

<b>To:</b>	Warden Hicks and Members of Grey County Council
<b>Committee Date:</b>	August 8, 2019
<b>Subject / Report No:</b>	Proposed Regulation Changes - Bill 108 More Homes, More Choice Act / Addendum to PDR-CW-24-19
<b>Title:</b>	Grey County Comments on Proposed Regulations for Bill 108
<b>Prepared by:</b>	Grey County Staff
<b>Reviewed by:</b>	Kim Wingrove
<b>Lower Tier(s) Affected:</b>	All Municipalities within Grey County
<b>Status:</b>	Recommendation adopted by Committee of the Whole as presented as per Resolution CW170-19;

## Recommendation

1. That the Addendum to Report PDR-CW-24-19 regarding an overview of the proposed regulation changes for '*Bill 108: More Homes, More Choices Act*' be received; and
2. That Addendum to Report PDR-CW-24-19 be forwarded to the Province of Ontario and confirmed as the County of Grey's comments on the proposed regulation changes posted on the Environmental Registry through postings # 019-0181, 019-0183, and 019-0184 as well as the proposed regulation changes under the Local Planning Appeal Tribunal Act; and
3. That the County request that the Province allow additional time for comment, once the draft regulations themselves have been released, including the regulations associated with other components of Bill 108, not yet covered by the proposed regulations; and
4. That the Report be shared with member municipalities having jurisdiction within Grey County; and
5. That staff be authorized to proceed prior to County Council approval as per Section 25.6(b) of Procedural By-law 5003-18.

## Executive Summary

The Province recently released proposed regulation changes associated with '*Bill 108: More Homes, More Choices Act*' and they are seeking comments by August 5, 6, and 21, 2019. Bill

108 amended several pieces of Provincial legislation, including the *Planning Act*, the *Local Planning Appeal Tribunal Act*, *Development Charges Act*, as well as other pieces of legislation. County comments were provided to the Province prior to the passing of Bill 108. The posted proposed regulations relate to the *Development Charges Act*, the *Planning Act*, and the *Local Planning Appeal Tribunal Act*. County staff are supportive of some of the proposed regulations but have some concerns and questions with other planned changes which are highlighted in the report.

## Background and Discussion

Bill 108 – More Homes, More Choices Act received Royal Assent on June 6, 2019. The County provided comments to the Province prior to Bill 108 being passed and those comments can be found in Report [PDR-CW-24-19](#). Although Bill 108 received Royal Assent, most of the legislation changes required changes to regulations before being proclaimed. The Province has released proposed regulation changes associated with Bill 108. The proposed regulation changes relate to the *Local Planning Appeals Tribunal Act*, the *Planning Act* (including the Community Benefit Charges), and the *Development Charges Act*. The Province is seeking comments by August 5, 6, and 21, 2019, respectively. The actual regulations have not been released at this stage, rather just a summary of the proposed regulation changes.

In order to meet the comment deadline for the *Planning Act* regulation changes, staff provided comments to the Province with the caveat that these have not been approved by Council and that staff would confirm with the Province following the August 8<sup>th</sup> meeting. The proposed regulation changes can be found at the following links:

- [Proposed regulation changes to the Local Planning Appeals Tribunal](#)
- [Proposed new regulation pertaining to the community benefits authority](#)
- [Proposed regulation changes to the Development Charges Act](#)
- [Proposed regulation changes to the Planning Act.](#)

What follows are some summaries and comments on the proposed regulation changes.

### *Local Planning Appeals Tribunal Act Regulation Changes and Staff Response*

The proposed regulation changes to the Local Planning Appeals Tribunal (*LPAT*) Act primarily relate to transition rules for major land use planning appeals before the LPAT. The amended LPAT Act applies to the following based on the proposed regulations:

- A major land use planning appeal that was commenced or continued under the former Ontario Municipal Board (OMB) Act, except for the requirement to hold a case management conference;
- A major land use planning appeal that was commenced under the old OMB Act and continued under the existing LPAT Act, or a major land use planning appeal that was commenced under the existing LPAT Act, except where a hearing on the merits of the appeal has been scheduled before the amendments come into force. If the hearing on the merits of the appeal has been scheduled before that day, the existing LPAT Act will continue to apply to the appeal;

- The amended LPAT Act applies to a major land use planning appeal commenced on or after the day the amendments of the LPAT Act come into force.
- The existing 'Planning Act Appeals' regulation under the LPAT Act that prescribes timelines, time limits, practices and procedures for Planning Act appeals is proposed to be revoked.

**Staff Response** – The term 'Major Land Use Planning Appeal' has not been defined. It would be beneficial to have this term defined to fully comment on the proposed regulations. However, staff believe this will likely apply to appeals of official plans, zoning by-laws and subdivisions that were made prior to the previous changes from the OMB Act to the LPAT Act under Bill 139. Further information is required to determine what implications this may have for existing appeals and to determine what rules and procedures will apply. This will need to be reviewed on a case-by-case once the regulations have been approved and following a proclamation date by the Province.

## *Planning Act Regulation Changes and Staff Response*

The proposed regulation changes to the *Planning Act* can be summarized as follows, along with a staff response for each section.

### **1. Transition Provisions**

The proposed transition provisions outline how Bill 108 will apply to existing planning policy decisions (e.g. new or amended official plans) or development application (e.g. a subdivision application) matters currently in process. These provisions apply to;

- a) Matters currently under appeal or where a decision has yet to be rendered as they pertain to expanding the grounds for appeal,
- b) Matters for which the reduced application processing timeframes apply, and
- c) Matters for which new limitations on appeal rights apply.

With respect to item (a) above, in most instances the 'new rules' will apply for any matter where a LPAT hearing has yet to be scheduled. The new rules being referred to are very similar to the former OMB criteria for the grounds under which a matter can be appealed. The change 'back to' the OMB-style criteria expands the grounds for which an appeal can be lodged.

For item (b), complete applications which were submitted after Royal Assent of Bill 108 (June 6, 2019) are now required to be processed under the new reduced timeframes i.e. 120 days for official plan amendment and subdivision decisions, and 90 days for zoning amendment decisions.

For item (c), members of the public will no longer be able to appeal plans of subdivision, or the change of conditions on a subdivision, after Bill 108 is proclaimed in force.

**Staff Response** – staff generally have no concerns with the transition provisions for item (a) above.

With regards to item (b), there will be an impact on the County and member municipalities. In some cases, the application processing timeframes have been roughly cut in half. In order to meet legislative requirements for giving notice, deeming applications complete, and getting on Council/Committee agendas at the County and Municipal levels, it will require a 're-think' of

some of our current systems. Depending on the volume of applications received, additional staffing levels may be needed at the municipal or county level. County Planning staff recently met with municipal planners to start to look at further areas for collaboration, and areas where we can 'cut time' out of our existing processes, without sacrificing public process or 'short-changing' the review of applications. In order to give municipalities more time to adjust to these reduced timeframes, staff recommend this proposed regulation be updated to push this timeframe back to when Bill 108 is proclaimed in force, or preferably to January 1, 2020. This would effectively change the 'switch-over' date from June 6, 2019 to later in 2019 or the beginning of 2020 for new complete applications received after those dates.

Item (c) is problematic as proposed, because it means that existing subdivision applications which are in process could suddenly have their appeal rights 'stripped' from them, after Bill 108 is in force. For example, if a subdivision application was submitted in mid-2019, and the County gave notice of the application, and the member municipality held a public meeting; then the notice and meeting would have informed the public that if they participate in the process, that they then have the right to appeal the application. However, if that application is approved in late 2019, after Bill 108 is in force then the appeal rights have been removed for the public, even though they had participated in the process to date believing they would have the ability to appeal. In order to protect members of the public that are participating in current subdivision planning processes, staff recommend this proposed regulation be updated to push this timeframe back to when Bill 108 is proclaimed in force (i.e. any new subdivision application deemed complete after Bill 108 is proclaimed in force would be under the new more restrictive public appeal provisions).

## **2. Community Planning Permit System**

A community planning permit system would work very similarly to the development permit system in place for large portions of the Niagara Escarpment. Zoning, site plan, and minor variance processes would be replaced by the community planning permit system. For those communities that choose to implement such a system, or for whom the province requires to implement this system, there would be limited abilities to appeal the implementing policy or by-law.

**Staff Response** – staff generally have no concerns with the proposed regulations, with the exception of seeking more information for the criteria on when the province would require the implementation of a community planning permit system. At this stage, staff do not believe that many municipalities in Grey will seek to implement a community planning permit system, though there may be some. Staff speculate that the province is seeking to implement community planning permit systems in higher growth areas, and around major transit infrastructure, and therefore it generally does not apply to Grey. That said, with no criteria having been released, this is speculation only, and more clarification is requested through the proposed regulations.

## **3. Second Unit Requirements and Standards**

Through Bill 108 the province is attempting to make it easier to develop secondary suites. Municipalities are required to permit such suites in detached, semi-detached, and townhouses and in an ancillary building or structure (e.g. above garages or coach houses). Prior to Bill 108 many municipalities would allow for a secondary suite in either the primary dwelling, or in an ancillary structure, but not in both. The proposed regulations to Bill 108 are prescriptive and

leave little 'leeway' for municipal-specific standards, unless they are more permissive. Below are the criteria in the proposed regulations:

- *“One parking space for each of the additional residential units which may be provided through tandem parking*
- *Where a municipal zoning by-law requires no parking spaces for the primary residential unit, no parking spaces would be required for the additional residential units*
- *Where a municipal zoning by-law is passed that sets a parking standard lower than a standard of one parking space for each of the additional residential units, the municipal zoning by-law parking standard would prevail*
- *‘Tandem parking’ would be defined as a parking space that is only accessed by passing through another parking space from a street, lane or driveway*
- *An additional residential unit, where permitted in the zoning by-law, may be occupied by any person in accordance with s. 35(2) of the Planning Act, and, for greater clarity, regardless of whether the primary unit is occupied by the owner of the property, and*
- *An additional residential unit, where permitted in the zoning by-law, would be permitted without regard to the date of construction of the primary or ancillary building.”*

**Staff Response** – staff support the creation of more secondary suites across the province. County staff generally have no concerns with the proposed regulations. However, in stating as such, County staff would note that the proposed regulations more directly impact municipal requirements such as parking standards in zoning by-laws. As such, staff would be interested to hear what member municipalities within Grey think of the proposed regulations, for those comments to be forwarded to the province. At this time this report was written, County staff had spoken briefly with municipal planners about the proposed regulations but had not yet had time to receive any feedback.

Staff would further note that for rural or small-town Ontario, the province may wish to consider servicing criteria for those secondary suites proposed on private wells and/or septic systems. For example, prior to allowing three units on a site (the primary dwelling, the secondary suite in the dwelling, and the secondary suite above the garage) municipalities would first need confirmation that the well and septic system can handle the water and septic needs.

#### **4. Housekeeping Changes**

The proposed regulations also include some 'housekeeping' changes around giving of duplicative notices for subdivisions, the implementation of inclusionary zoning, and the replacement of bonusing with the new Community Benefit Charge (CBC).

**Staff Response** – Staff have no concerns at this time based on the information available in the proposed regulations. That said, based on the limited information available, it would be nice to have more detail to provide constructive comments.

## **Community Benefit Charge Regulation Changes and Staff Response**

*The More Homes, More Choices Act*, 2019 deleted the Section 37 density and bonusing provisions under the Planning Act and replaced it with a new Community Benefit Charge (CBC). This new CBC also replaces some of the soft services that municipalities were able to collect

under the Development Charges Act. The following is a summary of the proposed regulation pertaining to the Community Benefits Authority under the Planning Act.

### 1. Transition Provisions

The proposed date for municipalities to transition to community benefits is January 1, 2021. What this means is that municipalities would generally no longer be able to collect development charges for discounted services past January 1, 2021 and municipalities would generally no longer be able to pass by-laws to collect funds under Section 37 of the Planning Act.

**Staff response** – Additional information is required in order to better understand the transition provisions. Are municipalities required to update their DC By-laws prior to January 1, 2021? Based on the summary of the proposed regulations, it is not clear as to whether in fact the DC By-law would expire after January 1, 2021 or if it only applies to any provisions/costs related to the discounted services? If the Province decides to move ahead with these regulation changes, County staff hope that the County DC By-law will still be in effect past January 1, 2021 but that any charges related to discounted services would be removed from the application of a County Development Charge. Further details are required to understand the implications of the proposed regulation changes. County staff would have preferred to see a copy of the draft regulations in order to fully comment on the proposed regulations. Staff will continue to monitor.

### 2. Reporting on Community Benefits

Under the proposed regulations, municipalities will be required to prepare a report for the preceding year that would provide information about the amounts in the community benefit charge special account. This would include such items as:

- opening and closing balances
- a description of the services funded through CBC's
- details on amounts allocated during the year
- the amount and purpose of the money borrowed from the CBC account, and
- the amount of interest accrued on money borrowed.

These are similar to the reporting requirements for development charges and parkland.

**Staff Response** – If the proposed reporting requirements are similar to the existing reporting requirements for development charges and parkland, County staff still wonder what the purpose is of introducing a new charge system?

### 3. Reporting on Parkland

The amendments to the Planning Act provide that municipalities may continue to use the parkland provisions of the Planning Act if they are not collecting a community benefit charge (i.e. municipalities chose either CBC or parkland, not both). Municipalities with parkland special accounts will be required to provide the reports and information that is very similar to the proposed reporting requirements for CBC noted above.

**Staff Response** – It is still not clear as to whether upper-tier municipalities will be able to collect a CBC for upper-tier soft services/facilities (e.g. child care facilities) if the local municipality decides to collect parkland under Section 42. As noted previously, if the reporting requirements

are similar to the existing development charges reporting requirements, staff question the purpose of introducing a new charge system? Municipalities will be required to report on both CBC accounts and development charge accounts potentially resulting in twice the amount of work.

#### 4. Exemptions from Community Benefit Charges

The proposed regulations would exempt 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, from charges for community benefits.

**Staff Response** – The above exemptions are very similar to exemptions that exist under the Development Charges Act and are similar to the exemptions under the County's current DC By-laws. Staff generally have no concerns with the proposed exemptions from CBC's. It does reinforce the question as to why introduce a new charge system that has similar exemptions under the DC Act? One option is to keep the soft and hard services under the DC Act and update the exemptions under the DC Act. If the previous Section 37 bonusing provisions were causing a concern, then maybe there is an opportunity to improve this process without impacting the development charges system.

#### 5. Community Benefits Formula

For any development, the CBC payable cannot exceed the amount determined by a formula involving the application of a prescribed percentage to the value of the development land. The value of the land to be used is the value on the day before the building permit is issued in order to account for the necessary zoning to accommodate the development. The Province is in the process of developing the formula and is asking for feedback. The Province has noted two goals:

- to ensure that municipal revenues historically collected from DC's for 'soft services', parkland dedication and density bonusing are maintained, and
- to make costs of development more predictable.

**Staff Response** – It is difficult for staff to comment on the proposed CBC formula without knowing what the formula will be. We know that it will be a percentage of the value of the land on the day before the building permit is issued. Who determines the initial value of the land? If the assessed value of the land is used it may not reflect the actual value of the land prior to the building permit issued as it may not be updated to reflect any recent zoning changes to the property. Based on that, will municipalities be required to have an initial appraisal done of the property prior to building permit issuance? Will this slow down the process of issuing building permits until an initial appraisal has been completed? If one of the goals is to maintain municipal revenues historically collected from DC's for 'soft services', then again why change to this new system? County staff feel that the new CBC could make the costs of development more unpredictable because the CBC will be calculated based on a percent of the value of the property the day before building permit is issued which could change right up to building permit issuance. Further detail needs to be provided on the formula and how the initial land value will be calculated before staff can fully comment on the proposed regulations. The province has indicated that there will be further consultation on the proposed formula in late summer. Staff will continue to monitor.

## 6. Appraisals for Community Benefits

The proposed regulations would allow the owner of the land to submit an appraisal of the property within 30 days of the CBC payment if the owner disagrees with the amount of CBC. The owner would have to pay under protest and submit the land appraisal within 30 days. If the municipality disputes the value of the land in the appraisal provided by the owner, the municipality has 45 days to provide another appraisal of the value of the land. If the municipality's appraisal differs by more than 5 percent from the appraisal provided by the owner of the land, the owner can select an appraiser from a municipal list of appraisers, and that appraisers' s appraisal must be provided within 60 days.

**Staff Response** – staff are concerned with the administrative burden, the additional time added to the overall development process, as well as the additional expense put on both the developer and the municipalities to determine the value of the land to calculate the CBC. What is not clear is whether the third appraisal is final or if this could go through arbitration if there was a disagreement on the value of the land. As noted above, who determines the initial value of the land in order to calculate the CBC? If the initial value of the land needs to be determined through an appraisal, does that mean there could actually be four separate appraisals to determine the actual value of the land? This creates too much red-tape and will add further time and expense to both the developer and municipalities thereby potentially negating any community benefit that may come from a CBC. It is recommended that the Province take a step back and review the merits of the CBC. The Province may want to instead look for opportunities to enhance any reporting requirements or creating more cost certainty through the development charges system, the previous Section 37 bonusing provisions, and the parkland system rather than introduce an additional charge system that could add considerable time and expense to developers and municipalities.

## 7. Excluded Services for Community Benefits

The proposed regulations would exclude the following facilities, services or matters from community benefits: cultural or entertainment facilities, tourism facilities, hospitals, landfill sites and services, facilities for the thermal treatment of waste, and the headquarters for the general administration of municipalities and local boards. The Province notes that this would be consistent with the ineligible services list currently found under the Development Charges Act.

**Staff Response** – The proposed ineligible services for community benefits is consistent with the ineligible services under the DC Act which is good but again reinforces the question as to why introduce an additional charge system that is identical to the current DC system but will add further administrative costs and time to developers and municipalities?

## 8. Community Planning Permit System

The Community Planning Permit System allows conditions requiring the provision of specified community facilities or services. Therefore, the Province is proposing that 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.

**Staff Response** – County staff have no specific comments other than to indicate that this will introduce another charge system which could provide further uncertainty to developers on the cost of development.

# *Development Charges Act Regulation Changes and Staff Response*

Most of the the proposed regulation changes to the Development Charges Act relate to the proposed changes to the Community Benefits Charge as well as other changes under the Planning Act. Below is a summary of the proposed DC Act regulation changes and a staff response for each.

## **1. Transition Provisions**

As noted under the Community Benefit Charges section above, municipalities are to transition to community benefits by January 1, 2021. For DC 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 CBC's by January 1, 2021, municipalities will generally no longer be able to collect development charges for soft services.

**Staff response** – The County's current DC By-laws are set to expire on January 1, 2022. The County was planning to start the development charges review process in 2021. Based on a summary of the proposed regulations, it indicates that the DC By-law would expire on either the passage of a CBC by-law or January 1, 2021 whichever comes earlier. It also indicates that municipalities will generally no longer be able to collect charges for soft services if the municipalities have not transitioned to CBC's by January 1, 2021. Based on this wording it is not clear as to whether the current DC By-law could still be in effect past January 1, 2021 save and except for any charges related to discounted services or whether the DC By-laws need to be updated prior to January 1, 2021.

Discounted services represent approximately 6% of the County's current development charge. If in fact the County DC By-law will expire on January 1, 2021, one option is to bump up the Development Charges review to 2020. However, we anticipate that consultants who assist municipalities with development charge reviews will be extremely busy over the next two years and therefore it may be difficult to contract a consultant to assist with the DC review before 2021. Once the full regulation has been released, staff will review in further detail and will recommend if we should stay the course or recommend bumping up the DC review by a year.

Staff will be bringing forward the proposed changes to the current DC by-laws to encourage more rental based housing and second units; however, staff wanted to ensure that the proposed regulations would not impact the proposed updates to the DC By-laws. This has caused a slight delay in bringing the draft updated DC by-laws forward. The plan is to bring these forward in September and then proceed to a public meeting.

## **2. Types of Development Subject to Development Charges Deferral**

The More Homes, More Choices Act, 2019 introduced mandatory deferrals of development charges for rental housing developments, non-profit housing development; institutional development; industrial development; and commercial development until occupancy. The proposed regulations provide definitions for the types of developments noted above.

**Staff response** – Staff generally have no concerns with the proposed definitions of the types of developments noted above. The County was already considering providing development

charge exemptions for rental housing developments and non-profit housing developments and therefore the proposed changes will not impact the changes to the DC By-laws that Council has supported in principle. Staff still have concerns with the administrative pressures that these changes will have on entering into deferral agreements with these types of developments, as well as concerns with tracking the collection of DC's over the six year timeframe and determining when the time of occupancy begins. For developments requiring occupancy permits, this will be easier to track but for those developments where an occupancy permit is not required, it will be much more difficult to track and enforce. The proposed regulations do not provide any additional tools or mechanisms that would assist municipalities in being able to track the timing of payments of these mandatory deferrals.

### **3. Duration of Development Charge Freeze**

The More Homes, More Choices Act, 2019 introduced the freezing of development charge rates at the time council receives a site plan application for a development or if a site plan is not submitted, at the time council receives the application for a zoning amendment. The status quo would apply for developments that don't require a site plan or a zoning application.

**Staff response** – Staff generally have no concerns with the proposed regulations other than to reiterate the comments provided previously that the freezing of DC rates will add further administrative burden for municipalities to be able to track the different DC rates for different developments.

### **4. Interest Rate During Deferral and Freeze of Development Charges**

The proposed regulations indicate that the Minister is not proposing to prescribe a maximum interest rate that may be charged on development charge amounts that are deferred or frozen.

**Staff response** – Staff generally have no concerns as this will allow municipalities to determine the interest rate to be charged for development charges that are deferred or frozen. This is consistent with the County comments provided on Bill 108.

### **5. Additional Dwelling Units**

The proposed regulations would allow additional dwelling units to be created within ancillary structures to existing dwellings without triggering a development charge. It is also proposed that one additional unit in a new single detached dwelling; semi-detached dwelling; and row dwelling, including in a structure ancillary to one of these dwellings, would be exempt from development charges. This is in support of the Planning Act changes which requires municipalities to permit second units within or attached to an existing dwelling as well as within an ancillary structure. It is also proposed that within other existing residential buildings, the creation of additional units comprising 1% of existing units would be exempt from development charges.

**Staff response** – Staff support the proposed regulation changes regarding exempting secondary suites from development charges within, attached or detached to a new or existing dwelling as these are consistent with the proposed changes to the current County DC By-law that council has supported in principle.

## *Other Bill 108 Regulations*

At this time there have been no draft regulations released to implement other elements of Bill 108, such as the changes to the Endangered Species Act, the Conservation Authorities Act and others. Staff would request the ability to comment on these future draft regulations before they are finalized, as they have the ability to impact County operations and services. Staff will continue to monitor the Environmental Registry for draft regulations in this regard, and update Council accordingly.

## Legal and Legislated Requirements

Some of the proposed regulation changes are welcomed by the County, however there are changes that cause concern, or are difficult to interpret at this stage. Until we see the full regulations it is difficult to fully comment on the proposed changes. It is recommended that a draft of the regulations be posted for review and that additional time is provided to review the proposed regulations.

## Financial and Resource Implications

At this stage there are no immediate financial or resource implications to these regulations, as the full details of its implementation are not known. Some of the proposed regulation changes will create more administrative burden to municipalities and developers. It is recommended that the Province reconsider some of the changes introduced through Bill 108 to ensure that additional time and expense is not added to the development process.

Staff will continue to monitor Bill 108 and keep County Council aware of any other regulatory changes.

## Relevant Consultation

- Internal: Planning, Transportation Services, Housing, Legal Services, Corporate Services and CAO.
- External: Member Municipalities within Grey (to be circulated following Committee of the Whole)

## Appendices and Attachments

[Staff Report PDR-CW-24-19](#)