The County of Peterborough
County Council

To: Warden and Members of Council
From: Bryan Weir, Director of Planning
Date: August 7, 2019

Subject: [2019-015] Proposed Regulations Relating to Community Benefits Charge under The Planning Act

Recommendation: That Council receive Staff Report 2019-015, entitled “Proposed Regulations Relating to Community Benefits Charge under The Planning Act”;

That Council direct Staff to provide a copy of the Report to the Province as its comments on the Proposed Regulations to Bill 108;

And that a copy be provided to M.P.P.’s Scott, Smith and Piccini.

Overview

This report provides a summary for County Council of the proposed Regulation to implement the part of Bill 108 pertaining to the Community Benefits Charge and to provide comments on the Regulations for the Province’s consideration.

Background

On June 6, 2019, Bill 108, the More Homes, More Choice Act, 2019 received Royal Assent. Some amendments to the various Acts affected by the Bill came into force on the day of Royal Assent, however many of the individual Schedules do not come into force until proclamation is issued by the Lieutenant Governor.

Additionally, on June 21, 2019, the Provincial Government posted proposed Regulations to the Environmental Registry including those associated with changes to The Planning Act and Development Charges Act as they relate to a new authority referred to as a Community Benefits Charge (CBC). Comments are being received on the proposed CBC Regulation until August 21, 2019.

Under Bill 108, a number of formerly eligible services that could be included in a municipality’s Development Charges (DC) By-law were excluded. These were considered by the government to be “soft services” and included, but not limited to, such
items as libraries, park amenities, administration, social services, recreation facilities and daycare facilities. Under Bill 108, proposed new regulations specifically pertaining to the Community Benefits Charge will provide municipalities with the ability to charge for these “soft services” in order to fund a range of community projects that would also benefit new development. A CBC strategy must first be drafted in order to take advantage of this new funding mechanism. DC’s will still be able to be utilized to fund “hard services” related to growth (such as roads, bridges, EMS, transit, waste diversion).

The following is an overview of CBC as issued by the Province:

- Will enable municipalities to fund a full range of capital infrastructure for community benefit services needed for new development (excluding long-term care homes, retirement homes, universities and colleges, memorial homes, clubhouses or athletic grounds, hospices and non-profit housing)
- Would apply to new developments or redevelopments only
- Would not be able to exceed the amount determined by formula
- The formula would involve applying a specific percentage (to be prescribed by Regulation) of the value of the land
- Aim is that municipalities would not be disadvantaged in funding community benefits required because of the development of lower-valued land
- Key objective in developing the formula is to enable municipalities to maintain historical revenues from density bonusing, parkland dedication and development charges.

The proposed Regulations will also set the time period for when a DC “freeze” would be in effect for a particular development. Such freeze is proposed to be 2 years. Two of the options relate to using the approval date for a Site Plan Application or Zoning By-law Amendment Application as the date for the DC. Instead of applying the DC at the Building Permit stage, the DC would actually be set much earlier in the process (i.e. Site Plan Control or Zoning Amendment approval date) but not payable until the building permit is issued (proposed not to exceed 2 years). Interest may be applied during the “freeze” period and will be determined by the municipality. No limits have been placed on the rate of interest.

As mentioned above, a CBC will be based upon a formula, however, a proposed formula has not yet been provided. It is anticipated that feedback regarding formula components and considerations will assist in its initial preparation. A proposed formula is then expected to be released for comment later this fall. The County should monitor the progress of the Regulations and be prepared to respond to subsequent opportunities for consultation.

The Province has decided that the amount of Community Benefits Charge revenue collected by a municipality will depend on the value of the development site and to be based on a prescribed percentage of the value of land to be developed. This factors into the formula being developed by the Province. This is a divergence from the present
where DC’s are collected based on the number of homes/units built or area of non-residential building space constructed.

There is a mechanism for land value review if the owner of the development site believes that the Community Benefits Charge exceeds what is permitted by legislation. In this case, the developer may provide the municipality with an up-to-date appraisal of the site. If the municipality believes the owner’s appraisal is inaccurate, it can provide its own appraisal. If the appraisals differ by more than 5% a third appraisal is prepared. Timelines are proposed for this process as follows:

- The developer has 30 days to produce an appraisal to the municipality in the case where the owner disagrees with the amount of the Community Benefits Charge.
- The municipality then has 45 days to provide the owner with an independent appraisal if the municipality does not agree with the owner’s appraisal.
- If there is a difference of more than 5% between the 2 appraisals, the developer may choose another appraiser from a pre-determined list of appraisers. The new appraisal must be provided within 60 days.

The proposed Regulation has a Transition provision which would prescribe that municipalities must pass a By-law by January 1, 2021 in order to collect community benefits and to exclude ineligible “soft services” from its DC By-law. A CBC Strategy is a pre-requisite.

Analysis:

The Community Benefits Charge approach is certainly a dramatic departure from the current structure for funding growth. Because this is a new and novel approach, it is difficult to provide comment regarding how a Provincial CBC formula should be determined. Factors and inputs into such a formula could vary widely and may include such considerations/questions as the following:

- Will the actual building footprint area as opposed to the site area be factored into the formula?
- Does possible gross floor area or potential density of development become a factor?
- Are open space lands on a development site considered differently than built land area?
- Are parking areas considered differently than open space and built land on a development site?
- How will the redevelopment of existing buildings (having a greater valuation than greenfield lands) be considered?
- What time frame will be permitted for determining community needs (i.e. 10 years, 20 years, >20 years)?

The approach of applying the formula to the value of land will create challenges for municipalities. It is believed that the amount of revenue a municipality can expect for soft
service costs will become less predictable given that land values will differ from site to site and fluctuate with market conditions. Hopefully, the prescribed percentage in the formula can vary to accommodate differences in land values within individual municipalities and throughout the Province. Areas of the Province with higher land values will be able to receive relatively larger amounts of revenue than other areas of the Province. This could result in an inequity of soft service facilities on a geographic basis. It is recommended that the Province take this potentially imbalanced situation into account when developing its formula.

With respect to the length of time a “freeze” may be allowed before a DC is allowed to be re-applied, it is believed that this period should be not longer than 1 year as opposed to 2 years. Developments that have received Planning Act approvals should be nearing their planning stage and ready to be launched. A 2-year freeze could create a situation where indexed DC, would be that much more removed from actual costs of providing community services and create a shortfall for municipalities.

A CBC can be challenged by a developer if it is believed that the CBC is excessive. As mentioned above, a system of appraisal submission, review and comparison can be adversarial and prolong the process. In addition, it creates an element of revenue/cost uncertainty. While cumbersome, having a set time frame for the exchange and review of appraisals will add some certainty to the process.

It is not mandatory that a municipality develop and apply a CBC. If it does not institute such an authority, it still has the power to ask for parkland dedications or payment in lieu. With the proposed Transition requirement imposing that DC By-laws be amended by 2021, and that a CBC By-law be passed for those municipalities that want such a power, this timeframe will be challenging. It is believed that the Transition Regulation should provide a date of January 1, 2022 in order to allow adequate time for all that is necessary to have a By-law in place (RFP process, availability of consultants, strategy development, public consultation, etc.).

Financial Impact

The County is actually in a relatively good position with its DC’s since the vast majority of the DC’s relate to “hard services”. Only 10.12% of the County’s total DC relates to “soft services”. While this amounts to approximately $810 per unit using a full Residential Charge and significant on a cumulative basis, its impact is not nearly as great as for some of the County’s local municipalities whose DC’s are comprised of upwards of 70% for “soft services”. Potentially, if the County decides to implement a CBC in the future, the lost DC revenue could be recouped.

Anticipated Impacts on Local and/or First Nations Communities

The impact to local municipalities will vary depending upon the type and level of services that are provided and/or included in their Development Charges. However, despite what
the eventual Transition date will be, municipalities will have to spend funds to acquire the services of a qualified consultant to undertake a review of its DC and CBC situations.

**Link to County of Peterborough Strategic Plan Priorities**

- Financial Sustainability and Fiscal Responsibility

**In consultation with:**

1. CAO Troy Speck

**Communication Completed/required:**

Send Staff Report to the Province with a copy to the County's 3 MPPs.

**Attachments**

"None"

Respectfully Submitted,

Original Signed by

Bryan Weir
Director of Planning

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