

May 6, 2019

To Our Development Charge Clients:

Re: Proposed Changes to the Development Charges Act

The letter is to advise that on May 2, 2019, the Province introduced Bill 108 which proposes changes to the *Development Charges Act, 1997* (D.C.A.). The Bill has been introduced as part of the Province's "*More Homes, More Choice: Ontario's Housing Supply Action Plan*." The Bill has been given first reading and is expected to be debated over the coming months.

The Act proposes that any development charge (D.C.) by-laws passed after May 2, 2019 will be affected by these proposed changes. Any by-laws that were passed prior to this date will remain in effect until the by-law either is repealed or expires. A summary of the proposed changes to the D.C.A. is provided below.

Changes to Eligible Services – The Bill will remove “soft services” from the D.C.A. These services will be considered as part of a new Community Benefit Charge (discussed below) imposed under the *Planning Act*. Eligible services that will remain under the D.C.A. are as follows:

- Water supply services, including distribution and treatment services;
- Wastewater services, including sewers and treatment services;
- Stormwater drainage and control services;
- Services related to a highway as defined in subsection 1 (1) of the *Municipal Act, 2001* or subsection 3 (1) of the *City of Toronto Act, 2006*, as the case may be;
- Electrical power services;
- Policing services;
- Fire protection services;
- Toronto-York subway extension, as defined in subsection 5.1 (1);
- Transit services other than the Toronto-York subway extension;
- Waste diversion services; and
- Other services as prescribed.

Waste Diversion – The Bill will remove the mandatory 10% deduction for this service.

Payment in Installments Over Six Years – The Bill proposes that rental housing, non-profit housing and commercial/industrial/institutional developments pay their D.C.s in six equal annual payments commencing the date of issuance of an occupancy permit or occupancy of the building, whichever is earlier. The municipality may elect to charge interest (at a prescribed rate) for each payment, commencing the date of the first



payment. If payments are not made, interest may continue to be charged and may be added to the property and collected as taxes.

When D.C. Amount is Determined – The Bill proposes that the D.C. amount for all developments proceeding by site plan or requiring a zoning amendment shall be determined based on the D.C. charge in effect on the day of the application for site plan or zoning amendment. If the development is not proceeding via these planning approvals, then the amount is determined at the earlier of the date of issuance of a building permit or occupancy.

Soft Services to be Included in a New Community Benefit Charge Under the Planning Act – It is proposed that a municipality may, by by-law, impose community benefits charges against land to pay for the capital costs of facilities, services and matters required because of development or redevelopment in the area to which the by-law applies. These services may not include services authorized by the D.C.A. Various provisions are provided as follows:

- Before passing a community benefits charge by-law, the municipality shall prepare a community benefits charge strategy that (a) identifies the facilities, services and matters that will be funded with community benefits charges; and (b) complies with any prescribed requirements.
- The amount of a community benefits charge payable shall not exceed an amount equal to the prescribed percentage of the value of the land as of the valuation date.
- The valuation date is the day before building permit issuance.
- Valuations will be based on appraised value of land. Various requirements are set out in this regard.
- All money received by the municipality under a community benefits charge by-law shall be paid into a special account.
- In each calendar year, a municipality shall spend or allocate at least 60 percent of the monies that are in the special account at the beginning of the year.
- Requirements for annual reporting shall be prescribed.
- Transitional provisions are set out regarding the D.C. reserve funds and D.C. credits.

Remarks

The proposed legislative changes noted above will require a more detailed review to consider the impact to the D.C. and *Planning Act* matters including methodology, collection policies and transition policies. As we have done in the past, our firm will be engaging with legal advisors to further consider the full implications of the Bill and potential Regulations. We will be providing a submission on the Bill to the Province on behalf of our D.C. clients. A few direct comments are made at this time for consideration of the reader, as follows:



Payment in Installments Over Six Years

- The delay in receiving the D.C. revenue will impact the D.C. cashflow. As most of these “hard services” must be provided in advance of development occurring, it will require increased debt borrowing. Added debt interest will have upward pressure on the D.C. quantum.
- As the proposed changes to the Act are to facilitate the Province’s housing agenda, it is unclear why these installment payments are to be provided to commercial, industrial and institutional developments.
- The requirement to manage multiple-year collections for each building permit issued for each rental housing, non-profit housing and commercial/industrial/institutional development building permit will cause a tremendous administrative burden on municipalities. This will add to staffing requirements and be reflected in higher planning and building permit fees.

When D.C. Amount is Determined

- Locking in the D.C. rates well in advance of the building permit issuance would produce a shortfall in D.C. revenue, as the chargeable rates will not reflect the current rate as of the time the development proceeds to be built.
- There should be a time limit on how long the development takes to move from site plan approval, or zoning change, to the issuance of a building permit. There is no financial incentive for the development to move quickly to building permit. This may induce speculation to change the land use and then market the lands. (Note: There is an opportunity for a time limit to be prescribed by regulation; however, there are a number of references currently in the D.C.A. that “the Minister may prescribe” which have not been acted upon.)

Soft Services to be Included in a New Community Benefit Charge Under the *Planning Act*

- More information is needed, as there are several key items to be included as part of the regulations. That is, what items are to be included in the community benefits charge strategy and what percentage of the “value of land” is to be eligible for collection?
- Depending on what is to be included in the community benefits charge strategy, this may be undertaken at a similar time as the D.C. background study. As noted, however, it is unclear as to the prescribed items to be included along with the process required to adopt the strategy and the by-law.
- Concern is raised regarding what prescribed percentage of the land value will be allocated for the charge. If the same percentage is provided for all Ontario, then a single-family lot in Toronto valued at \$2 million will yield 20 times the revenue of a \$100,000 lot in eastern Ontario. Given that building costs for the same



- facilities may only vary by, say, 15%, the community benefits charge could yield nominal funds to pay for required services for municipalities outside the G.T.A.
- It is unclear how the community benefits charge will be implemented in a two-tier municipal system. Given that both the upper and lower tiers will have needs, there is no guidance on how the percentage of the land value will be allocated, or how the process for allocating this would occur. Obviously, land values will vary significantly in urban vs. semi-urban communities (e.g. in York Region, land value in Markham is significantly higher than in Georgina), so the upper-tier needs may only take, say, 30% of the allotted value in the urban areas but 75%-90% of the allotted semi-urban or rural values.
 - Given the need for appraisals and the ability of the applicant to challenge the appraisal, a charging system based on land values will be extremely cumbersome and expensive. It is unclear how appraisal costs are recovered, and the appraisals may become a significant cost on each individual property.

We trust that the above information is helpful. For those clients who are in the midst of a background study process, we would be pleased to further discuss this with you and Council shortly. For our other clients, we would be pleased to arrange a time to discuss this further. As noted above, we will be providing further feedback to the Province during this legislative process.

Yours very truly,

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