Davies Howe

LAND DEVELOPMENT ADVOCACY & LITIGATION

Development Charge Changes and the New Community Benefits Charge Regime: What does it all Mean?

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Introduction

To understand the cumulative impact of recent legislative changes to the *Development Charges Act,* S.O. 1997, c. 27 (the "***DCA***"), including the creation of a new community benefits charge ("**CBC**") regime, a review of cascading law reform initiatives over the last two years is key. Over the last two years, changes to the *DCA* and the *Planning Act,* R.S.O. 1990, c. P. 13 (the "***Planning Act***"), have altered the way development charges ("**DCs**") are calculated, created a new category for calculating community benefits or, in the case of parkland, merely tinkered with the prior funding regime.

Where it Started: Bill 108

On May 2, 2019, the provincial government introduced the *More Homes, More Choices Act, 2019* ("**Bill 108**").[1] Bill 108 was part of the province's "Housing Supply Action Plan" intended to address housing affordability through legislative changes to Ontario's land use planning system. Among other things, Bill 108 proposed broad changes to parkland dedication, DCs and contributions under section 37 of the *Planning Act* ("**Section 37 Contributions**").

Had it been enacted as originally proposed, Bill 108 would have replaced the financial structure for determining parkland contribution obligations, Section 37 Contributions and soft services costs by combining them into a single CBC. Under Bill 108, the total applicable CBC would have been capped based on a proportionate percentage of land value calculated on the day before the day the first building permit is issued, though the rate was not made public during the Bill 108 legislative process. The prospect of an amalgamated and value capped CBC was a provocative concept for both the public and private sectors.

While some aspects of Bill 108 were brought into force on January 1, 2020, the province determined that further public consultation was required on the concept of a CBC replacing parkland, soft servicing and Section 37 Contributions. Ultimately, a CBC in the form contemplated by Bill 108 was not brought into force.

Where it Ended: Bill 197

On July 8, 2020, the *COVID-19 Economic Recovery Act, 2020* ("**Bill 197**") was introduced.[2] Bill 197 was based on feedback from the further consultations that took place following the partial proclamation of Bill 108.[3] In the end, Bill 197 scaled back the comprehensive nature of the CBC proposed under Bill 108.

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[1] Bill 108, *More Homes, More Choices Act, 2019,* Ontario, 2019 (assented to 6 June 2019) S.O. c. 9.
[2] Bill 197*, COVID-19 Economic Recovery Act 2020,* Ontario, 2020, (assented to 21 July 2020) S.O. c. 18.
[3] Environmental Registry of Ontario, "Proposed Regulatory Matters Pertaining to Community Benefits Authority under the Planning Act, the Development Charges Act, and the Building Code Act" (September 18, 2020), online: <ero.ontario.ca>.

Bill 197 narrowed the scope of CBCs so that it would only replace Section 37 Contributions and not parkland or soft service charges.[4] Parkland contribution obligations continue to be governed by the *Planning Act* with the pre-Bill 108 regime largely restored.

Changes Made Along the Way

Between the tabling of Bill 108 and the enactment of Bill 197 and subsequent regulation, as alluded to above, key changes were made to parkland contribution, DCs and CBCs. These changes are discussed in greater detail below.

Parkland Dedication

Currently, municipalities can require the conveyance of parkland at basic rates and alternative rates.[5] They can also require the payment of cash-in-lieu of parkland at the alternative rate. While Bill 108 proposed to replace this system by having parkland acquisition funded through CBCs, Bill 197 left these provisions intact.

Bill 197 did introduce a right of appeal for *new* parkland dedication by-laws that provide for the use of alternative parkland dedication or cash-in-lieu of parkland dedication rates. As might be expected, the appeal is to the Local Planning Appeal Tribunal (the "**Tribunal**"). On appeal, the Tribunal may order an amendment to the parkland by-law, including to the alternative dedication and cash-in-lieu rate provisions.[6]

In terms of transition, existing parkland dedication by-laws that establish alternative or cash-in-lieu of parkland dedication rates cannot be appealed to the Tribunal; however, these by-laws will expire on September 18, 2022, unless repealed earlier.[7]

Development Charges

Moving from parkland to DC considerations, one major change ushered in by Bill 108 on January 1, 2020 was the introduction of the ability for certain types of development to pay DCs in annual installments. Under the annual installment plan, the first payment is due on the earlier of the issuance of an occupancy permit or occupancy of the building.[8] The annual installment option is available to rental housing, institutional and non-profit development. It is important to note that interest can be charged on the balance owed over the term of the installment plan, although this is not compulsory.[9]

Another change to the DC system brought in by Bill 108 was the introduction of a "freeze" on DCs. Under section 26.2, DCs are calculated as on the day an application is made for either site plan approval or a zoning by-law amendment.

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[4] See Municipal Finance Officers' Association of Ontario, "MFOA's Hub for Bill 108, *More Homes, More Choice Act, 2019*", online: <mfoa.on.ca> for a detailed timeline of changes.
[5] *Planning Act,* ss 42(1), 42(3). Base rate is 2% for industrial and commercial and 5% for residential; the alternative rate is 1 hectare per 300 dwelling units and cash-in-lieu is 1 hectare per 500 units.
[6] *Planning Act*, s 42(4.15).
[7] *Planning Act,* ss 42(4.9), 42(4.26).
[8] *DCA*, s 26.1(3).
[9] *DCA*, ss 26.1(7).

Where there is no site plan or zoning by-law amendment application DCs are still set at the rate in effect on the date the building permit is issued. Importantly, the "freeze" is not indefinite. Rather, the "freeze" only lasts for two years from the date of approval of the application.[10]

Like with the annual installment plan, even a "frozen" DC is subject to interest at the discretion of the municipality.[11] The amount of interest chargeable is subject to a prescribed maximum rate, which has not yet been enacted.

Before Bill 108, municipalities could collect DCs for services to pay for increased capital costs unless the service was listed as ineligible. Bill 108 introduced an enumerated list of eligible hard services for which municipalities could collect DCs and proposed that soft services could be funded using CBCs. Bill 197 amended the list of eligible services from what was established in Bill 108 to include both hard and soft services.

The new list now includes:

- Hard services (sewer, water, storm water, roads, electricity);
- Transit;
- Waste diversion;
- Police, fire and ambulance services;
- Libraries (including circulation materials);*
- Long-term care homes;*
- Parks development (but not land acquisition costs);*
- Public health;*
- Recreation;*
- Child care;*
- Housing services;*
- Bylaw enforcement and court services;* and
- Emergency preparedness.*

[*services not in Bill 108].

Bill 197 resulted in a single list of services (as above) subject to either DCs or CBCs as determined by municipal discretion, with the caveat that the same capital costs are not charged twice.[12]

Under the current legislation, the eligible costs for services will no longer be subject to a 10% discount for certain services. Bill 108 removed this 10% discount for eligible services under the *DCA* and Bill 197 continued this removal when the funding for soft services was reverted back to the *DCA*.

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[10] *DCA*, s 26.2(5); O. Reg 89/82, s 11.2
[11] *DCA,* s 26.2(3)
[12] *DCA,* s 2(4). See also *DCA*, s 2(4.1) and *Planning Act*, s 37(5) for the interaction between community benefits charges and development charges.

Lastly, following the enactment of Bill 108, though O. Reg 454/19 (consolidated with O. Reg 82/98), the province enhanced DC exemptions for additional units in prescribed classes of existing residential buildings and second dwelling units for new residential buildings.[13]

Community Benefit Charges

CBCs, as developed through the interplay of Bills 108 and 197, can be imposed against land where the by-law applies, to pay for the capital costs of facilities, services and matters required because of development or redevelopment.[14]

Only one by-law can be in place in a municipality at a time.[15] Before a municipality enacts a CBC by-law it must give notice and prepare a strategy that assesses the services and costs to be funded by the CBC.[16]

The requirements for what a CBC strategy must include are set out in O. Reg 509/20, and are:

a) Estimates of the anticipated amount, type and location of development and redevelopment with respect to which CBCs will be imposed;

b) Estimates of the increase in need or facilities, services, and matters attributable to the anticipated development and redevelopment to which the CBC by-law would relate;

c) The identification of excess capacity that exists in relation to these facilities, services *etc.*;

d) Estimates of the extent to which an increase in a facility, service *etc.* would benefit existing development;

e) Estimates the capital costs necessary to provide the facilities, services *etc.*; and

f) Identify any capital grants, subsidies and other contributions made to the municipality or anticipated to be made in respect of the capital costs referenced above.[17]

A CBC may be imposed on development or redevelopment requiring approval of a zoning by-law, a zoning by-law amendment, a plan of subdivision, minor variance, consents, a plan of condominium or even just a building permit.[18]

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[13] *DCA*, s 2(3), (3.1); O. Reg 82/98, s 2.
[14] *Planning Act*, s 37(2).
[15] *Planning Act*, s 37(12).
[16] *Planning Act*, ss 37(9), 37(10).
[17] *Planning Act,* s 37(9); O. Reg. 509/20, s 2.
[18] *Planning Act*, s 37(3).

It bears repeating that the capital costs in a CBC cannot overlap with those intended to be funded by a DC.[19] Another key restriction on CBCs is that the amount imposed through a CBC cannot exceed 4% of the land value under development.[20]

Municipalities will be required to hold the money collected from CBCs in a special account and 60% of the CBCs collected must be spent or allocated each year. The annual spending requirement represents a departure from the administration of DC reserves where no such rule applies.[21]

As mentioned, a CBC by-law can be appealed to the Tribunal. The appeal procedures mirror the process for DC by-laws. There is also an appraisal exchange mechanism intended to resolve disputes over land value, though this process may be found to be wanting as CBCs are implemented.[22]

There are a few notable exemptions to the CBC regime. Only single-tier and lower-tier municipalities may impose CBCs. Municipalities cannot impose CBCs on small-scale developments and redevelopments as prescribed in the regulations. In particular, no CBCs can be imposed on developments with fewer than 5 storeys or 10 residential units. Additionally, long-term care homes, non-profit housing developments, retirement homes, universities and colleges, Royal Canadian Legions, and hospices are exempt from CBCs.[23]

In terms of transitioning to the CBC regime, a by-law passed under section 34 of the *Planning Act* that includes any requirements under the former section 37 continues to apply until the earlier of the day the municipality passes a CBC by-law or September 18, 2022.[24]

Where We Go From Here: Anticipated Impacts and Considerations

The Calculation Wars – What Won't Change

In 2019 the Tribunal issued *Amacon Development (City Centre) Corp. v Peel (Regional Municipality)*, a decision from which leave to appeal was refused.[25] A brief review of *Amacon* allows for an exploration of what might stay the same and what might change with the introduction of CBCs.

Taken as a whole, *Amacon* emphasizes the importance of calculating DCs in accordance with the methodology contained in the *DCA*. Following *Amacon*, and given the methodological similarities between DC background studies and CBC strategies, care should be taken to ensure that CBC strategy preparation follows the prescribed methodology.

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[19] *Planning Act*, s 37(5).
[20] *Planning Act,* s 37(32); O. Reg 509/20, s 3.
[21] *Planning Act*, ss 37(44)-(46).
[22] *Planning Act,* ss 37(17)-(42).
[23] *Planning Act,* s 37(4).
[24] *Planning Act,* s 37.1(5); *DCA*, s 9.1; O. Reg. 82/98, s 11.2.
[25] OMB Case No. DC150017 (decision issued June 11, 2019) [*Amacon*], leave to appeal refused by Divisional Court File No. 367/19 (decision issued November 28, 2019).

On a more granular level, *Amacon* dealt with whether the impugned DC by-law created an improper cross-subsidy between residential and non-residential development.

The Tribunal also grappled with whether certain charges had been properly reduced to account for benefits to existing development.[26] We turn next to a consideration of how each of these items might be dealt with in a CBC context.

Cross-Subsidy

The cross-subsidy issue arose out of the rules in section 5(6) of the *DCA*, which are still in force. One of the rules provides that if a municipality chooses to not charge development charges to a particular type of development, it cannot make up foregone costs by charging the costs to another type of development.[27] In other words, one type of development cannot subsidize another.

Neither the CBC provisions of the *Planning Act* nor O. Reg 509/20 have similar rules for CBCs. This may be because the policy choices regarding preferred development have largely already been made by the Legislature. As noted above, the Legislature has already exempted a broad range of development from CBCs, including development with fewer than 5 storeys and fewer than 10 residential units along with a host of other institutional types of development. Given the constraints already in existence, there is little room for further distinction between what remains.

Benefit to Existing

The decision in *Amacon* was clear on how capital costs that benefit existing development should be treated, "if there is a benefit to existing development, that benefit must be identified and deducted in the calculation of the by-law's charge. This is set out in section 5(1)(6) [of the *DCA*] …"

A provision with a similar purpose to section 5(1)(6) of the *DCA* is found in O. Reg 509/20 at section 2(d), suggesting that the treatment of benefit to existing development will remain relevant. The extent to which existing development benefits from new projects is not a question of whether a municipality wants to raise property taxes or user fees. It is not a question about whether growth is occurring and capital costs are being incurred contemporaneously. Rather, it is a question about the nature, type and extent of benefits accruing to existing development from new projects and one which will continue to require nuanced, contextual examination.

[26] *Amacon* at para 9.
[27] *DCA*, s 5(6)(2).

Appeal Rights – Has Anything Really Changed?

The ability to appeal parkland by-laws and CBC by-laws is a new introduction to planning legislation. The appeal procedures for parkland by-laws and CBC by-laws, like those applicable to the DC by-laws that led to the *Amacon* decision, each provide for an appeal period and adjudication by the Tribunal. The provisions closely resemble other planning legislation procedures. Notably, it is generally not within the powers of the Tribunal to increase the burden to a proponent on appeal of any one of these by-law types.

Perhaps of greater interest are those areas where disputes might arise, but there is no statutory appeal provision or privative clause to provide guidance. One such area is the CBC land value appraisal process established through sections 37(32) to 37(42) of the *Planning Act*. The intent of these sections is to establish an agreeable land valuation in the event there is a dispute between a developer and the municipality at the outset. However, there is no clear forum for parties to approach should they arrive at the end of the appraisal process with a persistent disagreement. It seems the logical forum for the parties is the courts through a judicial review of some kind; perhaps of the municipal decision to impose a CBC different than what the landowner feels is properly owed.

Surveying the DC Landscape

Elimination of the 10% Discount on Soft Services

Prior to the *DCA* amendments, a mandatory cost reduction of 10% for certain soft services was included in DC rate calculations. This “discount” requirement has long been a major sore spot for municipalities, since the imposition of the discount to the cost of these items required a municipality to make up the additional 10% increment from other sources, such as the general tax levy.

Under Bill 197, the 10% statutory deduction has been eliminated. Therefore, DCs for services that were previously subject to a 10% reduction under the pre-Bill 197 *DCA*, will generally increase by 10%. Moreover, where the service itself is no longer payable under the *DCA*, it could be payable under a CBC, which likewise specifies no 10% reduction in any cost calculation.

Ultimately, the plain effect of the elimination of the 10% discount will be higher DC costs for services enumerated under the *DCA* that had previously been subject to the discount.

Elimination of the 10-year Planning Horizon

Previously, the calculation of a municipality’s need for soft services could not rely on an increase in the need for the service beyond a 10-year planning horizon. Under the revised *DCA*, although municipalities must still only consider a level of service that is in line with the average level of that service over the 10-year period immediately preceding the preparation of the background study, the requirement for them to only consider a 10-year forward planning horizon for these eligible services has been removed.

Municipalities usually do not plan soft services and programs beyond a 10-year forward horizon, so the change is not likely to cause significant effects. That said, if there are municipalities that have ambitious plans for certain soft service programs that would reflect a higher level of service than the average level of that service over the previous

10-year period, it is possible that they could look to collect the differential through the CBC. Time will tell how creative municipalities get in preparing their CBC strategies.

Surveying the CBC Landscape

Services In-Kind – The Next New Battleground or Loophole?

Section 37(6) of the *Planning Act* provides that where a CBC by-law has been passed, a municipality may allow an owner to provide in-kind municipal facilities, services or matters required because of a development or redevelopment. The value of in-kind contributions is to be deducted from the amount an owner would otherwise have to pay pursuant to the CBC by-law. A municipality is to advise the owner of the value of the in-kind contribution before the owner provides them.[28]

Valuation of in-kind contributions may present significant challenges. Disputes can be expected about the value of land dedications, facilities and services. The risk of a dispute will be particularly high for facilities where costs cannot be conclusively confirmed before construction, and for services where costs cannot be known until actually provided.

In the face of such risk, it may be necessary to create cost guides that establish unit prices and other standard valuations to create consistency and fairness in the application of the in-kind provisions. This would also address the inevitable challenges of valuing any in-kind contribution before it is provided, whether actual costs end up being higher or lower.

It can also be anticipated that in situations where municipalities seek assistance from owners to deliver facilities or services that require a contribution attributable to existing development, the under-valuation of in-kind contributions could create a funding source that would otherwise be unavailable pursuant to the *DCA.* Municipalities will also be positioned to fix service and facility costs by capping in-kind contribution credits that are unrelated to the actual cost of services and facilities.

While the provisions are drafted in a permissive manner, it is likely that many cases will arise which trigger the need to establish valuations for in-kind contributions because the delivery of the related services and facilities will be a requirement of development approvals.

Coordination of CBCs and DCs

Both the *Planning Act* and *DCA* contain a provision intended to give CBCs and DCs coordinate roles in funding services.[29] However, there is no detailed guidance on how such coordination might be achieved in either statute or their respective regulations. What is clear is that municipalities now have the discretion to determine how services will be funded, either through DCs or CBCs. This raises the question of which services will be funded through DCs and which services will be funded through CBCs? The approach taken will likely depend on cost recovery prospects, predictability and the unique statutory constraints imposed on each.

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[28] *Planning Act*, ss 37(6)-(8).
[29] *Planning Act*, s 37(5); *DCA*, s 2(4.1).

Cost Recovery

Fundamentally, DCs are based on projected need for services and growth while CBCs take those same factors into consideration, but are ultimately based on land values. Municipalities will look at which services they wish to provide, types of development and the density of expected development in making their determination on how to proceed. However, a critical consideration will be developing a strategy to maximize cost recovery.

If the 4% cap on CBCs or the 10-year service level cap on DCs presents a barrier to recovery, municipalities will likely sort capital costs into DCs and CBCs, using both in a coordinated manner. This might be achieved, for example, by completing a DC background study and CBC strategy at the same time. Where either the 4% cap or 10-year level of service constraint limits recovery at the rate desired by the municipality, they may supplement one charge with the other by earmarking discrete capital costs for each stream. Importantly, section 37(5) of the *Planning Act* does not require that a choice be made between which "services" are funded through a CBC or DC (which would connote a class of projects and associated capital costs), rather the focus is on "capital costs" (connoting a subset of the class).

This poses a potential problem for those working with DCs and CBCs: what principled basis should be used to coordinate between DCs and CBCs? And, perhaps more importantly, will the justification survive challenge?

Predictability

The CBC valuation method of determining the charge by multiplying land value by 4% has important implications for cash flow predictability. The land value basis means that cost recovery can vary with land valuations. In times of prevailing strength in land values, CBCs will no doubt be attractive to municipalities. In times of declining land values, less attractive. In comparison, DCs are not directly dependent on land values for their determination and so are not subject to the same risks. Where predictability itself is valuable, DCs clearly have the advantage.

Statutory Constraints

Whether CBCs will be more favourable in a scenario will also depend on statutory factors, such as divergent update requirements, spending obligations and, in the case of DCs, installment and lock-in provisions.

As set out in section 9(1) of the *DCA*, a DC by-law must be updated every 5 years. There is no similar requirement for CBCs, which is an enticing proposition for municipalities. Despite no formal update requirement, periodic review the CBC by-law would help ensure it remains relevant.

Pursuant to section 37(47) of the *Planning Act*, municipalities are required to spend or allocate at least 60% of the money in the CBC special account annually. There is no parallel requirement in the *DCA*. While it is unclear what is meant by "spend or allocate", what is clear is that the management of the CBC special account will require foresight and diligence.

For some municipalities, the additional administrative burdens associated with CBCs and the lower prevalence of taller residential and mixed-use buildings will limit their attractiveness.

The new annual installment provisions that apply to rental, institutional and non-profit development under the *DCA* present a risk to municipalities. That is, as time goes on there is an opportunity for unforeseen circumstances to develop, making recovery of payment potentially challenging. That said, with many rental, institutional and non-profit developments being exempt from CBCs altogether, the opportunities for recovery under a DC look comparatively favourable for municipalities.

With the introduction of section 26.2 into the *DCA*, DCs are now calculated as of the day a site plan or zoning by-law amendment application is made. Even though the *DCA* allows for interest to be charged during the "freeze" period, all else being equal, municipalities will likely prefer funding services through a CBC, which is not subject to a similar constraint.

Will CBCs be Subject to Scope Creep like Section 37 Contributions Were?

The central premise of the CBC regime is to create more certainty for the public and private sectors. It remains to be seen whether that will be achieved, or whether like Section 37 Contributions before them, they will succumb to incremental increases in scope.

There are some Official Plan policies applicable to Section 37 Contributions that establish triggers unrelated to increases in height or density, or that set the triggering threshold at a very low level. For example, current Toronto Official Plan policies contain permissions to utilize Section 37 Contributions in circumstances where an application does not seek any increase in height or density. Policy 5.1.1.4 establishes a threshold of 10,000 square metres (including an increase of at least 1,500 square metres) for Section 37 Contributions to be exigible. However, Policy 5.1.1.5.d provides that Section 37 Contributions may be used, regardless of the size of the project or the increase in height or density, "as a mechanism to secure capital facilities required to support development". This policy framework is further complicated where, for example, secondary plan policies have set the section 37 threshold for an increase of residential density at zero. In that context, where a developer acquiesced to a section 37 arrangement but challenged the City's section 37 requirements, the Tribunal found that "while the application crossed the section 37 contribution threshold, this smacks of a kind of policy opportunism that is not viewed favourably by the Tribunal."[30]

Where a zoning application seeks to add a use with no identified increase in height or density, the City of Toronto has taken the position that the added use itself represents an increase in height and density for that specific use, thereby triggering section 37.

[30] *CIC Management Services Inc. v Toronto (City),* OMB Case No. PL170085 (decision issued August 27, 2018) at para 155.

However, the City's Implementation Guidelines for section 37 state at section 3.4 that:

> *Matters routinely required to support development in the absence of using Section 37 are not considered to be eligible community benefits but may nevertheless be secured in a Section 37 agreement as a legal convenience where the City and owner agree.*[31]

While the Implementation Guidelines provide some level of protection, the realities that face a developer in pursuing staff support for an application result in an often-untenable choice in determining whether to agree to a Section 37 agreement as a "legal convenience." It is also entirely unclear what matters could be determined to be "routinely required to support development" where the zoning by-law contains no development parameters.

Considering this type of past expansion of legislative provisions, it is open to question whether such "policy opportunism" will arise in the CBC context as well, thereby undermining the certainty expressly sought through the enactment of the CBC regime.

One CBC Per Municipality

The CBC framework limits municipalities to having one CBC by-law in effect at a time, but there is no limitation on the number of amendments that can be enacted.[32] Under such circumstances, it will be interesting to see whether area specific CBCs emerge within CBC by-laws that purport to apply to the municipality as a whole. The ability to enact area specific DCs has historically been important for smaller municipalities that wish to encourage development. Such municipalities often use area specific DCs to charge developers in discrete areas for the services they use, without discouraging development in other areas of the municipality.

Given the prospect of unlimited amendments to a single CBC by-law, another question arises: will CBC by-laws be treated as a "running tally" of site-specific CBC deals? This seems possible given the geographically imprecise scale of the CBC strategy methodology. Conceivably, a CBC strategy could be added to the list of items that make up a "complete application" for certain development application types, with consultation on the CBC mimicking the underlying planning application procedure. When coupled with the in-kind contribution provisions for CBCs, the "running tally" approach evokes the former height and density bonusing by-law regime that was ostensibly left behind.

It is worth highlighting that an appeal of an amendment to a CBC by-law only engages the content in the amendment.[33]

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[31] City of Toronto, "Implementation Guidelines for Section 37 of the *Planning Act* and Protocol for Negotiating Section 37 Benefits" (adopted by City Council 19-20 November 2007 and 11-13 December 2007).
[32] *Planning Act*, s 37(12).
[33] *Planning Act*, s 37(31).

CBCs as Enabling or Limiting?

Certain municipalities have concerns that CBCs will result in less overall less than the former Section 37 bonusing provisions and DCs.[34] The former Section 37 was typically used for enabling intensification, allowing municipalities to deliver benefits that they were not otherwise able to deliver, including funding for affordable housing community projects. Removing the bonusing provisions leaves municipalities, especially those not expecting taller residential and mixed-use developments, with fewer revenue tools. This could result in taxpayers and ratepayers covering the funds for infrastructure that municipalities are unable to recover for services. In turn, this would create higher property taxes and a disincentive for residents to support new housing.

Additionally, only a local municipality (lower-tier or single-tier) may impose a CBC by-law. This restricts the ability of upper-tier municipalities to collect funds for services in certain instances.

CBC Strategies – Considerable Homework for municipalities

The legislative package enabling CBCs requires the transfer of old systems to new systems. The changes impose significant requirements on municipalities to revise their by-laws and meet the legislative deadline of two years. Municipalities also must now prepare two documents: a background study under the *DCA* to charge DCs and a CBC strategy under the *Planning Act* to charge CBCs. Both of these analyses require public consultation. Change also imposes more financial burdens on municipalities.

Conclusion

It is too early to tell whether the changes ushered in by Bill 108 and Bill 197 will live up to the promises of fairness and predictability. While the changes bring forward important improvements to procedural fairness, for example, by permitting appeals of parkland by-laws; significant questions emerge on other fronts, such as in the completeness of the CBC land valuation process or regarding the proper scope and treatment of in-kind contributions. While the additional clarity has been brought to the DC framework, there are areas in the CBC framework that could still benefit from additional elucidation, particularly regarding area specific and site specific CBCs and the principles upon which CBCs and DCs should be coordinated. Wherever things go from here, it is sure to be scenic.

[34] Municipal Finance Officers' Association of Ontario, "Development Charges Act, 1997 & Planning Act (Before Bill 108 vs. July 21, 2020) Line by Line Analysis" (October 28, 2020).