Cassels

Bill 108 and the New Planning and Development System: Regulations, Transition & Royal Assent

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On June 6, 2019, Bill 108, the *More Homes, More Choice Act, 2019* passed third reading and received Royal Assent. Summaries of Bill 108 at first reading can be found here (The Pendulum Swings Back) and here (Government Looking for Balance). While some amendments came into force on the day of Royal Assent, many of the individual Schedules do not come into force until proclamation is issued by the Lieutenant Governor.

On June 21, 2019, the province posted three sets of proposed regulations to the Environmental Registry, summarized below. These provide further guidance related to timing and transition of the changes introduced by Bill 108. Comments on the proposed regulations may be made through the Environmental Registry.

Proposed New Regulation and Regulation Changes Under the *Planning Act*

Transition – Proposed Changes to O. Reg. 174/16: Transitional Matters - General

It is proposed that the following changes from the *More Homes, More Choice Act, 2019* be transitioned as follows:

Amendment: Expanding grounds of appeal of a decision on an official plan/official plan amendment or zoning by-law/amendment and allowing the Local Planning Appeal Tribunal (**LPAT**) to make any land use planning decision the municipality or approval authority could have made

Applies to: Appeals of decisions not yet scheduled for a hearing by the LPAT

Amendment: 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

Applies to: 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

Amendment: 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

Applies to: Applications where the approval authority has not issued a notice of decision at the time the proposed changes come into force

Amendment: 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

Applies to: 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 proposed changes come into force

Amendment: 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 proposal) and plans of subdivision (120 days)

Applies to: Complete applications submitted after Royal Assent (June 6, 2019) of the *More Homes, More Choice Act, 2019*

Community Planning Permit System

Ontario Regulation 173/16 - Community Planning Permits outlines the various components that make up a community planning permit system, including matters required to be included in an official plan and implementing by-law. It is proposed that the ability to appeal the by-law implementing a community planning permit system be removed.

Additional Residential Unit Requirements and Standards

Specific standards are proposed to remove barriers for the establishment of additional residential units with respect to parking and occupancy. It has also been clarified that an additional residential unit will be permitted irrespective of the date of the construction of the primary or ancillary building.

Housekeeping Regulatory Changes

Various other housekeeping amendments have been proposed to ensure that the regulations under the *Planning Act* with respect to the applicable notice provisions for various applications are consistent with the changes made by the *More Homes, More Choice Act, 2019*.

Proposed Regulation Pertaining to the Community Benefits Authority Under the *Planning Act*

The *More Homes, More Choice Act, 2019*, repealed and replaced the Section 37 density and bonusing provisions with a new community benefits charge system.

The province is now proposing regulatory changes related to: transition provisions, reporting on community benefits, reporting on parkland, exemptions from community benefits, community benefits formula, appraisals for community benefits, excluded services for community benefits, and the community planning permit system.

Transition

The proposed date for municipalities to transition to community benefits is January 1, 2021 (as further detailed below).

Reporting on Community Benefits and Parkland

To ensure that community benefits charges and parkland are collected in a transparent manner, every year municipalities will be required to prepare a report for the preceding year that would provide information about the amounts in the community benefits charge special account (i.e., opening and closing balances, description of services funded through the special account, etc.).

Exemptions from Community Benefits

Long-term care homes, retirement homes, universities and colleges, memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion, hospices, and non-profit housing, are proposed to be exempt from charges for community benefits.

Community Benefits Formula

A range of percentages will be prescribed to consider varying values of land, with two goals in mind:

- To ensure that municipal revenues historically collected from development charges for “soft services,” parkland dedication including the alternative rate, and density bonusing are maintained; and
- To make costs of development more predictable.

While the Ministry is not currently providing prescribed percentages, the Ministry is seeking feedback related to the determination of the range of percentages. The Ministry has advised that there will be further consultation on the proposed formula in late summer.

Appraisals for Community Benefits

The owner of land proposing to develop a site may provide the municipality with an appraisal of the site if they believe the community benefits charge exceeds what is permitted by legislation. If the municipality believes the owner's appraisal is inaccurate, it can provide its own appraisal. If the appraisals differ by more than 5% a third appraisal is prepared.

The following timelines are proposed:

- If the owner disagrees with the amount of community benefits charges, the owner has 30 days to provide the municipality with an appraisal;
- If the municipality believes the owner's appraisal is inaccurate, it has 45 days to provide the owner with an appraisal; and
- If the two appraisals differ by more than 5%, the owner can select an appraiser from the municipal list of appraisers, and the new appraisal must be provided within 60 days.

Excluded Services for Community Benefits

Cultural or entertainment facilities, tourism facilities, hospitals, landfill sites and services, facilities for the thermal treatment of waste, and headquarters for the general administration of municipalities and local boards are proposed to be excluded from community benefits.

The Community Planning Permit System

A community benefits charge by-law would not be available for use in areas within a municipality where a community planning permit system is in effect.

Proposed Regulations Under the *Local Planning Appeal Tribunal Act, 2017* (O. Reg. 102/18)

A new regulation is proposed (O. Reg. 102/18) to establish transition rules for major land use planning appeals before the LPAT, including:

- The amended *Local Planning Appeal Tribunal Act* (LPATA) applies to:

o A major land use planning appeal that was commenced and continued under the former *Ontario Municipal Board Act* (OMBA), except for the requirement to hold a case management conference;

o A major land use planning appeal that was commenced under the OMBA and continued under the existing LPATA, or a major land use planning appeal that was commenced under the existing LPATA, *except* where a hearing on the merits of the appeal has been scheduled before the amendments come into force. If a hearing on the merits of the appeal has been scheduled before that day, the existing LPATA will continue to apply to the appeal;

o The amended LPATA applies to a major land use planning appeal commenced on or after the day the amendments of the LPATA come into force.

While 'major land use planning appeal' is not defined, it is anticipated that this will relate to appeals of official plans, zoning-by-laws and subdivisions which previously saw the appeal process significantly modified by Bill 139. The existing "Planning Act Appeals" regulation under the *LPATA* that prescribes timelines, time limits and practices and procedures for *Planning Act* appeals to the Tribunal is proposed to be revoked.

Proposed Changes to O. Reg. 82/98 Under the *Development Charges Act*

Transition

The legislative provisions related to community benefits charges in Schedule 12 of the *More Homes, More Choice Act, 2019* is proposed to come into force on January 1, 2020.

Municipalities are to transition to community benefits by January 1, 2021. For by-laws that are currently in effect governing soft services, the by-law will be deemed expired on the earlier of the passage of a Community Benefits By-law by the municipality, or January 1, 2021. If municipalities have not transitioned to community benefits by this date, municipalities will generally no longer be able to collect development charges for soft services.

Types of Development Subject to Development Charges Deferral

Definitions have been proposed for non-profit housing development, institutional development, industrial development and commercial development, for the purpose of obtaining development charge deferrals.

Duration of Development Charge Freeze

A development charge will be frozen until two years from the date the site plan application is approved, or in the absence of a site plan application, two years from the date the zoning by-law amendment application is approved.

Interest Rate for Deferral and Freeze

Municipalities may charge interest on development charges payable during the deferral. Interest may also be charged during the development charge "freeze" from the date that the application is submitted to the date the development charge is payable. While the *More Homes, More Choices Act, 2019* provides that interest cannot be charged at a rate above the prescribed maximum rate, a maximum interest rate has not been proposed.

Additional Dwelling Units

It is proposed that units may be created within ancillary structures to existing single detached, semi-detached and other residential dwellings without triggering a development charge. It is also proposed that one additional unit in a new single detached, semi-detached and row dwelling, including in ancillary structures, would be exempt from development charges. Within other existing residential buildings, it is also proposed that the creation of additional units comprising 1% of existing units would be exempt from development charges.

Bill 108 at Royal Assent

While many of the Schedules remain unchanged from first reading, a summary of the key amendments following first reading are as follows:

Local Planning Appeal Tribunal Act

- At first reading, Bill 108 provided the Tribunal with the power to direct parties to participate in mediation or other forms of dispute resolution. At third reading, the Tribunal was granted the power to exercise this authority, regardless of whether a case management conference has been held.

Development Charges Act

- Ambulance services have been added to the list of services that may be included in a development charge by-law;
- The transitional periods for municipalities to co-ordinate development charge by-laws within the passage of community benefit by-laws applies to ambulance services; and
- Development charges for non-profit housing are now payable in 21 annual instalments, in comparison to six.

Ontario Heritage Act

- Restrictions on the demolition or removal of buildings on properties located in Heritage Conservation Districts designated under Part V of the *Ontario Heritage Act* have been amended to also restrict the demolition or removal of any of the property's heritage attributes; and
- Regulation making powers have been expanded to include requiring additional records to be forwarded to the Tribunal, prescribing the material and information to be included in such records and providing for exemptions.

Conservation Authorities Act

- Mandatory programs or services have been expanded to include other programs and services that have been prescribed by regulation on or before a certain date.

Endangered Species Act

- At first reading, Bill 108 provided that certain prohibitions on killing (Section 9 of the Act) did not apply to persons who are issued permits to engage in activities for one year after the species was listed as endangered for the first time. This has been expanded to include persons engaging in activities that are regulated by other Acts.

For more information on Bill 108, please contact the authors of this article or any member of our Municipal, Planning and Environmental Group.
