

**Date:** 2020-11-19

**Subject:** **Update on Bill 108, More Homes, More Choice Act, 2019, and Planning and Development Charges Matters relating to Bill 197, COVID-19 Economic Recovery Act, 2020**

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**Report Number:** Planning, Building and Economic Development-2020-461

**Recommendations:**

1. That the staff report titled: Update on Bill 108, More Homes, More Choice Act, 2019, and Planning and Development Charges Matters relating to Bill 197, COVID-19 Economic Recovery Act, 2020 to the City Council meeting on December 9, 2020, be received;
2. That staff be authorized to undertake the process to amend the soft service DC by-laws in order to capture the increased revenue potential available through Bill 197;
3. That Council approve the Development Charges Interest Rates Administrative Directive Policy, in accordance with Appendix A;
4. That staff be authorized to undertake the process to complete a new Parkland Dedication By-law within the legislated timeframe;
5. That the City Clerk circulate this report to the Building Industry and Land Development Association – Peel Chapter (BILD).

## **Overview:**

- The omnibus Bill 197, *COVID-19 Economic Recovery Act, 2020* (“Bill 197”), amending 43 separate provincial statutes, received Royal Assent on July 21, 2020. Bill 197 was proclaimed into force on September 18, 2020, along with the remaining, unaffected amendments contained in Bill 108, *More Homes, More Choice Act, 2019* (“Bill 108”).
- This report focuses on changes to the *Planning Act* and the *Development Charges Act*.
- Changes included in Bill 108 were largely unfavourable to municipalities, while Bill 197 introduced some more positive amendments.
- The key beneficial changes stemming from Bill 197 in relation to financial tools include:
  - Re-incorporation of “soft services” back into the DC regime.
  - The 10% statutory “discount” no longer applies and the “soft services” will be fully eligible for DC funding.
  - Restores both the basic and alternative parkland dedication rates that were repealed as part of Bill 108.
  - The former Section 37 of the *Planning Act* is now replaced with the authority to impose community benefits charges (“CBC”). The regulations set a maximum amount of a CBC to be 4% of the value of lands. The CBC cannot be levied on buildings with fewer than five storeys and/or 10 residential units.
- Beginning on January 1, 2020, the DC rate applicable to any given development is frozen on the date an application is deemed complete, and some developments can defer and phase their DC payments.
- Charging interest on frozen and deferred DCs is permitted by the DC Act, and staff recommend approval of an Administrative Directive (attached hereto as Appendix A) for this purpose.
- In order to capitalize on the provisions of Bill 197 that provide for increased DC revenue potential and continued use of the alternative parkland rate, this report recommends that staff be authorized to undertake the processes to amend the DC By-laws and the Parkland Dedication By-law.

## **Background:**

The Province proposed significant amendments to the *Planning Act* and *Development Charges Act* (the “DC Act”) in 2019 through the introduction of Bill 108, *More Homes, More Choice Act, 2019* (“Bill 108”). Many of these changes would have been to the financial detriment to municipalities in terms of raising DC revenue, parkland dedication and cash-in-lieu of parkland (CIL).

At the time Bill 108 was introduced, the City initiated an advocacy campaign against the proposed changes, and engaged in the public consultation process, as detailed in a staff report to Committee of Council on May 29, 2019. Despite the opposition to Bill 108, it was enacted on June 6, 2019, largely as originally proposed. Many of the significant details of Bill 108 were to be dealt with through the passage of Regulations. While some aspects of Bill 108 were proclaimed into force on January 1, 2020 (most notably the DC rate freeze and deferral of DCs for some types of developments), large sections of Bill 108 never came into effect.

After the June 2019 enactment of Bill 108, the Province undertook further consultations with respect to the required regulations, in particular those relating to the financial components. Some Regulations were passed as expected, with City staff providing feedback as directed by Council in the Spring of 2019. The following are two significant policy changes enacted through Bill 108 that were not affected by Bill 197, *COVID-19 Economic Recovery Act, 2020* (“Bill 197”):

- Additional and ancillary units are exempt from DCs; and
- Official Plans are required to authorize the use of two residential units in detached, semi-detached or row house AND the use of a residential unit in a structure ancillary to a detached house.

Changes to the *Endangered Species Act* came into force with few amendments, while the Province continues to contemplate further changes to the *Environmental Assessment Act* and the *Conservation Authorities Act*.

Significant changes to the *Ontario Heritage Act* were proposed through Bill 108. Staff reported to the Brampton Heritage Board on these matters on October 20, 2020.

Despite the above, many of the most significant proposals contained in Bill 108 were reversed by Bill 197, which was introduced on July 8, 2020, and received Royal Assent with no public input on July 21, 2020. Overall, Bill 197 demonstrates positive change from a financial perspective. Bill 197 provides municipalities with meaningful legislative authority to ensure that growth continues to pay for growth. However, staff have concerns with other elements of the legislation.

Bill 197 and the remaining amendments in Bill 108 were proclaimed into force on September 18, 2020 and therefore all changes to the DC Act and *Planning Act* are now in effect.

## **Current Situation:**

### Scope of Development Charges Expanded

The most welcome change from a DC perspective is the removal of the 10% statutory reduction, in both the setting of the rates in a DC Study and funding of a growth-related

capital project. This will provide the “soft services” of Recreation, Parks, Libraries and Studies a greater funding ability with less reliance on the property tax base

Under Bill 197, municipalities may impose DCs for the services explicitly listed in the DC Act, which include:

1. Water supply services, including distribution and treatment services.
2. Waste water services, including sewers and treatment services.
3. Storm water drainage and control services.
4. Services related to a highway.
5. Electrical power services.
6. Toronto-York subway extension.
7. Transit services other than the Toronto-York subway extension.
8. Waste diversion services.
9. Policing services.
10. Fire protection services.
11. Ambulance services.
12. Services provided by a board within the meaning of the Public Libraries Act.
13. Services related to long-term care.
14. Parks and recreation services, but not the acquisition of land for parks.
15. Services related to public health.
16. Child care and early years programs and services.
17. Housing services.
18. Services related to proceedings under the Provincial Offences Act, including by-law enforcement services and municipally administered court services.
19. Services related to emergency preparedness.
20. Services related to airports, but only in the Regional Municipality of Waterloo.
21. Additional services as prescribed.

Bill 108 had removed the “soft services” from the development charges regime, and added them, along with costs related to parkland acquisition under the *Planning Act*, into a new Community Benefits Charge (“CBC”). The amount of CBC a municipality could charge under Bill 108 would have been capped at a proportion of the value of the development land (the cap was to have been set by regulation).

While the expanded list of services above provides funding certainty for Brampton services such as parks and recreation and library, unfortunately services such as Animal Services and Municipal Parking are no longer eligible for DC funding. The Province has reconceived the CBC (described in more detail below) as a funding tool for municipalities wishing to recover additional costs related to certain kinds of development, which costs could include Animal Services and Parking. It will not be required to cover all the services initially provided for under Bill 108.

Finally, the Province has allowed for a two year transition period to the new regime. Finance staff recommend the City begin the process to amend its soft service DC By-laws to capture the 10% reduction.

## DC Rates and Payments

The sections of Bill 108 with regards to the freezing of rates and phased payments came into effect on January 1, 2020. Previously, DCs were calculated and charged at the rate that was in effect at the time of building permit issuance. Now, DC rates are frozen on the date as indicated on the Notice of Complete Application issued by the Planning Department for the site plan application, or rezoning application if no site plan approval is required. Once the application is deemed complete, the building permit must be issued within two years to maintain the DC rate freeze. This is very pertinent in the instance of a residential draft plan of subdivision with multiple phases.

As site plan approval is not generally required for residential subdivisions, the rate freeze would begin at the time the rezoning application is received, and the rate would be set at the time the developer pulled a building permit for the first phase (provided it did so within two years). All subsequent phases would benefit from the rate set at the time the first building permit was issued. This can have significant implications. Many of the City's phased subdivision developments see many years pass between receipt of the rezoning application and issuance of the final building permits. In at least one case where not all phases are complete, three DC By-law updates have been approved since the application was first received.

In addition, rental and institutional development (prescribed as a long-term care home, retirement home, post-secondary institution, Royal Canadian Legion, and hospice) can now defer the first installment of their DC payment to occupancy of the building and have the remaining payments phased over five years (six DC installments in total). In the case of non-profit development, the phasing period is 20 years (21 DC installments in total).

## Introduction of a DC Interest Rate Policy

These changes to the DC legislation are extremely detrimental to municipalities, while also adding a significant burden on staff to administer and track the DC rate freezes and deferrals. In order to maintain some level of revenue neutrality, the Province has amended the DC Act to allow municipalities to charge interest on the rates that are frozen and/or deferred. However, the Province has not prescribed an interest rate and therefore municipalities have the flexibility to implement an interest rate that is suitable to meet their local needs and fiscal pressures.

City staff are recommending a DC interest rate administrative directive as outlined in Appendix A, and an interest rate of 5.5%. This would apply to anyone that submitted a site plan application or zoning by-law amendment for a subdivision on or after January 1, 2020. This interest rate is consistent with the policy passed by Region of Peel Council earlier this year. It reflects historical changes in the Statistics Canada Non-Residential Building Construction Price Index, plus changes in construction costs observed through

the City's capital budgeting exercise. In addition, based on information currently available, staff understand that the City of Mississauga and the Town of Caledon will be implementing a consistent interest rate. All Peel municipalities will be following a process similar to the one outlined in Appendix A.

With regards to the DC Deferrals on rental and institutional development, staff are recommending an interest rate of 0% to be consistent with the Region's Council approved DC interest rate policy and to align with the area municipalities.

Finally, DC rates could increase significantly at every by-law update or amendment for a number of reasons, including cost escalations and new growth pressures. It should be noted that if a developer received a Notice of Complete Application on or after January 1, 2020 and the City revises its DC by-laws in 2021, the developer will be entitled to pay the "old" DC rate and not the new 2021 DC by-law rate which reflects the true cost of growth (provided that it obtained the first building permit with two years of submitting a complete application).

#### Reimagining of the Community Benefit Charge (CBC) under the *Planning Act*

Bill 197 has significantly altered the CBC from what was introduced through Bill 108. CBCs can only be imposed by local municipalities (single or lower tier) and are only to be imposed on apartment buildings of at least 10 units and at least five storeys. While funds generated by the CBC can be used for the full range of DC-eligible services including parkland and recreation, there can be no double-dipping. In other words, any services funded by a CBC cannot also be funded by the Development Charges.

Since Bill 197 restores and includes additional "soft services" into the DCA funding framework, the need for the CBC in Brampton limited at this time. Density bonusing under the former section 37 was not used in Brampton. Currently within the GTA, even cities such as Mississauga made limited use of this tool. In fact, it should be noted that the City currently "waives" its portion of DCs through the Development Charges Incentive Program under the Downtown Brampton Community Improvement Program (DCIP). The purpose of the DCIP is to incentivize high density development along the Queen Street Corridor. Should the City impose density bonusing via a CBC By-law, it would undermine some of the incentives in the City's DCIP. It would be prudent of the City to harmonize its incentive programs with this new revenue raising tool, especially given that CBC by-laws are appealable, and must be justified before the Local Planning Appeal Tribunal if appealed.

There appears to be a variety of approaches to using a CBC, but it is not yet clear where, or if, there is a tangible benefit overall in implementing a CBC framework in Brampton. The City's growth structure, which has yet to be defined in the Official Plan, along with the City-wide CIP Initiative, Housing Affordability Strategy, City-wide Parking Strategy, Community Hubs, Integrated Downtown Plan, and Comprehensive Zoning By-law Review, are factors which feed into this consideration.

## Reinstatement of Most Parkland Dedication Provisions

### *What does this mean for the City?*

Bill 108 removed the City's ability to require the conveyance of parkland at the alternative rate of 1 hectare per 300 residential units and the payment of cash-in-lieu of parkland at the alternative rate of 1 hectare per 500 residential units under both Sections 42 and 51.1 of the *Planning Act*. The base rates of 2% of the area of land developed for commercial/industrial lands and 5% of the area of land developed for all other uses, was to remain, but would not apply where CBC By-law was in force. The changes would have required an increase in parkland acquisition to be funded through the CBC, as described above. It was not expected that the CBC would generate enough revenue to cover all the services the Province had contemplated, which included not only parkland but the "soft services" removed from the DC Act.

Bill 197 now amends Sections 42 and 51.1 of the *Planning Act* by unwinding the amendments mentioned above. This change permits the City to require developers to dedicate parkland at the base rates of 2% of the area of land developed for commercial/industrial lands and 5% of the area of land developed for all other uses; or, for residential development, at the alternative rate of 1 hectare per 300 dwelling units for land conveyances and 1 hectare per 500 units for cash-in-lieu.

These changes would free up potential CBC funds for non-parkland community benefits and DC-eligible infrastructure. Bill 197 also allows the City to use Section 42 interchangeably with CBCs to fund parkland. The implementation process remains unclear at the moment. It is expected that new regulations will be announced to clarify, and/or future LPAT decisions will help to inform the method.

### *Right of Appeal*

The proposed Section 42 amendments now grant landowners the right to appeal the City's Parkland Dedication By-law as it provides for the use of the alternative parkland dedication or cash-in-lieu rates, to the Local Planning Appeal Tribunal (LPAT). Staff note that this right to appeal is limited as only the alternative rate can be challenged. The LPAT can order an amendment to the use of the alternative rates set out in the by-law by reducing the rate and prescribing rules for refunds after a successful appeal.

Although existing Parkland Dedication By-laws cannot be appealed, Bill 197 specifies that any existing Parkland Dedication By-law providing for the use of the alternative rates will expire on September 18, 2022 unless repealed earlier. As a result, the City will be required to pass a new Parkland Dedication By-law to continue to use an alternative rate, thereby giving landowners the opportunity to appeal within 40 days of its

approval. In the meantime, the existing Parkland Dedication By-law remains in effect until the transition period ends and the by-law lapses.

### *Parkland Dedication Regulation*

The Province has also passed new Regulation under the *Planning Act*, Ontario Regulation (“O. Reg”) 509/20, which sets out prescribed information with respect to the amended parkland dedication provisions under Section 42. O. Reg. 509/20 includes:

- parkland by-law public consultation and notice requirements;
- annual parkland reporting requirements regarding a “special account” for specified parkland revenues; and
- a minimum interest rate that would apply to a refund provided by a municipality in the event of a successful appeal.

### *City is preparing to update its Parkland Dedication By-law*

Staff is presently looking at developing a new Parkland Dedication By-law and strategy to be completed within the mandated timeframe. A revised Parkland Dedication By-law will require additional analysis and supporting documentation to justify the new alternative rate methodology. Therefore staff recommend that the City undertake the process to adopt a new Parkland Dedication By-law as soon as possible.

### Inclusionary Zoning and Minister’s Zoning Orders

Section 47(1) of the *Planning Act* permits the Minister to exercise any of the powers granted to Councils by sections 34 (zoning), 38 (interim control) or 39 (temporary use) without the requirement to carry out public consultation. The zoning order is not subject to appeal to the Local Planning Tribunal. In other words, Minister Zoning Orders (MZO) allow the Minister to directly zone land without having to give public notice and thereby provides both speed and certainty with regards to a decision. MZO are directed by the Minister and may be supported by a local Council, however this is not a mandatory requirement. Recent examples have shown the Province to be willing to issue MZO requested by municipalities, but in some cases the affected municipality has not been given advance notice that an MZO was to be imposed.

Bill 197 increased the Province’s authority through MZO. As a result of Bill 197, MZO may be used to require inclusionary zoning and thereby set affordable housing requirements at a particular location, and to deal with site plan control matters.

It is completely unknown how the Province might use its enhanced powers respecting site plan control. These include the authority to remove lands from site plan control, impose conditions, and require parties to enter into agreements that are of no force and effect to the extent that they do not comply with the MZO. Provincial reach into the site planning process is unprecedented and the objectives for the change are not clear. Staff will be monitoring this and will keep Council informed, as necessary.



Inclusionary zoning (“IZ”) allows municipalities to require new housing developments in their communities to include affordable housing units, to set how long the units should stay affordable, and specify when the units can be built. Bill 108 limited the authority of municipalities with respect to IZ, by providing that they could only apply it to Major Transit Station Areas (MTSAs) and Community Planning Permit System areas ordered by the Minister specifically. MTSAs are intended to be developed as high density, mixed-use, transit supportive neighbourhoods that provide access to local amenities, jobs, housing, and recreation opportunities.

The full implications of Bill 197’s provision for an MZO to require IZ are not yet clear. The new regulation may be an effective tool that the Province, ideally with the collaboration of local and regional governments, may use to encourage affordable housing initiatives. However, given that the Region of Peel and the City of Brampton have not yet established the inclusionary zoning framework, the application of an MZO IZ designation in the Brampton is both unclear and premature.

Staff are currently working together with the Region on a housing strategy. Staff will report to Council regarding this strategy early in 2021. This report will fully analyze IZ as a tool for implementing the City’s objectives, both as a municipal initiative and through MZOs.

### **Corporate Implications:**

#### Financial Implications:

Development charges are a critical revenue tool for the City, as Brampton continues to be one of the fastest growing municipalities in the Province. Under a do-nothing scenario, the City would be at risk of losing out on DC revenue. If the City were to amend its Library and Recreation DC By-laws, the uptick in revenue over the next four years would be in the range of \$5 million - \$10 million, depending on how the housing market responds during and after the global pandemic. It is expected that the DC rate freeze and DC deferrals will have a financial impact, but at this point in time, it is not possible to anticipate the impacts. Although the authority to charge interest on DC rate freezes is welcome, it remains to be seen if the interest will provide municipalities with revenue neutrality.

#### Legal Implications:

Bill 197 introduced new rights of appeal with respect to Parkland Dedication By-laws and Community Benefits Charges By-laws. Legal staff will monitor the outcome of any such appeals and provide further advice as required.

#### Other Implications:

### **Term of Council Priorities:**

This report achieves the Term of Council Priority of Brampton as a Well-run City through strict adherence to effective financial management policies and supports Brampton's 2040 Vision by ensuring sustainable financial revenues.

## **Conclusion:**

Overall, the implications of Bill 197 are well received by staff given the initial proposals in Bill 108, particularly regarding DCs, parkland provisions and the CBC. Because the DC rate freeze poses significant fiscal challenges to the City, it is imperative that the soft service DC by-laws be amended, and that the DC interest rate policy be approved by Council. Those two actions will help to mitigate the potential revenue losses stemming from the remaining Bill 108 changes.

The re-introduction of the alternative parkland dedication rate is very beneficial to the City. In order for the City to continue to use the alternative parkland rate, it is important that staff proceed to adopt a new Parkland Dedication By-law to comply with the new rules and framework. The changes to the parkland dedication and DC frameworks have restored crucial funding mechanisms to the City. Fortunately for Brampton, the replacement of the former section 37 density bonusing powers with the CBC is expected to have limited impact.

The enhancement of the Province's MZO powers to include IZ and site plan control powers will need to be monitored closely, as it is not yet known what approach the Province will take to consulting with municipalities prior to imposing an MZO. Staff will report to Council in early 2021 regarding a housing strategy, and this report will discuss the implications of IZ both as a municipal tool, and a Provincial one through MZOs.

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**Attachments:**

Appendix A: Development Charges Interest Rates Administrative Directive