



OAKVILLE

REPORT

Planning and Development Council

Meeting Date: September 6, 2022

FROM: Finance Department

DATE: August 30, 2022

SUBJECT: Community Benefits Charge Strategy and By-law 2022-069

LOCATION:

WARD: Town-wide

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RECOMMENDATION:

1. That the Community Benefits Charge approach to calculate the charges on a uniform Town-wide basis be adopted.
2. That the capital project listing set out in Chapter 4 of the Community Benefits Charge Strategy dated August 5, 2022, subject to further annual review during the capital budget process, be approved.
3. That a reserve fund be set up which will contain all Community Benefits Charge monies collected.
4. That the Community Benefits Charge Strategy dated August 5, 2022 be approved.
5. That Community Benefits Charge Policy F-FPC-008 be approved, and related Community Benefits Charge Procedure F-FPC-008-001 be received.
6. That Council determine that no further public consultation is required.
7. That Community Benefits Charge By-law 2022-069 be adopted; and that the by-law shall take effect at 12:01 am on September 7, 2022.

KEY FACTS:

The following are key points for consideration with respect to this report:

- On September 18, 2020 amendments to the *Development Charges Act, 1997* (DCA) and the *Planning Act* introduced through *Bill 108, the More Homes, More Choices Act, 2019* (Bill 108) and *Bill 197, the COVID-19 Economic Recovery Act, 2020* (Bill 197) were proclaimed. A transition period of two years, or September 18, 2022, was established for municipalities to move to the new regime.
- Section 37 of the *Planning Act*, previously bonus zoning for increased height or density, was repealed and a new Community Benefits Charge (CBC) was added. In order to utilize the new section 37, the Town must pass a by-law to

impose a CBC that would apply to high density developments and redevelopments that are five storeys or more and have a minimum 10 residential units.

- CBCs may be collected in order to pay for the growth-related capital costs of facilities, services and matters required because of development and redevelopment that are not being collected for under development charges and parkland dedication.
- Prior to passing a CBC by-law, a CBC Strategy is required to be developed. The town's CBC Strategy and draft by-law was made available to the public on August 5, 2022. Watson & Associates Economists Ltd presented the CBC Strategy at the August 9, 2022 meeting of Council.
- In preparing the CBC Strategy and before passing the CBC by-law, the town must engage with such persons and public bodies as the municipality considers appropriate. Multiple consultation meetings have been held on the CBC Strategy and draft by-law, and feedback is included in this report.
- The CBC Policy and related procedure are included as an appendices to this report. The policy and related procedure outline the key details for administration of the charge. CBCs shall be collected and utilized in a fiscally responsible manner in order to fund growth-related infrastructure that manages the impacts of high-density development and leads to complete communities.
- Community Benefits Charge By-law 2022-069 is included as an appendix to this report. Council consideration of the by-law will take place at the meeting on September 6, 2022. It is recommended that the by-law take effect at 12:01 am on September 7, 2022.
- The proposed CBC is 4% of the value of land for eligible development and redevelopment, which is the maximum permitted by Provincial Regulation.
- While the intention of the CBC is that growth should pay for growth, the 4% cap for the CBC is not sufficient to fully offset CBC eligible growth-related capital costs.

BACKGROUND:

The town has utilized the former section 37 of the *Planning Act* (known as bonus zoning for increased height and density in the past) to secure public benefits in exchange for permitting additional height and density through the re-zoning process and subsequent bonusing agreements. Agreements have included in-kind contributions, as well as cash payments intended to serve the immediate existing community around the development and the new development itself.

As a result of Bill 108 and Bill 197, bonus zoning for increased height and density under section 37 of the *Planning Act* is no longer a tool the town can employ at the earlier of September 18, 2022 or the passage of a CBC by-law. As required by the *Planning Act*, in consultation with the public and public bodies, the town completed and released a CBC Strategy on August 5, 2022. The CBC Strategy can be found on the town’s website at the following location: <https://www.oakville.ca/townhall/community-benefits-charge.html>. This new charge can be used to pay for the capital costs of facilities, services and matters required because of development and redevelopment if those costs are not already accounted for in the Development Charges (DCs) by-law or Parkland Dedication by-law.

Beginning in October 2021, staff have been working with Watson & Associates Economists Ltd. To complete the calculations and policies for the purpose of approving a CBC By-law. The chart below outlines key dates in the community benefits charge process. The by-law is being presented to Council for consideration of adoption on September 6, 2022 with an effective date of 12:01 am September 7, 2022.

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|--------------------------|--|
| October 2021-March 2022 | Data Collection |
| April 22, 2022 | Meeting of DC Steering Committee with CBC overview |
| May 27 & August 18, 2022 | Stakeholder Meetings (2) |
| August 5, 2022 | Release of CBC Strategy and draft by-law |
| August 9, 2022 | CBC Strategy presented at meeting of Council |
| September 6, 2022 | Council Consideration of CBC Strategy and CBC by-law |

COMMENT/OPTIONS:

There are three main growth funding tools available to the town to pay for the growth-related land and infrastructure needed to maintain services as the town grows: development charges, parkland dedication, and community benefits charges (CBCs). CBCs are a new charge that can be used to recover capital costs for items that are not being collected for as part of DCs or parkland dedication. This provides an opportunity to recover some of the capital costs for services that are ineligible for DCs and have previously been considered a cost of growth. CBCs can also be utilized to augment DCs and parkland dedication for a particular project or service; however, this has not been recommended as part of the CBC Strategy. The CBC Strategy includes a capital project listing of projects that may be considered for CBC funding over the 2022-2031 time period.

CBC Strategy and by-law

The legislation in the *Planning Act* includes a maximum allowable CBC of 4% of land value. Through consultation with staff, based on previous master plans and

strategies, a total of \$117 million of eligible growth-related capital costs for services not eligible for DCs or parkland dedication have been identified from 2022-2031. Following the analysis included in the CBC Strategy pertaining to CBC eligible growth and land value, this represents 4.9% of the land value of CBC eligible development and redevelopment. Therefore, the CBC by-law would authorize the collection of the maximum 4% of land value. The “cap” on CBC collections will require the town to prioritize how CBCs are allocated through the annual budget process, as not all identified projects will be able to receive CBC funding due to the prescribed limit for CBCs. The CBC by-law is appealable to the Ontario Land Tribunal (OLT) within 40 days of by-law passage.

CBC Collection and Utilization

A Community Benefits Charge Policy and related Community Benefits Charge Procedure have been developed for this new charge (Appendix B and C). The Policy states that CBCs shall be collected and utilized in a fiscally responsible manner in order to fund growth-related infrastructure that manages the impacts of high-density development and leads to complete communities. The related procedure includes key elements for the successful implementation of the CBC by-law, including land valuation, acceptance of in-kind contributions, budget allocation, and annual reporting.

The CBC will be payable at the time of building permit, and calculated based on the value of land at the time of building permit. In order to ensure that the town is collecting appropriately, while not delaying the building permit process, site-specific land appraisals within 90 days of building permit will be undertaken as part of the calculation of the CBC payable. Should the amount be disagreed upon, a dispute resolution process has been defined in the *Planning Act* and is illustrated in the CBC procedure. If a landowner feels the CBC is greater than 4% of land value, they may pay under protest and a series of appraisals may ensue in order to settle the dispute, these protests would not go to the OLT.

Funds collected under the CBC will be deposited to the CBC reserve fund, and recommendations for allocation of the funds in the reserve fund will be made through the annual budget process. The CBC reserve fund is a requirement under the *Planning Act*, and is also recommended in accordance with the town’s Financial Control Policy, as it will enable the town to ensure that CBCs are being used in accordance with the CBC Strategy to fund appropriate growth-related capital projects. As mentioned, because the town is limited and unable to collect the total CBCs required for the high density share of capital projects, funding will need to be prioritized through the annual budget process. Capital projects that are eligible for CBC funding will be identified through the budget for Council consideration.

A development or redevelopment may also request consideration for an in-kind contribution in lieu (in part or whole) of the CBC requirement. If accepted, the total

CBC payable would be reduced by the value the town attributes to the contribution. In these circumstances, staff will review the proposal in order to ensure it meets town standards and the type of projects outlined in the CBC Strategy, and Council will have final approval for acceptance of the in-kind contribution. The ability to accept in-kind contributions on a case-by-case basis allows for flexibility in securing local infrastructure that provides a community benefit through the CBC.

The town currently reports annually to Council and makes available on the town website a report summarizing the activity for DCs, section 37 Bonusing, and parkland dedication. This practice will continue with the addition of CBCs, with reporting on all activity in the CBC reserve fund and acceptance of in-kind contributions.

Financial Implications

In July, as part of the DC by-law update, staff provided a summary of the total amount of growth-related capital costs that are required to be funded by the town. Due to limitations in the *Development Charges Act, 1997* and in the *Planning Act*, the town is unable to pay for all growth-related land and infrastructure through growth funding tools, and there is a “cost of growth” that must be funded from other sources. The update in July included information based on the draft CBC Strategy for services ineligible for DCs and this update provides more detail on these services in relation to the restrictions under the *Planning Act*.

The main reason for the requirement for funding from other sources is that certain services are not eligible for DC collection. In the past, these costs would be 100% funded by the existing taxpayer. Going forward, the town has the ability to collect a portion of the costs that relate to high density development through CBCs. Of the total \$117 million in growth-related capital costs that have been identified (which is net of approximately \$5.0 million in benefit to existing), \$11.7 million will be collected for through CBCs. The limitations that remain include:

- \$63.5 million in costs that are associated with non-CBC eligible growth (non-residential, low and medium density, and developments that utilized the former section 37 bonusing)
- \$2.1 million in exemptions mandated by the province for certain types of development including long term care and retirement homes, hospices, post secondary institutions, the Royal Canadian Legion and non-profit housing
- \$2.7 million as a result of the maximum charge at 4% of land value
- \$37 million is recognized as a benefitting growth beyond 2031, and could have partial funding from CBCs as part of a future CBC by-law

Appendix D provides an update to the total cost of growth for the town.

Public Feedback

Through public consultation, staff received feedback from the development industry on a number of issues pertaining to the proposed CBC by-law. After consideration, staff are not recommending any changes to the CBC Strategy and only minor amendments to the CBC by-law to provide clarification. The following is a summary of the key items raised:

- *Exemptions*: a request was made to add an exemption for rental housing.

Exemptions for rental housing would be a discretionary exemption that Council could approve, which would reduce the amount that could be collected from CBCs and increase the amount that must come from other sources. Financial exemptions for growth funding tools could be considered as part of an overall housing affordability strategy in the future.

- *Unit rate and unit rate cap*: requests that the CBC take the form of a unit rate, or unit rates by area, rather than a % of land value, to improve cost certainty and timeliness during the building permit application process. A unit rate cap was also suggested.

While utilizing unit rate(s) for the CBC would provide cost certainty, the town would collect a lower amount of CBCs due to varying land values in the town. In all cases, the town would be limited to the lesser of 4% of land value or the unit rate, and therefore may often collect less than 4%. The CBC Strategy shows that the share of growth-related capital costs associated with high-density development is 4.9% of average land values, making it important that the town maximize CBC collections in order to limit the amount that must be funded by other sources.

As a new charge, staff have been working through the process for administration and, along with the steps outlined in the CBC Procedure (Appendix C), have developed a fulsome strategy for communication within existing systems and processes to avoid any delays as a result of the new charge. Further dialogue will occur as the CBC is implemented to ensure there are no delays to the process.

- *Credits*: a request that all pre-existing buildings or structures that remain post-redevelopment (and which are not converted from non-residential use to residential uses) are excluded from the calculation of the value of land.

Credits for pre-existing structures would result in additional exemptions or credits, beyond what is required under the *Planning Act*. This would further limit the ability of the town to collect the CBCs needed for capital projects.

- *Transition period:* a request for clarification regarding transitional matters was received. The request included clarification on how the CBC would impact projects that are currently underway and to provide relief to development proposals at advanced stages as the financial implication may not have been considered for the specific development.

Further clarification has been added to the by-law that the CBC will apply to building permits that are issued after the passage of the by-law; however, provisions that provide relief for developments where building permits occur after passage is not recommended. A two-year transition period from the proclamation of Bill 197 was established as September 18, 2022, and the passage of the CBC at the intended date of September 6, 2022 has allowed for sufficient time for the CBC to be incorporated for planning purposes.

- *CBC Strategy:* Technical questions were received seeking additional clarification for particular aspects of the CBC Strategy, including: land values, growth forecast, capital project listing and CBC growth-related share.

A third-party land appraisal report was completed as an input for the purposes of the CBC Strategy, the values utilized are summarized in the CBC Strategy by area of the town. The same growth forecast was used as the basis for the CBC Strategy, the Parks Plan and the recently completed DC Background Study. The growth forecast takes into consideration active development applications, as well as the anticipated location of additional growth to 2031.

CONSIDERATIONS:

(A) PUBLIC

Before passing the CBC By-law, the Town must engage with such persons and public bodies as the municipality considers appropriate. The CBC Strategy is available online, notification was provided in the local newspaper, and staff have engaged members of the development community.

(B) FINANCIAL

Collections under section 37 of the Planning Act provide a mechanism to finance the costs of growth from new development and redevelopment. The Town can utilize this financial tool to fund additional land and infrastructure needed as a result of growth so that services can continue to be provided at established levels, while minimizing the financial impact of growth-related needs on existing residents and businesses. However, while the intention of the CBC is that growth should pay for growth, the four percent cap for the CBC is not sufficient to fully offset CBC eligible growth-related capital costs, as can be seen in Appendix D.

Other possible financial considerations include:

If the CBC By-law is appealed to the OLT, there will be costs arising from external expert witnesses as well as legal counsel.

If appraisals used in the determination of the CBC are disputed then there may be additional appraisal costs to the town as part of the dispute process.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

Input from various departments has been included in the development of the CBC Strategy and by-law.

(D) CORPORATE STRATEGIC GOALS

This report addresses the corporate strategic goal(s) to:

- Be accountable in everything we do
- Be fiscally sustainable

(E) CLIMATE CHANGE/ACTION

N/A

APPENDICES:

Appendix A – Community Benefits Charge By-law 2022-069

Appendix B – Community Benefits Charge Policy

Appendix C – Community Benefits Charge Procedure

Appendix D – Town of Oakville Cost of Growth

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