

August 21, 2019

**Comments from the Regional Public Works Commissioners of Ontario
re: 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. ERO number 019-0184**

Thank you for the opportunity to comment on proposed changes to O. Reg. 82/98 under the Development Charges Act, to support Schedule 3 of the *More Homes, More Choice Act*, passed on June 6th.

The following comments from the Regional Public Works Commissioners of Ontario address the anticipated cumulative impact of development charges deferral and the development charge freeze period.

While RPWCO is supportive of efforts to promote the construction of affordable housing, there is concern that the proposed measures will have unintended consequences of transferring greater financial risk associated with development and growth to municipalities and creating a structural imbalance between the timing and cost of financing and building capital works required to support new development on the one hand, and the amount of D.C. revenues and timing of collection of these revenues on the other.

Matching the timing and cost of capital works and the timing of collection and amount collected through DCs is a difficult exercise. Capital works, by their very nature, take time to finance, plan, approve and implement. The timing and location of development is dictated by the market, which is ever changing. Many municipalities have already experienced changes in developers' intentions due to market changes that result in building infrastructure in the wrong place or with the wrong capacity at the wrong time. On both sides, for the municipality and the developer, these are multi-million dollar decisions. Getting it as right as possible will reap benefits for both taxpayers and housing affordability.

That is why open communication between municipalities and developers is essential. The Region of Peel has launched an initiative to improve ongoing communication with its development sector so as to better understand the timing and location motivations and market pressures that developers face. This allows the Region to better anticipate where development is going, even in advance of development permit applications being submitted.

It is this type of 'open dialogue' approach that needs to be incentivized and rewarded.

Unfortunately, in the past, provincial requirements have had the opposite effect. For instance, analysis prepared by RPWCO, RPCO and ORSTT regarding lessons learned from the first ten years of the GGH Growth Plan, found that provincially prescribed growth targets that did not reflect real growth on the ground, but had to be conformed to

by municipalities, and integrated into DC charges, created a structural imbalance in the financing of municipal capital works supporting growth.

RPWCO is concerned that the changes proposed to O.Reg. 82/98 will result in greater risk associated with new development and growth to be borne by municipalities and a structural imbalance in the cost of infrastructure and revenues collected. For instance, DC freezing provisions provide a strong incentive for developers to get to the rezoning / site plan application stage to lock in DC rates. Once DC rates are frozen, there is less incentive to proceed to development, which would delay the timing of construction.

Together, these provisions tie the hands of municipalities with respect to the quantum and collection timing of DC revenues to finance growth related infrastructure. This could have a negative impact on municipal finances, on property taxes, and ultimately on the availability and timing of capital works to support growth.

To avoid this transfer of risk and structural imbalance, and to promote greater sharing of information and open dialogue between municipalities and the development sector, RPWCO offers the following comments and recommendations for the Province's consideration.

1. *Creating Greater Certainty in the face of new risk*

A risk that significantly impacts the cost effectiveness of infrastructure planning and service delivery is changes in development types, location and timing from planned assumptions, or outright cancellation of developments. This risk will be exacerbated by the proposed freezing and deferral provisions, as described below. Strengthening certainty of and commitment to planned development would result in more efficient planning and delivery resulting in cost savings.

RPWCO recommends that municipalities be left to collect DCs at the appropriate point in time, (at issuance of building permit time or subdivision agreement) to enforce payment, ensure cost recovery, and provide funds in a timely manner to advance the construction of muni infrastructure.

RPWCO further recommends that municipalities be permitted to impose current DC rates at the time of payment and not be required to freeze development charge rates or at an earlier date (site plan/ zoning amendment application), or defer payment to a later date, as this will result in a loss of revenue and potential delays in construction of infrastructure needed to support future development.

If these recommendations are not adopted, to balance the proposed DC changes (when DCs are paid, freezing and deferral provisions), **RPWCO recommends** a provincial requirement for developers to provide firmer commitments on timing and the nature and size of a proposed development. This would give municipalities much needed predictability on when, where and at what capacity their roads, water and wastewater

infrastructure must be built to support the new development. This would help avoid stranded assets and capacity.

It is not only a question of financial risk. There is also operational risk involved. For example, if the pace of development lags, early stage wastewater servicing issues could result in low sewage flows directed to treatment plants, creating significant operational difficulties and associated costs.

Similar impacts occur for drinking water, where low water consumption creates water quality issues in local water distribution systems.

2. Safeguards to ensure collection following deferral

With the deferral of DC payment for some developments, the lag between a municipality paying for capital works to support growth, and the timing of DC collection will be lengthened. According to MFOA, for some types of development, municipalities will be waiting up to 8 years (over 20 years for non profit housing development) for full payment of DCs owing. This will require a longer period, and increased cost, of upfront debt financing, with the increased interest passed on through DCs. Depending on the financial impact on cash flow associated with the timing of collection and total amount of DC revenues, it could also result in deferred capital projects.

Bill 108 and related regulatory changes will result in significant changes related to the collection of development charges. Most municipalities currently collect 100% of development charges at one point in time, generally at building permit issuance. This ensures payment as the applicant must pay the fees in order to receive the building permit.

There is currently no mechanism proposed by the Province to ensure future payment of DCs once the building permit is issued other than having the payments added to the property and collected as taxes (in the case of two tiered municipalities, it would be the lower tier municipality collecting on behalf of the upper tier, resulting in further delay).

RPWCO recommends that the Province provide safeguards to ensure municipalities receive the entirety of the deferred DC payment. This will be a particularly high risk in cases where properties change ownership before the final DC payment is due. A specific mechanism is needed to avoid the risk of non-payment of DCs following deferral.

Such a mechanism could be registering the DCs owed on title. A preferred approach would be a requirement that DC payments be made in full prior to sale as a condition of sale.

3. Recovery of costs associated with increased administration associated with freezing and deferred DCs

The proposed changes to delay collection of DCs will result in an increase in administration and procedural costs.

Collection of DCs for individual development projects later than the building permit issuance will result in more administrative burden for municipalities, including tracking anniversary dates for every development project and issuing pre notices and possible enforcement activity in cases where DCs are not paid on time.

RPWCO recommends that additional costs to administer the DC regime be eligible for recovery through DCs.

4. Freezing and more frequent renewal of DC by-law:

Currently, DCs payable are calculated at time of residential subdivision agreement execution, or at building permit for other forms of development. The proposal is to set the date for the amount of DCs payable on the date of application for an approval of a development in a site plan control area or the date of an application for an amendment to a by-law passed under sec 34 of the Planning Act. The DC amount would be frozen until two years from the date the site plan application or zoning application is approved, and that municipalities may charge interest during the DC freeze from the date of application received to the date of DC is payable.

For those municipalities that annually index to adjust DCs to inflationary increases (3.2 % over past five years), the indexing will not apply to the portion of DCs that are frozen which will result in a DC shortfall. If permitted, the interest rate imposed by the municipalities may make up for this shortfall.

A more substantial risk to DC revenue is related to the renewal of a DC by-law. The renewal of DC by-law often results in significant increases in the water, sewer and roads DC quantum. This is generally due to higher construction costs. This provides the necessary funding to advance the infrastructure needed to accommodate future development. Allowing the freezing of DCs to avoid the DC increases related to a by-law renewal will result in a DC shortfall. This again could result an increase in debt financing which results in higher DCs.

RPWCO recommends that it be made explicit that more frequent renewals of DC by-laws are permitted to reflect revenue shortfall resulting from the freezing of DCs may be required.

Thank you in advance for considering RPWCO's recommendations. I would be happy to discuss these further with the appropriate provincial staff. I can be reached at mwinterton@citywindsor.ca

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mark Winterton', with a stylized flourish at the end.

Mark Winterton

Chair, Regional Public Works Commissioners of Ontario