April 20, 2020

Mr. John Ballantine, Manager
Municipal Finance Policy Branch
Ministry of Municipal Affairs and Housing
13th Floor, 777 Bay Street
Toronto, Ontario
M5G 2E5

Dear Mr. Ballantine:

Re: Comments on Draft Regulation 019-1406 – Changes to the Development Charges Act

On behalf of our many municipal clients, we are providing our comments on the draft Ontario Regulation 019-1406 regarding the proposed changes to the *Development Charges Act* (D.C.A.) and the *Planning Act*, related to the community benefits charge (C.B.C.) framework.

At the outset, we would like to thank the Ministry for some of the changes made thus far (i.e. returning parks, recreation, libraries, long-term care and public health services to the development charge (D.C.) calculation and removing the mandatory 10% deduction within the C.B.C. calculation), which will enhance a municipality's ability to recover the growth-related costs for these services.

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 the original date of January 1, 2021.
- A 12-month transition period may appear sufficient; however, there are more than 200 municipalities in the Province with current 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 suggested time period is consistent with the time-frame provided when major changes were made in 1997

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to the D.C.A.; however, it is shorter than the 24-month period provided by the 1989 D.C.A.

- It is therefore requested that a minimum 18-month period be provided for municipalities to transition to a C.B.C.

2. Community Benefits Charge Formula

The C.B.C. will be limited to a maximum rate, set as a percentage of the market value of the land on 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 combined maximum rate of 15% within a two-tier municipal structure; i.e. if, for example, an upper-tier municipality does not charge the maximum rate, the upper-tier municipality should be allowed to transfer (by resolution) a portion of its allotted maximum rate to the lower-tier municipalities so as to maximize their recovery. This would require justification by the lower-tier municipality that it requires recovery beyond the 10% maximum rate. The same would be allowed if lower-tier municipalities do not fully impose the maximum rate allocation, then the upper-tier municipality could utilize the unused allocation.
- There should be different maximum rates applied to residential and non-residential development. From preliminary analysis we have undertaken, the non-residential maximum rate should be in the range of 3% to 5% based on benefits received, whereas the residential maximum rate should be set much higher. We would perceive that the proposed uniform maximum rates would shift the costs burden from residential development to non-residential development and may have a negative impact on commercial/industrial development.

3. Community Benefits Charge Strategy

A C.B.C. strategy must be prepared to support the prescribed maximum rate restrictions (as discussed above). The draft regulation establishes the components of the strategy must 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. Currently, many 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. Either this requirement needs to have transitional provision to allow municipalities to address interim policies, or the transition timing for C.B.C. compliance must be extended.
- Germain to calculating the C.B.C. is to clearly understand how the application of the charge will 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.). This needs to be better understood by municipalities to inform the strategy and calculation of the charge.
- Is there a prescribed planning horizon for calculating the C.B.C. (e.g. 10 years) or is the municipality able to determine the planning horizon most suitable to its service planning?
- Will there be a requirement for municipalities to establish current levels of service, for services other than parkland, to inform the increase in need for service?
- What is included in the definition of capital costs? For example, can these costs include study and financing costs?
- Is there a statutory public process required for by-law adoption (e.g. notice of public meeting, public meeting, public release of the strategy, time periods for public consultation)?
- 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 charge fits within the maximum rate relative to the value of land? For example, a municipality could impose C.B.C.s with a rate structure similar to a D.C. (e.g. charge per residential dwelling unit). When a developer applies for a building permit, a determination would need to be made by the applicant whether the charge payable, based on the type of dwelling being developed, exceeds the maximum permissible percentage of land value. The payment under protest provisions of the legislation provide for this. Allowing C.B.C.s to be imposed with structure similar to a D.C. provides for a tighter nexus between the charge and the

increase in need for service resulting from the development, in this example, by reflecting underlying differences in occupancy levels between different unit types. If the C.B.C. is expressed as a percentage of land value, then the C.B.C. would be more akin to a tax, since there would appear to be no clear relationship between land value and increase in need for service, particularly for the soft services within the jurisdiction of the C.B.C.

4. 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 building permit issuance pending payment of the C.B.C.

5. Other Comments Previously Provided by Watson & Associates Economists Ltd. on the Act Amendments and Draft Regulations

5.1 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 C.B.C. strategy 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?
- Will planning-related studies (i.e. official plans, secondary plans, zoning by-laws, etc.) and/or growth-related financial studies (i.e. fiscal impact assessment of growth) continue to be recovered as a D.C. or are they to be recovered as a C.B.C.?

- Will outstanding debentures and credits related to services being moved from the D.C. regime to the C.B.C. regime be an eligible expense to be recovered as a C.B.C.?

5.2 Reporting on Community Benefits Charges

"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)?

5.3 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."*

  - Regarding the amount of interest accrued on money borrowed, confirm that "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*. In contrast to the current reporting under s. 42 (15) of the *Planning Act*, however, 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.

5.4 Appraisals for Community Benefits Charges

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?

5.5 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.?
- Can municipalities still mandate the dedication of parkland in situations where the location is desirable, or must they only take a cash contribution? The ability to take land should be clarified.
- How often will the Province be reviewing the percentage caps to assess if they are sufficient or should be revised?

6. Potential COVID-19 Transitional Matters

We all recognize that during these times many sectors will be needing assistance to maintain a level of financial security and viability. Obviously the residential and non-residential building construction sector will experience a slow down during this period, as will municipalities, as local economies slow.

We have dialogued with a number of municipalities who are developing interim policies with respect to property taxes, water/wastewater rates, various fees and charges including D.C.s and potentially C.B.C.s. In our discussions regarding D.C.s, we have suggested that municipalities consider the short- and medium-term needs of the community and the economy.

Looking back 10 to 12 years at the last major economic downturn, one stimulus initiative provided by senior levels of government was to encourage municipal infrastructure construction by way of grant programs such as the “Build Canada” program. We would expect coming out of this downturn that municipal infrastructure construction could play an important role in assisting the Ontario and local economies. Hence, municipalities will be reliant upon their financial resources to achieve similar results as in the past. Based on this, it may be more beneficial to all stakeholders if the municipalities seek to delay the D.C. payments rather than exempt developments from the payment of D.C.s. This would continue to provide municipalities with the much-needed funding to undertake the necessary infrastructure construction to support the development industry. Moreover, the continued infrastructure construction will generate the need to purchase construction supplies and create construction jobs.

Based on the foregoing, should the Province seek to direct municipalities to adopt interim D.C. policies, we would recommend that these policies be focused on delayed payments versus exemptions or reductions.

Yours very truly,

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