



IBI GROUP
7th Floor – 55 St. Clair Avenue West
Toronto ON M4V 2Y7 Canada
tel 416 596 1930 fax 416 596 0644
ibigroup.com

April 20, 2020

Mr. John Ballantine
Ministry of Municipal Affairs & Housing
Municipal Finance Policy Branch
College Park
777 Bay Street, 13th floor
Toronto, ON
M7A 2J8

Sent via email: john.ballantine@ontario.ca

Dear Mr. Ballantine:

Re: IBI Group Submission on Proposed Regulation under the *More Homes, More Choice Act, 2019 (Bill 108)* - ERO 019-1406 – Proposed Regulatory Matters Pertaining to Community Benefits Authority under the Planning Act, the Development Charges Act, and the Building Code Act

Representatives of IBI Group have been actively participating in the Community Benefits Charge (CBC) dialogue which has been occurring over the last year. Our participation in the ongoing consultation has been driven by our long history and interest in municipal infrastructure funding on behalf of mainly private sector development clients as well as our professional interest in planning and development. The provision of all levels of infrastructure are essential to our communities.

While our interest originally was focused on ensuring we were keeping apprised of CBC progress, more recently we have carried out analyses on behalf of a broad cross-section of clients who are concerned about the potential impact of the CBC. These analyses have informed our thinking as we considered our submissions to the Ministry of Municipal Affairs and Housing on this matter.

Initial analysis by IBI Group demonstrates that the charges would fluctuate substantially between municipalities and would often exceed the charges imposed by the current DC Regime. We believe that this additional cost will negatively impact housing affordability and housing supply - two key tenets of Bill 108.

This letter outlines some of our specific concerns arising from our review of the material provided on the ERO and the various analyses we have undertaken. We have identified concerns, raised questions and provide some recommendations.

Methodology / Calculation of the CBC

More guidance is required in terms of the calculation of the CBC, the process and the accountability. The CBC regulation must include a more detailed methodology to assist or guide municipalities in the determination of the CBC strategy and quantum. The current information provided by the Province will result in highly varied impacts across a broad geography. The uncertainty arising from this will result in increased risk and uncertainty for the development industry and will delay decisions to proceed with projects.

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1. The CBC Authority (legislation) should, similar to the Development Charges Act (DCA) and associated regulations, provide the methodology to determine the Community Benefits Strategy and the calculation of the CBC.
2. The calculation of the CBC rate and much of the detail is unclear.
 - What is the intended timeframe/life of a CBC by-law? This must be known in order to determine service needs and the identification of lands that will be developed.
 - The need for specific services (undefined – more on that below) is to be identified and the capital costs associated with those services estimated. What is the basis of the determination of need? Is it based on a level of service? What is the basis of the capital costs for the services? In the DC environment we routinely see significant variations for capital cost of facilities, and it is typically the highest per unit cost that is used as being reflective of 'replacement cost'.
 - How will a municipality determine/identify lands that will be developed within a defined period? In the DCA, the anticipated amount, type and location of development for which development charges can be imposed, must be estimates – this is rarely if ever done with any degree of specificity, thus the lands to be identified in a CBC will similarly lack specificity. How can one attribute land value across a broad geography such that it is fair and reasonable?
 - How will the rate be imposed? It is a city-wide rate, but will it be applied to GFA, units by type, areas?
3. How will the initial land value be estimated? As land values are generally going up, how will the future land value (at building permit) be estimated? How will this be done for communities with limited land transactions?
4. How long will the by-law be in effect? When will it need to be reviewed/renewed? A review of the by-law should be coordinated with a DC by-law review to ensure that programs which are inter-related (i.e., park acquisition and park development) are coordinated. The current information provided by the Province provides no guidance in this regard.
5. The CBC Authority must include the need for municipal financial reporting to ensure accountability. Despite the requirements in the DCA and the associated regulation for treasurer statements, it is impossible to track the DC funding of a project. The CBC Authority should provision for the financial reporting of the use of CBC funds and the funding of CBC projects. This will provide some measure of assurance that the intent of the CBC, to provide community benefits, is being delivered.
6. Additional guidance must be provided to better understand the obligations of the municipality to spend monies collected. Current information indicates a municipality must spend/allocate 60% of funds at the beginning of each year. What if a municipality does not? What if the municipality does not spend the funds in the account?
7. Does the CBC framework contemplate reserve funds? For example, what happens if a municipality collects too much or too little?

Eligible Services / Benefit to Existing / Excess Capacity

More clarity is required in defining eligible services and some of the calculations.

8. A definitive list of eligible services must be provided. Currently there is no clarity on what can be included. Various reference has been made to other eligible services but a definitive list has not been provided and thus broad and varied interpretations will result in unfair and uneven CBC rates.

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9. Given the premise that services included in a CBC (or a DC) are required because of increased needs for services arising from development of the area to which the by-law applies, the following services should not be included in the CBC (or the DC): affordable housing, social housing, long term care, public realm/civic improvements.
10. Reference is made in the regulatory framework to include 'social services' in a CBC. What is meant by this category of service?
11. A definition of parkland should be provided such that it aligns with parkland dedication. The CBC information provided to date indicates that a municipality must calculate the current amount of parkland per person provided in a municipality. Is this 'level of service' intended to include open space? Trails? NHS? We have seen municipalities interpret the meaning of such language to their advantage through the DC regime. The potential outcome is that the level of service is vastly overstated and the financial burden on new residential development is substantially increased.
12. Greater guidance should be provided around the terminology and calculations associated with 'excess capacity' and 'benefit to existing'. These calculations require some measurable foundation and cannot simply be an estimate based on unsubstantiated information.
13. Reinstate the 10% reduction to soft services included in development charges. The proposed regulation moves a number of services initially proposed in the CBC back to development charges with 100% cost recovery. The removal of the 10% deduction will result in an increase that will be passed on to the price of new homes thus increasing the price of housing. Further, the underpinnings of the 10% deduction relate to ensuring municipalities had some 'skin in the game' so that they would not 'gold plate' DC eligible projects, which had routinely occurred prior to the DC legislation coming into effect.

Timing of Land Value Estimation

The timing of estimating land value at building permit is far too late in the process.

14. The proposed appraisal / land valuation date for low-rise housing at the building permit stage is flawed and must be amended. As currently proposed the appraisal and valuation would occur when the land value is the highest after the development proponent has built and paid for significant servicing and amenity infrastructure. In essence, the CBC as proposed would tax the capital invested by the developer.
15. Furthermore, as currently proposed the appraisal and valuation would occur AFTER the homes have already been sold, thus there is no certainty or predictability for either businesses or consumers potentially resulting in significant adjustments on closing for purchasers over and above what they paid for the home. The CBC payment should be calculated as the value on the day prior to approval of a development application (site plan control, zoning bylaw amendment, and consent to sever applications or draft plan of subdivision application where there is no site plan application). Putting the CBC so late in the process undermines the goals of Bill 108 – to provide more housing, quicker and more affordably. If the land value appraisal is appealed, this could cause significant delays to the development process.
16. Estimating the amount of the charge so late in the process creates uncertainty, risk and a lack of predictability – unknown what the valuation will be and therefore the charge – how will this impact the feasibility of the project? How will this potentially unknown cost impact homebuyers? How does the developer build levies into the pro forma and determine the pre-build rate?

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Transitional Considerations

As with any new authority, provision for transition is important to ensure seamless continuance of existing projects and developments as well as being fair and reasonable.

17. What happens in larger existing master plans which are phased and potentially have already dedicated parklands? Are those contributions under the old regulatory system considered under the CBC regime for the undeveloped blocks? Our suggestion is to grandfather these circumstances.
18. What happens to existing section 37 agreements/increased density? Those happen more upstream in the development process, and by the time a development gets to building permit, those contributions may have already been given. Our suggestion is to grandfather these agreements.
19. How can a CBC By-law be appealed? What are the grounds for an appeal? Can area specific CBCs be appealed?
20. What governing body would handle the dispute over assessment values? Will there be timelines to settle disputes to ensure that the process continues to move forward?

Residential vs Non-residential Uses

The development economics around residential and non-residential uses is vastly different and warrants review and consideration in the context of the determination and application of a CBC.

21. In current parkland dedication provisions, there are different caps based on whether the site is residential or non-residential. We recommend the CBC factor in different caps based on use.
22. When undertaking the forecast for services, how will charges be allocated to residential and non-residential development?
23. In a mixed use or non-residential building, how is land value determined? Do you split out residential and non-residential components? Non-residential land value is usually based on the income approach where the potential revenue generation is used to determine a net present value (cap rate).

General Questions/Comments:

24. Are municipalities restricted from permitting additional density under the CBC regime? Under the current regime developers would pay s.37 contribution in exchange for more height and density, but know what are they getting in exchange? Official plan and zoning policies will need to be updated regularly to reflect growth potential within municipalities. Our experience is that municipalities have not updated their Official Plans and Zoning By-laws to align with Provincial policies around MTSA's or growth centres.
25. Low density/ground related vs high density development – the charge impacts both very differently. Given the analysis we have undertaken to date, it is our suggestion that a differentiated approach should be applied to low/medium density versus high density.
26. What is the relation between land value and service levels? Do municipalities that have lower land values subsequently have less of an ability to collect to fund services that they need?

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Recommendations:

We have made suggestions/comments throughout our submission. Our key recommendations

- Establish the land value more upstream in the development process to create greater certainty for developers, municipalities and homebuyers. Consider having standardized land value information reported by municipality to give developers an idea of CBC caps expected.
- Create clear requirements for the CBC Strategy, including how need is established, which services are to be included, and how the land value is established. A planning horizon should be identified in order to provide consistency for long range planning and align with other planning timelines, like the MCR and DC Act.

Other

Beyond the specifics of the CBC, we would like to comment on the consultation process to date. We have two specific comments in this regard:

1. Early in the process, as information was being shared at consultation sessions, it was difficult to provide meaningful commentary as the details of the presentation were provided at the meetings. While some individuals are 'quick on their feet' and can 'think on the fly', it is difficult to provide meaningful and articulate feedback when you have seen a plethora of slides each for only a few seconds or minutes on very complex matters and while explanations are being provided.
2. The last round of consultation was a misuse of our time and energy. The material had been provided on the ERO for review. We arrived at the meeting, had a presentation that reflected the ERO, almost verbatim. This was followed by Ministry staff fielding questions from the attendees which were effectively not answered. The lack of dialogue in this consultation was inappropriate.

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We appreciate having had the opportunity to participate in the consultation process as well as the opportunity to submit our comments, questions and recommendations. We look forward to the finalization of the CBC Authority and moving ahead so that collectively we can improve on enhancing both housing supply and housing affordability.

Yours truly,

IBI Group



Name: Audrey Jacob MCIP RPP PLE
 Title: Deputy Regional Director, Canada East
 Email: ajacob@ibigroup.com



Name: Robyn Brown
 Title: Associate Director, Practice Lead
 Email: robyn.brown@ibigroup.com