

The Corporation of the City of Kawartha Lakes

Committee of the Whole Report

Report Number CA2020-001

Meeting Date: September 1, 2020

Title: Update on Development Charges and Community Benefits Charges

Description: This report apprises Council of the 2019-2020 amendments to the Development Charges Act and Planning Act as they relate to development charges and community benefits charges.

Ward Number: All Wards

Author and Title: Adam Found, Manager of Corporate Assets

Recommendation(s):

That Report CA2020-001, **Update on Development Charges and Community Benefits Charges**, be received;

That 2020 special project 921204601 (Community Benefits Charges Strategy) be renamed "Development Charges Background Study", have its budget reset to \$70,000, financed 90% by the Administration Studies Account of the Development Charges Reserve and 10% by the Contingency Reserve, and have its timeframe extended to June 30, 2022; and

That this recommendation be brought forward to Council for consideration at the next Regular Council Meeting.

**Department
Head:**

Financial/Legal/HR/Other: _____

**Chief Administrative
Officer:**

Background:

The legislative environment in which development charges (DCs) operate has changed significantly over the previous 15 months due to the following:

1. More Homes, More Choice Act, 2019: Creates a community benefits charges (CBC) authority under the Planning Act, makes several municipal services DC-ineligible under the Development Charges Act, and introduces various restrictions on the timing of the determination and collection of DCs.
2. Plan to Build Ontario Together Act, 2019: Reverses aspects of the More Homes, More Choice Act as it relates to DCs and further defines the CBC authority.
3. Coronavirus (COVID-19) Support and Protection Act, 2020: Provides for automatic extensions to DC by-laws expiring during the COVID-19 emergency declaration and the 6-month period following (this has no impact on the City).
4. COVID-19 Economic Recovery Act, 2020: Restores DC-eligibility to most municipal services, reverses other aspects of the More Homes, More Choice Act as it relates to DCs, restructures transformation of Section 37 of the Planning Act into a CBC authority, severely limits the types of development to which the CBC authority applies, clarifies the relationship between DCs and CBCs, and clarifies transitional matters.
5. Ontario Regulation 454/19, A Regulation to Amend Ontario Regulation 82/98 Under the Development Charges Act (2019): Provides for revised and expanded DC exemptions respecting certain types and quantities of residential development and other amendments made necessary by recent amendments to the Development Charges Act.

This report appraises Council of the principle implications of the foregoing measures, and makes recommendations regarding 2020 special project 921204601 (Community Benefits Charges Strategy) accordingly.

Rationale:

Assented to on June 6, 2019, the More Homes, More Choice Act dramatically changed the legislative landscape for DCs. The thrust of the act was to substitute a community benefits charges (CBC) authority for DCs respecting often-called “soft services” (e.g. parks and recreation, libraries, social housing etc.). The principle difference between DCs and CBCs is that DCs are levied on the quantity of development, which is meaningful measure of additional demands on municipal services, whereas CBCs are levied on development land value.

The shift of soft services from a DC to a CBC regime was generally unwelcomed by the municipal sector, and was intensely opposed by the Municipal Finance Officers Association of Ontario (MFOA), of which the City is a member. Generally speaking, the shift was understood to be an unnecessary complication to the legislative framework in which municipalities recover growth-related capital costs. By introducing various sources of uncertainty (e.g. land appraisal challenges, unclear applicability to multiuse buildings etc.) into the CBC process, it also appeared to conflict with the provincial government's goal, as stated in its publication *More Homes, More Choice: Ontario's Housing Supply Action Plan*, of enhancing predictability in development application and approval processes.

As a result of a vigorous oppositional campaign by MFOA, public consultations and evidently weak support for the CBC regime in the development industry, the provincial government has largely reversed course on the originally proposed DC-CBC shift through two measures. First, the Plan to Build Ontario Together Act removed commercial and industrial development from the types of development entitled to pay DCs over the 6-year period following building occupancy. Second, the COVID-19 Economic Recovery Act restored DC-eligibility for most of the soft services previously shifted from the DC regime to the CBC regime.

As of the time of writing, the principle relevant changes to the DC regime that have taken effect, or will come into force upon proclamation by the Lieutenant Governor, are as follows:

1. Eligibility of Municipal Services: Replacement of a prescribed set of ineligible services by a prescribed set of eligible services such that some services (e.g. airport, parking etc.) become DC-ineligible and others (e.g. landfills, museums etc.) remain DC-ineligible.
2. Eligibility of Capital Costs: Removal of the arbitrary limitation of 10 years on capital forecast horizons and the arbitrary 10% deduction of otherwise DC-eligible costs respecting services for which these provisions formerly applied.
3. Timing of Determination of DCs: Respecting development for which an application for site plan control or zoning by-law amendment is filed, DCs are to be determined based on DC rates in effect at the time of application, subject to a limit of 2 years after the approval of the application (if approval is granted).
4. Timing of Collection of DCs: Developers of rental housing, non-profit housing or one of several particular types of institutional use are entitled to pay DCs over several years after building occupancy, amounting to an

extended deferral of DCs. For non-profit housing, the payment period is 21 years, whereas for the other noted types of development it is 6 years.

5. Exemptions Respecting Residential Buildings: Refinement of exemptions respecting new dwelling units created in existing residential buildings, and addition of exemptions respecting dwelling units in or ancillary to new residential buildings, subject to various restrictions.

Among the City's current services supported by DCs, only those of airport and parking will become DC-ineligible.¹ These two services represent only about 0.5% of the City's DC revenue.

Turning to the newly created CBC regime, the More Homes, More Choice Act designed it to generally encompass all municipal services and types of development. This scope of applicability has been markedly reduced by the COVID-19 Economic Recovery Act. Specifically, the following types of development are exempt from CBCs:

1. Development of a proposed building or structure with fewer than five storeys at or above ground.
2. Development of a proposed building or structure with fewer than 10 residential units.
3. Redevelopment of an existing building or structure that will have fewer than five storeys at or above ground after the redevelopment.
4. Redevelopment that proposes to add fewer than 10 residential units to an existing building or structure.
5. Any other such types of development or redevelopment prescribed by regulation.

In other words, the CBC authority has been restructured into one that is generally only useful to municipalities experiencing considerable amounts of dense development. Given the narrowed applicability of CBCs, and that no development in the City's recent history has been at, much less exceeded, five storeys, the CBC authority has been rendered unusable for the City's purposes.

This outcome is reinforced by the following facts: (i) that the City can continue with parkland dedication as provided for under Section 51.1 of the Planning Act but which may, at the City's option, be transferred to the CBC authority; (ii) that the City does not have a policy of making developers pay for increased density as permitted by Section 37 of the Planning Act and as continued under the CBC

¹ In accordance with the COVID-19 Economic Recovery Act, airport services remain DC-eligible only in the Regional Municipality of Waterloo.

authority; and (iii) that airport and parking, representing just 0.5% of the City's DC revenue, are the only services to be removed from the City's DC by-law and potentially placed under the CBC authority.

Recognizing the foregoing and that the City's DC by-law must be updated by July 21, 2022 to comply with the DC Act, staff is recommending that 2020 special project 921204601 (Community Benefits Charges Strategy) be transformed into a DC study, meaning the City would not pursue a CBC regime at this time. As the City's 2019 DC Task Force remains in effect, it will be leveraged to guide the 2021 DC by-law update and facilitate public and stakeholder consultations.

Other Alternatives Considered:

The alternative to the recommendations of this report is for Council to do the following:

1. Maintain special project 921204601, inclusive of its funding from the Municipal Modernization Fund grant, but increase its budget from \$30,000 to \$50,000 given the increased requirements arising from legislation enacted after the 2020 budget was approved; and
2. Authorize the creation of a new 2020 special project entitled "Development Charges Background Study" with the same budget and funding as proposed in this report's recommendations.

Staff does not recommend this course because the CBC authority has been rendered useless to the City, meaning a CBC strategy would be a waste, and because a DC study is required regardless in order to bring the City's DC by-law into compliance with the DC Act by July 21, 2022.

Financial/Operation Impacts:

Under the recommended approach, the budget for special project 921204601 would increase from \$30,000 to \$70,000, where funding of the DC study would be 90% DC-recoverable and 10% tax levy-supported via the Contingency Reserve. It would, moreover, release \$30,000 of funding from the Municipal Modernization Fund grant to eventually be utilized to offset ratepayer support of another project eligible for the grant.

Relationship of Recommendation(s) To The 2016-2019 Strategic Plan:

The recommendations of this report relate to the following strategic goals and enablers identified in the Corporate Strategic Plan:

1. Strategic Goals: (i) A Vibrant and Growing Economy; (ii) An Exceptional Quality of Life.
2. Strategic Enablers: (i) Responsible Fiscal Resource Management; (ii) Efficient Infrastructure and Asset Management.

Consultations:

Municipal Finance Officers Association of Ontario
Watson & Associates Economists Ltd.
Chief Administrative Officer

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