

# Housing Supply Action Plan: What Bill 108 and Changes to the Growth Plan Mean to You

# JUNE 25



## OUR SPONSORS





**Bill 108**  
***More Homes, More Choices Act, 2019***

Denise Baker, Partner  
WeirFoulds LLP  
1525 Cornwall Road, Suite 10  
Oakville, Ontario  
L6J 0B2  
[dbaker@weirfoulds.com](mailto:dbaker@weirfoulds.com)  
416-947-5090

## Introduction

- Bill 108 *More Homes, More Choices Act*, 2019 amends thirteen existing statutes, including:
- *Conservation Authorities Act; Development Charges Act, 1997; Endangered Species Act, 2007; Local Planning Appeal Tribunal Act, 2017; Ontario Heritage Act; and Planning Act.*

## **Introduction**

- Bill 108 was introduced on May 2, 2019
- It received Royal Assent on June 6, 2019
- Some of the amendments are already in force and effect. Others will come into force and effect on a date to be named by proclamation (to be announced).

# Schedule 4- Education Act

## **Amendments to Education Development Charges:**

- On October 12, 2018 the Province enacted O.Reg 438/18, which, among other things, prohibited school boards from enacting successor EDC by-laws that would impose any EDC rates higher than the current in-force by-law rates (as of August 31, 2018), until such time as the Province had an opportunity to review this legislation. This froze EDC rates at the rate that was in effect as of August 30, 2018.

# Schedule 4- Education Act

## **Amendments to Education Development Charges:**

- Following the freeze, on March 29, 2019, the Province filed O. Reg. 55/19 which amended O. Reg. 20/98, which partially thawed the freeze This partial thaw implemented a cap on EDC's which provides for increases equal to the greater of 5% or \$300 per unit annually for residential rates and a maximum yearly increase of 5% for non-residential rates.

# Schedule 4- Education Act



## **Amendments to Education Development Charges:**

- In addition, changes were made to O.Reg. 193/10, which require that proceeds from the sale of a site purchased using EDCs to be returned to the EDC Reserve Accounts. This would be applicable to all sites purchased on or after March 29, 2019, which have not been used for pupil accommodation.

# Schedule 4- Education Act



## **Amendments to Education Development Charges:**

- The implemented cap provides certainty to the development industry with respect to the amount of the charge year over year.
- Under Bill 108, there were no amendments to O.Reg. 55/19 that have been released.

# Schedule 4- Education Act

The changes to the Education Act under Bill 108:

- Require a school board to give notice to the Minister if it plans to acquire or expropriate land with the Minister having the ability to reject the board's plans;
- Section 257.53.1 provides for alternative projects (project, lease or other prescribed measure) that, if approved by the Minister, would allow the allocation of revenue from EDC by-laws for projects that would address the needs of the board for pupil accommodation and would reduce the cost of acquiring land.
- Description of alternative projects would need to be in EDC Background Study

# Schedule 4- Education Act

- Section 257.53.2 is added to the Act to provide for localized education development agreements that, if entered into between a board and an owner of land, would allow the owner to provide a lease, real property or other prescribed benefit to be used by the board to provide pupil accommodation in exchange for the board agreeing not to impose EDC's
- Like most Schedules to Bill 108, the devil is in the detail that will be prescribed by Regulation.
- The amendments to the Education Act come into effect on November 1, 2019.

# Schedule 3 - *Development Charges Act, 1997*

## **The changes to the *Development Charges Act* under Bill 108:**

- Can not charge DC's if the only effect is to:
  - permit the enlargement of an existing dwelling unit; or
  - permit the creation of additional dwelling units as prescribed, subject to the prescribed restrictions, in prescribed classes of existing residential buildings or prescribed structures ancillary to existing residential buildings;
  - The creation of a second dwelling unit in prescribed classes of proposed new residential buildings, including structures ancillary to dwellings.

# Schedule 3 - *Development Charges Act, 1997*



## **The changes to the *Development Charges Act* under Bill 108:**

### **Eligible Services**

- The proposed repeal and replacement of subsection 2(4) has turned the DC Act on its head by specifically enumerating the services for which a development charge can be imposed, as opposed to the current regime which identifies through regulation those services for which a development charge cannot be imposed and if it is not expressly stated, then a development charge can be imposed for the service.

# Schedule 3 - *Development Charges Act, 1997*

## **Eligible Services**

- A DC By-law may impose DCs to pay for increased capital costs required because of increased needs only for the following services:
  - Water supply services, including distribution and treatment services;
  - Waste water services, including sewers and treatment services;
  - Storm water drainage and control services;
  - Services related to a highway;
  - Electrical power services.

# Schedule 3 - *Development Charges Act, 1997*



## **Eligible Services**

- A DC By-law may impose DCs to pay for increased capital costs required because of increased needs only for the following services:
  - Policing services;
  - Ambulance services;
  - Fire protection services;
  - Toronto-York subway extension;
  - Transit services other than the Toronto-York subway extension;
  - Waste diversion services;
  - Other services as prescribed.

# Schedule 3 - *Development Charges Act, 1997*

- Capital Costs no longer reduced by 10%
- The proposed subsection 2(4) excludes what have been traditionally known as “soft services” such as recreation and library services and are therefore no longer eligible for DC’s.
- However, this is where the interplay with the new proposed section 37 of the *Planning Act* comes into play because it is likely that a number of these services will be eligible to be included in the new Community Benefit Charge By-law contemplated under the *Planning Act*.

## **When a development charge is payable**

- Bill 108 introduces the ability for a landowner to defer the payment of development charges for rental housing development, institutional development, industrial development, commercial development, and non-profit housing development until the earlier of the date of the issuance of a permit under the *Building Code Act, 1992* authorizing occupation of the building, and the date the building is first occupied where no occupancy permit is required.

# Schedule 3 - *Development Charges Act, 1997*



## **When a development charge is payable**

- A development charge referred to in subsection (1) shall be paid in equal annual instalments beginning on the earlier of the date of the issuance of a permit under the Building Code Act, 1992 authorizing occupation of the building and the date the building is first occupied, and continuing on, (a) the following five anniversaries of that date for non-profit rental housing development, institutional development, industrial development, commercial development or (b) the following 20 anniversaries of that date, in the case of a development charge in respect of non for profit housing.

# Schedule 3 - *Development Charges Act, 1997*

## **When a development charge is payable**

- A person shall notify the municipality within five business days of the building first being occupied and if a person fails to do so the DC and any interest becomes immediately payable.
- A municipality may charge interest on the instalments from the date the DC would have been payable to the date the instalment is paid, at a rate not exceeding the prescribed maximum interest rate.
- Any unpaid amounts will be added to tax roll
- Any change in type of development so that it would no longer have the benefit of deferral, the owing DC and interest is payable immediately.

# Schedule 3 - *Development Charges Act, 1997*

- Amendments to the *Development Charges Act, 1997* setting out the rules for when the amount of a development charge is determined.
- The amount in many instances will be determined based on the date of the application under s.41 (site plan control) or, if no such application, on the date of the application under s.34 (zoning by-law) and if neither, the date of building permit issuance.

# Schedule 3 - Development *Charges Act, 1997*

- **Transitional matters respecting community benefits under *Planning Act***
- A development charge by-law that would expire on or after May 2, 2019 and before the prescribed date shall remain in force until the earlier of,
  - the day it is repealed;
  - the day the municipality passes a by-law under subsection 37 (2) of the *Planning Act* as re-enacted by section 9 of Schedule 12 to the *More Homes, More Choice Act, 2019*; and
  - the prescribed date.

## **Section 37:**

Upon proclamation, section 37 as we know it is no more.

- However despite the repeal of Section 37, the following provisions continue to apply until the applicable date:
  - Subsections 37 (1) to (4), as they read on the day before the effective date;
  - Subsection 37 (5), as it read on the day before the effective date;

## **Section 37:**

On and after the applicable date, the following rules apply if, before that date, the municipality has passed a by-law under the repealed 37 (1):

- Subsections 37 (1) to (5);
- Despite subsections 2 (4) and 9 (1) of the *Development Charges Act, 1997*, the development or redevelopment of the lands that are the subject of the by-law is subject to any DCs that relates to any of the services described in subsection 9.1 (4) of the DC Act and that applied to the lands, regardless of whether the development charge by-law has expired or been repealed.

## **Section 37:**

- The development or redevelopment of the lands that are the subject of a section 37 bonusing by-law is not subject to a community benefits charge by-law
- The development or redevelopment of the lands that are the subject of a section 37 bonusing by-law is subject to any by-law under section 42 as it read on the day before Bill 108 comes into force, regardless of whether it has been repealed.

## **Section 37:**

The applicable date is the earlier of:

- the day the municipality passes a by-law under section 37; and
- the date prescribed under the *Development Charges Act, 1997* for the purposes of section 9.1 of that Act.

## **S.37- Community Benefit Charge:**

- Section 37 contributions, certain soft services development charges and parkland dedication requirements are in effect replaced with a community benefit charge.
- Charge may be imposed for development that requires, among other things, a zoning bylaw amendment, minor variance, plan of subdivision, consent, approval of condo description, building permit.

## **S.37- Community Benefit Charge:**

- Municipality is required to have a community benefit strategy before passing a community benefits charges bylaw.
- The community benefit strategy has to comply with any prescribed requirements.

## **S.37- Community Benefit Charge:**

- Certain types of development may be excluded. These exclusions will be prescribed.
- Community benefits charge can't be imposed with respect to matters set out in 2(4) of DC Act.
- Amount of the charge is a prescribed percentage of the value of the lands.
- Valuation date for the lands is the date of first building permit issuance.

## **S.37- Community Benefit Charge:**

- A dispute regarding the value of the lands and consequently the community benefit charge is addressed by the owner of lands making a payment in protest and providing an appraisal of the lands to the municipality.

## **S.37- Community Benefit Charge:**

- The municipality may then provide the owner its appraisal. If the difference is less than five (5) percent, the municipality refunds the difference.
- If the difference is more than five (5) percent, a third appraisal is produced from an appraiser on the approved list of appraisers the municipality maintains.

## **S.37- Community Benefit Charge:**

- Any difference between the value determined by the third appraisal and the community benefit charge is to be refunded to the owner.
- In-kind contributions may be provided and the value of the contribution will be deducted against the community benefit charge.

## **S.37- Community Benefit Charge:**

- If the municipality passes a community benefits charge by-law before the specified date, any credit under section 38 of the *Development Charges Act, 1997* that was held as of the day before the by-law is passed and that relates to any of the services described in subsection 9.1 (4) of that Act may be used by the holder of the credit with respect to a community benefits charge that the holder is required to pay under a community benefits charge by-law.

## **S 42 and 51.1- Parkland Dedication and Cash in Lieu**

- As a condition of (re)development of land, a municipality may pass a by-law to require conveyance of or cash in lieu of the value of, 2 per cent of land proposed for commercial/ industrial purposes and 5 per cent of the land proposed for all other purposes for park or other public recreational purposes.
- Alternative rates of 1:300 (conveyance) and 1:500 (CIL) are repealed

## **S 42 and 51.1- Parkland Dedication and Cash in Lieu**

- Subject to some exceptions, a by-law referred to above (1) is of no force and effect if a community benefits charge by-law under section 37 is in force.

# QUESTIONS ?



Denise Baker  
Partner  
WeirFoulds LLP  
1525 Cornwall Road, Suite 10  
Oakville, Ontario  
L6J 0B2

[dbaker@weirfoulds.com](mailto:dbaker@weirfoulds.com)

TEL: 416-947-5090