

December 22, 2015

To our Municipal Clients

**Re: Passage of Bill 73 and Ontario Regulation 428/15**

This letter is to advise that on December 3, 2015, the Province passed Bill 73 which amended the *Development Charges Act*. Subsequently, on December 18, 2015, Ontario Regulation 428/15 was published which amended Ontario Regulation 82/98 (i.e. the DCA Regulation) and provided additional directives for the amended Act. Copies of both items are enclosed with this letter for your review.

We have reviewed the documents and would provide a summary of the changes which have been made to date. The table below provides the proposed changes which were presented by the Province upon the introduction of Bill 73 (as summarized in our March 9, 2015 letter) along with how these items have been included in the final legislation.

<b>Proposed Changes to the Act (March 9, 2015)</b>	<b>Final Changes to the Act (December 2015)</b>	<b>Commentary</b>
<b>New definitions:</b> <ul style="list-style-type: none"> <li>• “Prescribed” – a reference to what may be contained in the Regulation</li> </ul>	Has been included in the definitions section of the Act (section 1)	“Prescribed” means prescribed by the regulations
<ul style="list-style-type: none"> <li>• “Regulations” – used to specifically refer to regulations made under the DCA.</li> </ul>	Has been included in the definitions section of the Act (section 1)	“Regulations” means the regulations made under this Act

<b>Proposed Changes to the Act (March 9, 2015)</b>	<b>Final Changes to the Act (December 2015)</b>	<b>Commentary</b>
<b>Ineligible Services</b> – move the definition of Ineligible Services from the DCA to the Regulations – allows for easier adjustments to add or reduce ineligible services.	<ul style="list-style-type: none"> <li>• Section 2(4) of the Act is repealed and replaced with a new section 2(4) which references ineligible “prescribed” services</li> <li>• New section 2.1(1) in Regulations provides the prescribed ineligible services</li> </ul>	<ul style="list-style-type: none"> <li>• As noted, allows for easier adjustments to add or reduce ineligible services</li> <li>• Solid waste was formerly an ineligible service – sections 2.1(5) and (6) identify that only landfill and incineration are ineligible, thus allowing for alternative waste disposal methods (e.g. recycle, reuse, composting, etc.)</li> </ul>
<b>Area Specific Charges:</b> <ul style="list-style-type: none"> <li>• New requirements which will prescribe areas and services which must be undertaken on an area-specific basis</li> </ul>	<ul style="list-style-type: none"> <li>• Section 2 of the Act expanded to include new subsections (9), (10), (11), (12)</li> </ul>	<ul style="list-style-type: none"> <li>• The new sections provide that prescribed services or municipalities shall consider area rating</li> <li>• <u>The regulations do not provide for any prescribed services or municipalities at this time</u></li> </ul>
<ul style="list-style-type: none"> <li>• New powers to allow the Province to prescribe municipalities, services and criteria so that the prescribed municipality must pass more than one by-law for prescribed services and criteria</li> </ul>	<ul style="list-style-type: none"> <li>• Former section 60(1)(d) of the Act is repealed and replaced with a new 60(1)(d) and (d.1)</li> </ul>	<ul style="list-style-type: none"> <li>• As noted above, no services or municipalities prescribed at this time</li> <li>• For the future, the new powers allow the Minister to provide this by regulation changes</li> </ul>
<b>Transit Service</b> – 10% mandatory deduction from the growth-related costs will be removed	<ul style="list-style-type: none"> <li>• New section 7.2 of the Act</li> </ul>	

<b>Proposed Changes to the Act (March 9, 2015)</b>	<b>Final Changes to the Act (December 2015)</b>	<b>Commentary</b>
<b>Service Standard Calculations:</b> <ul style="list-style-type: none"> <li>Prescribe services which will not be subject to the 10-year historic average service restriction</li> </ul>	<ul style="list-style-type: none"> <li>New section 5.2(1) and (2) of the Act provides for “prescribed” services</li> <li>New section 6.1 of the regulations only prescribes transit service at this time</li> </ul>	<ul style="list-style-type: none"> <li>The Act allows for prescribed services to be defined</li> <li>Only transit service is a prescribed service at this time</li> </ul>
<ul style="list-style-type: none"> <li>Restrictions so that a planned 10-year level of service to be achieved over the 10-year forecast is not exceeded</li> </ul>	<ul style="list-style-type: none"> <li>New sections 5.2(3) and (4) of the Act provides for “prescribed” services</li> <li>New section 8(2) of the Regulation provides for the manner in which transit service will be dealt with</li> </ul>	
<ul style="list-style-type: none"> <li>Methodology for determining the planned level of service will be set out in the regulations</li> </ul>	<ul style="list-style-type: none"> <li>New section 8(2) of the Regulation provides for the manner in which transit service will be dealt with</li> </ul>	<ul style="list-style-type: none"> <li>Methodology established for transit service only</li> <li>Methodology requires ridership forecasts and ridership capacity for all modes of transit over the 10 years, identification of excess capacity which exists at the end of 10 years, identification of whether new ridership is from existing or planned development</li> </ul>

<b>Proposed Changes to the Act (March 9, 2015)</b>	<b>Final Changes to the Act (December 2015)</b>	<b>Commentary</b>
<b>Development Charge Background Study:</b> <ul style="list-style-type: none"> <li>Municipalities must examine the use of area-rating</li> </ul>	<ul style="list-style-type: none"> <li>New section 10(c.1)</li> </ul>	<ul style="list-style-type: none"> <li>While there are no “prescribed” services, this section identifies that the background study must consider this to reflect the different needs for different areas</li> <li>Note that while the background study must consider the option of area rating, it is not mandatory to pass area-specific charges</li> </ul>
<ul style="list-style-type: none"> <li>Must include an asset management plan related to new infrastructure – the requirements of the asset management plan, the information to be provided and the manner in which it is prepared will be prescribed by regulation</li> </ul>	<ul style="list-style-type: none"> <li>New sections 10(c.2) and 10(3)</li> <li>Section 8 of the Regulation amended to include subsections (2), (3) and (4) which provide for specific detailed requirements for transit (only)</li> </ul>	<ul style="list-style-type: none"> <li>For all services except transit, the background study shall deal with all assets proposed in the study and demonstrate that these assets are financially feasible over their full life cycle</li> <li>Act identifies that further information or the manner in which these are provided may be prescribed; however, only transit service is prescribed at this time</li> <li>However, it is expected that this requirement will align with the Asset Management Guidelines established by the Province</li> </ul>

<b>Proposed Changes to the Act (March 9, 2015)</b>	<b>Final Changes to the Act (December 2015)</b>	<b>Commentary</b>
<ul style="list-style-type: none"> <li>• Must demonstrate that all of the new infrastructure in the asset management plan is financially sustainable over their full life cycle</li> </ul>	<ul style="list-style-type: none"> <li>• See above comments</li> </ul>	<ul style="list-style-type: none"> <li>• See above comments</li> </ul>
<p><b>Payment Timing for Multiple Building Permits</b> – when multiple building permits are issued in respect of a single building, the DC is payable when the first building permit is issued.</p>	<ul style="list-style-type: none"> <li>• New sections 26(1.1) and (1.2) of the Act</li> </ul>	<ul style="list-style-type: none"> <li>• Requires that the development charge is calculated and payable when the first permit is issued</li> <li>• However, if the development has two or more phases that are not constructed concurrently, each phase is deemed a separate development</li> </ul>
<p><b>Annual Report of the Treasurer</b> – existing reporting requirements will be continued and new requirements added to:</p> <ul style="list-style-type: none"> <li>• Identify all assets whose capital costs were funded by DCs and, for each asset, identify costs which were funded by other sources</li> </ul>	<ul style="list-style-type: none"> <li>• Section 43(2) of the Act is repealed and replaced with a new 43(2)</li> </ul>	<ul style="list-style-type: none"> <li>• Annual report must include opening/closing balances, all transactions in the fund, statements identifying all assets funded by DCs and how the portions not funded by DCs were funded</li> </ul>
<ul style="list-style-type: none"> <li>• Include a statement as to the municipality's compliance in not imposing, directly or indirectly, a charge related to a development or a requirement to construct a service related to development, except as permitted by this Act</li> </ul>	<ul style="list-style-type: none"> <li>• New section 43(2)(c) of the Act</li> </ul>	<ul style="list-style-type: none"> <li>• Section 43(2) references the new section 59.1 of the Act (discussed below under "No Additional Levies") and requires a statement that the municipality is compliant</li> </ul>

<b>Proposed Changes to the Act (March 9, 2015)</b>	<b>Final Changes to the Act (December 2015)</b>	<b>Commentary</b>
<ul style="list-style-type: none"> <li>Require that the report be made available to the public</li> </ul>	<ul style="list-style-type: none"> <li>New section 43(2.1) of the Act</li> </ul>	<ul style="list-style-type: none"> <li>New section provides that “council shall ensure that the statement is made available to the public”</li> </ul>
<ul style="list-style-type: none"> <li>Submit the report to the Ministry of Municipal Affairs and Housing only when requested by the Minister</li> </ul>	<ul style="list-style-type: none"> <li>Section 43(3) of the Act is modified</li> </ul>	<ul style="list-style-type: none"> <li>The modification removes the requirement to file statements with the Ministry unless requested to provide</li> </ul>
<p><b>No Additional Levies:</b></p> <ul style="list-style-type: none"> <li>New provisions to prohibit municipalities from imposing additional payments or requiring construction of a service not authorized under the DCA (note that exceptions may be made for a prescribed class of development, a prescribed class of services related to development or a prescribed Act or a prescribed provision of an Act)</li> </ul>	<ul style="list-style-type: none"> <li>New sections 59.1(1) and (2) of the Act</li> </ul>	<ul style="list-style-type: none"> <li>New section prohibits municipalities from imposing additional payments or requiring construction of a service not authorized under the DCA except as permitted by this Act (e.g. Section 59, “Local Services”) or another Act (e.g. Local Improvements under the <i>Municipal Act</i>)</li> <li>Subsection (2) does allow for exceptions if a class of service or development, or an Act is prescribed – no provision is made in the Regulations at this time</li> </ul>
<ul style="list-style-type: none"> <li>Transitional provisions will make exceptions for existing payment agreements</li> </ul>	<ul style="list-style-type: none"> <li>New section 59.1(3) of the Act</li> </ul>	<ul style="list-style-type: none"> <li>Section 59.1 does not affect a charge imposed prior to January 1, 2016</li> </ul>

<b>Proposed Changes to the Act (March 9, 2015)</b>	<b>Final Changes to the Act (December 2015)</b>	<b>Commentary</b>
<ul style="list-style-type: none"> <li>Ministry of Municipal Affairs and Housing may investigate a municipality for compliance. Cost of all or a portion of the investigation may be imposed on the municipality</li> </ul>	<ul style="list-style-type: none"> <li>New sections 59.1(4), (5), (6) and (7) of the Act</li> </ul>	<ul style="list-style-type: none"> <li>Minister may at any time investigate a municipality for compliance - note that the powers provided to the Minister to investigate are extensive</li> </ul>
<b>Housekeeping Change to the Act</b> – to update the reference to the <i>Condominium Act</i>	<ul style="list-style-type: none"> <li>Section 2(2)(f) of the Act is amended</li> </ul>	<ul style="list-style-type: none"> <li>Reference to the <i>Condominium Act</i> changed from “section 50” to “section 9”</li> </ul>
<b>Other Changes not Identified at the beginning of the Process</b> <ul style="list-style-type: none"> <li>Minimum 60 day circulation of the DC Background Study</li> </ul>	<ul style="list-style-type: none"> <li>New section 10(4) of the Act</li> </ul>	<ul style="list-style-type: none"> <li>Council shall ensure that the DC Background Study is made available to the public 60 days prior to the passing of the DC by-law</li> <li>Report must be available on the website for 60 days prior to passage and be available as long as the by-law is in effect</li> </ul>

The Province has set January 1, 2016 for the amended legislation to take full force and effect. This means that starting January 1st of next year, any new by-laws (or amending by-laws) must conform to these new changes. We are aware of a few municipalities who have commenced a process for amending or updating their DC by-laws and hence, will need to refine their background study, draft by-laws and public process to conform to the new legislation.

### **Remarks**

The legislative changes noted above will require a more detailed review to consider the impact to the DC methodology and policies. As we have done in the past, our firm will be engaging with legal advisors to further consider the full implications of the Bill and Regulation. A few direct comments are made at this time for consideration by the reader:

**Transit** – while there have been changes which appear to allow for a greater recovery of transit capital costs, the process now required to calculate the charge has become far more complex and prescriptive. We would perceive that more detailed background analysis will be required through transit/transportation master plans and ridership forecasting.

**No Additional Levies** - the new provision prohibits a municipality's ability to impose an additional charge or requirement to directly construct services. This provision does not impact a municipality's ability to impose local service conditions as allowed for currently under section 59(2) of the Act. However, it does emphasize the need for a comprehensive local service policy to be included as part of the DC Background Study. In addition, other Acts remain in effect for imposing charges against development (e.g. *Planning Act* Parkland Dedication, *Municipal Act* Local Improvements, etc).

As we have communicated in earlier correspondence, we feel that this requirement can restrict development in the future. For example, if a developer requests a project timing to be accelerated and there is a non-growth component to the project, the municipality cannot require the developer to fund this non-growth share. The developer will have to wait until the financial resources of the municipality are available to fund this cost. Further, for fast growing municipalities, the burden of the DC deductions and service restrictions may be too substantial to bear and will look to restrict growth to financially manageable levels.

**Longer Circulation Period for DC Background Studies** – while not a significant change, this will add approximately six weeks on to the DC process. For minor amendments to a by-law to address a definition change or add an additional exemption, it will take longer to implement that change.

**Eligible Solid Waste Services** – this service was removed by the DCA 1997, hence the methodology, approach to service standard measurements, etc., will need to be developed. It is unclear what data or background studies municipalities may have to support the calculations. This service is expected to evolve over time.

**Treasurer Statement** – the report requirements for the Treasurer have been expanded. As the Act takes effect on January 1, 2016, it would appear that the new requirement will be required for the 2015 year. We will be preparing sample reporting statements for all of our clients which we will make available in early January.

**Area Rating** – this new requirement will add additional time, effort and cost to the DC Background Study. Area rating is most applicable to water, wastewater and stormwater services however the Act does not limit which services shall be considered. It is also anticipated that this new requirement will foster additional dialogue with the development community. While the requirement for an open public process is embraced by the Act currently, this provision will compare averaged uniform charges against higher/lower area rated charges, thus giving rise to further discussion.



We trust that the above information is helpful.

Yours very truly,

WATSON & ASSOCIATES ECONOMISTS LTD.

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Gary Scandlan, BA, PLE  
Director

A handwritten signature in blue ink, appearing to read 'A. Grunda', with a stylized, cursive script.

Andrew Grunda, CMA, MBA  
Principal