

May 29, 2019

Mr. John Ballantine
Manager, Municipal Finance Policy Branch
Ministry of Municipal Affairs and Housing
13th Floor, 777 Bay Street
Toronto, Ontario
M5G 2E5

Dear Mr. Ballantine:

Re: Bill 108: Potential Changes to the Development Charges Act

On behalf of our many municipal clients, by way of this letter we are summarizing our perspectives on the changes to the *Development Charges Act* (D.C.A.) as proposed by Bill 108.

Watson & Associates Economists Ltd.

Watson & Associates Economists Ltd. is a firm of municipal economists, planners and accountants, which has been in operation since 1982. With a municipal client base of more than 250 Ontario municipalities and utility commissions, the firm is recognized as a leader in the municipal finance/local government field. The firm's Directors have participated extensively as expert witnesses on development charge (D.C.) and municipal finance matters at the Local Planning Appeal Tribunal (formerly known as the Ontario Municipal Board) for over 37 years.

Our background in D.C.s is unprecedented including:

- carrying out over one-half of the consulting work completed in Ontario in the D.C. field during the past decade; and
- providing submissions and participating in discussions with the Province when the D.C.A. was first introduced in 1989 and with each of the amendments undertaken in 1997 and 2015.

Changes to Eligible Services

The Bill proposes to remove “soft services” from the D.C.A. These services will be considered as part of a new “community benefits charge” (discussed below) imposed under the Planning Act. Eligible services that will remain under the D.C.A. include water, wastewater, stormwater, services related to a highway, policing, fire, transit and waste diversion.



As provided below (a detailed summary is provided in Appendix A), Province-wide this change would remove 20% of annual collections from the D.C.A.

Table 1 - Development Charge Collections - 2013 to 2017

| Service Category | Total Collections 2013 to 2017 | Annual Average Collections | Percentage of Total |
|---|---|---|--------------------------------|
| Services Continued Within D.C.A. | \$ 8,069,285,661 | \$ 1,613,857,132 | 80% |
| Services to be Moved to Community Benefits Charge | 1,967,192,671 | 393,438,534 | 20% |
| Total | \$10,036,478,333 | \$ 2,007,295,667 | 100% |

Since it is unclear as to the potential ability to replace these revenues with the proposed community benefits charge, a number of concerns are raised:

- Many municipalities have constructed facilities for these various services, and the ability to recoup the annual debt charges is in question. This lost revenue may shift the burden directly onto existing taxpayers.
- A number of municipalities enter into agreements to have the developing landowner fund certain services (e.g. parkland development) and provide D.C. credits at the time of building permit issuance. It is unclear how a municipality is to honour these commitments given the new revenue structure.
- Many municipalities have projects for these services in progress. The lost funding may put these projects in jeopardy.
- Many municipalities have borrowed D.C. revenues from another D.C. service to fund these expenditures. Once again, it is unclear how to fund these balances.
- Municipalities have concerns with the potential of the Minister to limit the scope of eligible services for which community benefits charges could be imposed through regulation, particularly as this might relate to future funding plans based on this revenue source.

Waste Diversion

The Bill would remove the mandatory 10% deduction for this service.

This change will be helpful to municipalities in funding this service. Moreover, the ability to forecast the increase in needs over a period longer than 10 years will allow municipalities to better determine the long-term average increase in needs.



Payment in Installments Over Six Years

The Bill proposes that rental housing, non-profit housing and commercial/industrial/institutional developments pay their development charges in six equal annual payments commencing the earlier of the date of issuance of a building permit or occupancy. If payments are not made, interest may be charged (at a prescribed rate) and may be added to the property and collected as taxes.

As the proposed changes to the D.C.A. are to facilitate the Province’s affordable housing agenda, it is unclear why these installment payments are to be provided to commercial, industrial and institutional developments. Table 2 presents the number of non-residential building permits issued annually by Ontario municipalities over the period 2012 to 2017. Based on the past six years, municipalities would be managing installment collections on almost half a million building permits.

Table 2 - Non-residential Building Permits Issued - 2012 to 2017

| Service | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | Total |
|----------------|--------|--------|--------|--------|--------|--------|----------------|
| Permits Issued | 67,795 | 75,182 | 76,189 | 79,070 | 86,158 | 82,640 | 467,034 |

Source: Financial Information Returns - 2012 to 2017

Based on the above:

- Administration of this process to undertake annual collections, follow up on delayed payments, and pursue defaulting properties would increase administrative staffing needs significantly. If an ability to recover these administrative costs is not provided, then this would be a direct impact on property taxes.
- It is unclear what security requirements the municipality may impose. As the building permit is most often taken out by the builder, there is a disconnect with the potential owner of the building. We would recommend that the D.C.A. provide the ability to either receive securities or be able to register the outstanding collections on title to the property.
- The delay in receiving the D.C. revenue will impact the D.C. cashflow. As most of these “hard services” must be provided in advance of development occurring, it will require increased debt and borrowing costs. Added interest costs will place upward pressure on the D.C. quantum.

When the D.C. Amount is Determined

The Bill proposes that the D.C. amount for developments proceeding by site plan approval or requiring a zoning by-law amendment, shall be determined based on the D.C. charge in effect on the day of the application for site plan approval or zoning by-law amendment. If the development is not proceeding via these planning approvals,



then the amount is determined the earlier of the date of issuance of a building permit or occupancy.

Based on the above:

- We perceive the potential for abuse with respect to the zoning change requirement. A minor change in a zoning would activate this section of the D.C.A. and lock-in the rates. This would give rise to enhancing the land value of the property as it has potentially lower D.C. payments.
- D.C.s tend to increase in subsequent five-year reviews, because the underlying D.C.A. index does not accurately reflect the actual costs incurred by municipalities. Locking-in the D.C. rates well in advance of the building permit issuance would produce a shortfall in D.C. revenue, as the chargeable rates will not reflect the current rate (and therefore current costs) as of the time the development proceeds to be built. If municipalities are being required to maintain these charges, then the D.C.A. should provide for adjustment to reflect changes in actual costs, allow for ease of amendment between review periods, and index charges based on actual cost experience.
- There should be a time limit established in the D.C.A. as to how long the development takes to move from site plan application, or zoning application, to the issuance of a building permit. There is no financial incentive for the development to move quickly to building permit if this is not provided. Although the D.C.A. indicates that the Minister may regulate this, if no regulation is provided then the rates would be set in perpetuity.

Second Dwelling Units in New Residential Developments or Ancillary to an Existing Dwelling Unit are to be Exempt from Paying Development Charges

We perceive that imposing an immediate exemption for a second unit in a new home will cause considerable problems for existing agreements with developers. Potential impacts could include:

- For existing agreements and in certain circumstances, the developer may not recover the full amount of the agreed-to funding.
- Alternatively, the municipality may have to recognize the potential funding loss. The municipality then must generate the funding even though these expenditures were not planned. This may cause direct impacts on debt levels, tax/use rates or delays in future funding given the added net costs to build the infrastructure.
- The potential arises for the conditions within these agreements to now be challenged in court in light of the provincial regulation changes, giving rise to considerable legal expense, delays in development (given the uncertainty of the outcome) and loss of confidence in negotiating future agreements.



- Note also that, with respect to allocation of capacity for water and wastewater servicing, there may be further impacts given Environmental Assessment approvals for targeted development levels.
- Increasing the number of statutory exemptions also results in a revenue loss for municipalities that have to be funded from non-D.C. funding sources, thus increasing the obligation on property taxes.

Soft Services to be Included in a New Community Benefits Charge Under the Planning Act

It is proposed that a municipality may, by by-law, impose community benefits charges against land to pay for the capital costs of facilities, services and matters required because of development or redevelopment in the area to which the by-law applies. These services may not include those authorized by the D.C.A. Various provisions are proposed as follows:

- *Before passing a community benefits charge by-law, the municipality shall prepare a community benefits charge strategy that, (a) identifies the facilities, services and matters that will be funded with community benefits charges; and (b) complies with any prescribed requirements.*
- *Land for parkland purposes will be included in this charge.*
- *The amount of a community benefits charge payable shall not exceed an amount equal to the prescribed percentage of the value of the land as of the valuation date.*
- *The valuation date is the day before building permit issuance.*
- *Valuations will be based on the appraised value of land. Various requirements are set out in this regard.*
- *All money received by the municipality under a community benefits charge by-law shall be paid into a special account.*
- *In each calendar year, a municipality shall spend or allocate at least 60 per cent of the monies that are in the special account at the beginning of the year.*
- *Requirements for annual reporting shall be prescribed.*
- *Transitional provisions are set out regarding the D.C. reserve funds and D.C. credits.*

The proposed changes are limited, in that the details are left to be defined by Regulation. As such:

- More information is needed, as there are several key items to be included as part of the regulations; i.e. what items are to be included in community benefits charge strategy and what percentage of the “value of land” is to be eligible for collection.
- Depending on what is to be included in the community benefits charge strategy, this may be undertaken at a similar time as the D.C. background study. As



noted, however, it is unclear as to the prescribed items to be included along with the process required to adopt the strategy and the by-law.

- The potential for future parkland is minimized by including it as part of the charge along with all other “soft services.”
- Concern is raised regarding what prescribed percentage of the land value will be allocated for the charge. If the same percentage is provided for all of Ontario, then a single family lot in Toronto valued at \$2 million will yield 20 times the revenue of a \$100,000 lot in eastern Ontario. Given that building costs for the same facilities may only vary by, say, 15%, the community benefits charge will yield nominal funds to pay for required services for most of Ontario. As such, if prescribed rates are imposed, these should recognize regional, in not area-municipal, distinctions in land values.
- It is unclear how the community benefits charge will be implemented in a two-tier municipal system. Given that both the upper and lower tiers will have needs, there is no guidance on how the percentage of the land value will be allocated or how the process for allocating this would occur. Obviously, land values will vary significantly in urban vs. semi-urban communities (e.g. in York Region, land value in Markham is significantly higher than in Georgina), so that the upper tier needs may only take, say, 30% of the allotted value in the urban areas but 75% to 90% of the allotted semi-urban or rural values.
- Given the need for appraisals and the ability of the applicant to challenge the appraisal, a charging system based on land values will be extremely cumbersome and expensive. It is unclear how appraisal costs are recovered and the appraisals may become significant costs on each individual property.

By-laws That Expire After May 2, 2019

The Bill provides in subsection 9.1 (1) that a development charge by-law expiring on or after May 2, 2019 and before the prescribed date shall remain in force as it relates to the soft services being moved to community benefits charges.

Confusion is produced by this section of the Bill. There are many municipal D.C. by-laws (over 70) currently set to expire between May and August of this year. Until the Bill is passed into law, these D.C. by-laws will need to be replaced by new ones. This section of the Bill should be amended to reflect that the new D.C. rates in effect at the time of the new legislation coming into force will continue so as to not present confusion over rates as of May 2, 2019 versus rates passed under these new D.C. by-laws.

Conclusions/Observations

In late 2018/early 2019, the Province invited many sectors to participate in the Province’s Housing Supply Action Plan. This process included specialized Development Charges and Housing Affordability Technical Consultations undertaken to provide input to this Action Plan. From those discussion sessions undertaken with members of the development/building community, it was acknowledged that there are



challenges for the development/building community to address the housing needs for certain sectors of the housing market. Rental housing is one example of an area where the low profit margins and high risks may limit participation by developer/builders; however, there clearly does not appear to be a Province-wide concern with D.C. rates that would warrant a wholesale reduction/elimination of D.C.s for any particular service. Arising from those discussions it was expected that these matters would be the focus of the legislated changes; however, Bill 108 has varied significantly from that target:

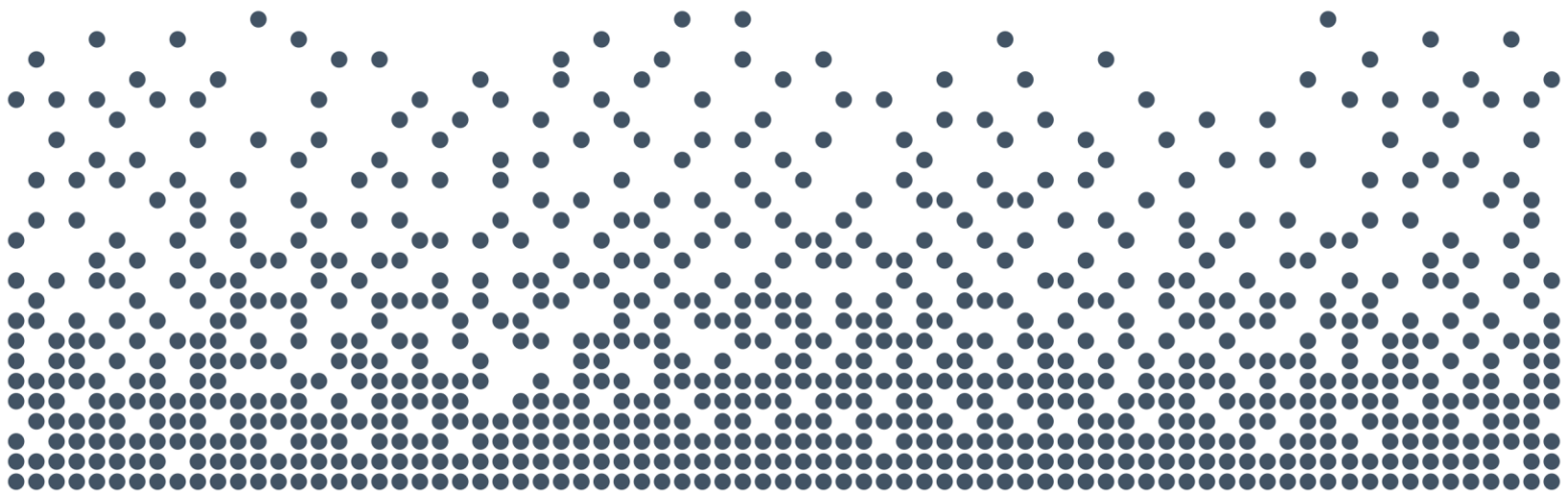
- The Bill makes wholesale changes to the D.C.A. which will restrict revenues collected from all forms (and all prices) of housing. Hence, the target is no longer rental or affordable housing focused. Where municipalities have been developing D.C. policies and programs to address affordable housing needs directly, the loss of D.C. funding will make these programs unaffordable due to the overall revenue lost.
- The Bill has introduced changes to collections and locking in rates, which directly benefit commercial, industrial and institutional developments, that were not part of the Province's Housing Supply Action Plan. It is unclear why this has been introduced. The six-payment plan for this sector is expected to be expensive and cumbersome to administrate.
- Many transitional items have not been addressed and it is unclear whether the developing land owner is responsible for potential revenue losses or whether that will be the responsibility of the municipality. These matters need to be addressed, otherwise time and money will be spent clarifying these matters in the courts.
- The Regulations to define the new community benefits charges have not been circulated with the Bill; hence, the magnitude of the impact cannot be calculated. It is anticipated, however, that a significant amount of revenue will be lost along with additional lands for park purposes. This either places a direct burden onto taxpayers or will reduce service levels significantly for the future.

Yours very truly,

WATSON & ASSOCIATES ECONOMISTS LTD.

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Director

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Appendix A

Development Charge Collections 2013 to 2017



Appendix A: Development Charge Collections 2013 to 2017

Development Charge Collections - 2013 to 2017

| Service | 2013 | 2014 | 2015 | 2016 | 2017 | Total | Average Annual |
|--|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| Services Continued Within D.C.A. | | | | | | | |
| Development Studies | \$ 6,785,229 | \$ 7,539,525 | \$ 9,634,244 | \$ 9,536,538 | \$ 11,607,836 | \$ 45,103,372 | \$ 9,020,674 |
| Fire Protection | 19,100,753 | 23,624,512 | 24,765,253 | 27,313,942 | 26,978,473 | 121,782,933 | 24,356,587 |
| Police Protection | 16,473,155 | 18,511,592 | 20,652,998 | 18,378,613 | 20,548,089 | 94,564,447 | 18,912,889 |
| Roads and Structures | 459,358,776 | 612,034,803 | 690,333,195 | 779,050,973 | 719,779,061 | 3,260,556,808 | 652,111,362 |
| Transit | 76,809,022 | 132,348,600 | 130,908,057 | 132,489,696 | 136,970,102 | 609,525,477 | 121,905,095 |
| Wastewater | 226,276,592 | 326,853,930 | 366,627,394 | 442,003,774 | 377,008,100 | 1,738,769,790 | 347,753,958 |
| Stormwater | 35,407,598 | 37,192,646 | 36,127,040 | 52,679,456 | 53,577,620 | 214,984,360 | 42,996,872 |
| Water | 249,052,732 | 324,843,966 | 373,922,202 | 474,822,033 | 513,942,477 | 1,936,583,410 | 387,316,682 |
| GO Transit | 7,594,651 | 9,005,572 | 10,515,931 | 9,837,550 | 10,461,361 | 47,415,065 | 9,483,013 |
| D.C.A. Continued Services | \$ 1,096,858,508 | \$ 1,491,955,146 | \$ 1,663,486,314 | \$ 1,946,112,574 | \$ 1,870,873,119 | \$ 8,069,285,661 | \$ 1,613,857,132 |
| Services to Be Included Within New Section 37 Community Benefits Charge | | | | | | | |
| Emergency Medical Services | \$ 3,112,736 | \$ 4,765,936 | \$ 5,128,696 | \$ 4,840,840 | \$ 5,773,536 | \$ 23,621,744 | \$ 4,724,349 |
| Homes for the Aged | 3,073,247 | 2,939,550 | 3,743,039 | 3,595,331 | 4,297,427 | 17,648,594 | 3,529,719 |
| Daycare | 2,499,810 | 3,301,019 | 3,088,376 | 1,760,689 | 2,473,840 | 13,123,734 | 2,624,747 |
| Housing | 17,947,287 | 18,658,790 | 19,786,738 | 16,116,747 | 21,684,247 | 94,193,809 | 18,838,762 |
| Parkland Development | 64,269,835 | 88,966,081 | 84,900,635 | 73,762,908 | 87,751,688 | 399,651,147 | 79,930,229 |
| Library | 28,579,595 | 33,673,639 | 32,963,569 | 33,161,869 | 34,690,844 | 163,069,516 | 32,613,903 |
| Recreation | 113,885,296 | 139,822,233 | 162,878,471 | 165,794,581 | 160,313,825 | 742,694,406 | 148,538,881 |
| General Government | 12,050,045 | 12,270,754 | 12,829,713 | 21,443,520 | 8,654,142 | 67,248,174 | 13,449,635 |
| Parking | 1,906,154 | 3,594,036 | 4,821,705 | 3,986,887 | 3,947,438 | 18,256,220 | 3,651,244 |
| Animal Control | 18,224 | 16,511 | 44,952 | 23,839 | 15,205 | 118,731 | 23,746 |
| Municipal Cemeteries | 38,942 | 69,614 | 55,007 | 170,736 | 108,145 | 442,444 | 88,489 |
| Other | 100,284,812 | 88,219,453 | 84,354,637 | 82,829,254 | 71,435,996 | 427,124,152 | 85,424,830 |
| Services to be Moved to Community Benefits Charge | \$ 347,665,983 | \$ 396,297,616 | \$ 414,595,538 | \$ 407,487,201 | \$ 401,146,333 | \$ 1,967,192,671 | \$ 393,438,534 |
| Total | \$ 1,444,524,491 | \$ 1,888,252,762 | \$ 2,078,081,852 | \$ 2,353,599,776 | \$ 2,272,019,452 | \$10,036,478,333 | \$ 2,007,295,667 |

Source: Financial Information Returns - 2013 to 2017