

TORONTO LANDS CORPORATION
Bill 108 – Summary of Changes and Impacts on TLC/TDSB

To: Chair and Members of the Toronto Lands Corporation

Date: September 26, 2019

Recommendation

That the report, *Bill 108 – Summary of Changes and Impacts on TLC/TDSB*, be received and forwarded to TDSB for information.

Rationale

On June 6, 2019, the Province's Bill 108, the *More Homes, More Choice Act, 2019* received Royal Assent. Bill 108 amends 13 statutes, including but not limited to, the *Planning Act* and the *Local Planning Appeal Tribunal Act*, which impacts how municipal land use planning is conducted in the province. This report provides a summary of the changes and impacts of Bill 108 on the Toronto Lands Corporation (TLC) and the Toronto District School Board (TDSB).

Context

On May 2, 2019, the Province introduced Bill 108, the *More Homes, More Choice Act, 2019* and subsequently received Royal Assent on June 6, 2019. All of the Bill 108 amendments to the *Local Planning Appeal Tribunal Act* are in force. Most of the Bill 108 amendments to the *Planning Act* are in force, as of September 3, 2019. The remaining sections of Bill 108 will come into effect on a date to be named by proclamation.

The Province's stated objective for Bill 108 is to help people struggling to find affordable housing, by laying the groundwork needed to tackle Ontario's housing crisis and help to build more homes that meet the needs of people in every part of the province¹.

The key changes introduced by Bill 108 related to land use planning include:

- shortening statutory review timelines for development applications;
- significant amendments to appeal rights – broadening the grounds of appeal for most types of applications; limiting third party appeals for draft plans of subdivisions and restricting appeals for approval authority non-decisions of official plans and official plan amendments;
- significant amendments to the Local Planning Appeal Tribunal (LPAT) hearing process - a return largely to the former Ontario Municipal Board (OMB) hearing process;
- enabling Minister's Orders regarding community planning permit systems to identify specific areas of provincial interest, and removing the right to appeal community planning permit by-laws that implement Minister's Orders; and,
- replacement of current section 37 (density bonusing) contributions, certain soft services development charges, and parkland dedication requirements with a completely new process for determining "community benefit" contributions.

¹ Ministry of Municipal Affairs and Housing Backgrounder: "More Homes, More Choice: Ontario's Housing Supply Action Plan will cut red tape, build more housing and increase number of affordable homes", May 2, 2019, <https://news.ontario.ca/mma/en/2019/05/comprehensive-legislation-would-help-give-people-of-ontario-more-homes-more-choice.html>

The implications for TLC/TDSB of the above Bill 108 changes include:

- The timeline for processing development applications is shorter, therefore TLC will need to be involved earlier in the application review process to identify potential concerns;
- Broader grounds of appeal may result in a greater number of applications appealed to the LPAT; TLC will continue to monitor whether this will result in TLC being involved in more LPAT hearings;
- Potentially more areas in the City subject to community planning permit by-laws, which provide a shorter streamlined development application process; TLC will need to monitor and where needed, be involved at the time the City prepares the draft permit by-law.
- TDSB capital projects requiring building permit would be subject to the new community benefit charges, unless regulation provides exemption; and,
- Facilities, services and matters to be funded by community benefits charges must be identified in a Community Benefits Strategy; TLC will need to be involved at the time that the City prepares its Community Benefits Strategy.

Appendix A provides more detail on the Bill 108 changes and a discussion on potential implications to TDSB/TLC.

Appendix

Appendix A: Background on Bill 108 Changes

Routing

TLC Board September 26, 2019
TDSB Board Cycle: October 2019

From

Daryl Sage, Executive Officer, Toronto Lands Corporation, at dsage.tlc@tdsb.on.ca or at 416-393-0575

Bianca Bielski, Senior Manager, Land Use Planning, Toronto Lands Corporation, at bbielski.tlc@tdsb.on.ca or at 416-393-0582.

APPENDIX A

BACKGROUND

Bill 139 - Previous Legislative Changes

Bill 139 (the *Building Better Communities and Conserving Watersheds Act, 2017*) was introduced by the previous Ontario Government on May 2, 2017 and came into effect on April 3, 2018. Bill 139 introduced sweeping changes to the land use planning approvals process in Ontario, including significant amendments to the *Planning Act*² in particular regarding appeals of official plan and zoning by-laws. Bill 139 also replaced the administrative tribunal responsible for hearing appeals, the Ontario Municipal Board (OMB), with the new Local Planning Appeal Tribunal (LPAT).

Bill 108 – Current Legislative Changes

Following the change in Ontario Government in June 2018, Bill 108 (the *More Homes, More Choice Act, 2019*) was introduced on May 2, 2019 and received Royal Assent on June 6, 2019. Bill 108 is a key component of the Ontario Government's More Homes, More Choice: Ontario's Housing Supply Action Plan, which outlines legislative, regulatory and policy changes across multiple ministries to address the housing crisis in Ontario. The changes are intended to eliminate unnecessary steps, duplication and barriers to creating more housing throughout the province. Bill 108 amends 13 statutes, including the *Planning Act* and the *Local Planning Appeal Tribunal Act*, which impacts how municipal land use planning is conducted in Ontario. Some of the Bill 108 amendments reverse the changes implemented by Bill 139.

On September 3, 2019, a number of new regulations and regulation changes related to Bill 108 came into effect, including the following related to transitional matters:

- Amendments to O. Reg. 174/16: Transitional Matters – General, made under the *Planning Act* (Planning Act transition regulation)
- O. Reg. 303/19: Transition for Planning Act Appeals, made under the *Local Planning Appeal Tribunal Act* (LPAT transition regulation)

A proposed regulation pertaining to the community benefits authority under the *Planning Act* (Environmental Registry of Ontario #019-0183) was posted by the Province on June 21, 2019, with commenting period that ended August 21, 2019. As of the date of this report, the new community benefits regulation has not yet been released.

Parts of Bill 108 are in force, while other sections are awaiting proclamation. All of the Bill 108 amendments to the *Local Planning Appeal Tribunal Act* are in force. Most of the Bill 108 amendments to the *Planning Act* are in force, as of September 3, 2019; sections not yet in effect primarily relate to community benefit charges and section 37 (discussed in greater detail below at item 7).

² The *Planning Act* is provincial legislation governing land use planning in the Province of Ontario. It describes how land uses may be controlled, and who may control them.

CHANGES AND IMPLICATIONS

1. Shorter Timelines for Processing Development Applications

The *Planning Act* sets out the timelines for the right to appeal the failure of municipal council to make decisions on development applications. Bill 139 had extended these timelines to provide municipalities more time to process development applications. Through Bill 108, the timelines are being reduced to shorter than the pre-Bill 139 timelines, as set out in the table below:

	Pre-Bill 139	Bill 139	Bill 108
Official Plan / Official Plan Amendment	180 days	210 days	120 days
Zoning By-law Amendment	120 days	150 days*	90 days*
Plan of Subdivision	180 days	180 days	120 days

* except where submitted concurrent with OPA: OPA timeline would apply

The *Planning Act* transition regulation identifies that the Bill 108 timelines would apply to complete applications submitted after June 6, 2019 (date of Bill 108 Royal Assent).

The intent of these shorter timelines is to enable a faster development approval process in order to bring more housing units to market more quickly. TLC planning staff note that some municipalities, including Toronto, have advised of the impracticality of the Bill 108 timelines, given internal reporting deadlines and scheduling of Council meetings and that the shorter timelines will impact the ability for City staff to consult effectively with commenting agencies and the public and to collaborate with applicants. If City staff is unable to process applications within the new shorter timeframes, this could result in a greater number of non-decisions of Council being appealed to the LPAT. The City is challenged by the current timelines and therefore many applications are appealed to the LPAT on the basis of a non-decision.

< Implications for TLC/TDSB:

In order to implement the above shorter timelines, the City may require TLC to review and provide comments more quickly during the municipal circulation of development applications. Currently, the City provides commenting agencies/department deadlines of three to seven weeks, depending on the type and complexity of the application. If the City shortens the commenting period, this will likely result in increased workload for TLC land use planning staff when adjusting to the shorter review period.

With a potentially shorter development approval timeframe, there is increased importance for TLC and the TDSB to be informed of and engaged in development applications early in the process, particular where applications are proposed adjacent or within close proximity to TDSB properties and/or are located in areas experiencing student accommodation pressures. TLC will continue to advocate, where appropriate, to be included at the pre-application consultation stage, and meet with developers early in the planning approval process in order to identify and address any concerns regarding land use planning impacts (e.g. shadow, wind, traffic) on nearby TDSB sites as well as student accommodations.

TLC planning staff has been working on improvements to its development application review process. A guideline document has been prepared to ensure a comprehensive and consistent approach to reviewing development applications that are in close proximity to TDSB sites (see separate TLC Board Report 2019-09-791). TLC planning staff has also recently introduced a new streamlined process for reviewing development applications with TDSB Planning and Strategy staff to ensure that student accommodation concerns are identified.

If quicker development approval timeframes are realized, TDSB enrolment projections may need to be updated to reflect the shorter timeframes in order to appropriately plan for student accommodation. In areas experiencing significant growth and pressures (such as Midtown and High Park), this may result in greater challenges of accommodating students in local schools. Accordingly, TLC will continue to monitor development activity in the City and advise the TDSB.

2. Broader Grounds of Appeal

Bill 139 amended the *Planning Act* to limit the grounds of appeal for official plans, official plan amendments and zoning by-laws to be made and determined only on the basis of consistency with the Provincial Policy Statement (PPS) and conformity with provincial plans and municipal official plans. Bill 108 repealed these restrictive grounds of appeals. With Bill 108, appeals are no longer strictly limited to the consistency/conformity test, but can be made on the basis of broad land use planning issues, which reflects the previous reasons of appeal under former OMB.

The *Planning Act* transition regulation identifies that the expanded grounds of appeal and allowing the LPAT to make a decision on these broader merits could apply to any existing appeals made under the Bill 139 regime that have not yet been scheduled for a hearing by the LPAT. For these matters, the appellant has an opportunity to provide a new notice of appeal with the broader grounds of appeal.

< Implications for TLC/TDSB:

With broader grounds for appeal, applicants and third parties have a greater opportunity to appeal decisions (or non-decisions) of Council. In conjunction with the shorter timeline for municipal review of development applications, there is potential for an increase in the number of appeals to the LPAT. TLC will monitor to assess whether this will result in TLC being involved in more LPAT hearings.

Currently, TLC/TDSB are appellants in one hearing that was appealed under the Bill 139 process – the City initiated OPA 419 for the High Park Apartment Neighbourhood Area. TLC is also interested in seeking party status at two LPAT matters in the Midtown Area that were appealed under the Bill 139 process. No hearings have been scheduled yet for these three matters, so it is anticipated that these hearings will proceed under the expanded grounds of appeal. With the expanded grounds of appeal, there may potentially be greater opportunity and flexibility for TLC and TDSB's interests to be heard at the LPAT.

3. Restrictions on Certain Third Party Appeals:

Bill 108 introduces restrictions on certain appeals:

- Appeals of Draft Plan of Subdivision applications are limited to the applicant, the Minister, the municipality, public bodies, and a narrow list of persons (primarily utilities and telecommunications companies).
- Appeals of the failure of an approval authority to make a decision on official plans and official plan amendments are restricted to the municipality that adopted the plan, the Minister (if the Minister is not an approval authority³); and the applicant in the case of an official plan amendment.

< Implications for TLC/TDSB:

³ The approval authority is typically the upper-tier municipality. In the case of the City of Toronto, the Minister is the approval authority for official plans; official plan amendments are generally exempt from Ministerial approval.

With respect to draft plans of subdivisions, the Bill 108 restriction on third party appeals does not affect the TDSB as there are not many subdivision applications in the City of Toronto, and the TDSB maintains the right to appeal as a “public body”, which definition includes “local boards” such as school boards. The terms are defined in s.1(1) of the *Planning Act* as follows:

“public body” means a municipality, a local board, a ministry, department, board, commission, agency or official of a provincial or federal government or a First Nation;

“local board” means any school board, public utility commission, transportation commission, public library board, board of park management, board of health, police services board, planning board or any other board, commission, committee, body or local authority established or exercising any power or authority under any general or special Act with respect to any of the affairs or purposes of a municipality or of two or more municipalities or portions thereof;

There are no immediate concerns with respect to the Bill 108 restriction on third party appeals of non-decisions of approval authority.

4. LPAT Hearing Process

Bill 139 overhauled the Ontario Municipal Board (OMB) hearing process and introduced a new Local Planning Appeal Tribunal (LPAT) process, with a two-stage hearing format: On a first appeal, where the LPAT determines that the consistency/conformity test is failed, the matter is referred back to the municipality to make a new decision. On a second appeal (of a new decision made by the municipality), the Tribunal can make a decision to approve, refuse or modify the appealed application.

Bill 108 maintains the LPAT in name, but makes significant changes to the hearing process that is largely based on the former OMB process. Bill 108 restores the following elements of the hearing process:

- A single hearing format;
- Authority for the LPAT to make a final determination approving, refusing, or modifying all or part of the instrument under appeal;
- Evidentiary-based hearings, including rights of examination and cross-examination of witnesses at hearings (although LPAT has the power to limit, if satisfied that all matters related to an issue are fully and fairly disclosed); and,
- Process for municipal reconsideration and recommendation to LPAT on new information that is introduced as evidence at the LPAT that was not before municipal council at the time of its decision.

Bill 108 also introduces some new procedural controls for LPAT hearings:

- Non-parties (i.e. participants) may only make written submissions, but the Tribunal may examine the person who made the submission; and,
- Mandatory mediation or other dispute resolution processes if prescribed, in specified circumstances.

The LPAT transition regulation identifies that the post Bill 108 amended LPAT Act will apply to all official plan, zoning and subdivision appeals, except where a hearing of merits has been scheduled under the Bill 139 regime before September 3, 2019. In cases where a Bill 139 hearing of merits has been scheduled, the appeal shall be continued and disposed of under the Bill 139 LPAT Act.

< Implications for TLC/TDSB:

In areas of the City where the TDSB is facing significant accommodation pressures, such as Midtown and High Park areas, the TDSB and TLC have taken the position of “not supporting” residential development applications. A number of residential development applications have been appealed to the LPAT, and TLC has maintained its opposition to proposed residential development in these areas by obtaining (or planning to seek) party status where appropriate. With respect to how the Bill 108 changes affect the hearing process for the matters of interest to TLC:

- Five development applications in the Midtown Area and two development applications in the High Park Area were appealed by the applicant under the former OMB regime. The new Bill 108 process (largely the same as the former OMB process), except for the mandatory case management conference, will apply to these matters.
- Two development applications in the Midtown Area were appealed by the applicant under the Bill 139 regime. The new Bill 108 process will apply to these two matters as no formal hearings have been scheduled yet for these proceedings.

The City initiated OPA 419 for the High Park Apartment Neighbourhood Area was appealed by TDSB (and other parties) under the Bill 139 regime. TLC now has carriage of this appeal on behalf of the TDSB. The new Bill 108 process will apply to this matter as no formal hearing has been scheduled yet.

5. Minister’s Orders re Community Planning Permits

A community planning permit system (also referred to as a development permit system) is an alternative framework set out in the *Planning Act* that combines and replaces the individual zoning, site plan and minor variance processes in an identified area with a streamlined single application and a 45-day approval process⁴. The Minister has the ability to issue an Order requiring a municipality to adopt a community planning permit system. To date, only a few municipalities in Ontario have adopted a community planning permit system⁵.

Bill 108 amendments to the *Planning Act* provide the Minister with greater authority to require municipalities to implement a community planning permit system in specified areas, within a specified time period. Prior to Bill 108, the Minister’s Order would require the community planning permit system to be for a specified purpose, but the municipality had the discretion to determine the geographic area governed by community planning permits. Under Bill 108, there is also no right to appeal the implementing community planning permit by-law passed in response to a Minister’s Order.

< Implications for TLC/TDSB:

With the Province’s increased authority to require community planning permits in areas of provincial interest, there may potentially be an increase in areas in the City subject to community planning permits. As there is no longer a right (other than by the Minister) to appeal a community planning permit by-law made in response to a Minister’s Order, it will be important that TLC monitor and where needed, be involved at the time the City is establishing the community planning permit by-law setting out the permitted development standards.

6. Community Benefits Charges

⁴ Applications for community planning permits (where a community planning permit system is in place) can be appealed by the land owner to the LPAT if Council fails to make a decision within 45 days of the application.

⁵ The City of Toronto made initial steps in laying the foundation for a community permit planning system in 2014, through Official Plan Amendment 258, which was appealed to the Ontario Municipal Board. The City has not released any details of the implementing community benefit by-laws.

Bill 108 introduces a new optional tool in the *Planning Act*, the Community Benefits Charges (CBC), which can be imposed by municipalities against land to pay for the capital costs of facilities, services, and matters required because of development or re-development of the area. Before a municipality passes a CBC by-law, they will be required to develop a CBC strategy, which includes the identification of the facilities, services, and matters that will be funded. The amount charged will be capped as a percentage (to be prescribed by the Province) of land values at building permit. Municipalities may also allow for in-kind contributions of facilities, services or matters.

The CBC replaces and consolidates three existing sources of community benefits/fees:

1. the existing Section 37 density bonusing contributions (repealed by Bill 108), where community benefits are currently negotiated with applicants on a site-specific basis for increases in height and/or density beyond what the existing zoning would permit;
2. the charges for soft services (libraries, child care, recreation centres, etc.) which are currently collected as part of development charges, but no longer permitted to be included in development charges under the Bill 108 amendments to the *Development Charges Act*; and,
3. parkland dedication provisions under s.42/51.1 of the *Planning Act*.⁶

Under Bill 108, certain types of development may be exempt from the CBC if prescribed by regulation. The proposed CBC regulation identifies the following types of development to be exempt:

- Long-term care homes
- Retirement homes
- Universities and colleges
- Memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion
- Hospices
- Non-profit housing

As of the date of drafting this report, the above amendments to the *Planning Act* with respect to CBC are not in effect.

< Implications for TLC/TDSB:

When the City of Toronto passes a CBC by-law, any TDSB capital project that requires a building permit would be subject to the new charge, equal to a determined percentage of the land value. Schools (specifically public schools) are not included in the proposed exemption list set out in the draft CBC regulation. The *Planning Act*, as amended by Bill 108, does not appear to provide municipalities with the authority to exempt additional types of development from a CBC, where a CBC by-law has been passed. Currently, development on public school sites is exempt from development charges⁷ and parkland dedication⁸, and would generally not trigger section 37 density bonusing contributions. Thus, if the proposed regulation is passed, Bill 108 introduces a significant new charge from which

⁶ Municipalities who do not pass a CBC by-law may continue to require parkland dedication in accordance with s.42 of the *Planning Act*.

⁷ Section 3 of the *Development Charges Act* provides that "No land, except land owned by and used for the purposes of a municipality or a board as defined in subsection 1 (1) of the Education Act, is exempt from a development charge by reason only that it is exempt from taxation under section 3 of the Assessment Act." Furthermore, § 415-4 of the City of Toronto Development Charges By-law states that the by-law does not apply to land that is owned by and used for the purposes of a board of education.

⁸ In the City of Toronto, § 415-30 of the Municipal Code exempts certain types of the development from parkland dedication, including buildings or structures owned by and used for the purpose of a public school as set out in the Education Act

TDSB is currently exempt. In August 2019, the Ontario Association of School Board Officials (OASBO) and TLC have both made written submissions to the Province to request the proposed regulation be revised to specifically exempt school boards from the payment of CBC.

Historically, the TDSB has received the benefits of Section 37 cash contributions for capital improvements of school board playgrounds and other facilities. Under Bill 108, CBC funding will be provided to facilities, services, or matters identified in the CBC strategy that is required as a pre-requisite to passing a CBC by-law. Therefore, if the TDSB wishes to obtain CBC funding for capital improvements of school board playgrounds or other eligible projects, it will be important for TLC/TDSB to participate in the process at the time that the City develops its CBC strategy.

CONCLUSION

Most of the Bill 108 changes affecting land use planning came into effect on September 3, 2019. TLC will continue to monitor and be involved in early stages of planning initiatives and development applications in the City, and will report back on any significant changes that result from the effects of Bill 108 changes.