

**TOWNSHIP OF LAURENTIAN VALLEY COMMENTS ON PROPOSED ERO # 019-1406
POSTING ON REGULATORY MATTERS PERTAINING TO THE COMMUNITY BENEFITS
CHARGE (CBC) REGULATION/AUTHORITY AND CHANGES AS A RESULT OF THE MORE
HOMES, MORE CHOICE ACT, 2019 (MHMCA)**

The following brief provides comments being submitted by the Township of Laurentian Valley on the Environmental Registry of Ontario posting ERO # 019-1406 for the proposed regulatory matters pertaining to community benefits authority under the Planning Act, the Development Charges Act, and the Building Code Act. It is noted that a number of the comments are also made in the March 30, 2020 submission issued to the Province by the MFOA and some of that language has also been included within this submission.

As noted in the MFOA submission, even with the proposed amendments in the latest ERO posting, there is still work to do to mitigate the potential negative consequences of the changes introduced by the *More Homes, More Choice Act, 2019* (MHMCA). Much of this work is the result of the diversity of the municipal sector across Ontario. Issues are also created by the limitations of the existing cost recovery regimes for growth-related capital costs. The Province currently has an opportunity to make meaningful changes, but municipalities need time to test the proposed community benefits charge caps to ensure they are workable, fair, and allow for the recovery of growth-related infrastructure costs. Municipalities also need support to understand proposed changes to legislation and to adapt existing systems strategically.

The COVID-19 pandemic has further exacerbated the situation, however, even without the COVID-19 situation, municipalities needed to be provided with more opportunity for meaningful input and review of the impacts of the CBC and other changes.

Notwithstanding what the Province decides with regard to the other recommendations related to consultation prior to finalizing the CBC regulations and the other changes as a result of the MHMCA, the specified transition date must be extended with the recommendation being two (2) years after the date the proposed community benefits charge regulation comes into effect, to provide municipalities with the time to undertake the background work related to the CBC. The January 2021 date is completely inappropriate particularly in light of challenges that municipalities, consultants and indeed all of the public are facing in light of the COVID-19 pandemic.

Required content of a community benefits strategy

The requirement to undertake a community benefit strategy adds another cost to municipalities and another study which will have to be borne by all ratepayers and not just growth, in order to collect the CBC which further reduces the funds that would otherwise be available to the municipality to offset the costs of growth.

The proposed CBC content outlined in the ERO posting is similar to the process set out in the Development Charges Act with a few notable exceptions. These exceptions, such as the lack of prescription with respect to 10 year average service levels and definitions of capital costs, provide municipalities with additional flexibility in the development of a CBC strategy. While this greater degree of flexibility allows municipalities to recover costs reflective of actual needs rather than historical experience by providing the opportunity for forward-looking service levels, there still is a concern that this additional flexibility will mostly offset by the imposition of a cap on the CBC payable, which may decrease the funds that a municipality may otherwise have been able to recover, not providing an opportunity for recovery of growth-related costs of some expenditures.

The proposed CBC strategy also takes elements from requirements under s.42 of the *Planning Act* for parkland acquisition. Previously, not all municipalities availed themselves of s.42 of the *Planning Act* and as such, may not have prepared parks plans or included parkland acquisition in their capital forecasts for planning purposes. The result is that municipalities moving to the new CBC regime will face additional work and the requirement to do a parks plan could delay the implementation of the CBC regime. This is problematic as once again it adds another cost to municipalities that will diminish the amount of funds that can be collected. In smaller urban/rural municipalities, DCs were not typically at levels that were a deterrent to development and cash-in-lieu of parkland was applied to necessary projects as they presented themselves. The requirement to once again undertake yet another study to spend additional municipal funds in order to be provided with tools to collect municipal funds puts a strain on staff resources and adds costs to municipalities that are already going to be facing some challenges as a result of loss of revenues as a result of the impact of COVID-19.

In addition to the general issues associated with red tape required to get a CBC in place, the additional administrative burden and quick transition timelines will negatively impact the 'soft' services remaining in the Planning Act. Municipalities that are already constrained from a staffing and financial perspective, may be forced to forgo the CBC given the sheer volume of administrative work required to implement both a CBC strategy and the changes made to the Development Charges Act. **All municipalities absolutely will need more time to complete new background studies to support both new DC and CBC rates, develop new administration and collection systems, as well as implement processes to deal with appeals of land values. This is especially true now given the added financial pressures and greater uncertainty due to COVID-19.**

Ideally a return to the previous frameworks for the recovery of growth-related capital costs and parkland acquisition, and growth and density bonusing under the DCA and PLANNING ACT, which existed prior to MHMCA receiving Royal Assent, would be the preferred approach with some further changes to the DCA to provide additional flexibility on service categories, particularly as they affect small urban and rural communities. Should this return not occur and the Province chose to continue on the current path, there needs to be flexibility in the development of a CBC strategy.

Need for Ability for Increased Types of Services Funded Through Development Charges

Increasing the number of services eligible to be funded through development charges improves predictability for both municipalities and developers improves the potential for municipalities to recover their growth related capital costs.

The existing DC regime is one that meticulously identifies the costs that are driven by growth (people, employees) and recovers them (albeit at a reduced rate) over the relevant growth period from the various types of property. There is a link between costs and the anticipated revenues. Furthermore, the DC is updated every 5 years so the link between costs and revenues is reasonably current. Land value is not related to the cost of providing services and by imposing a cap based on land value this means that the CBC may not change over time to reflect project costs. It also places rural Ontario at a greater disadvantage where land values are typically lower but project costs are not.

Given these concerns, while the proposed amendment to increase services eligible to be funded through DCs and the removal of 10% discount on the remaining 'soft' services, required prior to

the MHMCA, is a good step, it needs to go further and return soft services that are now proposed under the CBC regime to DCs or change how the CBC is calculated. A further issue with the DC calculation requirement is the prescribed use of historic service levels for most eligible services when calculating DC rates. This all means that all of the taxpayers have to bear more of the costs of growth and growth is not paying its fair share. While municipalities want to be encouraging growth and do not want to create a situation where it is cost prohibitive for growth, however at the same time, they do not want to have to unfairly increase taxes for properties that have already contributed to infrastructure and equipment given growth an unfair break on costs and instead it should have to pay its fair share. Including the ability to collect DC's for some recreation, such as community recreation centres and arenas, similar to the inclusion of public library services and parks development, recreation provides a myriad of community building, health, and economic benefits to residents. In addition, including both public library and recreation as eligible services better enables municipalities to pursue provincial initiatives, such as the development of community hubs. Questions remain, however, as to whether the definition of this service will allow for the recovery of costs related to walkways, trail ways, cycle paths, and other recreation services that may or may not be within parks. Given the differences in service levels across the province, there needs enough flexibility needs to be provided when defining eligible services to allow municipalities to tailor their DC background studies to reflect local circumstances.

Further, while the return of additional services improves municipalities' ability to recover the capital costs of growth-related infrastructure for a wider range of services, all services should be eligible. We continue to promote a return to the previous DC regime where the DCA listed exempt services, rather than prescribed a restricted list of eligible services. Should this return not be under consideration, we encourage the province to consider further expanding the list of eligible services. Widening the list would increase the probability that municipalities will have the revenues to emplace needed growth-related capital works. A few areas to consider include but are not limited to: childcare; social housing; airports; and municipal master plans. CBCs and DCs together must pay for 100% of growth-related costs. DCs and CBCs must work together, such that unrecoverable DC growth-related costs (e.g. service levels) can be recovered using CBCs. Expanding the list of DC eligible services and removing the 10% discount on select 'soft' services is an improvement however, it is not enough to enable municipalities to fully recover the growth-related capital costs of the long list of services municipalities provide to support vibrant, complete communities. There should also be no distinctions between services to property and services to people; there are only services to people and therefore the capital costs of all services should be eligible to be recovered through the DCA.

Recommendation for legislation:

- **Repeal MHMCA amendments to ss 2(4) of the DCA, which have yet to come into force, such that all services are eligible for inclusion in the development charge calculation so long as they are not expressly excluded by regulation.**
- **If MHMCA amendments to ss 2(4) of the DCA, which have yet to come into force, are not repealed, the following services should be identified in regulation under ss 2(4) of the DCA: public libraries, including library materials for circulation, reference or information purposes; long-term care; parks development, such as playgrounds, splash pads, equipment and other park amenities (but not the acquisition of land for parks); public health; and recreation, such as community recreation centres and arenas.**
- **The 10% discount should be eliminated on all services in the DCA.**

- **Should MHMCA amendments to ss 2(4) of the DCA, which have yet to come into force, not be repealed, the list of eligible services should be expanded to include: child care services, social/subsidized housing, airports, and municipal masterplans.**
- **Development charges and the community benefits authority should be allowed to be used together, such that unrecoverable DC growth-related costs (e.g. service level) can be recovered under the community benefits authority.**

Percentage of land value for determining a maximum community benefits charge

The MHMCA had an outsized impact on municipal planning and finance functions. The Act reconfigured how municipalities recover the growth-related capital costs of certain 'soft services', acquire parkland, and collect height and density bonusing. Three sections of legislation with different purposes were lumped together under a new cost recovery regime. While it was appropriate that the current proposed amendments return select 'soft' services back to the DCA, they remain concerned that much still remains at stake for municipalities in trying to utilize tools to fund the costs of growth.

The issues with the community benefits charge regime are several and continue to warrant consideration.

As also indicated in submissions to the Province by the MFOA, it is unlikely that the province's objective of maintaining municipal revenues will be met given:

- the loss of the alternative parkland rate,
- the loss of height and density bonusing, and
- the imposition of a prescribed cap on the CBC.

While the flexibility provided by the proposed CBC strategy is appreciated, we remain concerned that this flexibility will be substantially offset by the CBC regime's restrictions that will impact our ability to raise revenue and cover growth-related capital costs.

We are also very concerned that the CBC charge is tied to land value rather than the actual costs of growth-related capital works. "While it makes sense to make land values pay for some amenities such as the land costs for parks, other community services are not affected by land values. Even though the ability to collect through the CBC is capped, there is no cap for the growth-related costs of 'soft' services so this deficit will have to be borne by the rest of the ratepayers through property tax meaning they will be paying more than their fair share and growth will not be paying for growth. As argued by the MFOA the prescribed cap must be anchored in the costs to service growth. Without this link, growth will not pay for growth and councils will be faced with decisions that could lead to neighbourhoods with different levels of service. A calculated maximum based on land values without a similar drop in infrastructure costs could result in a situation whereby a sudden drop in land values leaves a municipality without the ability to collect adequate funds to provide growth-related community benefits.

In addition, land values can differ widely between neighbouring municipalities, while the municipalities' construction costs remain relatively similar. This could result in inequities between neighbours. For example, a municipality with high land values may be able to build more recreation centres than its neighbour. Complete, vibrant communities are good for everyone. They should not be restricted based on a one-size-fits all cap that is not reflective of local circumstances. Anchoring the cap in costs recognizes the unique circumstances of each municipality and reflects the changing cost structures, demographic patterns, economic conditions, and other factors outside of municipal control.

Another issue is that the ERO posting provides 'one-size fits all' caps based on whether a municipality is an upper tier, lower tier or single tier. As noted in the 2020 Provincial Policy Statement (p. 5):

Ontario is a vast province with diverse urban, rural and northern communities which may face different challenges related to diversity in population, economic activity, pace of growth and physical and natural conditions. Some areas face challenges related to maintaining population and diversifying their economy, while other areas face challenges related to accommodating and managing the development and population growth which is occurring, while protecting important resources and the quality of the natural environment.

In addition to the diversity noted above, regions and counties divide responsibilities in different ways. The proposed one-size fits all caps cannot capture the range of municipal experience.

The prescribed caps must be workable, fair, and allow for the recovery of growth-related infrastructure costs on a place-by-place basis. Evidence created by comprehensive and rigorous analysis is needed to determine whether the split between upper and lower tiers makes sense. It is also needed to determine whether 15% captures the range of services delivered by single tiers across the Province and what happens when a community in a two-tier structure abuts a single tier and the potential impacts on comparative development costs based on the different CBC structure. The repercussions of getting the caps wrong are great. As such, municipalities need more time to test whether the proposed caps work given local circumstances, **especially when many of those days are in the midst of a pandemic. A more fulsome consultation on the prescribed maximum CBC payable with all Ontario municipalities and not just small working groups is required** given the complexity of the task and the timing of the comments period. The Township has gratefully looked to many of the comments issued by the MFOA to reiterate in our submission, in part due to the overload of challenges that municipalities are dealing with in dealing with COVID-19, alternative work arrangements, spring freshet preparations. The process with the CBC has had long periods where no information was provided to municipalities while discussions and drafting was going on behind the scenes. Municipalities deserve the respect of being provided with the time for a more fulsome opportunity for meaningful consultation and review of this important change to the financial tools available to municipalities, particularly in light of the changing world and impacts of COVID-19.

There are also additional questions surrounding the implementation of the new CBC regime and potential consequences of the regime as currently laid out. Any one of these issues could have major revenue impacts. For example,

- What happens in two-tier structures when lower tier municipalities forego the CBC regime?

How will this impact the collection of the upper tier's CBC?

- Municipalities will need to calculate the risk of not receiving land vs. the impact of not recovering capital costs for certain soft services. Currently the CBC regime (Planning Act sect. 37) does not require developers to provide land for parks, unlike Planning Act sect. 42. One of the questions is whether municipalities need to expropriate land more frequently (a very expensive endeavour) if they choose to pass a CBC by-law?

What happens to existing debt related to 'soft' services, negative DC reserve fund balances, and DC credits for 'soft' services?

- The Planning Act (PA) does not currently provide municipalities with the authority to establish local services policies. A question is will this misalignment between the PA and the DCA create roadblocks in the integration of parkland acquisition (under the PA) and parkland development (under the DCA)?

As previously stated, it is MFOA's belief that the CBC must be workable, fair, and allow for the recovery of growth-related infrastructure costs. This recovery must hold on a municipality by municipality basis, not just at the provincial level where winners and losers can be masked. Ultimately, municipalities need a prescribed cap that:

- Permits the capture of 100% of growth-related capital costs, land acquisition needs, as well as height and density bonusing requirements;
- Is predictable;
- Is reflective of local circumstances; and
- Remains relevant.

MFOA encourages the Province to include a mechanism for regular review of prescribed caps, as well as flexibility for the Minister to authorize municipalities to exceed prescribed caps where evidence demonstrates material need. A transparent criteria-based process would need to be created to ensure predictability for all parties. Together these measures would help municipalities continue to support the development of complete and vibrant communities.

Recommendations for legislation:

- **Add a subsection under Planning Act sect 37 to provide for regular updating of the prescribed maximum amount of community benefits charge: "The Ministry of Municipal Affairs and Housing shall initiate a review of the prescribed maximum amount of community benefits charge before the end of 2024 and thereafter within five years of the end of the previous review."**
- **Provide the Minister of Municipal Affairs and Housing with the authority to allow municipalities to exceed the prescribed maximum amount of community benefits charge in select circumstances.**
- **Add a subsection under Planning Act sect 37 to include conveyance such that: "As a condition of development or redevelopment of land, the council of a local municipality may, by by-law applicable to the whole municipality or to any defined area or areas thereof, require that land be conveyed to the municipality for park or other public recreational purposes."**
- **Add a subsection authorizing local services in the *Planning Act* based on subsection 59 (2) of the *Development Charges Act, 1997*.**

Timeline to transition to the new community benefits charge regime

Since the introduction of the MHMCA, municipalities have worked diligently to adjust policies and procedures to meet new legislative requirements under the Development Charges Act (DCA) and Planning Act (PA). Many of these new requirements (proclaimed or awaiting proclamation) require new administrative processes and systems.

The new CBC regime and changes to the existing DC regime require municipalities to modify how they do business. To enable municipalities to do this strategically, the timelines need to be extended to transition, create and communicate practice guides, interpretation bulletins, and webinars to educate stakeholders on the new regimes, and for the Province to provide assistance in adapting municipal policies and procedures.

The current proposed transition period is one year after the date the proposed CBC regulation comes into effect. We believe that this timeline is insufficient when accounting for the time required to complete a CBC strategy with the appropriate level of stakeholder engagement, the preparation of necessary studies, and the need to develop a new administrative process for CBC collection. In addition, in an "all hands on deck" world devoted to COVID-19 and the

disruption to working relationships and office attendance, it will be even more difficult to transition to a new regime.

To quote the MFOA submission directly “Municipal governments are essential partners in achieving the Province’s policy objectives. By providing municipalities with the time and tools needed to implement changes, the sector will be better positioned to adapt their systems while continuing to deliver the services that enable Ontarians to live their best life.”

Recommendation for regulation:

- **The specified transition date be 2 years after the date the proposed community benefits charge regulation comes into effect.**

Appeal ability of community benefits charge by-law

The *Plan to Build Ontario Together Act, 2019* amended the Planning Act to allow the community benefits charge by-law to be appealable to the Local Planning Appeal Tribunal (LPAT). While it is understood that processes must be set out to implement the change, this is another cost exposure for municipalities and why it would be better to have a revised and expanded DC structure so that there is only one set of potential LPAT appeals and not two should both a DC by-law and a CBC by-law be appealed.

Collection of CBCs in two-tiered system

While the inclusions of CBC as applicable law in the Building Code provides the mechanism for ensuring the payment of community benefits charges prior to the issuance of a building permit, however there needs to be further clarification and process related to the collection of CBCs in two-tier systems.