

# Fundamental Changes to Ontario's Planning Regime Proposed by Bill 108

May 9, 2019

On May 2, 2019, the Government of Ontario introduced Bill 108, the *More Homes, More Choice Act, 2019*. Bill 108 is part of the government's housing supply action plan, which aims to address housing challenges many Ontarians are facing, and proposes amendments to 13 different acts. On the same day, the Ministry of Municipal Affairs and Housing released the new Growth Plan 2019.

Our Municipal and Planning Law Group will be releasing bulletins on each of the following items in the coming days:

- *Planning Act*
- *Local Planning Appeal Tribunal Act, 2017*
- *Education Act*
- *Development Charges Act*
- *Environmental Assessment Act, Conservation Authorities Act and Environmental Protection Act*
- *Ontario Heritage Act*
- *Endangered Species Act, 2007*
- Growth Plan, 2019

This bulletin will focus on the changes to the *Planning Act* arising from Bill 108.

## Planning Act Changes

### Official Plan and Zoning By-law Appeals Generally Restored

The legislative changes proposed in Bill 108 include amendments to the provisions of the *Planning Act* governing official plan and zoning appeals, which will reverse most of the more significant changes to these provisions enacted by the previous government in 2017. Key changes include:

- Grounds for appeal are no longer limited to failure to conform with provincial plans or official plans or failure to be consistent with provincial policy statements (s. 17(24), 17(36), 22(7) and 34(19)), suggesting a return to the "good planning" test;
- The two stage appeals process is eliminated and, on appeal, the tribunal is empowered to approve or refuse to approve all or part of the official plan, official plan amendment, zoning by-law or zoning by-law amendment, or make modifications to all or part of the official plan, official plan amendment, zoning by-law or zoning by-law amendment (S. 17(50), 34(26)).

### Restrictions on Who Can Appeal Official Plan Non-Decisions

Bill 108 would restrict those who can appeal the failure of an approval authority to make a decision on an official plan within 120 days to the municipality that adopted the plan, the

minister, and in the case of an adopted amendment in response to an application, the applicant. Previously, any person or public body could appeal, subject to a deadline established by notice issued by the approval authority. With the restriction of appellants, the provision enabling the approval authority to issue a notice limiting the appeal period is proposed to be repealed.

### **Restrictions on Who Can Appeal Decisions on Plans of Subdivision**

Currently, any person who made oral submissions at a public meeting or written submissions to the approval authority before a decision was made with respect to the approval of a plan of subdivision has a right to appeal that decision under Section 51(39). Bill 108 would limit the right of appeal to the applicant, the minister, the municipality, certain public bodies, and a narrow list of persons, primarily utilities and telecommunications companies, listed in Section 52(48.3).

### **Shorter Timelines for Processing Development Applications**

Bill 108 introduces shorter timelines for appeals arising from an approval authority's failure to make a decision as follows:

- *Official Plans and Official Plan Amendments:* 120 days;
- *Zoning by-laws and Zoning by-law Amendments:* 90 days (120 days if a corresponding official plan amendment is required); and
- *Draft Plan Approval – Subdivision:* 120 days.

Along with the shorter timelines, Bill 108 also eliminates the ability to extend the timeline for the approval authority to make a decision on official plans and official plan amendments.

### **New Evidence at Hearings**

Bill 108 restores the provisions governing the introduction of new information and material which was not previously before council or the relevant approval authority at a hearing as they once were prior to Bill 139 (s. 17 (44.3), s.34(24.3)). In such a case, either by its own initiative or on motion, the tribunal may consider whether the information or material could have materially affected the council's decision, and if so, provide an opportunity for council to reconsider its decision and make a written recommendation. The tribunal must "have regard" to the council's written recommendation if it is received within the prescribed time period.

These provisions are identical to what was in place prior to Bill 139.

### **New Community Benefits Charge for Section 37 and Parkland Dedication Contributions**

Bill 108 proposes to consolidate s. 37 contributions and s. 42/51.1 parkland dedication requirements into a single fee, referred to as the community benefits charge (CBC). Municipalities may pass CBC by-laws to impose CBCs against land to pay for "the capital cost of facilities, services and matters required because of development or redevelopment in the area to which the by-law applies."

Much of the substance is left to regulation, but the proposed CBC framework includes the following:

- CBCs may only be imposed for zoning by-laws and amendments, minor variances, plans of subdivision and condominiums, consents and building permits;
- Before passing a CBC by-law, the municipality must prepare a community benefits charge strategy that identifies the facilities, services and matters that will be funded

with community benefits charges and consult with appropriate persons and public bodies;

- In-kind contributions may be recognized by the municipality;
- The maximum amount of the CBC charge is tied to a percentage of the value of the land as of the valuation date (day before the date of first building permit issuance) and will be prescribed by regulation;
- There is a dispute mechanism available if payment is made under protest (as supported by an appraisal) and the difference between the owner's appraisal and the municipality's appraisal is greater than five per cent. In such a case, the owner will choose an appraiser from the municipality's list of appraisers to make a decision on the CBC;
- Moneys received under a CBC by-law must be paid into a special account. The municipality must spend or allocate 60 per cent of the special account funds at the beginning of each year;
- If a CBC by-law is passed, council must provide the prescribed reports and information, presumably to maintain transparency and help inform the use of CBCs in the future.

Note that existing s. 37 and parkland dedication by-laws would continue to operate until the CBC by-law is in force. The application of development charges by-laws may also be affected by CBC by-laws. For example, s. 38 credits under the *Development Charges Act, 1997* (DCA) may be used by the holder of the credit with respect to a CBC in certain circumstances. There are certain services under the DCA, however, that cannot be included in the CBC by-law, namely, those services that have no percentage reduction under the current DCA (e.g. water supply services) and waste diversion services.

#### **Other Key Amendments to the *Planning Act***

- Official plans must contain policies permitting additional residential units that would permit two units in a single dwelling and a unit in a building ancillary to the dwelling; previously, an additional unit could be in the dwelling, or the ancillary building, but not both.
- New provisions promoting inclusionary zoning policies for protected major transit station areas and areas in which a development permit system is established in response to a minister's order.
- If the minister determines that a matter of provincial interest may be adversely affected by the amendment before the Local Planning Appeal Tribunal, the minister may give notice 30 days before the hearing commences. This restores the pre-Bill 139 timing; Bill 139 required such notice be given 30 days after notice of the hearing was given.
- The minister could, by order, require a municipality to adopt a development permit system applicable to an area delineated in the order, or to a specific location with a surrounding area to be determined by the municipality.
- Provisions enabling regulations that will prescribe the transition rules for appeals under the act.

#### **How BLG Can Help**

Municipalities, public agencies, developers and other stakeholders involved in current or future planning matters should consider the implications of the new planning regime

proposed by the first reading of Bill 108. Our Municipal and Planning Law Group is well positioned to assist you in understanding the implications of Bill 108 and how it may affect your interests.

## **AUTHORS**

**J. Pitman Patterson**

T 416.367.6109

[PPatterson@blg.com](mailto:PPatterson@blg.com)

**Emma Blanchard**

T 613.369.4755

[EBlanchard@blg.com](mailto:EBlanchard@blg.com)

**Isaac Tang**

T 416.367.6143

[ITang@blg.com](mailto:ITang@blg.com)

## **BLG OFFICES**

### **Calgary**

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T +1.403.232.9500  
F +1.403.266.1395

### **Montréal**

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T +1.514.954.2555  
F +1.514.879.9015

### **Ottawa**

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T +1.613.237.5160  
F +1.613.230.8842

### **Toronto**

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T +1.416.367.6000  
F +1.416.367.6749

### **Vancouver**

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T +1.604.687.5744  
F +1.604.687.1415

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