From:	Watson & Associates Economists Ltd.
To:	Watson & Associates Economists Ltd.
Subject:	Assessment of Bill 23 (More Homes Built Faster Act) - Community Benefits Charges and Parkland Dedication
Date:	November 16, 2022 6:06:51 PM
Attachments:	image001.png image002.png image003.png Assessment of Bill 23 (More Homes Built Faster Act) Community Benefits Charges - November 16, 2022.pdf Assessment of Bill 23 (More Homes Built Faster Act) - Parkland Dedication - November 16, 2022.pdf

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Good afternoon:

In follow-up to our correspondence on October 31, 2022, we are continuing to provide information on the proposed legislative changes arising from Bill 23, the *More Homes Built Faster Act, 2022*.

As a firm, we are committed to keeping our clients up to date on these proposed legislative changes and the anticipated impacts arising from the proposed Bill. We will be sending out multiple letters that cover the following topics:

- Development Charges;
- Community Benefits Charges;
- Parkland Dedication;
- Conservation Authorities; and
- Planning Matters.

These letters will also be posted to our website in the Insights section under Opinions.

The attached letters provide further details with respect to the anticipated impacts on community benefits charges and parkland dedication arising from proposed changes to the *Planning Act*.

If you have any questions regarding Bill 23, we would be pleased to discuss them with you, at your convenience.

Best regards,

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November 16, 2022

To Our Municipal Clients:

Re: Assessment of Bill 23 (*More Homes Built Faster Act*) – Community Benefits Charges

On behalf of our many municipal clients, we are continuing to provide the most up-to-date information on the proposed changes to the *Planning Act* related to community benefits charges (C.B.C.s), as proposed by Bill 23 (*More Homes Built Faster Act*). As identified in our October 31, 2022 letter to you, our firm is providing an evaluation of the proposed changes to C.B.C.s along with potential impacts arising from these changes. The following comments will be included in our formal response to the Province, which we anticipate presenting to the Standing Committee on Heritage, Infrastructure and Cultural Policy later this week.

1. Overview Commentary

The Province has introduced Bill 23 with the following objective: *"This plan is part of a long-term strategy to increase housing supply and provide attainable housing options for hardworking Ontarians and their families."* The Province's plan is to address the housing crisis by targeting the creation of 1.5 million homes over the next 10 years. To implement this plan, Bill 23 introduces several changes to the *Planning Act*, along with nine other Acts including the *Development Charges Act* (D.C.A.) and the *Conservation Authorities Act*, which seek to increase the supply of housing.

One of the proposed amendments to the *Planning Act* seeks to exempt affordable housing units (ownership and rental) and attainable housing units from C.B.C.s. While the creation of affordable housing units is an admirable goal, there is a lack of robust empirical evidence to suggest that reducing development-related fees improves housing affordability. Municipalities rely on C.B.C. funding to emplace the critical infrastructure needed to maintain livable, sustainable communities as development occurs. Introducing additional exemptions from the payment of these charges results in further revenue losses to municipalities. The resultant shortfalls in capital funding then need to be addressed by delaying growth-related infrastructure projects and/or increasing the burden on existing taxpayers through higher property taxes (which itself reduces housing affordability). If the additional exemptions from C.B.C.s are deemed to be an important element of increasing the affordable housing supply, then adequate transfers from the provincial and federal governments should be provided to municipalities to offset the revenue losses resulting from these policies.

A summary of the proposed C.B.C. changes, along with our firm's commentary, is provided below.

2. Changes to the *Planning Act* – C.B.C.s

2.1 New Statutory Exemptions: Affordable residential units, attainable residential units, and inclusionary zoning residential units will be exempt from the payment of C.B.C.s., with definitions provided as follows:

- Affordable Residential Units (Rented): Where rent is no more than 80% of the average market rent as defined by a new bulletin published by the Ministry of Municipal Affairs and Housing.
- Affordable Residential Units (Ownership): Where the price of the unit is no more than 80% of the average purchase price as defined by a new bulletin published by the Ministry of Municipal Affairs and Housing.
- Attainable Residential Units: Excludes affordable units and rental units; will be defined as prescribed development or class of development and sold to a person who is at "arm's length" from the seller.
- Inclusionary Zoning Units: Affordable housing units required under inclusionary zoning by-laws.

The exemption is proposed to be implemented by applying a discount to the maximum amount of the C.B.C. that can be imposed (i.e., 4% of land value, as specified in section 37 of the *Planning Act*). For example, if the affordable, attainable, and/or inclusionary zoning residential units represent 25% of the total building floor area, then the maximum C.B.C. that could be imposed on the development would be 3% of total land value (i.e., a reduction of 25% from the maximum C.B.C. of 4% of land value).

Analysis/Commentary

- While this is an admirable goal to create additional affordable housing units, further C.B.C. exemptions will continue to provide additional financial burdens on municipalities to fund these exemptions without the financial participation of senior levels of government.
- The definition of "attainable" is unclear, as this has not yet been defined in the regulations.
- Under the proposed changes to the D.C.A, municipalities will have to enter into agreements to ensure that affordable units remain affordable for 25 years and that attainable units are attainable at the time they are sold. An agreement does not appear to be required for affordable/attainable residential units exempt from payment of a C.B.C. Assuming, however, that most developments required to pay a C.B.C. would also be paying development charges, the units will be covered by the agreements required under the D.C.A. These agreements should be allowed to include the C.B.C. so that if a municipality needs to enforce the

provisions of an agreement, both development charges and C.B.C.s could be collected accordingly.
    - These agreements will increase the administrative burden (and costs) on municipalities. Furthermore, the administration of these agreements will be cumbersome and will need to be monitored by both the upper-tier and lower-tier municipalities.
- It is unclear whether the bulletin provided by the Province will be specific to each municipality, each County/Region, or Province-wide. Due to the disparity in incomes across Ontario, affordability will vary significantly across these jurisdictions. Even within an individual municipality, there can be disparity in the average market rents and average market purchase prices.
- Where municipalities are imposing the C.B.C. on a per dwelling unit basis, they will need to ensure that the total C.B.C. being imposed for all eligible units is not in excess of the incremental development calculation (e.g., as per the example above, not greater than 3% of the total land value).

2.2 Limiting the Maximum C.B.C. in Proportion to Incremental Development:
Where development or redevelopment is occurring on a parcel of land with an existing building or structure, the maximum C.B.C. that could be imposed would be calculated based on the incremental development only. For example, if a building is being expanded by 150,000 sq.ft. on a parcel of land with an existing 50,000 sq.ft. building, then the maximum C.B.C. that could be imposed on the development would be 3% of total land value (i.e., 150,000 sq.ft. / 200,000 sq.ft. = 75% x 4% maximum prescribed rate = 3% of total land value).

Analysis/Commentary

- With municipal C.B.C. by-laws imposing the C.B.C. based on the land total land value or testing the C.B.C. payable relative to total land value, there will be a reduction in revenues currently anticipated. At present, some municipal C.B.C. by-laws have provisions excluding existing buildings from the land valuation used to calculate the C.B.C. payable or to test the maximum charge that can be imposed. As such, this proposal largely seeks to clarify the administration of the charge.

We will continue to monitor the legislative changes and will keep you informed as the Bill proceeds.

Yours very truly,

WATSON & ASSOCIATES ECONOMISTS LTD.

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November 16, 2022

To Our Parkland Dedication By-Law Clients:

Re: Assessment of Bill 23 (*More Homes Built Faster Act*)

On behalf of our many municipal clients, we are continuing to provide the most up-to-date information on the proposed changes to the parkland dedication requirements of the *Planning Act*, as proposed by Bill 23 (*More Homes Built Faster Act*). As identified in our October 31, 2022 letter to you, our firm is providing an evaluation of the proposed changes to section 42 of the *Planning Act*, along with potential impacts arising from these changes. The following comments will be included in our formal response to the Province, which we anticipate presenting to the Standing Committee on Heritage, Infrastructure and Cultural Policy later this week.

1. Overview Commentary

The Province has introduced Bill 23 with the following objective: *"This plan is part of a long-term strategy to increase housing supply and provide attainable housing options for hardworking Ontarians and their families."* The Province's plan is to address the housing crisis by targeting the creation of 1.5 million homes over the next 10 years. To implement this plan, Bill 23 introduces a number of changes to the *Planning Act* (along with nine other Acts, including the *Development Charges Act* (D.C.A.)), which seek to increase the supply of housing.

As discussed later in this letter, the proposed changes to parkland dedication would significantly reduce the amount of parkland conveyance and payments-in-lieu (P.I.L.) of parkland to municipalities. The proposed changes under Bill 23 would impact municipalities by:

- Reducing the amount of development subject to parkland dedication by exempting affordable, attainable, non-profit and additional residential dwelling units;
- Reducing P.I.L. revenues for some developments by grandfathering in charges by up to 2 years, reflecting land values at the time of Site Plan and Zoning By-law Amendment applications;
- Reducing and capping the alternative requirements for parkland dedication, which results in significant reductions in parkland conveyance and P.I.L. revenues, particularly for high-density developments;
- Increasing the administrative burden on municipalities by requiring the preparation of and consultation on a parks plan with the passage of a parkland

dedication by-law, whether utilizing the standard or alternative requirements, and by requiring the allocation and reporting on funds annually; and
- Limiting local decision-making by allowing the Province to prescribe criteria for municipal acceptance of incumbered lands and privately owned public space (POPs) for parks purposes.

It is anticipated that the resultant loss in parkland dedication from development will result in either a cross-subsidization from existing taxpayers having to provide increased funding for parks services to maintain planned levels of service in their community, or an erosion of service levels over time. The timing of these changes, and others proposed in Bill 23 to limit funding from development, is occurring at a time when municipalities are faced with increased funding challenges associated with cost inflation and the implementation of asset management plans under the *Infrastructure for Jobs and Prosperity Act*.

A summary of the proposed parkland dedication changes under section 42 of the *Planning Act*, along with our firm's commentary, is provided below.

2. Changes to Section 42 of the *Planning Act*

2.1 New Statutory Exemptions: Affordable residential units, attainable residential units, inclusionary zoning residential units, non-profit housing and additional residential unit developments will be exempt from parkland dedication requirements. For affordable, attainable, and inclusionary zoning residential units, the exemption is proposed to be implemented by:

- discounting the standard parkland dedication requirements (i.e., 5% of land) based on the proportion of development excluding affordable, attainable and inclusionary zoning residential units relative to the total residential units for the development; or
- where the alternative requirement is imposed, the affordable, attainable and inclusionary zoning residential units would be excluded from the calculation.

For non-profit housing and additional residential units, a parkland dedication by-law (i.e., a by-law passed under section 42 of the *Planning Act*) will not apply to these types of development:

- Affordable Rental Unit: as defined under subsection 4.1 (2) of the D.C.A., where rent is no more than 80% of the average market rent as defined by a new bulletin published by the Ministry of Municipal Affairs and Housing.
- Affordable Owned Unit: as defined under subsection 4.1 (3) of the D.C.A., where the price of the unit is no more than 80% of the average purchase price as defined by a new bulletin published by the Ministry of Municipal Affairs and Housing.

- Attainable Unit: as defined under subsection 4.1 (4) of the D.C.A., excludes affordable units and rental units, will be defined as prescribed development or class of development and sold to a person who is at "arm's length" from the seller.
- Inclusionary Zoning Units: as described under subsection 4.3 (2) of the D.C.A.
- Non-Profit Housing: as defined under subsection 4.2 (1) of the D.C.A.
- Additional Residential Units, including:
    - A second unit in a detached, semi-detached, or rowhouse if all buildings and ancillary structures cumulatively contain no more than one residential unit;
    - A third unit in a detached, semi-detached, or rowhouse if no buildings or ancillary structures contain any residential units; and
    - One residential unit in a building or structure ancillary to a detached, semi-detached, or rowhouse on a parcel of urban land, if the detached, semi-detached, or rowhouse contains no more than two residential units and no other buildings or ancillary structures contain any residential units.

Analysis/Commentary

- While reducing municipal requirements for the conveyance of land or P.I.L. of parkland may provide a further margin for builders to create additional affordable housing units, the proposed parkland dedication exemptions will increase the financial burdens on municipalities to fund these exemptions from property tax sources (in the absence of any financial participation by senior levels of government) or erode municipalities' planned level of parks service.
- The definition of "attainable" is unclear, as this has not yet been defined in the regulations to the D.C.A.
- Under the proposed changes to the D.C.A, municipalities will have to enter into agreements to ensure these units remain affordable and attainable over a period of time, which will increase the administrative burden (and costs) on municipalities. An agreement does not appear to be required for affordable/ attainable units exempt from parkland dedication. Assuming, however, that most developments required to convey land or provide P.I.L. of parkland would also be required to pay development charges, the units will be covered by the agreements required under the D.C.A. As such, the *Planning Act* changes should provide for P.I.L. requirements if the status of the development changes during the period.
- It is unclear whether the bulletin provided by the Province to determine if a development is affordable will be specific to each municipality or aggregated by County/Region or Province. Due to the disparity in incomes across Ontario, affordability will vary significantly across these jurisdictions. Even within an individual municipality there can be disparity in the average market rents and average market purchase prices.

- While the proposed exemptions for non-profit housing and additional residential units may be easily applied for municipalities imposing the alternative requirement, as these requirements are imposed on a per residential unit basis, it is unclear at this time how a by-law requiring the standard provision of 5% of residential land would be applied.

2.2 Determination of Parkland Dedication: Similar to the rules under the D.C.A., the determination of parkland dedication for a building permit issued within two years of a Site Plan and/or Zoning By-law Amendment approval would be subject to the requirements in the by-law as at the date of planning application submission.

Analysis/Commentary

- If passed as currently drafted, these changes would not apply to site plan or zoning by-law applications made before subsection 12 (6) of Schedule 9 of the *More Homes Built Faster Act* comes into force.
- For applications made after the in-force date, this would represent a lag in P.I.L. value provided to municipalities, as it would represent the respective land value up to two years prior vs. current value at building permit issuance. For municipalities having to purchase parkland, this will put additional funding pressure on property tax funding sources to make up the difference, or further erode the municipality's planned level of parks service.

2.3 Alternative Parkland Dedication Requirement: The following amendments are proposed for the imposition of the alternative parkland dedication requirements:

- The alternative requirement of 1 hectare (ha) per 300 dwelling units would be reduced to 1 ha per 600 dwelling units where land is being conveyed. Where the municipality imposes P.I.L. requirements, the amendments would reduce the amount from 1 ha per 500 dwelling units to 1 ha per 1,000 net residential units.
- Proposed amendments clarify that the alternative requirement would only be calculated on the incremental units of development/redevelopment.
- The alternative requirement would be capped at 10% of the land area or land value where the land proposed for development or redevelopment is 5 ha or less; and 15% of the land area or land value where the land proposed for development or redevelopment is greater than 5 ha.

Analysis/Commentary

- If passed as currently drafted, the decrease in the alternative requirements for land conveyed and P.I.L. would not apply to building permits issued before subsection 12 (8) of Schedule 9 of the *More Homes Built Faster Act* comes into force.
- Most municipal parkland dedication by-laws only imposed the alternative requirements on incremental development. As such, the proposed amendments

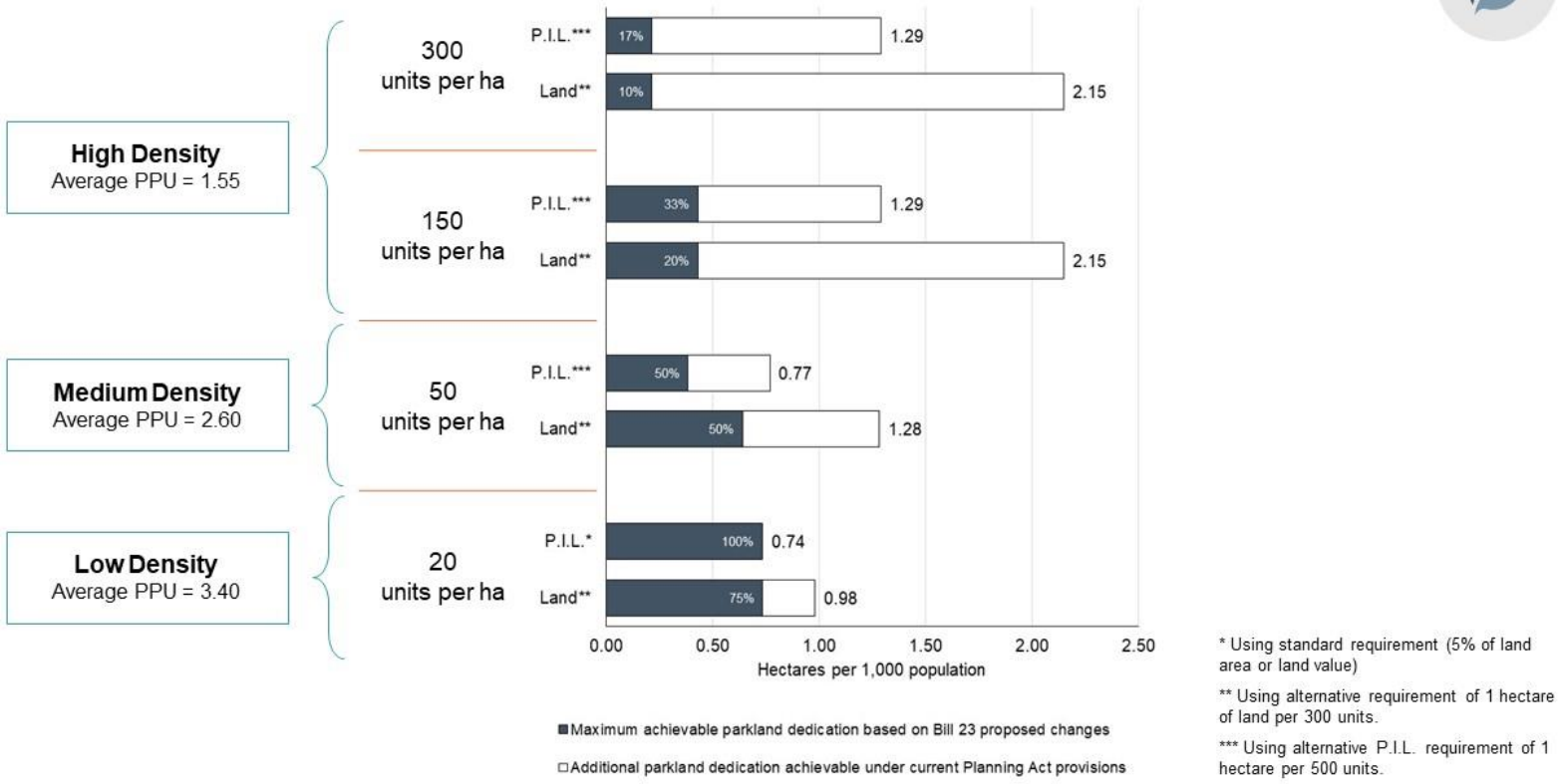
for net residential units seek to clarify the matter where parkland dedication by-laws are unclear.

- Section 42 previously imposed the alternative requirement caps of 10% and 15% of land area or value, depending on the respective developable land area, for developments only within designated transit-oriented communities. By repealing subsection 42 (3.2) of the *Planning Act*, these caps would apply to all developable lands under the by-law.
- As illustrated in the figure below, lowering the alternative parkland dedication requirement and imposing caps based on the developable land area will place significant downward pressure on the amount of parkland dedication provided to municipalities, particularly those municipalities with significant amounts of high-density development. For example:
    - Low-density development of 20 units per net ha (uph), with a person per unit (P.P.U.) occupancy of 3.4, would have produced a land conveyance of 0.98 ha per 1,000 population. The proposed change would reduce this to 0.74 ha, approximately 75% of current levels.
    - Medium-density development of 50 uph, with a P.P.U. of 2.6 would produce land conveyance at 50% of current levels (0.64 vs. 1.28 ha/1,000 population).
    - Low-rise development of 150 uph, with a P.P.U. of 2.6 would produce land conveyance at 20% of current levels (0.43 vs. 2.15 ha/1,000 population). P.I.L. would be approximately 1/3 of current levels.
    - High-rise development of 300 uph, with a P.P.U. of 2.6 would produce land conveyance at 10% of current levels (0.22 vs. 2.15 ha/1,000 population). P.I.L. would be approximately 17% of current levels.[1]

[1] Low-rise and high-rise developments with sites larger than 5 ha would only be marginally better under the proposed changes, at 30% and 15% of land conveyance and 50% and 25% P.I.L., respectively.

Maximum Achievable Parkland Dedication (hectares per 1,000 population)

Development Sites ≤ 5 hectares



* Using standard requirement (5% of land area or land value)

** Using alternative requirement of 1 hectare of land per 300 units.

*** Using alternative P.I.L. requirement of 1 hectare per 500 units.

- Based on the proposed alternative requirement rates and land area caps, municipalities would be better off:
    - For land conveyance, imposing the alternative requirement for densities greater than 30 units per ha.
        - Sites of 5 ha or less, land conveyance would be capped at 10% of land area at densities greater than 60 units per ha.
        - Sites greater than 5 ha, land conveyance would be capped at 15% of land area at densities greater than 90 units per ha.
    - For P.I.L. of parkland, imposing the alternative requirement for densities greater than 50 units per ha.
        - Sites of 5 ha or less, land conveyance would be capped at 10% of land area at densities greater than 100 units per ha.
        - Sites greater than 5 ha, land conveyance would be capped at 15% of land area at densities greater than 150 units per ha.
    - For densities less than 30 units per ha, imposing the standard requirement of 5% of land area for land conveyance and P.I.L. of parkland.

2.4 Parks Plan: The preparation of a publicly available parks plan as part of enabling an Official Plan will be required at the time of passing a parkland dedication by-law under section 42 of the *Planning Act*.

Analysis/Commentary

- The proposed change will still require municipal Official Plans to contain specific policies dealing with the provision of land for parks or other public recreational purposes where the alternative requirement is used.
- The requirement to prepare and consult on a parks plan prior to passing a by-law under section 42 would now appear to equally apply to a by-law including the standard parkland dedication requirements, as well as the alternative parkland dedication requirements. This will result in an increase in the administrative burden (and cost) for municipalities using the standard parkland dedication requirements.
- Municipalities imposing the alternative requirement in a parkland dedication by-law on September 18, 2020 had their by-law expire on September 18, 2022 as a result of the *COVID-19 Economic Recovery Act* amendments. Many municipalities recently undertook to pass a new parkland dedication by-law, examining their needs for parkland and other recreational assets. Similar transitional provisions for existing parkland dedication by-laws should be provided with sufficient time granted to allow municipalities to prepare and consult on the required parks plan.

2.5 Identification of Lands for Conveyance: Owners will be allowed to identify lands to meet parkland conveyance requirements, within regulatory criteria. These lands may include encumbered lands and privately owned public space (POPs).

Municipalities may enter into agreements with the owners of the land regarding POPs to enforce conditions, and these agreements may be registered on title. The suitability of land for parks and recreational purposes will be appealable to the Ontario Land Tribunal (OLT).

Analysis/Commentary

- The proposed changes allow the owner of land to identify encumbered lands for parkland dedication consistent with the provisions available to the Minister of Infrastructure to order such lands within transit-oriented communities. Similar to the expansion of parkland dedication caps, these changes would allow this to occur for all developable lands under the by-law. The proposed changes go further to allow for an interest in land, or POPs.
- The municipality may refuse the land identified for conveyance, providing notice to the owner with such requirements as prescribed. The owner, however, may appeal the decision to the OLT. The hearing would result in the Tribunal determining if the lands identified are in accordance with the criteria prescribed. These "criteria" are unclear, as they have not yet been defined in the regulations.
- Many municipal parkland dedication by-laws do not except encumber lands or POPs as suitable lands for parkland dedication. This is due, in part, to municipalities' inability to control the lands being dedicated or that they are not suitable to meet service levels for parks services. Municipalities that do accept these types of lands for parkland or other recreational purposes have clearly expressed such in their parkland dedication by-laws. The proposed changes would appear to allow the developers of the land, and the Province within prescribed criteria, to determine future parks service levels in municipalities in place of municipal council intent.

2.6 Requirement to Allocate Funds Received: Similar to the requirements for C.B.C.s, and proposed for the D.C.A. under Bill 23, annually beginning in 2023, municipalities will be required to spend or allocate at least 60% of the monies in a reserve fund at the beginning of the year.

Analysis/Commentary

- This proposed change appears largely administrative, increasing the burden on municipalities. This change would not have a fiscal impact and could be achieved as a schedule to annual capital budget. Moreover, as the Province may prescribe annual reporting, similar to the requirements under the D.C.A. and for a C.B.C under the *Planning Act*.

We will continue to monitor the legislative changes and will keep you informed as the Bill proceeds.

Yours very truly,

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