



The Corporation of the Town of Tecumseh

Planning & Building Services

To: Mayor and Members of Council

From: Brian Hillman, Director Planning & Building Services

Date to Council: June 25, 2019

Report Number: PBS-2019-19

Subject: Bill 108 - More Homes, More Choice Act, 2019

Recommendations

It is recommended:

That PBS-2019-19, Bill 108 – *More Homes, More Choice Act, 2019*, be received.

Background

On June 6, 2019, Bill 108, the *More Homes, More Choice Act* (Bill 108) received Royal Assent by the Province of Ontario. Bill 108 amends 13 pieces of provincial legislation, with the stated goal being to address the shortage of affordable housing in Ontario by finding faster ways to get a mix of housing types built. The 13 pieces of legislation amended by Bill 108 are as follows:

- Cannabis Control Act
- Conservation Authorities Act
- Development Charges Act
- Education Act
- Endangered Species Act
- Environmental Assessment Act
- Environmental Protection Act
- Labour Relations Act
- Local Planning Appeal Tribunal Act
- Occupational Health and Safety Act
- Ontario Heritage Act
- Planning Act
- Workplace Safety and Insurance Act

Although Bill 108 received Royal Assent on June 6, only portions of the Bill came into force, with the balance to come into force on the day of proclamation. There has been no specific date upon which proclamation is anticipated. Bill 108 will require the introduction of numerous regulations for implementation. Draft regulations are anticipated by late June and will be available for public review and comment on the Environmental Registry of Ontario website (EBR). The Province has indicated that it will be reviewing the feedback with experts and will provide the final regulations by late summer. The purpose of this report is to summarize the changes specifically related to the *Planning Act*, *Local Planning Appeal Tribunal Act* and the *Development Charges Act* and to provide a commentary on how the changes may impact the Town of Tecumseh.

Comments

Changes to the *Planning Act*

Bill 108 reverses several of the changes made to the *Planning Act* through Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017*. It touches on numerous land use planning policies including:

- the creation of second units in ancillary buildings;
- reducing timelines for making decisions;
- sheltering plans of subdivision from third party appeals;
- changing the conditions under which municipalities can establish inclusionary zoning by-laws and policies to facilitate affordable housing development, however these would be limited to areas around protected major transit stations or having a development permit system in place; and
- allowing the Minister or a municipality to initiate the use of a Community Planning Permit System (CPPS) in areas strategic for housing growth.

One of the more significant changes introduced by the legislation is a new Community Benefits Charge (CBC) to address the costs of providing “soft” services to new residents as a result of growth. This is a change to Section 37 of the *Planning Act* allowing a municipality, through a by-law defining an area, to impose a CBC against land to pay for the capital costs of specified facilities, services and matters required because of development or redevelopment in the area. Costs of growth eligible for development charges are excluded from the new CBC (more detailed discussion is provided later in this Report).

The CBC by-law would be based on a strategy produced by the municipality which identifies the specific costs of growth that are no longer covered by development charges as a result of Bill 108 changes to the *Development Charges Act*. The Ministry of Municipal Affairs and Housing will be preparing a list of eligible items for the charge, methodology for calculating the charge and any caps they may deem necessary. It should be noted that the CBC would be held in a special account and these funds must be spent in keeping with the Act and regulations. Specifically, each year a municipality would have to spend or allocate at least 60

percent of the money that is in the special account at the beginning of the year. Certain lands (e.g., hospitals) would be exempted from the new CBC. These exemptions will be listed in a future regulation.

Discussion

1. Second Units

Previously, the *Planning Act* permitted second units (i.e. accessory apartments) in single detached, semi-detached or rowhouse dwellings, and in an accessory building, if there is only one unit in the main (single detached, semi-detached or rowhouse) dwelling (i.e. total of two units on one lot). Bill 108 permits second units in a detached, semi-detached or rowhouse, as well as an additional unit in an accessory building such as a detached garage (i.e. total of three units on one lot). A regulation is forthcoming that will provide the necessary details for implementation.

2. Timing of Municipal Decisions

Amendments to the *Planning Act* brought about by Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017* have been largely repealed. Bill 108 changes will have an impact on both the timing and approach taken by the Town to evaluate development applications and by the Local Planning Appeal Tribunal (LPAT) to adjudicate an appealed application. It significantly reduces the timelines for decisions regarding Official Plan Amendments, Zoning Amendments and Draft Plans of Subdivision, as outlined below:

| Type of Application | Pre-Bill 139 | Bill 139 | Bill 108 |
|---------------------------------------|---------------------|-----------------|-----------------|
| Official Plan/Official Plan Amendment | 180 days | 210 days | 120 days |
| Zoning By-law Amendment | 120 days | 150 days | 90 days |
| Plan of Subdivision | 180 days | 180 days | 120 days |

Bill 108 also eliminates the ability to extend the approval timeframe for OPAs by an additional 90 days, with mutual agreement of the Town and the County of Essex (the approval authority).

The reduced timelines will impact the ability of staff to adequately circulate, review, assess, and make recommendations regarding applications. There is the potential consequence that shorter timelines may make it challenging to conduct effective public consultation and work collaboratively with applicants for the best planning outcomes for the community. Recent experience has demonstrated a need for increased and repeated public engagement on individual planning applications. Although it is agreed that this type of thorough public engagement is important and will continue, there will be instances where the established

timelines are exceeded. Town Administration will work with applicants to encourage support for thorough public engagement and to recommend against filing appeals to LPAT when timelines have not been met as a result of ongoing public consultation processes.

In summary, the intent of Bill 108 is to reduce processing timelines to bring new dwelling units to market more quickly. The unintended consequence may be that shorter timelines could lead to more appeals for non-decisions, protracted timeframes awaiting LPAT hearings and decisions, and adding to the existing backlog of LPAT cases as a result of the transition from OMB to LPAT.

3. Community Benefit Charge

The changes to the *Planning Act* replace the existing Section 37 regarding 'Bonusing' with a new 'Community Benefit Charge'. Without the associated regulations, it is unclear to what extent there will be potential funding impacts and/or Administrative impacts (detailed discussion is provided later in this Report).

4. Parkland Dedication

The alternative rate for parkland using a density-based parkland calculation (1 hectare/300 units) is removed. Provided there is not a CBC By-law put into effect, Bill 108 now limits parkland to the value of the land at 2% for commercial/industrial and 5% for residential, which were the percentages in effect pre-Bill 108. Until the details of the regulations that will establish a formula in relation to the CBC have been released, the full impact of the changes to the parkland dedication rates is unclear.

Changes to the *Local Planning Appeal Tribunal (LPAT) Act*

LPAT remains but it will no longer evaluate appeals based solely on compliance with official plans and consistency with provincial plans and policy. Instead, it will return to a "best planning outcome" approach, by also allowing appeals that only list land use planning reasons for the appeal. This means a return to "de novo" hearings (or "new trial") as had been the case with the former Ontario Municipal Board.

The Bill sets limits to third party appeals of subdivisions and promotes increased mediation and/or mandatory Alternative Dispute Resolution to resolve appeals. It also establishes new limits on the extent of testimony and repeals provisions relating to the LPAT's ability to seek direction or refer matters of law to the Divisional Court.

Discussion

1. Consistency/Conformity Test

Appellants are no longer required to "explain how" the matter being appealed is inconsistent with, or not in conformity with, Provincial and County planning policies. Although Bill 108 still maintains the ability to appeal based on the consistency/conformity test, it no longer limits appeals to just that test. Rather, an appellant could also appeal provided they include land use planning reasons for an appeal (i.e. old OMB hearing "de novo" approach). If an appellant

were to appeal on the basis of inconsistency/non-conformity, it must expand on the consistency/conformity matter in its appeal.

The previous Bill 139 established a higher standard for consideration of appeals – the consistency/conformity test. This approach provided greater weight to local decision-making that was consistent with, and in conformity with Provincial land use planning policy directions. A shift to the pre-LPAT, former OMB approach regarding appeals that are not just consistency/conformity appeals, provides an additional opportunity to be heard at the LPAT, which could potentially lead to an increased number of appeals.

The return to de novo hearings based on wider grounds for appeal, and the reinstatement of the power of the LPAT to be a substitute decision maker for Council, could have the effect of reducing regard for Council's decision-making authority with regard to planning matters.

2. Mandatory Mediation

Several changes to the LPAT Act reflect an increased focus on mediation and dispute resolution prior to hearings. While the regulations are not yet available, Bill 108 provides for mandatory mediation or other dispute resolution processes if prescribed, in specified circumstances. Although the OMB had formerly encouraged mediation as a way to resolve disputes, the proposed amendments to the LPAT Act specifically empower the Tribunal to set rules and require that the parties participate in mediation or another dispute resolution process. The efficacy of using mandatory mediation powers in this new regime will be revealed over time.

3. Third Party Appeals

Bill 108 further limits who can appeal approval or conditions of Draft Plans of Subdivision/Condominium to only the applicant, municipality, Minister, public body, or prescribed list of persons. This change aligns with the current process for Site Plan approvals and Removal of Holding Zoning Amendments. The intent appears to be further streamlining and expediting final approval timelines, thereby reducing costs associated with bringing housing to the market quicker.

Appeals by members of the public are more often associated with the Official Plan/Zoning land use planning instruments (where the principle of use is established) than with the implementation mechanism of a Draft Plan of Subdivision. Restricting third party appeals could expedite the approval process for Draft Plan of Subdivision/Condominiums.

Changes to the *Development Charges Act (DCA)*

The Housing Supply Action Plan introduces changes that alter Development Charges (DCs). Highlights of the changes include:

- The separation of DCs and a new Community Benefits Charge (CBC) to pay for municipal services required as a result of growth. More specifically, “soft services” have been removed from the DCA and will be considered as part of the new CBC imposed under the *Planning Act*. These soft services include things such as parking, outdoor

recreation, indoor recreation, library services, daycare centres and cemeteries. Greater clarity as to the municipal services to be paid for by the CBC are not yet specified.

- Proposed changes also affect rules on when DCs are payable if the development is rental housing, institutional, commercial, industrial, or non-profit housing. In these cases, development charge payments to the municipality would now be made as six annual installments commencing upon occupancy. The Town may charge interest from the time of building permit issuance and the interest rate would be determined by regulation.
- The timing of the calculation of the DC payment has changed under certain circumstances. DCs owing will continue to be calculated at the building permit stage, except where a property has been subject to a Zoning By-law Amendment or Site Plan Approval, the DCs owing will be calculated as of the date of these applications.
- Second dwelling units in new residential buildings and structures ancillary to all dwellings are exempt from development charges.

Discussion

Although much of the financial impact on the Town will not be known until the regulations have been passed, the changes resulting from Bill 108 appear to have the potential for financial impacts on the Town and future debt levels by shifting some costs from developers to the ratepayer. Any reductions in the ability to collect development charges by shifting savings to the development process directly impacts existing ratepayers, either by shifting more pressure on taxes, or reducing the existing and future services that can be addressed within the funding available. Until the regulations have been provided, a full understanding of the impacts is unknown.

Below are highlights related to the proposed changes to the DCA as a result of Bill 108.

1. Exempt Community Infrastructure

Development charges no longer support community infrastructure identified in Tecumseh's ten-year capital program (as identified in the Town's DC Background Study), including parks and recreation, library, general government, and non-administration operational facilities (i.e. non-admin portion of Town Hall and IT) for the Town. These types of projects will be shifted to the CBC, however until the regulations are released, it is unclear the degree to which these projects will be funded.

2. Eligible Expenses

The new regulations are expected to prescribe eligible expenses for the remaining eligible services in the DCA. There is a concern the hard (roads and related) services would be prescribed/narrowed under regulation, further reducing the growth revenues available for municipalities and infrastructure needs.

3. Timing of Payment

As noted above, DCs were previously due at the issuance of a building permit. Bill 108 changes the timing of development charge payments related to rental housing, non-profit housing development, institutional development, industrial development, and commercial development to include six equal annual installments, with the first payment due at building permit occupancy and the remaining installments due at each of the following five anniversaries. Interest at a prescribed rate would be allowed on amounts owing after the first payment. Any unpaid amounts after five years would be eligible to be added to the property account as taxes.

Deferring payment for commercial and industrial developments allows developers to benefit at the expense of taxpayers since Bill 108 will require municipalities to finance the obligations of developers over five years.

This delay in payment creates a gap between construction of infrastructure and collection of development charges which will require municipalities to finance the costs through increased debt or deferred spending on infrastructure needed for development to occur.

If a property is sold after development is complete, but within the five-year timeframe, the new property owner is technically responsible for any outstanding development charges still owing.

There will be the need for Administrative procedures and allocation of staff time in order to adequately implement and track this new approach.

4. Timing of Development Charge Rate Determination

Under the previous DCA, rates were determined at the time of payment (building permit stage). Under Bill 108, DC rates will be determined based on the rate in effect at the day an application for approval of the development in a site plan control area under Section 41 of the *Planning Act* was made, or the day an application for zoning amendment to a by-law passed under Section 34 was made, or if either of the preceding does not exist, the day a building permit issued. This will result in the rate being set earlier in the development process in the specified circumstances.

Although this adds certainty to developers in terms of what is owing, it adds uncertainty and potential risk to municipalities due to the disconnection between the determination of costs and the actual costs incurred when the infrastructure is constructed. Budgets and development charges are based on estimates that are updated based on better information the closer it is to construction of the infrastructure.

Municipalities are experiencing significant price fluctuations on capital projects affected by inflation, tariffs and the economic environment. The greater time between setting a rate and actual construction increases the uncertainty of the costs and the risk to the capital program. There is the potential to increase the costs to ratepayers and increase debt requirements.

Once again, there will be the need for Administrative procedures and allocation of staff-time in order to adequately implement and track this new approach.

5. Second Dwelling Units

Under the previous DCA, second dwelling units in existing houses were already exempt from DCs. Under Bill 108, second dwelling units in newly constructed houses and additional dwelling units ancillary to dwellings are also exempt from DCs. This would permit accessory apartments (basement apartments and units within accessory buildings) to be constructed in new houses without incurring DCs. This measure is expected to marginally reduce development charge collections over time but is consistent with PPS policy related to intensification and providing affordable housing.

6. Community Benefit Charge (CBC)

Bill 108 allows municipalities to pass by-laws to impose CBCs for “community infrastructure”. This charge would be based on a maximum value equal to a prescribed percentage of the value of land based on the day before a building permit is issued. It also allows municipalities to receive in-kind contributions (facilities etc. required by development), or land from a developer. The value of these contributions is required to be subtracted from the CBC revenues in place for the development. Each year the municipality must spend or allocate 60% of the collections it receives.

The combination of a municipality’s inability to collect development charges for all infrastructure and cash-in-lieu for parkland, in addition to capping the rate(s), will potentially add to the share of growth-related costs paid by existing ratepayers. This will affect a municipality’s ability to fund growth related capital for community infrastructure (parks, recreation, parking, libraries etc.), while also impacting the ability to fund needed hard (roads and related) infrastructure required for development to occur.

Further, there is a concern that land values are not a good proxy for need. The previous development charge regime provided a connection between cost of infrastructure and the rate to be charged a result of projected growth. The new CBC will be capped based on the value of land and based on the information provided to date, will not recognize a direct link between future infrastructure costs and development charge rates. In addition, the required annual allocation of 60% of all fees collected could impact the Town’s ability to plan and fund for larger projects.

The Town will be able to pass a CBC By-law as of January 1, 2020 and will have until January 1, 2021 to transition to the CBC regime. Accordingly, it is understood that the Town’s new DC By-law (adoption expected in August 2019) will be in full force and effect until either the passage of a CBC By-law or January 1, 2021, whichever occurs first.

7. General Issues

There is significant uncertainty in terms of details related to Bill 108 since these will not be known until the release of regulations. These issues include:

- the transition provisions under the Act;
- the prescribed eligible expenses for the remaining DC eligible services;
- the status of existing reserve fund balances both for the affected development charge services and for cash-in-lieu;
- the ability to secure the six annual payments of development charges;
- the determination of the cap on the CBC;
- additional studies required to enact CBCs;
- the ability to use CBC funding to pay for existing infrastructure currently funded under the affected development charges;
- whether the prescribed rate for land is to be updated on a regular basis; and
- whether municipalities will be able to update the CBC on a regular basis.

Summary

The wide scope of changes enacted by Bill 108, as they relate to the *Planning Act*, *LPAT Act* and *Development Charges Act* will have a number of impacts for the Town of Tecumseh. A summary of the significant changes are as follows:

Planning Act: the impact of the CBC will not be known until the regulations, including the formula for calculating the charge and an anticipated cap on the charge, are revealed. The diversity of land values, even within different neighbourhoods within the Town, may introduce funding challenges that make it difficult to cover the cost of future municipal infrastructure required as a result of growth.

Planning Act: given the complexity of development issues and the seemingly heightened public engagement on these matters of late, there may be challenges in meeting the reduced timelines which, in turn, opens the potential for more appeals for “non-decisions” on planning applications.

LPAT Act: returning to the more traditional format (de novo hearings) and powers that were in place under the former OMB could open the scope of the basis for appeals beyond that which were contemplated when LPAT was originally established – appeals solely based on a lack of consistency/conformity with the PPS and approved Official Plan policies.

DC Act: there are many unknowns as the details and formulae for DC calculation will be revealed in the regulations.

DC Act: the ability to defer the payment of the DC for certain types of uses and depending on the planning process undertaken will require implementation of administrative procedures/tracking that are not currently in place. There will be additional staff-time required to implement these new approaches, however the full impact is not known at this time.

It is apparent that there continue to be significant unknowns at this time given the Province has not yet released draft regulations that will ultimately flow from the legislative changes. Consultation with and comments from municipalities on these regulations will be important. Administration will review the draft regulations once released on the EBR and will further report to Council in order to provide comments from the Town to the Province as deemed necessary prior to the issuance of the final regulations anticipated by the end of August 2019.

Consultations

Financial Services

Financial Implications

Any financial impacts arising from Bill 108 are difficult to determine until the regulations are in place. It is anticipated that the consolidation of community infrastructure development charges and the *Planning Act* cash-in-lieu provisions to the new Community Benefit Charge provisions where the rates are fixed, could impact the ability to fund the Town's existing 10-year capital program for community infrastructure and negatively affect debt levels. Once the full impacts are known, the proposed capital program may require further scope changes or deferrals to community infrastructure capital projects in order to minimize the impacts on existing ratepayers.

In addition, there may be costs incurred by the Town in relation to changes to Administrative tasks required to implemented some of the Bill 108 changes, particularly as it relates to deferred DC payments.

Link to Strategic Priorities

| Applicable | 2017-18 Strategic Priorities |
|-------------------------------------|---|
| <input type="checkbox"/> | Make the Town of Tecumseh an even better place to live, work and invest through a shared vision for our residents and newcomers. |
| <input checked="" type="checkbox"/> | Ensure that the Town of Tecumseh's current and future growth is built upon the principles of sustainability and strategic decision-making. |
| <input type="checkbox"/> | Integrate the principles of health and wellness into all of the Town of Tecumseh's plans and priorities. |
| <input type="checkbox"/> | Steward the Town's "continuous improvement" approach to municipal service delivery to residents and businesses. |
| <input type="checkbox"/> | Demonstrate the Town's leadership role in the community by promoting good governance and community engagement, by bringing together organizations serving the Town and the region to pursue common goals. |

Communications

Not applicable

Website

Social Media

News Release

Local Newspaper

This report has been reviewed by Senior Administration as indicated below and recommended for submission by the Chief Administrative Officer.

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Recommended by:

Margaret Misek-Evans, MCIP, RPP
Chief Administrative Officer

| Attachment Number | Attachment Name |
|------------------------------|----------------------------|
| None | . |