

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.*