

City of Mississauga

Corporate Report



Date: October 9, 2020

To: Chair and Members of General Committee

From: Andrew Whittemore, M.U.R.P., Commissioner of Planning & Building

Originator's files:
LA.07-BIL

Meeting date:
November 4, 2020

Subject

Bill 197 – Overview of Changes to the Planning Act and Community Benefit Charge

Recommendation

That the report entitled “Bill 197 – Overview of Changes to the *Planning Act* and Community Benefit Charge” dated October 9, 2020 from the Commissioner of Planning and Building be received for information.

Report Highlights

- The Province updated the *Planning Act* as part of the *COVID-19 Economic Recovery Act, 2020* (Bill 197) in order to implement the Community Benefits Charge (CBC).
- These changes are generally positive and largely a return to the status quo. Most soft service growth costs will continue to be collected as Development Charges and parkland provisions, and alternative parkland rates will be maintained.
- The CBC replaces the former Section 37 (density bonusing) provisions of the *Planning Act*. The CBC can be applied to all high density residential developments in Mississauga, including those in the Downtown Core, and is underpinned by a more transparent process to calculating growth related fees.
- The CBC cap has now been set at 4% of land value. This is anticipated to result in modest revenues of approximately \$2-3M per year. However, this could vary significantly based on levels and timing of development.
- To implement the CBC, a by-law will need to be developed. Through this process staff will be able to better estimate revenues generated and seek feedback from Council on how to direct CBC revenues.
- This report is focused on changes to the *Planning Act* that relate to the CBC. To understand all of the other changes made through Bill 197, please refer to the Corporate

Report entitled “Bill 197 – COVID-19 Economic Recovery Act 2020” from the Commissioner of Corporate Services on November 4, 2020.

Background

The *COVID-19 Economic Recovery Act, 2020* (Bill 197) received Royal Assent on July 21, 2020 and is now in effect. This report describes the changes to the *Planning Act* stemming from Bill 197 and specifically examines the CBC and changes related to the provision of parkland.

A parallel report from the Corporate Services Department will describe changes to the *Development Charges Act* and other legislation. Please refer to the Corporate Report entitled “Bill 197 – COVID-19 Economic Recovery Act 2020” from the Commissioner of Corporate Services for more information.

Comments

1. COMMUNITY BENEFITS CHARGE (CBC)

The CBC has evolved significantly and is now a growth related charge

In May 2019, the Province first proposed the CBC through the *More Homes, More Choice Act, 2019* (Bill 108). The intent was for the CBC to replace the existing height and density bonusing provisions (Section 37) and parkland dedication requirements (Section 42 and 51) of the *Planning Act*, as well as most soft services development charges. The consultation period that followed led to the Province changing direction.

The Province has now repositioned the CBC to exclusively replace the former Section 37 (Density Bonusing) provisions of the *Planning Act*. Parkland dedication requirements remain largely the same with some changes and are discussed in later sections of this report. Most soft services are now fully recoverable from development charges, with the notable exception of municipal parking.

Please see Appendix 1 to see how the CBC has evolved over this period from Bill 108 to the present Bill 197.

The CBC applies to high density residential redevelopments

The CBC can only be applied to residential developments of 5 or more storeys and 10 or more units. The CBC is determined as a prescribed percentage cap of land valuations, which will be determined at building permit issuance, and can only be levied by single and lower tier municipalities. To determine land value, the Province has clarified a three stage appraisals process between the municipality and applicant.

Revenue from the CBC can also be used to fund any growth-related capital cost (e.g. affordable housing, parking, public art, etc.), provided that development charges are not being used to fund the same capital costs (i.e. no double dipping permitted).

The CBC provides a more transparent approach to funding growth related costs

The CBC provides a new approach for collecting funds for growth-related costs that is more transparent and predictable than Section 37 (Density Bonusing).

The CBC is a legal instrument that is implemented through a by-law, compared to density bonusing that is implemented through a Corporate Policy. A CBC by-law can be appealed to Local Planning Appeal Tribunal (LPAT).

The CBC has a broader application than Section 37 (Density Bonusing), which was limited to development applications that exceeded height and density permissions. With the CBC, the City will have the ability to apply the charge across a broader range of high-rise development, regardless of location and zoning permissions.

Extensive and lengthy negotiations are common under the density bonusing regime. These negotiations take place on a case by case basis, which creates uncertainty over the size of the contribution and/or where it is to be directed. The CBC addresses this by providing municipalities and the development industry with a structured and transparent process for determining the charge and directing its revenues.

The CBC cap is 4% of land value, which is anticipated to generate modest revenues

A CBC of 4% will generate new revenues, but predicting a standard annual amount is difficult. There are many variables that influence the amount of potential funds that could be generated. For example, because the regulation would only apply to residential developments that are 5 storeys or more, and is only collected at the time of building permit issuance, the annual amount of funding is directly dependent upon the level of construction activity occurring throughout the city, and the property value at that time.

If staff were to estimate, a CBC of 4% is likely to generate revenue in the order of \$2-3 million per year, which is similar to the average collections of density bonusing contributions prior to 2019.¹

The CBC may be complex to administer due to multi-stage appraisal process and less certainty over the timing of payments

¹ Recently Council has secured density bonusing contributions higher than historical averages in places such as the waterfront and Uptown Node.

There will be some administrative challenges to implement the CBC. Specifically, a strategy will need to be developed to support the CBC by-law, up to three appraisals will need to be conducted to determine each charge, a new process for collecting funds at the building permit stage will need to be developed, staff will need to interpret and apply the by-law, as well as enforce collections.

Another disadvantage of the CBC is that the City has little control over when an applicant pulls their building permit (e.g. the point where the charge would be collected). This may delay collections and/or could result in some challenges for projecting CBC revenues.

The Province has also not yet provided clarification on how the CBC will be charged for developments that occur in phases (e.g. does the entire site get appraised or just the portion subject to the first stage of redevelopment?). This could be an administrative bottle neck and will need to be clarified with the Province while developing the City's first strategy and by-law. The City will also need to build any additional costs for appraisal processes into its development fees.

A CBC By-law is required to support implementation

In the coming months staff will be preparing a statement of work for the Development Charges Background Study and CBC Strategy, and will be reporting to Council on the work plan timing. These reviews will occur in tandem and is set to commence in early 2021.

As part of this process, recommendations will be brought forward to Council on how to implement the CBC, as well as options for where funds could be directed. For example, the CBC could be implemented City-wide or for specific areas. If implemented City-wide, this would mean the CBC could be charged, and funds directed, to all areas experiencing high density development growth. This could include the Downtown Core where density bonusing currently is not applicable.

Possible options on where to direct the CBC revenues include affordable housing, municipal parking, public art and community service facilities not covered by the Development Charges by-law. If directed to affordable housing, the CBC could help provide a consistent revenue stream for these initiatives and address affordable housing needs in areas other than Major Transit Station Areas that are not able to implement Inclusionary Zoning. In addition to affordable housing, the CBC may serve as a continuous funding source for the city's public art program. A developer's contribution towards public art is currently voluntary, unless otherwise negotiated through Section 37. Staff will report back to Council at a later date on funding options.

The Province requires municipalities implement the CBC within two years of the Act's proclamation date on September 18, 2020. In other words, the sunset date for the current density bonusing regime is September 18, 2022. The City will need to pass the new CBC by-law by that date in order to avoid any funding losses.

2. PARKLAND PROVISIONS

Parkland provisions have largely returned to status quo

The changes to the *Planning Act* stemming from the *COVID-19 Economic Recovery Act, 2020* (Bill 197) also address parkland provisions related to development. While Bill 108 proposed some significant change, the new legislation maintains the existing provisions for parkland dedication, cash-in-lieu payments, and the alternative requirement (per unit rate).

As for the required parkland dedication/cash-in-lieu payments negotiated through the development process, the new legislation also enables CBC to be applied. The mechanics of this are unclear at present. Staff anticipate new regulations will be released to help clarify, and/or future LPAT decisions will help to inform the approach.

Respecting the alternative requirement (per unit rate), municipalities wishing to use the alternative requirement will be required to adopt a new parkland conveyance by-law. The By-law will require public consultation and will be subject to appeal within 40 days of passing. Municipalities have until September 18, 2022 to pass the new parkland conveyance by-law.

As Council is aware, Section 42(15) of the *Planning Act* permits cash-in-lieu to be spent only for the acquisition of land for park, or other public recreational purposes, including the erection, improvement or repair of buildings and the acquisition of machinery for park or other public recreational purposes. Consequently, the potential to direct a portion of CBC funds, over and above the existing parkland dedication and cash-in-lieu, could provide opportunities for more resources to be directed to parkland and open space amenities, especially in high growth areas of the City where these amenities are most needed.

City is currently updating its Parkland Conveyance By-law

The City is currently working on a new Parkland Conveyance By-law and strategy to be completed within the required time. The establishment of a new Parkland Conveyance By-law will require additional study and supporting documentation to rationalize the alternative requirement methodology.

Financial Impact

The CBC cap has now been set at 4% of land value. If staff were to estimate, a CBC of 4% is likely to generate revenue in the order of \$2-3 million per year, which is similar to the average collections of density bonusing prior to 2019.

To implement the CBC, a strategy and by-law will need to be developed. Through this process staff will be able to better estimate revenues generated, identify locations for which the charge

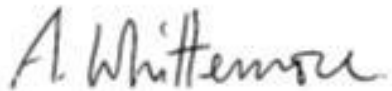
will apply, identify the capital projects and improvements related to the charge, and determine where to direct revenues.

Conclusion

Bill 197 changes to the *Planning Act* are largely positive, particularly regarding the CBC and parkland provisions. In this case, advocacy from Mississauga and other municipalities was effective and persuaded the Province to change direction. Mississauga now has a complete framework to commence work on a new CBC by-law.

Attachments

Appendix 1: Evolution of the Community Benefits Charge



Andrew Whitemore, M.U.R.P., Commissioner of Planning & Building

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