

August 21, 2019

John Ballantine, Manager
Municipal Finance Policy Branch
Municipal Affairs and Housing
13th Floor, 777 Bay St.
Toronto, ON
M5G 2E5
Canada

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,

WATSON & ASSOCIATES ECONOMISTS LTD.

Gary D. Scandlan, BA, PLE
Director

Andrew Grunda, MBA, CPA, CMA
Principal