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**ERO # 019-1406** Proposed regulatory matters pertaining to community benefits authority under the Planning Act, the Development Charges Act, and the Building Code Act

**Submission to the Ministry of Municipal Affairs and Housing**  
March 30, 2020

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## 1. Executive summary

MFOA agrees with the Housing Supply Action Plan's declaration that "Ontario needs more housing, and we need it now."<sup>1</sup> Housing affordability is a serious underlying challenge in the Province and our members commend the government for trying to address one of the most pressing as well as complicated issues facing Ontarians today.

Despite this urgency, the Association's message since the introduction of the *More Homes, More Choice Act, 2019* (MHMCA) has been one of caution. The potential for unintended consequences, such as creating have and have-not communities and slowing down development, are too high to rush through changes to the legislative and regulatory system. It does appear that the Province has been listening.

Even with the proposed amendments in the latest ERO posting, however, there is still work to do to mitigate the potential negative consequences of the changes introduced by the MHMCA. Much of this work is the result of the diversity of the municipal sector. Issues are also created by the limitations of the existing cost recovery regimes for growth-related capital costs. The Province currently has an opportunity to make meaningful changes, but municipalities need time to test the proposed community benefits charge caps to ensure they are workable, fair, and allow for the recovery of growth-related infrastructure costs. Municipalities also need support to understand proposed changes to legislation and to adapt existing systems strategically.

## 2. Summary of recommendations

The following summarizes MFOA's recommendations for the DCA, *Planning Act* (PA), and supporting regulations. These recommendations are guided by three main principles, that: (1) growth should pay for growth on a place-by-place basis; (2) complete, vibrant communities are good for everyone, and (3) provincial legislation related to municipal governance should be enabling and permissive.

### Recommendations for legislation:

- Repeal MHMCA amendments to ss 2(4) of the DCA, which have yet to come into force, such that all services are eligible for inclusion in the development charge calculation so long as they are not expressly excluded by regulation.
- If MHMCA amendments to ss 2(4) of the DCA, which have yet to come into force, are not repealed, MFOA supports identifying the following services in regulation under ss 2(4) of the DCA: public libraries, including library materials for circulation, reference or information purposes; long-term care; parks development, such as playgrounds, splash pads, equipment and other park amenities (but not the

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<sup>1</sup> Province of Ontario (2019). [More Homes, More Choice: Ontario's Housing Supply Action Plan](#)

acquisition of land for parks); public health; and recreation, such as community recreation centres and arenas.

- MFOA believes that there should be no discounted services. MFOA supports the elimination of the 10% discount on all services in the DCA.
- Should MHMCA amendments to ss 2(4) of the DCA, which have yet to come into force, not be repealed, MFOA recommends expanding the list of eligible services to include: child care services, social/subsidized housing, airports, and municipal masterplans.
- MFOA recommends allowing development charges and the community benefits authority to be used together, such that unrecoverable DC growth-related costs (e.g. service level) can be recovered under the community benefits authority.
- Add a subsection under PA s 37 to provide for regular updating of the prescribed maximum amount of community benefits charge: “The Ministry of Municipal Affairs and Housing shall initiate a review of the prescribed maximum amount of community benefits charge before the end of 2024 and thereafter within five years of the end of the previous review.”
- Provide the Minister of Municipal Affairs and Housing with the authority to allow municipalities to exceed the prescribed maximum amount of community benefits charge in select circumstances.
- Add a subsection under PA s 37 to include conveyance such that: “As a condition of development or redevelopment of land, the council of a local municipality may, by by-law applicable to the whole municipality or to any defined area or areas thereof, require that land be conveyed to the municipality for park or other public recreational purposes.”
- Add a subsection authorizing local services in the Planning Act based on subsection 59 (2) of the DCA.

#### Recommendation for regulation:

- The specified transition date be either the later of 2 years after the date the proposed community benefits charge regulation comes into effect or the date the municipal DC by-law expires.

### 3. Introduction

“Homelessness and the lack of affordable housing are Ontario-wide problems, and not confined to Toronto.”<sup>2</sup>

MFOA agrees with the Housing Supply Action Plan’s declaration that “Ontario needs more housing, and we need it now.”<sup>3</sup> Housing affordability is a serious underlying challenge in the Province and our members commend the government for trying to address one of the most pressing as well as complicated issues facing Ontarians today.

Despite this urgency, the Association’s message since the introduction of the *More Homes, More Choice Act, 2019* (MHMCA) has been one of caution. The potential for unintended consequences, such as creating have and have-not communities and slowing down development, are too high to rush through changes to the legislative and regulatory system. It does appear that the Province has been listening. MFOA members were heartened by the proposed changes to the Community Benefits Charge (CBC) regime introduced in ERO # 019-1406, as well as measures in the Fall Economic Statement that removed commercial and industrial development from being eligible for automatic phased DC payments and allowed municipalities to maintain revenues during the transition to the new regime. Other measures, such as making CBC by-laws appealable and the surprise announcement of changes to the DCA, were not as well received.

Even with the proposed amendments in the latest ERO posting, however, there is still work to do to mitigate the potential negative consequences of the changes introduced by the MHMCA. Much of this work is the result of the diversity of the municipal sector. Recent reports and commentary have showcased how the housing affordability crisis is playing out in different ways across the Province.<sup>4, 5</sup> Municipalities are unique, a concept clearly noted in the newly released Provincial Policy Statement, 2020 (p. 5). They need flexible legislation that allows them to tailor responses to address local circumstances if they are to effectively provide municipal services (protection, transportation, environmental, health, social and family, social housing, recreation and culture, planning and development, among others), as well as support the province’s objectives.

Issues are also created by the limitations of the existing cost recovery regimes for growth-related capital costs. Under the previous DC regime, growth was not fully paying for growth<sup>6</sup> and this fact must be appropriately considered to ensure communities we build

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<sup>2</sup> The problem is likely worse today than it was when Hulchanski reported on the issue in [Where’s Home? A Picture of Housing Needs in Ontario](#) in 1999.

<sup>3</sup> Province of Ontario. (2019). [More Homes, More Choice: Ontario’s Housing Supply Action Plan](#)

<sup>4</sup> Refer to Moffatt, Mike. (2020). [Ontarians on the Move #0 — What Parts of Ontario Are Growing... and Why?](#) And the TVO.org [series](#) looking at how Ontario’s affordable-housing crisis is playing out beyond the GTA.

<sup>5</sup> RE/MAX. (2019). [2020 CANADIAN HOUSING MARKET OUTLOOK](#)

<sup>6</sup> 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.

today are able to thrive in the future. Growth must pay for 100% of growth on a place-by-place basis to support equitable development across Ontario.

The Province currently has an opportunity to make meaningful changes, but municipalities need time and support to understand the proposed changes and adapt existing systems strategically. MFOA thanks the Province for the opportunity to provide comments on the new regulation pertaining to the community benefits authority and accompanying regulatory amendments. We also commend the government on its commitment to meaningfully engage with stakeholders throughout the consultation process.

#### 4. About MFOA

The Municipal Finance Officers' Association (MFOA) was established in 1989 to represent the interests of municipal finance staff across Ontario. Our membership includes individuals from municipalities who are key advisors to councils on financial affairs and who are responsible for handling the financial activities of municipalities. The municipalities that are members of MFOA account for 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 submitted [comments](#) on proposed regulatory changes pertaining to the community benefits authority under the Planning Act and to O. Reg. 82/98 under the *Development Charges Act*, 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.

#### 5. Guiding principles

The following principles have guided our comments in all of our submissions, including this one:

- a) Growth should pay for growth on a place-by-place basis.

Provincial legislation should consistently allow **all municipalities** to recover the **full cost of infrastructure related to growth** (i.e. no excluded services, no discounts, and forward-looking service levels rather than 10-year average historic levels). 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 DC regime it will be more difficult to build complete communities in a financially sustainable way, while remaining affordable for residents and business. Further, if existing taxpayers and ratepayers have to cover funds for infrastructure not recovered through DCs and CBCs, this could result in higher property taxes and utility rates for municipalities with new development. It could also create a disincentive for residents to support new housing.

- c) 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. Proposed regulatory matters pertaining to community benefits authority under the Planning Act, the Development Charges Act, and the Building Code Act

The following section presents MFOA's recommendations for ERO # 019-1406. Our recommendations aim to ensure that municipalities have the right tools to strategically provide infrastructure to support growth on a place-by-place basis. These tools support development and are necessary for the Province's objective of increasing the housing supply.

- a. Required content of a community benefits strategy

The proposed CBC content outlined in the ERO posting is similar to the process set out in the DCA with a few notable exceptions.

These exceptions, such as the lack of prescription with respect to service levels and definitions of capital costs, provide municipalities with additional flexibility in the development of a CBC strategy. MFOA members appreciate this greater degree of flexibility as forward-looking service levels allow municipalities to recover costs reflective of actual needs rather than historical experience. Despite this opportunity, many municipalities remain concerned that the additional flexibility provided to municipalities will be mostly offset by the imposition of a cap on the CBC payable.

The proposed CBC strategy also takes elements from requirements under s.42 of the *Planning Act* for parkland acquisition. Previously, not all municipalities availed themselves of s.42 of the *Planning Act* and as such, may not have prepared parks plans or included parkland acquisition in their capital forecasts for planning purposes. On the other hand, not all municipalities that availed themselves of s.42 may have collected DCs. The result is that all municipalities moving to the new CBC regime will face additional work and the requirement to do a parks plan could delay the implementation of the CBC regime.

This is problematic. In addition to the general issues associated with red tape, MFOA is concerned that the additional administrative burden and quick transition timelines will imperil the 'soft' services remaining in the PA. Resource-constraint municipalities may be forced to forgo the CBC given the sheer volume of administrative work required to implement both a CBC strategy and the changes made to the DCA. And all municipalities will need more time to complete new background studies to support both new DC and CBC rates, develop new administration and collection systems, as well as implement processes to deal with appeals of land values. This is especially true now given the added financial pressures and greater uncertainty due to COVID-19.

**MFOA continues to support a return to the previous frameworks for the recovery of growth-related capital costs, parkland acquisition, and growth and density bonusing under the DCA and PA, which existed prior to MHMCA receiving Royal Assent.**

**Should this return not occur, MFOA supports flexibility in the development of a CBC strategy.**

b. [Services eligible to be funded through development charges](#)

Increasing the number of services eligible to be funded through development charges improves predictability for both municipalities and developers. It also facilitates the strategic emplacement of the range of growth-related infrastructure needed to create complete communities by improving the potential for municipalities to recover their capital costs.

The existing DC regime is one that meticulously identifies the costs that are driven by growth (people, employees) and recovers them (albeit at a reduced rate) 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. Land value is not related to the cost of providing services and by imposing a cap based on land value this means that the CBC may not change over time to reflect project costs.

Given these concerns, MFOA members welcome the proposed amendment to increase services eligible to be funded through DCs and commend the government for listening to municipal concerns and to be willing to adjust course as needed. Our members were also pleased that the 10% discount on 'soft' services, required prior to the MHMCA, has been



removed. Municipalities will be in a better position as compared to June 7<sup>th</sup>, 2019, should the proposed amendments go through. We caution, however, against characterizing the removal of the discount as making these costs ‘fully’ recoverable. Negative pressure continues to exist within the DC framework such as prescribing the use of historic service levels for most eligible services (transit services being the exception) when calculating DC rates.

MFOA supports the return of the proposed services to the DCA for the following reasons:

- Public libraries: Public libraries educate, connect, and empower residents, as well as provide a boost to the local economy.<sup>7</sup> Returning public libraries to the DCA allows new residents to also benefit from these community-building services.
- Long term care: It is estimated that by 2041, one-quarter of Canada’s population will be over the age of 65.<sup>8</sup> 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.<sup>9</sup> For many municipalities across Ontario, growth will be driven by this segment of the population. Municipalities will be better equipped to provide the services needed by this segment of the population by making long term care an eligible service under the DCA. MFOA members were concerned when ERO #019-0183 proposed exempting long-term care homes from the CBC regime. MFOA commends the government for recognizing the current and future pressure presented by long term care services.
- Parks development, such as playgrounds, splash pads, equipment and other park amenities (but not the acquisition of land for parks): Parks provide environmental, social, economic, and health benefits.<sup>10</sup> Their attributes echo the 2020 Provincial Policy Statement’s vision of communities (p. 5): “Strong, liveable and healthy communities promote and enhance human health and social well-being, are economically and environmentally sound, and are resilient to climate change.” Including parks development as an eligible service is aligned with provincial objectives.
- Public health: As Benjamin Franklin stated and studies<sup>11</sup> have found, “an ounce of prevention is worth a pound of cure.” In this case, the ‘pound of cure’ relates to the overall cost savings resulting from local investments in public health. Including public health as an eligible service enables municipalities to make strategic investments with positive spillover for the province’s long-term health spending

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<sup>7</sup> “Public libraries deliver a big return on investment – more than \$5 in direct, local economic benefits for every \$1 invested. (...) But many public library budgets are stretched to the limit, even as more people depend on local public libraries than ever before.” [Federation of Ontario Public Libraries](#), (2019).

<sup>8</sup> D. Peters, TVO, How Ontario Communities are making themselves more senior friendly January 2019

<sup>9</sup> Statistics Canada, 2016 Census

<sup>10</sup> Park People. (2019). [The Canadian City Parks Report](#)

<sup>11</sup> Masters, Rebecca, Anwar, Elspeth et al. (2016). [“Return on investment of public health interventions: a systematic review”](#)

projections.<sup>12</sup> Further, the current COVID-19 situation demonstrates the importance of public health infrastructure to community health.

- Recreation, such as community recreation centres and arenas: Similar to public library services and parks development, recreation provides a myriad of community building, health, and economic benefits to residents. In addition, including both public library and recreation as eligible services better enables municipalities to pursue provincial initiatives, such as the development of community hubs. Questions remain, however, as to whether the definition of this service will allow for the recovery of costs related to walkways, trail ways, cycle paths, and other recreation services that may or may not be within parks.

Given the differences in service levels across the province, MFOA encourages the provision of enough flexibility when defining eligible services to allow municipalities to tailor their DC background studies to reflect local circumstances.

Further, while the return of additional services improves municipalities' ability to recover the capital costs of growth-related infrastructure for a wider range of services, MFOA maintains that all services should be eligible. We continue to promote a return to the previous DC regime where the DCA listed exempt services, rather than prescribed a restricted list of eligible services. Should this return not be under consideration, we encourage the province to consider further expanding the list of eligible services. Widening the list would increase the probability that municipalities will have the revenues to emplace needed growth-related capital works. A few areas to consider include but are not limited to:

- Childcare services: The new refundable Ontario Childcare Access and Relief from Expenses (CARE) Personal Income Tax credit recognizes the challenges faced by many families in Ontario. Including childcare services in the DCA complements this initiative by returning one municipal revenue tool previously used to fund the growth-related capital costs of these services. This could be especially important in municipalities experiencing an influx of young families due to high costs in the GTA.<sup>13</sup>
- Social/subsidized housing: The 2020 Provincial Policy Statement (p. 16) requires municipalities to “provide for an appropriate range and mix of housing options and densities to meet projected market-based and affordable housing needs of current and future residents.” There are numerous partners who, together, play an essential role in building healthy and vibrant communities in Ontario. The development industry is one such partner. However, according to Mitchell Cohen, president of The Daniels Corp., “Without the government engagement, the private sector is not going to create affordable housing.”<sup>14</sup> Given its objectives, the

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<sup>12</sup> Jones, Allison. (2019). [Ontario doctors' contract to increase health spending by \\$1.5B: watchdog](#)

<sup>13</sup> Moffatt, Mike. (2020). [Ontarians on the Move #0 — What Parts of Ontario Are Growing... and Why?](#)

<sup>14</sup> <https://business.financialpost.com/real-estate/property-post/how-one-developer-is-working-to-get-affordable-housing-built-in-toronto>

province should consider making social/subsidized housing an eligible service under the DCA.

- **Airports:** Part 1.6.9 of the Provincial Policy Statement speaks to the importance of protecting the economic role of airports and other special transportation facilities. As such, the province should consider aligning the funding and planning supports available to these facilities.
- **Municipal masterplans:** Municipalities prepare overarching plans, both direct and indirect, to strategically guide their future. These plans, for example Official Plans, cover a wide range of services not all of which will be eligible for recovery through the DCA. Making the preparation of these documents eligible for recovery promotes integrated long-term planning.

CBCs and DCs together must pay for 100% of growth-related costs. MFOA supports allowing DCs and CBCs to be used together, such that unrecoverable DC growth-related costs (e.g. service levels)<sup>15</sup> can be recovered using CBCs. Expanding the list of DC eligible services and removing the 10% discount on select 'soft' services is an improvement over the direction the DC regime appeared to be headed in the summer of 2019. It is not enough, however, to enable municipalities to fully recover the growth-related capital costs of the long list of services municipalities provide to support vibrant, complete communities. As previously commented, MFOA supports the 1977 Commission on the Reform of Property Taxation in Ontario conclusion that there are no distinctions between services to property and services to people; there are only services to people<sup>16</sup>. As such, MFOA believes that the capital costs of all services should be eligible to be recovered through the DCA.

#### **Recommendation for legislation:**

- **Repeal MHMCA amendments to ss 2(4) of the DCA, which have yet to come into force, such that all services are eligible for inclusion in the development charge calculation so long as they are not expressly excluded by regulation.**
- **If MHMCA amendments to ss 2(4) of the DCA, which have yet to come into force, are not repealed, MFOA supports identifying the following services in regulation under ss 2(4) of the DCA: public libraries, including library materials for circulation, reference or information purposes; long-term care; parks development, such as playgrounds, splash pads, equipment and other park amenities (but not the acquisition of land for parks); public health; and recreation, such as community recreation centres and arenas.**
- **MFOA believes that there should be no discounted services. MFOA supports the elimination of the 10% discount on all services in the DCA.**
- **Should MHMCA amendments to ss 2(4) of the DCA, which have yet to come into force, not be repealed, MFOA recommends expanding the list of eligible**

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<sup>15</sup> This does not include non-growth related costs such as benefit to existing development.

<sup>16</sup> Ontario, "Report of The Commission on the Reform of Property Taxation in Ontario", (Toronto: Government of Ontario, 1977).

**services to include: child care services, social/subsidized housing, airports, and municipal masterplans.**

- **MFOA recommends allowing development charges and the community benefits authority to be used together, such that unrecoverable DC growth-related costs (e.g. service level) can be recovered under the community benefits authority.**

c. Percentage of land value for determining a maximum community benefits charge

The MHMCA had an outsized impact on municipal planning and finance functions. The Act reconfigured how municipalities recover the growth-related capital costs of certain ‘soft services’, acquire parkland, and collect height and density bonusing. Three sections of legislation with different purposes were lumped together under a new cost recovery regime. While MFOA members appreciate that current proposed amendments return select ‘soft’ services back to the DCA, they remain concerned that much still remains at stake for municipalities in the post MHMCA world.

The issues with the community benefits charge regime are several and continue to warrant consideration. First, it is unlikely that the province’s objective of maintaining municipal revenues will be met given:

- the loss of the alternative parkland rate,
- the loss of height and density bonusing, and
- the imposition of a prescribed cap on the CBC.

While MFOA members appreciate the flexibility provided by the proposed CBC strategy, they are concerned that this flexibility will be substantially offset by the CBC regime’s restrictions that will impact their ability to raise revenue and cover growth-related capital costs.

Second, MFOA members continue to be concerned that the CBC charge is tied to land value rather than the actual costs of growth-related capital works. “While it makes sense to make land values pay for some amenities — most notably, the land costs for parks — other community services aren’t as affected by land values.”<sup>17</sup> Revenue may be capped, but there is no cap for the growth-related costs of ‘soft’ services. MFOA continues to argue that the prescribed cap must be anchored in the costs to service growth. Without this link, growth will not pay for growth and councils will be faced with decisions that could lead to neighbourhoods with different levels of service. A calculated maximum based on land values without a similar drop in infrastructure costs could result in a situation whereby a sudden drop in land values leaves a municipality without the ability to collect adequate funds to provide growth-related community benefits.

In addition, land values can differ widely between neighbouring municipalities, while the municipalities’ construction costs remain relatively similar. This could result in inequities between neighbours. For example, a municipality with high land values may be able to

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<sup>17</sup> McGrath, John Michael. (2020). [Tories discover it’s hard to keep both cities and developers happy.](#)

build more recreation centres than its neighbour. Complete, vibrant communities are good for everyone. They should not be restricted based on a one-size-fits all cap that is not reflective of local circumstances. Anchoring the cap in costs recognizes the unique circumstances of each municipality and reflects the changing cost structures, demographic patterns, economic conditions, and other factors outside of municipal control.

Third, the ERO posting provides ‘one-size fits all’ caps based on tier. As noted in the 2020 Provincial Policy Statement (p. 5):

Ontario is a vast province with diverse urban, rural and northern communities which may face different challenges related to diversity in population, economic activity, pace of growth and physical and natural conditions. Some areas face challenges related to maintaining population and diversifying their economy, while other areas face challenges related to accommodating and managing the development and population growth which is occurring, while protecting important resources and the quality of the natural environment.

In addition to the diversity noted above, regions and counties divide responsibilities in different ways. It is difficult to believe that the proposed one-size fits all caps capture the range of municipal experience.

The prescribed caps must be workable, fair, and allow for the recovery of growth-related infrastructure costs on a place-by-place basis. Evidence created by comprehensive and rigorous analysis is needed to determine whether the split between upper and lower tiers makes sense. It is also needed to determine whether 15% captures the range of services delivered by single tiers across the Province. The repercussions of getting the caps wrong are great. As such, municipalities need longer than 52 days to test whether the proposed caps work given local circumstances, especially when many of those days are in the midst of a pandemic. **MFOA recommends a more fulsome consultation on the prescribed maximum CBC payable** given the complexity of the task and the timing of the comments period.

Fourth, questions remain surrounding the implementation of the new CBC regime and potential consequences of the regime as currently laid out. Any one of these issues could have major revenue impacts. For example,

- What happens in two-tier structures when lower tier municipalities forego the CBC regime? How will this impact the collection of the upper tier’s CBC?
- Municipalities will need to calculate the risk of not receiving land vs. the impact of not recovering capital costs for certain soft services. Currently the CBC regime (PA s 37) does not require developers to provide land for parks, unlike PA s 42. Will municipalities need to expropriate land more frequently (a very expensive endeavour) if they choose to pass a CBC by-law?<sup>18</sup>

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<sup>18</sup> Municipalities need to be the sole determinant of conveyance of land or cash paid. Without this authority, municipalities may struggle to provide planned service levels to their residents. For example, a municipality

- What happens to existing debt related to ‘soft’ services, negative DC reserve fund balances, and DC credits for ‘soft’ services?
- The PA does not currently provide municipalities with the authority to establish local services policies. Will this misalignment between the PA and the DCA create roadblocks in the integration of parkland acquisition (under the PA) and parkland development (under the DCA)?

As previously stated, it is MFOA’s belief that the CBC must be workable, fair, and allow for the recovery of growth-related infrastructure costs. This recovery must hold on a municipality by municipality basis, not just at the provincial level where winners and losers can be masked. Ultimately, municipalities need a prescribed cap that:

- Permits the capture of 100% of growth-related capital costs, land acquisition needs, as well as height and density bonusing requirements;
- Is predictable;
- Is reflective of local circumstances; and
- Remains relevant.

MFOA encourages the Province to include a mechanism for regular review of prescribed caps, as well as flexibility for the Minister to authorize municipalities to exceed prescribed caps where evidence demonstrates material need. A transparent criteria-based process would need to be created to ensure predictability for all parties. Together these measures would help municipalities continue to support the development of complete and vibrant communities.

#### Recommendations for legislation:

- **Add a subsection under PA s 37 to provide for regular updating of the prescribed maximum amount of community benefits charge: “The Ministry of Municipal Affairs and Housing shall initiate a review of the prescribed maximum amount of community benefits charge before the end of 2024 and thereafter within five years of the end of the previous review.”**
- **Provide the Minister of Municipal Affairs and Housing with the authority to allow municipalities to exceed the prescribed maximum amount of community benefits charge in select circumstances.**
- **Add a subsection under PA s 37 to include conveyance such that: “As a condition of development or redevelopment of land, the council of a local municipality may, by by-law applicable to the whole municipality or to any defined area or areas thereof, require that land be conveyed to the municipality for park or other public recreational purposes.”**
- **Add a subsection authorizing local services in the *Planning Act* based on subsection 59 (2) of the *Development Charges Act, 1997*.**

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trying to piece together a large park to serve new residents in a new community built by four developers could be in trouble. What happens if there are three developers that provide adjacent lots to build the park and one that opts for cash? Would the municipality be forced to expropriate the fourth corner to complete the park or would they need to provide a lower service level than originally planned?

d. Timeline to transition to the new community benefits charge regime

MFOA members appreciate that the Province has listened to municipalities and has proposed to adjust course on certain aspects of the CBC regime. This course correction, while viewed as positive, still presents logistical issues for municipalities.<sup>19</sup>

Since the introduction of the MHMCA, municipalities have worked diligently to adjust policies and procedures to meet new legislative requirements under the DCA and PA. Many of these new requirements (proclaimed or awaiting proclamation) require new administrative processes and systems.

MFOA's work in the area of long-term fiscal sustainability has taught us that changes to the status quo only have a chance of working as intended when municipalities are given the right tools and provided with enough lead time to effectively adapt existing systems. The new CBC regime and changes to the existing DC regime require municipalities to modify how they do business. To enable them to do this strategically, MFOA recommends that the Ministry extend the timeline to transition, create and communicate practice guides, interpretation bulletins, and webinars to educate stakeholders on the new regimes, and provide assistance in adapting municipal policies and procedures.

The current proposed transition period is one year after the date the proposed CBC regulation comes into effect. We believe that this timeline is insufficient when accounting for the time required to complete a CBC strategy with the appropriate level of stakeholder engagement, the preparation of necessary studies, and the need to develop a new administrative process for CBC collection. In addition, in an "all hands on deck" world devoted to COVID-19 and the disruption to working relationships and office attendance, it will be even more difficult to transition to a new regime.

Municipal governments are essential partners in achieving the Province's policy objectives. By providing municipalities with the time and tools needed to implement changes, the sector will be better positioned to adapt their systems while continuing to deliver the services that enable Ontarians to live their best life.

**Recommendation for regulation:**

- **The specified transition date be either the later of 2 years after the date the proposed community benefits charge regulation comes into effect or the date the municipal DC by-law expires.**

e. Community benefits charge by-law notice

The *Plan to Build Ontario Together Act, 2019* amended the PA to allow the community benefits charge by-law to be appealable to the Local Planning Appeal Tribunal (LPAT). While MFOA disagrees with this amendment due to the resulting revenue risks for

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<sup>19</sup> "To design is human, to implement, divine"

municipalities among other challenges<sup>20</sup>, we understand that processes must be set out to implement the change.

The notice provisions proposed in the ERO posting mirror those set out in the DCA. As such, municipalities with DCs will be able to leverage existing processes while transitioning to the new CBC regime. MFOA sees no significant issue with the community benefits charge by-law notice provisions as written.

- f. Minimum interest rate for community benefits charge refunds where a by-law has been successfully appealed

Similar to the comments above, MFOA understands that by making the community benefits charge by-laws appealable, processes need to be established to allow for refunds of by-laws which have been successfully appealed. MFOA sees no significant issues with the proposed minimum interest rate for community benefits charge refunds where a by-law has been successfully appealed.

- g. Building code applicable law

MFOA supports the proposal to amend the Building Code to add the community benefits charge authority to the list of applicable law. This amendment is a housekeeping item that enables the mechanism for ensuring the payment of community benefits charges prior to the issuance of a building permit. MFOA supports the change as it ensures payments to municipalities are made promptly. Further, MFOA encourages the Province to consider additional changes that could facilitate collections of CBCs in two-tier systems.

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<sup>20</sup> As mentioned in MFOA's submission on the *Plan to Build Ontario Together Act, 2019*, MFOA recommends that the Province review the proposed appeal provisions so as to allow the LPAT to increase the amount of a community benefits charge when a by-law is appealed. In its current state, developers can never be made worse off from a LPAT appeal decision, which may be an incentive for developers to appeal municipal decisions and slowing down the development process overall. We believe that the appeal provisions in the *Development Charges Act, 1997* should be revised as well since these same limitations are found in the DCA.