



Greater Ottawa Home Builders' Association
Association des constructeurs d'habitations d'Ottawa

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November 21, 2022

The Hon. Steve Clark
Ministry of Municipal Affairs and Housing
777 Bay Street, 17th floor
Toronto, Ontario M7A 2J3

Re: Submission 3 [Community Benefits Charges] of 3 on ERO #019-6172 Proposed Planning Act and Development Charges Act, 1997 Changes: Providing Greater Cost Certainty for Municipal Development-related Charges

Dear Minister Clark,

Please accept the below from the Greater Ottawa Home Builders' Association (GOHBA) and its members as part of its submission to the government's request for feedback on Proposed Planning Act and Development Charges Act, 1997 Changes: Providing Greater Cost Certainty for Municipal Development-related Charges (ERO #019-6172).

Given the breadth of proposals, this is the third of three separate submissions under ERO#019-6172:

- 1) Comments and additional suggestions related to development charges;
- 2) Comments and additional suggestions related to parkland; and,
- 3) Comments and additional suggestions related to community benefit charges.

Items #1-7 of this submission speak to Community Benefit Charges issues that were not part of the provincial government's original proposals under ERO #019-6172, but we believe would support and complement the government's efforts to address our housing affordability and supply crisis by streamlining approvals for housing and reducing barriers and costs to development.

Items #8-11 repeat requests GOHBA provided its first submission on ERO #019-6172 on development charges, because there is overlap between the CBC and development charges policies. They are included here to provide a full set of comments and requests on the CBC.

Nonetheless, this memo should be read in association with GOHBA's first submission in relation to development charges.

1. Value of In-Kind Contributions Under the Community Benefit Charge

Under s.37 (6-8) of the Planning Act, the value of in-kind contributions shall be deducted from the amount of CBCs otherwise payable. However, it is the municipality that determines the value of the in-kind contribution.

The Act should be amended to explicitly state that determining the value of in-kind contributions is appealable to the Ontario Land Tribunal if there is a dispute with the municipality similar to what happens in a dispute regarding a cash-in-lieu of parkland payment (Planning Act section 42 (12) & (13)).

Proposed wording:

s.37(32) The amount of a community benefits charge payable in any particular case shall be reduced by the value or any in-kind contribution and shall not exceed an amount equal to...

s.37(8.1) A dispute in regards to the value of an in-kind contribution may be made under protest as stated in subsection (33).

(8.2) A dispute in regards to accepting an in-kind contribution shall be determined in accordance with section 42(4.34 to 4.39).

OR

*37(8.1)(b) If the owner of the land is of the view that the value of in-kind contribution has not been properly assessed, the owner shall,
(a) Provide the municipality with a letter indicating the value of the in-kind contribution is being disputed; and
(b) Then the owner shall make an application to the Tribunal within 30 days of the notice of protest. Sections 42(4.34 to 4.39) shall then apply.*

2. Appeal Rights to a CBC By-law and CBC Strategy

Section 37(9) of the Planning Act, and Ontario Regulation 509/20, state that a CBC Strategy must be prepared prior to the preparation of a CBC by-law but the Planning Act or Regulations do not clearly state that the CBC Strategy, and project list, is appealable. The CBC Strategy is the foundation of the CBC by-law so it must be questioned as part of an appeal process.

The Planning Act or Regulations should clearly state these items, the CBC Strategy and project list, are appealable and the Tribunal may amend them. An appeal option will hold a municipality more accountable for the documents it prepares and relies on including the degree of detail it includes in the CBC Strategy.

Additionally, CBC eligibility criteria should be stated in a Regulation so it is known what applies in order to determine if a project is eligible to be a CBC project or how the benefit-to-existing residents is to be determined.

For example, in Ottawa, despite several revisions to the Project List before it was adopted by the City, GOHBA continues to question many of the projects listed. As the city said in its report considered by Council on February 10, 2022, “The benefitting capital projects must be correlated with the impacts of intensification and growth.” (p.11). Several of the projects listed in Ottawa’s CBC Strategy are in areas far removed from where intensification and growth will likely be occurring.

The project list should be including projects for areas where intensification and growth will be occurring, such as around the transit lines, and where measures such as traffic calming measures will be required.

Ottawa City Staff even went as far to call its CBC Strategy “illustrative”.

Proposed wording:

The appeal sections as indicated in sections 13 to 18 of the Development Charges Act could be reproduced for the purpose of CBC appeals.

3. Spending/Allocation of CBC Funds – Ward vs. City-Wide Projects

As mentioned above, several of the projects listed in Ottawa’s CBC Strategy are in areas far removed from where intensification and growth will likely be occurring.

Therefore, we urge the provincial government to amend the Planning Act to ensure that funds are spent in the same municipal ward from which they were collected.

Proposed wording: s.37(47) *In each calendar year, a municipality shall spend or allocate the monies that are in the special account at the beginning of the year in the municipal ward in which the monies are collected.*

4. Heritage

The Planning Act or Regulations should specify that all heritage buildings are exempt from, or are eligible for a reduction of, the CBCs payable. This benefit should not be extended to just newly designated heritage buildings as the City of Ottawa is attempting to do in its recent CBC By-law.

In its CBC By-law, the City of Ottawa allows “a Newly Designated Heritage Structure” to be eligible for a reduction in the CBC. Given the definition of a “a Newly Designated Heritage Structure” in the By-law, this wording excludes buildings that are already designated under Part

IV or Part V of the Ontario Heritage Act, R.S.O. 1990, c. O.18. Of note, what Ottawa has proposed may now be contrary to the proposed More Homes Built Faster Act amendments to the Ontario Heritage Act.

We do not see why existing Heritage buildings should be excluded from the reduction in the CBC.

Proposed wording:

Section 37(32.2) For a building or structure that is designated, or proposed to be designated, under Part IV or Part V of the Ontario Heritage Act, at the time of calculating the community benefits charge, the community benefits charge shall be reduced by an amount that is fifty per cent of the cost to rehabilitate the heritage building or structure as part of the development or redevelopment.

5. Landowner groups and community design plans or secondary plans

The Planning Act or Regulations should state that areas that are subject to a council approved landowner group, and for which a council approved community design plan or secondary plan exists, shall be exempt from the application of a CBC by-law.

Landowner groups are required by municipalities to account for the provision of community benefits based on proposed land uses and densities. The cost of the community benefits is then dispersed among the landowners.

It is now 'double dipping' if CBCs may also be sought based on a built form (5 storey height and 1- units) without having any regard for the community benefits already provided by the land in the context of the landowner group.

Although section 37(6) does state the owner may provide in-kind contributions, and the value shall be deducted from an amount otherwise payable, as currently worded it appears up to the discretion of the municipality as to whether it will accept the in-kind contribution.

Proposed wording:

New Section 37(8.1) In the event of a dispute as to the value of the in-kind contribution, the owner may object by filing with the clerk of the municipality, on or before 30 days after notice was provided to the owner, and the notice shall set out the objection to the value of the in-kind contribution and the reasons supporting the objection.

New section 37(8.2) – subsections (18) to (29) shall apply to any appeal submitted.

6. Deemed Corrected

Bill 23 should contain wording that states that any existing CBC by-laws, CBC by-laws adopted before the More Homes Built Faster Act is in force, are deemed to be revised to comply with the Bill 23 amendments similar to what is proposed to be stated in the Development Charges Act section 2(4.0.1) (Bill 23 Sch 3. s.2(3)).

Proposed wording:

New section 37(2.1) Any CBC by-law that is applicable on the day the More Homes Built Faster Act comes into force is deemed to be amended to be consistent with subsection 37(32) and (32.1) as it reads on the day subsection 10(1), (2) and (3) of Schedule 9 of the More Homes Built Faster Act comes into force.

7. Consistent Application

According to Bill 23 section 25(2), sections 10(1) and (3) above will come into force on a day to be proclaimed by the Lieutenant Governor rather than at the time that the More Homes Built Faster Act comes into force.

We recommend that the reference be revised to 10(1 to 3) in order to accommodate the consistent application of new sections.

The following items are repeated from GOHBA's first submission on ERO #019-6172.

8. Allow CBC to be Paid over the Same Timeframe as DCs

Similar to the Development Charges Act (section 26.1(3 & 7)), the Planning Act should state that a CBC payment for any project may be provided over 5 years subject to annual interest. (Bill 23, Sch 3, s.7(2 & 3))

Proposed wording: *s.37(44.1) A required community benefits charge payment shall be paid in equal annual instalments beginning on the earlier of the date of the issuance of a permit under the Building Code Act, 1992 authorizing occupation of the building and the date the building is first occupied, and continuing on the following five anniversaries of that date.*

9. Implement CBCs to be Paid Same as DCs

The Planning Act, should be amended to allow CBC by-laws passed between June 1, 2022, and the coming into force of the More Homes Built Faster Act, be deemed to be reduced and thereby implemented over a 5 year period.

This is reasonable since prior to September 2022, CBCs were not applicable to all projects. This implementation period will permit development to plan and account for the new CBC payment.

Proposed wording [similar to what is found in Bill 23, Sch 3, s.5(7) defining changes to be made to the Development Charges Act section 5(7 & 8)],:

37 (44.1) Subsection (44.2) applies to a community benefits charge imposed by a community benefits charge by-law passed on or after June 1, 2022.

Subsection (44.2) The amount of a community benefits charge shall be reduced in accordance with the following rules:

- 1. A community benefits charge imposed during the first year that the by-law is in force shall be reduced by 80 per cent of the community benefits charge that would otherwise be imposed by the by-law.*
- 2. ... reduced by 85 per cent...*
- 3. ... reduced by 90 per cent...*
- 4. ... reduced by 95 per cent...*

10. Discounts for Redevelopment Requiring Demolition and Rebuilding

Bill 23 proposes a new discount to Community Benefits Charges (“CBCs”) that will account for existing development located on land to be intensified. However, the amendment, as currently drafted, would only account for existing buildings that are proposed to be retained after the redevelopment, and does not capture buildings that are to be demolished and replaced.

The discount for existing development is a welcome addition to the CBC framework. As proposed under Bill 23, CBCs will only be assessed against new floor area resulting from a development, measured as a proportion of the total floor area on a property:

Amount of CBCs payable not to exceed an amount equal to the prescribed percentage [currently 4%] of the value of land, as of the valuation date, multiplied by ratio of A to B where:

A = floor area of any part of a building or structure proposed to be erected or located as part of the development or redevelopment

B = floor area of all buildings and structures that will be on the land after the development or redevelopment

By way of example, if 50sq metres of new floor area is proposed, and the total floor area of all buildings on the land after the development will be 200 sq metres, the value is calculated as follows:

$$\begin{aligned} & 4\% \text{ CBC rate} \times (50:200) \\ & = 4\% \times 0.25 \\ & = 1.00\% \text{ of land value} \\ & \therefore \text{CBCs payable shall not exceed 1\% of land value} \end{aligned}$$

In this example, the purpose of the existing development discount is achieved. The developer is only paying CBCs on the portion of the development that creates increased density. Without the discount, the developer may be required to pay CBCs twice on the existing floor area; once when it was originally built and again after the redevelopment.

However, the currently-proposed formula fails to capture a redevelopment project that involves demolishing and rebuilding a structure. For example, a 10,000 sq. metres building is erected and CBCs are paid as part of development. Five years later the building is destroyed by an Act of God. An exact replica 10,000-sq. metre building is erected in its place. CBCs must be paid on the replacement structure because all new development above 5 stories and 10 units attract CBCs. A developer in this scenario would pay CBCs twice despite the fact that density is not actually being increased.

When a developer replaces a structure, by choice or necessity, previously paid CBCs or predecessor s.37 payments (density bonusing) should be accounted for. A more equitable approach would be as follows:

Amount of CBCs payable not to exceed an amount equal to the prescribed percentage (currently 4%) of the value of land, as of the valuation date, multiplied by B minus A where:
A = floor area of any part of a building or structure erected on the land prior to the development or redevelopment
B = floor area of all buildings and structures that will be on the land after the development or redevelopment

In the alternative, a credit should be applied to offset CBC or predecessor s.37 charges that have already been paid.

11. Credit for CBCs previously paid

The Planning Act should contain policies that state a credit should be given for community benefit charges that have been previously paid. This would apply in the case of development or redevelopment where an entire building is being replaced perhaps due to damage. The development or redevelopment should be given a credit, and hence a corresponding reduction, to any new CBCs payable attributable to the replacement.

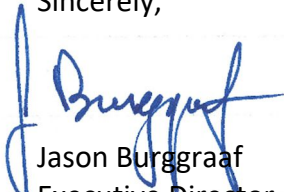
Proposed wording:

Section 37(32.2) In the event that a building or structure is damaged or destroyed and hence has to be reconstructed and/or replaced, a credit shall be given for the amount of any community benefits charge payment that was previously made for the building or structure that is now being reconstructed.

Thank you for the opportunity to provide comments on this issue.

We are pleased to answer questions or provide further information as requested.

Sincerely,



Jason Burggraaf
Executive Director