Greater Ottawa Home Builders' Association
Association des constructeurs d'habitations **d'Ottawa**

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November 21, 2022

The Hon. Steve Clark
Ministry of Municipal Affairs and Housing
777 Bay Street, 17th floor
Toronto, Ontario M7A 2J3

Re: Submission 1 [Development Charges] of 3 on ERO #019-6172 Proposed Planning Act and Development Charges Act, 1997 Changes: Providing Greater Cost Certainty for Municipal Development-related Charges

Dear Minister Clark,

Please accept the below from the Greater Ottawa Home Builders' Association (GOHBA) and its members as part of its submission to the government's request for feedback on Proposed Planning Act and Development Charges Act, 1997 Changes: Providing Greater Cost Certainty for Municipal Development-related Charges (ERO #019-6172).

Given the breadth of proposals, this is the first of three separate submissions under ERO#019-6172:

1) Comments and additional suggestions related to development charges;
2) Comments and additional suggestions related to parkland; and,
3) Comments and additional suggestions related to community benefit charges.

1. **Set maximum interest rate for DC freeze and deferral (prime + 1 per cent)**
   - **To provide for more consistent municipal interest rate charges that apply during the period that development charges are frozen and/or deferred, a maximum interest rate of Canadian Banks prime rate plus 1.0% per annum would be set for these periods as of June 1, 2022.**
   - **The municipal interest rate charge would apply to the freeze and deferral period from the date the applicable application is received to the date the development charge is payable.**

GOHBA supports the standardization of municipal interest rate charges that apply during the period that development charges are frozen and/or deferred across the province. It is important to establish the fundamentals for consistency and transparency across municipalities, which will help ensure cost certainty and protect project viability.

Request #1: Set Interest Rate for a Late DC Payment

GOHBA suggests, however, to amend Section 27 of the Planning Act (regarding agreements for the early or late payment of DCs) so that a municipality cannot set an alternate or punitive interest rate for a late payment, as it is not clear if sections that stipulate the interest to be applied in the case of residential rental prevail over section 27.

Proposed wording: *s.27(3) An agreement under this section may allow the municipality to charge interest at a rate stipulated in the agreement, but interest shall not exceed an amount calculated pursuant to section 26.3, on that part of the development charge paid after it would otherwise be payable.*

Request #2: Allow CBC to be Paid over the Same Timeframe as DCs

Similar to the Development Charges Act (section 26.1(3 & 7)), the Planning Act should state that a CBC payment for any project may be provided over 5 years subject to annual interest. (Bill 23, Sch 3, s.7(2 & 3))

Proposed wording: s.37(44.1) *A required community benefits charge payment shall be paid in equal annual instalments beginning on the earlier of the date of the issuance of a permit under the Building Code Act, 1992 authorizing occupation of the building and the date the building is first occupied, and continuing on the following five anniversaries of that date.*

2. **Reduce development costs to enable more housing to be built faster**
   - **Phase-in development charge rates set out in new DC by-laws over a 5-year period. The DC rates set out in new DC by-laws would be subject to a percentage reduction that gradually decreases each year, over a five-year period (i.e., 20 per cent reduction in year 1, 15 per cent in year 2, 10 per cent in year 3 and 5 per cent in year 4). With this proposal, the maximum development charge rate would be applied in year five of the DC by-law. This proposed change would apply to any DC by-law passed as of June 1, 2022.**

GOHBA supports the phase in of development charge rates to ensure cost certainty, protect project viability, and support housing affordability. Phasing increases over 5 years will allow home builders to plan ahead more effectively and will provide better pricing to future home owners and renters. Development approvals take years to obtain, so this policy change will allow for more cost certainty which will encourage more cost-effective housing options to be built.

Request #3: Implement CBCs to be Paid Same as DCs

The Planning Act, should be amended to allow CBC by-laws passed between June 1, 2022, and the coming into force of the More Homes Built Faster Act, be deemed to be reduced and thereby implemented over a 5 year period.

This is reasonable since prior to September 2022, CBCs were not applicable to all projects. This implementation period will permit development to plan and account for the new CBC payment.

Proposed wording [similar to what is found in Bill 23, Sch 3, s.5(7) defining changes to be made to the Development Charges Act section 5(7 & 8)],:

> *37 (44.1) Subsection (44.2) applies to a community benefits charge imposed by a community benefits charge by-law passed on or after June 1, 2022.*
>
> *Subsection (44.2) The amount of a community benefits charge shall be reduced in accordance with the following rules:*
>
> 1. *A community benefits charge imposed during the first year that the by-law is in force shall be reduced by 80 per cent of the community benefits charge that would otherwise be imposed by the by-law.*
> 2. *… reduced by 85 per cent…*
> 3. *… reduced by 90 per cent…*
> 4. *… reduced by 95 per cent…*

Request #4: Discounts for Redevelopment Requiring Demolition and Rebuilding

Bill 23 proposes a new discount to Community Benefits Charges ("CBCs") that will account for existing development located on land to be intensified. However, the amendment, as currently drafted, would only account for existing buildings that are proposed to be retained after the redevelopment, and does not capture buildings that are to be demolished and replaced.

The discount for existing development is a welcome addition to the CBC framework. As proposed under Bill 23, CBCs will only be assessed against new floor area resulting from a development, measured as a proportion of the total floor area on a property:

> *Amount of CBCs payable not to exceed an amount equal to the prescribed percentage [currently 4%] of the value of land, as of the valuation date, multiplied by ratio of A to B where:*
> *A = floor area of any part of a building or structure proposed to be erected or located as part of the development or redevelopment*
> *B = floor area of all buildings and structures that will be on the land after the development or redevelopment*

By way of example, if 50sq metres of new floor area is proposed, and the total floor area of all buildings on the land after the development will be 200 sq metres, the value is calculated as follows:

4% CBC rate x (50:200)
= 4% x 0.25
= 1.00% of land value
∴ CBCs payable shall not exceed 1% of land value

In this example, the purpose of the existing development discount is achieved. The developer is only paying CBCs on the portion of the development that creates increased density. Without the discount, the developer may be required to pay CBCs twice on the existing floor area; once when it was originally built and again after the redevelopment.

However, the currently-proposed formula fails to capture a redevelopment project that involves demolishing and rebuilding a structure. For example, a 10,000 sq. metres building is erected and CBCs are paid as part of development. Five years later the building is destroyed by an Act of God. An exact replica 10,000-sq. metre building is erected in its place. CBCs must be paid on the replacement structure because all new development above 5 stories and 10 units attract CBCs. A developer in this scenario would pay CBCs twice despite the fact that density is not actually being increased.

When a developer replaces a structure, by choice or necessity, previously paid CBCs or predecessor s.37 payments (density bonusing) should be accounted for. A more equitable approach would be as follows:

Amount of CBCs payable not to exceed an amount equal to the prescribed percentage (currently 4%) of the value of land, as of the valuation date, multiplied by B minus A where:
A = floor area of any part of a building or structure erected on the land prior to the development or redevelopment
B = floor area of all buildings and structures that will be on the land after the development or redevelopment

In the alternative, a credit should be applied to offset CBC or predecessor s.37 charges that have already been paid.

3. **(a) Update a development charge by-law at least once every 10 years compared to the current requirement to update every 5 years.**
(b) Use a historical service level of 15 years compared to the current 10 years to calculate capital costs that are eligible to be recovered through development charges. This would not apply to transit. This proposed change would apply to the passage of any new DC by-law.

(c) Remove housing services from the list of eligible services. DCs could no longer be collected for housing services, effective immediately, upon Royal Assent of Bill 23.

(d) Limit eligible capital costs to ensure greater cost certainty:

- **Studies would no longer be an eligible capital cost that could be recovered through development charges.**
- **A regulation-making authority would be provided to prescribe specific services for which the cost of land would not be an eligible capital cost that could be recovered through development charges.**
- **These proposed changes to eligible capital costs would be apply on a go-forward basis to the passage of new DC by-laws.**

GOHBA supports changes to the Development Charge Act to ensure cost certainty, protect project viability, and support housing affordability.

Request #4: Eligible Cost to Acquire Land for DC Eligible Service

It is our request that the DC Act be revised to state that the cost to acquire land required for a DC eligible service is also a DC eligible cost. It is logical to include, and it is even an omission that it does not currently state, that land require for a DC project is a development charge cost. For example, the cost of land for a city-wide pond is a cost that should be included. This revision may be achieved by including the below wording in section 2(4) of the DC Act.

Proposed wording: *2(4) # Land required for the provision of identified services*

Request #5: Credit for DC Eligible Services

Section 38 of the DC Act should be revised to clarify and direct that municipalities shall provide credits when development charge eligible services are provided.

Section 38(1) appears to state that credits shall be provided but the current practice of several municipalities is to request the provision of services as a condition of development approval when the service is actually a development charge eligible service. Also, many municipalities consider the granting of a credit as being within the discretion of the municipality when the credit should be mandatory if a DC eligible service has been provided.

This section would also be strengthened if it explicitly stated that, in the event of a dispute on the quantum of a credit or whether a service is eligible for a credit, an appeal to the Ontario Land Tribunal may be submitted – wording similar to what is contained in Section 49.

The Tribunal shall decide whether the service provide is eligible for a credit and what the appropriate quantum of credit shall be. Section 18 could then apply if a refund is due.

Proposed wording:

New Section 38(5) In the event of a dispute as to whether a credit shall be given, or the value or quantum of the credit, the owner of land may object to the credit by filing with the clerk of the municipality on or before 30 days after notice of the credit was provided to the owner, and the notice shall set out the objection to the credit and the reasons supporting the objection.

New section 38(6 to 14) – [Reproduce with required modifications the wording found within the DC Act sections 48 and 49]

Request #6: Credit for Green buildings and/or infrastructure

The Planning Act or Regulations should state that green buildings or infrastructure shall be granted a corresponding development charge credit. Green buildings and infrastructure, such as is requested by High-performance development standards in Ottawa, are more expensive to construct and they have a corresponding smaller impact on existing municipal services. Accordingly, it is reasonable and logical that a development charge credit should be applied based on the relative benefit that the green building or technology provides.

Proposed new wording:

Section 38*(1.1) A credit shall be given for green buildings and/or infrastructure that has a corresponding reduction on development charge eligible services. The credit shall be equal to the benefit that the work that the green buildings and/or infrastructure has relative to other developments*.

Request #7: DC Background Study Criteria & Transfer of Funds

Although there were no changes to the DC Act in regards to DC Background Studies proposed by Bill 23, there are two amendments being requested that we believe would support and complement the government's efforts to address our housing affordability and supply crisis by streamlining approvals for housing and reducing barriers and costs to development.

Either s.10(2) of the DC Act, or the regulation, should be revised to state the Background Study shall include:

A detailed list and accounting of funds that have been collected, spent, allocated between growth and non-growth, funds borrowed for growth projects, repayments, an interest payments, and/or transferred, between services and/or capital facilities in addition to an indication of when the funds will be transferred back. The municipality shall produce this report on an annual basis and shall make it publicly available.

And, another section should be added to the DC Act to state:

Funds identified in the Background Study, as required by section 10(2)(x), shall be returned to the account from which it was transferred within 2 years. Funds could not be taken out of the same account for 5 years after their return.

4. **Increase transparency and accountability in the use of development charges funds**
    - **To incent municipalities to plan and build priority infrastructure to service growth more quickly, municipalities would be required to allocate or spend at least 60 per cent of their development charges reserve balance for water, wastewater and roads at the start of each year. Regulation-making authority would be provided to prescribe additional priority services, for which this would apply, in the future.**

GOHBA welcomes the standardization of spending/allocation of DCs, parkland dedication and the CBC. This will encourage the actual development of parks rather than the accumulation of reserve funds.

5. **Encourage the supply of rental housing**

    - **To incent the supply of rental housing units, particularly family-friendly rental housing, a tiered discount would be provided on development charges levied on purpose-built rental units. The discount would be deeper depending on the unit type (i.e., 15 per cent for a 1-bedroom unit (or smaller), 20 per cent for a 2-bedroom unit; 25 per cent for a 3+ bedroom unit). This proposed change would be in effect immediately upon Royal Assent of Bill 23.**

    - **The definition of purpose-built rental would be based on the definition that is currently used in a regulation under the Development Charges Act, 1997: "a building or structure with four or more dwelling units all of which are intended for use as rented residential premises".**

GOHBA supports the above changes to the Development Charge Act to ensure cost certainty, protect project viability, and support housing affordability.

In the current environment of rising interest rates and high inflation, purpose built rental projects are very challenging to finance. Reducing development charges for rental housing is a very smart incentive - any reduction of costs will spur more investment in purpose built rental development. Builders also require as much support as possible to get planned units delivered to the market.

6. **Encourage the supply of affordable housing**

- **To incent the supply of more affordable housing, affordable ownership and rental housing units, affordable housing units in a development subject to inclusionary zoning, as well as non-profit housing developments would be exempt from development charges, community benefits charges and parkland dedication requirements.**

- **The proposed exemptions for non-profit housing developments would come into effect immediately upon Royal Assent of Bill 23. Similarly, the proposed exemptions for affordable units in a development subject to inclusionary zoning would come into effect immediately.**

- **For all other developments, an affordable housing unit would be any unit that is no greater than 80 per cent of the average resale purchase price for ownership or 80 per cent of the average market rent for rental, for a period of 25 years.**

- **A Minister's (Municipal Affairs and Housing) bulletin would provide the information needed to support municipal determination of the eligibility of a unit for development charges and parkland dedication exemptions.**

- **To benefit from a development-related charge exemption, a developer must enter into an agreement with a municipality, which may be registered on title, to enforce the affordability period of 25 years and any other applicable terms set out by the municipality, such as the eligibility of buyers and renters. The Minister of Municipal Affairs and Housing would have the authority to impose the use of a standard agreement to ensure the effective implementation of these exemptions.**

- **Affordable housing units would also be exempt from parkland dedication requirements. With regard to the standard parkland rate, the exemption would be implemented by discounting the maximum parkland rate of 5% of land or its value based on the number of affordable housing units to be built as a proportion of total units in a particular development. With regard to the alternative parkland dedication rates, the maximum parkland requirements would only be calculated based on the market units in a particular development.**

- **Similarly, affordable housing units would be exempt from community benefits charges. The exemption would be implemented by discounting the maximum CBC of 4% of land value by the floor area of affordable housing units as a proportion of total building floor area.**

GOHBA supports the above changes to promote the construction of affordable housing (defined as 80 per cent average market rate), and to increase the overall housing supply in

Ottawa and across the province. The exemption of fees related to affordable units will help projects get off the ground and will encourage more investment in new housing.

The City of Ottawa is currently requesting as much as 20% of affordable units in new purpose-built rental projects, which is economically unfeasible.

Builders and developers have a role in creating affordable housing, but they do not have the ability to pay the entire cost to provide discounted units.

<u>Request #8: Regional considerations regarding eligibility of a unit for development charges and parkland dedication exemptions</u>

It is essential that the Bulletin specify an affordable rate be defined according to appropriate geographic areas. What is affordable in Windsor is not the same as what is affordable in Ottawa, Burlington or Sudbury.

7. **Gentle Density**
    - **To encourage the supply to gentle intensification, a new parkland dedication exemption and refined DC exemptions are proposed to align with proposals under the Planning Act to implement an enhanced "additional residential unit" framework. A second unit in a primary residential building and up to one unit in an ancillary building would be exempt from DCs and parkland dedication requirements. Similarly, a third residential unit in a primary residential building would be exempt from DCs and parkland dedication requirements as long there are no residential units in an ancillary building.**

GOHBA supports the standardization of the applicability of DCs, parkland dedication and the CBC on additional dwelling units. This will help encourage the increase of "gentle density" in existing neighbourhoods.

However, we are concerned that there are potential loopholes in the proposals that municipalities will abuse to unreasonably restrict conversions, thereby severely limiting the ability to increase intensification in existing neighbourhoods and work against the government's efforts.

We provide some high-level comments on our concerns in our submission on ERO #019-6163, and will expand on this issue in comments to ERO #019-6197.

8. **Encourage the supply of attainable housing**

- **To incent the supply of attainable housing units, a residential unit, in a development designated through regulation, would be exempt from development charges, parkland dedication requirements and community benefit charges.**

- **The Lieutenant Governor in Council would be provided with regulation-making authority to prescribe any applicable additional criteria that a residential unit would need to meet to be exempt from municipal development-related charges.**

- **The parkland dedication and community benefits charge exemptions would be calculated based on the same approach proposed for affordable housing exemptions.**

GOHBA supports the above changes to promote the construction of attainable housing, and to increase the overall housing supply in Ottawa and across the province, although additional details are required.

Request #9: Add "Ownership" to Attainable Housing Section

It is our suggestion that the word "ownership" should be added to the header for the Attainable section 4.1(4) to read "Attainable residential unit, ownership".

Thank you for the opportunity to provide comments on the government's proposals.

We are pleased to answer questions or provide further information as requested.

Sincerely,

Jason Burggraaf
Executive Director