

# Goodmans<sup>LLP</sup> Update

## Ontario Rethinks Proposed Community Benefits Charges and Changes to Parkland Dedication and Development Charges

On July 8, 2020, a little over a year after proposing sweeping changes to the planning regime in Ontario through Bill 108, the provincial government has introduced new legislation that would scale back the proposed changes. The new legislation, known as Bill 197, would narrow the scope of the previously-proposed community benefits charge (CBC) authority, and make related changes to parkland dedication and soft service development charges.

As described in our May 22, 2019 Update, *The 2019 Housing Supply Action Plan: Much More Than a Return to the Former OMB Process*, among the legislative changes in Bill 108 were amendments to the *Planning Act* and *Development Charges Act, 1997* (the “*Development Charges Act*”) that would replace existing municipal powers regarding parkland dedication, soft service development charges, and height and density bonuses in exchange for community benefits, with the authority to impose a single new CBC against development. However, those aspects of Bill 108 were not brought into force when it was enacted in June 2019, pending public consultation on the regulations required to implement critical aspects of the new regime. As described in our March 5, 2020 Update, *Province Unveils Proposed Approach to Community Benefits Charges*, on February 28, 2020, the province released for public consultation a summary of proposed regulations pertaining to the new regime.

In response to that consultation, instead of proceeding with the proposed regulations and bringing the relevant provisions of Bill 108 into force, the province has introduced further amendments to the *Planning Act* and *Development Charges Act* in Bill 197, the *COVID-19 Economic Recovery Act, 2020*, which is an omnibus bill amending over 20 provincial statutes.

As discussed in more detail below, if enacted in its current form, Bill 197 would roll back many of the changes made in Bill 108 to parkland dedication and soft service development charges. In doing so, Bill 197 also proposes to unbundle many of the contributions municipalities would have collected through a CBC. The result is that, under Bill 197, the CBC would effectively replace only the existing section 37 regime that allows municipalities to grant increases in height and density in exchange for community benefits provided by developers.

Bill 197 also contains amendments to other legislation that will have implications for land development in Ontario, such as the *Environmental Assessment Act*.

The following sections outline in more detail some of the key legislative changes proposed in Bill 197.

### Parkland Dedication

Through Bill 108, the province proposed to remove municipalities’ ability to require the conveyance of parkland at the alternative rate of 1 ha per 300 residential units and the payment of cash-in-lieu of parkland at the alternative rate of 1 ha per 300 residential units. The amendments also heavily curtailed municipalities’ ability to require the conveyance of parkland, and instead provided for parkland acquisition to be funded through the CBC.

### Authors



Robert Howe  
rhowe@goodmans.ca  
416.597.5158



Max Laskin  
mlaskin@goodmans.ca  
416.849.6938



Matthew Lakatos-Hayward  
mlakatoshayward@goodmans.ca  
416.849.6906

Bill 197 unwinds these amendments. This change has the practical effect of restoring the municipalities' right to require development proponents to dedicate parkland at the base rates of 2% of the area of land developed for commercial/industrial lands and 5% of the area of land developed for all other uses, or, for residential development, the alternative rate of 1 hectare per 300 dwelling units for land conveyances and 1 hectare per 500 units for cash-in-lieu.

An important new feature introduced through Bill 197 is landowners' ability to appeal the parkland dedication by-law of any municipality that provides for the use of the alternative parkland dedication or cash-in-lieu rates, to the Local Planning Appeal Tribunal (LPAT). On appeal, the LPAT can order an amendment to the use of the alternative rates set out in the by-law. Although existing parkland dedication by-laws cannot be appealed, Bill 197 provides that any existing parkland dedication by-law providing for the use of the alternative rates expires two years after the statutory provisions come into effect, unless repealed earlier. This will force municipalities to pass a new parkland dedication by-law if they wish to use the alternative rate, thereby giving landowners the opportunity to appeal the by-law to the LPAT. In the meantime, existing parkland by-laws remain in effect until they are replaced within the two year period noted above.

Bill 197 would continue to allow municipalities to impose a requirement to convey parkland or pay cash-in-lieu as a condition of approval of a draft plan of subdivision, consent or condominium. Such a condition may require dedication or payment of cash-in-lieu of parkland at the alternative rates, although such conditions are subject to LPAT appeal.

## Development Charges

Whereas Bill 108 proposed to remove soft services from funding through development charges and instead have them funded through CBCs, Bill 197 proposes to revert the funding of most soft service categories back into the development charge. Bill 108 proposed to restrict the imposition of development charges to the following relatively narrow list, focussing on hard services:

- water supply services, including distribution and treatment services;
- waste water services, including sewers and treatment services;
- storm water drainage and control services;
- services related to a highway;
- electrical power services;
- policing services;
- ambulance services;
- fire protection services;
- transit services;
- waste diversion services; and
- other services as prescribed.

The intention of Bill 108 was that municipalities would instead fund soft services through their CBC. Bill 197 proposes to expand the above list of services to include most of the soft services municipalities typically fund through development charges. Under Bill 197, the following additional services are proposed to be funded through development charges:

- services provided by a public library board;
- services related to long-term care;
- parks and recreation services, except for the acquisition of parkland;
- services related to public health;
- child care and early years programs and services;
- housing services;
- services related to provincial offence proceedings, including by-law enforcement services and municipally administered court services;

- services related to emergency preparedness;
- for the Regional Municipality of Waterloo, services related to airports; and
- other services prescribed by regulation.

While Bill 197 proposes to move the funding of most soft service categories back to development charges, it does not propose to reinstate the requirement that the capital cost of these services be reduced by 10%, which was removed from the *Development Charges Act* by Bill 108. Accordingly, development charges for these services will generally increase by 10%.

Other changes to the *Development Charge Act* introduced through Bill 108, including a freeze on development charge rates as of the date of site plan or rezoning application, and provisions for the phased payment of development charges for rental housing, institutional and non-profit development, are already in force and would not be impacted by Bill 197.

## **Community Benefits Charges**

### *Services Funded through CBCs*

As a result of the above changes, Bill 197 would significantly narrow the scope of what may be funded by a CBC. As noted above, with parkland dedication and soft service development charges no longer funded through CBCs, the CBC authority effectively replaces the contributions for height and/or density increases previously secured through section 37 of the *Planning Act*.

As with Bill 108, Bill 197 provides that a CBC can only be imposed to pay for the capital costs of facilities, services and matters required because of development or redevelopment. Before a by-law imposing a CBC is enacted, the municipality must undertake a strategy that assesses the services and costs to be funded by the CBC, but the same rules and restrictions that apply to the calculation of development charges do not apply. A CBC by-law is subject to appeal to the LPAT.

Bill 197 expressly provides that a CBC can be imposed to fund services that are eligible for funding in a development charge, however the actual capital costs intended to be funded by a CBC cannot overlap with the capital costs intended to be funded by a development charge. Likewise, the legislation provides that a CBC can be imposed with respect to land for park or other public recreational purposes, provided that the capital costs for parkland intended to be funded by the CBC do not overlap with the capital costs intended to be funded through the municipality's cash-in-lieu of parkland account. Given that a municipality has fairly broad power to use the money in its cash-in-lieu of parkland account to acquire land for park or other public recreational purposes, the limitations on funding parkland acquisition through CBCs remain unclear.

Bill 197 continues to provide that the CBC payable is to be capped based on a percentage of land value that will be prescribed by regulation. In February 2020, when the scope of the CBC was much broader, the province proposed a land value cap of 15% (split 10% to the lower-tier municipality and 5% to the upper-tier municipality in areas subject to two-tier municipal government). The province has not indicated what land value cap is now proposed in light of the narrower scope of the CBC. Bill 197 also continues to provide a mechanism for disputes over land value to be resolved through an appraisal process.

### *Exemptions for Small-Scale Development*

Bill 197 proposes to impose some important new restrictions on the use of CBCs. First, only single- and lower-tier municipalities may impose a CBC, but not upper-tier municipalities. Second, municipalities may not impose a CBC on developments with fewer than five storeys or 10 residential units and other types of development or redevelopment to be set out in regulations.

Accordingly, ground-related housing (singles, semis, townhouses, etc.), and other smaller-scale forms of housing, cannot be subject to the payment of CBCs.

## *Transition*

During a transition period that ends on the earlier of two years after the legislation comes into effect and the date a municipality passes its first CBC by-law, the existing section 37 provisions of the *Planning Act* regarding density and height bonusing would remain in effect. As was the case under Bill 108, existing zoning by-laws requiring section 37 contributions would continue to apply even after a CBC by-law is enacted, and the lands to which those existing by-laws relate would not be subject to the payment of a CBC.

## **Environmental Assessment Act**

Bill 197 proposes what amounts to a complete overhaul of Ontario's environmental assessment (EA) regime. The most significant amendment to the *Environmental Assessment Act (EAA)* is the proposed repeal and replacement of the individual EA and Class EA processes set out under Parts II and II.1 of the *EAA*.

The Municipal Class EA is one of 10 Class EAs that have been approved by the Minister of the Environment, Conservation and Parks under the *EAA* and governs the environmental assessment process typically followed for most municipal transportation, transit, water, and wastewater infrastructure. Under the current provisions of the *EAA*, the Minister may approve a Class EA setting out a process to be followed to assess environmental impacts for a class of projects with routine and predictable environmental effects. A proponent that follows the process set out in the Class EA can generally avoid the need to complete an individual EA and obtain separate approval from the Minister. Bill 197 proposes to repeal the Class EA process altogether and replace it with a new "streamlined EA process", which will be set out in regulations. The Minister will designate classes of projects that will be subject to the streamlined EA process. Little information is known about the streamlined EA process, as regulations have not yet been proposed.

Projects that have been approved or in respect of which an existing Municipal Class EA process is ongoing, can continue under that system. For projects that are currently subject to the preparation of an individual EA that requires approval of the Minister, Bill 197 proposes to replace the current system with a new "comprehensive EA" process, which will also be set out in regulations. Regulations will set out the categories of projects that will be required to obtain approval through a comprehensive EA process.

## **Next Steps**

Bill 197 has been introduced in the Legislature of Ontario for first reading. There may be further changes to the legislation before its final enactment. The release of associated regulations will also play an important role in understanding the full implications of the legislative changes. We will continue to monitor Bill 197 as it proceeds through the legislative process.

Please contact any member of our [Municipal, Planning and Property Tax Group](#).

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