



May 31, 2019

Finance Department

John Ballantine, Manager
Municipal Affairs and Housing
Municipal Finance Policy Branch
13th Floor, 777 Bay St.
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And to:

Planning Act Review - ERO#: 019-0016
Provincial Planning Policy Branch
13th Floor, 777 Bay St.
Toronto, ON M5G 2E5

Dear Mr. Ballantine,

Re: York Region Staff Comments in Response to Bill 108 - *More Homes, More Choice Act, 2019* - ERO # 019-0017 and ERO # 019-0016

On May 2, 2019 the Province introduced Bill 108, the *More Homes, More Choice Act, 2019*. Bill 108 proposes amendments to 13 statutes and forms the cornerstone of the government's Housing Supply Action Plan. Due to the short 30 day consultation period, it was not possible to bring the attached staff response to York Region Council for endorsement. Should Council have any additional comments staff will forward them to the Province at a later date. Detailed staff comments can be found in the attachments.

Regional staff calls upon the Government of Ontario to extend the commenting period for Bill 108 and to consult municipalities in the development of the regulations

On May 16th, 2019, York Region Council carried forward a motion to urge the Government of Ontario to halt the legislative advancement of Bill 108 to allow the Region and all municipalities to provide meaningful and constructive feedback. The Region has a long history of working with the Province and the development industry to create innovative solutions in the public interest. We look forward to continuing this productive partnership.

Regional staff request that the Province extend the commenting period until the first Fall sitting on standing orders of the Provincial legislature – September 9, 2019. This would allow sufficient time to conduct a more thorough analysis of the proposed changes, and ensure that objectives for sound decision making for housing growth that meets local needs will be reasonably achieved.

Regional staff request that the Province consult municipalities in the development of the regulations and provide a minimum 90 day commenting period. In doing so, this may help mitigate some of the concerns expressed by staff in this letter and the Attachments.

Early analysis shows that Bill 108, if passed, could reduce the Region's development charge collections by the order of \$300 million over the next five years. Ultimately, the cost to the Region in terms of higher development charge debt and borrowing costs would be passed onto future development through upward pressure on rates. Any project with funding needs not recovered through development charges or the Community Benefits Charge would need to be reconsidered or addressed through the Region's tax levy, which has an impact on housing affordability.

Region Staff are proposing specific and balanced recommendations aimed to increase development cost certainty while protecting municipal fiscal health

There are opportunities to address concerns regarding cost certainty while also maintaining municipal fiscal health and supporting the delivery of needed infrastructure. Key staff recommendations are highlighted below:

- ensuring a fairer sharing of risks by providing municipalities with the ability collect full or partial payment of development charges at site plan or zoning amendment application;
- targeting the delayed and phased payment program to purpose-built rental and non-profit housing development, and providing municipalities with the ability to secure their interests;
- addressing the funding mechanisms for the growth-related portion of Yonge Subway Extension through regulations; and
- ensuring municipalities have sufficient time to adopt a new development charge bylaw and community benefits charge bylaw consistent with Bill 108.

With a five year supply of registered and draft approved housing units, York Region has a healthy housing supply to accommodate growth. Regional staff are committed to working expeditiously with the development industry, the Province, agency and other partners to advance development approvals that are in the public interest. York Region staff would be happy to discuss these comments further with Provincial staff.

For questions regarding the above and attached comments, please contact Laura Mirabella Laura.Mirabella@york.ca, or Paul Freeman Paul.Freeman@york.ca.



Laura Mirabella, FCPA, FCA
Commissioner of Finance and Regional
Treasurer
The Regional Municipality of York



Paul Freeman, MCIP, RPP,
Chief Planner
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The Regional Municipality of York

Attachments (2)

Attachment I

York Region Staff Comments on Schedule 3 and Schedule 12 (as it relates to the new Section 37 of the *Planning Act, 1990*) of Bill 108, *the More Homes, More Choice Act, 2019*

General Comments

York Region is a responsible and accountable order of government

York Region is a responsible and accountable order of government. With a five year supply of registered and draft approved housing units and 20 to 23 year supply of designated land, York Region has a healthy housing supply to accommodate growth. The Region is committed to working expeditiously with the development industry, the Province and its affiliated agencies and other partners in order to advance development approvals that are in the public interest.

The prescriptive nature of the changes under Bill 108 does not distinguish between municipalities; however each municipality in the Province is different. To treat all 444 Ontario municipalities the same does not recognize the significant strides and efforts some municipalities, like the Region, have made in increasing housing supply, creating an environment conducive to development and cultivating a culture of engagement and transparency with the development industry.

The Region continues to welcome a dialogue with the Province to ensure the benefits and risks associated with increasing housing supply are fairly shared between municipalities and the development industry.

While the Region is supportive of efforts to improve housing affordability, Bill 108 could create unintended consequences that are counterproductive

The Region of York supports the positive changes within Bill 108 such as:

1. removing the requirement for low risk projects to undertake environmental assessments;
2. appointing more Local Planning Appeal Tribunal adjudicators to deal with appeals;
3. streamlining the planning process provided that the planning processes are streamlined at both the provincial and local levels;
4. the removal of the 10% discount for determining development charges for hard services.

However, proposed changes to the growth funding mechanism could place significant financial risks and administrative burden on the Region. The Region is making significant infrastructure investments to support growth. In February of this year, York Region Council approved a 10-year \$6.6 billion capital plan, of which \$3.76 billion is for growth-related infrastructure. This includes \$705 million on road widening and approximately \$1.4 billion in water and wastewater projects over the 2019 to 2028 period. These investments are substantially funded through development charges. The Bill, if it becomes law, will create a structural disconnect between costs incurred by the Region and revenues received. This could result in:

- Approximately \$300 million in reduced development charge collections over the next five years (2019 to 2023)
- Delays in the construction of vital growth-related infrastructure such as Upper York Sewage Solutions, North East Vaughan Water and Sewage Servicing, and West Vaughan Water and Sewage Servicing (Phases 1 and 2), that could ultimately slow housing development
- Significant challenges to fund the Region share of the Yonge Subway Extension, a priority rapid transit project of Region-wide importance.

Development charges are an important funding source premised upon the principle of growth paying for growth. Regional development charges represent approximately five per cent of new housing prices. Limiting the ability of municipalities to recover growth-related infrastructure costs through development charges would not substantially address the issue of housing affordability.

The 30 day commenting period on Bill 108 should be extended so that municipalities may conduct a thorough analysis on its impact

Bill 108, the More Homes, More Choice Act, 2019 (“Bill 108”) was tabled on May 2, 2019 and municipalities were provided with a commenting period that ended on June 1, 2019 (which is a Saturday). The omnibus Bill proposes to amend 13 statutes including making fundamental changes to the planning and development charges regime in the Province.

In order to fully appreciate the implications of the changes and provide constructive feedback that is emblematic of our partnership with the Province, additional commenting time is necessary. In addition, many key details regarding the mechanics of *Bill 108* will be provided in regulations. Municipalities should be consulted on the development of these regulations.

In order to address these concerns, staff recommend the following:

- The commenting period be extended until the first fall sitting on standing orders of the Provincial legislature – September 9, 2019
 - In the alternative, the deadline be extended an additional 60 days, for a total commenting period of 90 days
- The Province consult with municipalities, and other interested stakeholders, in the development of related regulations and provide a minimum 90 day commenting period

Staff Comments on Schedule 3 and Schedule 12 (as it relates to the new Section 37 of the Planning Act, 1990)

The freezing of development charge rates could constrain the Region's ability to fund vital growth-related projects and increase the Region's debt risk

Currently, development charges are calculated at the prevailing rate as at date of building permit issuance, unless the development proceeds by plan of subdivision or an agreement is entered into stipulating an earlier or later date.

Under Bill 108, development charge rates would be 'frozen' at an earlier point in the development process, that being when an application for a site plan or zoning approval is made. This provision severs the connection between the cost of infrastructure needed to service growth and the rates charged. This proposed change could impact virtually all development in the Region. As a minor zoning change could activate the ability to lock-in rates, there is the potential for abuse.

The 'freeze' to development charge rates is intended as a measure to provide more cost certainty to developers. However, freezing development charges, potentially many years before development occurs, means that the development charge rates paid would not reflect the actual costs incurred and the projected needs of growth. This could limit the Region's ability to fund vital growth-related projects identified in the Region's 2041 Master Plan, which was developed in consultation with the development Industry. The Region's current development charge bylaw has a forecast horizon of 2031, and does not capture the numerous projects needed to support growth beyond that horizon.

The Region has entered into agreements to have the developing landowners fund certain infrastructure and provide development charge credits as the lands are developed. It is unclear how the Region can honor these commitments given the new rate structure.

There are other ways of increasing cost certainty to developers while also ensuring that municipalities do not bear all of the risks. For example, in order to secure a rate at site plan application, developers could provide full or partial payment. This affords municipalities with greater financial certainty to implement its capital plans. It will also discourage frivolous applications which add administrative burden and could slow down the approval process.

In order to address these concerns, staff recommend the following:

- That the Province further amend section 26 of the *Development Charges Act, 1997* such that for those developments requiring site plan or zoning application, payment, or partial payment, be required at that application
 - That this full, or partial, payment, due at site plan or zoning application, is a condition of registration or site plan approval

The funding mechanism for the Yonge Subway Extension may need to be addressed separately through regulations

Yonge Subway Extension, for which the Province recently announced partial funding, is not in the Region's Development Charge Bylaw. Allowing developers to lock in current development charge rates would mean that many of those benefiting from the Yonge Subway Extension could evade rate increases to pay for it. In other words, growth is not paying for growth, and funding the Region's share of this priority project would be a much greater challenge. This could have the unintended consequence of limiting future housing supply, and increase the Region's debt risks. Staff recommend that regulations be developed for the Yonge Subway Extension such that growth-related costs associated with this project can be appropriately recovered from growth.

In order to address these concerns, staff recommend the following:

- That the Province prescribe that the Yonge Subway Extension be an eligible service for which development charges may be imposed
 - That, as it relates to the Yonge Subway Extension, provisions related to the development charge rate calculation, amount of charge, and payment be prescribed through regulations
- That the Province further amend the new section 26.1 and 26.2 such that they do not apply to development charges imposed to pay for the growth-related portion of the Yonge Subway Extension and that full payment of those charges be payable in accordance with section 26

Freezing development charge rates without a deadline to construct will not incentivize the speedy delivery of housing supply

Allowing developers to lock in rates without making a financial contribution does nothing to promote the speedy delivery of housing supply. Bill 108 could be strengthened by setting a clear deadline for when developers must commence construction after locking in rates. The prescribed interest rate should also be set high enough to incentivize speedy delivery of housing.

In order to address these concerns, staff recommend the following:

- That, as it relates to the new subsection 26.2(1)(a) and (b), the Province prescribe a time period not greater than five years between the applications referred to in subsection 26.2(1)(a) and (b) and building permit issuance
 - That, when that five year time period is not met, development charges be payable in accordance with section 26
- That, as it relates to the new subsection 26.2(5)(a) and (b), the Province prescribe that the time period between application approval and building permit/date the development charge is payable be no more than two years
- That, for the purposes of the new subsection 26.1(7) and 26.2(3), the Province prescribe an interest rate that is greater than that which is charged by the Bank of Canada, such as the Prime rate

Delayed and phased payments will create significant cash flow challenges, and debt pressures burden for the Region

Bill 108 proposes to allow non-residential development, rental housing and non-profit housing to delay and phase payments. For these classes of development, development charges would be paid in equal annual installments, beginning at the earlier of occupancy permit or first occupancy of the development, and continuing for the ensuing five years (in the case of first occupancy, it is the developer who must notify the municipality of occupancy within five days of first occupancy).

Development charges are a highly variable source of revenue that is dependent on the housing market and non-residential development. The level of collections is the key driver of the Region's capacity to fund growth infrastructure and its overall debt levels.

Non-residential development historically accounts for 18 per cent of development charge collections. The delayed and phased payments could create a cash flow challenge on the order of \$300 million over the next five years.

The Region's current 10 year capital plan is dependent on the assumption that \$380 million in average annual development charges can be achieved. Of this amount, approximately \$290 million annually is needed to pay for principle and interest on existing development charges debt. The remainder is available to construct new growth-related projects. The cash flow challenge created by the delayed and phased payments translates directly to delays in funding for growth-related projects, if the Region is to continue its prudent efforts to reduce debt.

Deferred and phased payments should be targeted to purpose-built rental and non-profit housing development

While the Region has a healthy housing supply, it is facing shortages in rental housing supply. Encouraging rental and non-profit housing supply has the best opportunity to help address housing affordability in the Region. Bill 108 could be clarified to ensure that only developments that are registered as rental developments can qualify for deferred and phased payments. This is to ensure that rental buildings stay as rental over the long term, rather than converting into condominiums.

It is unclear why a housing plan, and its enabling Bill, premised upon improving housing affordability and increasing housing supply, would address non-residential development. Municipalities should retain the flexibility to devise incentives to promote non-residential development that suit their local circumstances. York Region has the mandate to advance such economic development strategies and has worked with its local municipalities and stakeholders to do so. York Region offers various development charge deferral programs to eligible non-residential developments.

The Bill should also be clarified to ensure that a mixed-use development, may only defer and phase development charges payable for the portion of development that is in the prescribed class (e.g., rental, non-profit housing).

In order to address these concerns, staff recommend the following:

- The Province strike institutional, industrial and commercial development as permitted classes under subsection 26.1(2)
- That the Province amend the new section 26.1 defining rental to be a registered rental development and that it be operated as a rental for a minimum of 25 years
- That the Province amend the new section 26.1 to permit municipalities to register a restrictive covenant on title, requiring the development be operated as a rental
- That the Province amend the new section 26.1 and clarify that a mixed-use development, a portion of which is not a prescribed class, not be permitted to avail itself of this deferral for the portion of the development that is not a prescribed, eligible class

The Bill should ensure that in cases of delayed payments, municipalities could secure its interests

Currently, a condition of building permit issuance is the payment of development charges. Bill 108 proposes to permit developers, in prescribed classes (section 26.1), to build and then phase in their payment beginning at occupancy permit or first occupancy.

This presents municipalities with potential challenges when it comes to recovering development charges in instances where the development is sold/transferred (or the developer ceases operations). It is possible that a development could build and then sell to another entity, prior to occupancy. The new owner/purchaser may be unaware of the outstanding development charge obligation without a registered agreement. Under this scenario, while the Region could put the development charges on the tax roll, there is no guarantee they would be collected. This represents a financial risk to the Region whereupon development charges are not collected, which puts additional pressures on the tax levy and user rate. In addition, the administration requirements of this process would be significant.

It remains unclear if the phased payment plan (akin to a deferral) can be secured or if a condominium operating as a rental can qualify. It is also unclear if this phased payment can apply to mixed-use development (e.g., condo and office). Under Bill 108 municipalities can charge interest, however again the rate has yet to be prescribed.

In order to address these concerns, staff propose the following:

- Noted previously: The Province strike institutional, industrial and commercial development as permitted classes under subsection 26.1(2)
- That the Province amend the new section 26.1 such that any phased payment/deferral under this section require an agreement, stipulating an agreed upon interest rate (not prescribed) and that the municipality can take security
 - That the Province amend the new section 26.1 to permit these agreements be registered on title
- That the Province strike the following from the new subsection 26.1(3) "the earlier of" and, "and the date the building is first occupied"
 - That the Province strike the new subsection 26.2(5)(6) – notice of occupation and failure to provide notice
- That the Province amend subsection 5(3) of the *Development Charges Act, 1997*, adding a new paragraph: Costs to manage the processing and collection of the payments under the new section 26.1

Schedule 3 of Bill 108 should be amended to ensure that municipalities have sufficient time to adopt a new development charge bylaw and Community Benefits Charge Bylaw consistent with the bill

Bill 108 proposes changes to when development charge rates are determined, when development charges are payable, what growth-related costs can be funded, and how. In addition, the Community Benefits Charge must be implemented through a new process. These are fundamental changes to the development charge regime.

The Bill should be amended to ensure that municipalities have sufficient time to adopt the needed bylaws. If the 'freezing' of development charges and delayed and phased payments are permitted at a time prior to a community benefits charge and new development charge bylaw being in place, municipalities could suffer financially. In York Region, the typical development charge bylaw update takes 18 months to two years to complete.

In addition, Bill 108, as tabled, has transition provisions that could result in different sections coming into force on different dates. The More Homes, More Choice: Ontario's Housing Supply Action Plan speaks to "excessive red tape and administrative burdens that make no sense". Having the potential for multiple transition periods creates an administrative burden for municipalities and increases the complexity of the development process.

In order to address these concerns, staff propose the following:

- The transition period for all parts of Schedule 3 to the *More Homes, More Choice Act, 2019* be on the date a municipality's next development charge bylaw comes into force
 - In the alternative, all parts of Schedule 3 to the *More Homes, More Choice Act, 2019* not be in effect until June 2, 2021 (two years after the proposed commenting period ends)

Services that are currently eligible for development charge recovery should continue to be eligible

The *Development Charges Act, 1997* through Ontario Regulation 82/98 note which services are ineligible for development charge funding. Bill 108 proposes to amend Subsection 2(4) of the *Development Charges Act, 1997* and prescribe those services eligible for development charge funding. Those Regional services still eligible for development charges include, water and wastewater, roads, policing, Toronto York Spadina Subway, transit, GO Transit, and waste diversion (which is no longer subject to the 10 per cent statutory deduction).

As a result of the proposed change, Regional services that would no longer be eligible for development charge funding would be: paramedic services, public health, senior services-capital component, social housing, and court services. These services, and the funding that helps facilitate them, are vital to building a vibrant and growing Region. These services should continue to be eligible for development charges. It is unclear whether if and to what extent, these services are eligible for the proposed community benefits charge.

While the Region is supportive of removing the statutory deduction, prescribing services eligible for development charges within the *Development Charges Act, 1997* is more restrictive than if that list resided in the regulations. At some point a municipality may need to add services and it is more difficult to do so through legislative change than it would be through regulatory change. Provincial legislation related to municipal governance should be enabling and permissive.

To address these concerns, staff propose the following:

- That the Province strike the new subsection 2(4)
 - In the alternative, that the Province amend the wording in the new subsection 2(4) and replace it with: “a development charge by-law may impose development charges to pay for increased capital costs required because of increased needs for a service that is prescribed as an eligible service for the purposes of this subsection“
- That the Province amend subsection 60(1) such that: “The Lieutenant Governor in Council may make regulations, prescribing services as eligible services for the purposes of subsection 2 (4)
- That the Province prescribe, through regulation, those services eligible for development charges to pay for increased capital costs required because of increased needs and that Yonge Subway Extension, social housing, court services, public services, senior services, paramedic services be added to that list (the list of which is currently prescribed in subsection 2(4) of Schedule 3 to the *More Homes, More Choice Act, 2019*)

The Community Benefits Charge should mirror that of development charges

Bill 108 proposes that a community benefits charge, through a Community Benefits Charge Bylaw, is proposed as a new provision that could be used to recover costs no longer eligible for development charges. This new tool also replaces existing density bonusing provisions in exchange for community benefits under Section 37 of the *Planning Act, 1990*.

The *Development Charges Act, 1997* established a methodology and process for attributing and recovering growth-related costs from growth. Key elements of the Community Benefits Charge should mirror that of development charges.

Unlike development charges, Bill 108 prescribes that the maximum quantum of a community benefits charge payable, on a development, shall not exceed an amount equal to the prescribed percentage of the value of the land as of the day before the day the building permit is issued in respect of the development.

The community benefits charge should not be linked to land value. The recovery of growth-related costs should be based on the best estimate of the draw on services due to growth. Land value can change significantly over time, and has no relation to draw on services, or the cost of providing those services. Capping the charge could result in funding shortfalls. In addition, it is unclear how would the cap be implemented in a two-tier jurisdiction such as the Region, where land values vary significantly among its nine local municipalities. Any costs that are not recovered from growth would create additional pressures on the tax levy and would represent a shift from the premise that growth pay for growth.

Bill 108 also proposes that all monies received under a Community Benefits Charge Bylaw must be paid into a special account and the municipality must spend, or allocate, 60 per cent of the monies in the special account each year. Unlike operating expenditure, capital expenditures could vary significantly from year to year. Municipalities should have the flexibility to allocate (or spend) monies in the special account based on sensible capital budgeting practices. In addition, it is unclear what the impact of non-conformity with this clause will be.

To address these concerns, staff recommend the following:

- That the Province strike subsection 37(12) – maximum amount of community benefits charge and then strike the associated subsections that follow
- That the Province strike subsection 37(27) pertaining to the requirement to spend or allocate at least 60 per cent of the monies in the special account at the beginning of the year

The proposed process to levy a Community Benefits Charge could create additional administrative burden on municipalities

Bill 108 prescribes that, prior to passing a Community Benefits Charge Bylaw, the municipality shall prepare a Community Benefits Charge Strategy that identifies the facilities, services and matters that will be funded by the charges and complies with any prescribed requirements. Municipalities are also required to consult with appropriate stakeholders in the development of the Strategy. These additional requirements create an administrative burden, and add additional costs to municipalities. Currently it is unclear if the costs associated with the development of a community benefits charge bylaw will be eligible for recovery under these charges. If not, this creates additional pressures on a municipality's tax levy.

A rigorous and transparent reporting process already exists for development charges

An underlying premise for the creation of the community benefits charge is increased transparency for stakeholders. It should be remembered that the development charge calculation and reporting process is already rigorous and was made even more rigorous through *Bill 73, Smart Growth Smart Growth for Our Communities Act, 2015*.

Requirements under the *Development Charges Act, 1997* premised on transparency, include:

- Requirement to complete a development charge background study that includes the costs, methodologies and assumption used to establish the development charge rates
- Requirement to inform stakeholders and consult
- Rigorous reporting requirements under section 43 of the *Development Charges Act, 1997*
- A new requirement under Bill 73 that the municipality has is in compliance with section 59.1(1) (a municipality shall not impose additional levies)
- A new requirement under Bill 73 to table the development charge background study 60 days prior to passage
- A new requirement under Bill 73 to include an asset management plan showing assets proposed to be funded with development charges are financially sustainable

To address these concerns, staff propose the following:

- That the information and reports, required under the new subsection 37(28) be similar to those required under section 43 of the *Development Charges Act, 1997*

The Region should be permitted to fund other growth-related costs for ‘soft’ services through a Community Benefits Charge (under the *Planning Act, 1990*)

Under Bill 108, the recovery of growth-related capital costs, for those services not listed in the *Act*, will be through a mechanism referred to as a Community Benefits Charge Bylaw under the *Planning Act, 1990*¹. A community benefits charge bylaw will permit a municipality to impose community benefits charges against land to pay for capital costs to which the bylaw applies. The trigger of these charges includes the issuance of a building permit and the approval of a plan of subdivision.

¹ Note: At a Regional level, these services include paramedics, court services, social housing and senior services

There are also a number of areas surrounding a community benefits charge that remain unknown, including:

- Whether or not upper-tier municipalities will be permitted to levy this
- Will the eligible services be limited
- What will the deductions be

To address these concerns, staff propose the following:

- The Province clarify that upper-tier municipalities and lower tier municipalities both be permitted to levy a community benefits charge
- That the Province, through regulation, clarify which services are ineligible
- That the Province clarify what development or redevelopment is excluded from a community benefits charge and how costs attributed to excluded development can be recovered through these charges
- That the Province permit municipalities to index a community benefits charge in a manner consistent with that which is permitted under the *Development Charges Act, 1997* and Ontario Regulation 82/98
- That the Province prescribe the requirements for Strategy required under subsection 37(9)b and that it be made clear that costs associated with the development and consultation of that Strategy be eligible for a community benefits charge

Municipalities should have the flexibility to determine the development charge treatment of second units

Staff are supportive of measures to encourage a mix of affordable housing, including secondary suites. More clarity is needed to ensure that the new development charge treatment proposed in the Bill is targeted at true secondary suites.

Bill 108 provides that a purpose-built secondary suite, in prescribed classes of new residential buildings, or in ancillary structures, would be exempt from development charges (subject to prescribed restrictions). Additional analysis is needed to better understand the number and location of secondary units to assess its impact on infrastructure. Providing municipalities with flexibility to determine what constitutes a true second unit, and design the development charge program can help municipalities to manage the built form and densities being developed, while still accommodating this gentle intensification.

If further clarification is not provided, or municipalities are not permitted to ensure, through security, that these units are in fact second suites, municipalities could lose out on vital development charges required to pay for infrastructure. Additional dwelling units could be built, be exempted from development charges and then draw on municipal services.

Bill 108 also addresses secondary suites in existing buildings. Currently the *Act* provides for an exemption for the creation of up to two additional dwelling units in prescribed classes of existing residential buildings. Bill 108 proposes to change this by removing the wording 'up to two' and replacing it with 'additional'. The proposed amendment also notes that those 'additional' dwelling units may now be in structures ancillary to existing residential buildings. Without a restriction on the number of second suites a municipality could be faced with densities it cannot sustain and a form of development it does not want.

To address these concerns, staff propose the following:

- That the Province further amend subsection 2(3)b and prescribe/restrict the maximum number of additional dwelling units, in prescribed classes of existing buildings, be two
- That the Province strike the new subsection 2(3.1), thereby removing the exemption for second dwelling units in new residential buildings
 - In the alternative, the Province exclude row dwellings from the prescribed class of new residential buildings for which this exemption applies
 - That the Province clarify that the second dwelling unit be subordinate, in gross floor area, to that primary dwelling unit, and that it be up to a municipality to determine this threshold. And that this threshold be established as part of a municipality's development charge bylaw
 - In the alternative, the Province provide municipalities with the ability to ensure, through security/agreement, that these units are in fact second suites

Attachment II
Proposed Bill 108 (Schedule 12)
The More Homes, More Choice Act: Amendments to the Planning Act (ERO #019-0016)
York Region Comments

1. ADDITIONAL RESIDENTIAL UNIT POLICIES

York Region Comments	Recommendation
<p>Currently, a secondary residential unit is permitted in a house or a building ancillary to the house. Through Bill 108, a secondary residential unit would be permitted in any house and ancillary building thereby allowing two secondary residential units. Staff are supportive of the creation of secondary residential units in primary and ancillary buildings as it introduces more rental supply and intensification.</p> <p>The Bill, through the Development Charges Act, proposes to exempt a second unit created in prescribed classes of new residential buildings from development charges. This has the potential to create more financial incentive for both large and small builders to make secondary units a standard feature, instead of an option or a retrofit.</p> <p>However, in order to support these proposed changes, a number of implementation challenges would need to be addressed. This includes clarification and stricter definitions on the type of prescribed dwellings that permit secondary units. Not making this distinction would result in the loss of development charges revenue required to pay for infrastructure</p> <p>For these reasons, the location of secondary units should continue to be at the municipalities' discretion.</p>	<ul style="list-style-type: none"> • The Region encourages the Province to work with municipalities to streamline the processes for creating and registering second suites in their jurisdictions as well as provide municipalities with flexibility in identifying where those units can accommodate secondary units • Stricter definitions around the prescribed classes of new residential buildings that allow secondary units to avoid unintended financial loss

2. INCLUSIONARY ZONING POLICIES

York Region Comments	Recommendation
<p>Inclusionary zoning is a valuable tool available to local municipalities to increase the availability of affordable housing across the Region. Municipalities currently have the ability to contain inclusionary zoning policies in all or part of their respective communities. Through proposed Bill 108, inclusionary zoning would be limited to areas around protected major transit station areas (MTSAs) or areas where a development permit system is in place.</p> <p>While the Region supports the promotion of creating more affordable units near high growth areas with greater transit accessibility, limiting the application of inclusionary zoning policies to MTSAs and areas where a development permit system are in place restricts the application of this affordable housing tool.</p> <p>Consistent with the Region's January 2018 response to the Province's draft inclusionary zoning regulation, staff recommend the Province continue to provide municipalities with flexibility in developing appropriate inclusionary zoning policies that reflect the local housing market and affordability needs. A broader application of the policies allows for a more even distribution of affordable housing across the entire community.</p> <p>Limiting the use of inclusionary zoning to protected MTSAs and to areas where development permit systems are in place counteracts the Province's priorities to bringing affordable housing online faster. Municipalities have not had sufficient time to implement inclusionary zoning since the release of the enabling regulation in April 2018. Therefore, introducing changes to inclusionary zoning at this point in time will further delay implementation. In addition to this, inclusionary zoning policies will not be able to be adopted until policies with respect to MTSAs have been adopted and approved first, as per the Growth Plan, 2019. Lastly, the establishment of a development permit system, which is subject to a Minister's Order, also has the potential to result in implementation delays due to the amount of staff time and resources required to adopt these by-laws.</p>	<ul style="list-style-type: none"> That the Province support municipalities in the implementation of inclusionary zoning policies by continuing to allow flexibility in how the policies are applied to the local community and continue to look for ways to support the creation of affordable housing units to meet the diverse needs of residents

3. MANDATORY DEVELOPMENT PERMIT SYSTEM

York Region Comments	Recommendation
<p>The Province has the ability to require a municipality to adopt or establish a development permit system (DPS). The geographic area of the DPS is at the discretion of the municipality. Through proposed Bill the Province can now require a DPS in a specified delineated area or an area surrounding and including a specified location. The Region recognizes that leveraging planning tools has the ability to provide more housing in appropriate locations for people of all ages. However, the Region questions whether the implementation of a development permit system will lead to quicker approvals.</p> <ul style="list-style-type: none"> Implementing a DPS requires a significant amount of detailed, upfront work by municipalities. This work could have the unintended consequence of prolonging the approval process. <p>There is uncertainty around how the interests of upper tier municipalities, such as access to Regional roads, servicing and transit, would be captured through this system, as implementation is done through lower tier municipalities. Upper-tier interest is generally captured at the establishment of a DPS however this may not be enough to ensure that all Regional interests are reflected.</p>	<ul style="list-style-type: none"> The Region requests clarification on how the development permit system would ensure the interests of the upper-tier municipality are reflected in the development application process

4. REDUCTION OF DECISION TIMELINES

York Region Comments	Recommendation												
<p>Proposed Bill 108 introduces reduced timelines for processing development applications. Bill 139, the <i>Building Better Communities and Conserving Watersheds Act, 2017</i> had extended timelines for municipalities to process applications before the right to appeal for a non-decision of Council. Through proposed Bill 108, these timelines are even shorter than pre-Bill 139 timelines (see Table 1). Furthermore, the ability to extend the timeline for the approval authority to make a decision on official plans and official plan amendments has been eliminated.</p> <p>Table 1 – Summary of Non-Decision Timelines</p> <table border="1" data-bbox="1209 892 1421 1969"> <thead> <tr> <th></th> <th>Pre-Bill 139</th> <th>Bill 139</th> <th>Bill 108</th> </tr> </thead> <tbody> <tr> <td>Official Plan/Official Plan amendments</td> <td>180 days</td> <td>210 days</td> <td>120 days</td> </tr> <tr> <td>Zoning By-Law Amendment</td> <td>120 days</td> <td>150 days</td> <td>90 days</td> </tr> </tbody> </table>		Pre-Bill 139	Bill 139	Bill 108	Official Plan/Official Plan amendments	180 days	210 days	120 days	Zoning By-Law Amendment	120 days	150 days	90 days	<ul style="list-style-type: none"> Staff recommends that the timelines established for review of <i>Planning Act</i> applications before an appeal is permitted to the LPAT be returned to the timelines that were in effect under Bill 139, <i>Building Better Communities and Conserving Watersheds Act, 2017</i>. The Province recognize that all parties involved in the development application process can contribute efforts to reducing processing timelines by requiring more stringent timelines around complete
	Pre-Bill 139	Bill 139	Bill 108										
Official Plan/Official Plan amendments	180 days	210 days	120 days										
Zoning By-Law Amendment	120 days	150 days	90 days										

Draft Plan of Subdivision	180 days	180 days	120 days	
<p>Reduced planning decision timelines has a number of implications and will have the opposite effect of bringing housing to the market faster.</p> <ul style="list-style-type: none"> The quality of staff evaluation of applications could be negatively impacted by the shortened timelines. Additionally, the ability for staff to work with applicants and consult with the public and stakeholders will be limited. The shortened time frame may lead to an increase of non-decision appeals which will ultimately delay the Region's ability to process applications as the matter will be awaiting an LPAT hearing. Council decisions are required with respect to development applications. To ensure to the shortened timelines are met, special meetings of Council may be required. <p>The Region recognizes the importance of speedy approvals and is committed to reviewing applications in a timely manner. The Region has undertaken a number of initiatives to streamline the review process including implementation of a new development tracking system. These process improvements have been implemented to assist in expediting the approval process through the current timelines of the Act.</p> <p>The Region also recognizes that all parties involved in the submission and review of development proposals from the official plan, secondary plan, block plan through to zoning by-law amendment can contribute to a more timely review and approval process. The reduced timelines do not take into account the submission of poor quality applications, resubmission delays and applicants who submit "placeholder" plans with the ultimate goal to delay the approval process to file a non-decision appeal.</p> <p>Municipalities should be able to utilize the entirety of the decision timeframe to conduct comprehensive evaluations of the applications and consult with the applicant, the public and stakeholders. If the reduced timelines are implemented, municipalities should have the ability to "stop the clock" when waiting for an applicant to provide additional information on an application or awaiting resubmission. More stringent timelines for complete applications are required to assist in meeting the tight deadlines.</p>				development applications

5. REPEALS TO BILL 139, THE BUILDING BETTER COMMUNITIES AND CONSERVING WATERSHEDS ACT, 2017

York Region Comments	Recommendation
<p>Proposed changes in Bill 108 repeal a number of significant amendments introduced through Bill 139, the <i>Building Better Communities and Conserving Watersheds Act, 2017</i>.</p> <p>Grounds for appeals on adoption or approval of an official plan are no longer limited to failure to conform with provincial plans or official plans, or failure to be consistent with provincial policy statements. This restriction, which was enacted through Bill 139 and supported by Regional Council in September 2017, helped ensure that decisions were in keeping with the respective Provincial and local planning documents. Reverting back to pre-Bill139 will result in more appeals to the Local Planning Appeal Tribunal. Past experiences at the Region defending regional and local plans have shown that appeals amount to significant staff resource and costs related to preparation for mediation and hearings</p> <p>Bill 108 eliminates the 20 day notice of appeal period. Through the current Act, if the approval authority fails to give notice of a decision with respect to all or part of a plan within 210 days, any person or public body may appeal to the Tribunal within the 20 day notice of appeal period. Removing this ability will once again permit unlimited and open-ended non-decision appeals, which further slows down the ability to deliver housing.</p> <p>Bill 108 eliminates the two-stage appeals process and restores the ability of “de novo” hearings, which allows for new evidence not received by council to be presented at the Tribunal. The Tribunal may consider whether the information could have affected the Council’s decision, and if so, provide an opportunity for council to reconsider their decision. Returning to the former OMB model of determining land use planning disputes minimizes the respect of the local decision-making process. Past experience has shown that this approach to planning appeals has drawn out hearings. It is unclear how this reversal will speed up housing development.</p> <p>The Region has worked closely with the Province in recent years through extensive consultation to make changes to Ontario’s land use planning appeals system, including comments on the Regional Planning Commissioners of Ontario report on Ontario Municipal Board reform. Regional Council has endorsed a number of recommendations in over the years with regards to changes to the former OMB. Reversing many of these significant changes takes final planning decisions out of the hands of elected Councils.</p>	<ul style="list-style-type: none"> • The Province should retain the existing policy that limits the grounds for appeals to only provincial plan and official plan conformity. The Province could also consider simplifying/reducing the complexity of official planning processes • The Province should retain the existing policy that limits the notice of appeal period to 20 days • The Province should eliminate the ability of de novo hearings • Staff recommends that the timelines established for review of Planning Act applications before an appeal is permitted to the LPAT be returned to the timelines that were in effect under Bill 139, Building Better Communities and Conserving Watersheds Act, 2017.

6. THIRD PARTY APPEALS FOR NON-DECISIONS ON OFFICIAL PLANS AND PLANS OF SUBDIVISION

York Region Comments	Recommendation
<p>Bill 108 limits who can appeal a non-appeal decision on an official plan, official plan amendments and plans of subdivision.</p> <p>Through the proposed Bill, an appeal on a non-decision of an official plan or official plan amendments is limited to the municipality that adopted the plan, the Minister and in the case of a plan amendment, the person or public body that requested the amendment. While limiting who can appeal could reduce hearing timelines, it does not allow other public bodies, like the conservation authorities, school boards, residents, and/or other interested persons the right to appeal.</p> <p>Third party appeals on plan of subdivision would be limited to the applicant, a public body who, before the approval authority gave approval to the draft plan of subdivision, made oral submissions at a public meeting or written submissions to the approval authority or made a written request to be notified of changes to the conditions, the municipality in which the land is located, the minister, or those included on the 'prescribed list of persons'. While in comparison to the restricted third party appeals for non-decision on official plans/OPA is more expansive, it still does not allow for residents, landowners or interested persons the right to appeal.</p> <p>Reducing the number of third party appeals for non-appeal decision on an official plan, official plan amendments and plans of subdivision could result in a lower number of appeals bringing housing online sooner.</p>	<ul style="list-style-type: none"> York Region is supportive of reducing the number of third party appeals as it may lead to a reduced number of appeals which would assist in bringing housing online faster.

7. ADDITIONAL CHANGES TO THE LPAT

York Region Comments	Recommendation
<p>Bill 108 proposes a number of new changes to the procedural controls of a hearing. As proposed, the LPAT will have the ability to require that parties participate in mediation or other dispute resolution process.</p> <p>The ability for the LPAT to limit the examination or cross-examination of a witness (now that</p>	<ul style="list-style-type: none"> York Region shares the Province's preference to resolve appeals through mediation. York Region recommends that any enabling regulation identify mediation and alternative dispute

<p>this has been re-introduced) as it should in theory allow the LPAT to limit unnecessary and repetitive evidence so that the hearing can be efficient. Also those who can be examined or required to produce evidence is now narrowed to those who are actively involved in the proceedings.</p> <p>The LPAT will now have the power to limit any direct examination or cross-examination of a witness if the Tribunal is satisfied that all matters relevant to the issues in the proceeding have been fully or fairly disclosed, or as the tribunal considers fair and appropriate. Bill 108 also proposes to limit the submissions by non-parties to written submissions but provide the Tribunal with the authority to examine the person who made the submission. In addition, Bill 108 proposes to now provide for mandatory mediation or other dispute resolution processes if prescribed, in specified circumstances and repeals provisions relating to the Tribunal's ability to state a case in writing for the opinion of the Divisional Court on a question of law.</p>	<p>resolution strategies are a mandatory first step to addressing appeals.</p>
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8. COMMUNITY BENEFITS CHARGE AND PARKLAND DEDICATION BY-LAWS

York Region Comments	Recommendation
<p>The Province is proposing to repeal Section 37, which is used to support local community improvements to address added pressures from significant development and introduce a new tool, the Community Benefits Charge ("CBC"). The proposed CBC regime will replace the existing density bonusing provisions in the Planning Act, development charges for discounted services (i.e., parks and community facilities), and in some cases, parkland dedication.</p> <p>Under the Region's current development charge by-law, a portion of development charges are allocated to future construction of affordable housing. Given the high cost of developing in the Greater Toronto Area, Service Managers need the ability to raise additional capital funding to supplement federal/provincial funding programs to expand the supply of affordable housing.</p> <p>The Region's 10-year capital plan for affordable housing development requires \$8.9 million in funding collected through development charges. Removing soft services, including affordable housing, could potentially create a funding gap and reduce the Region's ability to deliver affordable housing supports to residents.</p> <p>The community benefits charge will be based on a prescribed percentage of the value of the land on the valuation date, which results in uncertainty for municipalities as land values may</p>	<ul style="list-style-type: none"> • Staff suggests that the Province consult further with municipalities on the drafting of the enabling regulation for the community benefits charge by-law to ensure that municipalities have the financial resources to deliver community infrastructure and services. • That the Province allow municipalities to require both the community benefits charge and the conveyance of land for parks or other recreational purposes. • The Province should work with municipalities to fully understand the full financial impacts of adopting a community benefits charge. • An effective transition period is required

vary over time and may not truly reflect the costs of the benefits or services required to support that development.

Clarification is required under Subsection 37 (27), regarding the requirement to allocate or spend 60 per cent of the monies in the special 'Community Benefits' account. For example, would a defined capital program fall within the definition of "allocate?"

It is important that the Province not repeal the parkland by-law and parkland condition to approval of plan of subdivision. Parks are a critical component of complete communities. They play an important role in enhancing physical and mental health and social wellbeing, providing connections to nature, as well as contributing to the overall vitality of a community. Increasing access to public parks and green space is of particular benefit to people living with lower incomes.

Parkland dedication is also important for climate change mitigation and adaptation as they contribute to carbon sequestration and storage, improve air and water quality, provide natural shade and address urban heat islands, and help buffer against the damaging effects from flooding.

to permit municipalities to prepare a Community benefits charge strategy and adopt a community benefits charge by-law before the repeal of current legislation.