


Hamilton

INFORMATION UPDATE

TO:	Mayor and Members City Council
DATE:	May 10, 2019
SUBJECT:	Bill 108 – Amendments Related to Development Approvals (City Wide)
WARD(S) AFFECTED:	City Wide
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

On May 2, 2019, the Ontario Government released the Housing Supply Action Plan that is intended to “cut red tape to create conditions that make it easier to build housing.”

The Action Plan is predicated on five themes:

- Speed (“making the development approvals process faster”);
- Cost (“make costs more predictable”);
- Mix (“make it easier to build different types of housing”);
- Rent (“protect tenants and make it easier to build rental housing”); and,
- Innovation (“encourage more innovation and creativity in Ontario’s housing sector”).

To implement the Housing Supply Action Plan, the Province is proposing legislative changes. Bill 108 was tabled in the Ontario Legislature on May 2, 2019 to give effect to many of the measures outlined in the Housing Supply Action Plan.

At the time of writing this Information Update, the Bill has only received First Reading. It is unknown how quickly the Province intends to move the Bill through the legislative process. There remain many unknowns as the changes proposed in the Bill will require a number of regulations to be created or changed.

Bill 108 contains amendments to the following Acts:

- *Cannabis Control Act, 2017;*

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- *Conservation Authorities Act;*
- *Development Charges Act, 1997;*
- *Education Act;*
- *Endangered Species Act, 2007;*
- *Environmental Assessment Act;*
- *Environmental Protection Act;*
- *Labour Relations Act, 2017;*
- *Local Planning Appeal Tribunal Act, 2017;*
- *Occupational Health and Safety Act;*
- *Ontario Heritage Act;*
- *Planning Act;* and,
- *Workplace Safety and Insurance Act, 1997.*

The scope of the proposed changes in Bill 108 affect, either directly or indirectly, many aspects of the activities of the City of Hamilton. This Information Update focuses only on the proposed changes to four Acts that relate directly to development and development approvals (*Planning Act, Ontario Heritage Act, Endangered Species Act and Local Planning Appeal Tribunal Act*). City staff are preparing a separate report for GIC that will address the other aspects of Bill 108.

Bill 108 has been posted on the Environmental Registry of Ontario (ERO) for review and comment. The deadline for comments to be submitted on the ERO is June 1, 2019. Given the very short commenting deadline, and consistent with past practise in these circumstances, to ensure that City of Hamilton comments and concerns on Bill 108 are submitted by the June 1, 2019 deadline, staff will be submitting staff-level comments directly to the ERO. Staff will be bringing forward a report to the June 4, 2019 Planning Committee containing staff's comments for consideration by Planning Committee and Council, and any further comments of Council will be forwarded to the Province at that time.

In conjunction with the release of the Housing Supply Action Plan and Bill 108, the Province has also updated the Growth Plan. A separate Information Report will be provided to Planning Committee summarizing those changes.

Schedule 5 – Endangered Species Act

The changes proposed to the Endangered Species Act affect both the listing of species, as well as the protection of the habitat of listed species.

The Committee on the Status of Species at Risk in Ontario (COSSARO), an independent committee comprised of experts with scientific backgrounds and Aboriginal Traditional Knowledge, classify species as extirpated or extinct, endangered, threatened

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or special concern. Each species added to the Species at Risk in Ontario (SARO) list is through regulation. Once the species is added, it receives general habitat protection. Currently, COSSARO can submit a report to the Minister at any time and the species must be added to the list within 3 months. The Province has 12 months from the time of listing to prepare a Recovery Plan or Management Strategy for the species and to identify the regulated portions of its habitat.

The revised ESA proposes a number of changes to how species are listed under the ESA:

- Broadens COSSARO member qualifications to include members with relevant expertise in “community knowledge”. Since “community knowledge” has not been defined, there is concern that broadening the COSSARO membership would allow non-scientific input into a species classification.
- Allows COSSARO to consider a species’ condition around its broader biologically relevant geographic area, inside and outside of Ontario, before classifying a species as endangered or threatened. If the overall risk to a species in the broader relevant geographic area is lower, COSSARO would be required to adjust the species’ classification to the lower category.
- Extends the timeframe for making regulations from 3 months to 12 months after receiving the COSSARO Report.
- Allows the Minister to reconsider the classification of a species if it is determined that the classification may no longer be appropriate. If a party provides scientific opinion which differs from COSSARO’s, the classification must be reconsidered if the Minister agrees.

The revised ESA also proposes a number of changes to how the habitat of listed species is protected:

- Removes the mandatory requirement for developing habitat regulations. Currently, the legislation requires that the habitat regulation (which protects SAR and their habitat) be made within 12 months of listing. The proposed ESA removes the mandatory requirement and timeline to develop a habitat regulation for each newly listed species and retains the option to develop a regulation “when needed”.
- Allows the Minister to make an order that temporarily suspends all or some of the protections for a period of up to three years.

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- Provides for the establishment of the SAR Conservation Fund and an agency (SAR Conservation Trust) to manage and administer this Fund. This would give proponents the option to pay a charge instead of completing certain on-the-ground activities (such as habitat restoration or compensation) required by the ESA. The payment-in-lieu funds would be used to support “strategic, coordinated, and large-scale actions that assist in the protection and recovery of SAR”. The new agency would receive the funds and disburse them to third parties in order for activities to be completed.
- Allows the Minister to enter into Landscape Agreements. A Landscape Agreement allows people who undertake “multiple activities” to be able to pursue limited conservation banking. Conservation banks allow compensation when a species or habitat is affected during development by providing credits that can be purchased to offset their negative impact.

The proposed revisions to the ESA also include new sections which provide the Minister of Environment, Conservation and Parks (MECP) with “greater Minister discretion on protections, while keeping the assessment as a science-based process”. While the role of classifying species would remain with COSSARO, the proposed changes would provide the Minister with the following new powers:

- Currently, the Lieutenant Governor in Council (LGIC) is responsible for developing and approving habitat regulations. The new ESA proposes giving this responsibility to the Minister.
- A change is proposed to clarify that recovery strategies are advice to government.
- Once a SAR is listed, the Minister may make an order that temporarily suspends all or some of the SAR protections for a period of up to three years if certain criteria are met. These criteria include non-scientific reasons, such as “if applying the prohibition would have significant social or economic implications”.
- The Minister would have the power to make regulations limiting the application of the prohibitions for a species, and limitations may be applied to the prohibitions (examples given are: only applying to geographic areas, or certain stages of the species development).

Schedule 9 – Local Planning Appeal Tribunal Act, 2017

Schedule 9 of the Bill would make several significant changes to the *Local Planning Appeal Tribunal Act, 2017*, (“LPAT Act”) the statute that gives the Tribunal authority in

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various types of planning appeals. At a high level, the proposed changes to the LPAT Act work in tandem with some of the changes to the Planning Act to remove the provisions that would give more deference to Council decision-making and revert the planning appeal process back to the former Ontario Municipal Board de novo hearing. In particular, the sections that govern the “first appeal” process (which limits the case to oral submissions and prohibits adducing evidence and calling and examining witnesses) are proposed to be removed. This is concurrent with the proposed changes to the Planning Act to delete the test for consistency/conformity and revert to the “good planning” test.

The Bill would also empower the Minister to make transitional rules in regulations respecting appeals that exist under the current process where they were commenced before, on or after the coming into force of the Bill and/or regulation.

Some other proposed changes include:

- Giving the Tribunal the power to set and charge different fees for different types of persons and different types of proceedings.
- Giving the Tribunal the power to provide for certain circumstances, or appeal-specific directions, where participation in mediation or alternative dispute resolution is mandatory.
- Giving specific power to the Tribunal to limit witness examination and cross examination if the Tribunal is satisfied that the issues have been disclosed or in fair or appropriate circumstances.
- Clarifying that the mandatory case management conference is not mandatory if there is a proposed settlement.
- Restricting non-parties to making submissions in writing.
- Removing the Tribunal’s ability to state a case to the Divisional Court.

During the consultation sessions held by the Province intended to identify and solicit ideas to improve the development approvals process in Ontario, Planning staff advised the Province that in developing options, it was important to consider the themes of “unintended consequences”; “uncertainty” and “downloading”. Furthermore, staff provided detailed overviews of the Open for Business initiatives that the City of Hamilton has undertaken to improve the development approvals process. Staff has concerns that the changes to the Growth Plan and the proposed legislative changes in Bill 108 will represent a downloading of planning responsibilities from the Province to local

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municipalities thereby creating additional uncertainty in the development approvals process in that the comprehensive, coordinated policy led planning framework is being replaced by a case by case development application process to be arbitrated by the LPAT based on “best planning outcomes” as determined by the LPAT.

Schedule 11 – Ontario Heritage Act

The most significant changes proposed to the Ontario Heritage Act relate to the appeals process for adding buildings to the municipal heritage registry, or designating them under the Act. There is a new appeal process to the LPAT for properties recommended for the Municipal Register where there was none before. Additionally, there is a new process for requiring that the owner of a property added to the Municipal Register is notified within 30 days after the property is added to the Register.

For appeals of heritage designations, these previously went to the Conservation Review Board which referred its findings back to Council for a final and binding decision. Under Bill 108, the final decision-maker on appeals would become the LPAT rather than the local municipality.

Schedule 12 – Planning Act

Bill 108 contains proposed changes that would require municipalities to permit in their Official Plans secondary residential units in a single-detached, semi-detached, or row house and in an accessory building. The Bill would also restrict the use of Inclusionary Zoning to a Major Transit Station Area or in a Development Permit System area

Bill 108 also proposes to change the timelines within which a municipality must make a decision on a planning application. The table below summarizes the timelines as they existed prior to the previous government’s Bill 139 changes, after the Bill 139 changes, and as proposed in Bill 108.

Instrument	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
Draft Plan of Subdivision	180 Days	180 Days	120 Days

Bill 108 also introduces a new concept referred to as Community Benefits Charges. Section 37 of the Planning Act related to bonusing has been repealed and replaced with

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the Community Benefits Charges section. A municipality may pass a by-law to impose community benefits charges against land to pay for the capital costs of facilities, services and matters required because of the development or redevelopment in the area to which the By-law applies. A municipality must prepare a Community Benefits Charge Strategy that identifies the facilities, services and matters to be funded through the Community Benefits Charge. A cap will be placed on the amount of a Community Benefit Charge, but the cap amount is not yet known. It is also important to note that the Community Benefits Charge would also replace and incorporate charges previously charged through Development Charges.

The proposed amendments eliminate the “alternative requirements” for parkland dedication for residential uses (i.e. 1 ha/300 units), and instead rely on the 5% dedication.

If you have any questions about the information contained in this update, please contact Director of Planning Steve Robichaud at 905-546-2424 x4281 or by e-mail at Steve.Robichaud@hamilton.ca

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