Bill 108 Development Charge Changes

May 30, 2019

Bill 108 proposes to address concerns in connection with the cost, supply and mix of residential housing and the effects of development charges on land development activity, translating into a number of proposed changes to the *Development Charges Act.*

On May 2, 2019, the Government of Ontario introduced Bill 108, the *More Homes, More Choice Act, 2019*. Bill 108 proposes changes that the government believes will help bring new housing to market sooner by making sweeping changes to the land use planning regime.

Concerns in connection with the cost, supply and mix of residential housing and the effects of development charges on land development activity more generally in Ontario have translated into a number of proposed changes to the *Development Charges Act, 1997*, S.O. 1997, c.27 (DCA).

The proposed changes include:

- the establishment of additional development charge exclusions for certain developments/redevelopments of prescribed residential dwellings, buildings and related structures;
- a reduction in the number and type of municipal services that can be funded by municipalities through development charges;
- the introduction of deferred payment options for development charges; and
- amendments to the mechanism and timing for calculation of development charges payable.

New Development Charge Exclusions

Subsection 2(3) of the DCA currently excludes certain redevelopments of existing residential dwellings from imposition of development charges including in circumstances where an existing residential dwelling is either enlarged or subdivided to create up to two additional units within a dwelling in prescribed existing residential buildings subject to prescribed restrictions. Under the changes proposed by Bill 108, this section of the DCA would be amended to remove the two additional dwelling unit cap for the said exclusion and also extend the exclusion to apply to the subdivision of ancillary structures to prescribed existing residential buildings subject to prescribed restrictions. It

is also proposed that the creation of a second dwelling unit within a new residential building and/or ancillary structure to a new residential building would also be exempt from development charges subject to prescribed restrictions.

Service Funding Changes

Bill 108 proposes an amendment to Subsection 2(4) of the DCA to limit the imposition of development charges strictly in relation to and only for the funding of the following municipal services:

- Water supply services, including distribution and treatment services
- Waste water services, including sewers and treatment services
- Storm water drainage and control services
- Services related to a highway as defined in subsection 1 (1) of the *Municipal Act, 2001*, S.O. 2001, c.25or subsection 3 (1) of the *City of Toronto Act, 2006*, S.O. 2006, c.11, Sched. A as the case may be
- Electrical power services
- Police services /policing
- Fire protection services
- Toronto-York subway extension
- Transit services other than the Toronto-York subway extension
- Waste diversion services
- Other services as prescribed.

It should be noted that “waste diversion services”, defined as waste management including landfill operations and incineration of waste, were previously excluded from services that can be funded through the imposition of development charges and have now been included. On the other hand, soft services such as the provision of parking, libraries, recreational facilities, development of parkland and/or daycare, are now excluded and are to be funded under the proposed “community benefits” provision(s) of the *Planning Act*. Particular attention should be paid to the pending transition rules applicable to the funding of these services.

Deferred Payment Options

A new addition, Section 26.1 in the DCA, is to provide an adjusted development charge payment process for the development of rental housing, institutional, industrial, commercial and non-profit housing. Generally speaking, the payment of development charges for these types of developments would be deferrable through six equal annual installment payments with the first such payment commencing as of the earlier of: (i) issuance of an occupancy permit under the *Building Code Act, 1992* or (ii) the date upon which the building is first occupied. The result is that over 83 per cent of development charge costs for these types of developments can be deferred and spread over a five year payment period. Municipalities will be permitted to charge interest, however, on the deferred portion of development charges which would be calculated and payable from the date that development charges would otherwise be payable, pursuant to Section 26 of the DCA through to the date that payment is actually received. Any interest charged by a municipality in accordance with the process mentioned must be set in accordance with rates that are prescribed.

Mechanism for Development Charge Calculation

There will also be changes in relation to when development charges are determined and set. Currently development charges are set as of the date upon which a building permit is issued which can be significantly later than when development approvals are obtained for a development and well after budgeting for the development has occurred. Under the proposed Section 26.2 of the DCA, development charges will be determined and set earlier in the development process, either at: (i) the time of application for site plan approval pursuant to Section 41 of the *Planning Act*, R.S.O. 1990, c. P.13 or, if no site plan application is required for the development, at of the time of any applications for zoning by-law amendments pursuant to Section 34 of the *Planning Act*. The development charge amounts set in accordance with the proposed Section 26.2 of the DCA would lapse if development, including issuance of a building permit, does not occur within a prescribed period of time. It should be noted that any developments that proceed without site plan approval or zoning bylaw amendment will be subject to development charges determined and set in the traditional fashion pursuant to the existing provisions in Section 26 of the DCA.

By

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