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Bill 108 Proposed Regulations Staff Report to Council

Report Number: 2019-76

Department(s): Planning & Building Services and Innovation & Strategic Initiatives

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Meeting Date: August 26, 2019

Recommendations

1. That the report entitled Bill 108 Proposed Regulations, dated August 26, 2019 be received; and,
2. That following the September 9, 2019 Council meeting, the final version of the report entitled Bill 108 Proposed Regulations, dated August 26, 2019 be formally submitted to the province; and,
3. That it be requested by the Town that the province release final drafts of the regulations associated with Bill 108 with a consultation period of no less than 3 months; and,
4. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

Purpose

The purpose of this report is to provide Council with information regarding the planning and financial implications of three proposed regulations to implement Bill 108 (the More Homes More Choice Act).

Background

Bill 108, More Homes, More Choice Act, 2019 received Royal Assent on June 6, 2019 and is awaiting proclamation. The changes to the various pieces of legislation including those to the Planning Act (as contained in Schedule 12 of Bill 108) are not currently in force; they will come into force upon proclamation.

Report 2019-62 (June 17, 2019) provided Council with an overview of the implications of Bill 108 and recommendations on the Bill, which were subsequently submitted to the province for consideration.

As noted in Report 2019-62, Bill 108 will dramatically change the urban planning and development financing landscape. The changes will create additional administrative costs, increase price uncertainty for developers/landowners, and may reduce municipalities' ability to continue to provide the current levels of service.

At the time Report 2019-62 was being prepared, it was anticipated that much of the detail regarding Bill 108's implementation would be included in the subsequent regulations. The province has recently released three proposed regulations which are discussed in this Report.

This report provides technical recommendations that seek to improve the regulations' specific elements. Notwithstanding the technical recommendations contained herein, staff maintain the opinions regarding the larger concerns associated with Bill 108 as expressed in Report 2019-62.

Discussion

General Comments on Consultation

The three proposed regulations that are intended to implement Bill 108's planning (Schedule 12 of Bill 108) and financial (Schedule 3 of Bill 108) components are:

1. Proposed new regulation and regulation changes under the Planning Act, including transition matters, related to Schedule 12 of Bill 108 - the More Homes, More Choice Act, 2019 **(June 21 to August 6, 2019)**
2. Proposed new regulation pertaining to the community benefits authority under the Planning Act **(June 21 to August 21, 2019)**
3. Proposed changes to O. Reg. 82/98 under the Development Charges Act related to Schedule 3 of Bill 108 - More Homes, More Choice Act, 2019 **(June 21 to August 21, 2019)**

Through Report 2019-62, it was recommended that the province engage in significant and meaningful consultation with municipalities prior to the development of the regulations. Significant levels of consultation are appropriate for Bill 108's regulations due to the dramatic change from the planning and development financing landscape that Bill 108 represents.

The three regulations were posted for public review for a total of 46 and 61 days respectively, over the summer period. In staff's opinion, this consultation represents neither 'significant' nor 'meaningful' consultation, and is insufficient for such extensive

legislative changes. It is submitted, through a recommendation in this report, that additional time would be beneficial for the province to seriously consider feedback and release more detailed regulations.

Comments & Recommendation(s): It is recommended that:

- The province extend the August 6 and August 21 deadlines in order to provide adequate time to consider the feedback that municipalities are currently providing on the proposed regulations;
- The province meet specifically with Town and Region staff to discuss the recommendations contained herein; and
- The final regulations be revised to reflect the specific recommendations contained herein as well as prescribe clear processes that can be followed by planning and finance practitioners.
- The province release final drafts of the regulations associated with Bill 108 with a consultation period of no less than 3 months (formal recommendation of this Report).

Proposed new regulation and regulation changes under the Planning Act, including transition matters, related to Schedule 12 of Bill 108 - the More Homes, More Choice Act, 2019

It was anticipated that full Planning Act regulations implementing Schedule 12 of Bill 108 were going to be released by the province, however the proposed regulations lack much of the detail that was anticipated by Report 2019-62. Unlike most provincial legislation’s regulations, the regulatory framework that was released does not include specific, prescribed processes for the implementation of the more general direction provided in the Bill; in contrast, the regulatory framework released is essentially a summary of the proposed changes. To date, the following details have been released:

1. Transition

There are five amendments that Bill 108 proposed regarding transitional matters associated with planning application review timelines and LPAT appeals, summarized as follows:

Bill 108 Amendment:	Applies to:
The reduction for decision timelines on applications for official plan amendments (120 days), zoning by-law amendments (90 days, except where concurrent with official plan amendment for same	Complete applications submitted after Royal Assent (June 6, 2019) of Bill 108.

Bill 108 Amendment:	Applies to:
proposal) and plans of subdivision (120 days).	
Expanding grounds of appeal of a decision on an official plan/official plan amendment or zoning by-law/amendment and allowing the LPAT to make any land use planning decision the municipality or approval authority could have made.	Appeals of decisions not yet scheduled for a hearing by the LPAT.
Expanding the grounds of appeal of a lack of decision on an official plan/official plan amendment or zoning by-law amendment and allowing the LPAT to make any land use planning decision the municipality or approval authority could have made.	Appeals of the failure of an approval authority or municipality to make a decision within the legislated timeline that have not yet been scheduled for a hearing by the LPAT.
The removal of appeals other than by key participants and the reduction of approval authority decision timelines for non-decision of official plan, official plan amendments.	Applications where the approval authority has not issued a notice of decision at the time the Bill's proposed changes come into force.
The removal of appeals other than by key participants for draft plan of subdivision approvals, conditions of draft plan of subdivision approvals or changes to those conditions.	Applications where the notice of the decision of draft approval or change of conditions is given, or conditions are appealed other than at the time of draft approval on or after the date that the Bill's proposed changes come into force.

Comments & Recommendation(s):

It is submitted that the proposed transitional framework as summarized in the second column above represents an overly complex approach that raises implementation concerns for municipal staff. It is therefore recommended that:

- The final regulations include a simplified approach wherein the above noted five transition provisions become applicable to planning applications that are deemed complete after the date of proclamation.

2. Community Planning Permit System

The Community Planning Permit System (CPPS) is a framework that combines and replaces the individual zoning, site plan and minor variance processes with a single application and approval process, within a specific area. This is intended to streamline the planning approvals process, thereby resulting in quicker development within these areas. The Planning Act already has provisions for creating CPPS areas, however the proposed regulatory framework sets out matters that must be included in an official plan to establish the system; sets out the process to establish the implementing by-law; removes the ability to appeal the by-law implementing a CPPS; and most significantly, includes provisions that allow the Minister to require a local municipality to establish a CPPS.

Comments & Recommendation(s):

It is generally agreed that removing the ability for appeals will help to streamline the planning process within CPPS areas; however, it is recommended that:

- The final regulations include additional information regarding the circumstances where the Minister would issue an order to require a local municipality to adopt or establish a CPPS.
- The final regulations provide clarity regarding which official plan(s) (upper/single tier or lower tier, or both) must include CPPS policies.

3. Additional Residential Unit Requirements and Standards

Specific standards are proposed to remove barriers for the establishment of additional residential units with respect to occupancy and parking. Currently, the Planning Act requires official plans and zoning by-laws to allow up to two residential units in a primary building (detached house, semi-detached house or rowhouse). Bill 108 has changed this to allow two residential units in a primary building, as well as an additional unit in an ancillary building or structure. This change effectively increased the allowable number of residential units on a single property from two to three.

The proposed regulation sets out requirements and standards for these additional residential units. The regulation specifies that an additional unit may be occupied regardless of whether or not the primary unit is occupied by the actual owner of the property. The proposed regulation also requires parking to be provided in accordance with municipal zoning, up to one additional parking space per additional unit. Furthermore, the regulation formally recognizes and defines ‘tandem parking’.

Comments & Recommendation(s):

It is generally agreed that a significant amount of housing capacity exists in existing building stock, specifically in the Town’s townhouse dwellings and ancillary buildings and structures. The Town has been a leader regarding Accessory Dwelling Units

(ADUs) and permits them by right, through Official Plan policy and zoning standards, in single detached and semi-detached residences. Staff see the extension of this permission to the other specified forms of ground-oriented housing and ancillary buildings as logical and supportable. Further, staff support the proposed regulation's parking content. However, it is imperative that this additional density be adequately supported by increased hard and soft services (connected to number 4 under the proposed changes to Schedule 3 of Bill 108, below). Therefore it is recommended that:

- The identified additional residential units be subject to a Development Charge (DC) to ensure that the “growth pays for growth” philosophy is upheld.

4. Housekeeping regulatory changes

The regulations propose to modify a number of other existing regulations under the Planning Act to ensure consistent requirements among regulations.

Comments & Recommendation(s):

None.

Proposed new regulation pertaining to the community benefits authority under the Planning Act

Proposed new regulations specifically pertaining to the Community Benefits Charge will provide municipalities with the ability to charge for certain community benefits. Sometimes called ‘soft services’, these community benefits could include libraries, parkland, daycare facilities and recreation facilities. To date, the following details have been released:

1. Transition

The proposed date for municipalities to transition to community benefits is January 1, 2021. This means that municipalities must pass a Community Benefits Charge By-law by this date in order to collect development charges from new development for the prescribed ‘hard’ services such as water/wastewater infrastructure. This by-law will act as the new mechanism that the Town will use to collect funds for the soft services that were previously collected through Development Charges (DCs) and Section 37 (bonusing).

Comments & Recommendation(s):

The clarity on the January 1, 2021 deadline to pass a Community Benefits Charge By-law is appreciated, however staff do have some concerns. It is noted that the January 1,

2021 deadline does not provide adequate time to prepare a background study to research appropriate rate(s) for inclusion in the by-law, or set up the required administration to oversee the application of, and reporting on, the new Community Benefits Charge (connected with number 2 below). In addition, the proposed regulatory framework does not provide adequate information on transitional matters beyond the January 1, 2021 date, e.g. how any recently approved Section 37 agreements are to be handled. It is therefore recommended that:

- The deadline be extended to January 1, 2022.
- The 'freeze' of any DC increases be lifted for the period between January 1, 2021 and the approval of the new by-law, to offset any increased immediate administrative costs.
- The final regulations must ensure that any Section 37 payment requirements under existing agreements will carry forward in accordance with the agreement provisions.

2. Reporting on community benefits

In order to provide transparency and greater accountability on the new Community Benefits Charge, under the proposed regulatory framework, municipalities would be required to prepare an annual report for the preceding year that provides information about the amounts in the Community Benefits Charge special account, such as:

- Opening and closing balances of the special account
- A description of the services funded through the special account
- Details on amounts allocated during the year
- The amount of any money borrowed from the special account, and the purpose for which it was borrowed
- The amount of interest accrued on money borrowed

Comments & Recommendation(s):

Increased transparency and accountability are supportable objectives, however as noted in number 1 above, increased costs are anticipated with the associated administration. Therefore it is recommended that:

- A provision be included in the proposed regulation that allows municipalities to recoup the administrative costs of the Community Benefit Charge reporting on an on-going basis.

3. Reporting on parkland

Under Bill 108, municipalities may choose to collect parkland requirements (land or cash-in-lieu) under the current basic parkland provisions of the Planning Act or through the new Community Benefits Charge / by-law. In instances where a municipality chooses to collect parkland requirements through a Community Benefits Charge, the proposed regulatory framework requires that such parkland funds be kept in a special account and annual reporting take place, in order to provide transparency and accountability. This is similar to the annual reporting on the new Community Benefits Charge discussed in number 2 above, and the same five reporting elements are required.

Comments & Recommendation(s):

It is unclear how this differs from the changes that came in to effect under Bill 73, which currently require parkland fees to be kept in a special account with annual reporting requirements in order to provide enhanced transparency and accountability. Such clarification is requested from the province.

4. Exemptions from community benefits

The proposed regulations provide that Community Benefits Charges will not be applicable to the following developments (i.e. exempt):

- Long-term care homes
- Retirement homes
- Universities and colleges
- Memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion
- Hospices
- Non-profit housing

Comments & Recommendation(s):

Staff have concerns with the ambiguity of some of the above noted developments that are proposed to be exempt from Community Benefits Charges, namely “long-term care homes”, “retirement residences”, “universities and colleges” and “non-profit housing”. In addition, there may be other forms of development that a municipality may wish to incentivize. Therefore it is recommended that:

- The regulation includes definitions for “long-term care homes”, “retirement residences”, “universities and colleges” and “non-profit housing”; and
- The regulation allow for additional exemptions to the Community Benefits Charge for types of developments identified by a Municipal Council and outlined in the Community Benefits By-law.

5. Community benefits formula

A formula for calculating community benefit payment amounts is not included in the proposed regulatory framework, although it is understood that such a formula is expected to be released by the province through a subsequent regulation in the fall of 2019. The province has indicated that an objective in developing the formula is to enable municipalities to maintain the historical revenues from Section 37 height/density bonusing, parkland dedication, and DCs for discounted services under this new charge.

For any particular development, the Community Benefits Charge payable could not exceed a prescribed percentage of the value of the development land (i.e. a Community Benefit Charge 'cap'). This cap is based on the value of land the day before the building permit is issued, in order to accurately reflect lands' zoning that is required to accommodate the development.

Comments & Recommendation(s):

The community benefit needs differ between municipalities and should reflect local population, existing services and facilities, development market and other contextual considerations. Using Newmarket examples, in order to maintain current growth related revenue, the prescribed percentage of the value of land would need to 75% for a high-rise apartment development and 25% for a ground-oriented residential development. To account for these different needs, it is recommended that:

- The formula include a clear methodology that can be tailored to local contexts in order to accurately reflect different population sizes and levels of market demand of various municipalities.
- The formula ensure that requirements are high enough to achieve revenue neutrality to the municipality, considering many soft services are no longer able to be captured by DCs and will rely solely on funding from the Community Benefits Charge.
- The province, in determining the formula, have regard to existing Section 37 (bonusing) formula and any parkland requirements that municipalities currently have, in order to understand current payments.
- The regulation clearly state that lower tier municipalities will be responsible for administering the Community Benefits Charge.

6. Appraisals for community benefits

As noted in number 5 above, the payable Community Benefits Charge cannot exceed an amount determined by a formula which will be set at a prescribed percentage of the value of the development land (i.e. a Community Benefit Charge 'cap') on the day before

the building permit is issued. In instances where a developer/landowner is of the view that the Community Benefits Charge being applied exceeds the cap, the developer/landowner can challenge the cap based on the completion of an appraisal. Similarly, a municipality can also provide the developer/landowner with an appraisal if it is of the view that the developer/landowner's appraisal is inaccurate. If both appraisals differ by more than 5 percent, a third appraisal is prepared.

Comments & Recommendation(s):

Planning Staff supports the appraisals-based approach to determine the Community Benefits Charge cap. However it is recommended that:

- The regulation include a definition of “development land” in order to clarify which land areas are to be included/excluded for the purposes of calculating the cap.
- The regulation include a longer timeline that the current 45 days for municipalities to provide the developer/landowner with an appraisal.

7. Excluded services for community benefits

In much the same way that certain developments are exempt from Community Benefit Charges (as noted in number 4 above), the proposed regulatory framework excludes the following specific facilities, services or matters from community benefits:

- Cultural or entertainment facilities
- Tourism facilities
- Hospitals
- Landfill sites and services
- Facilities for the thermal treatment of waste
- Headquarters for the general administration of municipalities and local boards

Comments & Recommendation(s):

The above list of proposed exclusions appears to be generally consistent with the ineligible services found under the Development Charges Act, however there is inconsistent terminology regarding the proposed term “Facilities for the thermal treatment of waste” and “facilities and services for the incineration of waste” as currently exists in the Development Charges Act. Therefore it is recommended that:

- The regulation maintain the term “facilities and services for the incineration of waste” as currently exists in the Development Charges Act.

8. Community planning permit system

As noted above (in number 2 of the proposed changes to Schedule 12), the proposed regulatory framework sets out matters that must be included in an official plan to establish the system; sets out the process to establish the implementing by-law; removes the ability to appeal the by-law implementing a CPPS; and includes provisions that allow the Minister to issue an order to require a local municipality to establish a CPPS. Building on these changes, the regulatory framework proposes that a Community Benefits Charge by-law would not be permitted to be used in CPPS areas because the opportunity for requiring the provision of specified community benefits already exists under the process involved in establishing CPPS areas.

Comments & Recommendation(s):

No recommendations; the CPPS allows conditions to be added to approvals to require the provision of specified community facilities or services, therefore it is not logical to require additional Community Benefits Charge in these areas.

Proposed changes to O. Reg. 82/98 under the Development Charges Act related to Schedule 3 of Bill 108 - More Homes, More Choice Act, 2019

1. Transition

The regulations of the Act provides for transition to the CBC authority during the period of January 1, 2020 to January 1, 2021.

Comments & Recommendation(s):

The effective date of the provisions relating to DCs is unclear. It is recommended that:

- Regulations state that all Development Charge Act provisions of Bill 108 will be effective at the municipality's discretion during the transition period (i.e. by January 1, 2021), such that DC by-law amendments for collections and statutory exemptions can take effect at the same time as transitioning soft services.

2. Scope of types of development subject to development charges deferral

The regulations of the Act provide for the deferral of DCs for rental housing development, institutional/industrial/commercial development until occupancy for 5 years. It also provides for the deferral of DCs for non-profit housing development for 20 years.

Comments & Recommendation(s):

Given the potential for abuse of the DC deferral provision for rental housing developments, it is recommended that:

- The regulation impose a requirement that any owner of the property must maintain “non-profit corporation” status over the term of the deferral.
- The regulation provide municipalities a means of substantiating that a property remains a “rental housing development”.

Given the length of time that DCs can be deferred for non-profit housing it is further recommended that:

- The regulation imposes a requirement that any owner of the property must maintain “non-profit corporation” status over the term of the deferral.

3. Period of time for which the development charge freeze would be in place

Upon proclamation, Bill 108 will require the amount of a DC to be set at the time a zoning by-law amendment or site plan application is received by the Town. The proposed regulations establish that the DC rate would be frozen “until two years from the date the site plan application is approved, or in the absence of the site plan application, two years from the date the zoning application was approved.”

Comments & Recommendation(s):

The stated goal of this proposed regulation is to “encourage development to move to the building permit stage so that housing can get to market faster and provide greater certainty of costs”. However, it is unclear how providing a two year freeze on DCs will meet this goal. This two year freeze may actually have the opposite effect, allowing developers with site plan approval to delay building for up to two years. Therefore, in order to incentivize expeditious development, it is recommended that:

- The two year freeze be reduced to a maximum 6 month freeze.
- The province consider other ways to incentivize the expeditious development of pre-approved site plans including the application of penalties for non-development within specified timeframes.

4. Interest rate during deferral and freeze of development charges

Upon proclamation, Bill 108 will allow municipalities to charge interest on DCs payable during a DC deferral period (as per number 2 above) as well as during the DC ‘freeze’ from the date the application is received to the date the DC is payable (as per number 3 above). The proposed regulation does not prescribe a maximum interest rate.

Comments & Recommendation(s):

No recommendations; by not prescribing a maximum interest rate municipalities may set their own, which accurately reflects local contexts and considerations including the strength of the local development market.

5. Additional dwelling units

The regulations of the Act propose that the present exemption within existing dwellings be expanded to allow "...the creation of an additional dwelling in prescribed classes of residential buildings and ancillary structures does not trigger a DC" Further, in new single, semi and row dwellings (including ancillary structures), one additional dwelling will be allowed without a DC payment. Lastly, it is proposed that, "...within other existing residential buildings, the creation of additional units comprising 1% of existing units" would be exempted.

Comments & Recommendation(s):

There is potential to increase the housing supply by making more efficient use of existing housing stock through the additional dwelling unit provision. However, this additional density will require the provision of additional hard and soft services. A means to finance these additional services should be provided for in the regulations. Therefore it is recommended that:

- The identified additional residential units be subject to a DC to ensure that the "growth pays for growth" philosophy is upheld.

Timing of Report

As noted previously, the commenting period for two of the three proposed regulations is August 21, 2019 and the commenting period for the third proposed regulation is August 6, 2019. These commenting deadlines are prior to the August 26, 2019 Committee of the Whole date and the September 9, 2019 Council date. Therefore, in order to provide comments to the province within their commenting period, this report will be provided to the province through the Environmental Registry of Ontario upon completion as a draft, then again formally through the submission of a Council extract following the September 9 Council meeting. In the event that Committee or Council revise this Report's recommendations, the Council extract would reflect such revisions.

Conclusion

Bill 108's proposed regulatory framework lacks much detail required for a thorough assessment. This report makes recommendations that can be used by the province in the drafting of the final regulations in order to provide additional detail and increase clarity.

Business Plan and Strategic Plan Linkages

- Long-term Financial Sustainability
- Extraordinary Places and Spaces

Consultation

This report was co-authored by the Planning & Building Services and the Innovation & Strategic Initiatives Departments.

Human Resource Considerations

None.

Budget Impact

There are no budget impacts as a direct result of this report. However, the changes proposed by Bill 108's proposed regulations will have significant budget impacts.

Attachments

None.

Approval

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