

# Overview Presentation for Bill 108, Bill 109, and Bill 23

Committee of the Whole Meeting Presentation

January 10, 2023



# Bill 108 Overview

- Bill 108 was introduced on May 2, 2019 and received Royal Assent on June 6, 2019. The Bill made amendments to numerous statutes including:
  - Conservation Authorities Act
  - Development Charges Act
  - Local Planning Appeal Tribunal Act
  - Ontario Heritage Act
  - Planning Act
- Presentation will focus on changes that impact City operations.

# Conservation Authorities Act

- Clarification of specific programs and services provided by an authority as prescribed by regulation (i.e. flooding and natural hazards, and where applicable Lake Simcoe Protection Act).
- Conservation Authorities can provide other programs and services where a municipality enters into an agreement with a CA to provide the program or service.
- Conservation Authorities authorized to determine the amounts owned by the City as it relates to programs and services relating to the Clean Water Act, 2006 and Lake Simcoe Protection Act, 2008

# Development Charges Act

- Eligibility of Municipal Services: Replacement of a prescribed set of ineligible services by a prescribed set of eligible services such that some services (e.g. airport, parking etc.) become DC-ineligible and others (e.g. landfills, museums etc.) remain DC-ineligible.
  - Removed only airport and parking from the City's DC by-law as of September 18, 2022, accounting for 0.5% of DC revenue.
- Eligibility of Capital Costs: Removal of the arbitrary limitation of 10 years on capital forecast horizons and the arbitrary 10% deduction of otherwise DC-eligible costs respecting services for which these provisions formerly applied.
- Timing of Determination of DCs: Respecting development for which an application for site plan control or zoning by-law amendment is filed, DCs are to be determined based on DC rates in effect at the time of application, subject to a limit of 2 years after the approval of the application (if approval is granted).

# Development Charges Act – cont'd

- Timing of Collection of DCs: Developers of rental housing, non-profit housing or one of several particular types of institutional buildings are entitled to pay DCs over several years after building occupancy, amounting to an extended deferral of DCs.
  - For non-profit housing, the payment period is 21 years, whereas for the other noted types of development it is 6 years.
- Exemptions Respecting Residential Buildings: Refinement of exemptions respecting new dwelling units created in existing residential buildings, and expansion of exemptions respecting dwelling units in or ancillary to new residential buildings, subject to various restrictions.
- Community Benefits Charges (CBCs): CBCs are now useful to municipalities only if they experience considerable amounts of dense development. Given their narrowed applicability, CBCs have been rendered effectively unusable for the City's purposes.

# Endangered Species Act

- MECP now responsible for the Endangered Species Act (ESA).
- Developers and municipalities can pay a regulatory fee into the Species Conservation Fund in lieu of adhering to the ESA's prohibitions, which supports species protection or recovery.
- Landscape agreements can allow activities within a prescribed geographic area which would otherwise be prohibited in exchange for "specified beneficial actions" that will assist with the protection or recovery of one or more species.
- Amendments on how species are assessed and classified. Protections may be suspended for up to three years for species that are listed endangered or threatened for the first time.

# Local Planning Appeals Tribunal

- LPAT Act changed to remove two-step appeal process (consistency and conformity with provincial and local policies) that could send decisions back to municipality for an alternate decision
- Former Ontario Municipal Board processes are reinstated:
  - Appeals will be evaluated against the criteria of "good planning;" and
  - All hearings will be de novo (considered from the beginning).
- LPAT now has the power to limit any examination or cross-examination of a witness if the matter has been fully disclosed.
- Mandatory case management conferences continue.

# Ontario Heritage Act

- Municipalities now required to give the property owners notice that a property has been listed on a municipal heritage register.
- Owners of properties listed after the amendments came into force (July 2021) may object to Council and Council is obligated to consider the owner's objection. There are no appeal rights.
- Appeals for designations are first heard by Council before proceeding to the OLT.
- All heritage related appeals to be heard by the OLT, rather than the Conservation Review Board.



# Ontario Heritage Act – cont'd

- Properties subject to certain Planning Act applications may only be designated within 90 days of a complete application unless agreement reached between City and applicant.
- Designation by-laws must be passed within 120 days of the issuance of a notice of intention to designate
- New definitions regarding the alteration and demolition of heritage properties and changes to processes for heritage permitting
- New regulation prescribing processing regarding standards for designating by-laws and modified processes for the amendment and repeal of by-laws

# Planning Act

- Secondary suites permitted within a primary dwelling and within an ancillary building or structure for a total of two additional units.
- Inclusionary zoning is a tool to create affordable units and was available to be implemented municipality-wide.
- Inclusionary zoning restricted to high density development in high-growth areas, including Major Transit Station Areas. There are no Major Transit Station Areas in the City of Kawartha Lakes.

# Planning Act - cont'd

- Community benefits charge (CBC) regime added to replace density bonusing (Section 37 of the Planning Act) and development charges for services Bill 108 made development charge-ineligible.
- CBC charge by-laws and rates to be supported by a CBC strategy identifying the facilities, services and matters to be funded by community benefits charges.
- CBC charge rates are determined as a percentage of land value.
- Municipalities required to spend or allocate at least 60% of the funds received in a year's time and must report their CBC reserve spending on an annual basis.

# Planning Act – cont'd

- Planning decision timelines are significantly shortened:
  - Official Plan / Official Plan Amendment – from 210 to 120 days
  - Zoning By-law Amendment – from 150 to 90 days
  - Draft Plan of Subdivision – from 180 to 120 days
- Limits to third party appeals of plans of subdivision.

# Bill 109 Overview

- Bill 109 was introduced on March 30, 2022 and received Royal Assent on April 14, 2022. The Bill made amendments to numerous statutes including:
  - Development Charges Act, 1997
  - Planning Act
- Presentation will focus on changes that impact City operations.

# Planning Act Changes

## Application Fee Refunds

- Changes for zoning by-law amendment and site plan applications require municipalities to refund application fees if a decision is not made within the legislative timelines (90 days for rezoning and 60 days for site plan approval)
- Refunds calculated on a graduated basis (*i.e.* 50% (timeframe), 75% (further 30 days) or 100% (further 30 days))
- Change will apply to applications made on or after January 1, 2023
- Staff to review the impact on budget

# Planning Act Changes – cont'd

## Site Plan Approval

- Municipal Councils required to delegate site plan control decisions to staff for all applications received on or after July 1, 2022
- Site plan application review timeline extended from 30 days to 60 days, after which an appeal can be filed with the OLT for lack of decision.
- Complete application requirements for site plan applications established, similar to other types of *Planning Act* applications with recourse if the application has not been deemed complete within 30 days of acceptance
- Site plan approval already delegated to the Director of Development Services so no change was required from that perspective
- Staff will review site plan approval process to implement all aspects of the new provisions, including Preconsultation process for site plans and approval delegation by-law

# Planning Act Changes – cont'd

## Plans of Subdivision

- Bill 109 permits establishment of a regulation to determine what cannot be required as a condition of draft plan approval – Regulations are being developed
- Changes also permit an approval authority to reinstate draft plans of subdivision that have lapsed within the past five years without a new application provided that there were no land sale agreements under the previous draft approved plan
- Provision can only be reinstated once and cannot be extended
- City making use of this provision



# Planning Act Changes – cont'd

## Community Infrastructure and Housing Accelerator

- New section permits Minister to make expedited zoning order at the request of the municipality by Council resolution, which includes a draft by-law
- Municipality to give notice to the public and consult with persons, public bodies and communities as the municipality considers appropriate before passing the resolution
- Order does not have to be consistent with the *Provincial Policy Statement, 2020*, nor does it have to conform with provincial plans or official plans
- Intended to expedite certain developments, particularly community housing, affordable housing and market-based housing, buildings that would facilitate employment and economic development and mixed-use developments
- Staff will be working on a Standard Operating Procedure to outline the process and required background information for obtaining a Council Support Resolution for an MZO or a CIHA.

# Planning Act Changes – cont'd

## Community Benefit Charge By-law Reviews

- New subsections proposed to the *Planning Act*, as well as the provincial regulation O. Reg. 509/20 regarding Community Benefit Charge By-laws and Parkland dedication, that increase the existing municipal reporting requirements
- CBC By-laws will need a complete a review every five years and subject to public consultation
- City has decided not to pass a Community Benefits Charge By-law because CBC by-laws apply only to high density development

# Planning Act Changes – cont'd

## Ministerial Powers Regarding Official Plan Approvals

- Gives Minister new discretionary authority when making decisions on certain OPAs, or new Official Plans to refer these matters to the Tribunal for recommendation on whether Minister should approve or modify the OPA or new Official Plan, or for a final decision
- Official Plans submitted to Minister for approval prior to April 14, 2022, for which no decision has been made can be referred in whole or in part to Tribunal for recommendation or a decision
- Allows Minister to suspend time period in which to decide on all Official Plan matters subject to Minister's approval (with transition for matters currently before Minister)

# Planning Act Changes – cont'd

## Regulation-Making Authority for Use of Securities

- New section permits Minister to make regulations prescribing and defining surety bonds and other prescribed instruments
- Will allow landowners and applicants to stipulate type of security used to secure obligations imposed by municipality in connection with land use planning approvals
- Ministry expected to consult with municipalities, development industry, and other relevant stakeholders in advance of these changes

# Bill 108 and 109

- This concludes the Bill 108 and 109 presentation

## Questions

# Bill 23 Overview

Bill 23 was introduced on October 25, 2022 and received Royal Assent on November 28, 2022. The Bill made amendments to 5 statutes:

- Development Charges Act, 1997
- Ontario Heritage Act, 2017
- Ontario Land Tribunal Act
- Planning Act
- Conservation Authorities Act

Presentation will focus on changes that impact City operations.

# Planning Act Changes

## OLT Appeal Rights

- Third party appeal rights removed for minor variance or consent decisions

## Gentle Intensification

- As of right zoning to permit up to three residential units per lot (two in the main building and one in an accessory building), with no minimum unit sizes

# Planning Act Changes – cont'd

## Plans of Subdivision and Plans of Condominium

- Public meetings no longer required for applications for approval of a draft plan of subdivision / condominium

## Site Plan Control

- Developments of up to 10 residential units are be exempted from site plan control
- Architectural details and landscape design aesthetics are be removed from the scope of site plan control

## Parkland Dedication

- The maximum amount of land that can be conveyed or paid in lieu is capped at 10% of the land or its value for sites under 5 ha, and 15 % for sites greater than 5 ha



# Planning Act Changes – cont'd

- Landowners can identify land they intend to provide for parkland, with the municipality able to appeal to the Tribunal if there is a disagreement – final process to be determined
- Maximum alternative dedication rate reduced to 1 ha/600 units for land and 1 ha/1000 units for cash in lieu
- Parkland rates frozen as of the date that a zoning by-law or site plan application is filed. Freeze remains in effect for two years following approval. If no building permits are pulled in that time, the rate in place at the time the building permit is pulled would apply

# Planning Act Changes – Cont'd

- Parks plans to be required prior to the passing of any future parkland dedication by-law (would not apply to by-laws already passed)
- Parkland dedication will apply to new units only (i.e., no dedication can be imposed for existing units)
- Municipalities will be required to spend or allocate 60% of parkland reserve funds at the start of each year

# Planning Act Changes – Cont'd

## Provincial Policy

The government is proposing to integrate the PPS and Growth Plan into a new province-wide planning policy instrument that:

- Leverages the housing-supportive policies of both policy documents;
- Removes or streamlines policies that result in duplication, delays or burden in the development of housing;
- Ensures key growth management and planning tools are available to increase housing supply and support a range and mix of housing options;

# Planning Act Changes – Cont'd

- Continues to protect the environment, cultural heritage and public health and safety; and
- Ensures that growth is supported with the appropriate amount and type of community infrastructure.
- Staff will continue to monitor for updates

# Ontario Land Tribunal Procedures

- Tribunal will have increased powers to order costs against a party which loses a hearing at the Tribunal
- Tribunal being given increased power to dismiss appeals for undue delay
- Attorney General will have the power to make regulations setting service standards with respect to timing of scheduling hearings and making decisions
- Regulations can also be made to establish priorities for the scheduling of certain matters
- All matters yet to be determined

# Development Charges Act Changes

- Historic Service Level Period: Extension from 10 to 15 years prior to the DC study; it is used to calculate DC rate caps by service except for transit.
  - Affects new DC by-laws only.
  - Backend recovery of growth-related capital costs for services for which the cap binds.
- Maximum DC By-Law Life: Extension from 5 to 10 years.
  - Consultation with Watson & Associates ongoing regarding replace vs. amend strategies.
- Interest Rate Cap: Imposition of a cap of “average prime” plus 1% on the interest rate chargeable on DC payment installments and freezes.
  - No impact so long as City continues foregoing interest on DC installments and freezes and so long as developers continue to prefer DC deferrals over DC installments.

# Development Charges Act Changes

- Expenditure / Allocation Requirement: At least 60% of DC reserves for water, wastewater and roads services must now be spent or “allocated” annually.
  - Legislation does not define “allocate”.
  - Allocation could potentially be facilitated through the Treasurer’s Annual DC Reserve Report, but more consultation with Watson & Associates is required.
- Studies: Study costs are no longer DC-eligible, even those for DC studies.
  - Affects new DC by-laws only, but DC revenue loss requires further assessment.
- Housing: Housing is no longer a DC-eligible service.
  - Equates to an immediate residential DC rate reduction of about 0.8%.

# Development Charges Act Changes

- Land for Prescribed Services: Land costs for prescribed services are no longer DC-eligible.
  - DC revenue loss is unknown as services are yet to be determined through regulation.
- Phase-in of DC Rates: DC rates must be phased in at 80%, 85%, 90% and 95% of their DC study-determined values for years 1-4, respectively, of a DC by-law.
  - Results in an average DC revenue loss of 12.5% over years 1-4 of new DC by-laws.
- Expansion of Residential DC Exemption: A third unit within a qualifying new residential dwelling is now DC-exempt.
  - Loss of DC revenue very difficult to estimate.



# Development Charges Act Changes

- DC Rate Discounts for Rental Housing: Rental housing now receives a DC rate discount of 15%-25% depending on the number of bedrooms.
  - Three or more bedrooms, 25%; two bedrooms, 20%; otherwise, 15%.
  - Loss of DC revenue very difficult to estimate.
  - Onerous administrative burden to monitor property use compliance over 20 years.
- DC Exemption for Certain Housing: Non-profit housing, affordable housing, inclusionary zoning affordable housing and attainable housing are now DC-exempt.
  - Loss of DC revenue very difficult to estimate.
  - DC exemptions for affordable housing used by City historically to incentivize affordable housing, now with DC's exempt as-of-right
  - Not yet in force pending regulations, housing affordability "bulletin" and proclamation.
  - Onerous administrative burden to monitor property use compliance over 20 years.

# Impacts for Affordable Housing

- Waiver of development charges

<b>Current Service Manager Provision</b>	Waived for those units that meet our affordable housing definition
<b>Bill 23</b>	To be waived
<b>Impact</b>	<ul style="list-style-type: none"><li>• Need to explore other municipal incentives to promote affordable housing development – i.e. Property tax exemptions, land incentives, cash contributions etc.</li><li>• Not enough of an incentive to encourage private developers to do their part in addressing the affordable housing crisis</li></ul>

# Impacts for Affordable Housing– cont'd

- Development charges – no longer able to fund affordable housing

<b>Current Service Manager Provision</b>	16% of municipal housing development costs, net of grants and housing disposition proceeds, are DC-recoverable.
<b>Bill 23</b>	DC revenue can no longer be used to fund affordable housing development
<b>Impact</b>	Need to explore ways to raise other funding (tax levy supported funds) to support affordable housing development

# Impacts for Affordable Housing– cont’d

- Definition of affordable housing - rental

<b>Current Kawartha Lakes Definition</b>	Rental housing with a rental rate not exceeding 30% of the gross annual household income of the lowest 60% of renter households within the service area, or is at or below the average rental rate within the service area, whichever is the lesser.
<b>Bill 23</b>	The rent is no greater than 80 per cent of the average market rent
<b>Impact</b>	Significant gap between ‘defined’ affordable housing under Bill 23 driven by the market, compared to affordable rent based on income levels of residents

# Impacts for Affordable Housing– cont'd

- Definition of affordable housing - ownership

<b>Current Kawartha Lakes Definition</b>	Ownership housing with a purchase price resulting in annual accommodation costs not exceeding 30% of the gross annual household income of the lowest 60% of households within the service area or is at least 10% below the average resale price of a housing unit within the service area, whichever is the lesser
<b>Bill 23</b>	The price of the residential unit is no greater than 80 per cent of the average purchase price
<b>Impact</b>	Significant gap between 'defined' affordable housing under Bill 23 driven by the market, compared to affordable home values based on income levels of residents

# Impacts for Affordable Housing– cont'd

- Definition of affordable housing

	Resident who has income at the 30 <sup>th</sup> percentile:	Resident who has income at the 60 <sup>th</sup> percentile:
Affordable Rent	\$600	\$1,120
Bill 23 definition	Average rent \$1,853 @ 80% = \$1,482	
Monthly affordability gap	\$882	\$362
Affordable ownership	\$181,700	\$330,400
Bill 23 definition	Average resale \$669,126 @ 80% = \$535,300	
Affordability gap	\$353,600	\$204,900

# Impacts for Affordable Housing– cont'd

- Introduce a category of “attainable housing” which will be defined in future regulations – TBD
  - What we know:
    - Will not be an affordable residential unit
    - Will not be rental
    - Will be exempt from development charges
- Affordability period of rental or ownership - 25 years or more from the time that the unit is first rented or sold.
  - Current affordability periods range from 15 years to indefinite

# Impacts for Affordable Housing– cont'd

- Minister to be given the authority to enact regulations related to the replacement of rental housing when it is proposed to be demolished or converted as part of a proposed development - TBD



# Ontario Heritage Act Changes

- Municipalities will not be permitted to issue a notice of intention to designate a property under Part IV of the Ontario Heritage Act unless the property is already on the heritage register when the current 90-day requirement for Planning Act applications is triggered
- Heritage registers to be reviewed and a decision made whether listed properties are to be designated, and if not, removed from the register within 2 years
- Objection process for listing established in Bill 108 extended to all listed properties
- Regulations regarding the evaluation, amendment and repeal of heritage conservation districts will be established (regulations regarding amendments not yet released)
- In effect January 1, 2023

# Conservation Authorities

- Permits will not be required within regulated areas (including wetlands) for activity that is part of a development authorized under the Planning Act - TBD
- A single regulation is proposed for all 36 Authorities in the province - TBD
- Clear limits are proposed on what Authorities are permitted to comment on as part of the planning approvals process, which will keep their focus on natural hazards and flooding – January 1, 2023
- Implications on City approval operations are that review functions for matters other than natural hazards and flooding will need to be brought in house or completed through peer review

# Next Steps

- Report to Council January 2023 outlining City planning process workplan as a response to Bill 109 and Bill 23
- Report to Council Q2 2023 on City financial response to Bill 23
- Report to Council in Q1 2023 on City strategy for listed property designation

Thank you

Questions?