

**AGENDA ITEM DOC7**

**Subject: Development Charges Briefing**

**Date: May 25, 2019**

**Prepared by: Stephen Abram, FOPL Executive Director**

**Prepared for: FOPL Board Meeting, June 7, 2019**

The Provincial Government is proposing many changes to the Development Charge rules in Ontario.

The ED attended a ULI briefing at the National Club a month ago and I’ve also attached the City of Toronto briefing to this doc (separate PDF).

Here are some points. It’s a bit of a hodgepodge but it’s what I know so far.

From MARGIE SINGLETON:

So you have an update on what is happening re Bill 108

“From Mgmt report to Bd:

***Bill 108 More Homes, More Choices Act -****Bill 108 More Homes, More Choices Act was introduced in the legislature May 2, 2019 as a document to support the Ministry of Municipal Affairs and Housing’s Housing Supply Action Plan intended to improve housing affordability and increase housing supply. This Bill proposed a new Community Benefits Charge (CBC) as part of the Planning Act to replace Development Charges for soft services currently in the Development Charges Act. VPL relies on Development Charges to fund 90% of construction, furnishing, technology and stocking of collections for new libraries. Staff are working with City colleagues to analyze potential impacts of this Bill however, an in-depth review is not possible at this time as associated regulations have not yet been released.*

What this really means – we have no idea what would happen to our DCs going forward.  Unlikely that we could collect the same amount only call it CBCs. Can we retain what we have stockpiled in DC Reserves?  We do know that CBCs would be collected for all soft services as 1 pot thus VPL specific funds would not be protected.  They also have a statement that 60% of CBCs must be committed at beginning of year.  What does this mean to the funds that are not spent?  I saw something in the proposed legislation that to me suggested collections may not be eligible for funding any longer but would need a lawyer to confirm. My humble uninformed opinion is that government is trying to reduce costs for new home buyers pay toward DCs by eliminating DCs and imposing a CBC at potentially a much lower rate.

Many, many questions with no info to glean answers from as no regulations released yet.  Argh!

May 2 was only the first reading of the Bill so it has a ways to go before being enacted.”

“Thinking FOPL may have a role to play in Bill 108 discussions also. I know Counsel gave a cursory look at it and supplied an opinion when Mary and Helen asked a few weeks ago but having looked at the legislation more closely and working with colleagues at City I am getting more and more concerned.  My concerns centre around library issues only:

1. Replacing DC with CBCs (probably at a much lower rate) thus significant revenue stream for new development dries up
2. All long range facility planning will have to be redone as revenue stream is altered
3. What happens to our DCs currently in reserves? Bill says a requirement of 60% CBCs committed at beginning of year
4. Pooling CBC will lead to competition among soft service providers City vs Lib. DCs were separated by each soft service
5. I believe new lib collections will no longer be eligible for funding but this is to be confirmed

Changes will have a significant impact on libs using DC for new builds in response to growth.   Not sure what our City is planning to do by government is asking for feedback so I expect they will submit something in writing.

Below is an email I sent my Exec Mgmt team.

***Margie Singleton****, BA, MLS, MCML*

Chief Executive Officer

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905.653.READ (7323) ext. 4601”

From Helen Kelly:

“Hi Stephen,

Thank you for everything you are doing to support SOLS and OLS North during this incredibly challenging time of budget reduction. Your knowledge, expertise and advocacy are invaluable to public libraries, we appreciate your efforts so much.

The provincial government is making many changes to many services and I saw yesterday that Ontario's More Homes More Choice Housing Supply Action Plan was announced and in footnote 6 it states, "A new authority is proposed to be created under the Planning Act that would allow municipalities to charge for community benefits, like libraries and daycare facilities." Footnote 7 states,"The proposed new community benefits authority would make upfront development costs more predictable by replacing the existing density bonusing provisions in the Planning Act, development charges for discounted services (i.e., soft services), and in some cases, parkland dedication."

<https://www.ontario.ca/page/more-homes-more-choice-ontarios-housing-supply-action-plan?_ga=2.208184212.766481754.1556880132-1482365976.1556880132#foot-6>

Do you have any details on this?

Many thanks,

Helen Kelly

CEO, Idea Exchange”

From Counsel Public Affairs:

“Stephen –

A bit more clarity on what is proposed in the legislation, background context and limitations.

The proposed legislation makes amendments to both the Development Charges Act and Section 37 of the Planning Act (density bonusing). The net effect of these changes is to more specifically prescribe what municipalities are allowed to collect these for from developers and more predictability about the amounts.

In the case of Development Charges, among the changes made is adding to the list of things that municipalities “may impose development charges to pay for increased capital costs required because of increased needs only for the following services”. This specifies a list of eligible items whereas the previous act was silent and left this up to the municipality for interpretation. (There still is an “other services as prescribed” item on the list, which could include capital costs for libraries).

Perhaps more immediately pertinent (and the item highlighted in your email below) is that they’re changing how Section 37 works under the Planning Act. I know that it’s hard to be optimistic in the current environment but this may net out to be more predictable for public libraries than the current model.

Under the current Section 37, municipal councils (mostly in Toronto and the inner GTA for practical purposes) have wide latitude to determine the amounts of money collected under Section 37 and how these are spent. The process is very opaque and often ends up becoming “wheeling and dealing” between developers and ward Councillors, with the result too often being less-than-remarkable public art or political priority projects for the local councillor.

This change aims to bring more certainty to the system.

* The municipality will create a single community benefits charge through by-law, which collects funds at a percentage value of the land as set out in the by-law.
* The funds can be used to pay for the capital costs of facilities, services and other matters required because of development or redevelopment.
* The municipality must, in advance, set out a community benefits strategy that identifies the facilities, services and other matters that will be funded.
* Only one such by-law can be effect in a municipality at a given time.
* Eligible items specifically prescribed in the municipality’s Development Charges by-law are excluded.

It would appear that this structure is prejudiced in favour community-wide facilities like public libraries, community centres, daycare centres vs. many other uses that have benefitted from Section 37 in the past – at least in places like Toronto, Mississauga, etc. where this is widely used. That was very much by design.

In most municipalities, the key consideration for public libraries is to continue to press/ensure that libraries are included in the municipal development charges bylaw under the “other services” category, which would remain in effect.

Happy to chat directly or follow-up if you have an additional question.

Devan Sommerville  
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Counsel “spoke with John Ballantine, the Manager of the Municipal Finance branch at the Ministry of Municipal Affairs and Housing regarding a number of questions related to Development Charges that have provided some further clarity – both confirming some reasons for potential concern and key opportunities ahead.

* The intent of Bill 108 is that development charges for **soft services – such as public libraries – are to no longer be collected under Development Charges** but under the Community Benefit Charges model.
  + However, John was **unable to point me to the actual change in the legislation to enforce this** – rather than just the explanatory note’s explanation of the objective. He’s committed to follow up to confirm that it indeed does.
* **As for development charge revenues already collected and earmarked for PL this year**, he indicated that these are still to be used for that purpose and there is a transition provision for them to transfer dollar-for-dollar to the Community Benefit Charges structure.
* In terms of **Community Benefit Charges** – the new model is much farther reaching in terms of its applicability. It removes the density bonusing provisions of the old Section 37 and is much more flexible within the cap. All that is required is a municipal Community Benefits Strategy setting out how the funds are to be used, which the province has intentionally left undefined.
  + **There will be a cap on this charge**, which undeniably presents a revenue risk. However, **the Ministry has not yet determined the formula or structure of the cap** (to be set in regulation) and it is premature as to whether it will be a single cap or a tiered cap based on the nature of the service.

Based on this conversation, it is of timely importance to engage politically and with Ministry staff in an effort to minimize the negative impact on DCs for public libraries.

On the back of the envelope, this may include:

1. amending Bill 108 to include public libraries on the list of prescribed services for DCs (a difficult objective)
2. shaping the CBC cap in regulation to permit some hard capital costs – such as public libraries – to be capped according to the municipality’s DC by-law

We can and should engage on this quickly but we’ll want to ensure that we have the strongest and most straightforward proposal to bring forward. We can discuss on our call Monday how we can rapidly pull this together.”

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| |  | | --- | | AMO Policy Update | | May 7, 2019 | | |  |  | | --- | --- | | |  | | --- | | **AMO’s Initial Review of Bill 107, the Getting Ontario Moving Act, 2019 and Bill 108, the More Homes, More Choices Act, 2019**  On May 2nd, 2019, two Bills of key interest to municipal governments were introduced.[Bill 108, the More Homes, More Choices Act, 2019](https://urldefense.proofpoint.com/v2/url?u=http-3A__AMO.informz.ca_z_cjUucD9taT0xMDg2MzQxJnA9MSZ1PTkwMjc4NTM3NyZsaT0xNDQ5NjEyNg_index.html&d=DwMBaQ&c=fMYCMpvyrCeAgEEhg2KwUA&r=VzadmgCSquCPaeIf7wBIAApX5U_amve2pCRV1XbUHuY&m=Wyww8lxzegvWsY0KQOLqKigbpZCRELVETBCuncP-BFU&s=Hp6oZ8Iaa2Q-ImIahnxOFYSkXbY-5t5pCAewTz0wZeQ&e=) addresses the shortage of affordable housing across the province by finding faster ways of getting a greater mix of housing supply on the ground. [Bill 107, the Getting Ontario Moving Act, 2019](https://urldefense.proofpoint.com/v2/url?u=http-3A__AMO.informz.ca_z_cjUucD9taT0xMDg2MzQxJnA9MSZ1PTkwMjc4NTM3NyZsaT0xNDQ5NjEyNw_index.html&d=DwMBaQ&c=fMYCMpvyrCeAgEEhg2KwUA&r=VzadmgCSquCPaeIf7wBIAApX5U_amve2pCRV1XbUHuY&m=Wyww8lxzegvWsY0KQOLqKigbpZCRELVETBCuncP-BFU&s=XWO6p3bOv-0xwcP3ig-ikE75EcI-rpJXJbx1lSNokKw&e=)updates numerous road safety rules and allows the province to assume ownership over Toronto’s subway infrastructure.  This update will focus on schedules of primary importance to municipal governments. We will continue to analyze the legislation and keep you updated as further information becomes available. A number of changes will require regulations.  **Bill 108, The More Homes, More Choices Act, 2019**  The Bill contains numerous amendments to many pieces of legislation. Considering the pressure on the Ontario government, Bill 108 contains some positives for municipal governments. Other aspects of the Bill may result in financial and service impacts that need to be determined. We have put the Schedules in order of primary importance.  **Schedule 3 – Amendments to the *Development* *Charges* Act**  The Housing Supply Action Plan reflects the long-standing idea that growth should pay for growth but brings some changes that will alter Development Charges (DCs). These include:   * The separation of DCs and a new Community Benefits Charge (CBC) regime to pay for as yet unspecified municipal services. Greater clarity is needed and will be provided through anticipated regulations. CBCs are discussed under Schedule 12. * Municipal governments may now charge the full capital costs of waste diversion services in the calculation of development charges (not including landfill sites, landfill services, or incineration). This is a positive development. * Proposed changes also affect rules on when development charge are payable if the development is rental housing, institutional, commercial, industrial or non-profit housing. In these cases, development charge payments to the municipality will now be made as six annual instalments commencing upon occupancy. Municipal governments may charge interest from the time of building permit issue and the interest rate will be determined by regulation. Notably, front-ending payment agreements reached prior to the Act coming into force will be preserved. * Against municipal advice, second dwellings or dwelling units will be exempt from developmentcharges. * Public library material (for reference or circulation) will also be excluded from developmentcharge calculations.   A deeper analysis of Schedule 3 and its potential impacts is underway. Once completed, we will provide members with this information.  **Schedule 9 – Amendments to the Local Planning Appeal Tribunal Act**  The LPAT remains but will no longer evaluate appeals based on compliance with official plans and consistency with provincial plans and policy. Instead, it will return to a “best planning outcome” approach. This means a return to de novo hearings. This is very disappointing for municipal governments as it will again take final planning decisions out of elected councils’ hands. Historically, the use of a de novo approach to appeals has drawn out hearings. It is unclear how this reversal will speed up housing development.  On the positive side, the Bill proposes limits to third party appeals of subdivisions and promotes increased mediation to resolve appeals. There will also be new limits on the extent of testimony. As well, the province has committed to hiring additional staff to help deal with the existing LPAT case backlog that arose from the OMB process and transition. It may be that current land use applications at Council tables are withdrawn to come in after Bill 108 rules take effect. AMO will consult with the Ministry as transition rules and accompanying regulations are considered.  **Schedule 12 – Amendments to the Planning Act**  The proposed Bill touches on numerous land use planning policies. Overall, these changes may have the desired effect of increasing the mix of housing and speeding up the process.  To facilitate housing mix, the Bill would allow the creation of second units in ancillary buildings. It also reduces timelines for making decisions related to official plans from 210 to 120 days and from 150 to 90 days for zoning by-law amendments. It also proposes to shelter plans of subdivision from third party appeals.  The schedule also proposes to change the conditions 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 Bill would also allow the Minister of Municipal Affairs and Housing to exercise authority to order an area to be subject to inclusionary zoning. These proposed changes will continue to allow municipal governments the ability to enact inclusionary zoning but will restrict the application of this affordable housing tool.  Another change is that either the municipality or the Minister can initiate the use of a Community Planning Permit System (CPPS) in areas strategic for housing growth.  The proposed legislation also introduces a new Community Benefits Charge (CBC) regime to address the costs of providing services to new residents as a result of growth. This is a change to Section 37 allowing a municipality, through a by-law defining an area, to 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. Notably, costs of growth eligible for development chargesare excluded from the new Community Benefits framework.  The CBC by-law will be based on a strategy produced by the municipality which identifies the costs of growth not covered by development charges.  As well, the Ministry of Municipal Affairs and Housing will be preparing a list of eligible items for the charge, methodology for calculating the charge and any caps they may deem necessary.  AMO has discussed with the province the need for a transparent transition to this new means of recuperating the cost of growth.  It should be noted that the CBC will be held in a special account and these funds must be spent in keeping with the Act and regulations. Specifically, each year a municipality will have to spend or allocate at least 60 per cent of the monies that are in the special account at the beginning of the year. Certain lands (i.e. hospitals) will be exempted from the new Community Benefits regime. These exemptions will be listed in a future regulation.  Another proposed change relates to parkland. Parkland costs can be included in the Community Benefits Charge or they can be charged under subsection 42 (1). However, there will be changes to the methodology.  AMO will continue to monitor additional details as they become available. If Bill 108 becomes law, many regulations would be required for implementation.  **Schedule 2 – Amendments to the Conservation Authorities Act**  Schedule 2 introduces a new concept of Conservation Authority (CA) ‘core services.’‘ Core services’ includes programs and services related to natural hazard risks, land management and conservation of lands owned or controlled by the authority, source water protection under the Clear Water Act, 2006, and other CA responsibilities under legislation as prescribed in regulations. As well, the Lake Simcoe Conservation Authority has specific responsibilities related to the Lake Simcoe Act. Expectations on the standards and expectations for these core services will be set out in regulations.  The draft amendments will also require CAs to enter into memoranda of understanding with municipal governments on service delivery to avoid duplication, especially where planning and development are concerned. Knowing what CAs are required to do, what is discretionary and how this impacts the levy as part of a municipal agreement is welcomed.  This schedule also includes governance and oversight-related provisions such as CA board member training and Minister oversight. Assurances that Conservation Authority Board members have training about their responsibilities is good governance.  AMO will participate in discussions with the Ministry of Natural Resources and Forestry and the Ministry of Environment, Conservation and Parks on the implementation of these changes, including draft regulations, in the months ahead.  **Schedule 6 – Amendments to the Environmental Assessment Act**  The province is proposing to increase the exemptions for low risk activities within the municipal class EA. These could include speed bumps, de-icing, and streetscaping. As well, the province has exempted itself from a number of EA requirements related to transit, mines, parks and real estate. A consultation paper has been released and AMO will be providing comment.  While greater information around Duty to Consult, the sale of provincial brownfields and the bump up process is being sought by AMO, these proposed changes reflect long term requests from the municipal sector.  **Schedule 5 – Amendments to the Endangered Species Act**  The suite of changes contained in this schedule is intended to streamline developmentwhile protecting endangered species. The proposals remain science-based and seek to balance both species-at-risk protections and human endeavours in a new way.  The proposed changes would require that species at risk be considered in the broader geographic context (both inside and outside Ontario) when determining species’ status. The role of the Committee on the Status of Species at Risk in Ontario (COSSARO) will remain the same. However, to increase predictability, their reports will now be due each year in January. Bill 108 also creates more realistic timelines, enables the phasing in of protection implementation and gives the Minister discretion to consider social and economic realities when determining a government response to species at risk.  A key change is that the Minister will be able to enter into ‘landscape agreements.’ A landscape agreement authorizes activities that would otherwise be prohibited with respect to one or more listed species. Agreements will include requirements to execute specified beneficial actions that will assist in the protection or recovery of species.  Bill 108 also establishes a Species at Risk Conservation Fund and an agency to manage and administer the Fund. The purpose of the Fund is to provide funding for activities that are reasonably likely to protect or recover species at risk. Where a municipal work or a development damages a habitat, a charge in lieu of meeting certain imposed conditions would be possible with a permit. The municipality or developer would still have to minimize impacts and seek alternatives. This creates an alternative path for development where protection of onsite habitat is problematic.  AMO continues to work with the Ministry as they formulate policy, draft regulations and programming to implement these proposed changes.  **Schedule 11 – Amendments to the Ontario Heritage Act**  The Bill proposes changes that would improve heritage register maintenance and transparency. The legislative amendments would require a municipal council to notify the property owner if the property is not formally designated but has been included in the register due to cultural heritage value or interest.  The proposed legislation also includes new timelines for a number of notices and decisions that are currently open-ended under the existing regime. The amendments also provide additional clarity to the meaning of ‘alteration’ and ‘demolition.’ All of these changes should add more certainty to the process and make it more transparent and efficient.  **Schedule 1- Amendments to the Cannabis Control Act**  Schedule 1 clarifies provisions for interim closure orders for illegal dispensaries and creates exemptions allowing police and other emergency responders to enter the premises for ‘exigent circumstances.’ The schedule also repeals a provision that exempted residences from interim closure orders. This is to deal with the tactic of putting a residency within an illegal dispensary.  **Bill 107, The Getting Ontario Moving Act, 2019**  Bill 107 focuses on making roads safer for Ontario residents. The draft legislation also creates authorities for the provincial government to upload subway infrastructure.  **Schedule 1 – Amendments to the Highway Traffic Act (HTA)**  Bill 107 would amend the HTA to align sections related to driving under the influence to correspond with updates to the Criminal Code of Canada. This is necessary to ensure charges are consistent and defensible in court.  Another proposed change of key interest to municipal governments is the creation of an Administrative Monetary Penalty (AMP) regime for municipal governments to charge drivers that pass an extended school bus stop arm outfitted with a camera. The province will be putting forward regulations to allow the evidence from these cameras to be used in court. Municipal governments are keen to introduce school bus stop arm enforcement cameras to help keep children safe. Along with the anticipated deployment of Automated Speed Enforcement (ASE) technology in School and Community Safety Zones, these measures should provide the ability for local governments to more efficiently enforce road safety in communities.  A concern for municipal governments relates to fine collection. Section 21.1 (13) of the Bill provides that an AMP that is not paid in accordance with the terms of the order is a debt to the Crown. AMO recommends that the legislation be amended to consider it a debt to the Crown or a municipal government, depending on its nature, as provided through a new regulation.  Bill 107, if passed, would also amend the rules to automatically allow off-road vehicles on municipal roads in all areas of the province. This amendment reverses the onus as these vehicles are currently prohibited unless a municipal government passes a by-law to allow them.  Another change is the anticipated alignment of Ontario’s rules for commercial vehicles with other jurisdictions. This includes allowing the use of wide-based single tires for trucks and aligning the rules with other jurisdictions for charter bus operations in the province.  Penalty increases are also proposed for drivers that endanger workers such as construction personnel or tow truck drivers on highways and for drivers that drive too slowly in the left-hand lane. Bill 107, if passed, will also introduce new penalties for impaired driving instructors, for removing or defacing traffic signs and prohibiting vehicles from entering bicycle lanes and bus terminals.  The province will also review the rules of the road for bicycles, e-scooters and e-bikes as well as consult on raising highway speed limits.  **Schedule 3 – Amendments to the Metrolinx Act**  The legislation creates the mechanism for the Ontario government to prescribe rapid transit project design, development or construction as the sole responsibility of Metrolinx through regulation and to prohibit further action on that project by the City of Toronto. The proposed amendments would allow the Minister to issue directives to the City of Toronto and its agencies.  The changes in this legislation are limited to the City of Toronto and its agencies as defined under the City of Toronto Act, specifically the Toronto Transit Commission (TTC). However section 47 (1) of the legislation allows the province to assume assets “with or without” compensation or recourse to the City. The Act further stipulates that this transfer would not constitute a breach of by-laws, rights or contracts nor is it an expropriation. Section 51 (3) limits proceedings for remedies or restitution.  AMO notes that these proposed provisions could set precedents for changes beyond the TTC subway where the provincial government assumes municipal assets without fair compensation. AMO will review this further given its potential application in other municipal-provincial contexts.  **Schedule 5 – Amendments to the Public Transportation and Highways Improvement Act (PTHIA)**  Bill 107 proposes to update the PTHIA to recognize activities such as grading of land and broadens the definition of infrastructure to include “structures” in addition to bridge and underpass construction in the Ministry permit zone.  **Schedule 6 – Amendments to the Shortline Railways Act**  The Bill updates the Act to define a railway as a rail service to encompass its operations, to allow the registrar to more easily add, amend or revoke conditions on licenses and to provide processes for doing so, including by electronic means. Railways are required to provide operational information on a regular basis and to notify the registrar of changes to corporate officers or to the services provided. The Bill also proposes to abolish the current requirement for a shortline rail service that will discontinue operations to offer to sell to the Government of Ontario at salvage value.  **Contacts:**  Development Charges:  Matthew Wilson, Senior Advisor, [mwilson@amo.on.ca](mailto:mwilson@amo.on.ca), 416-971-9856 ext. 323  Bill 108:  Cathie Brown, Senior Advisor, [cathiebrown@amo.on.ca](mailto:cathiebrown@amo.on.ca), 416-971-9856 ext. 342  Bill 107:  Craig Reid, Senior Advisor, [creid@amo.on.ca](mailto:creid@amo.on.ca), 416-971-9856 ext. 334  **﻿** | | | |