



May 31, 2019

Jocelyn McCauley
Committee Clerk
Standing Committee on Justice Policy
99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, ON M7A 1A2

Dear Ms. McCauley:

RE: *Bill 108, (Schedule 3) – More Homes, More Choice Act: Amendments to the Development Charges Act, 1997*

Thank you for the opportunity to comment on the proposed Bill 108, *Mores Homes, More Choice Act* (Schedule 3) Amendments to the *Development Charges Act (DCA), 1997*. On May 27, 2019 City of Guelph Council passed the following resolution:

WHEREAS the legislation that abolished the OMB and replaced it with LPAT received unanimous – all party support; and

WHEREAS all parties recognized that local governments should have the authority to uphold their provincially approved Official Plans; to uphold their community driven planning; and

WHEREAS Bill 108 will once again allow an unelected, unaccountable body make decisions on how our communities evolve and grow; and

WHEREAS On August 21, 2018 Minister Clark once again signed the MOU with the Association of Municipalities of Ontario and entered into "...a legally binding agreement recognizing Ontario Municipalities as a mature, accountable order of government"; and

WHEREAS This MOU is "enshrined in law as part of the Municipal Act". And recognizes that as "...public policy issues are complex and thus require coordinated responses...the Province endorses the principle of regular consultation between Ontario and municipalities in relation to matters of mutual interest"; and

WHEREAS By signing this agreement, the Province made "...a commitment to cooperating with its municipal governments in considering new legislation or regulations that will have a municipal impact"; and

WHEREAS Bill 108 will impact 15 different Acts - Cannabis Control Act, 2017 Conservation Authorities Act, Development Charges Act, Education Act, Endangered Species Act, 2007, Environmental Assessment Act, Environmental Protection Act, Labour Relations Act, 1995, Local Planning Appeal Tribunal Act, 2017, Municipal Act, 2001, Occupational Health and Safety Act, Ontario Heritage Act, Ontario Water

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Resources Act, Planning Act, Workplace Safety and Insurance Act, 1997.

Now Therefore Be it Hereby Resolved That the City of Guelph oppose Bill 108 which in its current state will have negative consequences on community building and proper planning; and

Be it further resolved that the City of Guelph call upon the Government of Ontario to halt the legislative advancement of Bill 108 to enable fulsome consultation with Municipalities to ensure that its objectives for sound decision making for housing growth that meets local needs will be reasonably achieved; and

Be It Further Resolved That a copy of this Motion be sent to the Honourable Doug Ford, Premier of Ontario, The Honourable Christine Elliott, Deputy Premier, the Honourable Steve Clark, Minister of Municipal Affairs, the Honourable Andrea Horwath, Leader of the New Democratic Party, and all MPPs in the Province of Ontario; and

Be It Further Resolved That a copy of this Motion be sent to the Association of Municipalities of Ontario (AMO) and all Ontario municipalities for their consideration.

Thank you again for the opportunity to comment on Bill 108 Schedule 3. As outlined above, the City has highlighted a number of concerns regarding the proposed Bill that we encourage the province to consider in its review. Further, the City requests to be actively engaged with the province as it reviews comments regarding the Bill and any subsequent programs and regulations. Please do not hesitate to contact me if you have any questions regarding the City of Guelph's feedback.

Sincerely,



Scott Stewart

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cc: Association of Municipalities of Ontario
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City of Guelph comments on Bill 108 Schedule 3

Overview

The City of Guelph strongly believes in the fundamental principle of “Growth paying for Growth” and for this reason cannot support many of the proposed changes in Bill 108 related to the Development Charges Act (DCA) and the Planning Act Sections 37 and 42. Movement away from a methodology that links development revenues to the long-term cost of infrastructure to a methodology based upon market-driven land value is in principle, a poor financial model. Like the province and the development community, municipalities need reliable revenue streams to develop growth business plans and this policy change will create unmanageable risk and unwarranted administrative burden, which collectively, will slow growth and housing supply creation. Give municipalities the choice between DCA and Section 37 of the Planning Act.

The proposed DCA impacts are further exacerbated by the requirement to choose between Sections 42/51.1 or Section 37 of the Planning Act; essentially leaving municipalities to choose between conveyance of parkland or the funding to build community infrastructure. The goal should not be building more housing at the expense of complete, health communities with parks, trails, and recreation facilities. Consideration of user fees (or increases) to recover the full cost of managing municipal parks, natural open spaces, trails and recreational facilities for residents who frequent these amenities may be required, which may ultimately pose a deterrent if unaffordable.

Protection of our Ontario tax payers should be the highest priority when considering the merits of Bill 108. Guelph is concerned that this Bill does not go far enough to protect our resident’s investment in affordable housing. Ontario tax payers should not become the bank to finance industrial and commercial developments. We need assurances that developers are passing on the savings to new homeowners and we need mechanisms to ensure that affordable units are not sold and made available for above-market profit. Community Investment Plans (CIPs) can better achieve the housing supply goals that the DCA is unequipped to provide.

Any legislation that reduces municipal cash flows in the development process will mean less financial capacity to fund the linear infrastructure resulting in slowed growth and housing supply creation. Guelph cautions that the provincial proposals to collect DCs over a six year period and freezing DCs at a point in time prior to building permit will have the negative and opposing effect of what the province was intending.

Timing

Similar to the Province’s recent announcement to reconsider the timing for cost-sharing and funding reforms to key services, Guelph strongly advocates for a delay in

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passing any of the changes to the DCA and Planning Act Sections 37, 42 and 51.1 until the implications can be studied more holistically which will provide for an orderly transition.

Guelph requests to be part of the consultation for the development of the regulations as they are foundational for the seamless implementation of the policy and for cultivating a growing and healthy housing supply.

Below is a comprehensive summary of staff comments regarding this Bill for consideration.

**Development Charges Act:
Section 2(4) – Service eligibility**

The proposed changes to eliminate development charges (DCs) for the collective “soft or social services” will likely result in a capital funding shortfall for growth-related infrastructure required for indoor and outdoor recreation (parks, trails and recreation centres), libraries, public health, child care and social housing, homes for the aged, paramedic services and parking. Without the specific regulations, Guelph cannot quantify the impact of these changes. Nevertheless, we do know that it leaves approximately \$155 million of capital funding vulnerable considering these monies were planned in our [DC Study that was approved in February 2019](#). These services are critical to creating livable, healthy communities and it is expected that new populations/businesses fund the growth infrastructure that is necessary for services in the same way as the other critical services such water, wastewater, roads and fire/police services. The current DCA provides a measurable and equitable means to quantify the cost of these services in each municipality based on existing service levels. Replacing this system with a Community Benefit Charge (CBC) regime based upon land value has many faults:

- i) Land value is subject to market conditions making it a very unreliable long-term financial planning tool – the Province advocates long-term capital planning with capital asset management plans and policies however is proposing to make a reliable capital revenue become unpredictable and unplannable.
- ii) Land value can vary based on proximity to the GTA making it an unfair method for funding common infrastructure needed across the province. The cost of building a recreation centre or a park may only vary upwards of 15% across the province whereas land value in the GTA for a single family lot may be 20 times that of the same size lot elsewhere in the province. This will create the have/have-not effect of urban centres versus rural communities where the revenue generation tool is unequitable to the cost of infrastructure.
- iii) The need for appraisals and the ability for the applicant to challenge the appraisal will create more burden and expense for municipalities rather than it creating a streamlined process that was the original intention of the province.
- iv) In a regional or county government system, the DCA contained guidance for

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the apportionment of the DC revenue collected according to the government body levying the charge considering it was directly attributable to their respective capital project plan. A system established on land value will create a new undefined, burdensome process to determine how this Community Benefit Charge would be allocated between the local and regional/county bodies.

Waste Diversion and Paramedic Services

The City applauds the decision to make Waste Diversion a non-discounted service and would stand firmly in the recommendation that all municipally-delivered services should be non-discounted so that growth development is really paying for growth. At a minimum, Guelph believes that Paramedic Services infrastructure should be treated equally to Police and Fire Services as they collectively create our first response emergency services team and are subject to mandatory requirements for response times as imposed by the province. Growth costs for provincially mandated services should be fully recovered from growth development.

Actions:

Guelph recommends that municipalities be given the option to choose between the DCA and Section 37 CBC as the growth-related revenue tool for soft services. Let municipalities make a choice rather than forcing the implementation of a separate, cumbersome, costly and unnecessary CBC regime, which will require separate studies, by-laws and administration.

If the Province feels that reducing municipal fees is necessary, it would be preferable to keep soft services in the DCA and simply limit the extent of recovery within the existing DCA to a cap as prescribed by the province.

Guelph recommends Paramedic Services should be a non-discounted service in the DCA similar to the other provincially legislated first response emergency services of Fire and Police.

Section 3.1 DC Exemption for second dwelling units in new residential buildings

The City understands and supports a concept to increase housing supply and agrees that this exemption would achieve more units. However, the City urges the province to put in place a mechanism to ensure developers transfer this cost reduction to the homebuyer.

Further, Guelph is requesting the province to acknowledge that exempting DCs does not change the cost of the infrastructure required for that development and this is a form of cost downloading to the citizens of Ontario. The lost DCs that would have otherwise been collected on these units will need to be recovered from property taxes and user fees. The DCA is based on a full cost recovery model, and any revenues not collected through DCs are subsidized by our citizens and businesses.

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Section 26.1 Certain types of development, when charge can be payable - 6 annual installments

Guelph strongly opposes any payment deferral arrangements for Institutional, Industrial or Commercial (ICI) development. Fundamentally, the provincial goal is to increase housing supply with Bill 108; ICI development does not create housing. The effect of ICI deferred payment arrangements will actually have the negative and opposing effect by slowing growth and reducing housing supply because the City's cash flows will be impaired early in the development cycle resulting in limited capacity to build road and pipe servicing infrastructure. Specifically, concerns relating to the six year ICI payment plan include:

- Property tax payers become a financing institution for the ICI development community. Let the banking industry finance and let the municipalities focus on building the infrastructure to accommodate development.
- Since municipalities are not banks, we do not have a building permit financial system in place to invoice development fees over a period of time. This new requirement necessitates an overhaul to the City's financial systems, increase risk of collection, increase staffing required to manage the extended collection period and generally will increase costs, time and red tape that will be passed back to the homeowners through increases in fees.
- A six year payment plan will reduce hard DC cash flows in Guelph by \$900,000 per year and increase the amount of debt funding required for growth-related infrastructure. There is insufficient debt capacity to simultaneously manage current and growth capital needs. Over-leveraging the City with more debt will mean a decrease in its credit rating and an increase in debt carrying costs which will ultimately be transferred to developers through increased DC rates.

The City understands and supports a concept to incentivize non-profit and rental housing. However, incentivising affordable housing units through the DCA (DC deferred payment arrangements over 6 years) does not allow for the appropriate level of security to keep those units affordable after they are built. It also does not allow for local municipalities to tailor the incentives to the types of units or construction that is needed in their community. We take affordable housing seriously in Guelph and are very concerned with the lack of protection and local influence over the 6 year payment plan currently proposed in the DCA. Just this week, Council approved the following [staff report motion](#) to provide \$1.3 million in grants to developments creating 230 new affordable units in Guelph. Further, we have a dedicated [affordable housing incentive policy](#) that guides our investments to ensure we are targeting the right units for our community. Without agreements, we cannot guarantee these units stay affordable.

Guelph would advocate for a requirement to implement a Community Improvement Plan (CIP) to incent affordable housing in each community (based upon a population requirement). This is a much more productive and effective way to incent, it enables the province to approve the CIP policies that are proposed, it allows local focus towards the types of units that are needed in the community, it provides consolidated reporting already built into the municipal FIR, and provides the protection to our Ontario tax payers investment in affordable housing. Affordable housing incentives go beyond DCs and a CIP would be a more inclusive and holistic way to require municipalities to have

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housing policies that align with the provincial mandates.

Actions:

Guelph strongly recommends removing any deferred payment language for ICI development and would direct those developers to secure financing from a lending institution rather than the property tax payers of Ontario.

Incentives are best achieved through CIPs or other local policies where appropriate security is available to protect that new housing supply from converting to unaffordable housing types. Guelph recommends that instead of the new proposed DCA deferral, that a requirement for municipalities to create a CIP to incent affordable housing (in more ways than just deferring DCs) with a local focus on the needs of that community. This will have a real impact on new supply of affordable housing in a way that protects the Ontario tax payer's investment.

Section 26.2 When amount of development charge is determined

The proposed requirement to freeze the DC obligation at a point in time years before the development occurs will significantly reduce the amount of DCs currently planned in the approved Background Study. This will require an update to the DC Study for this undefined time period and will result in an increased DC rate to make up for this lost revenue. The DCA is premised upon a full cost recovery model for the hard services and therefore this revenue loss would be made up through increases in DC rates immediately. Other concerns related to this proposal include:

- Increased burden in the system as incomplete or unwarranted planning applications and minor variances will be submitted to cities with the sole purpose to freeze a lower DC rate years before any development actually occurs. This will increase the planning and development fees to cover this additional burden.
- Building permit financial systems across the province are built to invoice fees at the building permit issuance date and has no mechanism to calculate fees on any other date. This new requirement will again require an overhaul to financial systems and reduce cash flow in the short term to fund the needed servicing infrastructure.

The City understands that certainty in development costs is desirable; however, similar to their cost of construction materials and labour increases over time, City costs also continue to increase. Guelph feels this proposed legislation has transferred all the financial risk to be borne by the property tax payers rather than the private industry. The DCA provides a high degree of certainty as the notice period for any rate change is highly regulated and requires significant public consultation. Guelph would support a transitional phase-in of rate requirements that do not extend beyond a two-year period during the time that a new DC By-law is introduced.

Action:

As the DCA already provides a high degree of fee certainty to the development community, Guelph recommends that DC obligations be determined at the time a building permit is issued and to seek out alternative phase-in language of increases to DC rates at the time of DC By-law approvals. Guelph does not support a phase-in or DC freeze period beyond 2 years.

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Section 60 Regulations and Section 61 Transitional issues

The proposed Bill does not include the regulations or details regarding the transitional provisions that would provide municipalities more detail to quantify the real implications including the effective date of transition, the prescribed interest rate, the prescribed amount of time for frozen DC fees, and definitions of types of affordable developments. In addition to these omissions, it is also not clear how municipalities are to be compensated for over-drawn DC reserve funds for which debentures were used to fund the construction of large facility infrastructure. Guelph has \$12.7 million in outstanding DC debt that was issued under the current DCA.

Actions:

Guelph requests that municipalities are engaged during the development of the regulations as these will be foundational for planning for an orderly transition of any of these changes.

In the event that a CBC is implemented and there is no choice to use the DCA as a more cost effective and reliable revenue authority, then Guelph would strongly urge the province to allow the CBC revenues to satisfy any remaining DC debt obligations remaining at the time of transition.

Planning Act:

Section 37: Combining parkland dedication, height and density bonusing, and community benefit charge into one authority

The proposed CBC would take three distinct revenue streams with unique purposes and authorities, like the conveyance of land, and consolidate them into one, less dynamic revenue tool. The parkland conveyance authority is fundamental to accessing land at the most affordable point in a development. If municipalities are required only to collect funds in lieu of parkland and in turn strategically buy parkland parcels throughout the city, this is a more expensive alternative and will decrease parkland affordability in the city. Removing the conveyance of parkland option will significantly increase the cost of development as buying land after an area is built up is more costly than acquiring it early in the development. This would effectively result in less overall parkland for residents and a decrease in access to open spaces and outdoor recreation opportunities.

The process of developing a Community Benefits Strategy would provide municipalities with greater flexibility for funding services; however, it will likely mean less funding in total to build community assets. If the intent of the legislation is to encourage growth and development, these proposed changes would mean that residents in new neighborhoods will likely see a drastically lower service level than those built under previous legislation.

Action:

Guelph urges the province to remove the either/or option for Section 37 or Section 42/51.1. Require a choice between soft DCs in the DCA or Section 37 of the Planning Act (with a provincially legislated cap) but not both. It is also encouraged that Section

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42 remain intact to be used in conjunction with Section 37 or DCA to convey parkland so we can ensure parks are available for future residents.

Section 37: Requirement to spend or allocate

The requirement to spend or allocate 60% of the funds received via the proposed CBC would drastically change how Guelph funds large recreation infrastructure. Funds to build arenas, swimming pools or acquire land for parks and sports fields require substantial investment that can take years of accumulation of funds to afford.

Action:

Guelph requests that the definition of the word “allocate” includes ear-marking funds for future large projects where spending will not occur for many years until funds are sufficiently accumulated.

Section 42 and 51.1: Eliminating the alternative rate

The proposed legislation removes reference to the alternative rate for parkland dedication. The contemplated changes would result in less parkland overall, and more specifically, less parkland for residents that purchase homes under the proposed legislation. This would either create a service level disparity between ‘older’ homes and ‘newer’ homes or would require that municipalities contemplate tax increases to maintain parkland service levels. This results in an increased burden on taxpayers and a significant shift away from the ‘Growth pays for Growth’ principle.

Action:

Guelph requests that the alternative rate for parkland dedication remains so that future communities can enjoy the same access to parks as older communities.

Section 37, 42 and 51.1: Transitional concerns

Due to the quick pace at which Bill 108 was drafted, with limited input from stakeholders, there has been little rationalization between the various Acts and even sections within the same Act. Guelph notes below a number of concerns and impacts that will arise with the passing of Bill 108 in its current form.

- Non application of Section 42(6.1) to CBC requires an amendment to the building code to include a section 37 by-law as applicable law.
- Non application of s. 42(7) to CBC means redevelopment will potentially be subject to a fresh charge even where parkland conveyance or even previous community benefits or DCs have been paid for the same services.
- Lack of rationalization between proposed Section 37 and 51.1 means that municipalities who chose to take land as a condition of subdivision approval will be unable to impose a charge for soft services. Alternatively, if a CBC is imposed, it may be forced to buy or expropriate land within the proposed subdivision from the developer for the provision of park and other recreational services which will likely require paying at a greater rate than the rate used to determine the charge.
- Key terms in Section 37 are not defined and will need further clarity in the

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development of the regulations including the words “allocated”, “value of the land”, “land” and “development”.

- Effect of repealing current Section 37 will be that the certain Official Plan (OP) policies that require “bonusing” to allow increased height will be unavailable. Amendments and updates to the OP will be required.
- Proposed Section 37 “in kind contribution” language appears to require reduction of payments to be based on estimates rather than actual costs. There is no allowance made to permit a credit where the amount of an in kind contribution would exceed the charge. No statutory power to enter into agreements, and nothing on how in-kind community benefits and DC credit for services agreements are allowed to interact. In kind contributions also do not appear to be limited to things included in the CBC by-law.
- Proposed Section 37 could be read as permitting multiple charges where there are multiple triggers; or the land value cap could be circumvented where multiple triggers exist.
- Proposed Section 37(13) appears to say “shall” where it should likely say “may”.

Action:

Guelph strongly advocates for a delay in passing any of the changes to the DCA and Planning Act Sections 37, 42 and 51.1 until the implications can be studied more holistically. This will enable municipalities to implement any changes in an orderly transition. There are many legal concerns with the disconnectedness of the proposed Bill 108 language and its interacting Acts.