

Goodmans^{LLP} Update

Province Unveils Proposed Approach to Community Benefits Charges

In June of 2019, the provincial government enacted a suite of legislative changes to the land use planning framework in Ontario through Bill 108. One of the most significant changes was the introduction of a new “community benefits charge” (CBC) which would replace parkland dedication requirements, section 37 contributions and soft service development charges. While the legislative framework for CBCs was set out in Bill 108, a key determinant of the new regime’s implications – the maximum amount of the CBC based on a percentage of land value – remained unknown. On February 28, 2020, following public consultations, the province released for the first time a summary of its proposed CBC regulation for comment. As outlined below, the regulation proposes to not only deal with the percentage land value cap, but also make some unexpected changes to the CBC regime.

The province’s proposed regulation would cap CBCs at 15% of land value for single-tier municipalities (such as Toronto, Ottawa, and Hamilton); 5% for upper-tier municipalities; and 10% for lower-tier municipalities. It would also remove certain services from eligibility for funding through CBCs, and instead leave them to be funded through development charges, with the result that the CBC percentages noted above would primarily fund parkland acquisition, facilities and services currently funded through section 37, and a much more limited range of services currently funded through development charges than initially expected. The implications of this new regime will be significant for landowners and municipalities across the province if finalized as proposed, though the precise repercussions will differ depending on the nature of the proposed development and the municipality in which it is located.

The proposed regulation is open for public comment until March 30, 2020. Its key components are outlined in more detail below.

The CBC Caps

The CBC is a single charge imposed in connection with development approvals, that is intended to replace section 37 contributions, parkland dedication and cash-in-lieu requirements, and certain development charges for soft services. Amendments to the *Planning Act* introduced through Bill 108 provide that the amount of a CBC payable in any particular case cannot exceed a prescribed percentage of land value, to be set out in regulation.

As noted above, the summary of the proposed regulation released for public comment on February 28 provides for different caps depending on the type of municipality, intended to reflect their varying service delivery requirements:

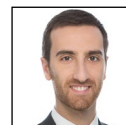
- Single-tier municipalities: 15%
- Lower-tier municipalities: 10%
- Upper-tier municipalities: 5%

To calculate the maximum CBC amount owing on a particular site, the percentages above would be applied to the value of the land as of the day before a building permit is obtained for the development.

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CBC Eligible Services

When Bill 108 was introduced, the funds collected through CBCs were intended to fund a variety of capital costs required because of development or redevelopment, such as costs associated with providing parks, libraries, community centres, daycares, among other soft services. However, the province now proposes to narrow the scope of services that are eligible for funding through CBCs. Specifically, under the proposed regulation, the following services would not be funded through CBCs, but rather continue to be funded through development charges:

- Public libraries;
- Long-term care;
- Parks development (as opposed to acquisition);
- Public health; and
- Recreational facilities such as community centres.

In addition, the province proposes to remove the requirement that municipalities fund 10% of the growth-related capital costs of these services, allowing the development charge for these services to be increased by a commensurate amount.

The Practical Effect of the Proposed Regulation

One effect of the proposed regulation is that the CBC would likely be used to fund parkland acquisition, and a much more limited range of services currently funded by development charges and section 37 contributions than originally contemplated when Bill 108 was enacted.

Based on a review of current development charge by-laws in various municipalities, it appears the key services currently funded by development charges that may be funded by a CBC include affordable housing, daycare services, and municipal parking, provided the municipality can demonstrate these services are required because of development. Other matters to be funded by a CBC that are currently secured through section 37 of the *Planning Act* might include public art and civic improvements such as streetscape enhancements. Municipalities that choose to implement the CBC regime will have to determine how to allocate CBC funds collected among these various services.

Under the proposed CBC regime as reflected in Bill 108 and the proposed regulation, single-tier and lower-tier municipalities would have the option to either:

- pass a CBC by-law and collect funds for parkland acquisition and other eligible services as components of a CBC capped at 15% or 10% of land value, respectively; or
- not pass a CBC by-law and (i) obtain dedications of parkland or cash-in-lieu based on 2% (for commercial/industrial) or 5% (for residential) of the land developed pursuant to a parkland by-law under section 42 of the *Planning Act* or as a condition of draft plan of subdivision approval, and (ii) forego the collection of funds for other services eligible for CBCs.

The implications of these options will differ depending on the nature of the development proposal and the municipality in which it is located. However, where single- and lower-tier municipalities prioritize parkland acquisition in their CBC strategies and by-laws, the province's proposed regulation could enable them to secure greater financial contributions in respect of parkland than under the current regime, especially for lower density proposals. For single- and lower-tier municipalities that currently have the opportunity to obtain significant section 37 contributions together with significant parkland contributions (i.e. at the alternative rate) in connection with a particular development, the CBC regime may reduce the overall financial contributions they can obtain from developers.

The CBC Strategy and Appeals of the CBC By-law

Amendments to the *Planning Act* introduced through Bill 108 provide that a CBC may be used only to fund facilities, services and other matters required because of development, and require municipalities to prepare a CBC strategy before enacting a CBC by-law that identifies the facilities, services and matters that would be funded through the CBC. The province's proposed regulation prescribes what must be included in a CBC strategy, including:

- the anticipated type, amount and location of development that would be subject to a CBC;
- the anticipated increase in the need for a specific community service (such as parkland, affordable housing, child care, etc.) resulting from development, and the associated capital costs;
- a parks plan that examines the need for parkland in the municipality, and an assessment of whether proposed parkland will change the amount of parkland per person currently provided; and
- an assessment of whether increased services funded through a CBC will benefit existing development.

While similar information is required for a background study under the *Development Charges Act*, it appears the province is not proposing to apply to CBCs many of the rules that restrict the quantum of development charges, such as explicit restrictions on funding increased average levels of service and services that benefit existing development.

The amendments to the *Planning Act* in Bill 108 did not provide for an appeal of a CBC by-law. However, the province introduced further amendments to the *Planning Act* in December 2019 to provide that once a CBC strategy is prepared and a CBC by-law is enacted, any person or public body may appeal the CBC by-law to the Local Planning Appeal Tribunal (LPAT) within 40 days. On appeal, the LPAT can repeal or amend the by-law, but it cannot increase the amount of the CBC payable, make the CBC payable earlier, or add, remove or reduce the scope of an exemption in the CBC by-law. However, beyond the legislative requirements that CBCs may be used only to pay for capital costs of facilities, services, and matters required because of new development that are not otherwise funded through development charges, it is unclear what the scope of appeals will be, since the province is not prescribing a methodology for calculating the quantum of CBCs, except for the imposition of the land value cap. Landowners will not be entitled to appeal the application of the land value cap to the LPAT on a site-specific basis, but the amendments provide a process by which a dispute regarding land value can be resolved by qualified land appraisers.

Timing for Transition to the CBC Regime

The province previously proposed a deadline of January 1, 2021 by which municipalities would have to enact a CBC by-law, or else forego collecting soft service development charges that were to be folded into the CBC. Under the proposed regulation, that deadline would be extended to one year after the date on which the final CBC regulation comes into effect. This transition period is intended to allow municipalities that choose to implement the CBC regime sufficient time to prepare a CBC strategy and enact a CBC by-law.

Next Steps

As noted above, the proposed regulation is open for public comment until March 30, 2020. Given the proposed regulation's implications for landowners and municipalities, there may well be many comments for the province to consider before finalizing the regulation. In the meantime, for more information, please contact any member of our [Municipal Law Group](#).