MEMO / NOTE DE SERVICE

To / Destinataire	Mayor and Members of Council	File/N° de fichier:
From / Expéditeur	M. Rick O'Connor City Clerk and Solicitor Stephen Willis General Manager, Planning, Infrastructure and Economic Development Department	
Subject / Objet	Bill 108 Proposed *More Homes, More Choice Act*	Date: 09 May 2019

Bill 108, the proposed *More Homes, More Choice Act* was introduced in the Legislature on May 2, 2019. The Bill is currently before the Legislature for second reading.

The Bill contains amendments to 15 Acts, being:

a) *Cannabis Control Act, 2017*
b) *Conservation Authorities Act*
c) *Development Charges Act, 1997*
d) *Education Act*
e) *Endangered Species Act, 2007*
f) *Environmental Assessment Act*
g) *Environmental Protection Act*
h) *Labour Relations Act*
i) *Local Planning Appeal Tribunal Act, 2017*
j) *Municipal Act*
k) *Occupational Health and Safety Act*
l) *Ontario Heritage Act*
m) *Ontario Water Resources Act*
n) *Planning Act*
o) *Workplace Safety and Insurance Act, 1997*

This memo will address the amendments to the *Development Charges Act,* the *Local Planning Appeal Tribunal Act, 1997*, the *Ontario Heritage Act* and the *Planning Act*.

Development Charges Act

There are three major areas of change through Bill 108 that are proposed to be made to the *Development Charges Act* that are

i) The types of capital costs that can be recovered through development charges;
ii) The time periods for certain type of buildings for the payment of development charges; and
iii) The date at which the development charges rate payable is determined.

Types Of Capital Costs No Longer Able To Be Recovered Through Development Charges

Bill 108 proposes that what are typically referred to as "soft services" would no longer be recovered through development charges but rather be imposed through a "Community Benefit Charge" under the *Planning Act*. These services include:

i) Parks Development
ii) Recreational Facilities
iii) Libraries
iv) Corporate Studies
v) Paramedic Services
vi) Affordable Housing

The Bill will however permit the imposition of development charges for Waste Diversion services without a statutory deduction of ten per cent.

Timing Of Payment Of Development Charges

In respect of the following five types of development, Bill 108 proposes that the applicable development charges be payable over six annual instalments, commencing at the earlier of building permit issuance or occupancy:

1. Rental housing development
2. Institutional development
3. Industrial development
4. Commercial development
5. Non-profit housing development

The bill provides that should a development no longer fall within the five categories set out above, the development charges would be immediately due and payable. The bill also provides that in the event of non-payment, the amount owing can be transferred to the tax roll.

Determination Of Amount Of Development Charge

Bill 108 provides that if a development is subject to site plan approval, the development charge rate will be determined as of the date the application was made for site plan approval. Should the development not be subject to site plan approval, the date for the determination of the amount of development charges payable for be the date of an application for a zoning amendment. If neither of these two apply, it would be the date of the issuance of a building permit (or in the Ottawa context

in respect of non-front-enders for stormwater facilities, the date of registration of a plan of subdivision)

The application for site plan approval or a zoning amendment can be significantly in advance of building permit issuance as it is in the developer's hands to determine when it wishes to build. The bill therefore provides for a regulation to set forth a time limit between the application for a site plan or zoning by-law, after which the applicable development charge rate would be the rate in effect at the issuance of a building permit.

LOCAL PLANNING APPEAL TRIBUNAL ACT, 2017

The bill eliminates the initial hearing provided through Bill 139. While the nature of such hearing is subject to a pending decision of the Divisional Court as a resulted of a reference to the Court by the Tribunal (known as a stated case), Bill 139 envisaged a hearing done on the basis of a written record only with the submissions by counsel limited to 75 minutes.

A practice had developed before the former Ontario Municipal Board where non-parties (known as participants) would be able to take the stand and provide oral testimony. Participants would be subject to cross-examination. They would not have the right to make opening or closing submissions nor to ask questions of other witnesses. Depending on the complexity of the hearing, participants may have been required to submit a written outline of their proposed testimony before the hearing.

The proposed bill would limit a non-party to making submissions in writing only. The Tribunal can however require the presence of such a non-party for questioning by the Tribunal. It is unclear whether such would include cross-examination by the parties to the hearing.

Amongst the other changes, the bill would:

a) Permit the Tribunal to require mandatory mediation or other dispute resolution process,
b) Expressly provide that the Tribunal may limit the examination or cross-examination of a witness,
c) Provide that case management conferences for official plan, zoning and certain subdivision appeals would continue to be mandatory,
d) Eliminate the ability of the Tribunal to refer a matter to the Divisional Court in order to receive the opinion of the Court (a stated case).

ONTARIO HERITAGE ACT

Heritage Register

Bill 108 proposes that after a property has been listed in the heritage register, notice must be given to the owner. The owner may object to the municipality that the property has been so listed. Upon receipt of such objection, the municipality must consider such objection and Council must determine whether the property will continue to be listed in the register.

The process in place at the City of Ottawa provides for notice to be given to owners before the property is listed in the heritage register. There may be a need to revisit this process should Bill 108 be enacted as presently written.

Designation of Individual Properties (Part IV Designations)

Under the existing provisions of the *Ontario Heritage Act*, an objection to the designation of individual properties (a "Part IV designation") is heard by the Conservation Review Board. The objection is considered by the Review Board and a recommendation is made to the Council. It is ultimately up to the Council to proceed with or withdraw the designation.

Bill 108 provides that any one who has objected to the designation may appeal the designation to the Local Planning Appeal Tribunal. The Tribunal may, after holding a hearing, dismiss the appeal, repeal the by-law or amend the by-law. Thus Council would no longer have the final ability to determine if a designation of an individual building is to be approved.

Repeal of Individual (Part IV) Designation

Under the existing legislation, where an owner applies for the repeal of an individual designation, such is considered by Council. In the event Council agrees to the repeal of the designation, there is no ability to challenge the decision. In the event the Council refuses the application for repeal of the designation, such may be referred to the Conservation Review Board. The Review Board will then make a recommendation to Council which Council may accept or refuse.

Bill 108 provides that the owner may appeal a refusal of the determination of Council to repeal a Part IV designation and that any other person may appeal the determination of Council to approve a repeal of a Part IV designation. Either appeal is to be heard by the Local Planning Appeal Tribunal which may approve, amend or repeal Council's decision.

Alteration of Part IV Property

The proposed legislation limits to 60 days the ability of a municipality to deem an application to alter a Part IV property complete. Upon such application being deemed complete, a period of 90 days follows, after which, if Council has not made a decision the application is deemed approved.

Again, under the existing legislation, an objection to a refusal of Council to an alteration of a Part IV designated building is heard by the Conservation Review Board who makes a recommendation to Council. Under Bill 108, an appeal would lie to the Local Planning Appeal Tribunal who has the ability to reverse Council's decision.

Part V Property

Similar to Part IV properties, in respect of applications with a Heritage Conservation District, the proposed legislation limits to 60 days the ability of a municipality to deem an application to alter a Part V property complete. Upon such application being deemed complete, a period of 90 days follows, after which, if Council has not made a decision the application is deemed approved.

Planning Act

Official Plan And Zoning Amendments

Bill 108 reduces the time frame for appealing the failure to make a decision on an application for an official plan or zoning amendment from 210 and 150 days to 120 and 90 days respectively.

Bill 108 further returns to the process hearings that were in place prior to Bill 139. Thus, it is no longer mandatory for an appellant to outline why a proposed official plan or zoning amendment is inconsistent with the provincial policy statement or the official plan. Further as opposed to a two stage hearing, where after an appellant shows inconsistency or non-conformity the municipality is given an opportunity to revisit the matter, the process will revert to one hearing where the appeal to an amendment, or failure to enact the amendment is considered.

Community Benefit Charges

Bill 108 proposes a "Community Benefit Charge". This charge would take the place of development charges for "soft serves" under the *Development Charges Act*, benefits for height and density under the *Planning Act*, section 37 and parkland/cash-in-lieu of parkland pursuant to the *Planning Act*, section 42. The maximum amount of a community benefit charge that could be imposed by the municipality will be a specified percentage of the value of the land in question as set forth in a regulation enacted by regulation. The bill provides for a process of the utilization of appraisals to determine the land value.

Where a community benefit charge is in place, land will not be able to be taken for parkland as a condition of development approval, other than as condition of approval of a subdivision. However, if land is taken as parkland as a condition of approval of a subdivision, a community benefit charge cannot be imposed against the land within the subdivision.

Transition Matters

The proposed bill provides a broad authority for the government to set forth regulations to deal with the transition from the current legislation framework to that which would result from Bill 108.

Financial Impacts

It will not be possible to determine the financial impact of the bill until it is known what is the percentage of land value that can be taken as the Community Benefit Charge. In 2018, the City received approximately $34 million for items that are now to be covered by the Community Benefit Charge. This included $24 million for "soft services" , $10 million for cash in lieu of parkland and $300K for current section 37 benefits.

In addition, it is anticipated that there will be a loss in revenue with the date for the determination of the development charge rate for the five specified uses being earlier in time than in currently the case.

Consultation

The Bill is open to consultation on the Environmental Registry until June 1, 2019.