



The Corporation of the Town of Milton

Report To: Council

From: Glen Cowan, Chief Financial Officer/Treasurer

Barbara Koopmans, Commissioner, Planning and Development

Date: May 27, 2019

Report No: CORS-035-19

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

Recommendation: WHEREAS the legislation that abolished the OMB and replaced it with LPAT received unanimous - all party support; and

WHEREAS all parties recognized that local governments should have the authority to uphold their provincially approved Official Plans; to uphold their community driven planning; and

WHEREAS Bill 108 will once again allow an unelected, unaccountable body to make decisions on how our communities evolve and grow; and

WHEREAS on August 21, 2018 Minister Clark once again signed the MOU with the Association of Municipalities of Ontario, which recognizes that “Public policy issues are complex and thus require coordinated responses...” and that “The Municipal Act, 2001 provides that the Province of Ontario endorses the principle of regular consultation between Ontario and municipalities in relation to matters of mutual interest”; and

WHEREAS the MOU sets out that “Ontario is committed to cooperating with its municipal governments in considering new legislation or regulations that will have a municipal impact”; and

WHEREAS Bill 108 will impact 15 different Acts - Cannabis Control Act, 2017, Conservation Authorities Act, Development Charges Act, Education Act, Endangered Species Act, 2007, Environmental Assessment Act, Environmental Protection Act, Labour Relations Act, 1995, Local Planning Appeal Tribunal Act, 2017, Municipal Act, 2001, Occupational Health and Safety Act, Ontario Heritage Act, Ontario Water Resources Act, Planning Act, Workplace Safety and Insurance Act, 1997.



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WHEREAS on April 15, 2019 Milton Town Council approved a resolution that the Provincial Government be called upon to improve the DCA, to ensure that all growth related costs of municipal infrastructure and services are recovered through development charges ensuring growth pays for growth;

WHEREAS on April 15, 2019 Milton Town Council approved a resolution that the Mayor write a letter to the Premier and the Minister of Municipal Affairs and Housing expressing Milton Council's concerns regarding changes to section 27 of the Development Charges Act, 1997, or a reduction in the use of development charges, and that Milton would welcome the opportunity to work with the Provincial Government to find creative solutions to increase the stock of affordable housing, while ensuring that growth pays for growth;

NOW THEREFORE BE IT RESOLVED THAT The Town of Milton oppose Bill 108 which in its current state will have negative consequences on community building and proper planning; and

THAT The Town of Milton call upon the Government of Ontario to halt the legislative advancement of Bill 108 to enable fulsome consultation with Municipalities to ensure that its objectives for sound decision making for housing growth that meets local needs will be reasonably achieved; and

THAT a copy of this Motion be sent to the Honourable Doug Ford, Premier of Ontario, The Honourable Christine Elliott, Deputy Premier, the Honourable Steve Clark, Minister of Municipal Affairs and Housing, the Honourable Andrea Horwath, Leader of the New Democratic Party of Ontario, the Honourable John Fraser, Interim Leader of the Liberal Party of Ontario, the Honourable Mike Schreiner, Leader of the Green Party of Ontario, and the Halton area MPPs; and

THAT a copy of this Motion be sent to the Association of Municipalities of Ontario (AMO), the Region of Halton, the City of Burlington, the Town of Halton Hills and the Town of Oakville.

EXECUTIVE SUMMARY

Bill 108 has been introduced by the Province and an opportunity to submit comments is available until June 1, 2019. The Bill proposes changes to a number of pieces of existing

legislation, with significant changes identified for the *Development Charges Act*, the *Planning Act* and the *Ontario Heritage Act*.

More information is needed to fully understand the implications of the proposed legislation for Milton as the lack of existing clarity prevents a proper evaluation. As outlined in further detail herein, what can be expected is a higher resource level and cost to support the administration of the changes, a greater utilization of debt financing to support changes to the timing of revenue collection, and greater uncertainty in the financial planning for new growth areas. Additionally, the Town could face a potentially material decrease in the funding available for the community's needs in areas like parks, community centres and libraries depending upon the prescribed rate and exclusions for the proposed Community Benefits Charge.

REPORT

Background

In the 2018 Fall Economic Statement, the Ministry of Municipal Affairs and Housing announced a consultation process on the Housing Supply Action Plan aimed at increasing housing supply by addressing barriers that inhibit the development of ownership and rental housing. The consultation ended on January 25, 2019 and on May 2, 2019, Bill 108: *More Home, More Choice Act, 2019*, received First Reading. Bill 108 proposes to amend various statutes including a number of amendments to the *Development Charges Act, 1997*, the *Planning Act* and the *Ontario Heritage Act* that will directly impact the Town. Consultation on the proposed Act closes on June 1, 2019.

Discussion

Summary of Proposed Changes

Development Charges Act, 1997 (DCA)

Eligible Services:

The proposed changes to existing legislation will remove all discounted (soft) services such as recreation, parks and libraries from the DCA. A new Community Benefit Charge (discussed below) may be imposed under the proposed Planning Act, which will replace development charges for discounted services. Eligible services within the Town's jurisdiction that will remain under the DCA include:

- Services related to a highway,
- Stormwater drainage and control services,
- Fire protection services, and
- Transit services.

New Exemptions:

The proposed changes include a new exemption for second dwelling units within newly built residential buildings or ancillary structures as well as in ancillary structures to existing dwellings and the conversion of communal areas to residential units in rental buildings.

Timing of DC Calculation:

The calculation of the amount of DC payable is proposed to be frozen at the rates in effect at the time of site plan or zoning application. Municipalities are permitted to charge interest, at a prescribed maximum rate, from the date of application to the date the DC is payable. For developments that do not require these planning approvals, the amount will continue to be calculated using the rates in effect at the time of building permit issuance.

Timing of DC Collection:

The Bill proposes deferring the payment of development charges (DC) until occupancy for the following types of development:

- Rental housing development,
- Institutional development,
- Industrial development,
- Commercial development, and
- Non-profit housing development.

For these types of developments, DC will be payable in six equal annual installments, commencing the date of occupancy. The municipality may elect to charge interest, at a prescribed rate, commencing on the date of occupancy, and can add any unpaid amounts, including interest, to the tax roll to be collected in the same manner as property taxes. For all other (re)developments, the DC will be payable at building permit issuance.

Transition Matters:

Bill 108 provides transition provisions that permit existing by-laws to remain in force until the earlier of the day it is repealed, the day a new by-law is passed under subsection 37(2) of the *Planning Act* or the prescribed date. For remaining eligible services, the existing by-law remains in force until the day a new by-law is enacted or the by-law expires, which for Milton is June 26, 2021. Any existing front-ending agreements under section 27 prevail over the above.

Planning Act

Bill 108 proposes significant changes to the *Planning Act* (and related changes to the *Local Planning Appeals Tribunal Act*), particularly in regard to the development application and appeal process, as summarized below. Notably, much of what is proposed will reverse recent changes to Ontario's land use planning system, enacted through Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017*.

Shorter Timelines for Processing Development Applications

In 2017, the Province extended municipal decision-making timelines for development applications by 30 days. This change was intended to allow for greater local assessment by planning staff, input from the community, and dialogue with applicants, and to ensure efficient and timely decisions regarding development applications, thereby reducing appeals to the Ontario Municipal Board (i.e., appeals over lack of decision). Bill 108 proposes to reverse the changes from Bill 139 and to further reduce timelines for processing development applications, as follows:

Instrument	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
Draft Plan of Subdivision	180 days	180 days	120 days

Along with the shorter timelines, Bill 108 also eliminates a municipality’s ability to extend the decision-making timelines for official plans and official plan amendments, should there be a need to do so in the opinion of the municipality.

Reinstated Ontario Municipal Board (OMB) Rules

A sweeping change to Ontario’s planning system in 2017 involved the renaming and reconstituting of the OMB by the Province. Bill 139 amended the *Planning Act* by:

- Creating the LPAT (Local Planning Appeal Tribunal) to replace the OMB;
- Reducing the ability of the Tribunal to overturn municipal decisions; and
- Giving municipal elected officials greater control over local planning.

Bill 108 proposes to reverse many of these changes. Although the LPAT name is retained, many of the former OMB rules will be reinstated. In particular:

- Grounds for appeal are no longer limited to failure to conform with provincial plans/official plans, or failure to be consistent with provincial policy statements. An appeal can still be made on these grounds; however, appellants are no longer limited to just these grounds; and

- The two-stage appeals process is eliminated and the Province will return to de novo hearing. This means that appeals will be evaluated based on “good planning” test, and final planning decisions will be made by the LPAT.

In addition, the Bill proposes new limits to third party appeals of subdivisions (and promotes increased mediation to resolve appeals), and new limits on the extent of testimony. As well, the province has committed to hiring additional staff to help deal with the existing LPAT case backlog.

Community Benefits Charge: Section 37 of the *Planning Act*

A new Community Benefits Charge (CBC) is proposed to replace the density bonusing provisions of Section 37 and the parkland dedication provisions of Section 42, in some cases, of the *Planning Act* along with the discounted services removed from the DCA. A municipality may, by by-law, impose a CBC against land to pay for the capital costs of facilities, services and matters required because of development or redevelopment. Before passing a CBC, the municipality must prepare a Community Benefits Strategy that identifies the facilities, services and matters that will be funded with the community benefits charges and complies with any prescribed requirements. The maximum amount of the CBC is limited to a prescribed percentage of the value of the land, determined by appraisal, as of the valuation date and is payable before construction of a building on the land proposed for (re)development. The proposed legislation provides for the exclusion of such types of (re)developments as well as the exclusion of facilities, services and matters as are prescribed. The legislation further proposes that if a municipality establishes a by-law under Section 37 to collect the CBC, then Section 42, Conveyance of land for park purposes, no longer applies, meaning municipalities collecting a CBC can no longer require parkland conveyance as a condition of development. The legislation; however, does permit an in-kind contribution of municipal facilities, services or matters by the landowner with the value of such in-kind contribution to be deducted from the CBC otherwise payable.

All monies collected under a CBC by-law must be paid into a special account and the municipality is required to spend or allocate a minimum of 60% of the monies that are in the special account at the beginning of the year. Transitional provisions have been established regarding DC credits and the transfer of discounted service DC reserve funds into the new special account. Annual reporting requirements shall be prescribed.

Ontario Heritage Act

Bill 108 also includes proposed changes to the *Ontario Heritage Act*, which are intended to provide clearer implementation rules and tools, to create more consistent appeals processes, and to help conserve heritage resources while allowing housing supply to increase.

Specifically, the proposed changes involve:

- Establishing prescribed principles that shall be considered by municipalities when making decisions under prescribed provisions of Parts IV (Conservation of Property of Cultural Heritage Value or Interest) and V (Heritage Conservation Districts) of the Act;
- Improving the process for adding properties that are not yet designated (known as “listed”) to the municipal heritage register, by giving notice to property owners once their property is “listed” and enabling them to object to the municipal council;
- Clarifying the meaning and intent behind the term “demolition or removal”, in circumstances where a property’s heritage attributes have been identified; and
- Requiring that municipal decisions related to heritage designations and alterations be appealable to the Local Planning Appeal Tribunal (LPAT), and that LPAT orders on such appeals be binding.

In addition, to reach decisions under the *Ontario Heritage Act*, the following municipal decision-making timelines are also proposed:

- 60-day timeline for notifying property owners of whether their applications for alteration and demolition are complete;
- 90-day timeline for municipalities to issue a notice of intention to designate a property as having cultural heritage value or interest; and
- Establishing a 120-day timeline for passing a designation by-law after the municipality issues the notice of intention to designate, subject to limited exceptions as prescribed by regulation.

Observations for Milton

Bill 108 will have significant impacts on municipalities in the management of growth and development. Staff have reviewed the proposed legislative changes and identify the following concerns and implications for Milton.

Lack of Clarity

Key changes in the proposed legislation have been identified to be prescribed through regulations including:

1. Development Charges Act, 1997:
 - Classes of proposed new residential buildings, the maximum number of additional dwelling units as well as the restrictions for developments exempt from DC for second dwelling units
2. Community Benefits Charge, section 37 of the *Planning Act*:
 - Maximum amount of the community benefits charge, expressed as a percentage of the value of land

- Developments or redevelopments upon which the community benefits charge may not be imposed
- Facilities, services and matters which are excluded from the community benefits charge

More information and clarity is needed to fully understand the implications of the proposed legislation for Milton and to provide concrete feedback through the consultation process. The recovery of growth costs will be constrained through the revised legislation and the lack of clarity results in an inability to evaluate the impact on existing residents and taxpayers and on the Towns' ability to extend existing levels of service to new growth communities.

There is also a lack of clarity as to how the new legislation is to be implemented in a two-tiered municipality. Of specific concern is how the CBC will be shared between the upper and lower tier municipalities as well as the responsibility of the lower-tier municipality to collect DC and interest charges for developments that are eligible for payments under the six annual instalments legislation.

Administrative Impacts

Based on the proposed changes, it is anticipated the cost of administering both the *Development Charges Act, 1997* and the *Planning Act* will increase significantly. Calculating DC at various stages of development, applying interest charges from application date to DC payment date and tracking payments and interest under the new six annual instalments legislation will require changes in technology systems and an increase in administrative resources. Additionally, calculating the community benefits charges based on an appraisal for each building permit issuance will be onerous and costly to administer in comparison to the collection methods for discounted services and parkland under the current legislation. Furthermore, the shorter timeframes for review and approval of planning processes will require an increase in planning staff resources resulting in increased costs for processing development applications. The Town will need to look at various options for recovering the increased costs for administration including increases in user fees and tax rates.

Cashflow

The proposed legislation contains numerous changes to the timing of the calculation and collection of DC that will impact cashflow forecasting and result in an increased reliance on debenture financing. As most of the services remaining eligible for DC are required in advance of development occurring, the delay in receiving DC revenues due to the installment payment legislation will require increased debenture financing to fund investment in capital infrastructure. Additionally, applying the DC rates in effect at application stage, rather than building permit issuance, impacts cashflow and erodes the purchasing power of the municipality due to inflationary pressures that will not be reflected in the DC revenues. The legislation permits the municipality to charge interest

from the application date; however, it is anticipated the prescribed interest rate will fall short of the inflationary pressures faced by municipalities. Over time, this will cause an upward pressure on the overall DC rates.

Long-term financial forecasting is made more complex by aligning the revenues for the Community Benefits Charge with property values instead of the capital infrastructure needs to support community growth. The existing DC legislation calculates DC revenues using the cost to extend historical levels of service to new growth areas and the estimated number of residential units and square metres of industrial/commercial/institutional development. The growth forecast is developed through extensive planning studies and provincial targets and remains relatively constant throughout the development of the lands resulting in a predictable revenue stream for the municipality to support infrastructure development. Under the proposed legislation, the calculation will be based on property values which can vary greatly depending on geographical location and proposed land use and which are very challenging to predict over the long-term planning horizon. This increases the financial risk for municipalities as revenue streams become more unpredictable and subject to changes in the real estate market, which has little to no relation to municipal funding requirements for capital investment.

Long-term Planning

The amount of uncertainty in the legislation makes long-term planning for growth very difficult in a high-growth municipality such as Milton. The Town is currently planning for the expansion of growth within the Sustainable Halton Lands, with local approval of the Trafalgar Secondary Plan earlier this year. Without further clarity on the proposed changes, timing of implementation and their impact on growth cost recovery, the Town may struggle to plan for new growth development areas in a timely and fiscally responsible manner.

Transition Matters

The legislation provides for some transition matters; however, there is still much uncertainty in the timing of when the proposed legislation will take effect as well as how the municipality will transition to the new legislation. The proposed legislation will require significant staff, consultant and legal resources to develop an implementation plan to address the numerous changes, ensure appropriate application of the legislation, understand the implications on existing development and financial agreements and to ensure the legislation is accurately reflected in the Town's policies and growth plans for new development areas.

Delivering Complete Communities

Amendment 1 to the Growth Plan will be in full force and effect on May 16, 2019 and maintains the requirement for the provision of public recreation facilities to support complete liveable communities. In order to deliver healthy, vibrant communities,

municipalities need to have access to effective development-related tools and funding sources to secure parkland and construct community infrastructure. The proposed changes identified in Bill 108 have the potential to erode the Town's current ability to do so in a timely and fiscally responsible manner.

Development Applications and Appeals

If the Bill is passed, it is expected that reduced timelines will allow less time for Milton staff to:

- Assess local planning and technical matters;
- Collect and consider input from the public; and
- Successfully negotiate solutions to possible issues.

Further, it is likely that more applications will be appealed much earlier in the review process (i.e., appeals over lack of decision), thereby circumventing the Town's development review process and leaving more planning decisions to be made by the LPAT - rather than municipal elected officials. It is important to note that the previous changes introduced through Bill 139 were arrived at after significant consultation with municipalities and consideration of points such as these.

Heritage

Town staff will now be required to reach decisions under the Ontario Heritage Act, within the timelines identified. Other than the challenges associated with more timeframes, the changes to the Ontario Heritage Act should add more certainty to the process and make it more transparent and efficient.

General

Bill 108 is intended to reduce housing costs but there is no mechanism in legislation to ensure the cost savings from reductions in DCs and the Planning Act requirements (section 37 and 42) are passed through to future homebuyers and renters. This is especially relevant as housing prices are driven by the market, and DCs comprise only a small portion of the overall cost of building a home in the GTA.

Although the DCA does have its limitations, it has been in place for over 20 years and the application has been tested through OMB appeals. The DCA is transparent and accountable, and provides a greater linkage between the growth-related cost and the developments that create the additional need for services.

Financial Impact

Bill 108 will have significant financial implications for the Town; however, the full extent of the impacts cannot be quantified with the information currently available. As



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discussed above, there is much uncertainty in the proposed legislation; however, it is clear the Town will face, at a minimum, the following financial implications:

- Increased costs to administer the proposed legislation for internal staff resources and appraisal costs for land values that will either need to be captured through increased user fees or an increase in the tax levy
- An increased use of debenture financing for growth infrastructure which will impact the Town's debt capacity limits as well as place upward pressure on development charges
- Financial risk to the collection of the Community Benefit Charge from changes in real estate values, which are beyond the Town's control
- Increased costs to the taxpayer for new DC exemptions for secondary dwelling units in new residential construction as well as conversions of common space in existing rental buildings

Additionally, the Town could face a potentially material decrease in the funding available for the community's needs in areas like parks, community centres and libraries depending upon the prescribed rate and exclusions for the proposed Community Benefits Charge.

Respectfully submitted,

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Commissioner, Planning and Development

For questions, please
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Attachments
None

CAO Approval
William Mann, MCIP, RPP, OALA, CSLA, MCIF, RPF
Chief Administrative Officer