
Subject: Bill 108 – proposed transition regulation materials relating to the *Planning Act, 1990* and *Development Charges Act, 1997*

Report to: Planning and Economic Development Committee

Report date: Wednesday, August 7, 2019

Recommendations

1. That Report PDS 28-2019 **BE RECEIVED** for information.
2. That staff **BE DIRECTED** to continue to provide detailed comments on Bill 108 and any associated matters, as needed.
3. That a copy of Report PDS 28-2019 **BE CIRCULATED** to local area municipal Planning Directors and Area Treasurers.
4. That staff **FURTHER REPORT** to Council with additional information on any legislation changes to Bill 108 and associated regulations that arise after the date of this report.

Key Facts

- This report provides an overview of the proposed regulations associated with Bill 108 – More Homes, More Choice Act, 2019 (Bill 108).
- On May 2, 2019, Ministry of Municipal Affairs and Housing (MMAH) announced its “Housing Supply Action Plan” and concurrently introduced Bill 108. An earlier report, PDS 26-2019, provides an overview and comments on Bill 108.
- On June 6, 2019, Bill 108 received Royal Assent, with some amendments coming into force and effect immediately.
- On June 21, 2019, MMAH released three proposed regulations for Bill 108 relating to the Planning Act, 1990 and Development Charges Act, 1997 (DC Act).
- A key component of Bill 108 – the formula for calculating a Community Benefit Charge (CBC) – has not been released. It is the subject of further consultation.
- The proposed CBC implementation date is January 1, 2021. Soft service development charges can no longer be charged after that date.

- Regional staff submitted their comments on Bill 108 regulations to the Environmental Registry of Ontario (ERO). A copy is attached as Appendix 1.

Financial Considerations

As identified in PDS 26-2019, proposed regulations to Bill 108 will influence the amount of development-related charges collected by Niagara Region and its local municipalities. This could result in less available funding for Regional programs and initiatives and may result in deferral of growth-related capital infrastructure.

The proposed regulations have not identified the formula for calculating a CBC – the release of the draft formula will occur after further consultation. The introduction of CBCs and the changes to development charges (DCs) may have a significant financial impact on the Region. Under the existing system the forecast DCs collected are as shown in the table below:

Summary of Regional Development Charge Collections (\$Ms)											
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	Total
DCs Collected - Hard Service	41.03	42.73	43.59	44.46	45.35	46.26	47.18	48.13	49.09	50.07	457.88
DCs Collected - Soft Service	3.33	7.95	8.11	8.27	8.44	8.61	8.78	8.96	9.13	9.32	80.90
Total	44.36	50.69	51.70	52.73	53.79	54.86	55.96	57.08	58.22	59.39	538.79

As recently presented in CSD 56-2019 Long Term Care Home Redevelopment Financing, unknowns associated with the CBC has created a significant financial risk for the growth related component of the Long Term Care redevelopment. This same risk also exists with other soft service areas that were previously included under DCs and proposed to be included under the new CBC (for example, social housing).

Regional staff are also in the process of assessing internal resources required to achieve compliance with the revised legislation. Staff expect to present program changes that are a direct result of Bill 108 as part of the 2020 Levy Supported Operating Budget. Program changes may address staffing and professional service requirements for the implementation of the revised legislation and CBC, as well as for the early adoption of a new DC Background Study.

Analysis

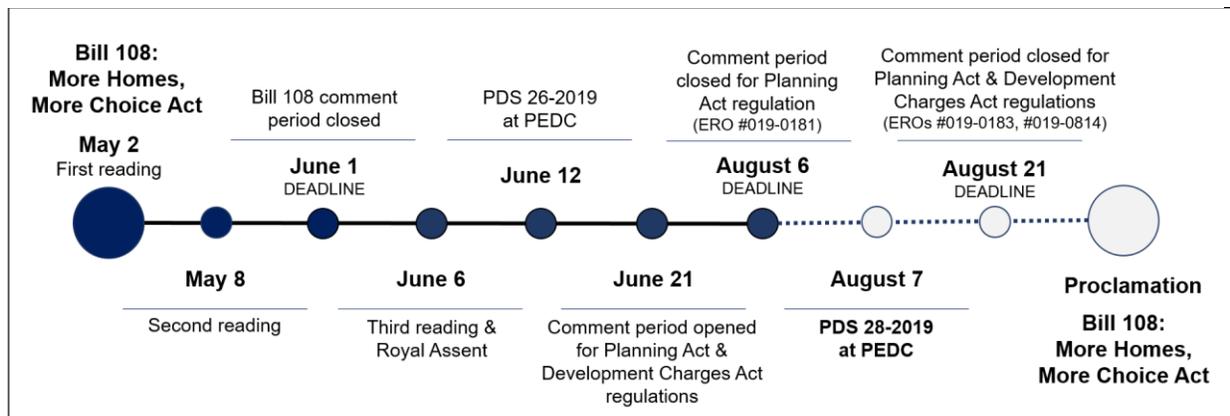
Amendments to the *Planning Act, 1990* and *DC Act* proposed through Bill 108 received Royal Assent on June 6, 2019.

On June 21, 2019, MMAH issued its first ERO postings of proposed transition regulations relating to Bill 108.

Most of the proposed regulations will come in effect at time of Bill 108's proclamation. Bill 108 has not received proclamation at time of writing this report. Some regulations will come in to effect retroactively to the date of Royal Assent (June 6, 2019).

Figure 1 below illustrates a timeline of key milestones associated to Bill 108.

Figure 1: Key milestones relating to Bill 108.



Current ERO postings for Bill 108's proposed regulations cover the following matters:

- ERO #019-0183 titled, "Proposed new regulation pertaining to the community benefits authority under the *Planning Act*" (<https://ero.ontario.ca/notice/019-0183>)
- ERO #019-0184 titled, "Proposed changes to O. Reg. 82/98 under the *Development Charges Act* related to Schedule 3 of *Bill 108 - More Homes, More Choice Act, 2019*" (<https://ero.ontario.ca/notice/019-0184>)
- ERO #019-0181 titled, "Proposed new regulation and regulation changes under the *Planning Act*, including transition matters, related to Schedule 12 of *Bill 108 - the More Homes, More Choice Act, 2019*" (<https://ero.ontario.ca/notice/019-0181>)

Regional staff's comments to these postings are attached as Appendix 1 to this report.

The following sections provide a synopsis of changes proposed through the regulations.

Community Benefits Charge (CBC)

CBC Formula

MMAH has not yet released the CBC formula. The Ministry advises that it will conduct further consultation to get feedback for the appropriate range of percentages for the formula.

The Ministry states a key goal of the CBC formula will be to ensure that municipalities maintain their historic revenue collected for soft services through its DC.

Notwithstanding this comment, staff are unsure whether this is achievable given that the formula details have not yet been released.

CBC Authority

The regulations specify that municipalities will be the CBC Authority. This is similar to the current authority of municipalities to charge development charges.

The proposed start date is January 1, 2020. After January 1st, municipalities can pass CBC By-laws.

CBC By-law Implementation Date

By January 1, 2021, municipalities must have transitioned to the use of CBC By-laws if they seek to collect money for soft services (i.e. what was permitted in the former *DC Act* before the recent amendment). After that date, municipalities are prohibited from collecting DCs for soft services.

However, in absence of a CBC By-law by January 2021, municipalities may continue to collect fees for parkland until such time that the municipality implements a CBC By-law.

CBC Reporting Requirement

The regulation identifies an annual CBC reporting requirement similar to what is currently prepared by municipalities for DC and parkland collection.

Required elements of an annual CBC report include:

- year-opening and year-closing CBC balances;
- details on amounts allocated during the applicable year;
- descriptions of services funded through allocated amounts;

- details relating to any money borrowed from the CBC account and its borrowed purpose; and,
- amount of incurred interest on the borrowed amount.

Exemptions to a CBC By-law

The regulation materials prescribe the following development types exempt from the collection of CBCs:

- long-term care homes;
- retirement homes;
- universities and colleges;
- memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion;
- hospices; and
- non-profit housing.

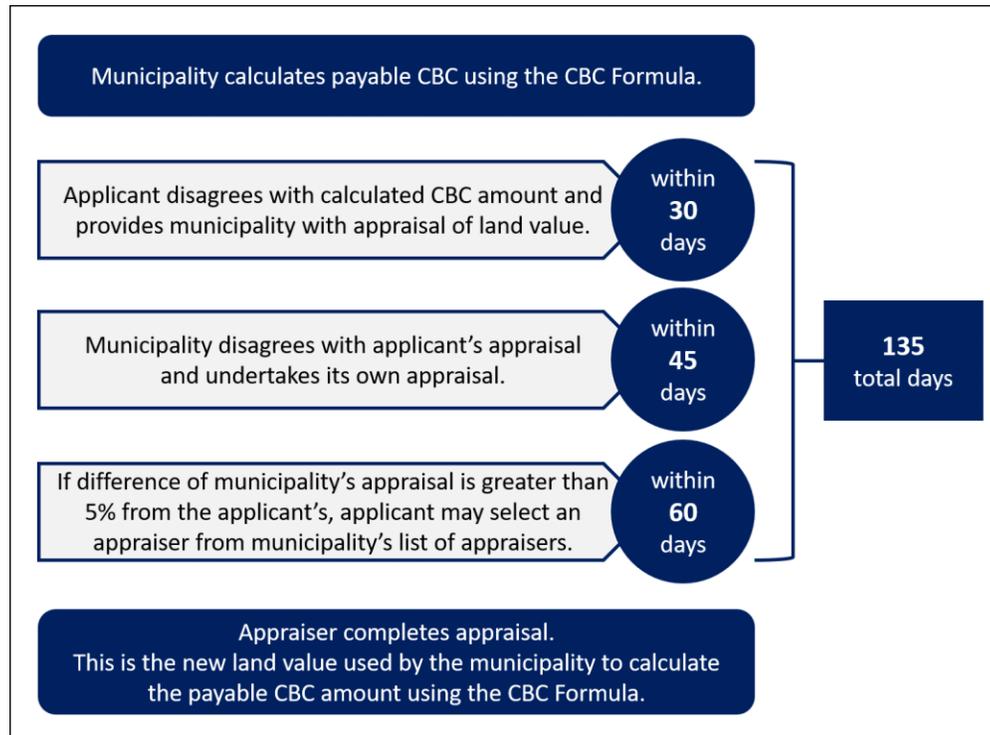
Protesting a Payable CBC Amount

An applicant may protest the amount a municipality determined is payable under the CBC.

The protest may only occur on the basis that the payable CBC amount exceeds the amount legislatively permitted through the CBC formula. This is similar to the test under the *DC Act*.

Figure 2 identifies the proposed process for challenges to a payable CBC amount.

Figure 2: Steps of the CBC land value appraisal process.



Development Charges (DCs)

January 2021 Implementation Date

As set out above, municipalities must implement a CBC by January 1, 2021 or they are no longer eligible to collect soft service-related DCs.

As a result, the Region may be required to prepare a new development charge background study and pass a new By-law in advance of the current By-law expiry (August 31, 2022) to satisfy the January 1, 2021 CBC implementation date.

Deferral of DC Collection

The following development types have a mandatory deferral for the collection of DCs:

- rental housing;
- non-profit housing;
- institutional;
- industrial; and
- commercial.

The above development types will be defined further in the regulations. The deferral eligibility takes effect upon proclamation.

DC Rate Freeze

Bill 108 set out a new process that allows the DC amount to be set at the time of site plan application (or zoning application, if there is no site plan application). In most cases under the old rules, DCs would be paid later, at the time of building permit issuance.

The regulation proposes a maximum length of time for the DC freeze: applications are frozen for a maximum of two years from the date of approval.

For planning applications that do not require a site plan or zoning amendment, the current DC collection procedure continues to apply.

The rate freeze rules will come in to effect upon proclamation.

Municipal interest rates for deferred or frozen DCs

Municipalities are able to collect interest on deferred or frozen development charges.

The regulation does not set a specific rate; rather MMAH has left it to individual municipalities to set a rate.

Local Planning Appeal Tribunal (LPAT)

Transition of LPAT Matters

LPAT appeal rights, procedure and evidence rules were revised through Bill 108.

Where an LPAT Hearing has not yet been scheduled, the new rules under Bill 108 will apply to that Hearing. Existing appeals with Hearing dates will proceed under the old rules.

Reduced Planning Application Review

As noted in PDS 26-2013, municipal review and approval timelines were reduced by Bill 108.

These timelines are now in effect and are set out below in Table 1:

Table 1: Overview of new planning application review and approval timelines through Bill 108.

Planning Instrument	Bill 139 (previous timelines)	Bill 108 (current timelines as of June 6, 2019)
Official Plan / Official Plan Amendment	210 days	120 days
Zoning By-law Amendment	150 days	90 days
Plan of Subdivision	180 days	120 days

Alternatives Reviewed

The purpose of this report is to provide an overview of key changes proposed through Bill 108's transition regulation materials in relation to the *Planning Act, 1990*, and *DC Act*. There are no other alternatives for Regional Council to consider at this time.

Regional staff will update Council on Bill 108-related matters as they occur.

Relationship to Council Strategic Priorities

Doing Business Differently

Bill 108's transition regulations will impact the way Niagara Region conducts its core functions and daily business operations.

Specifically, proposed regulations to the *Planning Act, 1990* and *DC Act* will modify the collection development-related costs through DCs and CBCs.

Other Pertinent Reports

- CWCD 176-2019
- CWCD 215-2019
- PDS 26-2019

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This report was prepared in consultation with Alexander Morrison, Planner, and reviewed by Helen Chamberlain, Director of Financial Management & Planning/Deputy Treasurer, Margaret Murphy, Associate Director of Budget Planning and Strategy, Robert Fleming, Senior Tax and Revenue Analyst, Donna Gibbs, Director of Legal and Court Services.

Appendices

Appendix 1	Niagara's comments: transition regulations for <i>Bill 108 – More Homes, More Choice Act, 2019</i> , regarding the <i>Planning Act, 1990</i> (ERO 019-0181, -0183), and the <i>Development Charges Act, 1997</i> (ERO 019-0184)	Pages 10 - 12
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Delivered electronically

Subject: **Niagara's comments: transition regulations for *Bill 108 – More Homes, More Choice Act, 2019*, regarding the *Planning Act, 1990* (ERO 019-0181, -0183), and the *Development Charges Act, 1997* (ERO 019-0184)**

Date: **August 6, 2019**

To: **John Ballantine**
Municipal Finance Policy Branch, Ministry of Municipal Affairs and Housing

Planning Consultation
Provincial Planning Policy Branch

From: **Rino Mostacci, MCIP, RPP**
Commissioner of Planning and Development Services, Niagara Region

Kindly accept this letter on behalf of the Commissioner of Planning and Development Services of the Regional Municipality of Niagara (the "Region") in response to the proposed regulations for the *Development Charges Act, 1997*, and the *Planning Act, 1990*, through the Ministry of Municipal Affairs and Housing (MMAH) *Bill 108: More Homes, More Choice Act, 2019*.

The views expressed in this letter are those of the Region's Commissioner of Planning and Development Services.

Comments in this letter are submitted collectively in response to the following Environmental Registry of Ontario ("ERO") postings:

- ERO #019-0181: "*Proposed new regulation and regulation changes under the Planning Act, including transition matters, related to Schedule 12 of Bill 108 - the More Homes, More Choice Act, 2019*"
- ERO #019-0183: "*Proposed new regulation pertaining to the community benefits authority under the Planning Act*"
- ERO #019-0184: "*Proposed changes to O. Reg. 82/98 under the Development Charges Act related to Schedule 3 of Bill 108 - More Homes, More Choice Act, 2019*"

Regional staff supports some of the proposed changes

Regional staff supports the following aspects of the proposed regulations:

- The Ministry's stated commitment that municipal revenue historically collected through development charges (DCs) and parkland are maintained through the Community Benefits Charge (CBC) formula.
- Clarified roles and responsibilities between the applicant and the municipality during the land value appraisal process used to calculate a CBC.

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- Specified transition period for the review and approval of *Planning Act, 1990*, applications such as official plan amendments, zoning by-law amendments, and plans of subdivision.
- Specified official plan elements required to implement a Community Planning Permit System and that approval of that instrument cannot be appealed.
- Decision to *not* specify a prescribed maximum interest rate on deferred / frozen DCs. This will allow municipalities to determine the appropriate rate based on its particular circumstances.

Regional staff comments

Participation in future consultations

The regulation does not specify how the Region can participate in future Bill 108-related consultation, including commenting on the CBC formula. The Region seeks to provide input.

Concern with the CBC By-law implementation date

The regulation sets out that CBCs need to be implemented by January 1, 2021.

This implementation date will be difficult to achieve given the process that must occur prior to the completion of a CBC Strategy.

Undertaking a CBC Strategy in a two-tiered governance structure will take considerable time and be difficult to coordinate between all stakeholders, particularly the first time.

It takes more than a year to complete the necessary background work required for a Development Charge Background Study. As such, we expect a CBC Strategy to take at least this long since it is a new initiative and will involve consultation and coordination with 13 municipalities. It is an unreasonable time expectation to have this work completed, including passing a By-law, for Niagara's 13 municipalities by January 2021.

It would be unfair to prohibit the collection of development charges under a circumstance where a By-law was not passed during this period. Losing out on these charges would be detrimental to the construction of community infrastructure necessary to accommodate growth.

Regional staff requests MMAH to adjust the implementation date of a CBC By-law to allow for proper planning and consultation with municipalities to better understand administrative resourcing, tools, and processes required for this major transition.

In our view, instead of the January 2021 implementation date, CBCs should be phased-in at the time of DC By-law expiry. For example, if a DC By-law expires in March 2023, development charges, including soft services DCs, could continue to be collected until that date, at which time a CBC By-law would be required in order to do so. Using this phased approach will allow for better coordination between the local municipalities and Region, and allow additional time for municipalities to prepare and plan for this new funding process.

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Additionally, there is confusion about the requirements for the January 2021 date based on the available materials. It is unclear whether a new DC By-law must be passed by January 2021 (thus requiring a new DC Study prior to that date), or if a municipality may instead amend its existing DC By-law by removing soft service rates recovered through the CBC By-law (without a DC Study). If the January 2021 date remains in the final form of the regulation, clarification about the requirements is needed.

Non-profit housing definition

Non-profit housing developments are able to defer payments in the revised *DC Act*. The regulation does not currently identify eligibility requirements for a non-profit that could receive this benefit.

Regional staff requests that the regulation include a "charitable organization" requirement for non-profit housing developments to prevent unmeritorious corporations from incorporating as a non-profit to qualify for DC deferral.

Applicable DC rates upon expiry of deferral periods

Regional staff requests clarification in regards to whether the initial DC rate or current DC rate would apply to applications whose two year deferral period has expired under ss. 26.1-26.2 of the *DC Act*.

Establish criteria for eligible CBC "in-kind contributions"

The regulation should specifically identify eligibility requirements for "in-kind contributions" in lieu of cash on a remaining CBC balance (*Planning Act, 1990, ss.37(6-8)*).

For example, the regulation should provide that in-kind contributions collected by municipalities count towards its 60% annual spending/allocation requirement (*Planning Act, 1990, ss.37(27)*). The legislation and regulation is unclear on whether in-kind contributions, or cash-only, meet the 60% requirement.

Conclusion

Regional staff appreciates the opportunity to provide these comments and looks forward to participating in further consultation opportunities.

Respectfully submitted and signed by



Rino Mostacci, MCIP, RPP
Commissioner of Planning and Development Services
Niagara Region