Memorandum

To	Kimberley Pope
From	Gary Scandlan and Daryl Abbs
Date	February 7, 2023
Re:	Cavan Monaghan Impacts of Bill 23 on Development Charges

Fax ☐ Courier ☐ Mail ☐ Email ☒

1. Introduction

The Province introduced Bill 23, *More Homes Built Faster Act, 2022* 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 introduced a number of changes to the Development Charges Act (D.C.A.), along with nine other Acts including the Planning Act, which seek to increase the supply of housing.

As a result of the legislative changes brought forth through Bill 23, Watson & Associates Economists (Watson) was retained to undertake a review of the changes to the D.C.A along with the potential impacts to the Township of Cavan Monaghan. This memorandum provides a summary of the changes along with the potential financial impact on the Township’s development charge (D.C.) rates and policies. The potential financial impact will be dependent on a number of factors including the actual type and rate of growth. These estimates are included to provide an “order of magnitude” estimate for the Township.

2. Changes to the D.C.A.

On November 28, 2022, Bill 23 received Royal Assent. The following provides a summary of the changes to the D.C.A., organized into three categories:

1. Changes that impact the Township’s policies and charges immediately;
2. Changes that impact the Township upon undertaking the next D.C. by-law or update; and
3. Changes that will impact the Township at a future date, yet to be determined.

2.1 Immediate Impacts

The following changes to the D.C.A. took effect upon Royal Assent of Bill 23 (i.e. November 28, 2022):

2.1.1 Additional Residential Exemption

Previously, the rules for these exemptions were provided in the regulations to the D.C.A. (O.Reg 82/98), however, they are now included directly in the Act. These exemptions are summarized as follows:

- Exemption for residential units in existing rental residential buildings – For rental residential buildings with four or more residential units, the greater of one unit or 1% of the existing residential units will be exempt from a D.C.
- Exemption for additional residential units in existing and new residential buildings – The following developments will be exempt from a D.C.:
    - A second and 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.

Additional Residential Unit Exemption - Impact on the Township

For single-family homes, this change will not have an impact. For semi-detached and rowhouses, this allowance of a third additional unit that will be exempt from D.C.s adds a further revenue loss burden to municipalities to finance infrastructure. This is of greatest concern for water and wastewater services where each additional unit will require additional capacity in water and wastewater treatment plants, but will not have to pay a D.C.

Other services, such as active transportation, will also be impacted as increased density creates increased demand for road-related infrastructure. Without an offsetting D.C., the additional costs will be funded by the taxpayer.

The financial impact of these regulatory changes will be based on the actual number of additional third units. Based on historical building activity, the number of new secondary units in the Township was approximately five (5) units per year. If this trend were to continue with third additional units as well, the anticipated D.C. revenue lost would range from $0 to $57,000 per year, or $0 to $290,000 over a five (5) year period[1].

[1] The estimated loss in D.C. revenue is based on five (5) exempt units per year multiplied by the small apartment Millbrook Area D.C. rate of $11,449 per unit.

2.1.2 Removal of Housing as an Eligible D.C. Service

Housing services are removed as an eligible service. Municipalities with by-laws that include a charge for housing services can no longer collect for this service.

Removal of Housing as an Eligible D.C. Service – Impact on the Township
This change does not have an impact on the Township's D.C. given housing services are provided by the County. Further, as stated in the County's staff report on Bill 23, this change does not impact the County's D.C. by-law, as Housing services are not currently included. Therefore, there is no financial impact to the Township with respect to loss of D.C. revenues.

2.1.3 New Statutory Exemptions – Non-Profit Housing

Prior to the passage of Bill 23, Non-profit housing developments paid their D.C.s in instalment payments over a 20-year period. With the changes to the D.C.A. from Bill 23, Non-profit housing units are now fully exempt from D.C.s. As a result, any remaining instalment payments required after November 28, 2022, would be waived.

New Statutory Exemptions – Non-profit Housing – Impact on the Township
Through discussions with staff, there have been no non-profit housing developments undertaken in the last five (5) years. Further, it does not appear that there are any development applications in the process for non-profit housing units. As a result, there may be no loss in D.C. revenues for the Township for the next five (5) years.

2.1.4 Mandatory Phase-in of a D.C.

For all D.C. By-laws passed after January 1, 2022, the charge must be phased in annually over the first five years the by-law is in force as follows:

- Year 1 – 80% of the maximum charge;
- Year 2 – 85% of the maximum charge;
- Year 3 – 90% of the maximum charge;
- Year 4 – 95% of the maximum charge; and
- Year 5 to expiry – 100% of the maximum charge.

Mandatory Phase-in of a D.C. – Impact on Township

Water, wastewater, stormwater, and roads are essential services for creating land supply for new homes. These expenditures are significant and must be made in advance of growth. As a result, the loss of revenue from phasing-in the D.C. will result in the Township having to fund this shortfall from other sources (i.e., taxes and rates). This may result in the delay of construction of infrastructure that is required to service new homes and a negative impact on the tax/rate payer who will have to fund these D.C. revenue losses.

As the Township passed their D.C. by-law in 2022, the phase-in is required for all building permits as of November 28, 2022.

Based on the anticipated growth identified in the Township's 2022 D.C. Background study, the total anticipated revenue over the first five (5) years of the by-law would have been approximately $20.77 million with no exemptions. However, Council passed an exemption for the non-water/wastewater services for industrial development. This loss of revenue is estimated to be approximately $160,000 annually, or $800,000 over the 5-year period. With the mandatory phase-in requirements as noted above, the anticipated revenues would further decrease by approximately $200,000 annually, or $1.00 million over the 5-year period. Therefore, it is estimated that the Township may lose approximately 4.75% of the anticipated D.C. revenues over the 5-year period as a result of these legislative changes.

2.1.5 Rental Housing Discount

The D.C. payable for rental housing developments[1] will be reduced based on the number of bedrooms in each unit as follows:

- Three or more bedrooms – 25% reduction;
- Two bedrooms – 20% reduction; and
- All other bedroom quantities – 15% reduction.

Rental Housing Discount – Impact on the Township

Further discounts to D.C.s will place an additional financial burden on Municipalities to fund these reductions.

The discount for rental housing does not appear to have the same requirements as the affordable and attainable exemptions (discussed later in this memo) to enter into an agreement for a specified length of time. This means a developer may build a rental

[1] "rental housing development" means development of a building or structure with four or more residential units all of which are intended for use as rented residential premises.

development and convert the development (say to a condominium) in the future, hence avoiding the full D.C. payment for its increase in need for service.

Through discussions with staff, there have been no rental housing developments undertaken in the last five (5) years. Further, it does not appear that there are any development applications in the process for rental housing units. As a result, there may be no loss in D.C. revenues for the Township for the next five (5) years.

2.1.6 Maximum Interest Rate for Instalments and D.C. Rate Freeze for Eligible Site Plan and Zoning By-law Amendment Applications

Before Bill 23 came into force, no maximum interest rate was prescribed. Under the changes, and in force as of November 28, 2022, the maximum interest rate would be set at the average prime rate plus 1%. This maximum interest rate provision would apply to all instalment payments (for rental housing and institutional development) as well as eligible site plan and zoning by-law amendment applications.

Maximum Interest Rate – Impact on the Township

No D.C. interest rate policy has been passed to date; however, Council has the ability to impose an interest rate of less than the maximum. The average prime rate on January 30, 2023, was 6.7%. Therefore, the maximum interest rate as per the D.C.A. would be 7.7%.

Council should consider the passage of a resolution to utilize the maximum interest rate allowable under the D.C.A. or consider an alternative interest rate policy that provides for a reduced rate.

2.1.7 Requirement to Allocate Funds Received

Similar to the requirements for Community Benefits Charges required under the Planning Act, annually, beginning in 2023, Municipalities are 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 (however, as of January 30, 2023, no services have been prescribed).

Requirement to Allocate Funds received – Impact on Township

This proposed change appears largely administrative and would not have a financial impact on the Township. This administrative requirement can be achieved as a schedule as part of the annual capital budget process or can be included as one of the schedules with the annual D.C. Treasurer Statement. This, however, will increase the administrative burden on the Township.

2.2 Impacts Upon Undertaking D.C. By-law or Update

The following changes to the legislation are currently in place, however, as these changes impact the preparation of the analysis or include transitional matters, the impact to the Township will not be realized until the undertaking of a new or update to the D.C. by-law.

2.2.1 Historical Level of Service

Currently, the increase in need for service (i.e. amount that can be included in the D.C. calculations) is limited by the average historical level of service calculated over the 10-year period preceding the preparation of the D.C. background study. These calculations are included in the Township's D.C. background study, Appendix B. With the changes to the legislation, these calculations will need to be undertaken on the 15-year period preceding the preparation of the D.C. background study.

Historical Level of Service – Impact on the Township

The change to averaging the historical level of service over 15-years will be required when the Township undertakes the next D.C. study. In review of the Township's service standard calculations included in the 2022 D.C. Background Study, if the 15-year level of service was required, the Township would have experienced a reduction in the D.C. recoverable amounts for fire, police, and library services. The total anticipated revenue loss as a result of the increased level of service would have been approximately $42,000 over the five (5) year period.

For municipalities experiencing significant growth in recent years, extending the historical level of service by five (5) years may reduce the level of service cap, and the corresponding D.C. recovery amounts. For many municipalities seeking to save for new facilities, this may reduce the overall recoveries and potentially delay construction.

This further limits municipalities in their ability to finance growth-related capital expenditures where debt funding was recently issued. Given that municipalities are also legislated to address asset management requirements, their ability to incur further debt may be constrained.

2.2.2 Capital Costs - Studies

The definition of eligible capital costs has been revised to remove the costs of studies, including the preparation of the D.C. background study.

Capital Costs – Studies - Impact on the Township

Official Plans and Secondary Plans are required to establish when, where, and how a municipality will grow. Master Plans and environmental assessments are required to understand the servicing needs development will place on hard infrastructure such as water, wastewater, stormwater, and roads.

These studies are necessary to inform the servicing required to establish the supply of lands for development; without these servicing studies, additional development cannot proceed. This would restrict the supply of serviced land and would be counter to the Province's intent to create additional housing units.

Note that the current growth-related costs for studies included in the D.C. totals approximately $365,000. Since the Township's D.C. study was passed before Bill 23 came into effect, the Township can continue to collect and pay for studies through D.C. funding. However, once the next D.C. by-law is in place, the Township will no longer be able to collect for this service.

Future growth studies, once the Township passes a new D.C. by-law, will need to be funded from other sources (i.e. taxes/rates).

2.2.3 D.C. By-Law Expiry

Prior to Bill 23, D.C. by-laws would expire after five (5) years, unless otherwise stated in the by-law. With the changes from Bill 23, a D.C. by-law would expire 10 years after the day it comes into force, unless otherwise provided for in the by-law.

D.C. By-Law Expiry – Impact on Township

Since the Township's D.C. by-law includes an expiry date of August 2, 2027, this would remain as the expiry date. When the Township undertakes their next D.C. by-law, they may utilize an expiry date that is 10 years after the date the by-law comes into force.

Although the Township's D.C. by-law will still expire after five (5) years, Municipalities across Ontario are experiencing significant increases in construction costs. From recent work across the Province, Watson has observed that some Municipalities are experiencing increases in tender prices that surpass the D.C. index.

As a result, amending/updating the present by-laws to update cost estimates for planned infrastructure may still place Municipalities in a better financial position.

2.3 Impacts to be Implemented in the Future – Date to Be Determined

The following changes included in the D.C.A. are not currently in force, however, may be implemented at any point. These changes require changes to the regulations (i.e.

O.Reg 82/98) and therefore only require posted notice of the changes. Watson will continue to monitor any changes to the legislation and keep the Township apprised.

2.3.1 New Statutory Exemptions

Affordable units, attainable units, and affordable units required as part of inclusionary zoning will be exempt from the payment of D.C.s, as follows:

- Affordable Rental Units: 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 Units: 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 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.

  Note: for affordable and attainable units, the Municipality shall enter into an agreement that ensures the unit remains affordable or attainable for 25 years.

- Inclusionary Zoning Units: Affordable housing units required under inclusionary zoning by-laws will be exempt from a D.C.

New Statutory Exemptions – Impact on the Township
While this is an admirable goal to create additional affordable housing units, further D.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. Additionally, the details of "affordable" have yet to be defined in the regulations. 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. 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. As a result, an estimated financial impact cannot be undertaken at this time.

2.3.2 Capital Costs - Land

The definition of capital costs may be revised at a future date to prescribe services for which land or an interest in land will be restricted. As of January 30, 2023, no services have been prescribed.

Capital Costs – Land - Impact on the Township
Land costs are proposed to be removed from the list of eligible costs for certain services (nothing prescribed to date). Land represents a significant cost for some municipalities in the purchase of property to provide services to new residents. This is a cost required due to growth and should be funded by new development, if not dedicated by development directly. As no services have yet to be prescribed, there is no financial impact to the Township.

3. Summary of Financial Impacts from Bill 23

As a result of the changes to the D.C.A. arising from Bill 23, the Township will see a reduction in D.C. revenues that will need to be funded from other sources (i.e. reserves, taxes, and/or water/wastewater rates). The actual magnitude of the loss in D.C. revenues will depend on the rate and type of growth. Table 3-1 summarizes the estimated financial impacts for the changes that take effect immediately. Based on these changes, the Township may lose D.C. revenues of up to $250,000 annually or $1.3 million over a five (5) year period. Table 3-2 provides for a summary of the changes that will impact the Township at a later date, along with an estimated financial impact of the changes.

Table 3-1
Township of Cavan Monaghan
Summary of Impacts from Bill 23 – Immediate Impacts

Legislative Change	Potential Financial Impact	Timing of Impact
Additional Residential Exemption	Annually: Revenue loss of $0 to $57,000; 5-Year Period: Revenue loss of $0 to $290,000.	Immediate
Removal of Housing as an Eligible D.C. Service	No anticipated financial impact.	Immediate
Non-Profit Housing Exemption	No anticipated financial impact.	Immediate

Legislative Change	Potential Financial Impact	Timing of Impact
Mandatory Phase-in	Annually: Revenue loss of $200,000; 5-Year Period: Revenue loss of $1.00 million (4.75% of the anticipated D.C. revenues).	Immediate
Rental Housing Discount	No anticipated financial impact.	Immediate
Maximum Interest Rate	No anticipated financial impact.	Immediate
Requirement to Allocate Funds Received	No anticipated financial impact.	Immediate

Table 3-2
Township of Cavan Monaghan
Summary of Impacts from Bill 23 – Future Impacts

Legislative Change	Potential Financial Impact	Timing of Impact
Historical Level of Service	Annually: Revenue Loss of approximately $8,400; or Over a 5-Year Period: Revenue loss of approximately $42,000.	Upon Undertaking D.C. By-law or Update
Capital Costs – Studies	Reduction in D.C. eligible amount of $365,000 for growth related studies, based on the cost for growth studies in the 2022 D.C. background study.	Upon Undertaking D.C. By-law or Update
D.C. By-Law Expiry	No anticipated financial impact.	Upon Undertaking D.C. By-law or Update
New Statutory Exemptions – Affordable and Attainable Housing	An estimated financial impact cannot be undertaken at this time, however, this should be reviewed upon release of the regulations.	In the Future
Capital Costs - Land	An estimated financial impact cannot be undertaken at this time, however, this should be reviewed upon release of the regulations.	In the Future