

March 18, 2020

To Our Development Charge Clients:

Re: Draft Regulations for the Development Charges Act and Planning Act
(Community Benefits Charge Related)

On behalf of our many municipal clients, we are continuing to provide the most up-to-date information on the proposed changes to the *Development Charges Act* (D.C.A.) as proposed by Bill 108 (*More Homes, More Choice Act*). On February 28, 2020, the Province released its latest regulations proposed for the D.C.A. and the *Planning Act* (as it relates to the community benefits charge (C.B.C.)). These regulations are posted on the Environmental Registry of Ontario for public comment which is open until March 30, 2020. Comments may be made at the following website:

Community Benefits Charge Regulation – <https://ero.ontario.ca/notice/019-1406>.

As identified in our February 28, 2020 letter to you, our firm is providing an evaluation of the draft regulations. These comments will be included in our formal response to the Province. As the changes to the D.C.A. and the *Planning Act* have been evolving, we have summarized the proposed changes to the D.C.A. in the attached tables (Appendix A) so that our comments may be considered within the context of the latest changes.

1. Timing for Transition to the Community Benefits Charge

The specified date for municipalities to transition to community benefits will be one year after the C.B.C authority is in effect.

- Given the amount of time to undertake this regulatory change, it is beneficial to extend the deadline from January 1, 2021.
- A 12-month transition period may appear sufficient, however there are more than 200 municipalities in the Province with current development charges (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 (e.g. property value information), carry out the study, assess the implications relative to maintaining the current parkland acquisition practice, undertake a public process and potentially 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 D.C.A. in 1989 and 1997.



2. Eligible D.C. Services

The new draft regulations will also allow the following services to continue with the D.C.:

- *Parks Development*
 - *Recreation*
 - *Public Libraries*
 - *Long-Term Care*
 - *Public Health*
- The continued inclusion of the above five services within the D.C.A. is a positive change. This provides a level of certainty for these services.

3. Mandatory 10% Deduction

The new draft regulations will remove the mandatory 10% deduction for the services included in the C.B.C.

- This is a positive amendment to the legislation. This will reduce the amount required to fund the growth-related capital infrastructure from property taxes.

4. Community Benefits Formula

The C.B.C. will be limited to a maximum rate, set as a percentage of the market value of the land the day before building permit issuance. The proposed maximum rates for the C.B.C. are as follows:

- *Single-tier municipalities: 15%*
 - *Lower-tier municipalities: 10%*
 - *Upper-tier municipalities: 5%*
- The maximum rates were not identified in prior draft regulations. It is unclear at this time whether the percentage amounts provided are adequate for all municipalities to recover the same amounts as allowed under prior legislation.
 - The legislation should allow for a maximum combined percentage of 15% within two-tier municipalities, i.e. if, for example, an upper-tier municipality does not use the maximum percentage, the upper-tier municipality should be allowed to transfer (by resolution) a portion of its percentage allocation to the lower tiers so as to maximize their recovery, if justification can be provided.
 - There should be different rates applied to residential and non-residential development. From preliminary analysis we have undertaken, the non-residential rate should be in the range of 3% to 5% based on benefits received, whereas the residential rate should be much higher. We would perceive that the proposed uniform rates would shift the costs burden from residential to non-residential development and may have a negative impact on commercial/ industrial development.



- How will the application of the charge apply to 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. – 10 years?
- Will municipalities be required to impose 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.

5. Community Benefits Strategy

A C.B.C. strategy must be prepared to support the percentage to be imposed.

Elements of the strategy include:

- *The C.B.C. strategy will have to set out the amount, type and location of growth*
- *There will need to be a parks plan included. This plan will need to identify the amount of parkland needed for growth*
- *The current level of service for parkland (i.e. parkland per person) must be calculated and indicated whether this will change in the future*
- *The strategy will need to identify the anticipated increase in need for the service, as well as the capital costs*
- *There will need to be deductions for excess capacity and benefit to existing*
- *Grants, subsidies & other contributions will need to be deducted*
- *C.B.C. appeal mechanism requires public notice of C.B.C. by-law passage*
- *Interest rate for C.B.C. refunds upon successful LPAT appeal will be the Bank of Canada rate on the date the by-law comes into force or quarterly*
- Generally, most of the items noted above are consistent with the requirements of the D.C.A.; however, the requirement to prepare a parks plan is not. Section 42 (4.1) of the *Planning Act* provides that “*Before adopting the official plan policies described in subsection (4), the local municipality shall prepare and make available to the public a parks plan that examines the need for parkland in the municipality.*” At this time, most municipalities do not have a parks plan. Given the time frame for conformity to the C.B.C. legislation (one year after the C.B.C. authority is in effect), it does not appear that most municipalities would have enough time to complete this plan. As well, it is not clear whether this plan must



be adopted within the official plan policies of the municipality thus extending the implementation time even longer.

- Either this policy needs to have transitional policies to allow for municipalities to address interim policies or the C.B.C. transition timing must be extended.

6. Building Code Act Amendment

Building Code Act will be amended to include a section to ensure C.B.C. payment must take place prior to building permit issuance.

- This is a positive change as it allows municipalities to withhold permit issuance pending payment of the C.B.C.

7. Other Comments Previously Provided by Watson on the Act Amendments and Draft Regulations

7.1 Eligible Capital Costs for Community Benefits Charges

- 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 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.)?
- 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 the cost of an appeal to LPAT to support the charge be eligible for funding from C.B.C. revenues?
- For parkland dedication, most municipalities have a local service policy that defines the minimum standard of development on which the land will be dedicated (e.g. 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?

7.2 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.*

With 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 (e.g. childcare 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)?

7.3 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 if they are not collecting community benefits charges. 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.”*
-
- Regarding 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.



7.4 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 the 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 LPAT?
 - Do all municipalities across the Province have a sufficient inventory of land appraisers (i.e. at least three) to meet the demands and turnaround times specified within the regulations?

7.5 Other Matters

- How are mixed-use developments that 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 five years. Is there a similar time period to be established for the community benefits strategy underlying the C.B.C.?

Yours very truly,

WATSON & ASSOCIATES ECONOMISTS LTD.

Gary D. Scandlan, BA, PLE
Director

Andrew Grunda, MBA, CPA, CMA
Principal



Appendix A

Summary of Changes for
Development Charges and
Community Benefits Charges



Development Charges Act Proposed Changes

Item	Bill 108 and Ontario Regulation 019-0184	Bill 138	Ontario Regulation 019-1406
1. Transitional Timelines	Provides for transition to the community benefits charge (C.B.C.) authority during the period of January 1, 2020 to January 1, 2021.		Transitional timelines have been modified. The deadline will be one year after the C.B.C authority is in effect.
2. D.C. Payment Deferral (note – definitions of development types also provided)	Provides for the deferral of D.C.s for: - rental housing development (6 payments) - non-profit housing (21 payments) - institutional (6 payments) - industrial (6 payments) - commercial (6 payments)	Commercial and industrial developments removed from deferral provision.	
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.”		
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.		



Item	Bill 108 and Ontario Regulation 019-0184	Bill 138	Ontario Regulation 019-1406
5a. Additional Dwelling Units – Existing 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.”		
5b. Additional Dwelling Units – New Units	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.		
6. Eligible D.C. Services (note – the mandatory 10% deduction is removed for all eligible D.C. services – former services where this applied noted by “*”)	Removes many services to C.B.C. – only allows for: <ul style="list-style-type: none"> - Water - Wastewater - Stormwater - Roads - Fire - Police - Ambulance* - Waste Diversion* 		Adds additional services back to the D.C.: <ul style="list-style-type: none"> - Parks* - Recreation* - Public Libraries* - Long-term Care* - Public Health*



Planning Act Proposed Changes
For Community Benefits Charges (C.B.C.)

Item	Bill 108 and Ontario Regulation 019-0183	Bill 138	Ontario Regulation 019-1406
1. Transitional Timelines	Provides for transition to the community benefits charge (C.B.C.) authority during the period of January 1, 2020 to January 1, 2021.		Transitional timelines have been modified. The deadline will be one year after the C.B.C. authority is in effect.
2. Eligible Services	<ul style="list-style-type: none"> - Provides for all former D.C. services to be included in C.B.C. Note that former D.C. excluded services are not eligible (i.e. facilities for cultural/entertainment, tourism, general administration of municipality/local board, hospitals, landfill sites/thermal treatment of waste). - Parkland dedication. - Bonus zoning contributions. 		<p>Changes made to add eligible services back to D.C. (i.e. parks, recreation, libraries, long-term care and public health).</p> <p>- also, the 10% mandatory deduction formerly applied to D.C.s is removed for all services.</p>
3. Community Benefits Formula	The C.B.C. payable cannot 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		<p>The C.B.C. will be imposed as a percentage based on the market value of the land the day before building permit issuance. The maximum percentages for the C.B.C. are as follows:</p> <ul style="list-style-type: none"> - Single-tier municipalities: 15%



Item	Bill 108 and Ontario Regulation 019-0183	Bill 138	Ontario Regulation 019-1406
	account for the necessary zoning to accommodate the development.		<ul style="list-style-type: none"> - Lower-tier municipalities: 10% - Upper-tier municipalities: 5%
4. Community Benefits Strategy	Before passing a C.B.C. by-law, the municipality shall prepare a C.B.C. strategy that, (a) identifies the facilities, services and matters that will be funded with C.B.C.s and (b) complies with any prescribed requirements.		<p>A C.B.C. strategy must be prepared to support the percentage to be imposed. Elements of the strategy include:</p> <ul style="list-style-type: none"> - The C.B.C. strategy will have to set out the amount, type and location of growth - There will need to be a parks plan included. This plan will need to identify the amount of parkland needed for growth - The strategy will need to identify the anticipated increase in need for the service - There will need to be deductions for excess capacity - Grants, subsidies & other contributions will need to be deducted - C.B.C. appeal mechanism requires public notice of C.B.C. by-law passage - Interest rate for C.B.C. refunds upon successful LPAT appeal will be the Bank of Canada rate



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			on the date the by-law comes into force or quarterly
5. Exemptions from Community Benefits Charges	<p>The Minister is proposing that the following types of developments be exempt from charges for community benefits under the <i>Planning Act</i>:</p> <ul style="list-style-type: none"> - Long-term care homes - Retirement homes - Universities and colleges - Memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion - Hospices - Non-profit housing." 		
6. Reporting on Community Benefits Charges	<p>Municipalities would be required annually to prepare a report for the preceding year that would provide information about the amounts in the C.B.C. special account, such as:</p> <ul style="list-style-type: none"> - 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 		<i>Building Code Act</i> will be amended to include a section to ensure C.B.C. payment must take place prior to building permit issuance.



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	<ul style="list-style-type: none">- 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- If a municipality elects to not have a C.B.C. and wishes to continue collection of parkland under former <i>Planning Act</i> provisions, then similar reporting required as above.		
7. Other Matters	<ul style="list-style-type: none">- For a municipality that elects to not have a C.B.C., they may continue collection of parkland under former <i>Planning Act</i> provisions- In each calendar year, a municipality shall spend or allocate at least 60 per cent of the monies that are in the special account at the beginning of the year.- Transitional provisions are set out regarding the D.C. reserve funds and D.C. credits- It is proposed that a C.B.C. by-law would	Transitional provisions for by-laws requiring parkland as a condition of development or redevelopment or subdivision	



Item	Bill 108 and Ontario Regulation 019-0183	Bill 138	Ontario Regulation 019-1406
	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.		