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May 30, 2019

John Ballantine, Manager
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Reference: RE: ERO #019-0017: Bill 108 – (Schedule 3) – the proposed More Homes More Choice Act: Amendments to the Development Charges Act, 1997

Dear Mr. Ballantine,

This letter contains comments on the Provincial Government's Bill 108 (More Homes More Choice Act), which passed Second Reading on May 29. The comments are restricted to the proposed amendments to the *Development Charges Act* (*DC Act*) and to the *Planning Act* amendments concerning municipal infrastructure funding. As of this date, draft Regulations to the legislation have not yet been tabled.

We make these comments as a consulting firm with more than 35 years' experience in providing expert advice in the areas of planning policy, municipal finance, demographic and economic forecasting, real estate advisory, and transportation impact analysis to Ontario municipalities. Of particular relevance is our familiarity with development charges (DCs): we have undertaken some of the most complex and detailed DC studies in the Province—well over 200 studies—for clients that range from large, rapidly growing regional and area municipalities to smaller towns and townships with more moderate growth rates. Furthermore, we have worked with municipalities across the country to review, calculate, and implement DCs under prevailing legislation.

Our comments are informed by extensive consultation with our municipal clients in recent weeks.[1]

A. OVERALL CONCLUSIONS

Our views of the new legislation are mixed. We support the Government's desire to address housing supply and affordability and make the cost of development more predictable. We believe that Bill 108 would promote affordable rental housing, and intensification more generally, through mandatory DC exemptions for secondary suites. As well, part of the cost of development would become more certain for developers through the freezing and staged payment of DCs at critical points during the development process. Finally, the provision allowing municipalities to fully fund eligible waste diversion costs through DCs is, in our view, progressive and desirable.

That said, we believe the legislation will generally reduce the ability of municipalities to fund and deliver growth-related capital works by reducing municipal cashflow, increasing pressure on debt levels, and delaying the timing of infrastructure needed to service land and allow housing to be constructed.

The replacement of DCs with a "community benefits charge" to fund "soft" services, including libraries, park amenities, recreation facilities, and other local infrastructure that is critical to building vibrant and complete communities, would also make municipal financial planning more difficult. Moreover, the proposed changes to the collection and administration of DCs is likely to result in a less efficient, and less transparent, system of land development where more "red tape" would be required. This is not in the interest of either municipalities or developers, who have to work collaboratively when developing land.

Our specific concerns are set out below.

[1] On May 22, 2019 Council of the Town of Penetanguishene resolved that our firm provide comments to the Province on their behalf as they relate to Bill 108 changes to the *Planning Act* and *Development Charges Act*.

B. COMMUNITY BENEFITS CHARGES

The Government's stated purpose for replacing soft service DCs with a community benefits charge is to make upfront development costs more predictable.[2] Given the prescriptive nature of the *DC Act*—which defines eligible services and eligible capital costs, sets out a detailed methodology for calculating DCs, and requires a comprehensive background study and public process—it is difficult to see how the new approach achieves this purpose. More specifically:

- The amount of community benefits charge revenue collected by a municipality will depend on the value of development sites rather than the number of homes built or non-residential building space constructed. How much revenue a municipality can expect to raise to fund soft service costs will therefore become much less predictable since land values vary from site to site and rise and fall with market conditions. In contrast, unit counts and building areas are clear cut. Consequently, municipal long range financial planning efforts, which rely heavily on sound revenue forecasts, would suffer.

- A community benefits charge is proposed to be based on a prescribed percentage of the value of land to be developed. Unless the prescribed percentage can vary to account for differences in land value across the Province, and within individual municipalities, there would be inherent inequities in municipal revenue raising ability. Municipalities with high land values could, in theory, raise comparatively larger amounts of revenue and afford better soft service facilities.

- In the absence of Regulations, a detailed analysis of the financial impact of the community benefits charge provisions is not possible. Unless the new charges produce revenue similar to DCs for soft services and existing *Planning Act* contributions, the ability of many municipalities to raise revenue for growth-related infrastructure, particularly for those lower tier municipalities where a substantial component of current DC revenue is for soft services, will be adversely affected. Where changes to capital funding are not "revenue neutral", soft service standards for new communities in Ontario could suffer.

- Prudent financial planning for large soft service facilities, such as arenas and libraries, relies in part on stable and secure funding sources, especially when a municipality incurs debt to finance expenditures. Given that the revenue from community benefits charges depends on land values, which are uncertain and

[2] See the Government's *More Homes, More Choice: Ontario's Housing Supply Action Plan*, May 2019, p.9.

beyond municipal control, the risk associated with issuing debt to finance large facilities would increase under the proposed scheme.

- We recognize that the community benefits charge represents, in part, an effort by the Government to regulate the collection and management of "density bonusing" contributions under section 37 of the *Planning Act*, which are negotiated in a limited number of municipalities. However, the new scheme would diminish the accountability currently in place for soft service DCs.

- For example, the calculation of soft services DCs requires detailed analysis of service levels, funding sources and, importantly, the long-term capital and operating cost impacts of capital plans. The calculations are published in a formal Background Study. Public consultation is a pre-condition of passing the DCs and there is a right of appeal of a DC by-law. Moreover, DC funds are maintained in service-specific reserve funds and are subject to stringent reporting requirements. These accountability requirements would be either removed or significantly weakened for the community benefits charges. We believe the proposed changes will negatively affect both municipalities and developers in this important respect.

- As well as soft service DCs and density bonusing contributions, the community benefits charges will effectively replace contributions made under the current sections 42 and 51 ("parkland dedication and associated cash in lieu") of the *Planning Act*. Municipalities would lose the ability to secure parkland independently of imposing charges for community facilities. While there is merit in streamlining municipal fees and charges and providing greater flexibility in spending decisions, there is the very real prospect that services that previously had dedicated revenue streams will now have to "compete" with other services for funds.

In summary, we believe that replacing soft service DCs with a new, less transparent community services charge would do little to address the Government's goals of improving housing supply and affordability and ensuring the cost of development is more predictable.

C. DC COLLECTIONS

Currently, DCs are generally paid at the time of first building permit or, on occasion for hard services, at the time of signing of subdivision agreements.[3] Bill 108 proposes to:

[3] Municipalities and developers can alter the timing of payment by agreement. This provision of the *DC Act* would remain untouched by Bill 108.

- allow developers of rental and non-profit housing as well as commercial, industrial and institutional development to pay DCs in six equal annual payments starting at building occupancy; and

- freeze the DC amount payable at the point of application for site plan or rezoning (or building permit issuance where site plan or rezoning is not required).

These changes would be a valuable incentive to developers of rental and non-profit housing by delaying payment of DCs until rents are generated. The changes also generally support the Government's objective of making housing more affordable. We are not however persuaded that the changes that apply to non-residential development would have any meaningful effect on achieving the Government's goals.

One significant consequence of the delayed DC revenue would be that municipalities would either have to borrow more in order to finance projects during the five years or delay projects until sufficient funds are collected. The latter would likely put upward pressure on DC rates for rental/non-profit housing and non-residential developers. The former could slow the delivery of municipal services to land awaiting development. Neither scenario is desirable for municipalities or developers.

From the municipal perspective, we believe the changes to DC collections would be:

- potentially a significant financial loss, as the DCs paid will no longer reflect the actual cost of services required for development. This will be especially true in cases where the date of application for site plan control or rezoning occurs long before building permits are issued (we understand that the Regulations may allow for the "unfreezing" of a DC rate if a building permit is not issued within a specified time following planning approval). We also note that this provision should only be permitted where "completed" applications have been filed.

- a challenge to enforce, particularly in cases where ownership changes over the five year period or annual payments are in default. In this last respect, although the legislation would allow municipalities to apply interest to the annual payments, it does not appear to set out a clear process for securing the revenue. If agreements, letters of credit, and/or liens become necessary to secure payments this would substantially increase the red tape associated with DCs.

- administratively onerous, because they would require municipalities to track building occupancy (many do not) and monitor payments of individual developments over long periods. Additional staff and associated operating costs will almost certainly be necessary.

In short, we are of the view that the changes to DC collection and administration proposed in Bill 108 is likely to result in a more costly and inefficient process with more red tape. The overall impact on municipalities and developers alike would be negative.

D. TRANSITION

Our municipal clients are very concerned about the transition provisions in Bill 108, particularly in light of the speed and manner in which this legislation is being brought forward. We share their concern. Specifically:

- Many municipalities are currently undertaking DC Background Studies and planning to pass DC by-laws in the coming months. The work to prepare a by-law is detailed, complex, and involves a great deal of analysis and municipal coordination. Near-term capital budgets and debt repayment commitments, as well as long-term capital forecasts and asset management plans, are often closely integrated with this work. The provisions of Bill 108 appear to prevent a municipality from passing a new DC by-law for soft services from the moment the new Act comes into force. As such, Bill 108 does not make adequate provision for DC studies and/or by-laws that are underway. In our view, a transition period of at least six months should be included in the legislation to enable municipalities to complete current DC work and pass by-laws under the current *DC Act*.

- The financial impact of Bill 108 cannot be properly assessed in the absence of Regulations as they will, among other matters, establish the prescribed date when soft service DCs are to end as well as the prescribed percentage of land value on which the new community services charges are to be based. The Government does not therefore have a complete picture of the financial consequences of its proposed legislation. This is of concern, because the financial impacts on municipalities are likely to be significant and uneven.

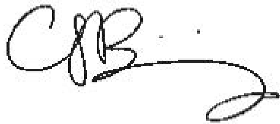
- Finally, the *DC Act* amendments require that soft service reserve funds be eventually transferred into a community services charge “special account”. There appears to be no provision for how municipalities are to deal either with growth-related external debt for soft services or existing negative balances in these reserve funds.

Our overriding concern with Bill 108 is the proposed transfer of funding for soft services from the DC framework to a community benefits charge. We believe this change to the current system of municipal finance is very significant but will do little to address the Government's concern about the predictability of development costs. Nor will it create more housing supply or make homes more affordable. It would however impair the ability of municipalities to raise funds for growth-related capital costs and make long range financial planning more challenging.

This letter reflects our considered opinion regarding the proposed legislation and takes account of the views of the many municipal clients with which we have discussed the matter. Accordingly, we hope that consideration be given to addressing the concerns that are raised. In the meantime, we thank you for providing us with the opportunity to make this submission. Should you have any questions about our comments please do not hesitate to contact us.

Kind regards,

HEMSON Consulting Ltd.



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