

A NEW FUNDING FRONTIER

EVALUATING THE NEW COMMUNITY BENEFITS CHARGE LEGISLATION IN
ONTARIO

By

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Abstract

Community Benefits Charges represent a new era of municipal finance and community benefit funding in Ontario, replacing a fraught and controversial use of Section 37 (density bonusing) and Section 42 (parkland dedication) of the Planning Act. This report undertook a critical policy analysis to identify early issues and how the legislation and regulations may be reformed to ensure it's implementation is equitable, efficient and effective, and meets objectives of the province, municipalities and development community. Through an extensive literature review, stakeholder and policy analysis this report identified three key issues, including, stakeholder confusion due to a lack of transparency on the process to develop the charge, financial uncertainty for municipal and private sector projects due to projecting land values in the calculation of the charge and uneven impact on different municipalities and development types. This report recommends the removal of the land value basis, allowing greater variations in implementation and rigid strategy analysis to allow the CBC to better meet the intent of the Province and satisfy identified concerns of all stakeholders.

Key Words: community benefits, density bonusing, development charges, land value capture, parkland dedication, municipal finance, affordability

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List of Acronyms

CAC: Community Amenity Contribution

CBA: Community Benefits Agreement

CBC: Community Benefits Charge

COT: City of Toronto

DB: Density Bonusing

DC: Development Charges

DCA: Development Charges Act

DCBS: Development Charges Background Study

DCL: Development Cost Levy

ERO: Environmental Registry of Ontario

GTHA: Greater Toronto and Hamilton Area

MMAH: Ministry of Municipal Affairs and Housing

LVC: Land Value Capture

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1.0 Introduction

Our cities, towns, neighbourhoods and streets are more than places people simply walk through, sleep and work. They facilitate our daily existence; they nurture our human desires of community and fulfilment. The spaces where these desires are met are our homes and community spaces. They are essential to what most contemporary policy documents, both municipal and provincial scale, call “complete communities”. They are our animated streets, libraries, community centres and parks and affordable living conditions. The essential question becomes: as our cities continue to grow how do we build them equitably, efficiently and effectively? In the next 10 years, the Greater Toronto and Hamilton Area (GTHA) is expected to grow by 8 million people (Ministry of Finance, 2019). With the Toronto and GTHA regions posed for substantial population growth amidst an affordable housing crisis, this question becomes imperative to ensuring adequate spaces and amenities are equitably provided and accessed.

The traditional means to provide these spaces is through community amenity or benefit contributions and development levies. Land value capture (LVC) tools have been a means in Ontario to ensure that firstly, growth pays for growth and that secondly, the public receives benefit from windfall profits from permissions granted to new developments. However, there is a new era emerging from the frustrations of the status quo. It is not unusual to see daily media posts on the rising cost of housing in Ontario and controversies over the use of Section 37 and some municipalities' use of Section 42. How have traditional planning processes and structures contributed to the affordability question? How do cities provide a balance between capturing land value, financing growth and increasing land supply? In May 2019, the Ontario provincial government attempted to address these questions by transforming a decades-old approach to

financing growth infrastructure, providing community benefits and building affordable housing through the introduction of Community Benefits Charges.

1.2 Purpose and Objectives

The purpose of this report is to assess the new Community Benefit Charge legislation and proposed regulations based on critical policy analysis with the intent to identify key issues that may affect the policy's ability to be equitable, efficient and effective. With that being said, this report was prepared when the initial draft regulations were released for comment on February 28th. The report does not reflect the final recommendations that will come into force after the date of this report's publication. There are three objectives of this report: (1) to provide an overview of major themes in municipal finance, community benefit and administration literature (2) to provide critical analysis of the legislation and proposed regulations; (2) to provide recommendations for the provincial government to consider for implementing regulations. In order to achieve these objectives, this report will investigate the following questions:

- Does the new legislation effectively address past issues with the repealed Section 37, Development Charges and Parkland dedication legislation?
- What are some examples of successful community amenity frameworks?
- Is the new regulation meeting the intent of provincial policy goals?
- What are the concerns and potential implications of the new policy for municipalities and the development community?

1.3 CBC Background

In May of 2019, the Provincial government introduced changes to multiple pieces of legislation affecting urban planning in Ontario. The omnibus Bill 108 the *More Homes, More*

Choices Act repealed sections of the *Planning Act*, *Development Charges Act (DCA)*, *Local Planning and Appeal Body Act*, *Conservation Act* and several more. One of the major changes and focus of this report is the introduction of Community Benefit Charges (CBC) legislation in the *Planning Act*. The new CBC legislation replaces Section 37 (density bonusing) and Section 42 (parkland dedication) provisions in the previous *Planning Act*. In the first iteration of the legislation charges for soft services/discounted services (libraries, parks, recreation centres, affordable housing) were no longer eligible in the *Development Charges Act (DCA)* and would be paid through the CBC system. This provision has subsequently been repealed some of the services to be added back to the DC, a list will be provided in a later section.

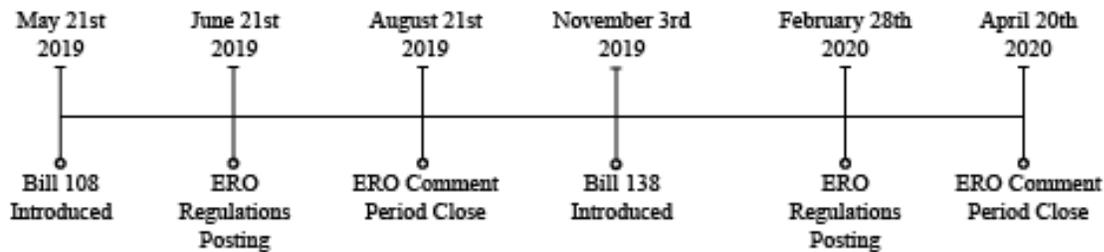
To implement the CBC legislation a municipality must pass a CBC by-law that applies for the whole city. Municipalities must engage in public consultation and produce a "Community Benefits Strategy " to identify community needs and services eligible for CBC funding. Municipalities are instructed to "consult with such persons and public bodies as the municipality considers appropriate", in a manner determined by the municipality (Planning Act, 1990). The amount of the levy from the CBC will be determined through a percentage cap of land value. Currently, there are no specific requirements released for the calculation of the charge, just the limiting cap. Land value percentages were released which will be discussed below. A notable claim by many municipalities is that the provincial government promised that the charge would be structured to allow municipalities to be revenue-neutral. In a letter sent to municipalities by the ministry, the province claims the approach will maintain similar revenues and to recover similar revenues from development charges for discounted/soft services, density bonusing and parkland dedication (Clark, 2019). The levies secured from the CBC will be kept in a "Special Reserve Fund " established by a municipality. There are new spending provisions to address

criticisms that some municipalities have been collecting parkland and Section 37 cash-in-lieu contributions and not spending them in an appropriate time frame. Now 60% of the monies in the fund must be spent or allocated at the beginning of the year. CBC's will be applicable to an array of planning approval applications such as minor variances, consents, plans of subdivision, zoning by-law amendments, condominium plans, issuance of a building permit and part lot control to a municipality's direction. The legislation also permits the contribution of in-kind services and facilities by the owner of the property. Municipalities will advise the landowner the value attributed to the service and deduct it from the amount the owner would pay in the CBC (Planning Act, 1990). Currently, there are no provisions guiding how municipalities will be determining the value.

In November 2019, the provincial government amended the *Planning Act* and introduced the *Plan to Build Ontario Together Act, 2019* to introduce the mechanism to appeal a community benefits charge by-law to the Local Planning Appeal Tribunal (Legislative Assembly of Ontario, 2019). If a municipality passes a CBC by-law, existing parkland dedication by-laws are rescinded. Thus, a municipality has a choice to enact a CBC by-law to fund parkland acquisition and/or conveyance or to not enact a CBC by-law and use historical parkland dedication rates.

The Province hired a consultant to undertake research and provide recommendations for the formula land value percentages proposed in the CBC legislation. Following the release of the CBC legislation in May 2019, the first round of stakeholder consultation was held in the fall of 2019. In February 2020, the Ministry of Municipal Affairs (MMAH) released proposed regulations for the Community Benefits Authority under the *Planning Act*, the *Development Charges Act*, and the *Building Code Act on the environmental Registry of Ontario (ERO)*.

Figure 1: CBC Policy Process Timeline



The following provides a summary of the proposed ERO February 28th regulations:

1. The required content of a community benefits charge strategy:

A municipality must include the following:

1. The anticipated type, amount and location of development or redevelopment that would be subject to a community benefit charge;
2. The anticipated increase in the need for a specific community service (for example, the acquisition of land for parks, affordable housing, childcare, etc.) resulting from new development or redevelopment;
3. A parks plan that examines the need for parkland in the municipality;
4. The amount of parkland per person currently being provided in the municipality, and if this is planned to increase, decrease or stay the same;
5. The capital costs associated with the increased need for a specific community service resulting from new development or redevelopment;
6. The excess capacity that exists in those specific services (for example, the extra capacity that exists in a service that is not currently being used);
7. Whether the increased provision of those specific services would also serve existing residents (for example, existing residents may also benefit from new childcare facilities that are needed as a result of new development or redevelopment); and,
8. Any capital grants, subsidies, or contributions from other levels of government or other sources like donations that are anticipated to be made to support those specific services.

Notably, in regards to item #3, municipalities are already required to produce a parks plan under Section 42 of the *Planning Act* (1990).

2. Services eligible to be funded through development charges:

1. Public libraries, including library materials for circulation, reference or information purposes;
2. Long-term care;
3. Parks development, such as playgrounds, splash pads, equipment and other parks amenities (but not the acquisition of land for parks);
4. Public health; and,
5. Recreation, such as community recreation centres and arenas.

The charges for these services can be imposed to fully recover the capital costs related to these services. This means the removal of a historical 10% discount rate, where a municipality pays for 10% of the cost. Notably, these services would not be eligible for funding through CBC.

3. Percentage of land value for determining a maximum community benefits charge

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

Municipalities may impose a lesser percentage, and at different rates for different types of development. Ex. non-residential uses.

The land value would be calculated at the valuation date, which is the day before the issuance of a building permit. Services eligible for CBC funding are not included in the DC nor eligible to be funded through it. List of possible services funded through the CBC includes

1. Parkland acquisition;
2. Child Care Facilities
3. Social/Subsidized Housing and Shelters;
4. Social Services;
5. Parking and By-law enforcement.
6. Public art and other civic improvements currently funded by Section 37.

It is important to note the services that are ineligible for DC funding are also eligible for CBC funding, which includes cultural, tourism or entertainment facilities, hospitals, parkland acquisition, landfill sites and services, municipal and local board headquarters.

4. Timeline to transition to the new community benefits charge regime

One year from the time the CBC regulation comes into effect.

(Environmental Registry of Ontario, 2020).

1.4 Provincial Policy Goals

Before critically analyzing the CBC legislation, it is important to understand the purpose and intent of the Provincial government in introducing this change to planning in Ontario. It is important to understand that the CBC legislation is embedded within Bill 108 the *More Homes, More Choice Act*. The intent of Bill 108 is to reform and introduce new measures that will increase housing supply and increase housing affordability by reducing development costs and making it simpler to build housing. Ontario has been experiencing unprecedented growth, and unprecedented housing costs as housing supply has not caught up with demand. The planning and policy goals the provincial government are attempting to achieve through the specific CBC legislative reform are:

- 1. Increase Predictability*

By improving risk for a project when potential costs and calculations are laid out, allowing a developer to absorb costs into pre-development land values.

2. Increase Transparency

Improve the decision-making process to understand how eligible community benefits are decided and when monies collected will be spent.

3. Housing Affordability

Reduce development costs that are transferred to a new home buyer or renter.

2.0 Literature Review

This section will provide an overview of community benefits agreements, development charge, density bonusing and parkland dedication. It identifies the historical origins, key debates and findings from municipal finance and administration academics and professionals. The findings of the literature will inform subsequent policy analysis and recommendations.

2.1 Community Benefits Agreements

This section will be providing a brief overview of Community Benefits Agreements (CBA)s literature to frame the narrative of the CBC discussion. The purpose of these types of measures or agreements is to ensure communities receive meaningful benefit from increased development in their neighbourhoods. CBAs are negotiated agreements between a community or community organization and a developer and represent one method of capturing value from development. CBAs are common in the United States and are generally what community benefits contributions are in American jurisdictions. Notably, CBAs are not enacted through legislative measures as seen in Canadian contexts with Section 37 and Vancouver's Community Amenity Contributions. Despite this difference, an analysis of these agreements and the perceptions regarding their use

allows insight into how the CBC legislation in Ontario may be equitably structured and implemented to maximize community engagement and benefit and development feasibility.

CBA scholars such as Camacho (2013) discuss the advantages of these types of agreements, such as increased community participation in the planning process, development support, increased development timelines and holistic land-use planning. To maximize the advantages, they advise in ensuring broad stakeholder engagement is done so captured benefits reflect a range of interests and maximize transparency. Lin (2017) expands on Camacho's analysis, citing a CBA's ability to foster trust and problem-solving between a community and developer. Musil (2014) discusses a CBA's ability to assist communities facing new growth pressure and most notably marginalized groups to navigate these new processes. To be a successful agreement, CBA's need a diverse stakeholder base and strong goals. The types of benefits typically captured differ on the project use. Notably, mixed-use developments typically secure local hiring agreements, leasing to women or minority businesses, and affordable housing.

Salkin (2010) echoes Musil's analysis that CBA's are powerful tools for marginalized communities, they secure benefits for both developers and communities and give local communities control of the planning process. However, Salkin further argues that CBAs fall short as they only apply to small geography, and there is a risk actual meaningful engagement is co-opted by a developer who can pay their way out of a disagreement. Fox-Rodgers and Murphy (2015) expand on Salkin's criticism and claim CBA's allow developers to by-pass political processes. By being able to shell out money for benefits and thus local support, whether the project represents bad planning is curtailed, and thus the benefits are not redistributive. Additionally, Fox-Rodgers and Murphy state negotiations are not power neutral as communities may not have the same financial or negotiating background as developers. Overall, there are pros

and cons to the CBA approach and lend insight into an equitable CBC structure and implementation.

2.2 Development Charges

As the CBC the first iteration has links to the structure and funding of DC's in Ontario, it is important to understand the key themes in DC literature to inform subsequent analysis on the effectiveness and efficiency of this new charge. DC's are a financial tool used by municipalities to pay for growth-related infrastructure brought on by new development or redevelopment (Baumeister, 2012). Development charges or "lot levies" have been used by municipalities since the 1950s but was formalized in legislation through the 1989 *Development Charge Act (DCA)* that outlined which costs were eligible for the charge. The municipal mantra of the DCA is to ensure "growth pays for growth".

The legislation was reformed again in the 1997 DCA giving further clarification on how the cost was calculated, further regimented which services were eligible and what services were non-eligible and introduced a discount rate for municipalities to pay to reflect those new residents will be paying for infrastructure as well as in their property taxes (Baumeister, 2012). The discount rate was 10% at the time of the Bill 108 reforms. Before passing a DC by-law, municipalities are required to produce a DC background study (DCBS) every five years that outlines projected growth and justification for a charge. The charge itself must only be based on the average level of service for the past 10 years (Baumeister, 2012).

2.2.1 Service Inclusion

One of the most notable and on-going debates in development charge literature is what services count as "growth-related" infrastructure, and notably, whether soft services (ex. Public libraries, recreation centres) should be included in the DCBS. Hard and soft costs are viewed as land vs.

people-related costs. The development community is generally an advocate for the exclusion of soft or people-related services from the DCA (Amborski, 2011). The exclusion of these costs is founded on the notion that development is not placing pressure on *land* in direct proximity to the development but the needs of people (Tomalty & Skaburkis, 1997). Tomalty (2000) discusses the “Tassonyi” test, where if a new development does not raise property taxes to account for pressure on people-related services the development charge is not justified. Whereas land or hard services can be directly tied to the intensified use of the land and directly benefit new development (Amborski, 2011; Tomalty & Skaburkis, 1997). However, others argue it is misleading to claim hard services only benefit residents in a new development, as people outside of a certain development’s geographical area may also use hard services such as roads. (Amborski, 2011; Skaburkis & Tomalty, 1997). A critique of the benefits argument is that any new additional infrastructure, hard or soft, has always been priced in accordance with both new and existing residents' use of infrastructure (Personal Communication, 2020).

2.2.2 Average vs Marginal Cost

Adjacent to the discussion on service inclusion is what is the most appropriate costing structure of a development charge regime. The two costing mechanisms in question are “marginal costs” or “average costs”. Marginal cost is a “site-specific” approach to estimate the charges assigned to development. The average cost is when the charges are spread out on a city-wide basis (Skaburkis & Tomalty, 2002). Advocates for an average or city-wide approach promote it as easier to administer, land-use neutral and fosters greater equity as some areas of a city are more expensive to provide infrastructure and will not be over-burdened (Tomalty & Skaburkis, 1997). As such, this approach is generally calculated by a population-based growth formula. Critiques of the city-wide approach cite a prevalence of subsidizing who is paying for

the infrastructure (Tomalty, 2000). Another major critique is its promotion of low-density and inefficient land-use patterns as the fixed charge will become more costly for higher density development (Slack, 2016). Proponents of a site-specific approach claim it is more efficient as it reflects the true cost development will impose on infrastructure in an area, it promotes more efficient land use and better accounts for infill development that uses existing services. Slack and Bird (1991) suggest the site-specific approach better addresses “intergenerational equity”, where average cost ignores double-paying through property taxes. Critics of the site-specific approach claim it only really benefits the development overburden some areas, each deal must be negotiated and is very susceptible to development trends (Tomalty & Skaburkis, 1997; Tomalty, 2000). Other professionals have commented that either an average or marginal approach should be determined by the type of infrastructure provided and whether its pricing can be inclusive of the mobile nature of people (Personal Communication, 2020).

2.2.3 Development Charge Incidence

How a DC should be structured and what should or should not be included comes back to discussions on who bears the burden or “incidence” of the development cost. Discussions on incidence fall into two categories - the effect on housing affordability and subsidization of low-cost development for high-cost development.

The first incidence of housing affordability is based on the observations that homeowners are passed on the cost of DC’s in housing prices. In this discussion, there are two views of this type of incidence. The first view, the “old view”, argues that developers capitalize on the cost of DC’s into pre-development land values (Amborski, n.d). Proponents of this view discuss DC’s as an “excise tax” on a housing development that essentially decreases builder profit and building of housing supply (Amborski, n.d). Blais (2010) discusses that when DC’s are viewed as an excise

tax that the actor that ends up paying or bearing the burden is dependent on supply and demand in different types of markets and their price sensitivities. For instance, in a hot real estate market, a developer can easily absorb costs, such as through pre-development land costs, but if the costs are passed forward that exceeds a consumer's affordability, the developer will not be able to participate in that market. The second view on housing incidence is called the “new view”. This group of scholars does not view DCs as an excise tax, but as a fee based on the provision of facilities and amenities wanted by home buyers (Blais, 2020; Amborski, n.d). Like the old view, this view agrees DCs increase home prices. However, this view claims the increase is because DCs divert higher payments of property taxes for these services. Thus, the long-term savings are capitalized into the price of the DC. The increases are dependent on how much a home buyer values the services provided - called “over-shifting”. Blais (2010) states that shifting is common and usually results in higher housing prices. Amborski (n.d) argues in the Canadian context the old view is more applicable, as there are more prescriptive and standard requirements for services financed by DCs.

A recent report published by Altus Group (2019) outlines the burden of development charges and government fees over the last decade in the Greater Toronto Area. The report found that for new single-detached homes, government charges account for 21.7% of the price of a single-family detached house, and 23.9% of the price for new apartments (Altus Group, 2019a). Additionally, DC rates have increased by 430% since 2004, most notable for high-rise structures. Some groups, such as the Association of Municipalities Ontario (AMO) dispute the extent of the incidence of new homeowners. They claim DCs are actually not captured in the full price of housing and that there are more substantial impacts on housing such as the market, land cost, construction, and that property taxes cannot fully cover the cost of growth-related services

(“Dispelling”, n.d). Other professionals attest these claims on the notion that of the total percentage of government fees, DC’s do not account for a substantial amount of the total. Instead, they are captured in the price of housing that is set by the market (Personal Communication, March 2nd, 2020).

Another incidence is the subsidization of high-density developments over low-density developments. Depending on how the charge is structured, it is argued it can work against planning goals of efficient development. Due to an average costing structure, some development structures pay more for growth-related infrastructure as the cost of more expensive developments is averaged out (Blais, 2010; Tomalty, 2000; Baumeister, 2013). For instance, a charge can make it more feasible to engage in low-density development if it makes more urban or dense development comparatively more expensive (Skaburkis, 1993; Skaburkis & Tomalty, 2000). Slack and Blais (2016; 2002, 2010) argue urban sprawl is encouraged through the current municipal wide (average) approach, as higher density developments will pay more in total DCs than greenfield development. Scholars such as Baumiester (2013) and Slack (2002) further argue the 1998 DCA undermines efficient planning goals and better coordination is needed to promote it as a growth management tool. They cite one of the major contributors to the disconnect to planning goals is the structuring of the charge based on Person Per Unit (PPU). A PPU does differ in terms of structure type and is lower for condos vs. single-family homes, but it does not account for unit size. Unit sizes are smaller in denser development, and thus the cost is disproportionately high (Beimester, 2013; Amborksi, 2011; Skaburkis, 2013). Additionally, the DC PPU does not account for lot size, location or inefficient development patterns that require more expensive servicing (Blais, 2010). Other municipal finance professionals argue that the DC and PPU are currently structured that there is no difference in the amount high or low-density

developments pay in Ontario, and in fact low-density greenfield developers pay more as they are required to front the cost of local linear infrastructure. Additionally, the PPU's are based on the charge calculated on a per capita basis and most DC by-laws account for unit size (Personal Communication, April 9th 2020). Overall, a more efficient structuring of DCs would encourage efficient development patterns, bringing down the total cost of services and lowering housing prices (Blais, 2010; Personal Communication, April 9th 2020).

2.3 Density Bonusing

Density bonusing is a land value capture tool utilized by municipalities to provide community benefits. The merit of density bonusing is to capture the “economic rent”, “windfall” or “unearned increment” by developers receiving an extra benefit to their properties from actions they did not engage in. Examples may be favourable market conditions, granting extra height, or government investment in public infrastructure that raised land values resulting in increased developer profit. A portion of the extra profit is captured by municipalities to bring the value back to the community through the provision of public amenities (Alterman, 2016; Friendly, 2017).

In Ontario, density bonusing is/was regulated under Section 37 of the *Planning Act* [1990]. There is little legislative guidance on how it should have been implemented or what benefits it may be used for. Section 37 can be implemented differently for every jurisdiction in Ontario (Moore, 2013). Only a select few municipalities utilized the tool – including Toronto, Ottawa, Vaughan, Richmond Hill and Mississauga. The municipality that used it the most is Toronto. The city has a publication listing recommended guidelines for the process in establishing benefit agreements (City of Toronto, n.d). The Official Plan Section 5.1.1 (2015) lists policies for implementation, including the benefits must be attributable to or in the geographic area of the

(re)development, represent good planning, developments eligible or ineligible for contributions, allowance of in-kind benefits, types of benefits that may be secured, and use of Secondary Plans in determining benefits for its geographic area. The City of Toronto's Section 37 guidelines (2014) lists the density bonus process as starting with the City of Toronto through public consultation for a development application identifying community needs. City staff then determine the amount of the land value uplift of development and negotiates with the developer occur until an agreement is reached. It is usually the ward councillor that leads the negotiation (Moore, 2013).

The following section will provide an overview of the major themes of density bonusing use in Ontario literature. Notably, most of the literature focuses on the City of Toronto and identified issues with their use and process of securing Section 37 agreements. Scholars on Toronto's density bonusing regime frequently cite inequity, lack of transparency and development predictability as common issues with the model.

2.3.1 Predictability

Due to the process identified in securing Section 37 benefits, it has been shown to be unpredictable. When a developer does not know what the value of the benefits potentially asked for them to contribute towards is, it is challenging to build the cost into their pro forma and land purchase as there is no way to know what the contribution may be. Section 37 becomes a new unexpected cost further in the development timeline. On the nature of predictability, Moore (2013) states that it is worsened by Toronto's use by the fact that the city's zoning is out of date, and the question of whether Section 37 agreements as valid land value capture has little merit. Due to the artificially low zoning and the development approvals process, developers are unsure how much land value will be captured from their proposed development to work into a pro forma

(Moore, 2013). Matthinson (2016) further builds on the lack of predictability citing the low understanding of where developer contributions go into municipal accounts and decisions based on “opinions” of individuals of what and how much should be captured. Matthinson (2016) further states the most successful density bonusing regimes are where clear goals are set, the focus is locally driven, the development community is consulted, and all stakeholders should feel like it is a “win-win”.

2.3.2 Transparency

Another issue identified with Toronto’s process is transparency in how benefits are being secured and decided. Municipal finance scholar Moore (2016) discusses the root of the problems of the Toronto regime and its lack of transparency as stemming from the councillor led negotiations. A councillor has more recourse in the type of benefit secured, thus they are more likely to play it safe as the process is politicized (Friendly, 2017). With that, data for 2015 Section 37 benefits shows the largest types of benefits secured were softer benefits like visual amenities, road improvements and park improvements (Moore, 2016). Though the public, as stated in the guidelines, is to be consulted to determine community need, there are still heightened questions over the decision of the benefit at the end of the day. Additionally, transparency is further meddled through Cash-in-Lieu (CIL) provisions, as the public does not know where the secured money will go or what it will eventually be used for (Matthinson, 2016). Having a political body separately and solely deciding the type of benefit produces a level of unpredictability.

2.3.4 Inequity

Another major criticism is the spatial inequities the regime has produced within the City of Toronto. Section 37 must follow the “nexus” principle which means benefits secured must be

spent close to and are attributable to the development (Moore, 2016). Friendly (2017) found that Toronto's "nexus" principle was serving to create inequitable conditions in the city. Toronto is experiencing growth unevenly, with 64% of benefits being captured downtown, and hence certain wards capture more benefits from the sheer quantity and scale of development in that geography. From 1998-2015, \$400 million (not including in-kind) was secured for limited geography of the city (Friendly, 2017). Her analysis of the City of Sao Paulo's density bonus approach showed that a formula-based method has been successful in securing benefits in higher-income areas to distribute throughout the city. She recommends reforming Toronto's regime to be able to capture and distribute benefits city-wide. Friendly (2017) and Moore (2013) cite the previously stated nature of the types of benefits secured like "visual amenities" lack distributive qualities. Lehrer and Pantalone (2016) further argue that Section 37 has been co-opted to make bad planning good by Toronto city councillors "deal-based" planning. They also advocate for a formula-based approach and the removal of the "nexus" principle to achieve greater equity.

2.4 Parkland Dedication

Development applications were required by the *Planning Act* [1990], Section 42 to convey parkland to the municipality or other public recreational purposes for new development applications at no more than 5% of the land. Additionally, there are alternative parkland dedication rates set at 1 hectare per 300 dwelling units, to accommodate more dense or smaller parcel sizes (Knowles, 2013). As such, municipalities set their own Cash-In-Lieu, parkland and alternative parkland dedication rates. The City of Toronto uses an alternative rate of 0.4 per 300 dwellings, and cash-in-lieu as 20% of the value of the development site. The rate of CIL utilization has increased by 258% since 2006 (Altus Group, 2019b).

Scholarly literature on parkland dedication discusses it as another incidence to be burdened by a homeowner (Knowles, 2013). The incidence arises out of rising land costs and is most pronounced when using the alternative “unit-based” rate and when applied to high-density development. When using a per-unit rate, the amount a project may have to give a CIL contribution is very high, especially if it is a high-density development, though they have no other choice if it is a smaller infill site (Altus Group, 2019b). Even though Toronto has a 20% cap, the cap still rises as it is tied to land costs and is passed on to a new buyer. One may argue this higher capture does allow municipalities to have the means to secure a great amount of park space. The City of Toronto’s parkland cash-in-lieu collections can be spent off-site from development or used to improve existing park space (City of Toronto, n.d). However, Knowles (2013) found in Toronto, that the city was not achieving policy objectives to adequately build new parks for growth. Even more so these high-growth wards are also generally park-deprived areas. In Knowles' (2013) study, they found the city had a fragmented policy, felt like it could not compete for land at market value, and it took too long for them to purchase land. Instead, funds were used to upgrade existing parks instead of creating new ones, which as stated before their policy allows. The Altus (2019b) study found \$674 million in Toronto’s parks reserve fund, and it had risen by 458% since 2006 which further calls into question why they are not spending it. Notably, GTA municipalities have higher and more significant use of the CIL than the City of Toronto. Whether Section 42 was meeting policy goals is not apparent and may even promote against them through ensuring low-density development is cheaper (Altus Group, 2019b; Knowles, 2013).

3.0 Vancouver LVC Tools

The City of Vancouver provides a relevant and meaningful comparison for the analysis and

introduction of the CBC legislation in Ontario. Vancouver has three different land value capture and growth-related financing methods including Development Cost Levies (DCL), Community Amenity Contributions (CAC) and density bonusing zoning. The Community Amenity Contributions (CAC) have been extensively compared to the Ontario model and Toronto's use of Section 37. CAC was first introduced in 1989 after the False Creek neighbourhood development following the 1986 World Fair Expo. CAC operates under the same premises as Section 37 whereas, in exchange for a municipality allowing a rezoning, a developer provides a community benefit to account for the increase in value by government action. Notably, CACs are heralded as a "voluntary" contribution by a developer (City of Vancouver, 2020). Eligible CAC amenities must be growth-related, consistent with services provided by the city, be based on community need from a site-specific assessment or Community Plan and have long-term operational viability. Additionally, Vancouver states the amenity should be located in the neighbourhood the rezoning is in, but they may also be located outside of the neighbourhood if there is a demonstrated benefit to the community in which the rezoning is in (City of Vancouver, 2020). Cash-in-kind contributions may be considered and can be the following: affordable housing, childcare, transportation and public realm, community facilities (rec centres, family/youth/seniors centres, neighbourhood houses, indigenous serving spaces, and social non-profit office spaces), public safety, parks and open spaces, arts and cultural spaces, and heritage conservation (City of Vancouver, 2020). The city also allows reserve funds to be contributed as CACs for certain capital maintenance projects and allows the use of CACs to fund projects funded through DCL's. CAC's are payable at the time of rezoning by-law enactment (City of Vancouver, 2020).

The City of Vancouver has two different CAC policy areas outlining different processes to

Figure 2: CAC Targets and Eligibility

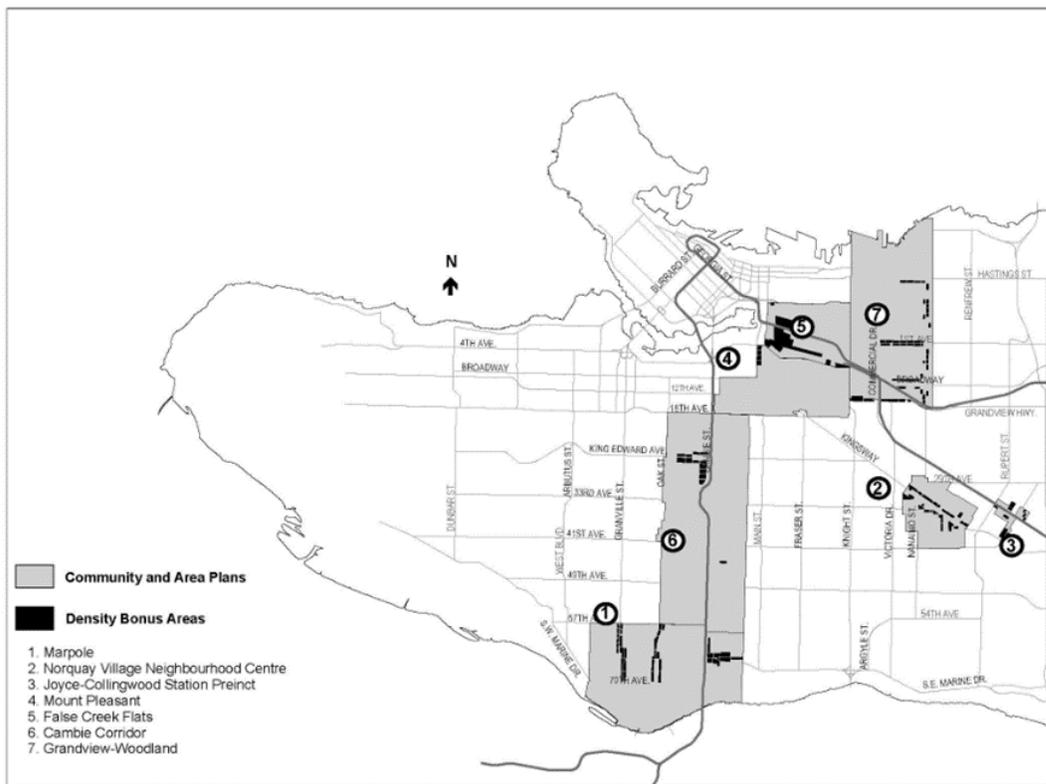
| Map | CAC Target Area and Eligibility Criteria | CAC Target ^(a) (effective Sept. 30, 2019) | Allocation of CAC ^(b) |
|---|---|--|---|
| Map A (Southeast False Creek) | Rezoning applications on sites zoned M-2 up to 3.5 FSR as shown in Map A. Additional CAC will be negotiated > 3.5 FSR. | \$180.66/m ² (\$16.78/ft ²) | Affordable housing in Southeast False Creek |
| Map B (Cambie Corridor) | Rezoning applications for 4-storey residential as shown in Map B | \$775.00/m ² (\$72.00/ft ²) | As per the Cambie Corridor Public Benefits Strategy |
| | Rezoning applications for 4-storey mixed-use as shown in Map B | \$215.28/m ² (\$20.00/ft ²) | |
| | Rezoning applications for 6-storey residential as shown in Map B | \$1,108.68/m ² (\$103.00/ft ²) | |
| | Rezoning applications for 6-10 storey mixed-use as shown in Map B | \$1,205.56/m ² (\$112.00/ft ²) | |
| Map C (Little Mountain Adjacent Area) | Rezoning applications for 4-6 storey apartments as shown in Map C | \$321.61/m ² (\$29.88/ft ²) | Affordable housing on the Little Mountain site or projects in or around the Riley Park/South Cambie neighbourhood |
| Map D (Norquay Village) | Rezoning applications on sites zoned C-2 along Kingsway that are less than 1 acre as shown in Map D | \$139.83/m ² (\$12.99/ft ²) | As per the Norquay Village Public Benefits Strategy |
| Map E (Marpole) | Rezoning applications for 6-storey residential as shown in Map E | \$871.88/m ² (\$81.00/ft ²) | As per the Marpole Public Benefits Strategy |
| Map F (Grandview-Woodland) | Rezoning applications in Nanaimo St./ E 12 th Ave. shopping nodes as shown in Map F | \$757.19/m ² (\$70.35/ft ²) | As per the Grandview-Woodland Public Benefits Strategy |
| | Rezoning applications in the Midrise Multi-Family areas as shown in Map F | \$252.40/m ² (\$23.45/ft ²) | |
| Map G (Downtown and Rest of Metro Core) | Rezoning applications for 100% non-strata commercial developments in the Downtown area as shown in Map G | \$169.85/m ² (\$15.78/ft ²) | Affordable housing and childcare in the Metro Core (Downtown and Rest of Metro Core) |
| | Rezoning applications for 100% non-strata commercial developments in the Rest of Metro Core area as shown in Map G | \$113.24/m ² (\$10.52/ft ²) | |
| Key Map (City-wide) | Rezoning applications for 100% institutional developments (i.e. hospitals, community care facilities, and post-secondary schools) | \$32.29/m ² (\$3.00/ft ²) | |

(City of Vancouver, 2020)

The second CAC policy area applies towards areas without a target formula and uses a site-specific negotiated approach. With the negotiation approach, the city aims to capture a minimum of 75% of the increase in land value due to the rezoning (City of Vancouver, 2020). The City of Vancouver lists out the following approach for negotiations. Firstly, the developer provides the city with a pro forma outlining sales revenues and development costs. Secondly, the property value under existing zoning is determined and then the property value increase after rezoning is determined by looking at sales revenues. Lastly, the city and developer will negotiate the CAC at a percentage of the increase in value (City of Vancouver, 2011).

The city recently introduced density bonus zoning as an additional tool to fund community amenities. In exchange for additional floor space and density in certain zones, cash contributions are made towards identified community benefits from community plans (City of Vancouver, 2019b). Charged on a flat sq. ft basis for each bonus unit, the financial contributions are determined by a set rate on a zone by zone basis (City of Vancouver, n.d). The city sets a base and upper-density limit, and if a developer would like to achieve the upper-density option they must provide community benefits (The City of Vancouver, 2019b).

Figure 4: Density Bonus Zoning Area



(City of Vancouver, n.d)

Vancouver also has impact fees/development charges, referred to as Development Cost Levies (DCL). Vancouver has a mix of city-wide and area-specific DCL zones to pay for growth-related infrastructure. They help fund parks, childcare facilities, replacement housing and

engineering infrastructure. Neighbourhood community plans undergo community consultation to determine and list location-specific public amenities and provide an outline how development contributions (CAC's, DCL, DB) would play in funding growth-related projects, and integrate these plans into the city's Capital Plan and Budget (City of Vancouver, 2019b). Notably, DCL's collected within each district can only be used within its area boundary, excluding housing DCL's. Through the consultation of the "Public Benefits Strategy", the city identifies the cost and demand for new facilities, the contribution from new developments and how the city will spend the funds (City of Vancouver, 2019c). CAC's differ from DCL's as they are an incremental tool to capture a wider range of benefits than the DCL (City of Vancouver, 2019). DCL charges are based on floor area, use and DCL area (City of Vancouver, 2019c).

3.1 Contributions

The following information was available through the *2018 Annual Reporting on Community Amenity Contributions and Density* which is the most recent reporting on CAC and DB collections. When CAC and DB monies are collected, they are deposited into dedicated reserves which are authorized by the council through the 4-year Capital Plan and annual budget. The budget and plan to deliver projects identified through public benefit strategies of community and area plans (Annual Report, 2019). In 2018 the City approved 61 new projects granting rezoning and additional density, representing 3.4% of all approvals in 2018. From these 61 they collected \$70 million in cash-in-lieu CACs from 2018 and 2017 approved rezoning and \$2 million from Density Bonus Zoning (Annual Report, 2018). In addition, Public Benefits secured are valued at \$706 million including cash-in-lieu and in kind. The benefits secured are allocated by different categories. The contributions include 488 units of social housing, 25 child-care spaces, public plaza, community centre, an ice rink and land for the expansion of a fire hall. The allocation of

the \$706 million is as follows: 29% towards housing, 17% towards heritage, 22% towards parks open space, public art and transportation, 15% towards community facilities and 5% towards child-care (Annual Report, 2018).

3.2 Toronto vs. Vancouver

The Vancouver CAC system differs from the recently repealed Ontario system in various ways. The first notable difference is most of the new development in Vancouver is as-of-right, as seen by the low percentage of applications that require a CAC whereas, in Toronto, most development applications require a rezoning (City of Vancouver, 2019). Instead of having a Councillor approach, they are led by city planners. Due to political removal, planners do not have the political considerations guiding their decision making. There is still some level of negotiation, but the planners use a formula that differs by zone and works with a developer pro forma to determine the appropriate amount uplift to be captured by the benefit (Moore, 2013). Whilst Toronto's Official Plan outlines policies on which benefits may be secured, Vancouver's City Charter sets out four broad goals that the benefits must fit within: affordable housing, safe and inclusive community, environment and sustainability, and creative and growing economy and it further fleshed out in local community plans (Moore, 2016). Moore (2016) states in Vancouver the benefits secured are more uniform and redistributive in nature. The top two types of benefits secured in Vancouver are affordable housing and heritage preservation. Matthinson (2016) found the target rate rezoning characteristic of Vancouver's regime as predictable as they were concurrent with existing plans, predictable, flexible to a degree, and transparent. Other Vancouver-based researchers have provided a critique of the CAC system, citing politicians are "selling density" by approving potentially negative projects in a bid to secure benefits (Cheung,

2018). Additionally, others argue, CAC’s disguise the history downloading of social welfare onto private actors under the guise of “altruism” (Hyde, 2018).

Figure 3: Toronto Section 37 vs Vancouver CAC

| Municipality | Structure | Eligible Items | Highest Secured Item |
|-------------------|--|---|---|
| City of Toronto | Real Estate division determines uplift; Councillor Negotiates Benefit | Official Plan lists guidelines | Visual amenities Street improvements |
| City of Vancouver | Planner negotiates benefit based on a formula and pro forma | City Charter provides 4 policy goals benefit must fit | Affordable Housing Heritage preservation |

4.0 Stakeholder Analysis

The new CBC legislation impacts a variety of stakeholders and their on-going and future projects, from municipalities to builders and developers. In May 2019 multiple groups submitted commentary to the provincial government, outlining support and various issues the groups had with the legislation. As these are the actors that will have to bear the impact and adapt, this report seeks to base its analysis in serving these groups. This section identifies stakeholders and provides summaries of their responses to the proposed CBC legislation and will follow by an analysis identifying common themes and issues, and how they have changed or been addressed from the first prior legislation and regulations to the current proposed regulations.

4.1 Association of Municipalities Ontario (AMO)

The AMO has stated they believe the changes to the DC Act will impact the creation of complete and vibrant communities and have a disproportionate impact on single and lower-tier

municipalities. Citing the fact that the previous DC rates only covered 80% of growth-related costs, they claim the new changes will provide even lower revenues for municipalities to provide growth-related infrastructure and force a reliance on property taxes to meet a shortfall. There is a departure from “growth pays for growth” with the new CBC legislation, and will further municipal financial burden and cash flow with the added amendment of a deferred DC payment schedule for non-residential properties and affordable housing. AMO supports the following principles from submitted comments by the Municipal Finance Officers Association:

- 1) Growth should pay for growth;
- 2) Complete vibrant communities are good for everyone;
- 3) Provincial legislation related to municipal governance should be enabling and permissive; and
- 4) Provincial red tape costs municipalities time and money.

The organization does suggest the new CBC changes may be “reasonable” to fund soft services, but it must address key questions if it is to be successfully implemented. The CBC must first address the merits of grouping two financing processes, secondly whether it is an adequate tool to even fund soft services, and lastly the volatile relationship between land values and financing and service provision. They recommend the formula ensures there is a link between revenues and growth-related costs and allowing municipalities to pass area-specific CBCs. AMO will further understand their level of support once regulations are released, addressing what costs will be eligible, the methodology for the calculation and the caps is complete (“AMO”, 2019).

4.2 City of Toronto

The City of Toronto (COT) is identified as a major stakeholder in the Bill 108 amendments due to their high use of Section 37 and is the largest municipality in Ontario. COT released a report outlining dissent against the proposed amendments from Bill 108, citing a lack of

evidence that the changes will positively impact housing supply and a lack of provision that ensures reduced development costs will actually result in affordability gains for renters and buyers. The largest concerns from COT on the new CBC are the possible negative effects the changes will have on the city's finances with its ability to secure parkland and provide community facilities. Mirroring concerns from AMO, the City claims the changes undermine the "growth pays for growth" municipal mantra and will result in the current population base subsidizing growth through property taxes increases. COT further lists how the change will affect financing for their 10-year capital projects, including

- 12 child-care centres with a cumulative 583 spaces;
- 21 Toronto Public Library expansion and renovation projects;
- 106 new or expanded parks; and,
- 17 community recreation centres, 5 pools, 4 arenas and 200+ playground projects.

They propose recommendations for Bill 108, including thorough stakeholder consultation, enshrining the historical revenue claim in legislation, ensuring compensation if there is a municipal shortfall, changing the CBC name to "community facilities charge by-law" to reflect the necessary infrastructure funded from the by-law, a four year or DCBS expiry date to enact the CBC regulations, indexing of rates used in the formula on a blend of property value and construction cost inflation, the allowance of area-specific CBCs, differing % caps, clarification on parkland dedication and allowance to secure community benefits in addition to parkland, and to stop the repeal of community services from the DCA ("Proposed Bill", 2019).

COT cites potential financial impacts on their capital plan and parkland plan, increased administrative burdens and increases to property taxes. In addition, impacts on equity-seeking

groups include less access to facilities, parks and affordable housing, and a less livable high-density environment (City of Toronto, 2019).

4.3 Ontario Home Builders Association (OHBA)

The OHBA represents the Ontario housing construction industry across Ontario. In response to Bill 108, OHBA released two letters of support and recommendations for aspects of the amendments. The OHBA is supportive of the January 1st 2020 proclamation date for the CBC legislation, as it would give municipalities a year before the January 1st 2021 transition date to establish their own CBC, the annual reporting measures, appraisal system to determine the CBC payment and exclusion of CBCs to apply to a Community Planning Permit area. OHBA recommends a cap on land value be established at the time of an application to ensure certainty. OHBA condemns recent Municipal actions to undermine the provincial government's legislation including rushing to pass new DC by-laws to maximise increases, conducting inclusionary zoning consultations under previous legislation, and COT councillor initiatives to delay approvals after amendments to OPA 405 and OPA 406. OHBA proposes the need for further clarity on whether municipalities cannot collect Section 37 funds after the proposed transition of January 1st, 2021. Additionally, the organization has concerns on the appraisal timeline at the time of building permit, as it is unclear how a possible higher land value from the time of approval to building permit will impact project viability and consumers. Notably, they claim appropriate timing should have no financial impact on expected municipal revenues. Their member municipalities outside of Toronto concerned with Section 37 included as a revenue stream – embedded is a charge from an old system that was flawed into a new system. OHBA submitted recommendations that they claim will achieve greater project viability, greater cost certainty, protection for consumers, and greater certainty to municipalities:

- Land appraisal for calculating CBC be at the time of application is approved to increase predictability to understand land value uplift and avoid uplift from developer or DC funded infrastructure.
- Calculate the CBC maximum to increase certainty and this should not be undertaken at approval stage as it is difficult to predict, and will give municipalities greater certainty as they will know the max at the planning stage they may get – better security to finance and schedule their community benefits projects.
- CBC by-law should have the ability to be appealed – like the DCBS.

4.4 BILD Members

The previous reactions are based on the fall 2019 comment period for the original legislation and regulations. Following the release of the February 2020 regulations, members of the Building Industry and Land Development Association, Goodmans LLP and Altus Group released a presentation outlining an analysis and recommendations for the CBC. The presentation recommends a basic formula for CBC calculation, as currently, one does not exist:

1. Numerator: How much growth and what facilities and services are needed by growth?
2. Denominator: How much development land is there in the municipality, and what is the value of the land?
3. Equals: What % of land value would need to be obtained to fund the growth-related share of facilities?

They suggest if this equation yields a percentage that is equal to, or greater than, the prescribed cap, the cap prevails. If this equation yields a percentage that's less than the prescribed cap, that is the percentage that prevails. Additionally, an analysis was conducted to assess the impact of the changes to the DCA and introduction of CBCs on various municipalities for high-density and

low-density development. The conclusions indicated savings for high-density development in all municipalities, and increased costs for low-density development (Howe & Kelher, 2020).

4.5 Common Themes

Though amongst the stakeholder groups there are wavering levels of support for the CBC legislation, this report's stakeholder analysis identifies common themes between the different stakeholders, in regards to the regulations released before February 28th, and a comparison of any identified changes with the February 28th posted regulations.

4.5.1 Financial Certainty

Prior: All stakeholders expressed concern regarding the financial certainty of their projects. Both groups' anxieties are related to the new appraisal method and the caps and land values aspect of the formula.

Proposed: The same level of financial uncertainty due to maintaining the timing of appraisals and requirement to essentially forecast land value. Municipalities' future capital planning is dependent on forecasting a very tricky thing to forecast due to changing market conditions.

4.5.2 Unclear Implementation

Prior: All stakeholders described concerns over the transition and implementation of the by-law. Both the development and public sector community differ on when the CBC should be implemented, with suggestions on the expiration of current legislation, appeals and timing. The underlying anxiety revolves around building certainty on how to transition into this new system with minimal negative impacts.

Recent: New year deadline to implement a year after CBC regulations are enforced ensures municipalities have a reasonable time to transition.

4.5.3 Mixing Soft Costs & Section 37

Prior: All stakeholders are unsure of the intent to combine the funding of growth-related infrastructure and density bonusing into the CBC.

Proposed: Some items are repealed back into the DCA. Intent still unclear and view the DC and CBC as a double charge.

4.6 Provincial Consultation

The author of this report attended a provincial consultation with the Ministry of Municipal Affairs (MMAH) on March 4th on the February 28th ERO posted CBC regulations for non-municipal stakeholders. Non-municipal stakeholders include development industry advocacy groups, market and non-profit developers, consulting firms, law firms and academics. The purpose of the briefing is to provide an overview of the proposed regulatory matters and conduct a Q & A with the attendees. There were a few items stressed at the start of the consultation. The first issue is that the CBC does not constitute a tax and is a fee based on the relationship between land value and revenue needed by municipalities. The second matter was that the CBC system still is embedded in the “growth pays for growth” mantra. Thirdly, the revised CBC Strategy is a result of consultation with requests from both municipal and non-municipal stakeholders requesting for clarity and guidance regarding the CBC strategy.

The Q & A period revealed that even with the new wave of regulations and acknowledgement of first-round consultation comments, there is still a lot of worry, confusion and disagreement with the new community benefits funding framework for Ontario. The following provides an overview of major themes of the consultation:

4.6.1 Releasing Consultant Analysis

It became apparent the need to see the math and results from the provinces' hired consultant

that is guiding the decision making on the land value percentages and CBC calculation. Without this math, it makes it difficult for stakeholders to conduct their own analysis to forecast impact on their product.

4.6.2 Affordability

There is a general dislike for the new provisions to allow both community infrastructure costs in the DCA and CBC, that the list of eligible services for the CBC is so short that it will effectively become a very expensive tool for parkland dedication. The removal of the 10% discount rate further added to frustrations, citing this move makes DC's more expensive for developers and consider it a double charge. Overall, it was claimed these moves are argued to negatively contribute to housing affordability as the increased cost will be passed onto a new home buyer, mostly in low-density developments and suburban municipalities.

4.6.3 Appealability

Large desire whether the community benefits strategy steps could be made more specific and prescriptive, almost in line with a Development Charge Background Study. The request for prescription was requested because "loose" language opens the legislation to a lot of appeals. Additionally, the language and lack of requirements also make for very confusing appeals as there is no definitive language to structure arguments over.

4.6.4 Formula Flexibility

Whether the CBC charge will have different options for its land value percentages or formula to account for geographic and market differences in municipalities in Ontario. For instance, questions surrounded whether the charge would allow site-specific calculations or would allow for a zone-based approach. Additionally, formula variation rates for non-residential markets, such as commercial and industrial. Overall, there was negative sentiment for having a single (or

total) percentage of 15% without considerations of the differing land values between geographies and differing effects on certain products.

5.0 Provincial Policy Goals Analysis

It is important to understand whether the current iterations of the CBC regulations and legislation are meeting the policy goals championed by the provincial government of predictability, transparency and housing affordability. Early analysis is essential to conduct as this legislation represents a major change in planning and municipal finance in Ontario. Understanding whether the CBC policy development is fragmented, shallow or misleading is important for future and current policymakers to take note of for the betterment of public policy decisions to come and to understand whether early concerns by key stakeholders are being addressed.

5.1 Transparency

Through the literature review, it was identified that there was an acute lack of transparency in how certain municipal revenues were collected and how they were going to be spent, notably Section 37 and parkland dedication monies. The removal of the Councillor as the negotiator addresses many of the concerns surrounding the political co-optation of the Section 37 negotiation process. The introduction of a regimented Strategy and cap does allow developers to have a better sense of what amount they will be contributing to community benefits and where it will be going towards. Additionally, it allows the public access to the decisions that will directly affect their communities. Another feature that increases transparency for the CBC Strategy is its ability to be appealed, which ensures municipalities are taking appropriate measures.

The nature of the CBC is an improvement over the untransparent nature of previous policies. However, the policy development process itself thus far has been far from transparent.

The hiring of a consultant to determine the key aspects of the regulations has not been an open process. At the consultation attended on March 4th, the consultant was not present to walk through the decision making behind the 15% value or simply answer questions. Nor has the province released data to support these decisions. Additionally, it is uncertain the decision making to remove the 10% discount rate, whether it was a mathematical or a political decision to pacify questions on achieving revenue neutrality for municipalities.

Overall: Transparent

5.2 Predictability

The CBC aims to increase predictability by listing the costs eligible for use and by using caps. From the first iteration of the regulations to the current proposal, there is greater predictability for municipalities. The repealing of the DCA from what was first proposed to include libraries, recreation centres amongst other items allows municipalities to have greater certainty that their capital planning projects will be properly funded, no matter the value of the land of a redevelopment proposal.

The intent to increase predictability is complicated by using land values as the basis of the CBC. Land values are volatile across time as the economy goes through cycles, making it an unpredictable mechanism to fund services/benefits or appropriately allocate funds. Additionally, as values are volatile across Ontario, across the GTHA and across a municipality ensuring a varied cap of land values on different areas and types of development is necessary to reflect an appropriate nexus.

The reliance on an appraisal method further complicates the predictability for both municipalities and the development community. Firstly, the date of an appraisal, the day before a building permit is issued, is problematic. It makes it difficult for a developer to understand what

the contribution amount will be due to the development timeline and how to effectively build that cost into decisions on purchasing land. Forecasting future land value is a form of speculation and will be difficult as development trends and markets are always subject to change. This land speculation also makes it difficult for municipalities as they must forecast types of development and their land values. There is confusion over the provision of in-kind benefits and how they may be secured versus paying into a CBC for certain municipal initiatives, like parkland dedication.

Overall: Unpredictable

5.3 Housing Affordability

Though at this time whether the CBC will have a large impact on housing affordability cannot be empirically shown, literature projects this may be a potential outcome. Furthermore, it is important to identify issues at this time of policy development for future analysis. Whether or not at this point the regulations can achieve greater consumer affordability is uncertain in a large part because of the lack of data or analysis publicly provided by the province. Decisions regarding the percentages for land value formula of a municipality is unknown. Whether these decisions result in decreases or increases in housing costs may depend on the nature of the land values of a municipality and the affordability sensitivity of different tenure markets. Even as a developer may be able to forecast what the land value will be at the date of building permit and absorb the costs of the CBC into their pre-development land value it depends on the market value of their product and whether increases or decreases in profit and cost of the product will occur.

Additionally, the rates a municipality will set in their Development Charge Background Study will play a role in whether the development charges and the CBC together exceed previous monies spent and will be passed on to consumers. When taking into consideration “revenue

neutrality” as supposedly promised by the provincial government for municipalities and extremely wanted by municipalities, it is unclear how any decrease in monies paid by a developer to a municipality would permit revenue neutrality. Development cost savings will be passed down to the consumer in the short run as there is less upward pressure on housing prices. The additional cost may influence pre-development land values in the long run as it may be absorbed. If a type of housing development has an additional charge that exceeds market price it may impact development feasibility and reduce supply in the short run.

An important consideration is how the introduction of the CBC relates to and is complementary to other provincial measures to increase housing affordability. In Bill 108, the provincial government introduced new provisions for the implementation of Inclusionary Zoning (IZ). IZ will only be implemented in Major Transit Station Areas and areas with a Development Permit System (DPS) (Planning Act, 1990). With that, it has not been identified by the provincial government if developments subject to the inclusion of IZ in their projects will still be required to contribute to the CBC, or how the IZ units will be valued against the percentage cap. As the CBC and IZ are both forms of land value capture, it would effectively result in a double charge of community benefits that would have equated into greater pressure on the prices of the market-rate units in development and put downward pressure on land values. It is unclear if the consultant took into consideration developments in the pipeline surrounding Major Transit Station Areas, and if their exclusion from the CBC monies would impact historical Section 37 revenue levels collected by certain municipalities.

Overall: Unclear

6.0 Evaluation of Proposed Regulations

This section provides an analysis of the February 28th ERO posted regulations based on major findings and themes in previously examined literature, policy and stakeholder concerns.

6.1 Required Content of a Community Benefits Charge Strategy

The CBC guidelines for a strategy is a welcome attempt at clarification from the initial legislation but falls short in providing meaningful direction to all stakeholders. Firstly, the strategy is unclear in its geographic implementations. Regarding the required “steps” in the strategy, there must be an identified link between the development and service need. How does a redevelopment cause a need for affordable housing? Will a municipality seek to establish displacement rates, types of units not being built for certain populations? Though including affordable housing is a laudable eligible item, the lack of prescription to measure need from redevelopment or definition of excess capacity makes it confusing for some types of items.

6.2 Services Eligible to Be Funded Through Development Charges

The repealing of the DCA to allow libraries, public health, recreation centres, and long-term care homes as eligible items for the DCA is a move on the part of the provincial government that shows they listened to the first round of stakeholder consultation. Many of the early criticisms were regarding tying land values to fund services that are necessary for a complete community and funding is heavily reliant on population growth per capita, which created a high level of uncertainty about what will happen if land values fall short in funding needed services. The removal of the 10% Discount Rate for DC’s is a controversial inclusion. On one hand, it is a boost to municipalities as they save money on capital planning and may better achieve revenue neutrality. However, some development types now have increased costs potentially compared to what they were previously paying. Whether or not the 10% Discount Rate removal was justified is dependent on whether the promise of the Municipal revenue

neutrality will be maintained. If it can be maintained, and now developers are double paying charges that surpass the past benchmark of neutrality, then it is unjustified.

The services that are eligible for funding under the CBC, including shelters, parkland acquisition, public and social housing and other services previously funded under Section 37 are more distributive in nature which addresses previous criticisms of the types of benefits that were usually captured in Section 37 agreements, such as landscaping and beautification.

6.3 Percentage of Land Value for Determining a Maximum Community Benefits Charge

The province established a percentage of land values for single, lower and upper-tier municipalities. It is unknown at this time what evaluations were used to determine that the 15% for a single-tier, or 10% for lower-tier and 5% upper-tier, the charge was equitable and fair for all municipalities.

Using differing percentage caps for different land values may help account for variances in land values. However, it is still a problematic method to use to fund services. The use of land values is problematic as there are differing land values in different areas of a city, or even across municipalities and how that coincides with the price of delivering a service. For instance, if a municipality with a lower land value would like to build more affordable housing through the use of CBC funds, there is a high chance that even if a higher land value municipality gets a similar development proposal, the lower land value municipality will get fewer revenues for the same need and amount of population growth. With that, it depends where development is located (between or within a municipality) and the types of services it will be funding, on whether or not the cap will be varied development to development proposal or areas of a city. Finally, the percentages should be evaluated at annual, or another reasonably defined interval, to ensure it is reflective of an ever-changing real estate market and the costs of providing infrastructure.

6.4 Timeline to Transition to the New Community Benefits Charge Regime

The new timeline of one year after the regulations are proclaimed is a notable improvement over the January 1st, 2021 transition date. However, there needs to be further clarification on the transition regarding projects with agreements prior to the CBC by-law enactment, long-term projects and developments.

6.5 Further Discussion

The previous discussions identified issues and provided an analysis of the regulations based on findings from stakeholder concerns, policy analysis and literature review. As the regulations are fully developed there are still several matters that need to be further teased out by provincial regulators. These matters are important for ensuring the regulations are equitable, effective and efficient for both the municipal and development community stakeholders, and the public that these benefits ultimately fall to. The following items have been identified as matters for further clarification and discussion:

1. Possibility for disproportionate impacts on low-density development

As the regulations currently stand, low-density developments relief measures from the CBC may need to be explored as it greatly exceeds the typical monies paid for services.

2. Increased costs for non-residential development

Types of development that were not subject to Section 37 may have more costs, exemptions or relief measures may need to be explored.

3. Parkland dedication provisions

Clarification on how potential caps on the CBC will be compatible with current rates for parkland dedication, how it may differently impact some development types and a municipality's ability to remain revenue neutral.

4. Valuation of in-kind benefits

There is currently little guidance on how in-kind contributions will be valued. For instance, whether their evaluation will be using raw land values or development-ready land values.

5. It's legality as a potential tax

The timing of the charge at the time of building permit and prescription to land value puts into question whether the CBC is a charge or tax, regardless of the nexus between the CBC and items funded.

6. Transitional Matters

How the CBC may impact long-term parkland and Section 37 agreements, implementation date and consideration of expiring DCBS's.

7.0 Conclusion & Recommendations

Overall, it is apparent the status quo of community benefits funding in Ontario needed to change. The CBC regulation's attempt to bring this change to community benefit funding has been a difficult and iterative process since the policy's introduction. One of the biggest reasons for this confusion after reviewing the literature, stakeholder concerns and other jurisdictional approaches, is the policy development process for the CBC – hiring a consultant after the policy is written to determine how it mathematically could be implemented. With that being said, the current CBC regulations do represent an improvement on predictability, transparency and could possibly reduce housing costs in the long run. However, the CBCs biggest faults lay in the complicated and almost speculative use of land values, lack of prescription in its calculation and CBC strategy, lack of clarity on implementing a varied approach and uncertainty whether municipal revenue will remain neutral and development costs will go down. Due to the extent

and how Section 37 and parkland dedication monies have been used in the City of Toronto, they will have the largest impact and adjustment to this new legislation.

The following section provides recommendations for a successful implementation of the new Community Benefits Charge legislation. As stated in the report objectives, these recommendations reflect the proposed regulations at the time of this report's publication. The recommendations are derived from the common themes, issues and uncertainties derived from the literature, policy and stakeholder analysis'. They provide guidance on how the implementing regulations may achieve greater equity, efficiency and effectiveness in implementation and intent. The recommendations should be read as a complementary whole.

1. Release the math and analysis conducted by the consultant

This report recommends the provincial government released the analysis and calculations conducted by the consultant to determine the CBC structure. This is important to understand whether development costs will decrease, and municipalities will be revenue-neutral. One of the overarching difficulties of understanding the implications of the CBC or whether it will meet the intent of the provincial planning goals is due to the lack of analysis provided by the province. It is unclear why the math behind the CBC's decision making is not released when it may have substantial effects on municipalities and developers on preparing for its implementation. Releasing the mathematical findings would provide better analysis for future iterations of the regulations and policy or how they could be revised to better meet provincial policy objectives.

2. Allow Greater Flexibility in the CBC Implementation

Municipalities and the communities within them are not homogenous, nor are their needs, built form or markets. As seen from the City of Vancouver's approach to CAC,

density bonusing and development charges these three mechanisms can be successfully implemented in a zone approach allowing variations by geographic area. Many of the benefits secured by CACs and density bonusing are like the services eligible for CBC funding, including affordable housing and parkland acquisition. The success is in part due to the CAC's two policy-area approach and focuses on local needs through their identification in both community plans and the capital budget. Vancouver has a similar approach to their DCL's, as some hard services are more cost appropriate to have a location-specific charge or a city-wide charge. The differences in land values from one municipality to one neighbourhood to another is extremely variable. Additionally, it assumes land values will remain constant or increase. The CBCs 15% land value cap approach may be staggered by a municipality for different uses and developments, as the 15% represents a maximum, however, the process of justification for implementing a lower percentage per each development is unclear. Identified from both the literature review and stakeholder analysis, there are multiple benefits and industry interest for a varied or zone-based approach. A zone-based approach achieves greater flexibility in capturing appropriate revenues for specific community needs and would allow better study of an appropriate land value percentage. Additionally, a CBC strategy that reflects a more granular approach to community needs and development locations would improve transparency, predictability and provide a more meaningful reflection of local realities. Thus, the CBC regulations should clarify or explicitly state if the CBC regulations allow municipalities to establish different or area-specific zones that allow the formula to have differing cap rates and percentages. An area-specific approach would still maintain the nexus principle if a CBC Strategy is identified.

How the current iteration will help reduce development costs and maintain municipal revenue streams has resulted in overly complicated tool municipalities to fund services. Looking towards the Vancouver model provides insight into how the CBC can be as effective and efficiently implemented as possible.

This report recommends the following model and flexibility that could be given to municipalities to implement as they develop their CBC by-law:

- a. Identify areas that would benefit from a targeted lower percentage and/or higher percentage; and
- b. Identify areas that would require a more nuanced approach to engage in a negotiation regarding land value percentage captured.

3. Use an sq.ft-based analysis to determine uplift

The stakeholder analysis and the cross-jurisdictional analysis indicated confusion over the appraisal method, notably how to correctly forecast land values four years into the future. Though there is a process to dispute an appraisal claim, this process allows another avenue for appeals that further ties up housing in litigation. The process set forth by the province is transparent, but the use of land values as the basis for funding at the time of building permit brings financial uncertainty to all stakeholders involved.

Modelling over the Vancouver approach of using a developers proforma as the basis of community benefits negotiation allows a simpler approach for an appropriate land value capture and mitigates a litigation process. Municipal staff working with developers to determine appropriate capture and uplift based on as-of-right sq.ft and then rezoning sq.ft increases is a tried and tested approach to effective and predictable financing of community benefits. Additionally, allowing flexibility for a more negotiated approach

and determined percentage of the value of increased square footage for identified areas allows for flexibility for developers and municipalities. The per sq.ft and negotiation approach allows for the reduced potential of appeals. Additionally, it would work harmoniously with the CBC Strategy to ensure predictability and the maintenance of the nexus principle as community needs are identified due to population growth. The nexus principal would be more site-specific in nature. The CBC Strategy that sets out charge by additional sq.ft charges can be built early on into a development pro forma. As such, impacts on high-density and low-density projects should be evaluated to ensure the approach is tailored to the differing costs and nature of development in different municipalities across Ontario. Following the previous recommendation, implementing an increase in sq.ft based approach may be structured accordingly by a municipality as:

- a. Identify areas that would benefit from a targeted per sq.ft charge; and
- b. Identify areas that would require a more nuanced approach to engage in a negotiation regarding a percentage of windfall profits.

4. The CBC Strategy should be more prescriptive

As identified in the stakeholder consultation how the CBC by-law will be calculated and appealed is not clear. If a zone-based approach or per sq.ft approach is not incorporated into the legislation, the calculated should be clearly laid out so both developers and municipalities can prepare and integrate it into their project decision making. The CBC strategy should be modelled after the DCBS to allow for stricter language and requirements that allows municipalities to have a uniform implementation and provide clarity while lessening the potential for appeals. A prescriptive structure would maximize the predictability of the CBC strategy and give greater clarity on issues

of development nexus. This report recommends the adoption of BILD's suggested formula into the CBC Strategy:

1. Numerator: How much growth and what facilities and services are needed by growth?
2. Denominator: How much development land is there in the municipality, and what is the value of the land?
3. What % of land value would be needed to fund the growth-related share of facilities?

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