

November 24, 2022

Via Email:

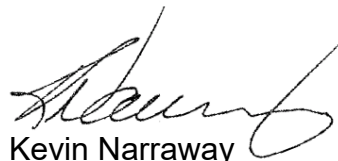
The Honourable Doug Ford  
Premier of Ontario  
[premier@ontario.ca](mailto:premier@ontario.ca)

Re: Planning and Development Department (Planning Services) Report PDP 65-22  
Re: Bill 23, More Homes Built Faster Act, 2022

Please be advised that at its meeting held on November 24, 2022, the Council of the Town of Whitby adopted the following Resolution:

1. That Report PDP 65-22 be endorsed as the Town's comments on key elements of the Province of Ontario's Bill 23 – the More Homes Built Faster Act, 2022, and other associated proposed changes;
2. That the Clerk forward a copy of Report PDP 65-22 to the Honourable Steve Clark, Minister of Municipal Affairs and Housing, the Premier of Ontario, Doug Ford, and MPP Lorne Coe; and,
3. That the Clerk forward a copy of Report PDP 65-22 to Durham Regional Council and the area municipalities.

Should you require further information, please do not hesitate to contact the Planning and Development Department at 905-430-4306.



Kevin Narraway  
Deputy Clerk

Attachment: Staff Report PDP 65-22

Copy: R. Saunders, Commissioner of Planning and Development -  
[saundersr@whitby.ca](mailto:saundersr@whitby.ca)

The Honourable Steve Clark, Minister of Municipal Affairs and Housing -  
[steve.clark@pc.ola.org](mailto:steve.clark@pc.ola.org)  
Lorne Coe, M.P.P., Whitby - [lorne.coe@pc.ola.org](mailto:lorne.coe@pc.ola.org)

A. Harras, Regional Clerk - [clerks@durham.ca](mailto:clerks@durham.ca)  
N. Cooper, Director of Legislative and Information Services, Town of Ajax  
[clerks@ajax.ca](mailto:clerks@ajax.ca)  
F. Lamanna, Clerk/Deputy CAO, Township of Brock -  
[Fernando.lamanna@brock.ca](mailto:Fernando.lamanna@brock.ca)  
J. Gallagher, Municipal Clerk, Municipality of Clarington - [clerks@clarington.net](mailto:clerks@clarington.net)  
M. Medeiros, City Clerk, City of Oshawa - [clerks@oshawa.ca](mailto:clerks@oshawa.ca)  
S. Cassel, City Clerk, City of Pickering - [clerks@pickering.ca](mailto:clerks@pickering.ca)  
B. Jamieson, Director of Corporate Services/Municipal Clerk -  
[bjamieson@scugog.ca](mailto:bjamieson@scugog.ca)  
D. Leroux, Clerk, Township of Uxbridge - [dleroux@town.uxbridge.on.ca](mailto:dleroux@town.uxbridge.on.ca)

# Town of Whitby Staff Report

[whitby.ca/CouncilCalendar](http://whitby.ca/CouncilCalendar)



---

**Report Title: Bill 23, More Homes Built Faster Act, 2022**

---

**Report to: Council**

**Date of meeting:** November 24, 2022

**Report Number: PDP 65-22**

**Department(s) Responsible:**

Planning and Development Department  
(Planning Services)

**Submitted by:**

R. Saunders, Commissioner of Planning  
and Development

**Acknowledged by M. Gaskell, Chief  
Administrative Officer**

**For additional information, contact:**

Lori Tesolin, MCIP, RPP  
Principal Planner, Policy and Heritage  
Planning, x. 2858

Fuwing Wong, Commissioner of  
Financial Services and Treasurer, x.  
4314

Francesco Santaguida, Commissioner of  
Legal Services and Town Solicitor, x.  
4242

John Romano, Commissioner of  
Community Services, x. 4321

---

## 1. Recommendation:

1. That Report PDP 65-22 be endorsed as the Town's comments on key elements of the Province of Ontario's Bill 23 – the More Homes Built Faster Act, 2022, and other associated proposed changes;
2. That the Clerk forward a copy of Report PDP 65-22 to the Honourable Steve Clark, Minister of Municipal Affairs and Housing, the Premier of Ontario, Doug Ford, and MPP Lorne Coe; and,
3. That the Clerk forward a copy of Report PDP 65-22 to Durham Regional Council and the area municipalities.

## 2. Highlights:

- The Province introduced Bill 23 - More Homes Built Faster Act, 2022 on October 25. The Bill was in its second reading at the time this staff report was prepared.
- Bill 23 is one of three (3) omnibus style bills introduced and/or passed by the Provincial government since 2019 to address housing supply.
- Bill 23 introduces changes to the *Planning Act*, *Development Charges Act, 1997*, and eight other Acts, as well as Provincial Policy documents, with the goal of providing 1.5 million new homes by 2031. Most of the proposed changes have a 30-day comment period closing on November 24, 2022.
- In principle, the Town of Whitby supports the Province's efforts to address housing needs in Ontario, including affordable housing. However, the Town has several concerns on how these efforts will affect the Town's ability to support those housing goals.
- The proposed changes in Bill 23 would significantly reduce municipal collections from developers to pay for and deliver infrastructure to support population growth (e.g. development charges for road improvements, stormwater infrastructure, parks, recreational facilities, libraries, etc.).
- The Town supports the principle that growth should pay for growth. With the proposed reduction in municipal revenues from development charges (DCs), community benefit charges and cash-in-lieu of parkland dedication fees collected from developers, a larger burden of the growth-related infrastructure costs will shift to property taxes / existing residents and businesses.
- The proposed mandatory five-year phase-in of DC fees included in Bill 23 would have reduced the Town's DC collections by \$18.8 million over the same five-year period. In infrastructure terms, this would have meant \$9.9 million less DC spending for roads infrastructure and \$6.2 million less in parks and recreation infrastructure.
- The Region has estimated a significant increase in growth for Whitby's population, to reach 245,000 by 2051. A shift to property taxes would be required to fund a larger share of this future growth-related infrastructure, which may result in delays in the delivery of infrastructure, as municipalities balance limited tax funding to reinvest in existing/aging infrastructure and new infrastructure to support growth.

- The Province has proposed a housing target for Whitby of 18,000 new homes by 2031. Whitby currently has approximately 18,000 units either under review, approved, and/or registered, with more to come through new subdivisions in Brooklin, remaining subdivisions in West Whitby, and infill elsewhere across Whitby.
- However, the Town does not have control over when developers submit applications for building permits, and/or build approved units. Whitby has the second fastest approval times for development applications, compared to other municipalities across the GTA, as reported in a recent [Municipal Benchmarking Study](#). Many developers wait for favorable market conditions, often related to interest rates, to begin building units.
- While Bill 23 may provide for more housing units, significantly reducing land use and infrastructure planning oversight of upper and lower tier municipalities, as well as conservation authorities, has the potential to cause public safety impacts (e.g. traffic, parking, flooding issues, water quality, air quality), as well as the loss of natural heritage and culture heritage resources, parkland, and overall good land use planning practices that would otherwise provide for a mix of housing options in sustainable, livable communities.
- By limiting third-party appeal rights, Bill 23 may result in faster approval processes, but limits public participation in a process that has long-term impacts on the local community. It also limits the ability of neighbours to bring forward concerns about a development that may directly affect the use of their property.
- Bill 23 will require that Heritage registers be reviewed and decisions made whether listed properties are to be designated, and if not, then removed from the register within 2 years. Once removed, those properties cannot be added back to the Register for another 5 years.
- Bill 23 provides no mechanisms to ensure, and it is unclear how, any potential savings from the proposed changes would be passed on to the homebuyer to ensure long-term affordability. An increase in supply does not necessarily mean an increase in affordability.
- Bill 23 will create a significant burden on municipal staff resources to implement the proposed changes, at a time when many municipalities are dealing with increased (financial and staffing) constraints.

- The 30-day comment period for the majority of changes proposed under Bill 23 is insufficient to understand the long-term impacts on local communities. Adequate consultation needs to be undertaken for such substantial and far-reaching changes.
- The Province is also proposing to change the Greenbelt Plan Boundary to allow for more housing. The Region of Durham recently released Phase 2 of the Growth Management Study for Envision Durham, which proposes to expand Whitby's urban boundary by approximately 500 hectares, to accommodate future population and employment growth to 2051. While no lands are proposed to be removed from the Greenbelt Plan Area in Whitby, it is unclear if the removal of certain lands elsewhere in Durham will have an effect on the proposed expansions to Whitby's urban area.

### 3. Background:

Bill 23 is the third step in the government's changes to the *Planning Act* and other related legislation, following on the *More Homes, More Choice Act, 2019*, and the *More Homes for Everyone Act, 2020* (Refer to Report PDP 31-22).

The *Strong Mayors, Building Homes Act, 2022* was also passed earlier this year, affecting the mayors of Toronto and Ottawa. (Refer to Report CAO 24-22.) On Nov 16, the [Better Municipal Governance Act, 2022](#), was introduced to expand similar powers to municipalities in Durham and other regions.

Bill 23 impacts legislation and regulations related to the following:

- Planning Act;
- Development Charges Act;
- Municipal Act;
- Conservation Authorities Act;
- Ontario Heritage Act;
- Ontario Land Tribunal Act;
- Ontario Building Code Regulatory Changes;
- City of Toronto Act;
- New Home Construction Licensing Act;
- Ontario Underground Infrastructure Notification System Act; and,
- Supporting Growth and Housing in York and Durham Regions Act.

The [Environmental Registry of Ontario \(ERO\)](#) notices and regulatory registry postings provide details on changes proposed for each Act/Regulation subject to Bill 23. Comments regarding the ERO postings are also being sought.

The Province is considering changes to the boundary of the Greenbelt Plan to remove lands from the Greenbelt to allow for residential development ([ERO Notice 019-6216](#)). Comments on the Greenbelt Plan changes are due Dec 04, 2022.

In addition, the province is proposing to update and integrate the Provincial Policy Statement (PPS) and A Place to Grow: Growth Plan for the Greater Golden Horseshoe ([ERO Notice 019-6177](#)), as well as revoke the Parkway Belt West Plan and the Central Pickering Development Plan. Comments on the PPS and Provincial Plan changes are due December 22, 2022.

The Region of Durham has submitted comments to the Province on Bill 23, as well as the proposed changes to the Greenbelt. Refer to Regional Reports [#2022-INFO-92](#) and [#2022-INFO-93](#).

#### 4. Discussion:

A high-level overview of the key changes proposed by Bill 23 is provided in this section. Given the volume of information on all proposed changes, staff will report back to Council as needed, when more information and time for analysis is available.

##### Key Changes to the Planning Act:

The Planning Act, together with the Provincial Policy Statement and other provincial policy tools (e.g. the Growth Plan for the Greater Golden Horseshoe) regulate land use planning in Ontario and aim to direct population growth in a sustainable manner over the long-term planning horizon.

Several changes to the Planning Act under Bill 23, and the potential impacts on the municipality, are summarized in the table below.

Topic	Proposed Changes	Impact on the Municipality
Removal of Upper Tier Planning Approval powers	<p>The Region of Durham will be defined as an “Upper-Tier Municipality without Planning Responsibilities.</p> <p>The Minister would become the approval authority for certain Official Plan matters, not subject to appeal.</p>	<p>Provides a more streamlined approvals process.</p> <p>Increases burden on lower-tier municipal staff to take on planning responsibilities downloaded from the Region.</p> <p>Will result in uncoordinated planning for critical infrastructure that crosses local municipal boundaries, as well as uncoordinated long term planning for intensification, population and employment growth.</p>

<p>Additional Units</p>	<p>Up to three (3) residential units to be permitted on a residential property.</p> <p>Additional units would be exempt from Development Charges (DCs) / Community Benefit Charges (CBCs) and Parkland dedication.</p> <p>No more than one additional parking space can be required.</p>	<p>Would increase housing options in mature areas, without significantly impacting the overall built form character of the area.</p> <p>Will cause safety issues if additional units are not appropriate for the building/lot size (e.g. stormwater, sewer, flooding; emergency service access, other building code issues).</p> <p>Will in some cases, cause or exacerbate on-street parking issues and traffic impacts; other impacts related to noise, garbage, snow removal, etc.</p> <p>Increases burden on municipal by-law staff to enforce compliance.</p>
<p>Inclusionary Zoning/Affordable and Attainable Housing</p>	<p>The number of affordable units that may be created through inclusionary zoning will be reduced from 10 per cent to 5 per cent.</p> <p>The threshold for affordability will be 80 per cent of average resale price for ownership housing, or 80 per cent of average market rent for rentals.</p> <p>A new category of “attainable housing” will be defined in future regulations.</p> <p>Affordable housing, attainable housing and inclusionary zoning units will be exempt from DC, CBCs and Parkland dedication.</p>	<p>Exemptions from DCs/CBCs and Parkland dedication may encourage the development of more affordable/attainable units.</p> <p>Will result in additional residents, placing increased demand on infrastructure, such as parks, recreational facilities, libraries, fire services and stormwater infrastructure. Maintaining service levels to meet this increased demand will need to be funded through property tax increases.</p> <p>The municipality should be able to financially secure DCs/CBCs and/or parkland dedication against a property in order to ensure that affordable/attainable housing remains affordable/attainable for the entire affordability period.</p>



<p>Zoning in Major Transit Station Areas (MTSAs)</p>	<p>Zoning must be updated to include minimum heights and densities within approved MTSA and Protected MTSAs within one year of MTSA/PMTSA being approved.</p> <p>Current protections from Zoning appeals in PTMSAs would no longer apply if the zoning is not updated within 1-year.</p>	<p>Currently, the Town has one PMTSA around the Whitby GO Station.</p> <p>Will increase burden on municipal staff resources to ensure zoning compliance within a year timeframe.</p> <p>The Region passed Regional Official Plan Amendment (ROPA) 186 in December of 2021, which establishes policies and delineates the Whitby GO PMTSA.</p> <p>The Town's ongoing Comprehensive Zoning review is a multi-year project that would address zoning compliance in the Whitby GO PMTSA.</p>
<p>Subdivision approvals</p>	<p>Statutory Public Meetings will no longer be required for draft plan of subdivision applications.</p>	<p>Streamlines the approvals process.</p> <p>Limits public participation/say on more complex/detailed plans of subdivision where Zoning amendments or other planning approvals are not required.</p>
<p>Site plan control</p>	<p>Developments of up to 10 residential units will be exempted from site plan control.</p> <p>Architectural detail, environmentally sustainable design elements and landscape design will be removed from the scope of site plan control.</p>	<p>Prevents local area municipalities from incorporating sustainable design practices in new development, including the Whitby Green Standards, which are designed to address energy efficiency and climate change.</p> <p>Limits the ability of staff to work with developers to create good urban design and pedestrian friendly environments in new development.</p> <p>Reduces efforts to support the conservation of heritage properties and their significant</p>

		heritage attributes, including landscapes.
Removal of third-party appeals to the Ontario Land Tribunal (the “Tribunal”)	<p>No one, other than the applicant, the municipality, certain public bodies, and the Minister will be allowed to appeal municipal decisions to the Tribunal. This applies to <u>all</u> <i>Planning Act</i> decisions (including consents and minor variances).</p> <p>The Region would no longer be permitted to file an appeal to the Ontario Land Tribunal, nor would conservation authorities (“CAs”).</p>	<p>Streamlines the appeals process.</p> <p>Limits residents, neighbouring landowners and other bodies from participating in the appeals process.</p> <p>Limits CAs rights to appeal decisions that may impact Natural Heritage, creating challenges for municipalities who rely on CAs for environmental review and expertise.</p> <p>Limiting a Third Party appeal results in the Town being the sole party representing the local public interest in a Tribunal appeal. This could result in the Town participating in more Tribunal appeals, as Council may feel compelled to represent the interests of parties who are no longer able to represent themselves.</p>
Parkland Dedication	<p>Parkland dedication requirements will be waived for affordable and attainable housing, and significantly reduced in higher density areas like major transit station areas (MTSAs).</p> <p>Landowners could provide input into the parkland conveyance process and will have the right to appeal municipal decisions regarding the size and location of parkland that the municipality requires.</p>	<p>Reducing parkland dedication in higher density areas, and/or waived for affordable and attainable housing units, seems counter-intuitive. Would create “have” and “have-not” communities with respect to the availability of park space. New communities that would have a lower- level of service for parkland, despite the significant increase in demand brought on by a rapidly growing municipality.</p> <p>Developers may propose/offer land that the Town considers</p>

	<p>Municipalities could be compelled to accept parkland that may be encumbered.</p> <p>The current parkland dedication requirements and alternative rates will effectively be reduced by 50 per cent.</p> <p>Municipalities will be required to spend or allocate 60 per cent of parkland reserve funds at the start of each year.</p>	<p>unacceptable due to location, size, configuration, grades, or general suitability.</p> <p>Accepting encumbered parkland (e.g., parkland with underground services, or environmentally contaminated parkland) often presents significant risks to the municipality. Encumbered parkland often requires greater maintenance, resulting in greater disruption for residents using those parks.</p> <p>Spending or allocating 60 per cent of funds each year may not be practical for municipalities (e.g. building up funds for a larger park related project over time, instead of trying to spend in the short-term to meet an arbitrary 60 per cent requirement.)</p>
<p>Community Benefit Charges (CBC)</p>	<p>A CBC is an additional fee in support of infrastructure needs related to high density development (can fund the capital cost of any public service associated with new growth). CBCs are based on the land value of the property and is currently capped at 4%.</p> <p>As noted above, some housing units will be exempt from CBCs.</p> <p>The proposed changes also limit the CBC value of the charge to the land for new development.</p>	<p>The overall impact would result in less CBC's collected to pay for growth related infrastructure required to support residents in high density developments, which wouldn't otherwise be included in DCs.</p> <p>The changes do not recognize that redevelopment will impact the need for services and the type of services needed in the area (i.e. converting non-residential land to residential land).</p> <p>Currently, Whitby does not have a CBC By-law in place, but plans are to establish one in the future.</p> <p>Refer to Attachment #1 for more information.</p>

**Key changes to the Development Charges Act:**

A Development Charge (DC) is a fee that is applied to new development (residential and non-residential), expanded non-residential development, and change of use development within the Town of Whitby

DCs help fund the Town’s growth-related capital infrastructure program required to service additional residents, and businesses resulting from growth, such as road improvements, parks, recreational facilities, libraries, fire stations, and stormwater infrastructure.

DC rates are applied based on the type of residential dwelling unit (i.e. small and large apartments, single/semi-detached houses, etc.) and gross floor area for non-residential development (\$ per square metre).

Under the Bill 23 changes, the amount of DCs collected as a part of new development will be reduced, and the cost difference for the construction cost of Whitby’s construction of growth-related infrastructure needed, to support growth will likely shift to existing taxpayers.

A high-level overview of proposed changes to the Development Charges Act is provided below. Refer to Attachment #1 for a more detailed review, which includes detailed financial impacts to the Town of Whitby, and specific recommendations related to proposed Bill 23 changes to the Development Charges Act and the Planning Act (Community Benefit Charges and Cash-in-Lieu of Parkland Dedication fees).

Topic	Proposed Changes	Impact on the Municipality
DC Increase / Exemption	<p>Five-year phase-in of DC rates proposed in all DC by-law updates from June 1, 2022 forward.</p> <p>There will be DC exemptions for certain housing units (see above).</p>	<p>Changes will result in reduced revenue from developers to pay for growth-related infrastructure and shift the burden onto existing taxpayers.</p> <p>In addition to the above, a shift to property taxes funding a larger share of growth-related infrastructure may also result in delays in the delivery of the infrastructure as limited tax dollars must be allocated towards growth-related infrastructure and funding repair/re-investment of aging infrastructure.</p>

DC Eligible Costs	Removal of land costs and studies as eligible costs recoverable through DCs.	<p>The cost of studies and land required for new roads and facilities to support population growth will need to be fully paid for by existing taxpayers in the future. The Town's current DC rates support the collection and funding of \$5.8 million of development related studies that would no longer be eligible for DC funding.</p> <p>By removing DC funding of planning studies, stormwater master plans, environmental assessments, which provide for specific planning and approval of infrastructure, could result in inefficient servicing, further limiting the supply of serviced land.</p>
DC Spending	Municipalities would be required to spend or allocate at least 60% of DC reserves for priority services (i.e., water, wastewater and roads) at the start of each year.	Similar to comments above on Parkland Dedication, requiring municipalities to spend or allocate 60% of funds on a time-restricted basis, may not be practical, depending on the need and priority for larger long-term projects vs. smaller short-term projects. More information is required and time to analyze. Refer to Attachment #1.

**Other Key Changes proposed by Bill 23:**

Several other Acts, provincial policy documents, regulations and procedures are proposed to be amended by Bill 23. Key changes are summarized in the table below.

Issue	Proposed Changes	Impact on the Municipality
Ontario Land Tribunal Act, 2022	Increased power to dismiss appeals for undue delay.	Changes will provide more clarity and certainty to help reduce backlog. However, the Tribunal already has powers to

	<p>Increased powers to order costs against a party who loses a hearing at the Tribunal.</p> <p>Regulations to establish priorities for scheduling of certain matters (e.g. prioritizing cases related to housing).</p>	<p>dismiss appeals that do not merit a hearing or are brought forward in bad faith to cause delays.</p> <p>Parties that bring forward appeals in good faith, should not be penalized because they are unsuccessful. Requiring that costs be awarded where the Town, a resident or ratepayers group seeks to defend their interests, discourages public participation in the appeals process.</p> <p>Establishing priorities for scheduling is beneficial, but should not cause unnecessary delay for other important matters (e.g. appeals related to employment land policies).</p>
<p>Natural Heritage Resources</p>	<p>The Ministry of Natural Resources and Forestry is considering developing an offset policy that would require a net positive impact to Natural Heritage Features, such as woodlands and wetlands.</p> <p>There are also proposed changes to the Ontario Wetland Evaluation System (OWES).</p>	<p>Further information and time for analysis are required.</p>
<p>Ontario Heritage Act</p>	<p>Two or more criteria (in regulation) will need to be met to warrant designation of a property under the</p>	<p>Reviewing the heritage register every two years increases burden on municipalities to evaluate</p>

	<p><i>Ontario Heritage Act</i>, instead of the current requirement of meeting one.</p> <p>Heritage registers will need to be reviewed and decisions made whether listed properties are to be designated, and if not, removed from the register within 2 years. If removed, properties cannot be added back until after 5 years.</p> <p>A process to be provided for how Heritage Conservation District (HCD) Plans can be amended or repealed, and criteria for HCDs will be established.</p>	<p>and undertake the designation process for non-designated properties on the heritage register, or potential properties not yet identified as having cultural heritage value.</p> <p>Whitby has two existing HCDs, with future planned HCDs in the Downtown Whitby area. The changes may result in requests for HCD plans to be reviewed and amended, putting increased burden on staff and resources.</p> <p>Overall, reduces ability to protect properties, which will result in the loss of Whitby's irreplaceable cultural heritage resources/ unique heritage character.</p>
<p>Conservation Authorities</p>	<p>Changes would limit conservation authority (CA) appeals of land use planning decisions.</p> <p>When acting as a public body, CAs would only be able to appeal with respect to matters related to natural hazard policies in Provincial Policy Statement.</p> <p>Limits the ability for municipalities to enter into agreements (Memorandums of Understanding) with CAs to support environmental protection/management.</p>	<p>CA expertise helps to ensure protection of public health and safety (i.e. natural hazards) as well as sustainable management of natural resources (i.e. water, natural heritage system, biodiversity, etc.) These lands are typically located in floodplains and/or are made up of significant natural features that support natural functions, protecting water quality, capturing carbon emissions, etc.</p>

	<p>Limits the ability for municipalities to engage CAs for review/advice on water quality/quantity, land conservation, ecosystem impacts.</p> <p>Limits CA ability to regulate lands (e.g. require permits) for site alteration and development in what are currently CA regulated areas adjacent to key natural heritage and natural hazard features.</p>	<p>Municipalities rely on CAs to provide review, advice and expertise that the Town does not provide in-house and may need flexibility to enter into agreements with CAs to review Planning Act applications to ensure the natural environment is protected.</p> <p>CAs should continue to have the authority needed to protect important natural heritage and natural hazard features, which is necessary for human health, safety and quality of life.</p>
<p>Rental Replacement</p>	<p>Municipal Act to give the Minister the authority to make regulations to prohibit and regulate demolition and conversation of residential rental properties under that section.</p>	<p>Further information and time for analysis are required.</p>

**Next Steps:**

Staff will continue to monitor Bill 23 and all associated changes as the bill receives Royal Assent, and changes come into effect. Staff will report back to Council on key changes as they are implemented.

**5. Financial Considerations:**

As noted earlier in this report, the proposed changes in Bill 23 challenge the principle of “growth paying for growth” as it relates the Town’s provision of infrastructure to support population growth. The Town relies on development-related fees (such as development charges and cash-in-lieu of parkland dedication fees) to pay for a significant portion of the cost to construct infrastructure to support additional residents and businesses (including employees and customers).



Over the past five years, the Town has collected \$171 million in development charges to pay for growth-related infrastructure. The proposed mandatory five-year phase-in of DC fees included in Bill 23 would have reduced the Town's DC collections by \$18.8 million over the same five-year period. In infrastructure terms, this would have meant \$9.9 million less DC spending for Roads Infrastructure and \$6.2 million less in Parks and Recreation infrastructure.

Capital projects (such as road improvements, new parks, trails, multi-use paths) requiring this funding would have been delayed, deferred, or supplemented by existing taxpayers via property taxes. More details of how Bill 23 may impact the Town's finances are provided in Attachment #1 to this report.

## **6. Communication and Public Engagement:**

Consultation on Bill 23 is the responsibility of the Provincial Government. The majority of proposed changes have a 30-day commenting period, closing on Nov 24, 2022. Further information can be found on the Environmental Registry of Ontario at [ero.ontario.ca/notice/019-6162](http://ero.ontario.ca/notice/019-6162).

## **7. Input from Departments/Sources:**

Review and input has been provided by the Planning and Development Department, as well as Financial Services, Legal and Enforcement Services, Community Services, and Strategic Initiatives.

Staff have also reviewed comments from other municipalities and related sources such as the Municipal Finance Officers Association, the Association of Municipalities of Ontario, municipality finance consultants and the Region of Durham. Staff will continue to monitor information from such sources as it is made available.

## **8. Strategic Priorities:**

The comments presented in this report align with the Town's Corporate Strategic Plan Priority to be a high performing, innovative, effective and efficient organization, and aligns with Council Goals for affordability and sustainability.

## **9. Attachments:**

Attachment #1 – Memorandum Financial Services Review of Bill 23

# Memorandum



---

**To:** Lori Tesolin, Supervisor, Policy & Heritage & Principal Planner

**CC:** Ed Belsey, Senior Manager, Policy & Heritage Planning

**From:** Jennifer Hess, Manager Development Finance and Long-Range Financial Planning

**Date:** November 21, 2022

**Re:** Review of Bill 23 from a Financial Services Perspective

---

Bill 23 includes proposed changes to the *Development Charges Act* and *Planning Act* which impact development/growth-related fees such as, development charges, community benefits charges and parkland dedication / cash-in-lieu parkland dedication fees. These proposed changes challenge the principle of “*growth paying for growth*”, which has underpinned municipal financing of growth-related infrastructure since the late-1980s.

Municipalities are projected to collect less funding as a result of new development to support growth-related infrastructure based on the proposed changes under Bill 23. Accordingly, the cost of Whitby’s construction of growth-related infrastructure, such as roads, parks, recreational facilities, libraries, fire stations, stormwater infrastructure to support growth will shift to existing taxpayers or, will otherwise result in a marked decreased level of service related to that infrastructure for current and future residents of the Town. A shift to property taxes funding a larger share of growth-related infrastructure may also result in delays in the delivery of the infrastructure as municipalities balance limited tax funding to maintain day-to-day service delivery, reinvest in existing/aging infrastructure and new infrastructure to support growth.

## **Development Charges Act – Development Charges (DC)**

A Development Charge is a fee that is applied to new development (residential and non-residential), expanded non-residential development, and change of use development within the Town of Whitby. The fees collected help fund the Town’s growth-related capital infrastructure program required to service additional residents, businesses (employers, employees, customers) resulting from growth.

Development charge rates are applied based on the type of residential dwelling unit (i.e. single- and semi-detached, apartments, townhomes) and gross floor area for non-residential development (\$ per square metre of commercial/industrial/institutional space).

Bill 23 proposes nine (9) changes that impact Development Charges:

- 1) Mandatory five-year phase-in of DC rate increases for by-laws passed after June 1, 2022, beginning with a 20% reduction in the first year, with the reduction decreasing by 5% each year until year five when the full new rate applies. A phase in of DC following a by-law update was previously optional.
  - Bill 23 proposes that Developers pay 80% of the DC rates following a new DC Background Study/by-law in the first year. For years two (2) to five (5) following the passage of a new DC by-law, developers will pay 85%, 90%, 95%, and 100% (full charge), respectively.
  - Based on the proposed limit of 80% of a new DC rate for the first year a new DC by-law, municipalities that propose modest rate increases will see a decrease in overall DC revenues given the same development levels as the 80% calculated on the total rate, rather than just the amount of the increase. As an example, if the current rate is \$100 and the new rate is \$110, Bill 23 proposes that municipalities charge only 80% of the new rate in the first year following the DC by-law update or \$88 in year 1, \$93.50, \$99, \$104.50, and \$110 in years 2, 3, 4 and 5 respectively.
  - A mandatory phase-in period is not recommended as the DC Background Study (“**DC Study**”) justifies the DC rates are required to fund the growth-related infrastructure specified in the study based on the growth projected in the study. Having municipalities wait 5 years before collecting full rates to support the required infrastructure for growth may delay the construction of the growth-related infrastructure and may shift a larger burden of the growth-related infrastructure to existing taxpayers.
  - The Town of Whitby collected approximately \$171 million of development charges over the past five (5) years. If a similar mandatory phase-in period had been in place for that time period, the Town’s DC collections would have been \$18.8 million lower. A large portion of the DC’s the Town collects funds the growth-related Roads and the growth-related Parks & Recreation program. The impact of a mandatory five-year phase-in of DC rates to those programs would have resulted in \$9.9 million less in Road infrastructure funding and \$6.2 million less in Parks & Recreation infrastructure funding over that period. Capital projects, (such as new roads, road improvements, new parks, trails, and multi-use paths) requiring this funding would have been delayed, deferred, or supplemented by property taxes.
  - Of all the proposed legislative changes under Bill 23, the proposed five-year phase-in of new DC rates would have the greatest negative impact to the Town’s ability to deliver infrastructure to support growth.

- Bill 23 is focused on housing yet the proposed phase-in would apply to development charges collected from residential and non-residential developments as well.
  - Further, housing prices are market driven. A mandatory phase-in whereby developers pay 80% of a new DC rate in the first year does not mean housing prices will not rise that year nor provide any assurance that any “savings” would be passed onto the homebuyer.
  - *We respectfully request the five-year phase in of new development charge rates, that are supported following a DC Background Study, be removed from the proposed legislation.*
- 2) Development Charges, Community Benefit Charges (“**CBC**”), and Parkland dedication exemptions for affordable housing and attainable housing (which will be developments or classes of development defined by future regulations).
- Exemptions provided for qualifying developments defined as attainable housing and affordable housing will further limit the Town’s ability to collect for growth-related infrastructure from developers. The impact of the Town receiving less developer funding to support growth-related infrastructure is outlined in Section 1.
  - Like all other developments that result in additional residents, there will be increased demand on infrastructure, such as parks, recreational facilities, libraries, fire department and stormwater infrastructure from new occupants of the attainable and affordable housing developments. Bill 23 currently proposes that these developers/developments will not have to pay DC’s, CBC’s, or dedicate or pay cash-in-lieu of parkland dedication.
  - In order to ensure that affordable housing developments remain affordable over the long-term (25 years), Bill 23 proposes that the Province publish average market rent tables and places an administrative monitoring burden on municipalities to ensure that the affordable housing developments do not exceed 80% of the average market rent each year. The resources to monitor this over the long term 25-year requirement for each development is currently not in place and cannot be funded from DC’s. While it is admirable that the Province has established targets below average market rents and require developers to meet the target for 25 years, the responsibility and costs of monitoring over a 25 year period for each qualifying developments has been delegated to municipalities.
  - Further, there are no provisions to allow municipalities to financially secure for the future collection of mandatory affordable housing exemptions in the event that the developments not remain affordable for the entirety of the 25-year period.

- Based on 2019 legislative changes, the *Development Charges Act* (“**DCA**”), currently provides for a non-profit housing DC incentive: DC are paid over 21 years (at occupancy and then annually over 20 years following occupancy).
  - The Provincial Government has already provided an incentive for affordable housing through this DC Deferral process (21 payments, outlined above).
  - *We respectfully request that in lieu of a DC exemption program, the current DC Deferral process remains in effect for non-profit housing. Further, the definition of non-profit housing could be expanded to include attainable and affordable housing. Should the Province proceed with the exemptions as proposed for affordable and attainable housing, the Town respectfully requests that the Province provide tools for the municipality to secure that housing for the affordability period, e.g. a charge registered on the property that is only payable if the housing is no longer affordable/attainable within the affordability period.*
- 3) DC Discount for all purpose-built rental units, with a higher discount for rental units with 2 or 3 bedrooms.
- The proposed discount would further reduce development charges by 15%-25% based on the number of bedrooms in the units; thereby limiting the amount of development charges a municipality can collect. The impact of lower development charge revenues is outlined in Section 1.
  - Based on 2019 legislative changes, the DCA currently provides a for a purpose-built rental DC incentive: DC are paid over 6 years (e.g. at occupancy and then annually over 5 years following occupancy).
  - Since the 2019 legislative changes, the Town of Whitby has had five high density rental developments (that qualify for the DC Deferral in the DCA) reach the building permit stage. While none are at the occupancy stage, these 5 developments will result in 702 apartment units in Whitby. It appears that the current DC incentive for purpose-build rental housing is having some positive effects within Whitby.
  - Larger apartment units are a greater draw on municipal services, which is why the rates are typically higher than studio or one-bedroom apartment. Discounting purpose-built rental and/or two- and three- bedroom units will shift the burden of those services onto other residents of the Town or, result in a reduction of service levels for new and existing residents.
  - The Town’s DC revenues, required to fund the construction of Town infrastructure to support residents of the 702 apartment units, would decrease by \$1.4 million if the proposed Bill 23 DC discounts were applied to the five rental developments currently under construction.

- Acknowledging that the current *Development Charge Act* already incentivizes rental development through development charge deferrals, *we respectfully request that the proposed additional incentive, DC discount, for purpose-built rental housing developments be removed from Bill 23.*
- 4) The Historical Service Level Cap calculation for Development Charge recoveries be extended from 10 to 15 years (except for Transit).
- Currently, municipalities developing DC Background Studies to determine DC rates are capped on using DC's to fund future growth-related infrastructure based on an average service level calculation over the past 10 years.
  - Generally, the service level is measured on a per capita basis. For example, if a municipality had one community centre over a 10-year period of rapid population growth, a 10-year historic service level cap would restrict the amount of DC's recoverable from future development based on the average per capita of recreation space provided to Town residents over the past 10 years.
  - Extending the Historical Service Level Cap calculation to 15 years would likely result in a further reduction on the maximum DC's that may be recovered/charged to fund growth-related capital infrastructure projects.
  - This change could have a significant long-term impact on the ability of the Town to maintain its current service levels, and when coupled with the other proposed changes under Bill 23, will very likely result in a sustained reduction of services levels for all future residents.
  - *We respectfully request the Historical Service Level calculation remain at 10 years in the Development Charges Act.*
- 5) New regulation authority to set services for which land costs would not be an eligible capital cost recoverable through DCs.
- Currently only the acquisition of parkland or other public recreation space is ineligible to be recovered through DC's, as parkland is required to be dedicated or cash paid in lieu of parkland dedication as part of the development process in accordance with the *Planning Act*. Land acquired through this process is known as a "base park", which is land that is graded, sodded, and connected to electrical, water and wastewater services.
  - Accordingly, DC's collected for Parks pays for "above base" park improvements such as amenities, play and recreational infrastructure, lighting, landscaping and other costs.

- Under the subdivision or consent process, the Town is able to acquire a local road free of costs from a new development, as well as road widenings for existing roads through subdivision and site plan approvals. The purchase of land is a required component of other growth-related infrastructure currently funded from DC's, such as new collector roads and bridges to accommodate growth, or land costs related to securing other services (e.g. easements).
  - As land values have increased significantly over the past 10 years, these costs are amongst the most significant for the construction of new infrastructure. Transferring these costs to existing taxpayers could make the planned timing of growth-related infrastructure infeasible, which in turn would exacerbate existing traffic concerns within the Town and Region.
  - *We respectfully request that land remain an eligible DC expenditure.*
- 6) Exclude recovery of the cost of studies (including Official Plan and DC background studies) through DCs.
- The Town of Whitby's 2021 Development Charge Background Study included \$5.8 million of development related studies that would no longer be eligible for development charge funding in the next DC By-Law. These costs would fall to the taxbase. These include environmental assessments, the Development Charge Background Study, Official Plans, Zoning By-Law Updates, and Master Plans.
  - These plans and studies are directly related to growth and, recognizing that municipalities need to complete studies to properly plan for and accommodate growth, *we respectfully request that development-related or growth-related studies remain eligible for development charge funding.*
- 7) DC by-laws will expire every ten (10) years, instead of every five (5) years. By-laws can still be updated any time.
- For municipalities with slow growth the change to 10 years is beneficial as it avoids the costs and resources related to a DC by-law update, including preparing a DC Background Study, mandatory public meetings, and notice publications.
  - However, in a rapidly growing municipality, this will likely not have a significant impact. By-laws will likely continue to be updated before the mandatory expiration dates/periods based on assumption changes such as additional growth/population allocations from the Region, and changes in costing or plans for infrastructure to support growth.

- 8) Bill 23 proposed an interest rate cap of prime plus one (1%) per cent on developments that currently qualify for a legislative DC deferral payment plan (i.e., 6 annual payments for rental housing, 21 annual payments for non-profit housing & institutional) and all developments eligible to have DC rates “frozen” at the time of planning application submission (e.g., Site Plan or Zoning By-Law Amendment applications submitted after January 1, 2020).
- The Town of Whitby currently charges a fixed interest rate of 5%. Based on the proposal in Bill 23, the Town’s interest rate for outstanding DCs in a mandatory DC Deferral payment plan would increase to 6.95% (based on Bill 23 and the current prime rate of 5.95%)
  - Interest on outstanding DC’s related to developments that qualify for the mandatory DC Deferral payment program (e.g., purpose-built rental, non-profit housing and institutional developments) helps the Town offset debt servicing costs if the Town had to borrow funds to construct the infrastructure before collecting all of the DCs from developers with qualifying mandatory DC Deferrals.
  - However, if the Town waited to collect sufficient funds before starting a growth-related infrastructure project, a mandated prime + 1% cap on interest may not offset the inflationary pressures of the Non-Residential Construction Price Index. That is, the Town is collecting DC’s over 21 years based on old/static rates but every year that it waits to construct the infrastructure (due to not having sufficient DC reserves), costs will increase based on the Non-Residential Construction Price Index which may be higher than the mandated interest. Accordingly, the Town will lose purchasing power and either reduce scope to the funds available or supplement shortfall from the taxbase.
  - *We respectfully request that municipalities continue to be able to set interest rates for “frozen” and deferred DCs based on the financial pressures they experience related to timing of DC collection and expenditures. That is, based on financial pressures related to either debt-financing costs for infrastructure built before the DC collection or inflationary pressures on infrastructure to be built pending actual collection of DC’s. For the former, (DC) interest rates linked to the prime rate would be appropriate to service DC-related debt. For the latter, (DC) interest rates linked to the Construction Price Index would be more appropriate to maintain purchasing power for Town projects due to inflation.*
- 9) Municipalities will be required to spend (or allocate) at least 60% of DC reserves for priority services (i.e., water, wastewater, and roads).
- For the Town of Whitby, as a lower tier/local municipality, only the Roads service level would apply.
  - The regulations related to this are not available at this time so guidance on time between DC collection and expenditure and definition of “allocate” is currently not known.



- It appears that the intent of this proposed change is for municipalities to spend DCs collected in a timely manner.
- Road infrastructure projects to support growth, noted in the Town’s DC Study, include new arterial roads which are quite costly to design and construct.
  - The 2022 Capital Budget and Forecast (2022-2031) included of \$91.7 million for the Columbus Road Widening to support future growth in Brooklin, \$53.6 million for the construction of the Mid Arterial Roadway from Ashburn to Oshawa and \$34 million for New Road XI in the Brooklin Development Area.
- In 2021, the Town collected approximately \$18.9 million of development charges dedicated to Road DC-related projects such as the Columbus Road widening, construction of the Mid Arterial Roadway and New Road XI as noted above.
- While it is important for municipalities to spend the Development Charge collections/revenues to build infrastructure that services the growth, legislation should continue to allow municipalities to accumulate DCs collected in reserve funds to pay for the construction of the infrastructure in the future in a way that mitigates costly debt-financing where feasible.
- The provincially mandated spending requirement may also encourage short-term, un-coordinated DC expenditures to meet mandated expenditure targets, which could ultimately increase costs in the long-term.
- *We respectfully request that the proposed regulations continue to allow municipalities accommodate prudent long term financial planning of infrastructure, outlined in their respective DC Background Studies, by not mandating any requirement to expend a percentage of DC reserve balances.*

### **Planning Act – Community Benefits Charge (CBC)**

A community benefits charge was introduced by the province in 2019 as an additional development-related fee in support of infrastructure needs related to high density development (i.e. at least five storeys in height and at least ten residential units). Community Benefit Charges are calculated based on the land value of the property and is currently capped at 4% of the land value. The proposed changes to the CBC limit the value of the charge to the land for the new development and discounts the value by the existing building size, even in the case of redevelopment. This charge replaced the previous “Section 37” community benefits regime, which was a less structured process.

The overall impact would result in less CBC's collected to pay for infrastructure required to support residents in high density developments. The changes do not recognize that redevelopment will impact the need for services and the type of services needed in the area (i.e., converting non-residential land to residential land).

To date the Town of Whitby has not undertaken a community benefits charge study but has plans to do so over the next couple of years. Background Studies, in accordance with current legislation, required to support both a CBC and DC by-law utilize the same growth-related data/projections so the Town will be completing each study concurrently in the future.

### **Planning Act – Parkland Dedication / Cash-in-Lieu of Parkland Dedication**

Through the development process, land for parks is required to be conveyed to the Town in accordance with the *Planning Act*. Developers have an option of paying cash-in-lieu of a parkland (“**CILP**”) dedication. Municipalities allocate CILP payments to a dedicated reserve for the future purchase of parkland and related expenditures. In response to previous changes to the *Planning Act*, the Town of Whitby adopted the [Conveyance of Parkland and Cash-in-Lieu of Parkland By-Law](#) in 2021.

Details of the Bill 23 proposed legislative changes related to Parkland Dedication / CILP are provided below. Overall, the proposed changes will decrease by half the amount of parkland the Town of Whitby will be able to provide as the Town’s population grows (e.g. requirement to provide 1 ha of parkland per 600 units vs the current 1 ha per 300 units). As an alternative, Council may choose to purchase parkland in the future, using property taxes to supplement the loss of CILP revenues in order to maintain parkland service levels as the population grows.

The proposed changes include:

- 1) Maximum alternative dedication rate reduced to 1 ha/600 units for land and 1 ha/1000 units for cash in lieu.
  - The current rate under the by-law is 1 ha/300 units for parkland dedication or 1 ha/500 units for CILP.
  - **This would equate to the Town of Whitby receiving about 50% less land in parkland dedications or about 50% less CILP for residential development.**
- 2) The maximum amount of land that can be conveyed or paid in lieu is capped at 10% of the land or its value for sites under 5 ha, and 15% for sites greater than 5 ha.
  - Under the current by-law for high density residential uses outside of the Historic Downtown Priority Area, the cap is 35% of the land or 1 hectare per 500 dwelling units (whichever is less), if it is within the Historic Downtown Whitby Priority Area is it capped at 5% of the land area.

- 3) Parkland rates frozen as of the date that a zoning by-law or site plan application is filed. Freeze remains in effect for two years following approval. If no building permits are pulled in that time, the rate in place at the time the building permit is pulled would apply.
  - The freeze provision will discount the CILP revenues required to purchase future parkland within the Town. The Town will be collecting at CILP based on values that are two or more years old while having to purchase parkland at current land values.
- 4) Encumbered parkland/stratified parks, as well as privately owned publicly accessible spaces (POPS) to be eligible for parkland credits.
  - This will reduce the amount of usable parkland the Town receives and may increase the operating cost to the Town to maintain this land.
  - Stratified parks and POPS are often placed on top of underground parking garages, which creates a potential liability for the Town (e.g., does the park affect the lifespan of the garage?) and creates a set lifespan for the park space, as parking decks need to be replaced every 15-25 years. It is not clear who will bear the cost of removing and replacing the park in such circumstances.
  - If Bill 23 includes contaminated land as part of the definition of encumbered parkland, such lands can present significant risks to municipalities, even if it is “risk assessed” (i.e. a plan is in place to manage the contamination). Requiring the municipality to accept full credit for such lands could create significant costs in the future for taxpayers.
- 5) Landowners can identify land they intend to provide for parkland, with the municipality able to appeal to the Tribunal if there is a disagreement.
  - Dedicated land may not align with the municipalities needs to provide adequate park services (i.e., parks in central locations, with appropriate frontage, of adequate size for sports fields, etc.)
  - Currently, the size and location of parkland is determined at the sole discretion of the municipality.
  - The cost to appeal to the Tribunal would be an additional cost to be borne by existing taxpayers.
- 6) Municipalities will be required to spend or allocate 60% of parkland reserve funds at the start of each year.
  - It appears that the intention of this requirement would be to encourage municipalities spend funds collected from CILP in a timely manner and identify how funds will be spent.

- Mandating spending 60% of CILP reserves or identifying how CILP reserves will be spent in the future (e.g., “allocation” requirement) may not be practical:
  - Publishing allocated parkland acquisition funding for currently privately-owned land may impact Municipal negotiations for land, leading to higher purchase prices for the Town.
  - The timing of the purchase of land is dependent on the land being available for sale. That is, the Town may be prepared to use CILP reserves to purchase land next year for a park, but the seller may not be willing to sell the land to the Town next year.

Acknowledging that the proposed changes to Parkland dedication will result in a community that has a lower-level service for Parkland; and recognizing that demand for more parkland is significant in a rapidly growing municipality, *we respectfully request that the proposed change to the Parkland Dedication rates, and the cap be removed from the proposed legislative changes. Further, that a requirement to spend or allocate 60% of the CILP reserve fund not be implemented.*