

Committee of the Whole (2) Report

DATE: Tuesday, June 21, 2022

WARD(S): ALL

TITLE: COMMUNITY BENEFITS CHARGE STRATEGY AND BY-LAW

FROM:

Michael Coroneos, Deputy City Manager, Corporate Services, City Treasurer and Chief Financial Officer

ACTION: DECISION

Purpose

To seek Committee approval of the Community Benefits Charge (“CBC”) Strategy and associated by-law to allow for the collection of CBCs against developments that are five or more storeys and ten or more residential units at 4% of the value of the lands proposed for development.

Report Highlights

- Staff are seeking Committee’s approval of the Community Benefits Charge strategy and associated By-law
- The charge will be calculated as 4% of the value of the lands to be developed and will be applied to developments that are five or more storeys and contain ten or more residential units.

Recommendations

1. THAT Council receive and approve the CBC Strategy (Attachment #1) dated June 21, 2022 and associated draft By-Law (Attachment #2);
2. THAT Council directs staff to schedule a Special Council meeting in September 2022 and that the CBC By-law be forwarded to that meeting for approval;
3. THAT Council recognizes that there are operating costs associated with the implementation of the capital program outlined within the CBC Strategy;

4. THAT Council direct staff to establish a CBC Special Reserve Fund as required by the *Planning Act* and that any unspent or unallocated portions of the existing funds in the legacy Section 37 bonus zoning reserve less any prior commitments will be transferred to the new CBC Special Reserve Fund;
5. THAT Council confirm that the consultations to date regarding the CBC Strategy satisfies the consultation requirement in the *Planning Act* and that no further public meetings are required prior to approval of the CBC Strategy or the enactment of the CBC By-law;
6. THAT notice of passage of the CBC By-law be given as required under the *Planning Act*; and
7. That City staff be authorized to attend the Ontario Land Tribunal or the courts, as appropriate, to defend the City's position if the CBC By-law is appealed.

Background

On June 6, 2019, *Bill 108, More Homes, More Choice Act*, 2019 received royal assent and outlined several changes to the *Development Charges Act* (“**DCA**”) and the *Planning Act*, R.S.O. 1990 (“**Planning Act**”). These changes were further amended by Bill 138, *Plan to Build Ontario Together Act*, 2019 and by Bill 197, *COVID-19 Economic Recovery Act*, 2020. These bills received royal assent on December 10, 2019 and July 21, 2020 respectively.

Bill 108 included changes to municipal authority whereby Section 37 of the *Planning Act*, height and density bonusing was repealed and replaced with a CBC that is to be applied to new mid to high-density developments. This charge would be used to fund the initial round of capital cost for projects (or shares of projects) that are not already funded through development charges or for services that are growth-related but ineligible for DC funding. This could include capital such as public art, parkland enhancements, and other items that would have been previously funded through Section 37.

Height and density bonusing has been repealed and replaced with CBCs which require a CBC Strategy before a by-law can be passed to impose CBCs.

Section 37 of the *Planning Act* was a planning tool that permitted the City to authorize increases to height and/or density through a site-specific zoning by-law in return for community benefits such as specified facilities, services or other matters from landowners. As a part of Bills 108/138/197, the *Planning Act* was revised, and the

original Section 37 provisions were repealed and replaced by the Community Benefits Charge which allows a municipality to impose CBCs against land to pay for the first round capital costs of facilities, services and matters required because of the development or redevelopment in the area to which the by-law is applied.

The amendments to the DCA and *Planning Act* as they relate to the CBC received royal assent in June 2019, but a two-year transitional period was provided following the proclamation of the amendments in September of 2020. As such municipalities have until September 18, 2022 to develop their CBC Strategies and pass a CBC By-law after which time the ability to pass by-laws in reliance of the traditional Section 37 provision of the *Planning Act* (which have since been repealed) will cease to exist.

Staff have convened workshops and technical meetings with the development industry to discuss the DC updates and the CBC Strategy.

A total of three (3) workshops, four (4) technical meetings and one (1) BILD York Chapter meeting have taken place with the development industry:

1. Workshop #1 – January 20th, 2022
2. Technical Meeting #1 – February 25th, 2022
3. Workshop #2 – March 1st, 2022
4. Technical Meeting #2 – March 18th, 2022
5. Technical Meeting #3 – April 25th, 2022
6. Workshop #3 – May 9th, 2022
7. Technical Meeting #4 – May 27th, 2022
8. BILD York Chapter Meeting – May 30th, 2022

The workshops included members of the Building Industry and Land Development Association (“**BILD**”). In between these workshops several correspondences, including the exchange of detailed supporting background information, and four technical meetings took place to discuss the technical aspects of the draft calculations.

In addition, the CBC Strategy was included as part of the Development Charges Study public meeting held on May 10th 2022.

Previous Reports/Authority

[April 12, 2022 – Committee of the Whole \(2\) – “City-Wide Development Charges Update and Community Benefits Charge Strategy”](#)

Analysis and Options

The CBC Strategy is included as Attachment 1 of this report and is intended to support the collection of a CBC charge to fund a wide range of capital costs, of any public service, that are related to the needs associated with new growth if these costs are not already recovered from development charges and parkland provisions. A CBC can be used to fund services provided for under a DC by-law, and for parkland improvements, as long as there is no duplication of recovery for the same capital costs under another growth funding tool.

CBCs can only be levied against medium and high-density residential developments.

A CBC can only be levied against medium and higher density residential development if it meets the two following criteria:

- Five or more storeys; and
- Contains 10 or more residential dwelling units

A mixed-use development can also be subject to a CBC charge if the development meets the above criteria.

O. Reg. 509/20, being a regulation made under the *Planning Act* with respect to CBCs also provides for a number of statutory exemptions, subject to criteria in the regulation, from the payment of CBCs including:

- Long-term care and retirement homes;
- Colleges, universities and post-secondary indigenous institutes;
- Royal Canadian Legion;
- Hospice for end-of-life care: and
- Non-profit Housing

A CBC charge cannot exceed 4% of the land value of the site for which the levy applies.

Subsection 37(32) of the *Planning Act* provides that there is a maximum permitted charge that can be levied which is prescribed within O.Reg 509/20 as being four percent of the land value for sites that meet the criteria above on the day before building permit issuance.

Further, the *Planning Act* mandates several steps that a municipality must take to create a CBC strategy to support a charge CBCs. They include:

- Preparing a development forecast;
- Determining the increased need arising from development;
- Determining how these costs are attributable to CBC development;
- Identifying any access capacity that exists; and
- Estimate benefit to existing shares, grants, subsidies or other contributions

The CBC revenue potential has been estimated at approximately \$18.9 million.

Over the 10-year planning period from 2022 – 2031, the City is anticipating to grow by approximately 10,500 units in buildings that would be subject to the CBC charge. As the maximum upset limit of the charge is 4% of land value, the CBC revenue potential was estimated at a high-level using this assumption which indicates that approximately \$18.9 million over the 10-year period, or approximately \$1,800 per unit, could be generated from these units. This revenue projection is subject to change based on the timing of developments and the land values at the time of permit issuance.

The CBC capital needs exceed the revenue forecast which justifies a 4% of land value charge.

As a part of the development of the CBC strategy staff identified projects that could be funded from CBCs. The projects that were included in the CBC capital program are summarized in Table 5 below.

Table 5: CBC Capital Program

Service Category	Gross Program	Less Replacement and BTE Shares	Less 2022 DC Study Share	Remaining Development Related	Total CBC Eligible Program
Community Facilities and Amenities	\$392.9 M	\$7.2 M	\$147.9 M	\$237.8 M	\$58.2 M
Parking	\$3.5 M	\$0	\$0	\$3.5 M	\$0.6 M
Public Art and Culture	\$39.6 M	\$0	\$0	\$39.6 M	\$28.2 M
Studies and Administration	\$0.5 M	\$0	\$0	\$0.5 M	\$0.5 M
Total CBC Program	\$436.5 M	\$7.2 M	\$147.9 M	\$281.4 M	\$87.5 M

The estimated net CBC eligible costs of this growth-related capital program totals \$87.5 million. Under each of these services, the City anticipates development-related project costs to arise, fully or partially driven by mid- to high-density residential and mixed-use development, to which the CBC charge would apply.

It is evident that there is not sufficient revenue anticipated to be collected to meet the increased needs arising from CBC eligible development.

As described above, the net CBC eligible cost of the capital program is \$87.5 million. However, as the total forecasted revenue identified is approximated at \$18.9 million based on the 4 percent cap, it is evident that the capital needs cannot be fully funded by potential CBC revenues. Therefore, staff recommend that the CBC charge be calculated on a land value basis to maximize the City's CBC revenue collections.

Implementation and Administration; Land appraisals will be required in order to determine the CBC charge payable.

Individual CBC obligations will be calculated based on the market value of the site on the day before issuance of the first building permit. Payment is required prior to the issuance of a building permit by the City. The developer can submit a payment under protest which would result in a valuation dispute resolution process which as outlined in section 37 of the *Planning Act*.

	Planning Act	Timing	Action	Outcome
Charge as set by City	37(44)	Building permit	Developer pays	Payment received – process complete
			Developers pays under protest	New appraisal required
Payment under protest	37(33)	30 days	Developer submits appraisal to City	City review need for new appraisal or accept value
City disputes developer's value	37(35)	45 days	City submits appraisal to applicant	Joint review - if less than 5 percent difference, use higher value
Arbitrated value	37(38)	60 days	Applicant picks appraiser from City roster	New appraisal sets value
In-kind contribution	37(7)	Before providing service / facility	City to advise applicant of in kind value	No appeal process. Value is deducted from charge

A special reserve account is required and CBCs collected and spent must be reported on annually.

In addition to the appraisal process outlined above, staff are required to set up a special account for the collection of CBCs. Currently the City maintains a section 37 reserve for funds collected under the previous regime. The City would need to create a new CBC reserve to administer the funds collected through the new CBC structure. Any unspent or unallocated portions of the existing funds in the legacy Section 37 bonus zoning reserve less any prior commitments will be transferred to the new CBC reserve. The legacy section 37 monies will continue to be tracked to ensure that the funds are spent in alignment with their associated development agreement.

Annually, the City is required to allocate or spend 60% of the funds within the special account to CBC eligible projects. This will be accomplished through the annual budget process. The City must also provide annual statements to the public each year in respect of the preceding year including the opening and closing balances, and details of the amounts spent.

In-kind contributions may be accepted by the City.

The City may allow developers to pay CBCs in part or in whole with in-kind contributions. The CBC By-law has been drafted in such a way as to allow for these types of contributions. The *Planning Act* does not define what types of in-kind contributions would be considered eligible or how the value of the contribution is to be determined. These types of contributions will be evaluated on a case-by-case basis and staff will work to develop a policy to assist with guiding the decisioning process.

City staff intend to develop an internal policy and procedures to help to guide the administration of the CBC By-law and special circumstances as they may arise.

A Special Council Meeting will be held to ratify the CBC By-Law.

In order to avoid disrupting any Zoning By-Law amendments with associated section 37 agreements that are being brought forward to Council through the months of June and September, Staff are recommending that a Special Council meeting be called in September 2022 and that the CBC By-law be forwarded to that meeting for approval. Developments that have section 37 agreements in place with the City prior to the enactment of the CBC by-law will not be required to pay CBCs.

Staff will provide notice of the passage of CBC By-Law in accordance with the *Planning Act*.

Financial Impact

All funding for the CBC Strategy have been approved within the Financial Planning and Development Finance capital budget (project BU-2560-20).

The outcome of the project will impact the entire corporation as the CBC Strategy will be used in future fiscal planning and decision making.

Broader Regional Impacts/Considerations

As CBCs can only be charged at the local municipal level there is not direct impact to the Region although staff have maintained an open dialogue with Regional Staff through the creation of the Strategy and By-Law.

Conclusion

The overall objective of the creation of a CBC Strategy is to achieve full cost recovery allowable under legislation. Completion of the CBC Strategy and related by-laws and

policies is a vital step towards ensuring long term financial sustainability for the City of Vaughan by ensuring that growth-related revenue collections are in line with anticipated growth pressures to be experienced by the City.

For more information, please contact: Nelson Pereira, Manager of Development Finance, ext. 8393 or Brianne Clace, Project Manager of Development Finance, ext. 8284

Attachments

1. Community Benefits Charge Strategy, Hemson Consulting Ltd., dated June 21, 2022
2. Community Benefits Charge By-Law

Prepared by

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Approved by



Michael Coroneos, Deputy City Manager, Corporate Services, City Treasurer and CFO

Reviewed by



Nick Spensieri, City Manager