

Committee of the Whole (2) Report

DATE: Monday, March 09, 2020

WARDS: ALL

**TITLE: BILL 108 UPDATE
REGULATORY PROPOSAL REGARDING THE COMMUNITY
BENEFITS CHARGE AUTHORITY**

FROM:

Wendy Law, Deputy City Manager, Administrative Services and City Solicitor
Michael Coroneos, Deputy City Manager, Corporate Services and Chief Financial Officer
Bill Kiru, Acting Deputy City Manager, Planning and Growth Management

ACTION: DECISION

Purpose

This report provides an analysis of ERO No. 019-1406 (the “Proposal”), a Provincial proposal regarding regulatory matters under the *Planning Act*, the *Development Charges Act* (the “DCA”), and the *Building Code Act* which have the potential to impact the City’s finances, service levels and land use planning matters.

Report Highlights

- The Proposal pertains to the community benefits charge (“CBC”) authority and is the Province’s second regulatory Proposal on the matter
- The proposal is subject to a 31-day consultation period, closing on March 30, 2020
- A realignment between the CBC regime and the DCA funding framework is proposed in comparing the initial proposal
- The structure and amount of the prescribed percentage cap for the CBC is deficient and will not result in the intended revenue neutrality, resulting in significant impact on the City’s ability to deliver community services
- Staff are seeking Council’s approval to issue further comments to the Province on Bill 108 related matters and the Proposal

Recommendations

1. THAT staff be authorized to make submissions to the Province on the Environmental Registry of Ontario posting as outlined in this report;
2. THAT staff be authorized to provide additional submissions to the Province regarding the community benefits charge authority as necessary in support of the City's interest;
3. THAT in order to meet the proposed transition deadline for a community benefit charge strategy and by-law, that Hemson Consulting Ltd. be retained through a single source contract at an estimated cost of \$95,000.00 excluding contingency and applicable taxes to provide consulting services and undertake the necessary work to establish a community benefit charges strategy and by-law for the City; and
4. THAT any requirements to activate contingencies following the award of the contract to Hemson Consulting Ltd. will be dealt with in accordance with the provisions provided for in the City's Corporate Procurement Policy PS-003.

Background

On February 28, 2020 the Ministry of Municipal Affairs and Housing ("MMAH") posted the Proposal regarding regulatory matters pertaining to the CBC authority introduced via Bill 108, *More Homes, More Choices Act, 2019*. Bill 108 was introduced by MMAH on May 2, 2019 and received Royal Assent on June 6, 2019.

Bill 108 amends the *Planning Act* and the DCA, and establishes a new authority under the *Planning Act* for municipalities to charge for community benefits. Substantive changes to both acts were made to replace existing density bonusing requirements (Section 37), parkland requirements, and soft service requirements with one charge known as the CBC. The changes to the DCA have a direct effect on the services eligible for funding through CBCs under the *Planning Act*. Pursuant to the revised *Planning Act*, CBCs can be used to fund development-related costs for services that are ineligible for funding under the DCA.

On November 9, 2019, amendments to the CBC provisions under the *Planning Act* were introduced through the *Plan to Build Ontario Together Act, 2019* ("Bill 138"). Bill 138 received Royal Assent on December 10, 2019. The amendments include new transition provisions for alternative parkland dedication and a mechanism to appeal a municipality's CBC by-law to the Local Planning Appeal Tribunal.

On January 1, 2020 several amendments to the DCA introduced through Bill 108 came into force, including the freezing of development charge rates at site plan or zoning application and the phasing of development charge payments for certain types of

development. The CBC authority however has not been proclaimed and is not in effect at this time.

This Proposal is the second regulatory Proposal posted regarding components of a new CBC authority. The first proposal (ERO No. 019-0183) was posted on the Environmental Registry of Ontario (“ERO”) on June 21, 2019 and the City provided comments through staff via a communication from Corporate Communications to the Province through the ERO posting. The Province had advised through the initial Proposal that it was the Province’s intent to ensure that the implementation of the CBC will result in municipalities remaining revenue neutral. The comments provided to the Province by staff expressed concern that the proposed regulations would not result in revenue neutrality and sought clarity from the Province on a number of matters.

This Proposal provides some clarity. Specifically, this Proposal confirms that where a municipality has a CBC by-law in place it cannot apply the basic parkland dedication provisions of the *Planning Act*.

“A municipality could choose to collect development charges to fund the development of new park facilities or enhance existing parks such as playgrounds and splash pads. To acquire the land needed to build new parks, a municipality would have the option of using one of the following tools under the Planning Act:

1. A municipality could apply the basic parkland dedication rate in which a maximum of either 5% (for example, for a residential development) or 2% (for a commercial or industrial development) of a proposed development is dedicated as parkland or cash-in-lieu is provided (section 42 “Conveyance of land for park purposes” and section 51.1 “Parkland” under the Planning Act).

2. Alternatively, a municipality could establish a community benefits charge by-law to collect funds to acquire land for parks as well as other community services such as affordable housing and childcare. If both a developer and municipality agree, a developer could provide land for parks (rather than a payment). The agreed-upon value attributed to the in-kind parkland contribution would be applied toward the community benefits charge payable.”

To implement the new CBC authority, the Province is seeking further feedback through this Proposal on the following regulatory matters under the *Planning Act*, the *DCA* and the *Building Code Act*.

1. Required content of a community benefits charge strategy;
2. Services eligible to be funded through development charges;

3. Percentage of land value for determining a maximum community benefits charge;
4. Timeline to transition to the new community benefits charge regime;
5. Community benefits charge by-law notice;
6. Minimum interest rate for community benefits charge refunds where a by-law has been successfully appealed; and
7. Building code applicable law.

Previous Reports/Authority

June 4, 2019 Committee of the Whole Report entitled “Analysis – Ontario Government’s Bill 108 and Bill 107.

<https://pub-vaughan.escrimemeetings.com/filestream.ashx?DocumentId=17200>

Analysis and Options

The consultation regarding this Proposal may serve as the City’s final opportunity to provide comments before actual regulations implementing the CBC authority are released. To properly advise as to the impact, the actual regulations are required. Based on the proposals received to date regarding the CBC, the City anticipates impacts on the City’s:

- Finances associated with the acquisition of parkland and service-in-kind;
- Ability to secure local parkland and maintain services levels in urban growth areas;
- Ability to off-set community impact of density bonussing; and
- Ability to provide City-wide community facilities.

The following is a summary of the matters for which the Province is seeking feedback on and the preliminary staff position.

1. Required content of a community benefits charge strategy

A CBC strategy is a precondition to the passage of a CBC by-law. The proposed contents of the strategy are as follows:

- i. The anticipated type, amount and location of development or redevelopment that would be subject to a community benefits charge;*
- ii. The anticipated increase in the need for a specific community service (for example, the acquisition of land for parks, affordable housing, child-care, etc.) resulting from new development or redevelopment;*
- iii. A parks plan that examines the need for parkland in the municipality;*

- iv. *The amount of parkland per person currently being provided in the municipality, and if this is planned to increase, decrease or stay the same;*
- v. *The capital costs associated with the increased need for a specific community service resulting from new development or redevelopment;*
- vi. *The excess capacity that exists in those specific services (for example, the extra capacity that exists in a service that is not currently being used);*
- vii. *Whether the increased provision of those specific services would also serve existing residents (for example, existing residents may also benefit from new child-care facilities that are needed as a result of new development or redevelopment); and*
- viii. *Any capital grants, subsidies, or contributions from other levels of government or other sources like donations that are anticipated to be made to support those specific services.*

The requirements included in the Proposal appear to marry the requirements for a development charges background study and the requirements for a parkland by-law which allows a municipality to charge the alternative rate for parkland. It is also proposed that the same services that would be considered ineligible under the *DCA* would also be considered ineligible under the new CBC regime.

Given the broad scope of the study requirements, and the similarities to those required under the *DCA*, the expertise of an external consultant (who has experience commissioning development charges background studies) is required, and the competition amongst municipalities in Ontario to retain same will be high. Timely completion of a CBC strategy and by-law is essential to avoid loss of revenues.

The requirement for a parks plan had been previously explored by the City in response to Bill 73, the *Smart Growth for our Communities Act, 2015*. The Active Together Master Plan (“ATMP”) is the City’s strategic plan for parks, recreation and libraries that examines the need for parkland in the municipality. In addition, the City developed the 2018 Park Redevelopment Strategy (“PRS”), a comprehensive study to guide the renewal and redevelopment of parks across the City. Any changes to the City’s existing parkland dedication and cash-in-lieu policies, by-laws and guidelines to the CBC regime will require a review and update to the existing strategic plans for park development and redevelopment.

The planned review and update to both the ATMP and PRS was scheduled to commence in 2021 and 2022 respectively, with a completion timeline in Q1-2023.

However, due to the proposed changes under Bill 108, the City intends to develop a CBC strategy and by-law which will include information required to assess the acquisition, development and redevelopment of parkland. This work will include the review of the prioritization of underserved areas due to new planned growth, recommend methodology for setting short and long-term parkland priorities to reflect demographics, existing development areas, current development patterns and future development plans to comply with Bill 108 and any related regulations.

It is recommended that Council authorize staff to retain Hemson Consulting Ltd. (“Hemson”) now with respect to the CBC strategy and by-law so as to ensure that the City is well positioned to meet the proposed transition deadline (details regarding proposed transition contained below). The estimate provided by Hemson is \$95,000 excluding contingency and applicable taxes. It should be noted that these costs might change as additional information is provided by the Province. Staff will provide further updates once the final regulations are released, should there be impacts on the scope of work and costs.

Hemson is well positioned to assist the City in meeting the new statutory requirements. They are very familiar with development charges in Vaughan, having completed the City’s most recent Development Charges Background Study. Moreover, they have worked closely with municipalities and the Province during the Bill 108 and Bill 138 consultation process.

2. Services eligible to be funded through development charges

The Province proposes that the following services be identified in a regulation under subsection 2(4) of the *DCA* and eligible for funding through development charges:

- i. Public libraries, including library materials for circulation, reference or information purposes;
- ii. Long-term care;
- iii. Parks development, such as playgrounds, splash pads, equipment and other park amenities (but not the acquisition of land for parks);
- iv. Public health; and
- v. Recreation, such as community recreation centres and arenas.

Many of these general “soft” services were originally proposed to be transferred from the DCA to the new CBC regime, but are now proposed to remain under the DCA funding framework. This is significant and seen as a positive improvement over the initial proposal. These proposed services would be ineligible to be funded through CBCs.

It is also proposed that development charges may be imposed to fully recover the capital costs related to the provision of these proposed services due to new growth. The 10% discount under the previous legislation would no longer apply. This is also seen as a positive for municipalities.

3. Percentage of land value for determining a maximum community benefits charge

The Proposal provides that the percentages of land value that would be prescribed in regulation under the *Planning Act* would be as follows:

- single-tier municipalities: 15%
- lower-tier municipalities: 10%
- upper-tier municipalities: 5%

The Proposal also provides that the CBC levied by a municipality could not exceed the amount determined by applying the applicable proposed percentage to the value of the land that is subject to development. The land value would be calculated as of the valuation date, which is the day before the date the building permit is issued in respect of the development or redevelopment.

The Proposal further provides that CBCs levied by municipalities would support the growth-related capital costs of acquiring land for parks, and other community benefits required because of development. These include matters such as child-care facilities, affordable housing, social services, parking and by-law enforcement. The Proposal provides that there would need to be a connection between the CBC levied and the increased need for community services associated with new development.

The percentage cap prescribed to lower-tier municipalities in the Proposal would significantly impact the City's ability to collect and maintain revenue neutrality in connection to local and city-wide growth-related parkland, cash-in lieu collections, community improvements (Section 37, height and density bonusing) and contributions that enhance the urban character of a development. Density bonussing contributions benefit the community for the increased height and/or density permitted over and above the base heights and densities permitted by the Official Plan for a particular area. This injection of municipal service benefits is important from a financial perspective to help ensure that impacts on existing taxpayers are mitigated when increased service levels are required in intensification scenarios.

Based on historical collections, a 10% cap on CBCs would represent a significant impact to service levels in regional, primary and local urban growth centres and

corridors. The revenue impact is estimated to result in a significant collection deficit for the City. Attachment No. 1 provides an illustrative demonstration of the impact. The proposed 10% cap on land value across the City would result in a higher or lower deficit depending on the scale of the development. In cases of high-rise, the deficit becomes larger than would be the case with low-rise development. This may result in arguments that low-rise development is subsidizing the lost revenue of high-rise development.

If the Province prescribes a 10% cap as proposed, the City would need to review alternative options to address the impact. Examples include: creating a reserve fund, funded through taxation to support new urban growth/intensification areas; reducing the levels of services provided in new urban growth/intensification areas; and/or seeking alternative funding to offset the decline in revenue under the CBC regime.

4. Timeline to transition to the new community benefits charge regime

In the initial June 2019 ERO posting, the proposed date for which municipalities would have to transition to the CBC regime was January 1, 2021. Staff provided comments indicating that meeting this date would be challenging given the extent of uncertainty due to the actual regulations not being provided.

It is now proposed that the specified date for municipalities to transition to the CBC regime would be one year after the date the proposed CBC regulation comes into effect. The Province submits that this transition period would allow municipalities time to prepare CBC strategies and pass by-laws (if they choose to implement a CBC regime).

Staff maintain that this transition deadline remains challenging. There are still many areas of uncertainty, and some of the previous questions posed by staff have yet to be answered. Having more clarity around the CBC regime and involving City staff more fully in the consultation process would help better prepare the City to meet the proposed transition date.

5. Community benefits charge by-law notice

To implement the appeal mechanism introduced through Bill 138, the Proposal provides that upon passage of a CBC by-law that a municipality would be required to comply with prescribed notice provisions. The proposed provisions are similar to the notice provisions under the DCA regarding the passage of a development charges by-law, and staff have no concerns regarding the prescription of notice.

6. Minimum interest rate for community benefits charge refunds where a by-law has been successfully appealed

The Proposal provides that the minimum interest rate a municipality would be required to pay on amounts refunded after successful appeals would be the Bank of Canada rate on the date the CBC by-law comes into force. Alternatively, if the municipality's CBC by-law so provides, the minimum interest rate would be the Bank of Canada rate updated on the first business day of every January, April, July and October. This aspect of the Proposal aligns with the prescribed minimum interest rate for refunds of development charges after successful appeals under the DCA, and staff have no concerns regarding the minimum interest rate.

7. Building code applicable law.

The Proposal provides that the Building Code be amended to add the CBC authority to the list of items under Division A - Article 1.4.1.3 Definition of Applicable Law. This amendment would establish a mechanism for ensuring the payment of CBCs prior to the issuance of a building permit. Given the introduction of an appeal provision, the municipality's ability to keep a required CBC is subject to challenge.

Financial Impact

Two capital projects were approved as a part of the 2020 Budget to facilitate the development of a CBC strategy and by-law based on the Bill 108 amendments to the *Planning Act* and the DCA. The CBC strategy will form part of the CBC by-law guiding the City's administration and Council in decision-making. The approved projects include: BU-2560-20, Bill 108 Related Studies (\$515,000.00); and PK-6653-20, Parks Planning CBC Strategy and By-law (\$165,000.00). This should provide sufficient funding to complete all of the required studies ahead of the passing of a CBC by-law.

Broader Regional Impacts/Considerations

The Proposal confirms that the Region is also able to pass a CBC by-law to collect for eligible services that would fall under their purview. If the Region chooses to pass a CBC by-law, City staff will be required to act as an agent of the Region and collect the charges on their behalf. City Staff have been working closely with the Region to implement the portions of Bill 108 that have already come into force and will continue to do so as further legislative changes are finalized.

Conclusion

Staff seek Council approval to provide feedback on the implementation of the CBC authority in order to inform the Province of staff comments and concerns regarding the development of the CBC regulations under the *Planning Act* and amendments to the regulations under the DCA and *Building Code Act*.

This latest Proposal addresses some of the concerns raised during the first comment period related to maintaining development charge eligible soft services and the allowance for 100% development charge funding for soft services. More clarity has been provided regarding the CBC strategy content, service eligibility and administrative requirements which is appreciated.

Staff have significant concerns and require further clarification regarding the proposed percentage cap in order to maintaining revenue neutrality, ensuring that growth pays for growth and service levels are maintained. Further clarification is required on the proposed percentage and implementation of the required strategy across the City. The full extent of the impact of this percentage cap may not be known for some time. Staff will provide a further report regarding detailed implementation considerations following the release of the regulations by the Province.

For more information, please contact: Nelson Pereira, Manager, Development Finance, extension 8393.

Attachments

1. Parkland Dedication and Collection Changes Illustration, March 6, 2020

Prepared by

Caterina Facciolo, Deputy City Solicitor, Planning and Real Estate Law, extension 8862
Martin Tavares, Interim Director of Parks Planning, extension 8882
Brianne Clace, Project Manager, Development Finance, extension 8284