CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Planning, Administration and Policy Division

TO:	Chair and Members General Issues Committee
COMMITTEE DATE:	November 30, 2022
SUBJECT/REPORT NO:	Bill 23, Proposed *More Homes Built Faster Act, 2022* as it relates to the *Development Charges Act* (FCS22085) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Lindsay Gillies (905) 546-2424 Ext. 5491 Kirk Weaver (905) 546-2424 Ext. 2878
SUBMITTED BY: **SIGNATURE:**	Mike Zegarac General Manager, Finance and Corporate Services Corporate Services Department

RECOMMENDATION(S)

(a) That Council adopt the submissions and recommendations as provided in Appendix “B” to Report FCS22085 regarding Schedule 3 of proposed Bill 23, *More Homes Built Faster Act*, 2022;

(b) That the General Manager, Finance and Corporate Services, be authorized and directed to confirm the submissions made to the Province attached as Appendix “B” to Report FCS22085;

(c) That the General Manager, Finance and Corporate Services, and the City Solicitor be authorized to make submissions on Bill 23, *More Homes Built Faster Act, 2022* and any associated regulations consistent with the comments and concerns raised in Report FCS22085.

EXECUTIVE SUMMARY

On October 25, 2022, the Province introduced 'More Homes, Built Faster: Ontario's Housing Supply Action Plan 2022-2023' ("Action Plan"). The Action Plan is the latest in a series of Provincial initiatives related to the supply of housing in Ontario. To support the Provincial commitment to getting 1.5 million homes built over the next 10 years, it proposes sweeping and substantive changes to nine different statutes through Bill 23, *More Homes Built Faster Act, 2022* ("Bill 23"), as well as, through updates to regulations and consultations on various Provincial plans and policies.

The purpose of Report FCS22085 is to provide information and staff comments on the changes proposed to Schedule 3 of Bill 23 which proposes changes to the *Development Charges Act*, *1997* ("DC Act"). A separate staff report to the Planning Committee (PED22207: Bill 23, Proposed *More Homes Built Faster Act, 2022*) addresses other Schedules of Bill 23.

The Province is to be commended for attempting to advance initiatives in support of our shared goal of addressing housing supply and affordability.

The stated purpose of the proposed legislative changes is to have 1.5 million homes built over the next 10 years. The proposed changes, as outlined by the Province, is to further streamline approvals for housing and reduce barriers and costs to development so that communities can grow with a mix of housing types and tenures. Through the Action Plan the Province has acknowledged that "too many people are struggling with the rising cost of living and finding housing that meets their family's needs"[1].

While the development of purpose-built rental housing is a pressing matter, and the supply of housing is a shared interest, staff has concerns that many of the proposed changes to the DC Act through Bill 23, compounded upon the changes made to the DC Act through Bill 108 (*More Homes, More Choice Act, 2019*) and Bill 197 (*COVID-19 Economic Recovery Act, 2020*), creates incentives to developers on the backs of municipalities and municipal taxpayers / ratepayers. It is vital that the Province of Ontario offset the impact to municipalities. If these related development costs are not offset, the impact may further exacerbate the rising cost of living for Ontarians, including increasing the cost of housing for existing residents, delay the timing of critical municipal infrastructure and ultimately limit the ability to advance housing supply.

Specifically, the changes to the DC Act provide sweeping and targeted reductions to the amounts that developers would contribute towards the costs of critical growth-related infrastructure without providing a plan for how municipalities are expected to fund that required infrastructure.

[1] https://ero.ontario.ca/notice/019-6162

Municipalities have long advocated that growth should pay for growth. This philosophy allows municipalities to grow without undue burden on existing tax and rate payers. While the tools that municipalities have that ensure growth-pays-for-growth have been imperfect and there has always been a portion of growth costs borne by tax and rate payer, the changes proposed through Bill 23 would significantly reduce the amount of capital costs that municipalities can recover from growth.

In order for municipalities to partner in the goal of providing 1.5 million homes over the next 10 years, municipalities will need to ensure that there is servicing in place to allow development to proceed. The main way that municipalities fund the servicing necessary to allow development to proceed is through the calculation and collection of Development Charges (DCs). The DC calculation is structured so that municipalities can collect just enough to pay for the necessary infrastructure related to growth. A reduction to the calculated amount of DCs means that there will be insufficient funding to pay for the infrastructure and municipalities will need to consider delaying infrastructure, taking on additional debt and / or levying the shortfall through increased property taxes or rate user fees.

Figure 1 in the Analysis and Rationale for Recommendation(s) section of Report FCS22085 provides an overview of how DCs function and illustrates the targeted and sweeping reductions.

Appendix “A” to Report FCS22085 provides an overview of the changes proposed to the DC Act through Bill 23 and staff comments on those changes.

The Province provided for consultation on Bill 23 though ERO 019-6172. The consultation deadline was November 24, 2022. In order to meet the Provincial deadline, staff comments have been submitted to the Province and are contained in the attached Appendix “B” to Report FCS22085. If the Recommendations in Report FCS22085 are approved by Council, the General Manager, Finance and Corporate Services, will notify the Province that the submissions that were made have been adopted by Council for the City of Hamilton.

Alternatives for Consideration – N/A

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Bill 23 will have significant financial implications on the City if passed as currently drafted. The degree and magnitude are not fully unknown at this time. Appendix “A” to Report FCS22085 includes some preliminary estimates related to some of the provisions in Bill 23 related to DCs. Staff will continue to monitor, analyze and report back to Council, as necessary.

Staffing: Bill 23 proposes changes to the DC Act. There are no staffing implications at this time. However, if Bill 23 is enacted as currently drafted, there will be staff resourcing implications associated with the changes.

Legal: Legal Services and the Financial Planning, Administration and Policy Divisions will continue to monitor the status of Bill 23 and report back, where necessary, with recommendations for the implementation of Bill 23 as it relates to DCs, if enacted.

HISTORICAL BACKGROUND

Since 2018, the Provincial government has advanced a number of initiatives and legislative changes related to the supply of housing in Ontario. These include:

- consultation on 'Increasing Housing Supply in Ontario' (November 2018);
- introduction of a 'Housing Supply Action Plan' (May 2019);
- enactment of Bill 108, '*More Homes, More Choice Act*' (June 2019);

  Finance Related Staff Reports
  - FCS19057 / LS09123: Bill 108 "*More Homes, More Choice Act, 2019*" – Schedule 3 Comment Submission
    - June 9, 2019 Audit, Finance and Administration Committee
  - FCS19057(a) / LS19023(a): Bill 108 "*More Homes, More Choice Act, 2019*" - Proposed Regulations Comment Submission related to the *Development Charges Act* and Community Benefits Authority under the *Planning Act*
    - August 15, 2019 Audit, Finance and Administration Committee
  - FCS19057(b) / LS19023(b): Bill 108 "*More Homes, More Choice Act, 2019*" - Proposed Regulations Comment Submission related to the Community Benefits Authority under the *Planning Act*, the *Development Charges Act*, and the *Building Code Act* (ERO 019-1406)
    - April 15, 2020 Audit, Finance and Administration Committee

  - enactment of Bill 197, '*COVID-19 Economic Recovery Act*' (July 2020);
  - enactment of Bill 213, '*Better for People, Smarter for Business Act, 2020'* (December 2020)
  - announcement of a Housing Affordability Task Force (December 2021);
  - an Ontario-Municipal Housing Summit (January 2022);
  - a report from the Ontario Housing Affordability Task Force (February 2022); and
  - enactment of Bill 109, '*More Homes for Everyone Act*' (April 2022).

There have been several changes to the DC Act from these legislative changes as summarized in Table 1.

Table 1
Summary of Enacted Changes to the *Development Charges Act, 1997* since 2019

Change	Related Legislation and Timing
DC Rate Lock-in DC rates are locked in at applicable site plan or zoning by-law amendment application date for up to two years following approval of the related application. Interest can be applied from locked in rate to building permit issuance. A maximum interest rate may be prescribed; no rate was prescribed until the proposal through Bill 23. Previously, the building permit issuance date was the relevant date for establishing the DC rate. Building permit issuance date remains to the be the relevant date for permits who do not have a relevant planning application.	Bill 108 Effective January 1, 2020
Legislated Instalments Certain forms of development, as defined by regulation, will pay DCs in instalments commencing at occupancy: • rental housing (6 instalments) • institutional development (6 instalments) • non-profit housing (21 instalments) Interest can be applied from building permit issuance to the date of each instalment payment. A maximum interest rate may be prescribed; no rate was prescribed until the proposal through Bill 23. Previously, all DCs were required to be paid at building permit issuance, unless the municipality and developer entered into a deferred payment agreement.	Bill 108 Effective January 1, 2020 City adopted an interest policy, effective January 1, 2020, through FCS0028 / PED20105

<table>
<tr><th>Change</th><th>Related Legislation and Timing</th></tr>
<tr><td>Removal of 10% Statutory Deduction
Previously, municipalities were required to take a 10% statutory deduction from the following services which meant that only 90% of the growth-related costs were able to be considered in the calculation of the DC. This change allowed 100% of the growth costs for these services to be considered in the calculation of the DC.
Parking
Airport
Parks and Recreation
Library
Growth Studies
Ambulance
Waste Diversion
Public Health
Long-term Care
Child Care and Early Years
Housing
Provincial Offences Act Administration
Public Works (Yards)
Note that the ability to collect for Parking and Airport services was removed effective September 18, 2022.</td><td>Bill 108
For DC by-laws enacted after January 1, 2020

The City updated DC By-law 19-142 through By-law 21-102 effective July 6, 2021</td></tr>
<tr><td>Expanded exemption for Secondary Dwelling Units
The requirement to exempt a secondary dwelling unit was expanded:
to allow exemptions of secondary dwellings within new builds vs existing
to allow the secondary units to be in an ancillary structure to the principal residence
to require the greater of one unit or 1% of existing units within apartments to be exempted</td><td>Bill 108
Effective January 1, 2020</td></tr>
</table>

Change	Related Legislation and Timing
Restricted list of what services a DC can be charged for A list of what services a DC may be imposed for is defined. Previously the legislation allowed collection for all services unless expressly prescribed as ineligible (i.e. culture, entertainment facilities and tourism, land for parks, hospitals, landfill / waste, general administration). None of the previously ineligible services were added to what a DC can be charged for. In terms of what the City had been collecting for, Parking, Airport and some studies became ineligible.	Bill 108 For DC by-laws enacted after January 1, 2020
Removal of Services related to Community Benefits Charges (CBC) Parking, Airport and some studies were removed from what the City was able to collect a DC for effective at the earlier of when a CBC by-law came into effect or September 18, 2022.	Bill 108 Transition period ended September 18, 2022
Statutory Exemption for Post-Secondary Institutions The *Ministry of Training, Colleges and Universities Act* was amended to exempt DCs on the development of land intended for use by a university that receives operating funds from the government.	Bill 197: *Better for People, Smarter for Business Act, 2020* Effective December 8, 2020

Bill 23 passed its first reading on October 25, 2022 and its second reading on October 31, 2022.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

There are no policy implications or legislative requirements related to the endorsement and submission of comments attached as Appendix "B" to Report FCS22085 which is what Report FCS22085 recommends.

If Bill 23 is enacted as drafted, there will be significant impacts to the timing and funding strategy for growth related capital projects. In addition, where there is conflict between the City's DC by-law and the revised DC Act. The revised DC Act will be adhered to and the City's DC by-law will be updated at the next opportunity.

RELEVANT CONSULTATION

- Planning and Economic Development Department
- Healthy and Safe Communities Department
- Legal and Risk Management Services, Corporate Services Department

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

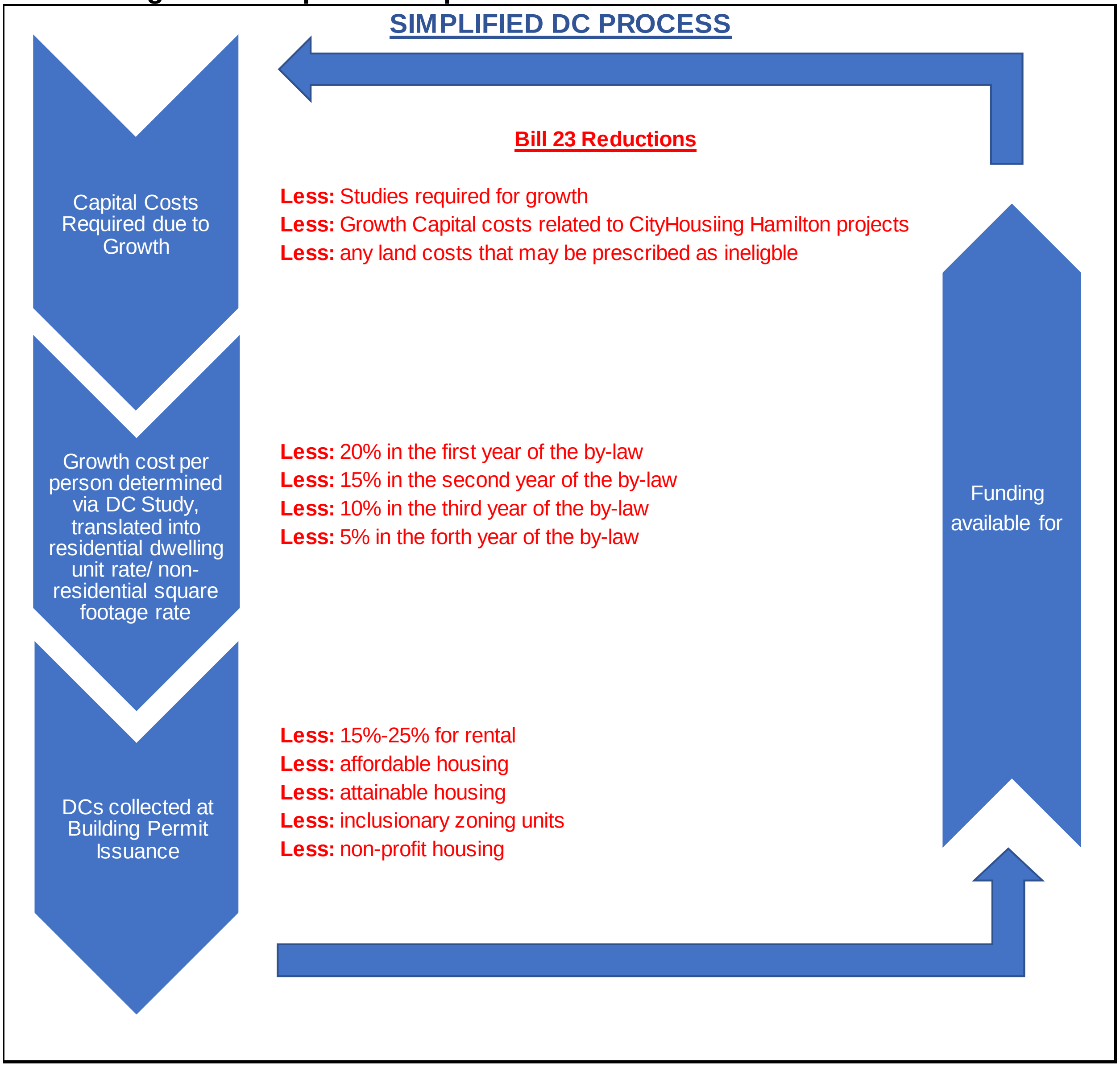
Staff has reviewed the proposed Bill 23 and has prepared a summary of the proposed changes to the DC Act (Schedule 3 of Bill 23), attached as Appendix "A" to Report FCS22085. Staff's comments to the Province are attached as Appendix "B" to Report FCS22085. The comments below are intended to provide a high-level assessment of the Bill and its potential impacts.

Municipalities have long advocated that growth should pay for growth. This philosophy allows municipalities to grow without undue burden on existing tax and rate payers. While the tools that municipalities have that ensure growth-pays-for-growth have been imperfect and there has always been a portion of growth costs borne by tax and rate payer, the changes proposed through Bill 23 would significantly reduce the amount of growth related capital costs that municipalities can recover from growth.

In order for municipalities to partner in the goal of providing 1.5 million homes over the next 10 years, municipalities will need to ensure that there is servicing in place to allow development to proceed. The main way that municipalities fund the servicing necessary to allow development to proceed is through the calculation and collection of Development Charges (DCs). The DC calculation is structured so that municipalities can collect just enough to pay for the necessary infrastructure. A reduction to the calculated amount of DCs means that there will be insufficient funding to pay for the infrastructure and municipalities will need to consider delaying infrastructure, taking on additional debt and/or levying the shortfall through property taxes or rate user fees.

Figure 1 illustrates how DCs function at a high level and identifies where the ability for a municipality to collect for the infrastructure to support that growth is being restricted by the proposed changes in Bill 23.

Figure 1: Simplified DC process with Bill 23 reductions identified



The amendments resulting from the proposed Bill 23 are a significant departure from the current legislative framework.

Summary of Major Changes Proposed to DC Act

Service Level Cap

The amount that a municipality can include in the calculation of a DC for a service is limited to the average service level that it has provided for that service over the past 10 years.

Bill 23 proposes that municipalities would be limited to a 15-year service level cap versus the current 10-year serve level cap. In cases where municipalities are enhancing the levels of services, in an effort to improve quality of life, DCs will be capped at a level that is insufficient to sustaining these efforts.

This change could result in a lower calculated service standard cap which will limit the amount that can be collected through DCs towards growth infrastructure.

By-law Expiration

The current requirement for the DC by-law to be updated every five years is proposed to be extended has been extended to 10 years.

DC by-laws could still be updated earlier than 10 years. However, the phase-in policy, which is explained further in Report FCS22085, would then apply in the first four years of the new by-law.

The change from a five-year by-law life to a 10-year by-law life essentially limits the capacity to update DC rates for changes in capital infrastructure and plans without impacts to short term collections.

Staff is currently engaged in background study work for the City's next DC by-law which, under current legislation, needs to be in place by June 13, 2024. The City may have an option to extend the life of DC By-law 19-142 depending on the date the legislation is enacted. This option, alongside the updates to masterplans necessitated out of the Province's direction to expand the urban boundary through the final approval of OPA 167 and the draft DC calculations from those masterplans, will need to be considered to determine whether it makes sense to postpone the enactment of the next DC by-law beyond the current required date of June 13, 2024.

Reduced Capital Cost Eligibility

Bill 23 proposes that several costs that can currently be collected for through DCs would no longer be eligible to be collected through a DC, consequently, reducing the ability of the municipalities to fund growth infrastructure and jeopardizing a significant number of additional affordable housing units

Housing Services are proposed to be removed from the list of eligible DC services. This service will be removed upon passing of legislation meaning that collection of DCs for CityHousing Hamilton (CHH) projects must cease the day that Bill 23 receives Royal Assent. The City will no longer be able to collect DCs for CHH and, therefore, will not be able to provide DC funding towards CHH projects in the future.

Growth Studies are removed from the list of eligible DC services. This service will be removed when the City adopts a new DC by-law (not an immediate change). Growth studies are required to the location and costs of infrastructure required to allow growth to proceed. The costs related to completing a DC background study are also proposed to no longer be an eligible cost in the DC calculation.

Land costs are currently permitted to be included for all services except parkland acquisition. The City's Parkland Dedication by-law collects funds to pay for land and, therefore, this restriction is to prevent the same costs being collected through two tools. Bill 23 proposes that services for which land will not be an eligible cost can be prescribed. No services have been proposed initially.

Mandatory Phase-in

Bill 23 proposes reductions applicable to DC by-laws passed after June 1, 2022. Specifically, the City would be required to calculate the amount that is necessary to collect from developers to pay for the capital works related to growth and then discount that rate by 20% in the first year of the by-law, 15% in the second year, 10% in the third year, 5% in the fourth year, and 0% in years five through 10 of the by-law.

The reductions are based on the newly calculated rate, not just the increase from the previous rate. By phasing the entire DC rate, passing a new DC by-law could have the effect of lowering the DC rate from by-law to by-law.

There is no immediate impact as the City's current by-law was passed in June 2019 (prior to June 1, 2022).

New Mandatory Exemptions

Bill 23 proposes that several forms of development will receive an exempt from DCs:

- Affordable housing (rental and ownership);
- Attainable housing (which has yet to be defined);
- Non-profit housing; and
- Inclusionary zoning residential units.

The Minister will publish a Bulletin to guide municipalities with respect to the dollar threshold for a unit to be considered affordable. It is unclear how localized the Minister's Bulletins will be and, therefore, unclear whether there is a risk that market rates in one or more localized areas of the City will be considered affordable by the definition in the Bulletin. It is also not clear how often the Bulletin will be updated.

The ownership stream for affordable housing is much more complex as it will impact not only the developer but the subsequent owner(s) who may not understand the financial impact.

There are also other factors that could affect price within specific geographies within a municipality, such as proximity to hydro corridors, industrial areas, etc. which may not be taken into account in the Bulletin. It is unknown how the average purchase prices will be defined by building type (e.g. will it be specific to housing size, housing type, etc.) all which have a variation on housing prices. Further, the current instability of the real estate market could cause great fluctuations in prices from month to month.

While Bill 23 proposes that the affordable and attainable exemptions may be secured by an agreement on title, no such security has been proposed related to the exemption for non-profit housing. In addition, any active instalment plans for non-profit housing developments will no longer be required to pay any instalments that fall after Bill 23 receives Royal Assent.

The City's DC by-law currently provides an exemption for affordable housing which would be superseded by the statutory exemption. Where there is conflict between the City's DC by-law and the revised DC Act, the revised DC Act will be adhered to and the City's DC by-law will be updated at the next opportunity.

DC Interest

Bill 23 proposes a maximum interest rate that can be charged for:

1. The interest that applies to DCs locked in at site plan application date (or zoning by-law amendment application date as applicable), or
2. The interest that applies to legislated instalment payments from building permit issuance to the date of instalment payment.

Under the proposed changes, the maximum interest rate would be set at the average prime rate of the five major Canadian Banks for commercial loans plus 1%, updated quarterly.

The City's policy generally appears to impose a lower rate than the proposed maximum. However, the City uses a fixed rate and the proposed rate is variable which mean that the City will need to assess its policy to ease administration of monitoring two interest rate policies.

Reserve Spending

Bill 23 proposes that 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 for water, wastewater and services related to a highway. Other services may be prescribed by the Regulation.

For the Services currently prescribed, Water, Wastewater and Services related to a highway, the City's combined approved but unspent direct capital funding and DC Debt exceed current reserve balances for those services so there is no immediate impact.

While there no direct financial impact, this requirement appears to be excessive administration for municipalities as the DC study effectively performs this function.

General Observations

The proposals through Bill 23 generally appear to run counter to the long-standing concept of growth paying for growth.

It is unclear why a reduction in DCs provided to developers is expected to translate into more housing being built and provided to market at more affordable rates. There is no requirement for developers to commit to reducing selling prices as a result of lower DCs. Many factors other than DCs, such as demand, development interests, mortgage rules, interest rates, immigration levels, foreign buyers, economic growth, raw land value, inter-generational wealth transfer, location and labour and material costs, affect the market rate of housing.

It is further unclear, whether the labour market can support increased construction of both housing and the infrastructure required to service that housing. If the labour market is not able to support all demands, there could be surge pricing which acts counter to the goal of affordable housing and further restricts a municipalities ability to pay for the infrastructure required to service growth.

It is, however, clear that the reductions in DCs will place a significant financial burden on municipalities and could lead to delayed studies and delayed infrastructure which could slow the pace of growth which runs counter to the Provincial goals of increasing the pace of housing development.

It is further clear that removing the ability to collect DCs for housing services (CHH) directly inhibits municipalities ability to contribute towards the goal of 1.5 M homes over 10 years through the development of affordable housing units.

Without support from the Provincial or Federal Governments to supplement the DCs that could no longer be collected through DCs, those reductions to DCs would shift the burden of costs from developers to property tax and rate payers. Higher property taxes and water rates, in turn, would affect housing and business affordability which would be counter to the goal of addressing overall housing affordability.

In the current inflationary and interest rate climate, an increase in property tax and water rates could have significant impacts to those already struggling to make ends meet. Business affordability through increased property taxes and water rates could also impact economic competitiveness in Ontario. If municipalities choose not to levy the lost revenue, or limit the amount levied on existing tax and rate payers, then infrastructure would be delayed and additional debt financing may be required.

Conclusion

The City supports the Province's goal of building 1.5 million homes over the next 10 yeas and tackling the affordability crisis affecting every Ontarian. The City has concerns that the changes proposed to the DC Act through Bill 23 will not effectively support these goals. There are drastic cuts proposed to the funding municipalities use to instal the infrastructure required to service growth. There is no clear indication that these cuts will have any impact on the selling price of homes. Without funding from the Province or Federal Government, municipalities will need to raise taxes and water rates across the board; impacting every resident and business across the Province.

ALTERNATIVES FOR CONSIDERATION

None.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth
Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Healthy and Safe Communities
Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

Built Environment and Infrastructure
Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Our People and Performance
Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report FCS22085 – Summary of Changes Proposed to the *Development Charges Act, 1997* through Schedule 3 of the *More Homes Built Faster Act, 2022* (Bill 23)

Appendix "B" to Report FCS22085 – City of Hamilton Staff Submission on the Proposed Changes to the *Development Charges Act, 1997* through Schedule 3 of the *More Homes Built Faster Act, 2022* (Bill 23)