HEMSON
Hemson Consulting Ltd
1000 – 30 St. Patrick Street
Toronto, ON M5T 3A3
416-593-5090
www.hemson.com
hemson@hemson.com

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ERO number: 019-6172
Ministry of Municipal Affairs and Housing

Email: MFPB@ontario.ca

To Whom It May Concern:

Re: Comments on *Development Charges Act* Changes Proposed In Bill 23

This letter addresses the proposed amendments to the *Development Charges Act* (DC Act) contained in Bill 23 (the *More Homes Built Faster Act*). The changes are addressed from the perspective of a consulting firm with 40 years' experience providing expert advice notably in areas of planning policy, municipal finance, demographic and economic forecasting. Of particular relevance is our extensive knowledge and understanding of development charges (DCs). We have undertaken over 250 DC studies for municipalities across Ontario.

The observations we make in this letter are also informed by extensive consultation with municipal clients as well as with the Municipal Finance Officers' Association (MFOA) and the Association of Municipalities of Ontario (AMO). However, the views expressed below are our own.

A. PROPOSED CHANGES ARE BOTH POSITIVE AND NEGATIVE

In our judgement, the impact of DC Act changes will be mixed. On the positive side, key changes being proposed will encourage the building of more housing units which are certainly needed:

- **Affordable housing**, which would be exempt from DCs, CBCs, and parkland dedication requirements.

- Mandatory discounts on DCs for **rental housing** will promote purpose built apartment rental buildings and the scaled approach to these discounts could encourage more family-sized rentals.
- DC exemptions for **inclusionary zoning** support the Government's desire to build affordable and market-rate housing in transit corridors and other high-density areas.

However, without a new revenue stream to offset these foregone DC payments the legislation will hamper the ability of municipalities to fund and deliver growth-related infrastructure. More specifically,

- The fiscal impact of the legislation on municipalities is substantial. We estimate that individual municipalities will collect between 10% and 35% less DC revenue in the next 5 years. The cumulative impact on all municipalities runs into the billions of dollars over the same period.
- The significance of this revenue reduction cannot be overstated as there are no provisions through Provincial-municipal revenue sharing, or new revenue raising tools, to make up for the loss. Instead, DC revenue shortfalls will have to be funded through increases in property taxes and water/wastewater utility rates. This erodes the affordability of existing homes and undermines the long established principal that growth should pay for itself.
- With the likelihood of additional municipal property taxes and utility rates being needed to cover DC shortfalls, municipal Councils may well choose to delay the delivery of growth-related infrastructure. Such delays would not be in the interests of either municipalities or the development industry and would run counter to the Government's efforts to spur housing construction.
- The DC reductions may undermine municipal-developer infrastructure cost sharing agreements that facilitate infrastructure in high growth areas of the province. These complex agreements facilitate infrastructure using DC credits or reimbursement through future DC revenue. They often require the municipality to have DC revenue on hand before issuing reimbursements. In such cases, DC revenue shortfall arising from Bill 23 would delay repayment, to the financial detriment of developers who are parties to such agreements.
- The broad application of the mandatory phase-in required for area-specific DCs is a further complication. Frequently, ASDC by-laws are used to facilitate DC credit arrangements to pay for critical hard services in targeted growth areas.

- Currently many municipalities across the Province provide DC exemptions and discounts to affordable, non-profit, and purpose-built rental housing. A consequence of Bill 23 is that these financial incentives, which have been tailored to meet the specific needs of local communities, will be replaced with broad mandatory provisions, which may not work as well. Moreover, with their DC revenue raising ability curtailed, municipalities may choose to discontinue existing incentives entirely in order to mitigate revenue losses.

- Finally, because key provisions of the DC Act proposals are unclear, this could lead to unintended outcomes. For example, the exemption for affordable ownership residential units applies when the unit price is no greater than 80% of the "average purchase price". If the average purchase price includes resales as well as new unit sales then the scope of the exemption is potentially very broad.

B. MANDATORY PHASE-IN OF DC'S IS A CONCERN

While the new DC Act provisions that seek to promote specific types of new housing supports the Government's overall policy objective, the proposed mandatory 5-year "phase-in" of new DCs raises questions.

- **Fairness**: First, the proposed phase-in is costly for municipalities and taxpayers. While there is little evidence to show that the changes will reduce the price of homes, at the very least in the near-term, the phase-in will mean a loss for municipalities of DC revenue and a saving for builders and developers, regardless of the type of housing being constructed.

- **Not a Phase-in**: Second, the phase-in is excessive relative to its purpose as articulated by Minister Clarke in the legislature on October 26th: "If and when new development charge bylaws are passed, the charges would be phased in over five years, making increases more manageable for home builders [emphasis added]."[1] The phase-in does not apply only to DC rate increases but rather to the total DC rate. As such, it unnecessarily reduces municipal revenues when the DC rate is relatively stable.

- **Retroactivity**: Third, the retroactive application of the phase-in to by-laws passed after June 1, 2022 does not take into account the public consultation process and municipal-developer negotiations in advance of by-laws passed before Bill 23 was

[1] Legislative Assemble of Ontario, Hansard Transcript 2022-Oct-26 vol. A.

tabled. This penalizes municipalities who have phased-in or otherwise discounted their DC rates to address local housing supply concerns. There are several examples of large, fast-growing municipalities, where the effect of the phase-in will be that DC rates in 2023 are lower than rates that were in force prior to by-law passage in the summer of 2022.

- **Non-Residential**: Fourth, although the phase-in is intended to stimulate residential construction, it applies to all DCs, including those imposed on commercial and industrial development. There is no apparent basis to expect that a broad application of the phase-in on non-residential development will increase housing supply.
- **Fiscal Impact**: The financial impact of the phase-in is substantial. Over the next five years, it is likely that the largest or second-largest source of DC revenue losses will be attributable to the mandatory phase-in.

C. CHANGES TO DC CALCULATION METHODOLOGY

Several additional changes proposed in Bill 23 are specifically designed to restrict municipalities from using DCs to pay for growth-related infrastructure. The following are concerns regarding these changes:

- The removal of **Housing Services** as a service eligible for DC funding appears counterproductive to one of the Government's stated objectives of promoting affordable housing. It hampers efforts by municipalities and non-profit organizations to provide such housing since Housing Services DCs are used to pay for a portion of municipally constructed affordable units and to provide financial support for third parties to deliver those units. The objection to using DCs to fund social housing and affordable housing overlooks the substantial "benefit to existing" shares of municipal capital expenditures that are paid for by property tax payers.
- The potential removal of **Land Acquisition** as a DC eligible cost is of special concern. Land acquisition for new infrastructure and facilities is critical in capital development planning, and acquiring land is often the step that gets infrastructure projects "up and running". Not being able to use DCs to pay for land for some or all DC services will have a negative financial impact on municipalities, resulting in infrastructure delays which will negatively impact housing supply. It will be especially concerning to municipalities who need to use DCs to acquire land for roads, transit, water and wastewater infrastructure, which typically comprise between 70% and 80% of DC revenue.

- **Growth-Related Studies**: Another proposed change is to remove the cost to undertake studies from the list of DC eligible costs. Such studies typically include master servicing plans to determine growth-related infrastructure needs. As with land, these studies form the basis of long-term capital programs and, by extension, reflect the intentions of municipal councils in managing long-term growth. Typically, projects are not approved for construction unless appropriate studies have been completed. As the need for studies is largely driven by development, they should continue to be funded from DCs.

- **15-Year Service Level**: The proposal to change the calculation of historical service levels based on 10 years to one based on 15 years, over the long-term, will erode municipal efforts to use DCs to maintain service levels in the face of rapid growth. This may delay infrastructure and facilities required to build "complete" communities (e.g. fire stations, recreation facilities, libraries).

D. RECOMMENDATIONS

In summary, the Government's efforts to promote the construction of new affordable, rental, and non-profit housing through targeted DC incentives will to an extent be supported by the proposed changes to the DC Act. However, in the absence of provisions to replace the loss in DC revenues, the initiative will erode the ability of municipalities to pay for growth-related infrastructure.

Moreover, the broad cuts to DC revenues arising from the mandatory phase-in and changes to the DC calculation methodology runs counter to the Government's objectives to quickly stimulate housing construction.

Accordingly, it is suggested that the Government amend Bill 23 to:

- remove the requirement to phase-in DCs under subsection 5 of the DC Act;

- OR, should the mandatory phase-in be maintained, require that

    - it only apply if the proposed DC rate increase is greater than 20%;
    - the phase-in period be reduced from 4 years to 2 years;
    - it only apply to residential DCs;
    - it only apply to DC rate increases and not to the total DC payable; and
    - it not apply retroactively.

Moreover, it is recommended that:

- Housing Services not be removed as a DC eligible service (subsection 2 (4) of the DC Act);
- the definition of DC eligible capital costs under subsection 5 (3) of the DC Act be left unchanged; and
- the 10-year historical service level be retained under subsection 5 (1) of the DC Act and consideration be given to replacing the historical service level standard with one based on a planned service level (similar to Transit Services).

Additionally, in order to offset the DC revenue loss arising from exemptions/discounts targeted to affordable and rental housing in Bill 23, the Government should:

- expand the level of grant funding to municipalities for growth-related infrastructure;
- and/or provide a dedicated revenue stream to municipalities to pay for growth-related infrastructure (e.g. through HST revenue sharing);
- and/or expand the range of funding tools available to municipalities to pay for growth-related infrastructure (e.g. by giving the similar revenue raising powers as the City of Toronto has under the *City of Toronto Act* to all large municipalities).

This letter reflects our considered opinion regarding the proposed legislation and takes account of the views of the many municipal clients with which we have discussed the matter. We thank you for the opportunity to make this submission. Should you have any questions regarding our comments please do not hesitate to contact us.

Yours truly,

HEMSON Consulting Ltd.

Craig Binning
Partner