



## MEMORANDUM

To: Regional Chair Emmerson and Members of Regional Council

From: Laura Mirabella, FCPA, FCA  
Commissioner of Finance and Regional Treasurer

Date: July 17, 2020

Re: Bill 197, COVID-19 Economic Recovery Act, 2020 – Update on Proposed Legislative Changes to Development Charges Act, 1997 and Planning Act (Community Benefits Charges)

### **On July 8, 2020, the Province tabled Bill 197, *COVID-19 Economic Recovery Act, 2020*, which proposed to amend a number of statutes**

[Bill 197](#), *COVID-19 Economic Recovery Act, 2020* (“Bill 197”), is an omnibus bill premised upon giving municipalities and their communities the tools they need to support economic recovery from COVID-19. The Bill proposes to amend 20 statutes including the *Municipal Act, 2001*, *Development Charges Act, 1997* (“Act”), *Planning Act* (community benefits charges), *Ministry of Municipal Affairs and Housing Act*, and the *Environmental Assessment Act*. It is expected that the legislature will pass the Bill prior to its rise for summer recess (i.e., July 22).

The Table below provides a highlight of key changes proposed in Bill 197. More details can be found in the July 8 letter from Minister Clark to Heads of Council, which is included as Attachment 1 to this memorandum.

**Table 1**  
**Bill 197 – Key Areas of Proposed Change\***

Area	Key Areas the Bill Proposes to Amend
<b>Development Charges and Community Benefits Charges</b>	<ul style="list-style-type: none"> <li>Restores development charge eligibility to a number of services</li> <li>Limits the ability to levy community benefits charges to single-tier and local municipalities</li> <li>Provides more time to transition to community benefits charges</li> </ul>

Area	Key Areas the Bill Proposes to Amend
<b>Electronic Participation in Meetings and Proxy Voting</b>	<ul style="list-style-type: none"> <li>• Authorizes municipal councils to hold open and closed meetings with a quorum of members participating electronically outside of a declared state of emergency</li> <li>• Permits the amendment of procedural bylaws to allow Members of Council to vote by proxy</li> </ul>
<b>Infrastructure Development + Environmental Assessment (EA)</b>	<ul style="list-style-type: none"> <li>• Streamlines and accelerates EAs to improve project timelines and build infrastructure in communities faster</li> <li>• Creates a new process for projects going forward including class EA schedules; limiting requests for “bump up” decisions to the Minister to those affecting aboriginal treaty rights; requiring Minister’s orders to be made within 30 days of the comment period; and establishing a 10-year limitation for project commencement after EA completion</li> </ul>
<b>EA and Landfill Siting: Municipal Say on Landfill Approvals</b>	<ul style="list-style-type: none"> <li>• Provides that proponents of landfills must seek approval of the host municipality in which the landfill is located, as well as certain neighbouring adjacent municipalities within 3.5km that meet certain criteria as part of the approvals process, does not impact other waste projects.</li> </ul>
<b>Transit Development</b>	<ul style="list-style-type: none"> <li>• Allows regulations to designate transit-oriented communities, allowing the creation of corporations to invest in the development and processes for expropriating land (limited to priority transit projects in York Region and Toronto, including the Yonge North Subway Extension, Ontario Line, Scarborough Subway Extension/Line 2 East Extension and the Eglinton Crosstown West Extension)</li> </ul>
<b>Land Use Planning: Ministers Zoning Order + Provincial Land and Development Facilitator</b>	<ul style="list-style-type: none"> <li>• Enhances the Minister’s powers to provide direction in relation to site plan control and inclusionary zoning (however not to be used in the Greenbelt)</li> <li>• Creates the office of the Provincial Land and Development Facilitator to advise the Minister on complex land use planning issues and provincial interests</li> </ul>

\*Note: The Bill also includes many other legislative changes, including support for virtual hearings in POA Courts, Environmental Assessment “modernization”, etc.

## **This memorandum focuses on changes to the *Development Charges Act, 1997* and the *Planning Act***

Bill 197 builds on previous changes made through Bill 108, *More Homes, More Choice Act, 2019* (“Bill 108”). Bill 108, tabled last May, was the cornerstone of the Province’s Housing Supply Action Plan. The Bill amended the Act and introduced a new growth-related funding tool, the community benefits charge, under the *Planning Act*.

Since the tabling of Bill 108, the Province, the municipal sector and the development industry have engaged in active consultation on the various regulatory proposals. Council’s previous submissions on the proposed legislative framework can be found in the reports dated [June 6, 2019](#), [September 19, 2019](#) and [March 12, 2020](#).

### **Bill 197 proposes to restore a number of growth-related services to the *Development Charges Act, 1997***

Bill 197 proposes to restore development charge eligibility to: Libraries, Long-Term Care, Public Health, Parks and Recreation Services but not the acquisition of land for parks, Childcare, Housing Services (e.g. affordable housing & shelters), Bylaw Enforcement/Court Services, Airports (Waterloo only), and Emergency Preparedness.

Staff support this change as it ensures that all of the Region’s existing development charge funded services would continue to be eligible for development charge recovery. By prescribing these services in the Act they will be less subject to change compared to if they were listed in a regulation. However, the Province has provided itself with the power to prescribe additional services in the future through regulation if required.

In addition, Bill 197 maintains the removal of the 10% statutory deduction, that was introduced by Bill 108. While growth capital costs for some services are still limited by a historical service level cap, the removal of the 10% statutory deduction improves cost recovery and better achieves the principle of growth paying for growth.

### **Despite the positive steps taken under Bill 197, development charges would still not fund the full costs of growth in a timely manner**

Despite the positive changes noted above, Bill 197 does not address previous recommendations from the Region to repeal some changes to the Act made through Bill 108, notably the freezing of development charge rates at application for site plan or zoning bylaw amendment.

Because it is possible for developers to freeze development charge rates for many years in advance of payment, this provision creates a significant disconnect between the cost of infrastructure needed to service growth and the rates charged. This provision limits the ability of the Region to fund vital new growth-related infrastructure projects, like the Yonge North Subway Extension, in a fiscally suitable way.

In February of this year, Regional Council passed a new policy to charge interest on frozen development charge rates, as permitted by the Act. This policy intends to mitigate some of the impacts of freezing as it relate to recovering cost escalations due to inflation. However, the ability for municipalities to charge interest cannot address growth-related cost increases due to the addition of new projects.

## **Further legislative action is needed to help the Region fund its share of the Yonge North Subway Extension in a fiscally sustainable way**

On May 28, 2020, York Region and the Province signed the “[Ontario-York Region Transit Partnership Preliminary Agreement](#)”. Included in this agreement was a commitment from the Province to continue working with the Region to identify any [legislative] changes so that the Region may fund its share of the Project capital costs in a fiscally sustainable manner.

Under the Act, the Yonge North Subway Extension would be limited to a 10-year planning horizon, and subject to the freezing of rates. Both provisions delay cost recovery through development charges. Previous staff submissions and engagement with the Province has recommended that the Yonge North Subway Extension be added as a discrete service not limited to a 10-year horizon, and it not be subject to the freezing provision.

In June of this year, Regional Council endorsed a report of the Commissioner of Finance entitled, [Fiscal Sustainability: 2020 Update](#). This report included a recommendation that the Province provide the Region with new tools to help the Region fund a potential contribution to the Yonge North Subway Extension, including potential changes to the Act. Attachment 2 to this memorandum is a letter from the Chair to the Province detailing this request.

The development charge treatment of future subway projects, such as the Yonge North Subway Extension, has not been addressed by Bill 197, and further legislative action would be necessary to ensure that the costs of the extension can be recovered from growth over a sustainable timeframe.

## **Changes to the community benefits charges regime impact local and single-tier municipalities**

In light of the expanded list of development charge eligible services, Bill 197 also proposes to restrict community benefits charges to only local and single-tier municipalities.

Bill 197 proposes to prescribe that community benefits charges may only be levied on residential development of at least 10 residential units and 5 storeys, at or above ground. Additionally, existing parkland provisions are maintained, such that they can be used in conjunction with community benefits charges. There is a requirement to consult on parkland bylaws and these bylaws will be appealable to the Local Planning Appeal Tribunal. Finally, the Bill clarifies that municipalities cannot have area-specific community benefits charge bylaws.

Additional details pertaining to community benefits charges, such as the 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.

### **Municipalities that intend to levy a community benefits charge have been provided more time to transition**

Originally municipalities were provided until January 1, 2021 to transition to the community benefits charges regime. Both municipalities and the development industry expressed a concern that this transition period was insufficient. Bill 197 now proposes a two year transition period from the date that Schedule 3 of Bill 197 comes into force (e.g., potentially July of 2022).

### **Staff support the proposed changes since they largely reflect the Region’s previous feedback to the Province**

Since the Province tabled Bill 108, in May of 2019, Council has been diligent in reviewing and providing feedback to the Province on the proposed legislative framework. Table 1 summarizes key areas where positive changes have been made through consultation with the Province.

**Table 2  
Summary of Key Changes in Provincial Position**

Area	Initial Provincial Position	Position Resulting from Feedback
<b>Services moved to the community benefits charge regime</b>	Paramedics, public health, social housing, court services, and long-term care were to be moved to the community benefits charge regime	All Regional services remain development charge eligible and resident within the Act
<b>Transition timing</b>	Municipalities were required to have a community benefits charge bylaw in effect by January 1, 2021 to transition	Municipalities have two years from the date Schedule 3 of Bill 197 comes into force
<b>Development eligible for delayed and phased payments</b>	Commercial and industrial developments were eligible for delayed and phased payments	Commercial and industrial developments are no longer eligible
<b>Interest on phased and frozen development charges</b>	Potential to prescribe a cap	No cap prescribed on interest charges for frozen and phased development charges*

\*Note: An interest [policy](#) was approved by Council in February of 2020

## **A 2020 development charge bylaw amendment is no longer recommended**

In February 2020, staff [reported](#) to Council on the potential need for a development charge bylaw amendment and a new community benefits charge bylaw as a policy response to Bill 108. At the time of the report, the proposed timing was intended to align with an anticipated transition to the community benefits charge regime by January 1, 2021.

Since Bill 197 proposes to allow the Region to continue recovering development charge services under the existing framework and removes its ability to levy community benefit charges, a development charge bylaw amendment is no longer needed at this time.

However if the Region were to provide any COVID-19-related development charge relief, an amendment to the Bylaw may be required but is not being recommended at this time. Finally, the Region will be undertaking a full update of the development charge bylaw before it expires on June 16, 2022.

## **Staff will continue to engage with provincial, municipal and development industry partners to ensure growth-related infrastructure continues to be funded in a fiscally sustainable way**

Since the beginning of the consultation process with Bill 108, and continuing throughout the COVID-19 pandemic, the Region actively engaged in consultation with local and neighbouring municipalities and with both provincial and ministry staff. The Region's continued advocacy and collaboration with our provincial partners has ensured that Council's comments and concerns have largely considered.

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Attachments (2)  
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