



Staff Report

Planning and Development Services

Report To: Special Committee of the Whole
Meeting Date: May 27, 2019
Report Number: PDS.19.59
Subject: Preliminary Comments on Bill 108
Prepared by: Nathan Westendorp, Director Planning and Development Services

A. Recommendations

THAT Council receive Staff Report PDS.19.59, entitled "Preliminary Comments on Bill 108" for information;

AND THAT staff be directed to provide the comments pertaining to Bill 108, as substantively outlined in Staff Report PDS.19.59, to the Province prior to the June 1, 2019 deadline for submission of comments.

AND THAT staff be directed to include a request for extension to the Bill 108 comment deadline to September 1, 2019 to allow municipalities sufficient time to assess the impacts of Bill 108.

AND THAT Council request the Province to engage in a fulsome consultation process including representatives from municipalities outside the Greater Golden Horseshoe, in the development of all regulations associated with proposed Bill 108.

AND THAT Council authorize the Interim Chief Administrative Officer, Director of Planning & Development Services, Director of Finance & IT Services, or any other member of the Senior Management Team as applicable, to provide further input to the Province on Bill 108, and associated policy(ies) and regulations.

B. Overview

The Provincial government recently released the document More Homes, More Choice: Ontario's Housing Supply Action Plan for comment. As part of the Action Plan, the Provincial government introduced Bill 108, entitled the More Homes, More Choice Act, 2019 which contains proposed changes to 13 pieces of legislation. The Province is seeking comments on the proposed legislative changes by June 1, 2019. This report provides a preliminary overview of the notable proposed changes. Considering the release date of the Bill 108 and a June 1, 2019 deadline for comments, Town staff have expedited a review to ensure Committee of the Whole can be informed to the greatest extent possible. It should be noted that Town Council will not formally have the opportunity to receive this report prior to the June 1, 2019 comment deadline. Therefore, it is recommended that Town staff provide comments to the Province

regarding Bill 108, as substantively outlined in this report. A more fulsome interdepartmental review is also recommended and should be associated with a request for the Province to extend the comment period to allow municipalities sufficient time to assess the impacts of Bill 108.

C. Background

On May 2, 2019 the Provincial government released [Ontario's Housing Supply Action Plan](#). As part of the Action Plan, the Provincial government is proposing legislative changes that are intended to “streamline the complex development approvals process to remove unnecessary duplication and barriers, while making costs and timelines more predictable.” These legislative changes are captured within [Bill 108](#). The Province is seeking comments on Bill 108 by June 1, 2019. Considering the compressed timeline provided to assess the impacts, this report provides a preliminary review of the notable changes as identified by Town staff.

D. Analysis

The legislative changes proposed through Bill 108 are wide ranging. There has been limited time to review, little to no opportunity to request clarification from Provincial officials, and it appears several key implementation details will be brought forward in the future through provincial regulations. As such, it is difficult for Town staff to fully understand the impacts of Bill 108 on the Town at this time. However, the following is a summary of the more notable changes as identified through staff's preliminary review.

Second Units – The Planning Act is proposed to be changed to permit second units as-of-right, within detached homes, semi-detached homes, rowhouses, or within detached ancillary structures (i.e. laneway homes, coach houses, etc.). Also, second units would be exempt from development charges (DCs).

Comment: The Town supports these changes, but suggests that policies/guidelines be required that will address design issues that could occur in the development of second units within detached ancillary structures.

Shortened Timelines – The Planning Act timelines that municipalities have to process Planning Act applications before an applicant may appeal to the Local Planning Appeals Tribunal (LPAT) are proposed to be shortened as follows:

Official Plan Amendments – 210 days (Current) to 120 days (Proposed)
Zoning Bylaw Amendments – 150 days (Current) to 90 days (Proposed)
Plans of Subdivision – 180 days (Current) to 120 days (Proposed)

Comment: Reductions in these timelines will have an impact on Town human and financial resources, and potentially on legal resources as well. If approved, these changes require the same level of review/analysis, public notice & engagement, and municipal decision-making to occur in less time. The Town will have to find ways to augment its ability to review and make decisions on Planning Act applications more quickly while ensuring consistency and conformity

with planning policies, bylaws, and legislation. Considering the Town's current procedural format having these specific matters vetted through Committee of the Whole prior to consideration and a decision by Council, staff will have less time to review planning applications prior to preparing a report and moving it through the internal authorization process. If decisions are not made within the legislated time, applicants have the ability to appeal to the LPAT. This has the potential to result in more applications under appeal, thereby requiring additional staff, financial, and legal resources to deal with each appeal. Considering the associated proposed changes to the LPAT Act later on in this report, it is anticipated that each appeal will take longer than in the current LPAT process established through Bill 139.

Inclusionary Zoning – Bill 108 proposes to adjust the terms under which municipal governments can establish inclusionary zoning by-laws and policies to facilitate affordable housing development. Inclusionary zoning would be limited to areas around protected major transit stations or areas with a development permit system in place. The Minister of Municipal Affairs and Housing (MMAH) will also have the authority to order an area to be subject to inclusionary zoning. These changes will continue to allow municipalities to enact inclusionary zoning but will restrict where and how it is applied.

Comment: Inclusionary Zoning can be an effective tool to increase the affordable housing stock in a municipality. A municipality's ability to pursue use of this tool should not be limited, but rather guided to ensure it is implemented in the correct context. The Province is requested to continue to allow inclusionary zoning, in tandem with legislative changes to make implementation of the community planning permit system (hereinafter referred to as a "development permit") faster and more achievable for municipalities.

Appeals To LPAT – Bill 108 proposes to change various aspects of who can appeal certain matters and how the LPAT deals with the appeals. Most notably, the following are some impactful proposed changes:

- Limit on appeals to official plan policies related to implementation of a development permit system.
- Remove requirement that appeals be exclusively on the basis that approval of the planning document (i.e. Official Plan or Zoning Bylaw) is inconsistent with the Provincial Policy Statement, fails to conform or conflicts with a provincial plan or fails to conform with an Official Plan. Appellants are required to state these in the notice of appeal, but would no longer be limited to just those grounds when the matter is heard before the LPAT.
- Re-introduce the single hearing process where the LPAT would have the power to make a final determination approving, refusing to approve or modifying all or part of a planning matter that is under appeal.
- Change and/or reintroduce parties' ability to introduce evidence and examine or cross-examine witnesses at hearings. However, the LPAT will have final authority to limit evidence at a hearing.
- Remove the ability for third-party appeals to approvals of plans of subdivision, unless the person or public body is specifically identified in the Act.

Comment: Many of the legislative changes proposed to the Planning Act dealing with LPAT appeals adjust who is permitted to appeal, on what basis appeals can be submitted, and how the LPAT can adjudicate matters that are before it. Town staff's primary concern is that some of the changes will likely extend the length of some hearings, thus requiring more time and resources to assert the Town's position. Also, it is unclear whether the LPAT's current process of determining the validity of appeals will continue. This process can assist in refining the number of appeals that actually move towards being heard by the LPAT. Also, it is unclear whether municipalities will receive additional time to prepare appeal records prior to sending the prescribed information to the LPAT. In addition to the current compressed timeline, the municipal costs associated with compiling this information for the appeal package are extensive. For example, when the Town's comprehensive zoning bylaw was appealed in late 2018, it cost the Town over \$5,000 in staff time and materials to prepare the appeal record required by the LPAT. Finally, it is critical that the Province allow applicants to be automatically identified as a party for appeals that directly relate to their own application.

Community Benefit Charge – Bill 108 introduces a new concept called a Community Benefits Charge (CBC). This charge is intended to address the costs of providing services to new residents as a result of growth. The proposed changes to Section 37 of the Planning Act would permit a municipality to pass a bylaw for a defined area. This bylaw would impose community benefits charges against land to pay for capital costs of facilities, services and matters required because of development or redevelopment in the area. It is important to note that a Community Benefit Charge would not be permitted with respect to facilities, services or matters included in a Development Charges bylaw. A CBC by-law would be based on a strategy developed by the municipality which identifies the costs of growth not covered by development charges. The CBC must meet specified requirements, follow the prescribed calculation of value, be deposited in a special account, and the municipality must spend or allocate at least 60% of the CBC funds within the account every year.

Comment: Town staff support additional sources of revenue to assist with providing services to new residents as a result of growth. However, further information and clarity is required to identify how the CBC framework would be implemented in the Town.

Development Charges – Bill 108 clarifies the definition of "waste diversion" in the Development Charges Act. This definition does not include landfill sites/services or facilities/services related to the incineration of waste. Also, it is proposed that development charges associated with rental housing, institutional, industrial, commercial, and non-profit housing developments be permitted to make DC payments in instalments over a 6 year period.

Comment: Town staff do not anticipate significant overall impacts as a result of these changes.

Development Permit System – Proposed changes to the Planning Act would allow the Minister to require a development permit system to be implemented in a local municipality, a specified area or a specific location.

Comment: Town staff agree that introduction of the development permit system could be beneficial for local municipalities, in the right circumstances.

Conservation Authorities Act – Bill 108 proposes several changes that appear to limit and direct the operations of conservation authorities. Within their areas of jurisdiction and if prescribed by regulations, conservation authorities are directed to provide programs and services related to natural hazards, conservation & management of lands owned/controlled by the authority, source protection, and other prescribed duties, functions and responsibilities. Conservation authorities would also be required to make their service agreement(s) public. If financing is required to provide a program or service, the program or service is not to be provided by the authority unless an agreement with the pertinent municipality that meets certain criteria has been entered into. Finally, Bill 108 authorizes the Minister to appoint one or more investigators to look into an authority's conduct and operations related to certain matters.

Comment: Municipalities have worked alongside conservation authorities for several decades. The authorities can play critical roles in assisting municipalities with matters related to natural hazards, conservation & management of lands, source protection, etc. With climate change and increased flooding events in recent years, municipalities will need expertise in these areas more than ever. The Town also relies on its conservation authorities to assist with matters related to natural heritage. While more information on the associated regulations referred to in Bill 108 is not yet available, municipalities may be forced to find alternate advisory sources for non-prescribed matters. This could likely increase the financial burden on the municipal taxpayer if in-house expertise is required or costs associated with development application review will increase to offset the need for additional review no longer provided by conservation authorities.

Endangered Species Act – Bill 108 proposes to make several changes to the Endangered Species Act. Based on Town staff preliminary review, it appears these changes introduce the opportunity for additional exemptions to the Act subject to certain terms. The changes also introduce the concept of landscape agreements, whereby a party could impact an identified species provided it agrees to provide a benefit or net enhancement to the habitat of a species, though not necessarily the impacted species. Bill 108 also references a Species At Risk Conservation Fund.

Comment: The Town does not have any qualified natural heritage/environmental professionals on staff to facilitate an in-depth review of these changes. However, Town staff are concerned that the proposed changes may result in the future degradation of natural heritage species that are at risk or endangered. With the uncertain role of conservation authorities in the review of natural heritage matters, there could be an increased need for Town resources to review natural heritage matters and navigate issues specific to the Endangered Species Act.

It is clear that Bill 108 has not yet been finalized and additional detail regarding implementation lies in regulations that have not yet been released by the Province. Until such information is

provided, it is difficult to completely assess the impact of the Bill 108 on the Town. Furthermore, information related to transition matters pertaining to active Planning Act applications and existing LPAT appeals have not been released. However, based on Town staff's preliminary review of Bill 108 as currently written, it is anticipated that the demand for Town staff, financial and legal resources will increase to accommodate several of the proposed legislative changes.

E. The Blue Mountains Strategic Plan

Goal #3: Support Healthy Lifestyles
Objective #2 Increase the Range of Housing Choices and Promote Housing Affordability
Objective #3 Manage Growth and Promote Smart Growth
Objective #4 Commit to Sustainability

F. Environmental Impacts

There are not direct environmental impacts associated with the recommendation of this report. However, if Bill 108 received royal assent as currently proposed, undetermined environmental impacts are possible.

G. Financial Impact

There are no direct financial impacts associated with the recommendations of this report. However, there will be a need for additional Town staff and legal resources if Bill 108 receives royal assent as currently proposed.

H. In consultation with

Senior Management Team

I. Public Engagement

The topic of this Staff Report has not been subject to a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required.

Comments regarding this report should be submitted to Nathan Westendorp, planning@thebluemountains.ca.

J. Attached

There are no attachments to this item.

Respectfully submitted,

Nathan Westendorp, MCIP RPP
Director of Planning and Development Services

For more information, please contact:
Nathan Westendorp
planning@thebluemountains.ca
519-599-3131 extension 246