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Town of Aurora

General Committee Report

No. FIN20-021

Subject: **Bill 197 – Update on Proposed Legislative Changes to
*Development Charges Act and Planning Act***

Prepared by: Alice Liu, Senior Financial Management Advisor

Department: Finance

Date: September 8, 2020

Recommendation

1. That Report No. FIN20-021 be received.

Executive Summary

This report provides an overview and amendments made within Bill 197 “Covid-19 Economic Recovery Act, 2020” (“Bill”) relating to the proposed changes to the *Development Charges Act (DC Act)* and the *Planning Act*. Bill 197 builds on previous changes made within Bill 108 “More Homes, More Choice Act, 2019” and Bill 138 “Plan to Build Ontario Together Act, 2019”. This Bill which received royal assent on July 21st includes multiple amendments to these two acts.

- Bill 197 has repealed changes previously made on Bill 108/138 and its legislation will amend the *Development Charges Act* and the *Planning Act*
- This Bill makes two of the Town services in the DC bylaw ineligible for recovery under the *Development Charges Act*, but removes the 10 percent statutory deduction on eligible soft services
- A new Community Benefits Charge has been introduced to replace Section 37 of the *Planning Act* through which municipalities may recover their growth related costs
- The Town can choose if it wants to implement a Community Benefits Charge
- Several parkland dedication changes have been made to the *Planning Act*
- The Bill has also made other *Planning Act* changes
- There are multiple next steps in the Town’s implementation of these changes

Background

Bill 197 “Covid-19 Economic Recovery Act, 2020” was given first reading by the Ontario Government on July 8, 2020. Although its regulations are yet to be approved, it has received Royal Assent on July 21, 2020. This Bill was introduced to amend Bill 108/138 that were previously prescribed.

On June 6, 2019, Bill 108 “More Homes, More Choices Act, 2019” received Royal Assent. The Act proposed changes to the *Development Charges Act* and *Planning Act*.

On December 10, 2019, Bill 138 “Plan to Build Ontario Together Act, 2019” received Royal Assent, introducing modifications to Bill 108.

In recognition that the Town would need to update its development charge study and bylaw as result of this legislation change, Council approved a capital project for the engagement of a consultant as part of the Town’s 2020 capital budget.

On December 20, 2019, Bill 108 and 138’s complimentary O/Reg. 454/19 under the *DC Act* was filed by the province which specified the definition of Institutional, Non-profit, and Rental developments.

This regulation addressed the following key Bill 108/138 provisions which came into force on January 1, 2020 are:

- For all developments, the amount of DCs payable is determined and frozen on the day a site plan application or Zoning bylaw amendment application is submitted, as provided for in Section 26.2(1) of the *DC Act*.
- On the date on which the application is deemed complete by the Planning and Development department as per the *Planning Act*, a two-year period begins.
- DCs payable for building permits issued within the two-year period will be charged at the frozen rate determined on the day of site plan application or Zoning bylaw amendment submission.
- DCs payable for building permits issued after the two-year period will be updated to the prevailing rate and bylaw at the time of the building permit issuance.
- Residential, Commercial, and Industrial developments will continue to pay full amount of DCs owing at the time of building permit issuance.
- For Institutional, Non-profit, and Rental developments, the Town can charge interest on the DCs payable on the application completion date, as permitted under Sections 26.1(7) of the *DC Act*. The Province has not prescribed any restrictions on the

interest rate and policy. DC payments will commence at the earlier of date of Occupancy Permit Issuance or Date of Occupancy.

- For Institutional and Rental developments, DC is payable in six equal annual instalments over five years.
- For Non-profit developments, DC is payable in 21 equal annual instalments over 20 years.

In response to Ontario Regulation 454/19, on April 28, 2020 Council approved a series of changes to the Town's development charge administration procedures.

It is important to note that the Province has actively sought input from all municipal stakeholders as the aforementioned legislation has been tabled and subsequently enacted. Together with colleagues from other York Region municipalities, as well as feedback provided by the Town's development charge consultant, the Province has been responsive to the impacts on the municipal sector. The Region has also previously submitted proposed legislative framework to Council for consideration in 2019 and 2020 relating to this matter.

Analysis

Bill 197 has repealed changes previously made on Bill 108/138 and its legislation will amend the *Development Charges Act* and the *Planning Act*

Bill 197 aims to create jobs and stimulate economic activities, as well as introduce changes to the land use planning regime that were contemplated as part of Bill 108. CBC being positioned as a single source mechanism to primarily recover the cost of growth from developers within Bill 108 are now being repealed in this Bill.

Although the substantive details of Bill 197 will follow within its accompanying regulations which are yet to be approved, this legislation will amend 20 statutes in order to provide municipalities with the tools necessary to support economic recovery from COVID-19. These amendments include changes to key sections of the *Development Charges* and the *Planning Acts* which may influence the Town's total sources of funding available to support its "growth related" municipal infrastructure costs.

This Bill makes two of the Town services in the DC bylaw ineligible for recovery under the *Development Charges Act*, but removes the 10 percent statutory deduction on eligible soft services

Bill 197 has restored eligibility for collection under provision of the *Development Charges Act* for certain municipal services that were previously identified as excluded services under Bill 108, as well as eliminated the mandatory 10 percent statutory deduction of eligible soft services (i.e. municipal infrastructure in the areas of Parks, indoor and outdoor recreations, Library services, Fire & etc.). In the broader categories of municipal services where Development Charge eligibility has been restored include:

- Libraries
- Long-Term Care
- Public Health
- Indoor & Outdoor Recreation (excluding the provision to acquire)
- Childcare
- Housing Services (i.e. affordable housing & Shelters)
- Bylaw Enforcement/Court Services
- Emergency Preparedness

Bill 197 did not restore two town services, these services remain ineligible for recovery through development charges:

- General Government (i.e. Administrative Buildings)
- Municipal Parking

This strategy allows existing development charge funded services to continue their eligibility for development charge recovery. By recommending them in the Act rather than in its accompanying Regulation, this list of services will be less subject to change, however the Province will have the power to impose additional services in the future through Regulation if required.

These now ineligible municipal services will need to be removed from the Town's existing DC Study and bylaw and will become only recoverable through a Community Benefits Charge (CBC) under the *Planning Act* which will be discussed later in this report.

The preliminary assessment for the removal of the 10 percent statutory deduction, which the soft services were previously only 90 percent recoverable based on eligible growth related capital costs on the basis of historical service level standards appears to better support the principle of "growth paying for growth" and advances cost recovery of the overall impacts.

It is the Town's intent to engage a consultant who will undertake a review and update of the Town's development charges study and bylaw, including the identification of the financial impacts to the Town. However, to illustrate the possible impact of these changes, Table 1 is prepared to illustrate changes to the Town's current Singles and Semi Detached Dwelling development charges rate.

Table 1 demonstrates that the overall rate per unit is expected to be larger after all anticipated changes have been applied, with a net favorable DCs increase of \$922 if the two ineligible soft services are removed and the 10 percent statutory deduction of eligible soft services are restored.

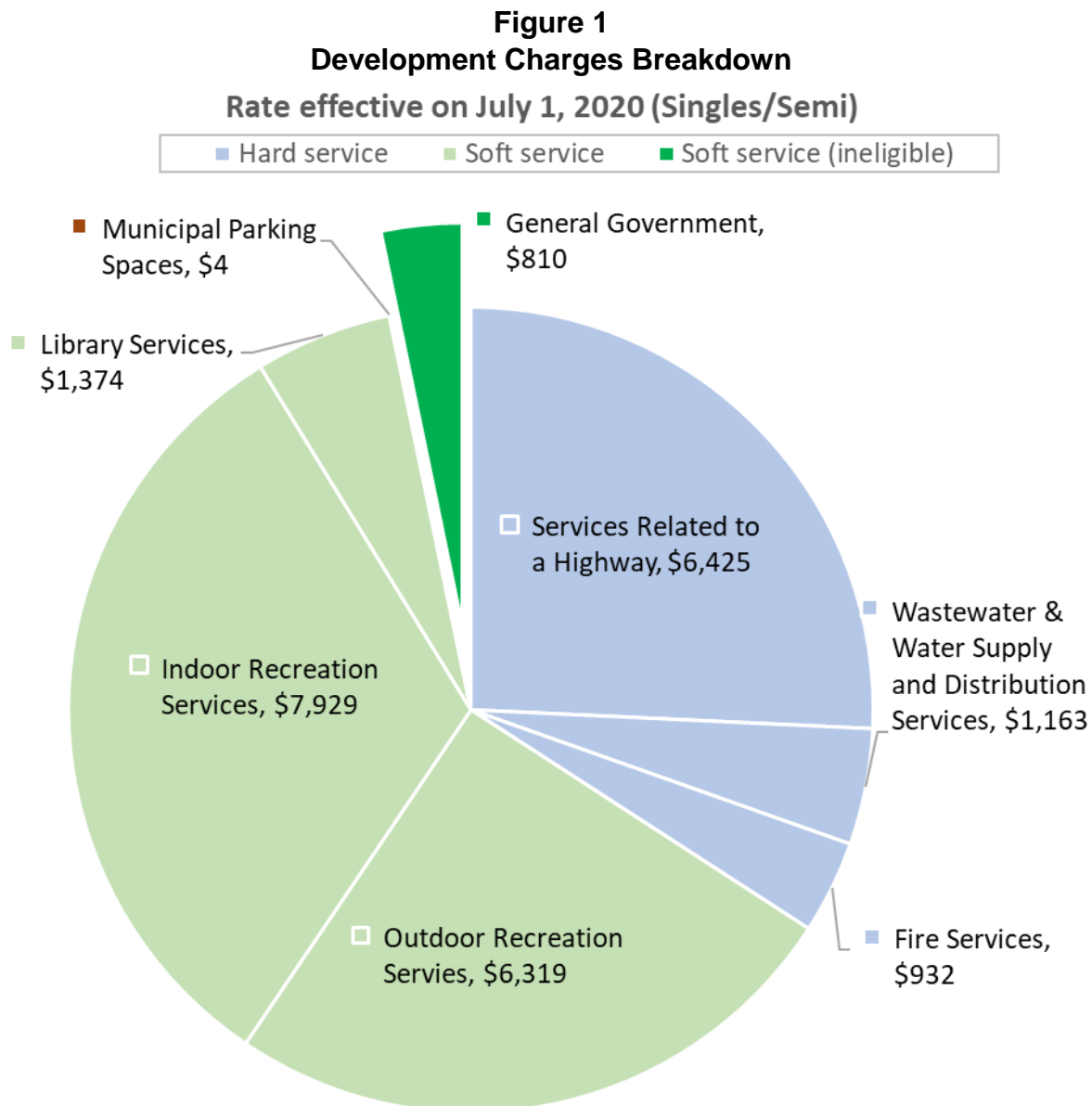
Table 1
Illustration of Bill's Anticipated Impacts on Development Charges

| DC | Types | *DC Rate (\$) as of July 1, 2020 | ** DC Rate (\$) | |
|---------------------------|--|-------------------------------------|---------------------------------|------------|
| | | | Bill 197 Anticipated Impacts | Net Change |
| Hard service | Services Related to a Highway | 6,425 | 6,425 | - |
| Hard service | Wastewater Services | 768 | 768 | - |
| Hard service | Water Supply and Distribution Services | 395 | 395 | - |
| Hard service | Fire Services | 932 | 932 | - |
| Soft service | Outdoor Recreation Services | 6,319 | 7,021 | 702 |
| Soft service | Indoor Recreation Services | 7,929 | 8,810 | 881 |
| Soft service | Library Services | 1,374 | 1,527 | 153 |
| Soft service (ineligible) | Municipal Parking Spaces | 4 | - | (4) |
| Soft service (ineligible) | General Government | 810 | - | (810) |
| Total | | 24,956 | 25,878 | 922 |

* Soft cost - at 90%, Hard cost - at 100%

** Soft cost - at 100%, Hard cost - at 100% (ineligible services removed)

Figure 1 (left) presents a summary of the hard and soft development services that the Town recovers through its present development charge. Figure 1 (right) presents the Bill's anticipated impacts on these recoverable services. It can be observed from these figures that the development services that are expected to be no longer recoverable under the *DC Act* represent a relatively small component of Town's total DC charge.



A new Community Benefits Charge has been introduced to replace Section 37 of the *Planning Act* through which municipalities may recover their growth related costs

Bill 197 introduced a new Community Benefits Charge (CBC) through which a municipality can recover select growth related costs. More specifically, a CBC may be used to recover the capital costs of any service needed due to development. This may

include any service that is ineligible or eligible for recovery under the *DC Act*, as well as, costs for parkland dedication or density bonusing. The primary rule of thumb is that these costs must be recovered only once from a given development. In other words, a municipality should not recover the same service growth costs arising from a development through its development charges or parkland dedication bylaws that has already recovered through the CBC.

Under the new Community Benefits Charge regime, the following criteria will apply:

- A CBC may only be used by lower and single-tier municipalities
- Bill 197 prescribes that a CBC
 - may only be levied on residential development of at least 10 residential units **and** five storeys at or above ground
 - may be used in conjunction with existing parkland provisions
 - its bylaw must consider any existing parkland dedication bylaws and is appealable to the Local Planning Appeal Tribunal
 - cannot be area specific
 - Must be calculated using prescribed percentages of the land value on the day before the date of the building permit issuance for a development are expected to be finalized through subsequent regulations

In essence, the CBC will eliminate all low and/or medium density residential developments from paying the CBC, however its impact is not yet clear in the context of non-residential developments at this time.

Parameters relating to the CBC also include a prescribed cap as a percentage of land value on the day before the date of the building permit issuance for an approved development parcel of land. However, a land appraisal must be completed for every proposed development in order to derive the CBC owing and therefore increase administrative procedures for the Town staff to coordinate and administer such processes (i.e. third party land appraisal). Lower-tier municipalities are prescribed at a 10 percent cap as suggested by the Minister. Each municipality will be required to complete a CBC strategy that demonstrates its need to charge the full available 10 percent cap, as well as produce an accompanying CBC bylaw. This 10 percent cap may prove to be restrictive and will not provide revenue neutrality and more importantly may impact the overall efficiency of the Town's growth management strategy.

Although a local municipality may impose a CBC against land to pay for the capital costs of facilities, services and matters required for a development or redevelopment, Bill 138 has provided the avenue for a developer to appeal a CBC bylaw to the Local

Planning Appeal Tribunal (LPAT), which in turn may require that the Town refund partial or whole of CBC collected plus applicable interest after a successful appeal.

The Town can choose if it wants to implement a Community Benefits Charge

The majority of the Town's current and short term projected residential development will not meet the criteria as set under Bill 197 whereby the development must exceed five storeys at or above ground and consist of at least 10 residential units. Whereby the majority of new growth relating to mid/longer term projected residential development will come from infilling and intensification. These facts must be taken into consideration as the Town evaluates its possible use of an optional CBC for its recovery of growth related costs.

The Town should consider the benefits and costs of introducing a CBC bylaw compared to continuing to use the amended parkland dedication/cash in-lieu and density bonusing provisions within the *Planning Act*. The CBC option is only available for mid to high density residential development (i.e. at least five storeys at or above ground and consist of at least 10 residential units) of which will represent a very small proportion of the Town's overall anticipated development.

As low density residential development is not eligible for CBCs, the Town will need to recover the growth costs through the more traditional provisions of the *Planning Act*. The benefits and costs of using a CBC will vary materially from one municipality to the next depending upon the nature of their future planned development and existing levels of service. As such, the feasibility of a CBC strategy should be developed in conjunction with a review of the Town's Development Charge bylaw, including an evaluation of the impacts of changes in the Development Charge legislation, parkland dedication and density bonusing needs, which may include:

- Anticipated increase in need for municipal services resulting from new development or re-development
- A park plan that examines the need for parkland
- Master planning examination of parkland requirements, (i.e. the amount of parkland per person standard is anticipated to increase, decrease or remain consistent)
- Municipal infrastructure needs/capital costs arise from new development or re-development
- Development forecast relating to anticipated residential and non-residential types and location
- Whether existing residents can be benefit from the increase in need for service
- Funding identification such as capital grants, subsidies or other external funding

Should the Town decide to opt out of a CBC, it will need to devise an approach that mitigates the impacts of these changes to the *Planning Act*. Alternative funding will need to be identified to support of land acquisition and/or municipal services that are now ineligible for recovery under the *DC Act*, such as general government and municipal parking services. This source of funding will likely be tax levy and could adversely impact future year tax rates.

Several parkland dedication changes have been made to the *Planning Act*

In the current Ontario context, there are three main types of levies available to municipalities in order to partially recover the cost of growth from developers: development charges, parkland dedication, and in certain circumstances, height and density bonusing. The most understood municipal cost recovery tool are development charges. Parkland dedication and density bonusing are more misunderstood.

Parkland Dedication:

Section 42 of the *Planning Act* allows that as a community grows, so do their parks and open spaces – either through the conveyance of land or payment of money in the value of the lands required. In Aurora, parkland dedication or cash-in-lieu thereof is governed by by-law number 4291-01.F. Commercial and industrial rates are set at 2% of the appraised land value of the property, and residential rates are 5% of the appraised land value, or alternatively one hectare for each 300 dwelling units proposed. Bill 108 had previously proposed to eliminate the ability of municipalities to charge the alternative unit-based rates, and to roll parkland dedication in with Community Benefits Charges. But now Bill 197 proposes to repeal those changes and continue to permit stand-alone parkland dedication and alternative rates.

Height and Density Bonusing:

Section 37 of the *Planning Act* allows municipalities to secure a public benefits as a condition of approval of a Zoning bylaw amendment, in exchange for an increase in building height and/or density over and above existing planning permissions. In Aurora, Guidelines for the Implementation of Height & Density Bonusing (Section 37 of the *Planning Act*) were introduced to Council in 2016. As the name suggests, height and density bonusing generally applies to multi-storey development. Public benefits are to be realized in the neighbourhood where the bonus is given, and often take the form of affordable housing units that are set aside within the development itself.

The current system within which municipalities obtain parkland will generally be maintained under Bill 197 (reversing many of the original major changes that were proposed under Bill 108). While the current alternative parkland dedication rate in Aurora's bylaw of one hectare for each 300 dwelling units proposed will continue to be permitted in situations where land is to be conveyed under this new legislation, the maximum alternative rate for payments in lieu set by the Province is different, this rate has been set lower at one hectare for each 500 dwelling units.

In addition, public consultation will now be required prior to the passing of a bylaw that sets an alternative parkland dedication rate (unit-based), and an alternative rate would become appealable to the Local Planning Appeal Tribunal (LPAT). Limits to the LPAT's decision-making powers clarify they cannot set higher alternative parkland rates. Existing parkland dedication bylaw expires two years after the changes come into force (i.e. July 22, 2022).

The Bill has also made other *Planning Act* changes

Further Planning Act changes that were made under this bill include the creation of an office of the Provincial Land and Development Facilitator to advise the Minister of Municipal Affairs and Housing on complex land use planning issues and provincial interests. Bill 197 also enables the Minister to give more direction on site plan control and inclusionary zoning. Related to infrastructure development, Bill 197 revises the Environmental Assessment process, to reduce timelines in order for infrastructure to be built sooner.

There are multiple next steps in the Town's implementation of these changes

Several milestones remain in the Town's implementation of these above noted Bill 197 changes. Firstly, the Town will need to await the accompanying regulation(s) to be developed and approved by the provincial government.

The legislation provides municipalities with more time to assess their path forward in response to this noted legislation with a two year transition period from the date that the Schedule 3 of Bill 197 comes into force (until July 22, 2022).

Upon the availability of the above regulation(s), the Town is able to proceed with the below next steps:

- 1) The Town will engage a consultant to:

- To assist it in the completion of a comprehensive feasibility study which will allow it to make a fully informed decision as to whether or not it will implement the new optional CBC regime; and
- To update its Development Charge Study and the Bylaw (#6166-19) in accordance to the latest amendments made through Bill 197 which will include the removal of all ineligible services and the additional recovery of the previous 10 percent discount to soft services. The study and bylaw update will also be reflective of any outcomes arising from its CBC feasibility study.
- To undertake a study to allow the Town to determine whether it should implement an alternative parkland dedication bylaw or go with the new DC rate as per Bill 197

Advisory Committee Review

Not applicable

Legal Considerations

Legal considerations are throughout the report.

Financial Implications

As Council approved a capital project as part of the Town's 2020 capital budget in support of this planned consultant engagement, the Town will engage a consultant to assist it in its assessment of the financial impacts arising from the above noted Bill 197 driven changes to both the *Development Charges Act* and *Planning Act*. These detailed financial implications will be presented in a future report to Council through which staff will present their recommendations for approval.

Communications Considerations

The Town of Aurora will use 'Inform' as the level of engagement for this project. There are five different levels of community engagement to consider, with each level providing the community more involvement in the decision making process. These levels are: Inform, Consult, Involve, Collaborate and Empower. Examples of each can be found in the Community Engagement Policy. These options are based on the International Association of Public Participation (IAP2) Spectrum and assist in establishing guidelines for clearly communicating with our public and managing community engagement. In order to inform, this report will be posted to the Town's website.

Link to Strategic Plan

None

Alternative(s) to the Recommendation

1. Nil

Conclusions

This report provides Council with a summary of the key legislative changes made to the *Development Charges Act* and *Planning Act* as part of the recently approved Bill 197. Upon receipt of this Bill's accompanying regulations the Town will engage a consultant to assist it in its implementation of all these changes. Further details of the Town's implementation plan will be presented to Council as they become available. The Town will have up to a maximum of two years to implement these said changes.

Attachments

Nil

Previous Reports

FIN20-005 - Administrative Changes to the Calculation and Collection of Development Charges under Bill 108 and Bill 138

Pre-submission Review

Agenda Management Team review on August 20, 2020

Approvals

Approved by Rachel Wainwright-van Kessel, Director, Finance/Treasurer

Approved by Doug Nadorozny, Chief Administrative Officer