June 4, 2025

To the Ministry of Municipal Affairs and Housing:

Re: Regulatory Registry 25-MMAH003 Comments - Assessment of Bill 17 (Protect Ontario by Building Faster and Smarter Act, 2025)

We would first like to thank you for taking the time to review our commentary on the proposed legislative changes to the *Development Charges Act* (D.C.A.) set out in Bill 17, *Protect Ontario by Building Faster and Smarter Act, 2025* (herein referred to as Bill 17). Our firm, Watson & Associates Economists Ltd. (Watson), is a leader in municipal finance, planning, and land economics and represents over 250 municipalities and local boards across Canada. Our firm is one of the foremost experts in development charges (D.C.) in Ontario, and has worked with municipalities in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, and Nova Scotia on similar matters.

The following provides our comments on the proposed legislative changes and our perspectives on the potential impacts they may have on municipalities in Ontario.

1. Definition of capital costs, subject to regulation

The proposed change would add the words "subject to the regulations" to section 5 (3) of the D.C.A."

- The proposed amendment expands the scope of the Province's authority to limit eligible capital costs via regulation.
- The D.C.A. currently provides this ability to limit the inclusion of land costs.
- The Province intends to engage with municipalities and the development community to determine potential restrictions on what costs can be recovered through D.C.s.

Commentary from organizations in the development community suggests these discussions may continue to focus on limiting the inclusion of land costs in the D.C. calculations. More specifically, the focus has been on removing the cost of land from the historical level of service calculations, while preserving the eligibility of land costs for D.C. recovery. The proposed amendment, however, provides broad authority for limiting eligible capital costs (i.e., the scope of regulatory authority is not restricted to land).

Impact of Proposed Changes

Restriction of eligible costs may delay investments in growth-related infrastructure that is required to build housing.

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Municipalities utilize D.C.s to recover the capital costs associated with new development and redevelopment. Prior to the 1997 legislative changes, D.C.s recovered close to 100% of the growth-related costs attributable to new development. After the 1997 legislation came into place, the share of growth-related costs recovered by D.C.s reduced to approximately 70-75%[1]. The legislative changes in 2019 further reduced the share of the growth-related costs recovered from D.C.s. These cost reductions must be funded from other municipal revenue sources (i.e. taxes and rates). Further restricting D.C. eligible capital costs will increase funding pressures from municipal taxes and user fees.

The increased funding pressure coincides with the recent implementation of the *Infrastructure for Jobs and Prosperity Act, 2015.* This Act requires municipalities to prepare a financial strategy for how they will manage their existing infrastructure, future infrastructure, and address any infrastructure deficits. In this context, if funding for growth-related capital costs have to compete for tax/user fee funding, investment in growth-related infrastructure may be delayed. This would serve to further slow the construction of new housing.

Moving authority to the regulations creates uncertainty

The proposed changes provide the Province with the flexibility to move quickly with changes to the definition of eligible capital costs through regulations. While administratively expedient for the Province, this will create uncertainty for municipal financial planning.

The municipal financial planning framework starts with the development of an Official Plan. This Official Plan identifies the anticipated growth and development for a municipality. Master plans are created in this context, which identify the anticipated capital needs required to service that development. The D.C. background study and by-law are subsequently prepared using this information to address a portion of the municipality's long-term funding plan.

This financial planning framework takes years for municipalities to properly prepare. If the definition of D.C. capital costs can be swiftly changed through regulation, municipalities will be required to adjust funding for capital projects through the annual budget process. This would not align with the long-term financial plans that were previously established and creates uncertainty for municipalities. This may require further contingency planning by municipalities, which may include delays in investment of growth-related infrastructure or require municipalities to incur additional financing costs to fund growth-related infrastructure without a dedicated funding source, thereby adding to the affordability concerns of exiting residents.

[1] Based on historical analyses prepared by Watson & Associates Economists Ltd.

2. Deferral of D.C. payment to occupancy for residential development

The proposed changes to section 26.1 of the D.C.A. provide that a D.C. payable for residential development (other than rental housing developments, which are subject to payment in instalments) would be payable upon the earlier of the issuance of an occupancy permit, or the day the building is first occupied. Only under circumstances prescribed in the regulations may the municipality require financial security for the D.C. payable. Municipalities will not be allowed to impose interest on the deferral of D.C. payment to occupancy.

The Province has noted its intent to mitigate risk for municipalities. As such, the prescribed circumstances may allow for securities when no occupancy permit is required.

Impact of Proposed Changes

Administration costs will be significant across the Province

There are over 200 municipalities with D.C. by-laws that fund growth-related capital costs of infrastructure. Many of these municipalities have limited administrative capacity due to their size. Previous amendments to the D.C.A. required payment in instalments for rental housing and institutional development. These changes required some small to mid-sized municipalities to create internal administrative processes to prepare agreements (or incorporate necessary wording into development agreements) and track payments over a 5-year term for these types of development.

Rental housing and institutional development within these communities is generally limited and as such, the increased administration is generally manageable. Most D.C. by-laws require the payment of D.C.s for all other development types (e.g., commercial, industrial and ownership-residential) at building permit issuance. Deferring the time of D.C. payments for all residential development types to occupancy will require all municipalities to establish separate processes to manage and track payments and securities separately. This will create additional administrative complexity in preparing rules and processes for different types of development.

Cashflow for D.C. projects will be impacted leading to delay in development of growth-related infrastructure

Watson conducted an analysis of the 2020 Financial Information Returns. Through this analysis, 213 municipalities reported on D.C. reserve funds. Assessing the D.C. reserve funds for these municipalities, approximately 70% of the reserve fund

balances related to the 30 municipalities of the Greater Toronto and Hamilton Area[1]. The remaining 30% of D.C. reserve fund balances relate to 183 municipalities. Moreover, for the non-GTHA municipalities, the D.C. reserve fund balances for water and wastewater services averaged $1.22 million and $1.77 million per municipality, respectively. It can cost between $1.50 million and $3.00 million to construct a 1km wastewater main, depending on location and size of pipe. Therefore, on average, cashflow impacts to municipalities may cause delays in the construction of growth-related infrastructure.

The nature of the D.C. funding is such that the municipality does not collect all of the D.C. revenue until all development is constructed. Deferred payments for all residential development to occupancy will further delay receipt of D.C. revenues and slow municipal cashflows (i.e. lessening reserve fund balances). This may serve to delay construction of growth-related infrastructure, slowing development. Alternatively, municipalities may have to debt-finance the growth-related infrastructure projects, subject to debt capacity constraints, which would increase D.C. rates and reduce debt financing availability for other municipal initiatives.

Conflict with subsection 26(2) of the Act

Section 26(2) of the D.C.A. provides that municipalities may impose D.C.s for water, wastewater, services related to a highway, and stormwater services at the time of subdivision agreement. This provides municipalities with cashflow assistance for growth-related infrastructure, as the D.C.s are collected earlier in the development process (i.e. most D.C.s are collected at the time of building permit issuance). Based on the proposed changes, it appears that section 26(2) may no longer be available to municipalities as it is in direct conflict with the proposed changes.

Impacts on residential development rate freeze provisions of the Act

Currently section 26.2, of the D.C.A. requires that a development that proceeds through Site Plan or Zoning By-law Amendment approvals shall have their D.C. determined based on the rates in effect at the time of the planning application. Section 26.2 (5) then states that:

> (5) Clauses (1) (a) and (b) [i.e., the rate freeze] do not apply in respect of,
>
> (a) any part of a development to which section 26.1 applies if, on the date the first building permit is issued for the development, more than 18 months has elapsed since the application referred to in clause (1) (a) or (b) was approved; or

[1] GTHA municipalities include those in Durham, York, Peel, Halton, Toronto, and Hamilton.

(b) any part of a development to which section 26.1 does not apply if, on the date the development charge is payable, more than 18 months has elapsed since the application referred to in clause (1) (a) or (b) was approved.

For residential subdivisions that proceed through Site Plan or Zoning By-law Amendment applications, since section 26.1 does not apply, the rate freeze only applies to the part of the development that receives their building permit before the 18 months has elapsed. With the proposed changes, a residential subdivision will have the rate frozen as of **the first building permit of the development**. The Province should clarify the definition of "development" for the purposes of this section as a residential subdivision may be constructed over a number of years. Perhaps a clause similar to that of Section 26(1.1) "multiple phases" would provide the needed clarity.

Need for clear regulatory guidance through consultations with the municipal sector and development community

The Province has committed to consultations regarding the potential use of financial securities in certain circumstances to ensure payment of D.C.s at occupancy, where no occupancy permit is required. Through preliminary discussions with staff in the municipal sector, it appears there may be various interpretations of authorities to withhold occupancy permits until receipt of payment of D.C.s. If occupancy or occupancy permits cannot be withheld without the payment of D.C.s and the D.C.A. has not required the provision of securities or an agreement to be entered into with respect to the deferral of D.C.s until occupancy, the only recourse for municipalities to recover the costs may be to add the amount to the tax roll. The impact of this would be to shift the obligation to pay the D.C. from the builder to the homeowner (who would have already paid the D.C.s through their purchase price). Furthermore, requiring a financial security where no occupancy permit is required will increase administrative burden. There is a need for clear guidance in the regulations and detailed consultations with the municipal sector and development community to ensure implementation of this proposed change is effective.

3. Ability for residential and institutional development to pay a D.C. earlier than a by-law requires

Currently, if a person wishes to waive the requirement to pay their D.C. in instalments as per section 26.1, an agreement under section 27 of the D.C.A. (early payment agreement) is required. The proposed changes state that, "for greater certainty, a person required to pay a development charge under this section may pay the charge before the day it is payable even in the absence of an agreement under section 27." Note this would apply to all residential development.

Impacts of Proposed Changes

Current process is simple to implement

Under the current legislation, a person may waive the requirement to pay in instalments by entering into an agreement under section 27 of the D.C.A. To implement this in a simple and effective manner, municipalities have created short agreements which seek to simply acknowledge the waiving of the instalment payments. Niagara Region for example, has created a one-page Early Payment Agreement form[1].

New wording unclear in intent and may have unintended consequences

The proposed changes state that a person required to pay a D.C. under section 26.1 may pay the charge before the day it is payable even in the absence of an agreement under section 27. Since all residential development would have D.C.s payable under this section, the wording implies that any person required to pay residential D.C.s may do so before it is payable under the terms of the D.C. by-law. This is problematic for municipalities, as the development community may elect to pay D.C.s before indexing or before a municipality passes a new D.C. by-law (where a publicly available D.C. background study may be indicating a potential increase in the charge). D.C. by-laws are indexed to ensure the charges reflect cost inflation of the underlying municipal capital projects. Furthermore, D.C. by-laws are regularly updated to ensure they align with the capital planning needs of the municipality. Allowing the payment of discounted D.C. rates due to early payments will result in lower D.C. revenues than required to meet the actual capital costs of growth-related projects.

This would create an additional administrative burden for municipalities, as they would need to track when developments have paid their D.C. Depending on the size of the municipality, this could be in respect of thousands of building permits per year. Since the wording states “before the day it is payable”, it is unclear how early the payments may be made. Can a person pay their residential D.C.s prior to registration of a subdivision? Can they pay prior to application?

It would also have cashflow impacts as D.C.s may be paid prior to the rationalization of the development in the D.C. background study calculations. This would lead to higher D.C.s for future development.

4. Removal of interest for legislated instalments

The proposed changes to section 26.1 of the D.C.A. would remove the ability to charge interest on instalment payments for rental housing and institutional development types.

[1] https://www.niagararegion.ca/business/property/pdf/early-payment-form.pdf

This change would also apply to the remaining instalment payments for existing rental housing and institutional development deferrals once Bill 17 receives Royal Assent.

Impact of Proposed Changes

Cashflow impacts for municipalities

This proposed amendment would reduce the D.C. revenues collected by the municipalities that would be used to fund growth-related infrastructure projects. As noted above, this may result in project delays or the need for debt financing of growth-related projects.

5. Grouping of services for the purpose of using credits

Section 38 of the D.C.A. allows a person to construct D.C. recoverable works on a municipality's behalf, subject to an agreement. The person constructing the works receives a credit against future D.C.s for the service(s) to which the works relate. A municipality can agree to allow the credits to be applied to other services in the D.C. by-law. The proposed amendments would allow the Province to, through regulation, deem two or more services to be treated as one service for the purpose of applying credits.

Impact of Proposed Changes

Removal of municipal discretion

Currently municipalities have the ability to agree to apply credits to other services within a D.C. by-law. In many cases, the municipality will undertake a cashflow analysis of their D.C. reserve funds to determine if this is feasible. This proposed change appears to remove a municipality's discretion to combine services by agreement in certain instances.

Cashflow implications for municipalities

Combining services for the purposes of credits would have cashflow implications for municipalities, where funds held in a D.C. reserve fund for a service not included under the section 38 agreement would be reduced. This could delay the timing of capital projects for these impacted services and/or increase financing costs, as municipalities tend to confine funding for projects to the reserve funds available for that service and not borrow between reserve funds/services.

6. Defining local services in the regulations

Section 59 of the D.C.A. delineates between charges for local services and, by extension, those that would be considered for recovery within a D.C. by-law.

Municipalities typically establish a local service policy when preparing a D.C. background study to establish which capital works will be funded directly by the developer, as a condition of approval under section 51 or section 53 of the *Planning Act* (i.e., local service), and which will be funded by the D.C. by-law.

Impact of Proposed Changes

Need for robust consultation to avoid unintended consequences

The proposed amendments would allow the Province to make regulations to determine what constitutes a local service. Although the Province has noted that this will be defined through consultations, there may be unintended impacts. For example, if the definition of a local service is too broad, it may lower the D.C. but increase the direct funding requirements on one particular developer. If the definition is too narrow, the opposite would result, whereby local services would be broadly included in D.C. funding, thereby increasing D.C. rates.

Additionally, what is deemed a local service may vary by municipality due to characteristics of size, density, and types of development. For example, defining a specific watermain diameter size as a local service would be problematic as the size requirements for a specific development in a small community may be different compared to a similar development in a larger community.

The principal intent of a local service policy should first be defined. The defining parameters should be agreed upon in consultation with a representative cross section of municipal and development community representatives. Representatives should comprise urban, semi-urban and rural municipalities, as well as residential and non-residential development industry representatives to inform the diverse perspectives of local services. The regulations should also provide flexibility for the varying degree of circumstances observed by the over 200 municipalities across the Province that impose D.C.s.

Utilizing regulations creates uncertainty in financial planning

Incorporating the proposed definition in the Regulations to the D.C.A. may create uncertainty in financial planning. As noted in Item 1, the municipal financial planning framework is established over a number of years. The expedient nature of a regulatory change could impact the recovery of costs for growth-related infrastructure, thereby impacting development. For example, a water master plan typically defines the infrastructure required to support the anticipated growth and development. Master plans generally focus on higher-order infrastructure needs, with more localized infrastructure being defined through the development process and included in development agreements. Should a regulatory change reduce the scope of local services (e.g., limits the size of a watermain that can be required as local service), a municipality may be required to revise the scope of their water

master plan to ensure the capital needs are identified, and subsequently update their D.C. background study to incorporate these costs. These updates would generally take years to complete, depending on the magnitude of the changes and size of the municipality.

7. Exemption for long-term care homes

The D.C.A. defines long-term care homes as institutional development. As such, D.C.s imposed on long-term care homes are subject to annual instalment payments under section 26.1 of the D.C.A. The proposed amendment would exempt long-term care homes from the payment of D.C.s. This exemption would also apply to any outstanding D.C. instalment payments on long-term care home developments.

Impacts of Proposed Changes

Cashflow impacts for municipalities and increased pressure on taxes and rates

The D.C.A. does not allow reductions in D.C.s to be funded by other types of development. As such, the D.C. exemption for long-term care homes will have to be funded from other municipal revenue sources. The overall impact on municipalities may be minimal relative to their overall D.C. collections, depending on the number of long-term care homes being constructed in the municipality.

8. Streamlined D.C. by-law process to reduce charges

The proposed changes to section 19 (1.1) of the D.C.A. would allow for a streamlined process when a municipality amends a D.C. by-law for the following purposes:

- Repeal or change a D.C. by-law expiry date (consistent with current provisions);
- Repeal a D.C. by-law provision for indexing or to provide for a D.C. not to be indexed; and
- Decrease the amount of a D.C. for one or more types of development.

The streamlined process only requires passing an amending by-law and providing notice of by-law passage. This process removes the requirements under the D.C.A. to prepare a D.C. background study and undertake at least one public meeting. Moreover, amending by-laws for these purposes are not appealable to the Ontario Land Tribunal.

Impact of Proposed Changes

Reduction in administrative burden

Limiting the streamlined D.C. by-law amendment process to situations where the D.C. is being reduced for a type of development would allow municipalities to adjust the charges for changes in assumptions (e.g. reductions in capital cost estimates,

application of grant funding to reduce the D.C. recoverable amount), adding exemptions for types of development, and phasing-in the D.C. over time.

Unclear when this may be utilized

It is unclear if the streamlined process would apply where exemptions are being provided based on characteristics other than development type. For example, where a municipality is exempting a geographic area, such as an industrial park, downtown core, major transit station area, etc. Clarity should be provided in the legislation in this regard.

Reduced transparency for the general public

While administratively expedient, eliminating the statutory public process for reductions in D.C.s will not provide the general public with an opportunity to delegate Council on the matter or appeal the amending by-law to the Ontario Land Tribunal. This reduces transparency, as reductions in D.C.s through exemptions would need to be funded from non-D.C. revenue sources such as property taxes.

9. Lower charge for rate freeze

Section 26.2 of the D.C.A. requires that, for developments proceeding through a site plan or zoning by-law amendment application, the D.C. be determined based on the rates that were in effect when the planning application was submitted to the municipality. This allows for the determination of the charge earlier in the development process, as most D.C. by-laws determine the charges at the time of building permit issuance. In some instances, the D.C. that would be imposed at the time of building permit issuance may be lower than that in place at the time of planning application. Where rates have been determined as per section 26.2 of the D.C.A., the proposed amendments would require municipalities to apply the lower of the charges determined at the time of planning application or as required under the D.C. by-law (e.g. building permit issuance).

Note, interest charges for the D.C. determined at the time of planning application may still be imposed.

Impact of Proposed Changes

Lower of the charges imposed appears positive

These proposed changes are positive as developers would not be charged in excess of current rates, and municipal capital costs, where charges are lower. Moreover, developers who proceed in a timely manner would not be penalized with additional interest costs for the period between planning application and D.C. by-law timing of payment.

10. Noted areas for future changes to D.C.s

In the Province's announcement, they indicated additional changes can be expected to follow the proposed regulatory changes and/or ongoing consultations.

The Province has indicated its intent to add the Statistics Canada Non-Residential Building Construction Price Index for London to the prescribed indexes in the regulations. This would allow municipalities in Southwestern Ontario to utilize the London series for indexing purposes. This appears to be a reasonable addition to the legislation and will better align the underlying capital cost in D.C. by-laws with changes in the area. The Province should consider allowing municipalities to amend their D.C. by-laws using the streamlined D.C. amendment process to reference this index where appropriate.

The Province also indicated its intent to consult on potential approaches to standardize benefit to existing (B.T.E.) deductions. Municipalities generally follow best practices in regard to B.T.E. deductions. Currently, there is no standardized approach across all municipalities. Providing a standardized approach may be problematic, as capital projects, capital costs, and circumstances in different municipalities may be unique. Robust consultations should be undertaken prior to the implementation of any changes in this regard due to the wide-ranging implications anticipated for municipalities.

Lastly, the announcement included commentary on expanding the Annual Treasurer's Statement reporting requirements. Under the D.C.A. currently, municipalities must allocate 60% of monies in their D.C. reserve funds to projects for services related to a highway, water, and wastewater services. The Province has indicated that it may consider expanding this requirement to more services. If expanded to additional services, this change would impose an additional administrative burden on municipalities.

11. Concluding Remarks

Based on the proposed changes and individual municipal circumstances, municipalities may experience a reduction in D.C. revenues and cashflows. Possible implications include funding of growth-related capital needs from non-D.C. municipal revenue sources, slowing the timing for growth-related capital projects, and increased debt financing which may lead to ultimately higher D.C. rates and utilization of tax-supported funds to address growth-related needs, impacting affordability for existing residents and businesses.

The impacts of the more significant changes being considered (i.e., changes to the definition of capital cost, grouping of credits, defining local services, and prescribing a methodology for benefit to existing) will not be known until the release of the draft regulations for consultation.

The approach of effecting legislative change through regulations, as opposed to the requirements of passing a Bill through the legislative process reduces transparency and opportunity for public input. This also creates issues with municipalities' ability to react to the legislative changes and to update master plans and D.C. by-laws, where needed.

We appreciate the opportunity to comment on the legislative changes and would appreciate any opportunity to participate in ongoing consultation regarding the above legislative changes.

Yours very truly,

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