Watson & Associates ECONOMISTS LTD.

August 21, 2019

John Ballantine, Manager
Municipal Finance Policy Branch
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13th Floor, 777 Bay St.
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Dear Mr. Ballantine:

Re: Comments on Draft Regulations 019-0183 - Community Benefits Charge

On behalf of our many municipal clients, we are providing our comments on the draft Ontario Regulation 019-0183 regarding the proposed Community Benefits Charge (C.B.C.). Generally, our questions and commentary follow the format of the draft regulation along with general discussion at the end of the letter.

1. Transition

The specified date for municipalities to transition to community benefits is January 1, 2021.

- A 12-month transition period may appear sufficient, however, there are more than 200 municipalities in the Province with current development charge (D.C.) by-laws. It will take some time for municipalities to consider the new C.B.C. methodology, evaluate the approach to these studies, collect background data (i.e. property value information), carry out the study, undertake a public process and pass a by-law. Based on our experience, the time frame is limited and should be extended to at least 18 months. This time period is consistent with major changes made in the past to the *Development Charges Act* (D.C.A.) (1989 and 1997).

Proposed Subsection 51.1 (6) of the Planning Act states that a community benefits charge by-law cannot be imposed if the approval of a plan of subdivision is the subject of a condition that is imposed under subsection (1) on or after the effective date.

Non-application of by-law under s. 37(6) The development or redevelopment of land within a plan of subdivision is not subject to a community benefits charge by-law under section 37, if the approval of the plan of subdivision is the subject of a condition that is imposed under subsection (1) on or after the effective date. 2019, c. 9, Sched. 12, s. 15 (7).

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The effective date is proposed to be January 1, 2020.

> *"effective date" is the day section 9 of Schedule 12 to the More Homes, More Choice Act, 2019 comes into force.*

- The implications of subsection 51.1(6) and 37.1(1) is that municipalities requiring the provision of land as a condition of a subdivision agreement after the "effective date" but before a Community Benefits Charge by-law has been put in place will lose the ability to use Community Benefits Charges to recover other growth related costs from that development.

2. Reporting on Community Benefits

"The Minister is proposing to prescribe reporting requirements that are similar to existing reporting requirements for development charges and parkland under section 42 of the Planning Act. Municipalities would be required annually to prepare a report for the preceding year that would provide information about the amounts in the community benefits charge special account, such as:

- *Opening and closing balances of the special account*
- *A description of the services funded through the special account*
- *Details on amounts allocated during the year*
- *The amount of any money borrowed from the special account, and the purpose for which it was borrowed*
- *The amount of interest accrued on money borrowed."*

In regard to the above:

- Confirm that "special account" and reserve fund have the same meaning. If they don't please provide a definition for "special account".
- In regard to "amounts allocated", within the context of the legislation where 60% of funds must be spent or allocated annually, can amounts be allocated to a capital account for future spending (i.e. recreation facility in year 5 of a forecast period) or are they to be allocated for immediate spending only?
- Similar to D.C. reserve funds, can the funds in the special account only be used for growth-related capital costs (i.e. cannot be used as an interim financing source for other capital expenditures)?

3. Reporting on Parkland

"The amendments to the Planning Act in Schedule 12 of the More Homes, More Choice Act, 2019 provide that municipalities may continue using the current basic parkland provisions of the Planning Act <u>if they are not collecting community benefits charges</u>. Municipalities would be required annually to prepare a report for the preceding year that would provide information about the amounts in the special account, such as:

- *Opening and closing balances of the special account*

- *A description of land and machinery acquired with funds from the special account*
- *Details on amounts allocated during the year*
- *The amount of any money borrowed from the special account, and the purpose for which it was borrowed."*

  - In regard to the amount of interest accrued on money borrowed, confirm that the "special account" and reserve fund have the same meaning.
  - This section of the regulation is introduced to allow municipalities to continue using the current basic parkland provisions of the *Planning Act*. However, in contrast to the current reporting under s. 42 (15) of the *Planning Act* which allows funds to be used "for park or other public recreation purposes", the scope in this regulation is for "land and machinery." Confirm whether the scope of services has been limited or continues to be the same.

4. Exemptions from Community Benefits

"The Minister is proposing that the following types of developments be exempt from charges for community benefits under the Planning Act:
- *Long-term care homes*
- *Retirement homes*
- *Universities and colleges*
- *Memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion*
- *Hospices*
- *Non-profit housing."*

  - Confirm whether "for-profit" developments will be entitled to exemptions similar to "not-for-profit" developments.
  - Will the regulations prescribe that exemptions must be funded from non-C.B.C. sources, similar to D.C.s, or can these exemptions be funded from the special account and incorporated into the calculation methodology?
  - Will there be definitions provided for each of the development types noted above and will these definitions link to legislation or accreditation for the various facilities provided above.
  - Does the phrase "universities and colleges" relate only to the academic space? Housing and commercial developments can occur on university/college owned lands and hence, should not be exempted by this provision. Moreover, would private institutions be included within these definitions?

5. Community Benefits Formula

"Provides the authority for municipalities to charge for community benefits at their discretion, to fund a range of capital infrastructure for community services needed because of new development."

- The regulation notes that, “This capital infrastructure for community services could include libraries, parkland, daycare facilities, and recreation facilities.” Is the inclusion of libraries, parkland, daycare facilities, and recreation facilities as capital infrastructure for community services intended to be exhaustive or are all other “soft” services (e.g. social and health services) eligible to be included as community benefits?
- What capital costs will be eligible as capital infrastructure for community services? The D.C.A. has an existing definition for capital costs which includes land, buildings, capital leases, furnishing and equipment, various types of studies and approvals, etc. Will these capital costs continue to be eligible as capital infrastructure under a C.B.C.?
- Will the cost of land appraisals, including annual appraisal studies, required for the C.B.C. be an eligible cost to be recovered through the C.B.C.?
- Will existing (and future) growth-related debt payments and all outstanding/existing D.C. credits for soft services be an eligible cost to be recovered through the C.B.C.?
- For parkland dedication, most municipalities have a local service policy which defines the minimum standard of development on which the land will be dedicated (i.e. graded, seeded, fenced, etc.). Will the local service policy be allowed to continue? If not, how will this matter be handled policy wise or cost wise?
- Will the D.C.A. mandatory 10% discount still apply to capital costs for services under a C.B.C.?
- The C.B.C. payable could not exceed the amount determined by a formula involving the application of a prescribed percentage to the value of the development land. The value of land that is used is the value on the day before the building permit is issued to account for the necessary zoning to accommodate the development. Will a range of percentages be prescribed to take into account varying values of land for different types of development or will the C.B.C. strategy require a weighting of the land values within the calculations?
- Will the range of percentages be prescribed to account for geographic differences in land values (i.e. municipal, county, regional, etc.)?
- Will the prescribed percentage account for differences in land use or zoning?
- Will the same percentage apply to both residential and non-residential lands be different? Will the formula also deal with mixed use properties?
- The Ministry is not providing prescribed percentages at this time. Can the Province confirm that no prescribed percentages will be proclaimed during the transition period?
- How will the formula deal with redevelopment (i.e. where buildings are demolished and replaced with another building, this could include conversions from residential to non-residential, vice versa, intensification, etc.)?
  Is there a prescribed planning horizon for calculating the C.B.C. (i.e. 10 years)?

- Will municipalities be required to express the C.B.C. as a percentage of land value or will the percentage simply be used to determine if the applicable charge fits within the maximum percentage of land value? For example, a municipality could impose C.B.C.s as a charge per unit, based on the unit type, similar to how D.C.s are currently imposed. When a developer applies for a building permit, a determination would need to be made whether the charge payable based on the type of dwelling being developed exceeds the maximum permissible percentage of land value. Allowing C.B.C.s to be imposed as a charge per unit would provide for a tighter nexus between the charge and the increase in need for service resulting from the development, by reflecting underlying differences in occupancy levels between different unit types. If the C.B.C. is expressed as a percentage of value then the C.B.C. would be more akin to a tax, since there is no clear relationship between land value and increase in need for service.

6. Appraisals for Community Benefits

It is proposed that,

- *"If the owner of land is of the view that the amount of a community benefits charge exceeds the amount legislatively permitted and pays the charge under protest, the owner has 30 days to provide the municipality with an appraisal of the value of land.*
- *If the municipality disputes the value of the land in the appraisal provided by the owner, the municipality has 45 days to provide the owner with an appraisal of the value of the land.*
- *If the municipality's appraisal differs by more than 5 percent from appraisal provided by the owner of the land, the owner can select an appraiser from the municipal list of appraisers, that appraiser's appraisal must be provided within 60 days."*

- Is the third appraisal binding? Can this appraisal be appealed to the Local Planning Appeal Tribunal (L.P.A.T.)?
- Can the costs for land appraisals be included as eligible costs to be funded under the C.B.C.?
- Do all municipalities across the province have a sufficient inventory of land appraisers (i.e. at least 3) to meet the demands and turnaround times specified within the regulations?
- A potential loophole may arise where a developer sells their land to a related company at a deeply discounted value. Is the market value what the land sold for in this transaction or will market value be defined differently by the regulation? Can the definition of market value be established to overrule this situation?

7. Excluded Services for Community Benefits

"The following facilities, services or matters are to be excluded from community benefits:

- *Cultural or entertainment facilities*

- *Tourism facilities*
- *Hospitals*
- *Landfill sites and services*
- *Facilities for the thermal treatment of waste*
- *Headquarters for the general administration of municipalities and local boards."*

  - This would be consistent with the ineligible services currently included in the D.C.A. Is there a distinction between services defined as "the thermal treatment of waste" and incineration?
  - Will there be any limitation to capital costs for computer equipment or rolling stock with less than 7 years' useful life (present restrictions within the D.C.A.)?
  - Are these services exhaustive, relative to the description of community services referenced in item 5 above.

8. Community Planning Permit System

Amendments to the Planning Act will allow conditions requiring the provision of specified community facilities or services, as part of the community planning permit system (which combines and replaces the individual zoning, site plan and minor variance processes). It is proposed, "that a community benefits charge by-law would not be available for use in areas within a municipality where a community planning permit system is in effect and specified community services are identified."

- The above suggests different charges to different lands. It is unclear as to the amount of recovery provided under the C.B.C. and that allowed under the community planning permit system.
- Will the community planning permit system have the same percentage of land value restrictions as the C.B.C.?

9. Other Matters

The following are questions arising from the new cost recovery approach which is not clearly expressed in the draft legislation.

- Will upper-tier municipalities (i.e. Counties and Regions) be allowed to continue the collect for their "soft" services under C.B.C.? How will the prescribed percentage of the land value be allocated between upper- and lower-tier municipalities? If they are required to provide an averaged percentage across their jurisdiction, how are they to recover their costs if their percentage of land value can be absorbed within the urban area municipalities but not absorbed within the rural area municipalities?
- How are mixed use developments which include exempt development types to be handled? For example, exempt institutional uses are planned for the first floor of a high-rise commercial/residential building.

- Will ownership or use determine the ability to impose the C.B.C.?
- In situations where large industrial or commercial properties are purchased for long-term purposes and only small portions of the full site are initially developed, is the C.B.C. calculated for the entire property or only the portion being developed at that time (with lot coverage provisions)? As the property continues to develop, is the percentage applied to the existing and undeveloped portion of the land?
- D.C. by-laws must be revisited at least every 5 years. Is there a similar time period to be established for the Community Benefits Strategy underlying the C.B.C.?
- The Act requires that *"In preparing the community benefits charge strategy, the municipality shall consult with such persons and public bodies as the municipality considers appropriate".* Will the regulations further define a public process to be followed?
- As the province will most likely consider the C.B.C. percentage in light of past practice, will all of the above noted costs be included in the determination of the C.B.C. percentage?
- Currently, many municipalities enter in agreements where the developing land owner either develops the park (and receives a credit for the work) or pre-pays the D.C. to advance the funds to develop the park. Will similar types of arrangements be allowed under the C.B.C.? Also, if the land owner wants to enhance the park at a standard in excess of the municipal standard, can this overcontribution be allowed without a monetary recovery from the C.B.C.?

We trust that the aforementioned information and questions assist the Province in developing the appropriate regulations for municipalities to continue to collect the required funding needed for these important services.

Yours very truly,

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August 21, 2019

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Dear Mr. Ballantine:

Re: Comments on Draft Regulations 019-0184 – Changes to the Development Charges Act

On behalf of our many municipal clients, we are providing our comments on the draft Ontario Regulation 019-0184 regarding the proposed changes to the *Development Charges Act* (D.C.A.). Generally, our questions and commentary follow the format of the draft regulation.

1. Transition of Discounted Soft Services

Provides for transition to the Community Benefits Charge (C.B.C.) authority during the period of January 1, 2020 to January 1, 2021.

- Confirm that all D.C.A. provisions of Bill 108 will be effective at the municipality's discretion during the transition period (i.e. by January 1, 2021), such that development charge (D.C.) by-law amendments for collections and statutory exemptions can take effect at the same time as the transition of soft services to a C.B.C.

2a. D.C. Deferral

Provides for the deferral of D.C.s for rental housing development, non-profit housing development, institutional, industrial, and commercial development until occupancy.

- The draft regulation speaks to "until occupancy;" however, it is proposed to be collected during a term (5 or 20 years) beyond occupancy. Clarify that this means period "from the date of occupancy."
- How would date of occupancy be defined in the case of a commercial strip mall or industrial condo building where many businesses occupy portions of the building over time?

- As land ownership may change during the deferral period, how will municipalities track the changes in ownership? Is there an ability to place a notice on title of the land?
- Can security be taken to ensure recovery of the payments, or will municipalities only be entitled to recover this as taxes on default?
- Are municipalities allowed to collect the totality of the charge upfront if requested by the developing landowner (currently allowed for by section 27 of the D.C.A.)?

2b. Deferral Definitions

"'Non-profit housing development' means the construction, erection or placing of one or more buildings or structures for or the making of an addition or alteration to a building or structure…"

- This appears to cover both new developments as well as redevelopments. Need to consider how the application of D.C. credits would apply on redevelopments.

"'Rental housing development' means…four or more self-contained units that are intended for use as rented residential premises."

- Definition speaks to "intended." What requirement is in place for these units to remain a "rented residential premises" and over the deferral period?
- Can municipalities impose requirements to maintain status over the term of installments?
- Will municipalities be entitled to collect remaining installments and interest if the use is changed?
- How will this be substantiated at the time of occupancy?

"'Non-profit housing development' means…by a non-profit corporation."

- What requirement is in place for the development to remain a "non-profit corporation" over the deferral period?
- Can municipalities impose requirements to maintain status over the term of installments?
- Will municipalities be entitled to collect remaining installments and interest if the use is changed?
- How will this be substantiated at the time of occupancy?

"'Institutional development' means…long-term care homes; retirement homes; universities and colleges; memorial homes; clubhouses; or athletic grounds of the Royal Canadian Legion; and hospices."

- Long-term care homes and retirement homes are considered in some municipalities as residential development types with charges imposed based on the number of dwelling units. Does this require these developments to be

charged as non-residential developments based on the gross floor area of development?
Does the phrase “universities and colleges” relate only to the academic space, as many municipalities impose D.C.s on the housing related to the institution.

- Many colleges and universities own land but provide long-term leases for the land. Use of the buildings should be the basis for imposing the D.C. not ownership of the land.

“‘Commercial development’ means…office buildings as defined under subsection 11(3) in Ontario Regulation 282/98 under the Assessment Act; and shopping centres as defined under subsection 12(3) in Ontario Regulation 282/98 under the Assessment Act.”

- This would appear to apply to a subset of commercial types of development. The *Assessment Act* defines a shopping centre as:
  - “i. a structure with at least three units that are used primarily to provide goods or services directly to the public and that have different occupants, or
  - ii. a structure used primarily to provide goods or services directly to the public if the structure is attached to a structure described in subparagraph i on another parcel of land.”
  - “‘Shopping centre’ does not include any part of an office building within the meaning of subsection 11 (3).”
- Office includes**:**
  - “(a) a building that is used primarily for offices,
  - (b) the part of a building that, but for this section, would otherwise be classified in the commercial property class if that part of the building is used primarily for offices.”
- Confirm all other types of commercial will continue to be charged fully at the time of building permit issuance.
- Will municipalities be entitled to collect remaining installments and interest if the use is changed?
- Will these definitions require D**.**C. background studies to further subdivide the growth forecast projections between shopping centre, office and other commercial development for cash flow calculation purposes?

Administration of deferral charges in two-tier jurisdiction.

- Regulation does not speak to policies for upper- and lower-tier municipalities. Areas where variation could occur including collection of installments (i.e. who monitors and collects installments), commonality for processing payment defaults, interest rates, etc.

3. D.C. Freeze for Site Plan and Zoning By-law Amendment

The D.C. quantum would be frozen "until two years from the date the site plan application is approved, or in the absence of the site plan application, two years from the date the zoning application was approved."

- D.C.s are frozen from the date of site plan or zoning bylaw application up to a period of 2 years after approval. In the situation where the planning application is appealed by the applicant, would they still be entitled to the rates at the date of planning application submission?
- This provision may provide for abuse where landowners may apply for minor zoning changes or provide incomplete planning applications in order to freeze the D.C. quantum for several years.
- Are municipalities able to recover the lost revenue due to differences in rates between site plan/zoning application and building permit issuance within the DC calculations?

4. Maximum Interest Rates on D.C. Deferrals for Freeze

Minister is not proposing to prescribe a maximum interest rate that may be charged on D.C. amounts that are deferred or on D.C.s that are frozen.

- Municipalities will need to consider what rates are to be used in this regard (i.e. annual short-term borrowing rates, long-term debenture rates, maximum rates on unpaid taxes, etc.).
- Should there be consistency between upper- and lower-tier municipalities?
- If interest rate selected is too high, would it discourage paying installments?

5. Additional Dwelling Units

It is proposed that the present exemption within existing dwellings be expanded to allow "…the creation of an additional dwelling in prescribed classes of residential buildings and ancillary structures does not trigger a D.C." Further, in new single, semi and row dwellings (including ancillary structures), one additional dwelling will be allowed without a D.C. payment. Lastly, it is proposed that, "…within other existing residential buildings, the creation of additional units comprising 1% of existing units" would be exempted.

- All the noted exemptions should be granted once, so as to not allow for multiple exemptions in perpetuity.
- The regulation should define a "row dwelling." Does a row dwelling include other multiples such as stacked townhouses and back-to-back townhouses?

We trust that the aforementioned information and questions assist the Province in developing the appropriate regulations for municipalities to continue to collect the required funding needed for funding DC services.

Yours very truly,

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