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August 21, 2019

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Re: ERO 019-0183

Purpose

This letter is in response to the request for comments on ERO 019-0183 regarding proposed new regulation pertaining to the community benefits authority under the Planning Act.

Background

Bill 108, More Homes, More Choice Act, 2019 (Bill 108) received Royal Assent on June 6, 2019. Bill 108 included changes to the Development Charges Act and the creation of a new Community Benefits Authority with the intent of making housing more affordable and development costs more predictable.

The Minister of Municipal Affairs and Housing indicated in a letter to municipalities dated June 7, 2019 that the intent of the new legislation is to maintain municipal revenues.

On June 21, 2019 draft proposed regulatory guidelines were made available by the province for the Development Charges Act, Planning Act and the new Community Benefits Authority. Municipalities have been invited to provide feedback on these proposed regulations by August 21, 2019.

Discussion

The Town of Whitby is one of the fastest growing municipalities in the province. Whitby's population is expected to grow by 56% in the next 12 years.

Under the existing Development Charge legislation, growth does not fully pay for the cost of growth. The current cost of growth for our residents is an increase in property taxes of 1.5% each and every year. This has an impact on both affordability and quality

of life for our residents.

Any further growth related pressures will have an impact on Whitby, and our ability to build a complete and vibrant community. Residents are struggling with the existing cost of growth and will object to any increased tax burden shifted from development to the taxpayer. As such, the Town is pleased by the province's commitment to maintain municipal revenues and not shift any additional cost of growth to Whitby taxpayers.

The Town has participated in the analysis of the proposed regulations with the Municipal Finance Officers' Association of Ontario (MFOA) and supports the submission made by MFOA (Attachment 1).

As noted in MFOA's submission "the proposal summaries, written in general terms, do not provide adequate information to understand the full impact of changes introduced under Bill 108". As such, complete draft regulations and adequate time to understand and test a completely new unprecedented CBC regime is required to ensure revenue neutrality is maintained for each municipality; given, it appears the amount to be collected through the CBC will be calculated by applying a percentage to the value of the developed land, up to a maximum/capped percentage.

"Soft services" does not mean unnecessary services. "Soft services" help define the community and add to the quality of life in a local community. Parks, recreation, libraries etc. are all part of a healthy and positive lifestyle that brings economic benefit and is one of the main reasons people want to locate in Whitby.

As a result, it is a significant concern that there is no longer a connection between the cost for infrastructure needs defined at the local level and a methodology to recover for them. Additional costs for administration and technology related to the new regime, as well as the acquisition of parkland and provision of other services previously provided by development under local services needs within each municipality add to the municipal burden.

It needs to be recognized that revenue neutrality and the ability to collect the funds necessary may vary significantly between municipalities depending on a municipality's:

- current stage of development (slow grow, high growth)
- current market conditions and value for land,
- the type of development occurring (greenfield or infill),
- existing policies for dedication of park lands or services received in lieu,
- costs of administration of the complex CBC regime, and
- service level needs defined by local Councils.

When the proposal summaries were released on June 21, 2019, the Minister of Municipal Affairs and Housing stated "Growth must pay for growth and it's important that municipalities have the resources to support complete communities. By working with municipalities, we will develop a formula that protects vital revenue streams". It is hoped that this commitment to revenue neutrality means each municipality remains whole while considering all the additional costs in addition to existing lost revenues.

If not, local choices will need to be made impacting the timing of service delivery. This could include a further shift of cost from the developers to the taxpayers, deferral or cancelation of needed infrastructure, or reduced levels of service, since shifting more growth related costs to the taxpayer will be difficult.

Subject to clarity on the definitions included in the proposed changes and a review of the complete draft regulations yet to be released; the Town of Whitby has provided the following additional comments.

1. **Transition** – Details on the requirements for the Community Benefits Charge Strategy needs to be known in order to determine if the prescribed date of January 1, 2021 is achievable. Given internal administrative constraints and limited external expertise available, this timeframe could be unachievable in some municipalities. Municipalities will also incur additional administrative costs to convert existing systems and processes.
2. **Reporting on Community Benefits and Parkland** – The proposed regulation indicates the reporting requirements would be similar to those already reported on under the Development Charges Act and Planning Act, as such it is anticipated to have a minimal administrative impact to the Town.
3. **CBC and Revenue Neutrality** – It is the intention of the Town of Whitby to collect the Community Benefit's charge. As a rapidly growing municipality, the tax base cannot bear the cost of growth alone; it has been Whitby's past practice to have growth pay for growth to the greatest extent possible, recognizing that based on the current legislation growth will never fully pay for growth. Municipalities should not be disadvantaged under the new CBC regime.
4. **Exemptions from Community Benefits** – The proposed exemption list for most types of institutional development (long- term care homes, hospices, universities, colleges, Royal Canadian Legion) and non-profit housing is similar to the DC deferrals being proposed in the DC Act. The Town of Whitby supports an exemption for non-profit housing and non-profit institutional development, but requests that any for profit institutional development not be exempt. In addition, Whitby requests definition clarification on the eligible types of development and seeks protection and the ability to collect should there be a change of use of the development within a defined period after occupancy.
5. **Community Benefits Formula** – It is the Town of Whitby's position that no two developments are the same, and no two municipalities are the same. The value of land is not the best determining factor when attempting to determine the community benefit's charge. A flat charge is not equitable across various types of development within a municipality or across multiple municipalities

In addition, some developments may not be fully developing the land; i.e. residential flood plain, industrial (phased development) etc.

We welcome the inclusion of municipalities in the Provincial Technical Working Committee that is seeking to determine the rate, and encourage the Province to establish different rates based on type of development i.e. residential / non-residential, greenfield / intensification in-fill, low / medium / high density, etc.

Every municipality within Ontario is unique and their populations and need for services vary. As such the community benefits charge should not be a “one size fits all” model based on land values without some methodology or connection to the cost of providing the services.

The additional burden from administrative costs to manage the process, land appraisals, the requirement to deduct the cost of all parkland and previously provided in lieu local services from the CBC revenues, further shifts the cost of development from the developer to the taxpayer. These additional costs should be considered eligible under a CBC regime and when determining revenue neutrality.

The proposed regulations have not currently defined when the community benefits charge would be payable or how the community benefits charge is allocated between upper and lower tier municipalities in a two tier system.

6. **Appraisals of Community Benefits** – It is assumed in order to get the best and most accurate land value at the time of determining the community benefits charge an appraisal will need to be completed by the municipality. This will not only increase the administrative burden and costs to the taxpayer, it will also increase the process “red tape” time.

The Town of Whitby appreciates the proposed regulation that the owner is responsible for all additional appraisal costs should they dispute the land value in the community benefits charge, but recognizes that any disputes will increase the administrative burden to the municipality.

It would be important for a municipality to develop and regularly update standard land values to minimize disputes. A methodology accepted by the development community would provide more certainty and avoid time consuming and costly disputes related to appraisal values.

7. **Exclusions from Community Benefits** – Although the proposed ineligible service list for the community benefits charge is identical to the current list under the DC Act, the Town of Whitby is asking for consideration to change that list.

The Town of Whitby respectfully requests that general administration headquarters of municipalities be removed from this list. As the municipality grows, the administrative need of that municipality grows. Municipal buildings are being used more as community hubs and it is the Town of Whitby’s position that a municipal building is a community benefit that should be paid for by some extent by development.

In addition, the Town of Whitby believes that cultural facilities play a vital benefit to a community, and as such should be eligible to be funded in part by the community benefits charge. Likewise, hospitals should be an eligible service to help offset the cost to the taxpayer for a municipality's share of a hospital. Whitby recognizes that restrictions should be set on when hospital money could be allocated; the Town of Whitby is recommending that once a future hospital site has been approved by the Province a municipality should be allowed to proceed.

8. **Community Planning Permit System** – The Town of Whitby currently does not have a community planning permit system, but supports the idea that it has the authority and choice to do so if deemed appropriate by Council, and should not be prescribed.

Thank you for the consideration.

Sincerely,



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Attachment 1 – MFOA Submission Regarding ERO 019-0183 and ERO 019-0184

Cc: Mayor and Members of Council
Suzanne Beale, Commissioner of Public Works
Chris Harris, Town Clerk
Sarah Klein, Director of Strategic Initiatives
Jacqueline Long, Head of Human Resources
Warren Mar, Town Solicitor
John Romano, Acting Commissioner of Community and Marketing Services
Roger Saunders, Commissioner of Planning
Dave Speed, Fire Chief
Ann McCullough, Manager Financial Planning
Jennifer Hess, Senior Financial Analyst



ERO # 019-0183 Proposed new regulation pertaining to the community benefits authority under the Planning Act

ERO #019-0184 Proposed changes to O. Reg. 82/98 under the Development Charges Act related to Schedule 3 of Bill 108 - More Homes, More Choice Act, 2019

Submission to the Ministry of Municipal Affairs and Housing

August 19, 2019

Table of Contents

- 1.0 Introduction 2
- 2.0 About MFOA 3
- 3.0 A Brief History of Development Charges in Ontario 3
- 4.0 DCs, Housing Affordability and the *More Homes, More Choice Act, 2019*..... 4
- 5.0 Guiding Principles 5
- 6.0 Themes 6
- 7.0 ERO # 019-0183 Proposed new regulation pertaining to the community benefits authority under the *Planning Act, 1990* 6
 - 7.1 Transition 6
 - 7.2 Reporting on community benefits and parkland 7
 - 7.3 Exemptions from community benefits 7
 - 7.4 Community benefits formula..... 9
 - 7.5 Appraisals for community benefits 12
 - 7.6 Excluded services for community benefits 13
 - 7.7 Community planning permit system 13
 - 7.8 Local Services..... 15
- 8.0 ERO #019-0184 Proposed changes to O. Reg. 82/98 under the DCA related to Schedule 3 of Bill 108 - *More Homes, More Choice Act, 2019* 16
 - 8.1 Transition 16
 - 8.2 Scope of types of development subject to DC deferrals..... 16
 - 8.3 Period of time for which the DC freeze would be in place 18
 - 8.4 Interest rate during deferral and freeze of DCs 19
 - 8.5 Additional dwelling units 19
- 9.0 Administrative Burden 21
- 10.0 Conclusion 21
- Appendix A: Costs in Ontario 22
- Appendix B: Other Concerns with the CBC Cap Methodology 23

1.0 Introduction

The Housing Supply Action Plan and the accompanying legislative and regulatory changes are an opportunity for the province to deliver meaningful changes to housing that Ontario needs. MFOA commends the province for addressing housing and growth-related challenges in Ontario. Housing affordability is a serious underlying challenge in Ontario, as more than 27% of Ontario households paid more than 30% of total income towards shelter costs at the time of the last census. This was higher than the national average of 24%. For renters in Ontario, this figure was much higher, at over 45%.¹ At the same time, Ontario's population is projected to grow by 30% by 2041, which will add even more pressure to the housing market. As the Province states in the Housing Supply Action Plan, "Ontario needs more housing, and we need it now." MFOA agrees that there is no time like the present to address this crisis to ensure the opportunities in our future are not compromised and to ensure that people across Ontario can find the housing that meets their needs in healthy communities.

There are numerous partners who, together, play an essential role in building healthy and vibrant communities in Ontario. Municipalities, most of whom are MFOA members, are equal partners in this equation. When a municipality grows, more housing is constructed, more roads are paved, more parks are built, more schools opened, and a healthy community is formed. To minimize the impact of new development on existing residents and tax payers, and to ensure that new residents enjoy the same services as the existing, growth needs to pay for growth. MFOA is therefore encouraged by the province's stated goal, "that municipal revenues historically collected from development charges for "soft services," parkland dedication including the alternative rate, and density bonusing are maintained", however, planning for growth requires forward thinking. Further, under the previous development charges arrangement, growth was not fully paying for growth, and this fact must be appropriately considered to ensure that the communities we build today are able to thrive in the future.

MFOA thanks the Province for the opportunity to provide comments on the proposed new regulation pertaining to the community benefits authority under the *Planning Act, 1990*, and the proposed changes to O. Reg. 82/98 under the *Development Charges Act, 1997* related to Schedule 3 of Bill 108 - *More Homes, More Choice Act, 2019*. MFOA has prepared the following comments based on our interpretation of the information contained in the two proposals. In the spirit of informed decision-making, MFOA first requests that the full draft regulations be released by the Province for consultation. The proposal summaries, written in general terms, do not provide adequate information to understand the full impact of changes introduced under Bill 108, the *More Homes, More Choice Act, 2019*. As communicated in our presentation to the Standing Committee on Justice Policy and our May 31, 2019 submission on Bill 108, these changes are

¹ <https://www.fin.gov.on.ca/en/economy/demographics/census/cenhi16-11.html>

significant and expose the municipal sector to new risks. Once draft regulations are completed, MFOA requests that these be posted to the ERO for stakeholder comment.

2.0 About MFOA

The Municipal Finance Officers' Association (MFOA) was established in 1989 to represent the interests of municipal finance staff across Ontario. Our membership roll includes individuals from municipalities who are key advisors to councils on financial affairs and who are responsible for handling the financial activities of municipalities. Our membership represents 99.6% of the population of the province.

MFOA has a keen interest in development charges (DCs) and has a history of advocating on this issue on behalf of the municipal sector. Most recently, MFOA presented at the Standing Committee on Justice Policy about Bill 108, *More Homes, More Choice Act, 2019*, and submitted a technical response to the Province's Housing Supply Action Plan, as well as a joint response with the Ontario Regional and Single Tier Treasurers. Each submission highlighted MFOA's long-standing position that growth should pay for growth. MFOA's submissions received strong endorsement from our members and from other municipal associations.

3.0 A Brief History of Development Charges in Ontario

DCs are fees collected on new development and are the primary funding source for infrastructure needed to service growth in municipalities. The first Development Charges Act (DCA) in Ontario came into force in 1989. The DCA set out rules to enable municipalities to collect DCs to fund growth-related capital costs relating to new development. This legislation was broad and allowed municipalities to recover 100% of growth-related capital costs.

Since 1989 the DCA has been amended several times (1997, 2015), resulting in an overall lower level of cost recovery for municipalities². Growth-related costs have shifted from the development that created the costs to existing property tax and ratepayers.

² Watson & Associates' 2010 study, "[Long-term Fiscal Impact Assessment of Growth: 2011-2021](#)," for the Town of Milton. According to the study, after taking into consideration the various DC restrictions introduced in 1997, DCs only paid for approximately 80% of the cost of growth-related capital in Milton.

Changes introduced in 2015 were mixed for municipalities. On one hand, amendments to the DCA and O. Reg. 82/98 allowed for greater recovery of growth-related transit costs and waste diversion costs. On the other hand, the provision of landfill sites and services, as well as the provision of facilities and services for the incineration of waste remained ineligible. Further, municipalities were faced with an unfavourable adjustment to the cash-in-lieu for parkland ratio and an inability to collect voluntary payments.

Despite these changes, DCs continue to be an important funding tool for municipalities. DCs fund growth-related costs for a range of services needed to create complete, vibrant communities.

4.0 DCs, Housing Affordability and the *More Homes, More Choice Act, 2019*

During the consultations on the Bill 108, *More Homes, More Choice Act, 2019*, a wide range of stakeholders (municipal, non-profit associations, consulting firms) voiced concerns regarding the unintended consequences of the changes to DCs for municipal finance and for housing affordability.

From a municipal perspective, moving to the new Community Benefits Charge (CBC) regime poses financial and administrative challenges and risks. As this submission will highlight, many of the proposed changes could have financial risks to municipalities that could prevent the *More Homes, More Choice Act, 2019* from realizing its important goals. In addition, we are concerned about a greater administrative burden.

From a housing perspective, DCs have minimal impact on housing affordability as DCs represent approximately 5-7% of the price of a new single-family home in the GTA and Ottawa.³ A recent study by the Royal Bank and Pembina Institute that examined the factors affecting home prices in the GTA concluded that, with respect to DCs, “the increase in these charges accounts for only a small fraction of the increase in home prices.”⁴ Reducing DCs does not guarantee lower house prices, rather it increases the burden on municipal revenues at the expense of other critical services and capital assets.

On June 6, 2019, the *More Homes, More Choice Act, 2019* received Royal Assent. As noted in MFOA’s presentation to the Standing Committee on Justice Policy, the Act turns the DCA on its head by shifting the recovery of growth-related costs of “soft” services to the *Planning Act* (PA).⁵ This shift moves the recovery of costs away from a known regime with a defined link between costs and anticipated revenues to a new framework that has yet to be fully articulated.

The Act also removes the PA’s provision for height and density bonusing and replaces it with the new CBC, which is intended to recover costs for soft services and parkland. At

³ Ontario, [Development Charges Subgroup: Report to the PMFSDR Infrastructure Table](#) and 2018 Altus Group report (refer to reference 6)

⁴ Cherise Burda, *Priced Out: Understanding the factors affecting home prices in the GTA*, Royal Bank of Canada and the Pembina Institute, November 2013, p. 15.

⁵ Ontario, (2013), [Development Charges in Ontario](#): “The collection of development charges for transit is subject to a 10 per cent discount along with services such as parkland development, libraries, daycares, and recreational facilities. This broad category is generally referred to as “soft services” as opposed to “hard” services, such as roads and water which are not subject to the discount.” Note: The 10% discount for transit was removed in 2015.

the time of Royal Assent, there were many unknowns about the mechanics and impacts of the proposed changes. It is difficult for the municipal sector to respond and plan for these changes, given how little information is known. The following comments and recommendations reflect both the absence of information and the need for information.

5.0 Guiding Principles

The following principles guide our comments:

a) Growth should pay for growth.

Provincial legislation should consistently allow municipalities to recover the full cost of infrastructure related to development. As noted above, amendments to the DCA since 1989 have reduced municipalities' overall ability to recover growth related costs. This means that existing taxpayers must pay the cost of infrastructure for new communities. The mechanisms to permit cost recovery should be efficient, as any accompanying administrative burden can result in slower provision of requisite infrastructure and services, thereby slowing housing development.

b) Complete, vibrant communities are good for everyone.

Complete communities support healthy and active living for residents. They require employment opportunities and a significant array of municipal infrastructure to service residents and businesses. The services needed to support complete communities extend beyond water, wastewater and roads. No community is complete without parks, recreation facilities, rinks and other services that enable residents and businesses to thrive. Revenue is needed to finance growth related costs for a full range of services. If the CBC raises less money than the existing regime it will be more difficult to build complete communities.

c) Provincial red tape costs municipalities time and money.

Reporting and robust processes and procedures are key to ensuring accountability. However, these become a costly burden when they are overly prescriptive and fail to recognize that municipalities are an order of government led by elected officials.

d) Provincial legislation related to municipal governance should be enabling and permissive.

Provincial legislation can be overly prescriptive. Restrictive legislation removes decision making power from local authorities and chips away at local officials' ability to respond to local concerns.

6.0 Themes

Predictability and revenue neutrality have emerged as clear priorities for the Province in the Housing Supply Action Plan and the changes introduced in the *More Homes, More Choice Act, 2019*. MFOA commends the Province for focusing on these priorities, however cautions that relying on land values as a basis for the CBC cap works against these efforts.

7.0 [ERO # 019-0183](#) Proposed new regulation pertaining to the community benefits authority under the *Planning Act, 1990*

MFOA's comments and recommendations

7.1 Transition

The changes introduced in Bill 108 alter how municipalities recover the costs of infrastructure for most 'soft' services, among other changes. As part of the transition to the CBC regime, the government must develop a specialized formula to calculate caps for the CBC payable. This CBC regime is unique; it has no precedent anywhere in the world, as far as we are aware. Further, much is riding on the prescribed caps. Done incorrectly, not only will Ontarians be worse off due to reduced levels of municipal services, but development will likely slow down. This is counter to the government's objective of increasing the supply of housing.⁶ Done correctly, the caps will enable municipalities to recover the costs of growth related 'soft' services, parkland, and density bonusing. Creating the methodology to arrive at these caps is an incredibly challenging task given the diversity of the municipal sector, the range of development that occurs, and the geography of the Province.

The consequences of error are too significant to rush the development of the caps on CBC payable. As such, **MFOA recommends that:**

- **The Province consult on the draft regulation to provide municipalities with the opportunity to test the proposed caps in the context of their local communities; and**
- **The specified transition date be 18 months after the approval of the caps or the expiry date of the current DC by-law, whichever is later.**

While these recommendations introduce timing uncertainty, it removes the pressure to rush the development of the formula. MFOA has also heard from members that a

⁶ As MFOA continues to advocate, reducing the amount of growth-related charges collected from developers does not reduce the cost of emplacing infrastructure. It merely shifts the burden to existing ratepayers.

number of them have already undergone public consultation processes and entered into agreements with developers with respect to parklands and other services. **We recommend that these agreements be recognized.**

7.2 Reporting on community benefits and parkland

The ERO posting outlines the reporting requirements set out for community benefits and parkland. The proposed reporting requirements appear similar to the existing requirements for DCs under the DCA and parkland under s.42 of the PA. MFOA sees no significant issues with the proposed reporting requirements for community benefits and parkland.

7.3 Exemptions from community benefits

The following development types have been proposed to be exempt from charges for community benefits:

- Long-term care homes
- Retirement homes
- Universities and colleges
- Memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion
- Hospices
- Non-profit housing

These development types are not accompanied by any definitions in the proposal. To meet the Province's broader objectives as well as those set forward in the Housing Supply Action Plan, certain developments are understandably proposed to be exempt from a charge for community benefits. However, the lack of definitions and the scope of this list have the potential to expose municipalities to financial risk.

First, MFOA recommends that these development types be scoped and defined in alignment with definitions that exist under current legislation. Second, MFOA recommends caution and consideration of unintended consequences of exempting retirement homes, universities and colleges, and non-profit housing from a charge for community benefits.

Retirement Homes

It is estimated that by 2041, one-quarter of Canada's population will be over the age of 65.⁷ There are currently 49 municipalities in Ontario with seniors' populations of 30% or more, and with this forecasted demographic shifts, these figures will likely increase.⁸ For

⁷ D. Peters, TVO, How Ontario Communities are making themselves more senior friendly January 2019

⁸ Statistics Canada, 2016 Census

many municipalities across Ontario, growth will be driven by this segment of the population, and given this reality, it no longer makes sense to provide the blanket “senior discount” for most services, including those at the municipal level. In the interest of intergenerational equality, age-based subsidies that favour nearly a quarter of the population can have financial and service delivery consequences in the future.

The Province proposes that retirement home developments be exempt from a charge for community benefits. This development type is not defined in the proposal, and the intent is unclear. Without parameters, for-profit retirement homes and condominium developments marketed at seniors stand to benefit from this exemption. At the same time, municipalities will still need to build the community facilities that will service and benefit this segment of the population, however, without the financial resources to provide the appropriate community benefits. Like services, community benefits should be financed the same way as those used by every other age group in the population spectrum.

We understand that this is a complex issue. There are high levels of senior debt as well as many seniors who have not saved adequately for retirement. Growth led by senior populations, however, is still growth; and growth needs to pay for growth. A blanket exemption on retirement homes is a departure from the existing regime and challenges the government’s goal of ensuring revenue neutrality. **MFOA recommends that the Province define “retirement homes” as defined in the *Retirement Homes Act, 2010*, and provide municipalities with a range of options to deal with low income senior populations in their communities.**

Universities and Colleges:

The Province also proposes that developments by universities and colleges be exempt from a charge for community benefits. This development type is not defined in the proposal, and the intent is unclear. For example, are privately funded colleges and/or public-private developments included in this exemption? Further, do new privately-owned student residences fall under the umbrella of “universities and colleges.” **MFOA recommends that the exemption of “universities and colleges” be restricted to developments that are solely owned by academic institutions, as defined in ss. 2(1) of the *Freedom of Information and Protection of Privacy Act, 1990*, and excluding those defined in ss.1(1) of the *Private Career Colleges Act, 2005*.**

Non-Profit Housing:

The Province also proposes that non-profit housing developments be exempt from a charge for community benefits. This development type is not defined in the proposal, and the intent is unclear. The Province must also give further consideration of the risk of

potential cases whereby properties are sold by the non-profit housing corporation to for profit corporations.

To better ensure that growth pays for growth, MFOA recommends that the Province define all development types exempt from CBCs prior to the ERO posting dealing with the prescribed CBC caps. Municipalities will not be able to assess the financial impacts of the proposed changes without this information.

7.4 Community benefits formula

A consistent message throughout these comments is that MFOA believes that growth must pay for itself for municipalities to provide the infrastructure necessary to support vibrant communities. The proposed caps on the CBC payables is one of the key determinants of the future recovery potential for growth-related charges.

To partially mitigate the unintended consequences of the move to the CBC regime, the prescribed caps will need to:

1. Permit the capture of 100% of growth-related costs
2. Be indexed to reflect changing cost structures
3. Be predictable
4. Be able to reflect local circumstances

The prescribed cap will be problematic if it is too low to cover all growth-related costs or if, over the period that the cap is in place, fluctuations in the variables prevent the collection of related costs.

The cap must also be anchored in the costs to service growth. This connection exists in the current DC regime but is unclear in the proposal. As MFOA stated in its 2019 submission to the Legislative Assembly of Ontario's Standing Committee on Justice Policy:

The existing DC regime is one that meticulously identifies the costs that are driven by growth (people, employees) and recovers them (albeit with discounts) over the relevant growth period from the various types of property. There is a link between costs and the anticipated revenues. Furthermore, the DC is updated every 5 years so the link between costs and revenues is reasonably current.

Without knowing what is in the regulation, there is a concern that this link between growth costs and the CBC will be lost and that the CBC will not be able to change over time as project costs vary. Land value, which sets a cap

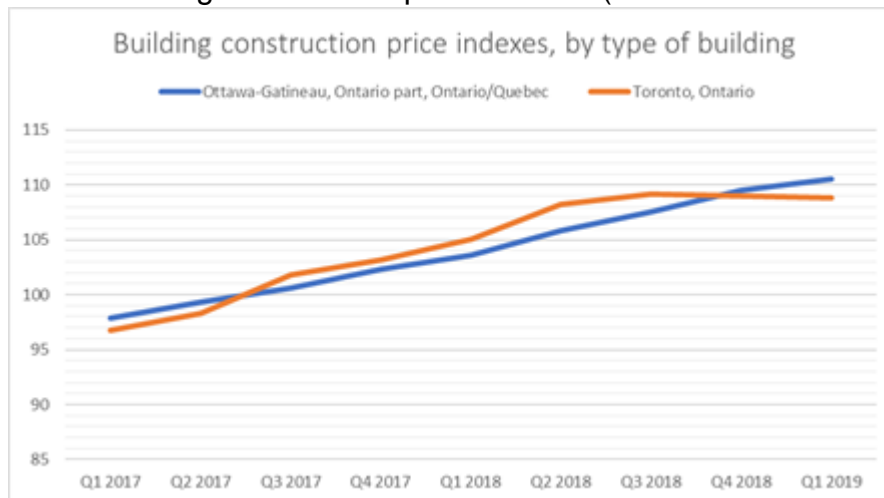
for the CBC, is not related to the cost of providing services. In addition, while revenue is capped, there is no cap to growth-related costs for 'soft' services.⁹

Anchoring the cap in costs also recognizes the unique circumstances of each municipality. For example, geography can have a significant impact on the cost of construction. According to the Altus Group's [Canadian Cost Guide 2018](#) (p. 13), construction costs in both Northern Ontario and downtown Toronto are 15% higher than in the GTA (See Appendix A).

The cap must also reflect changing cost structures, demographic patterns, economic conditions, and other factors outside of municipal control. The US tariffs "have caused prices of steel and aluminum-based products to soar to unusual heights. Comparing construction estimates created last year to those this year, we have seen prices rise beyond the traditional/historical trend of three to four percent per annum to a blended escalation rate of five to eight percent per annum in 2018."¹⁰ Increasing construction price index can be seen in the table below.

Municipalities capped at a fixed inflexible amount, which does not accommodate fluctuations in costs, would be unable to recover costs reflective of changing circumstances.

Table: Building construction price indexes (Q1 2017 – Q1 2019)



Statistics Canada. Table 18-10-0135-01 Building construction price indexes, by type of building

Keeping the connection between the cost of replacing growth-related infrastructure and the cost-recovery mechanism also provides predictability to municipalities and their stakeholders. Predictability for municipalities is crucial. A municipality will not be able to

⁹ MFOA, (2019), "[BILL 108: MORE HOMES, MORE CHOICE ACT, 2019: Submission to the Standing Committee on Justice Policy](#)"

¹⁰ Turner & Townsend, (April 1, 2019), "[How is Canadian construction being influenced by tariffs?](#)"

commit to growth-related works that are within the cap today only to find the cap has gone down and the portion of the works covered by the CBC is much lower tomorrow.

This problem is exacerbated by the nature of the housing market in certain parts of the province. Land values are volatile, and market fluctuations are inherently unpredictable. Land values can change based on market conditions, land speculation, interest rates, economic factors, and even natural disasters. As the Building Industry and Land Development Association outlined in its study of Parkland Dedication and Cash-in-Lieu Policies in the GTA, rising land values and discrepancies of values between and within municipalities result in inconsistent application of policies. According to that same study, land values for high-density residential development have increased upwards of 300% since 2006¹¹.

Likewise, an established percentage cap on a charge for community benefits that is based on land values could result in a situation whereby a sudden drop in land values leaves the municipality without the ability to collect adequate funds to provide the growth-related community benefits.

In some areas, land values can fluctuate throughout the year, between municipalities and even within municipalities. In addition, prescribing a consistent cap can be challenging because:

1. Less desirable neighbourhoods have lower land value but could have greater need for 'soft' services;
2. Less populous municipalities can have higher growth-related costs due to the availability of fewer suppliers and fewer economies of scale; and
3. It can be very costly to provide services for new residents in built up communities.¹²

Housing markets and house values can be volatile. As such, a fixed cap will need to be reassessed frequently enough to ensure that the CBC remains an effective tool for providing the services that support the creation of vibrant and complete communities.

Other concerns

In addition, MFOA is concerned with:

- How the cap will work in a two-tier municipality?

¹¹ [Study of Parkland Dedication and Cash-in-Lieu Policies in the GTA](#), prepared for the Building Industry and Land Development Association by Altus Group Economic Consulting. February 22, 2019.

¹² MFOA, (2019), "[BILL 108: MORE HOMES, MORE CHOICE ACT, 2019: Submission to the Standing Committee on Justice Policy](#)"

- What will happen to debt related to ‘soft services’? Many municipalities have issued debt to build soft services. The CBC must be sufficient to capture the costs of growth-related debt for services that have been built but still have outstanding debt servicing costs.
- How will these changes affect municipalities’ long-term plans, especially with respect to the ability to set funds aside to invest in large infrastructure projects (capital and strategic)?
- The Province’s methodology for calculating the prescribed caps (Appendix B)

As discussed, getting the community benefit formula right is critical to the future success of vibrant Ontario communities. Revenues may be capped at a prescribed percentage of land value, but the cost of emplacing infrastructure is not capped. While MFOA appreciates the Province’s current avenues for feedback, the Association highly cautions against rushing the development of the caps.

7.5 Appraisals for community benefits

MFOA has concerns regarding the administrative burden, slow pace, as well as the cost of land appraisals.

Appraisal disputes have the potential to significantly delay projects. Any delay caused by appraisal disputes is inconsistent with the province’s objective of addressing “speed”. The province stated in its Housing Supply Action Plan consultation documents, that “duplication, lack of coordination and delays add burden to the development process and increase costs for builders and homebuyers”. The proposed content for appraisal disputes adds administrative burden to the development process, which could have the effect of slowing down development. Further, on the province’s goal of predictability, any delay in the appraisals process will cause uncertainty for both the developer and the municipality.

There is also a concern about the availability of qualified appraisers, especially in smaller municipalities. Not every community has access to local qualified appraisers. This new process will increase competition for scarce qualified professionals, further delaying the collections process.

MFOA is also concerned about the additional costs of appraisals. The proposed regulation does not provide clarity for which party is responsible for the cost of an appraisal. According to a 2013 City of Toronto report to council on cash-in-lieu policies (collected under s 42 of the Planning Act), it was estimated that the City had lost over \$112,000 of unrecovered appraisal fees. **MFOA recommends that the Province provide clarifying language regarding cost and which party is responsible for appraisal costs, and provide municipalities with a full cost recovery mechanism.**

7.6 Excluded services for community benefits

Under the proposed regulation, certain services will be excluded from the CBC. MFOA agrees that services eligible for DCs should not be included in the CBC. The posting, however, also includes a list of proposed excluded facilities and services, including:

- Cultural or entertainment facilities
- Tourism facilities
- Hospitals
- Landfill sites and services
- Facilities for the thermal treatment of waste
- Headquarters for the general administration of municipalities and local boards

The proposed list of excluded services aligns with the list excluded under the DCA. MFOA has long held the position that there should be no ineligible services. These excluded facilities provide services that help municipalities create vibrant communities. Without a cost-recovery mechanism under the DCA or the PA, municipalities will be challenged to build these important facilities without further impinging on existing residents.

MFOA's view is that a service is a service. **MFOA recommends that there should be no restrictions on eligible services.**

7.7 Community planning permit system

The community planning permit system (CPPS), also referred to as the development permit system, was introduced as a new planning tool for municipalities in 2007 under the PA. The CPPS is a land use approval framework that provides an alternative tool for municipalities to address local planning issues and streamline development.¹³ While typical development projects may require a number of permits including zoning, minor variance, site plans, site alterations, etc., the CPPS combines the various required permits into a single permit. Timelines for CPPS applications are 45 days compared to 120 days for rezoning, 30 days for site plan approval, and 30 days for minor variances.¹⁴ The goal is to streamline development while also achieving municipal planning objective as outlined in Official Plans and provincial planning objectives (Provincial Policy Statement, Growth Plan for the Greater Golden Horseshoe).

¹³ <http://www.mah.gov.on.ca/AssetFactory.aspx?did=6131>

¹⁴ Ibid.

CPPS can be beneficial for municipalities that have any number of planning goals such as:

- Architectural and historical preservation
- Green infrastructure promotion
- Compact redevelopment and intensification
- Brownfield redevelopment
- Transit and pedestrian-oriented development¹⁵

The CPPS is also beneficial for some municipalities, because the CPPS uses a different definition of “development” than s.41 of the *Planning Act*.¹⁶ Development under the CPPS is given a broader definition, which enables municipalities to expand the types of activities that would require a development permit before any of the development begins. The broader definition allows municipalities to regulate site alteration and removal of vegetation.¹⁷

In its current state, only a few municipalities have implemented a CPPS bylaw (including City of Brampton, Town of Innisfil, Town of Gananoque, and Town of Carleton Place).¹⁸ In some cases, municipalities have implemented a CPPS bylaw to encompass the entire municipality. However, many other municipalities have either initiated the process to implement a CPPS bylaw or have had the bylaw overruled in the Local Planning Appeal Tribunal (LPAT). Based on discussions with members, it is MFOA’s understanding that municipalities have been slow to move forward with the process because of the heavy front-end work required.

Implementing a CPPS bylaw requires building the foundation of a CPPS through amendments to a municipality’s Official Plan, drafting a CPPS bylaw with Council approval, going through Local Planning Appeal Tribunal (LPAT) appeals if necessary, and developing applications that will outline CPPS requirements for developers. Each step also requires extensive upfront consultation with the community and relevant stakeholders. Having adequate staff and administrative capacity is crucial to executing a CPPS bylaw.

The proposed regulation notes that as the community planning permit system also allows conditions requiring the provision of specified community facilities or services, it

¹⁵ <http://www.mah.gov.on.ca/AssetFactory.aspx?did=6131>

¹⁶ S.41 of the PA defines development as: the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof, or the laying out and establishment of a commercial parking lot or of sites for the location of three or more trailers as defined in subsection 164 (4) of the Municipal Act, 2001 or subsection 3 (1) of the City of Toronto Act, 2006, as the case may be, or of sites for the location of three or more mobile homes as defined in subsection 46 (1) of this Act or of sites for the construction, erection or location of three or more land lease community homes as defined in subsection 46 (1) of this Act.

¹⁷ <http://www.mah.gov.on.ca/AssetFactory.aspx?did=6131>

¹⁸ [Carleton Place CPPS Bylaw](#), [Gananoque CPPS Bylaw](#), [Innisfil CPPS Bylaw](#), [Brampton CPPS Bylaw](#).

is proposed that a CBC by-law would not be available for use in areas within a municipality where a community planning permit system is in effect.¹⁹

However, it is important to clarify that under O. Reg. 173/16: Community Planning Permits, a CPPS bylaw may require specific community facilities or services in exchange for specified density or height of development.²⁰ In other words, the stipulation echoes s.37 of the PA which will be amended and replaced with the CBC. The CPPS is not inherently a tool to recover growth-related costs, rather it is a tool for municipalities to guide specific development to an area. Municipalities are not required to include exemptions to height and density in their CPPS bylaw, and as a result, are unable to collect funds for specific community facilities or services. Similarly, in the example of the Town of Carleton Place which has a development permit system, they continue to collect DCs for development within a development permit system area.

Given the proposed exemption of CPPS-designated areas from the CBC bylaw, clarification is required to understand:

How will municipalities that use a CPPS bylaw and collect DCs continue to cover soft services?

Some municipalities that currently implement a CPPS bylaw cannot collect funds for community facilities and services. Previously, municipalities were able to collect DCs in CPPS-designated areas, which includes soft services that were taken out of eligible services under the *More Homes, More Choice Act, 2019*.

For municipalities that do not wish to provide height and density bonusing under their CPPS bylaw, how will they collect funds for soft services when exempt from collecting CBC? **MFOA recommends that there should be no exemptions to zoning areas that can collect CBCs.**

7.8 Local Services

Under Section 59 of the DCA, municipalities are provided with the authority to establish local services policies. These policies set out the costs that are the direct responsibility of the owner and that will not be funded by DCs. This same concept is needed for the CBC, not only to ensure alignment between the regimes, but also to avoid potential conflict between developers and municipalities regarding cost distributions. Currently local services policies differ across the Province to reflect local circumstances. The CBC regime should continue to provide municipalities with this flexibility and provide developers with the transparency needed to easily answer the question: what level of completion is a developer to leave a subdivision park before the municipality finishes it?

¹⁹ <https://ero.ontario.ca/notice/019-0183>

²⁰ <https://www.ontario.ca/laws/regulation/160173> - s.4(6).

8.0 ERO #019-0184 Proposed changes to O. Reg. 82/98 under the DCA related to Schedule 3 of Bill 108 - *More Homes, More Choice Act, 2019*

The following section comments on proposed changes to O. Reg. 82/98 under the DCA.

8.1 Transition

Transition dates for proposed amendments to the DCA should mirror dates for amendments to the PA as a result of the *More Homes, More Choice Act, 2019*. **MFOA recommends that there are no gaps when a municipality is unable to collect revenues for 'soft' services, parkland dedication, and density bonusing.**

8.2 Scope of types of development subject to DC deferrals

The development types subject to DC deferrals are defined in the proposed changes to the DCA. **MFOA recommends that:**

- 1) **institutional developments, industrial developments, and commercial developments be removed, and**
- 2) **the Province considers the risk municipalities will be exposed to in the interim between when a building permit is issued and when the final DC installment payment is due.**

MFOA strongly believes that a risk reduction strategy should be developed and that mechanisms be made available in cases whereby properties change ownership before the final DC payment is due.

Municipalities have traditionally had the flexibility to make arrangements and enter into agreements on DC payment schedules for specific types of development. These arrangements reflected the unique needs of the municipality and its economic development priorities and strategies.

The proposed list of development types that will be subject to the DC deferral deviates significantly from this practice. There is a case to be made for non-profit housing, legions, long term care homes, and *some* rental housing developments, however, providing this flexibility to the remainder of the proposed development types does not make sense from an economic development, housing, nor municipal finance perspective.

First, MFOA is not aware of any research suggesting that industrial development promotes housing development. Permitting deferred DC payments for industrial developments may also be problematic since municipalities will still need to build the requisite infrastructure to support the development, but without the necessary cashflow.

This may require municipalities to incur debt in order to provide the hard services required at the onset of site development. This could mean that the tax base is ultimately subsidizing the industrial development. Such an arrangement is not fair to existing ratepayers and taxpayers.

Second, the broad definitions of office buildings and shopping centres as defined under commercial property under the *Assessment Act, 1990* opens up this arrangement to the following:

Office Building (as defined in ss.11(3) of O. Reg. 282/98 under the *Assessment Act*):

- a) A building used primarily for offices
- b) The part of a building that, but for this section, would otherwise be classified in the commercial property class if that part of the building is used primarily for offices

Shopping Centre (as defined in paragraph 1 of ss.12(3) of O. Reg. 282/98 under the *Assessment Act*)

- 1) i) A structure with at least 3 units that are used primarily to provide goods or services directly to the public and that have different occupants
 - ii) A structure used primarily to provide goods or services directly to the public if the structure is attached to a structure described in i) on another parcel of land
- 2) "Shopping centre" does not include any part of an office building within the meaning of subsection 11(3).

MFOA believes that municipalities are best positioned to determine if a DC deferral on office buildings and shopping centres, as described, aligns with economic development priorities and local planning circumstances. As with industrial developments, the need for municipalities to provide the requisite infrastructure to service these developments will still exist. Without available cash flow, an undue burden will be placed on the municipal resources, and ultimately the local taxpayers will be subsidizing these developments.

Third, the definition provided for rental housing under the proposed regulation is vague and the intent is unclear. MFOA has concerns about the potential broad application of this definition. For example, could a 10 story, 100-unit condominium development, with a floor of dedicated rentals be included in this development definition? If so, would the entire development be subject to deferred DC payments? Further, is there a reasonable rationale to include luxury purpose-built rentals? Are short term rentals (such as Airbnb) excluded from "rental housing"?

MFOA shares the province's perspective that rental housing development needs to be encouraged. However, growth in rental development is still growth; and growth needs to

pay for growth. This broad definition of rental housing for DC payment deferral will potentially expose municipalities and taxpayers to unnecessary risk. **MFOA recommends that the Province further scope this definition, and limit DC deferrals to certain types of rental development.**

The Province has not in this proposal, nor in the changes under Bill 108, provided safeguards to ensure municipalities receive the entirety of the deferred DC payment. Without such a tool or instrument, municipalities will face obstacles collecting any outstanding DC instalments after any potential sale or property change. One solution might be an instrument registered on title. However, this too has limitations as this would shift the responsibility of the payments to a future owner, and not the developer. In the spirit of the Housing Supply Action Plan, **MFOA recommends that a mechanism to ensure rentals are not converted into market housing at occupancy needs to be in place.**

8.3 Period of time for which the DC freeze would be in place

As stated in MFOA's submission to the Standing Committee on Justice Policy, "DC rates change to reflect changes in municipal needs and cost structures. (...) Freezing DC rates too early in the process creates a structural disconnect between costs incurred and revenues received."

MFOA believes that municipalities best understand their circumstances. Accordingly, **MFOA recommends providing municipalities the authority to set their own criteria to freeze rates.**

Should municipalities not be granted this authority, MFOA believes that a distinction be made between development subject to the new instalment payment plans and other development. This distinction is needed to recognize the additional collection risk being borne by municipalities by the new payment plans. For some types of development, municipalities will need to wait up to eight years (over twenty years for non-profit housing development) for full payment of DCs owing. A lot can happen in this time. As such, **MFOA recommends removing the DC freeze on these developments to lessen the impact of cumulative changes. MFOA also recommends providing the authority to municipalities to have priority lien status so they have priority over prior mortgages and other encumbrances.**

MFOA members have also expressed concerns with the definition of 'approved' with respect to site plans and zoning applications. Municipalities do not want a deficient application to be sufficient to freeze the rate. Should this be the case, it would be easy for developers to game the process, which would not hasten the supply of new homes. Only complete applications or applications where the major condition has already been met according to local practices should be acceptable.

8.4 Interest rate during deferral and freeze of DCs

MFOA supports the Minister’s decision to not prescribe a maximum interest rate that may be charged on DC amounts that are deferred or on DCs that are frozen.

MFOA encourages an enabling and permissive governance framework. The Association understands the diversity of the municipal sector in Ontario and recognizes that “one size fits all” is almost never true. The Minister’s approach is in line with these principles.

8.5 Additional dwelling units

The *More Homes, More Choice Act, 2019* further reduces the number of units eligible for the DCs needed to recover the cost of growth-related infrastructure. As stated in MFOA’s submission to the Standing Committee on Justice Policy, “growth-related costs are driven by increases in population and increases in employment. Reducing DCs does not decrease the cost of growth-related infrastructure. If this type of intensification becomes significant (i.e. additional units), it will mean that there will be a shortfall in DC revenues in comparison with the amounts needed to recover growth related capital costs.”

The posting includes exemptions for additional units in three types of residential buildings: ancillary structures, new residences, and other existing buildings.

Ancillary Structures

In general, MFOA supports expressly limiting the number and size of units exempt from DCs. This includes additional dwelling units permitted in ancillary structures. The ERO posting states that “units could also be created in ancillary structures”, as well as that this will be “subject to the same rules/restrictions”. MFOA would like clarification to ensure that the whole residence (primary residence plus ancillary structure) is subject to the existing express limit in O. Reg. 82/98. For example, this would mean that a maximum of two additional units would be exempt from DCs for a single detached dwelling.

Should this not be the case, MFOA is concerned that without express limits on the number of units, parties could game the system. Creative interpretations of the regulation could include supersized ‘ancillary structures’, among other interpretations.

In addition, ancillary structures may take different forms in different municipalities. Accordingly, **MFOA recommends providing municipalities with the flexibility to define the term to fit within their local context.** For example, lot size, demographic trends (e.g. aging population), availability of materials, and main industry could influence the types of structure. For example, the needs in cottage country would be

different than the needs of a college town and could result in alternative forms of structures. A one-size fits all definition may not be appropriate.

New residences

MFOA does not support extending the DC exemption to new residences but is pleased that the Province has proposed express limits on the number of units.

Clarification is needed to ensure the limit applies to the whole residence as previously discussed.

Other existing residential buildings

Clarification is required with respect to the definition of ‘other existing residential buildings’. Based on the proposed amendments, MFOA is assuming it is referring to multi-residential buildings. Using MPAC’s definition, this would include residential apartment buildings, mixed residential-commercial buildings, and non-equity co-operatives.²¹ While we understand the wish to incentivize new rental units, not all rental units are affordable. In the second quarter of 2019, nine of the ten most expensive municipalities to live in based on average rent were in Ontario.²² **Should the Province continue with the proposed amendments, rather than subsidize landlords of costly rentals, MFOA recommends limiting the definition to affordable housing units.**

In addition, some housing developments contain groups of buildings. Does the 1% apply to the group of buildings or only to stand-alone buildings?

Clarification is also required to understand whether a condominium building is intended to be included as an ‘other residential building.’ What happens when an apartment is converted to a condo, and what is meant by 1% of units? The inclusion of condos is very concerning. At 1% of units, if CityPlace in Toronto was considered one development, this would allow for an additional 75 DC-exempt units, which would translate into over \$2M in lost revenue for the City of Toronto.^{23,24} Yet, the average price

²¹ MPAC, (2016), “[ASSESSING MULTI-RESIDENTIAL PROPERTIES IN ONTARIO](#)”. According to pp. 4-5, “The following MPAC property codes are used to categorize the various types of multi-residential properties with seven or more self-contained units in Ontario: 340 – Multi-residential with seven or more self-contained units (excludes row housing), Multi-residential with seven or more self-contained residential units and with small commercial unit(s), 352 – Row housing with seven or more self-contained units under single ownership, Bachelorette (converted single-family dwelling with seven or more self-contained units), 374 – Non-equity co-operative (with seven or more self-contained units)”.

²² <https://rentals.ca/national-rent-report#municipal-rental-rates>. Using median rent to eliminate outliers, seven of the top ten rentals were in Ontario per rentals.ca.

²³ Wikipedia, [CityPlace, Toronto](#)

²⁴ This assumes 75 units at the one-bedroom DC rate of \$21,049 per the [City of Toronto’s posted rates in 2018](#)

of a condo in Toronto was \$579,000 in the first quarter of 2019.²⁵ With the rising price of condos, it seems unnecessary to subsidize developers of unaffordable units. Especially when the new units are created through the loss of existing residents' amenities.

9.0 Administrative Burden

The *More Homes, More Choice Act, 2019* layers new administrative processes on to municipalities. Changes that will increase the administrative burden on municipalities include:

- The multi-instalment payment plans, which will require significant additional administration and coordination efforts within single tiers and between tiers in two-tier regions, especially the enforcement of payments over multiple years with possibly more than one owner
- Freezing the DC at site plan or at zone change
- The new appraisal process, which will add costs to municipalities and will add to the time required for developments to be approved.

The municipal sector needs streamlined administrative processes. Adapting to new regimes requires time and money. It also introduces collection risks to municipalities. **MFOA recommends that costs to administer the DC and CBC regimes be eligible for recovery via DCs and CBCs.**

10.0 Conclusion

While reviewing all of the proposed changes to the DC regime and the introduction of the CBC regime, it is important to remember that when you add people, you add cost and the proposed changes transfer these costs to the property tax and utility base. Property taxes and utility fees, however, must also be affordable for residents and businesses. Given that the property tax is the primary tax available to municipalities, addressing the housing affordability issue at the local level comes at the expense of the tax affordability problem.

²⁵ Wong, Natalie, National Post, (2019, June 28), "[Toronto condo prices see weakest growth in 5 years as tight lending rules bite](#)".

Appendix A: Costs in Ontario

Costs in Ontario (Indexed to GTA)

1. Southwestern Ontario: Windsor 110 London 98 Tri-City (Cambridge, Kitchener, Waterloo) 99
2. Hamilton and Surrounding Areas 104
3. Niagara Peninsula 104
4. Barrie 105
5. Toronto: Downtown Core 115 GTA 100
6. Eastern (Kingston, Cornwall) 110 8. North (Sudbury, Thunder Bay, TransCanada Corridor) 115

Source: Altus Group

Appendix B: Other Concerns with the CBC Cap Methodology

In addition to the concerns outlined in the comments, MFOA members have flagged several additional areas with respect to the development of the CBC caps. How will the caps capture:

- The differences in service levels across the Province
- That municipalities are dynamic and are in different stages of development
- Development can take place in phases over long time horizons
- Backward looking information, like historical costs, reflect past decisions and environments
- Parkland agreements with developers can differ between municipalities and even between projects (land dedication, in-kind services, improvements)
- Lack of existing information on in-kind contributions
- Redevelopment on same property (detached houses to rows to high rise)
- Where growth has not materialized as anticipated and DCs have fallen short of expectations
- Additional exemptions and payment deferrals imposed by the *More Homes, More Choice Act, 2019*, which increase the room needed via the CBC to ensure revenue neutrality