The New *Development Charges Act* and *Planning Act* – What it Means for Municipal Infrastructure Funding

Tuesday September 17th, 2019

HEMSON VAUGHAN ORILLIA MFOA MUNICIPAL FINANCE OFFICERS' ASSOCIATION OF ONTARIO

This is NOT Your Usual DC Session…

Today you will learn about:

1. Municipal revenue sources under the new Bill 108 regime and potential implications
2. What a Community Benefits Strategy looks like
3. What you should be doing to prepare
4. Perspectives of large and small municipalities

There are 2 parts to this session:

1. Formal presentation and panel discussion
2. Small group facilitated discussion

Meet Your Panelists

Hemson Consulting

- **Stefan Krzeczunowicz,** Associate Partner
- **Jackie Hall,** Consultant

MFOA

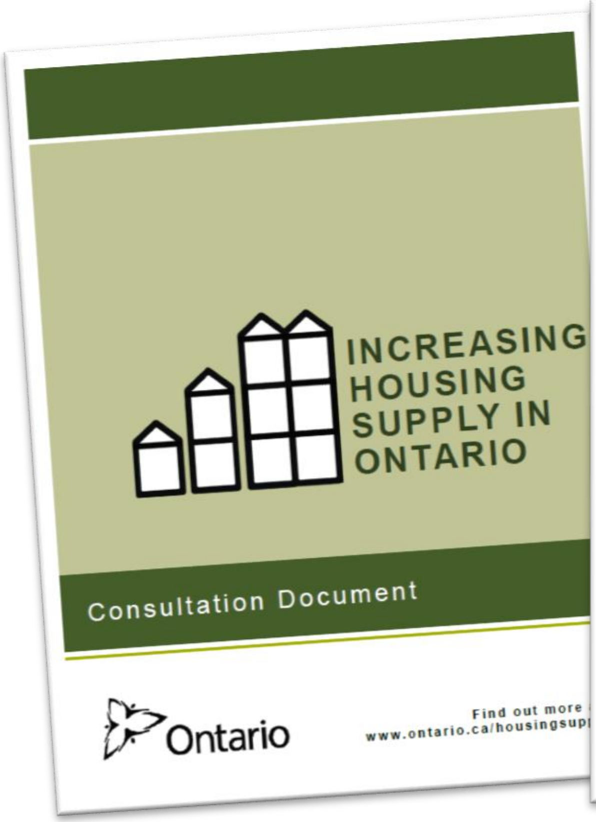
- **Shira Babins,** Manager of Policy

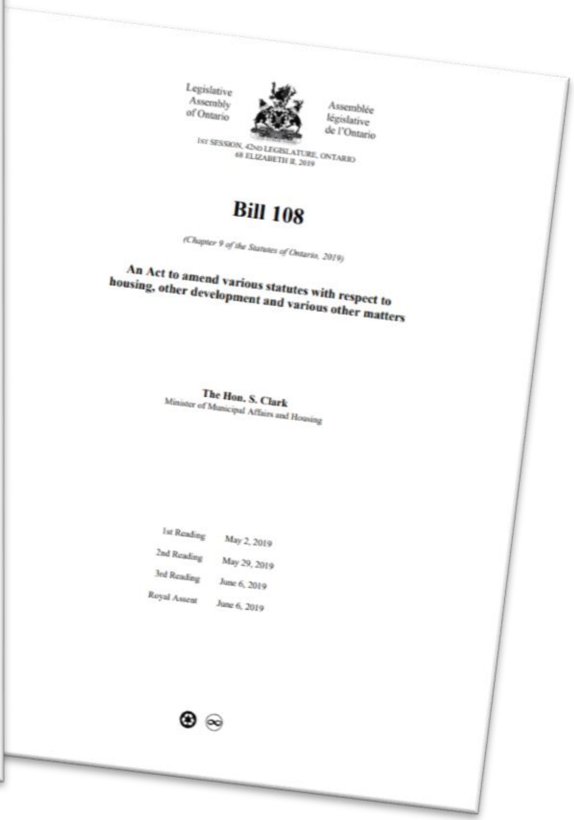
Municipal Sector

- **Jill Lewis,** Senior Planner, City of Orillia
- **Maggie Wang,** Manager Corporate Finance, City of Vaughan

MFOA Update on Bill 108

Background on the More Homes, More Choice Act, 2019





Legislative Assembly of Ontario

Assemblée législative de l'Ontario

1ST SESSION, 42ND LEGISLATURE, ONTARIO
68 ELIZABETH II, 2019

Bill 108

(Chapter 9 of the Statutes of Ontario, 2019)

An Act to amend various statutes with respect to housing, other development and various other matters

The Hon. S. Clark
Minister of Municipal Affairs and Housing

1st Reading	May 2, 2019
2nd Reading	May 29, 2019
3rd Reading	June 6, 2019
Royal Assent	June 6, 2019

Acts Affected

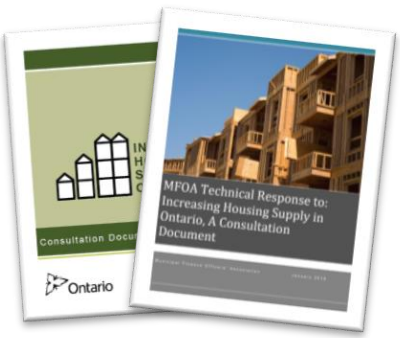
Schedule	Acts
1	*Cannabis Control Act, 2017*
2	*Conservation Authorities Act*
3	***Development Charges Act, 1997***
4	*Education Act, 1990*
5	*Endangered Species Act, 2007*
6	*Environmental Assessment Act, 1990*
7	*Environmental Protection Act, 1990*
8	*Labour Relations Act, 1995*
9	*Local Planning Appeal Tribunal Act, 2017*
-	*Municipal Act, 2001*
10	*Occupational Health and Safety Act, 1990*
11	*Ontario Heritage Act, 1990*
-	*Ontario Water Resources Act, 1990*
12	***Planning Act, 1990***
13	*Workplace Safety and Insurance Act, 1997*

How Did We Get Here?

Dec 1 ‘18 - Jan 31 ‘19

Province’s initial consultations on how to increase the housing supply in Ontario

MFOA submits technical response to consultation



May 2 ‘19 - May 31 ‘19

Bill 108 is introduced and 30 days are provided for public comment

MFOA presents to Standing Committee on Justice Policy and submits comments

June 06 ‘19

Bill 108, the More Homes, More Choice Act receives Royal Assent

June 21 ’19 - Aug 21 ‘19

Proposed regulatory changes pertaining to Schedules 3 (Development Charges Act) and 12 (Planning Act) of Bill 108 posted to the ERO for comment

MFOA submits comments on the ERO postings

July ‘19 -

Province establishes 16 person working group on the CBC cap

MFOA establishes complementary CBC cap working group

Fall 2019

- **September 3rd:** All changes to the Planning Act, except for those related to the CBC, came into force, as specified by proclamation.

- Anticipated posting of proposed CBC caps on the Environmental Registry of Ontario

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Role of MFOA & Recent Activities

- MFOA has been conduit between municipalities, ministry staff, and municipal organizations
- Recently, MFOA has:
  - Participated in MMAH's CBC land value cap Working Group
  - Established a complementary CBC cap Working Group with extended membership (weekly meetings since the start of August)
  - MFOA's recommendations were endorsed by the AMO Board

MFOA's Submission Approach

Four principles:

1. Growth should pay for growth
2. Complete, vibrant communities are good for everyone
3. Provincial red tape costs municipalities and developers time and money
4. Provincial legislation should be enabling and permissive

Key Messages:

1. Growth should pay for growth
2. Diversity of the municipal sector
3. Take time to get it right

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Unintended Consequences

- The cap must be anchored in the costs to service growth
- If it is not, there are a number of risks to municipalities
- "The devil is in the details"

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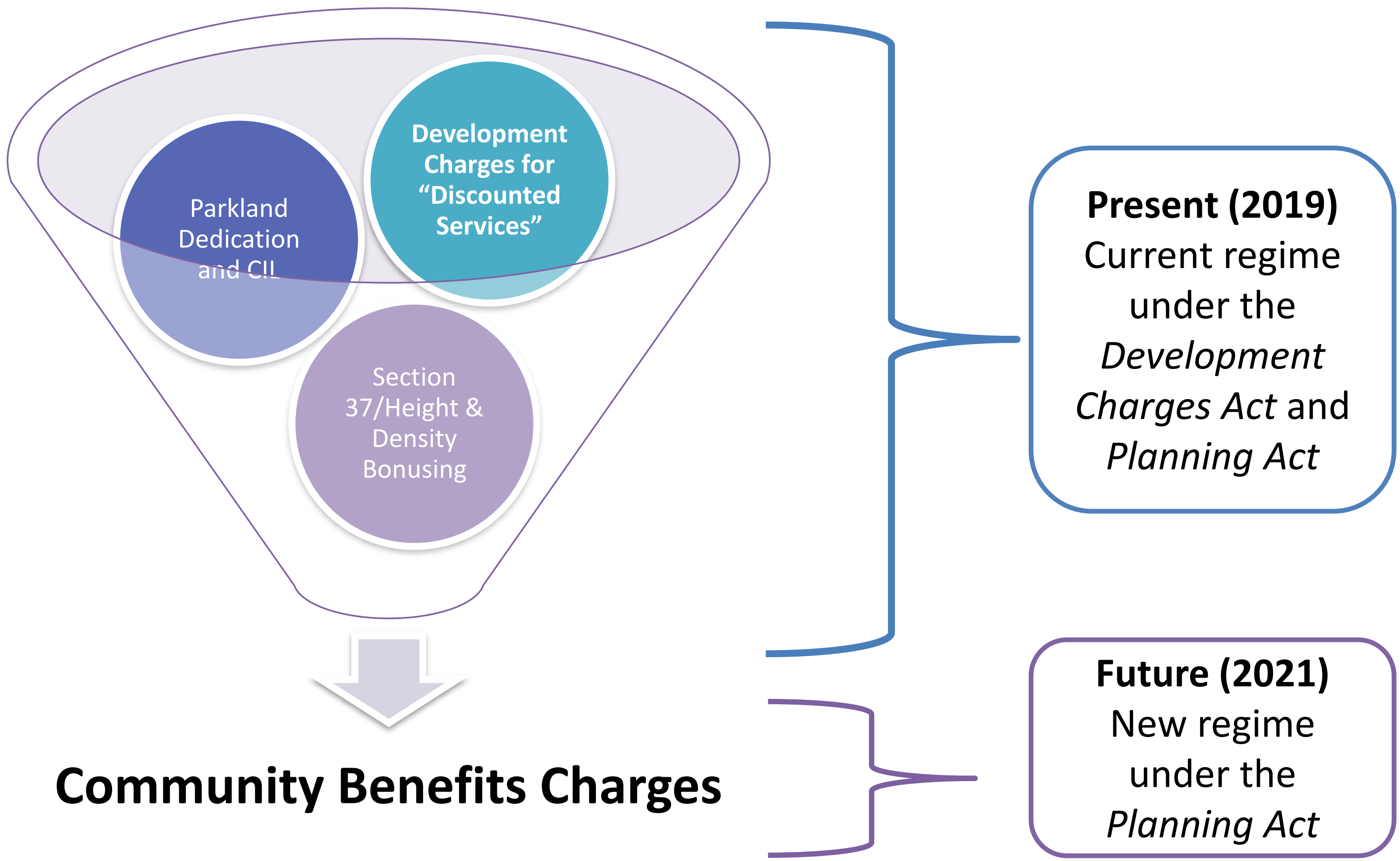
Before We Formally Begin…

Write down **<u>ONE</u>** concern/thought/comment about the new changes introduced through Bill 108 as it relates to the *Development Charges Act* or the *Planning Act*

Municipal Revenue Sources Today vs. Future

Municipal Revenue Today vs. Future



Municipal Revenue Today vs. 2021: Current Revenues and Basic Principles

Development Charges:

- Principle is that "growth pays for growth"
- Very prescriptive legislation – only certain capital costs and services are eligible for recovery
- Used to fund initial round of capital expenditures
  - Cannot fund operating costs or capital repair and replacement
- Includes both discounted and non-discounted services
  - **Discounted ("soft"):** Library, Parks and Recreation, Parking, General Government
  - **Non-Discounted:** Transit, Waste, Engineered Services (Roads, Water and Wastewater), Protection Services (Fire and Police)

Municipal Revenue Today vs. 2021: Current Revenues and Basic Principles

s.42 and s.51 Parkland Cash-in-Lieu (CIL) and/or Dedication:

- Requirement under the *Planning Act*
- New development required to contribute land for parks or pay cash in lieu equivalent
- Standard rate is 5% of net land area for residential property and 2% for non-residential
- New communities are provided with parkland and municipal park service levels are maintained

Municipal Revenue Today vs. 2021: Current Revenues and Basic Principles

s.37 / Height & Density Bonusing:

- Authorized under the *Planning Act*
- Allows municipalities to secure “facilities, matters or services” as a condition of increased building height and/or density above existing planning permissions
- Individual agreements are established on a property by property basis and terms and contributions vary based on height/density

What Does the Future Look Like?

The new world of "**Community Benefits Charges**" (CBCs)…

"Soft" services to be removed from DC framework (except recycling, organics, and paramedic services, which will now be 100% cost eligible) and replaced by CBCs under the *Planning Act*

A municipality can either secure parkland/CIL or have a CBC By-law, but **not both**

Density bonusing no longer permitted

- Credit provided for in-kind contributions (e.g. facilities or services) and shall be deducted from the CBC

General Structure of CBCs

What do we know for sure?

- CBCs imposed by by-law (no maximum lifespan)
- Requires a "strategy" with list of development-related projects
  - Includes parkland and other community benefits
  - Final Regulations may be more prescriptive
- Charges based on value of site (percentages to be prescribed by Regulation)
  - Municipalities responsible for determining site value
  - Appraisals can be "protested" by developer—dispute resolution process is complex

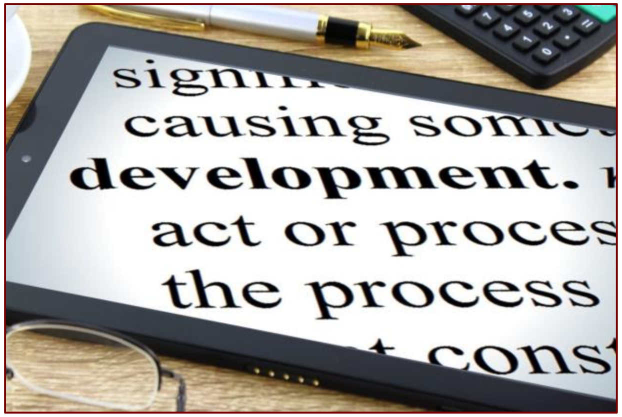
Prescribed Percentage Still Uncertain

Province proposes:

- "a **range of percentages** will be prescribed to take into account varying values of land"
- "that **municipal revenues historically collected** from development charges for "soft services", parkland dedication including the alternative rate, and density bonusing are maintained."

"One of our goals in establishing the new community benefits approach is to maintain municipal revenues"

- Minister Steve Clark to Municipal Heads of Council June 7, 2019



Proposed 12 Month Transition Window

Today

- CBC authority not yet in force
- Municipalities can still pass new discounted service DCs

January 1, 2020

- CBC authority comes into force
- Municipalities may start implementing CBC By-laws

January 1, 2021

- Prescribed end date for discounted service DCs
- CBC By-law must be enacted before this date to collect fees for discounted services

Bill 108 Will Change DC Collection and Administration

- Secondary suites now exempt from DCs (existing and new homes)
- For most non-residential development and non-profit and rental housing:
  - DCs payable frozen at time of site plan/zoning application (for maximum of 2 years from approval)
  - Payment plan from date of first occupancy
    - 6 annual installments for most non-res. and rental housing
    - 21 annual installments for non-profit housing

Responsibilities May Change

Generally, in the past…

Planning Departments responsible for:

- Parkland dedication and CIL
- Height & density bonusing
- Prioritization of development approvals

Finance Departments responsible for:

- Development charges
- Capital budgeting and prioritization of capital works

What will the future hold?

Better co-ordination is required moving forward…

Knowns and Unknowns

What do we know?

- The way we fund municipal infrastructure will change in the near future
- Municipalities will need resources to implement the program
- New program is intended to be flexible

What don't we know?

- What are the prescribed percentage "caps" and how often they will be updated?
- How will municipalities transition from the current regime?
- How will this affect capital planning, service levels and taxes?

What Are Your Concerns?

Duration: 10 Minutes

As a group, write down THREE concerns/questions regarding the proposed CBCs. How do these compare to the initial question you identified?

One person from each group will present their questions

Preliminary Analysis Suggests That…

- At minimum, two types of land value percentage caps are required:
  - Residential
  - Non-residential

- The residential land value cap should be further subdivided:
  - High density
  - Other (low/medium density)

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Residential Site Specific Analysis

- Historical exercise
  - What is needed to maintain <u>historical</u> revenues

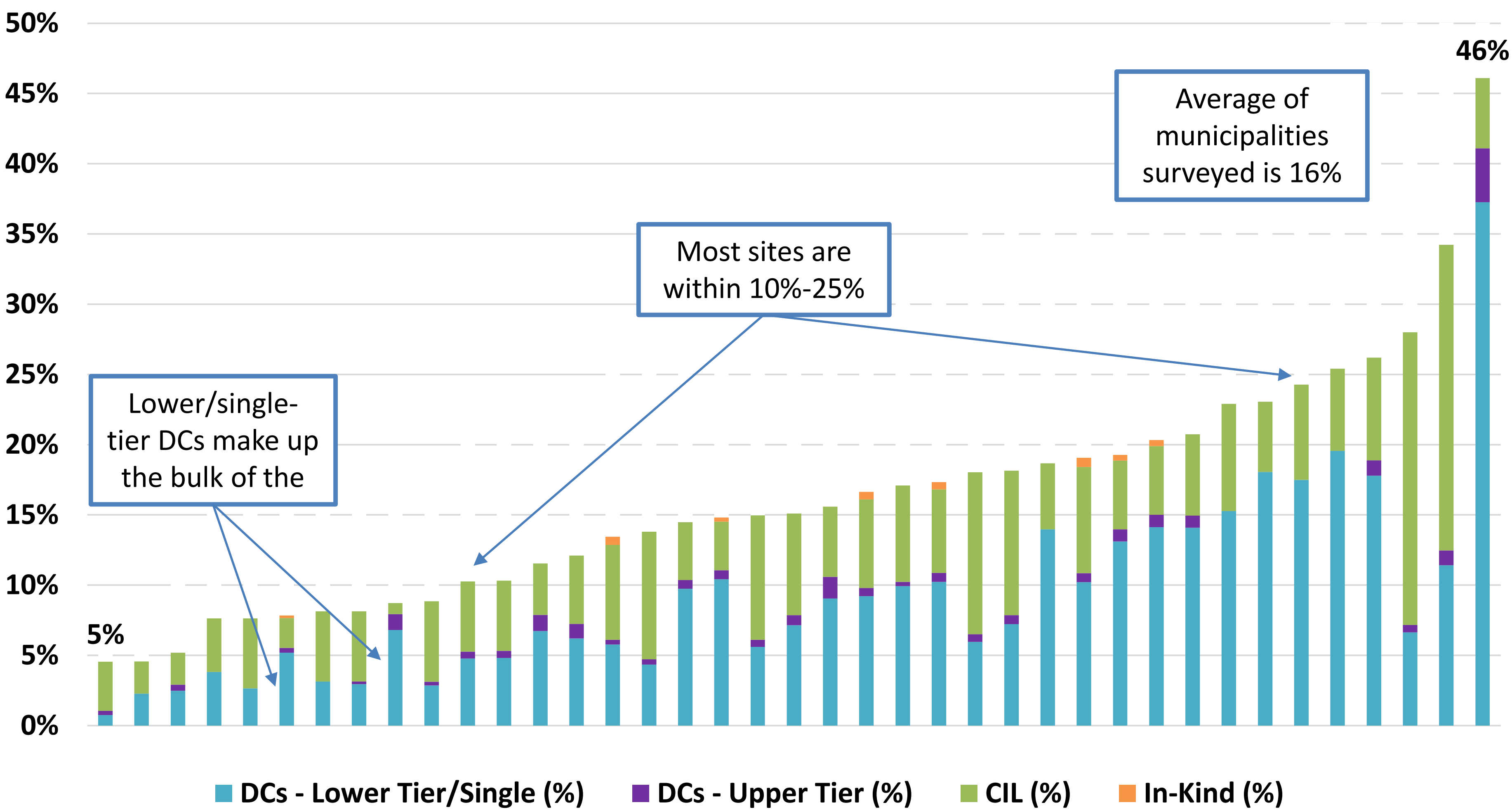
- Hemson has tested what land value percentage thresholds would be required to maintain existing revenues collected under the current regime

- Data collected from GTA and non-GTA municipalities on a site specific basis

Site Specific
Land Value Calculation

(Lower and Upper-Tier Development Charges + CIL of Parkland and/or Value of Dedicated Land + Section 37 Height & Density) / Value of Site ($) = **Land Value Percentage**

Site Specific
Low/Medium Density Residential



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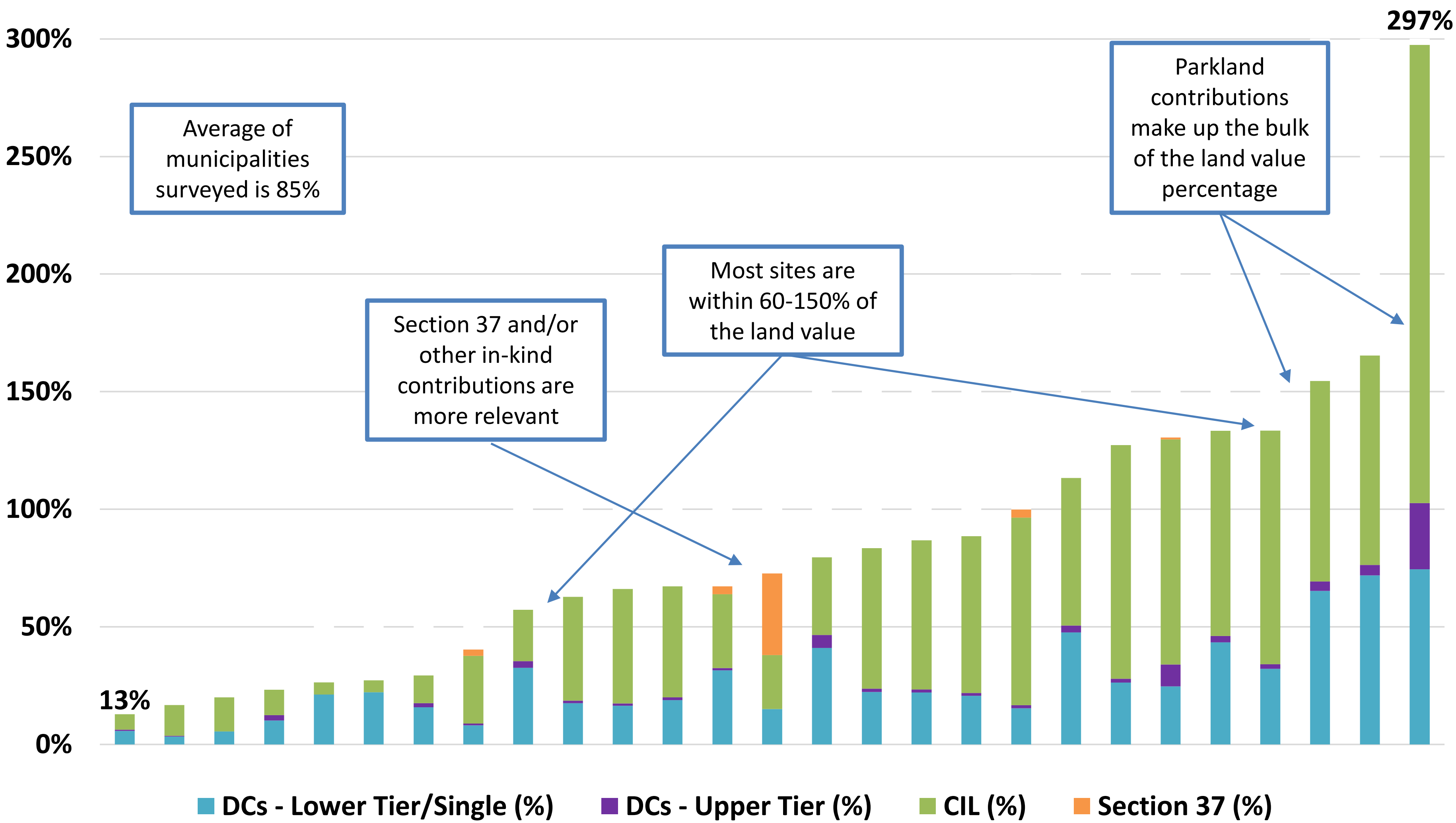
Site Specific High Density Residential



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Hemson's Preliminary Conclusions

1. **Range of required percentages** between municipalities, and even within municipalities, is very broad
2. Percentages for **residential** developments and mixed use developments **tends to be much higher than non-residential** developments
3. Required percentages for residential development in greenfield locations appears to be much lower than for redevelopment in built up areas **(% tend increases with density type**)
4. The required percentages are particularly high for development that have **density bonusing contributions**

What Does a CBC Strategy Look Like?

Topics

- General thoughts on the legislation
- CBC strategy “must haves”
- Purpose of strategy
- Process and implementation
- Fund management

General Thoughts on the Legislation

- Provisions are not prescriptive and should give more flexibility
  - in setting the charge
  - in spending the funds

- Prescribe percentage – lots of uncertainty but it seems that the prescribed percentages will cap CBC revenues

- This could mean that municipalities could:
  - impose different CBCs by types of development and, possibly, by location provided they do not exceed the cap
  - establish rules for apportioning site value between different types of development (e.g. site with different densities)
  - create rules to determine the land area to which a CBC applies and when a CBC is payable

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When Might Rules Be Needed?

Example 1: Rural

- Small building on large property
- Likely to occur in rural areas
- How would the CBC apply?

Example 2: Mixed-Use

- Mixed use (residential and non-residential)
- How will the “cap” be applied?
- Is pro-rating the land value an option?

Example 3: Industrial

- Phase 1 of industrial expansion on large lot
- Will municipalities be able to set rules to accommodate phasing?

General Thoughts on the Legislation

- **Of concern:**
  - Can revenue neutrality be achieved everywhere?
  - Volatility of land values means CBC revenue will be less predictable
  - CBC revenue separated from growth-related costs to be funded
    - Municipal costs could increase while land values, and CBC revenue, decline

CBC Strategy "Must Haves"

1. **Resources and funding** – strategy should be done in 2020
   – Appraiser roster
   – Legal

2. **List of projects** and their "growth-related-ness"
   – Is what is "growth-related" the same?

3. **Land value forecast**
   – Land area and values
   – Amount, type, and location of development

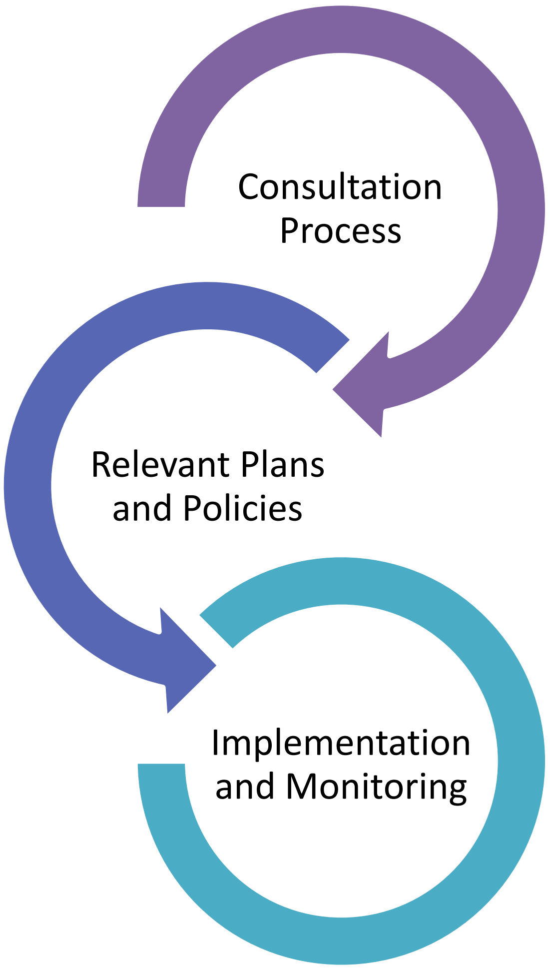
4. **Service level analysis**
   – What projects are needed and what drives the need?

Purpose of CBC Strategy

- Is it a static or a living document?
  - How does it tie to capital budget/ forecasts?
  - How does it intersect with DC studies?
  - How does it link with asset management plans?
  - When should it be updated?
    - When link between charge and anticipated spending becomes weak?
    - Every five years (with DC)?

Process and Implementation

- What kind of public process?
- How to include
  - Developers – they will pay the charge
  - General public
  - Council – could have broad discretion to decide who pays what
- Opportunity to tie CBCs with
  - Strategic plans
  - Land use planning policy
  - Economic development goals



Fund Management

- **Spend and allocate 60% of funds** in special account annually
  - Can "allocate" mean "reallocate"
  - To projects or services?
  - What happens to existing soft service DC or parkland CIL reserve funds
  - What if existing DC reserve funds are in a deficit? What about debt?

- **Capital development planning**
  - How do we prioritize capital works? Over what period?
  - How do we forecast revenue?

- **Accounting**
  - Can existing reserve funds be maintained?

- **Reporting**
  - How do we know we are achieving revenue neutrality?

BREAK

Duration: 10 Minutes

During the break, please review the questionnaire on the table in front of you and begin to think about your responses

Facilitated Group Discussion

Facilitated Group Discussion

- One panelist will facilitate the discussion with each group (4 groups of 10 people)
- You will have one (1) hour
  - 40 mins of group discussion
  - 5 mins to present findings (one person from each group) (20 mins in total)

Key Takeaways

1. **Start planning!**
   i. Secure funding for a CBC strategy in 2020
   ii. Establish a CBC Steering Committee to guide the process (who should be involved?)
   iii. Consult with Council early in the process (e.g. DC/CBC 101 Session)
   iv. What will stakeholder consultation look like? Will it be similar to a DC Study process?

Key Takeaways

2. **Identify current projects**
   1. Identify current projects with earmarked DC funding and/or ongoing debenture payments
   2. Initiate discussions early on in the CBC process about how these projects will be funded in the future under the new regime

3. **Consider alternative revenues**
   1. Revenue may be limited under the new regime
   2. Important to explore and/or understand other revenue sources that may be available (e.g. property taxes, grant funding), although these may be limited

Thank you!

- **Stefan Krzeczunowicz, Hemson**
  stefank@hemson.com

- **Jackie Hall, Hemson**
  jhall@hemson.com

- **Shira Babins, MFOA**
  shira@mfoa.on.ca

- **Jill Lewis, City of Orillia**
  JLewis@orillia.ca

- **Maggie Wang, City of Vaughan**
  Maggie.Wang@vaughan.ca

Additional Resources

- MFOA
  - [MFOA hub]
- Provincial
  - Housing Supply Action Plan
  - Environmental Registry of Ontario

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