

GROWTH FUNDING TOOLS (“GFTS”) AND THE CITY OF TORONTO’S RECENT DRAFT GFT BY-LAWS

Posted on April 20, 2022

Categories: [Insights](#), [Publications](#)

Update (June 6, 2022): The City has [announced](#) that it will hold additional public and industry engagement sessions from April – June 2022 respecting the Growth Funding Tools, which will then be considered by the [Executive Committee](#) at its July 12th meeting, and by [Council](#) at its July 19th meeting.

The City of Toronto (the “**City**”) recently released draft materials on its Growth Funding Tools for public input. While the term “Growth Funding Tools” (or “**GFTs**”) is new, many will be familiar with the mechanisms they refer to: Community Benefits Charges (“**CBCs**”) under s.37 of the *Planning Act*, Parkland Dedication pursuant to s.42 of the *Planning Act*, and Development Charges (“**DCs**”) under the *Development Charges Act*.

More details respecting each of these forms of GFTs may be found below. Generally, GFTs are intended to help new developments pay for the resulting increased need for municipal services and infrastructure supporting residents and business, on the basis that growth pays for growth. These revenues are used to pay for services such as public spaces, clean drinking water, transit and other infrastructure/services within the subject municipality. Like the City of Toronto, municipalities across the province are having to reconsider and update their GFTs in response to recent legislation that has changed how these municipalities may generate funding from development (such as the [More Homes, More Choice Act, 2019](#) and [COVID-19 Economic Recovery Act, 2020](#)).

City of Toronto GFTs

Draft by-laws for all three of the City’s GFTs, alongside background studies and fact sheets, are available on the [City’s website](#) under the Materials for Public Input. While the transition rules for DCs and CBCs are found in the legislation, the transition rule relating to the City’s Parkland Dedication rates are found the in by-law itself.

The City has indicated that they will be hosting two public information and consultation sessions to provide information and receive input on:

- Tuesday, April 26th, from 11:00 a.m. to 12:30 p.m.; and
- Thursday, April 28th, from 7:00 p.m. to 8:30 p.m.

Interested parties are advised to register on the City's website and can submit comments via email at GFT@toronto.ca. The City has indicated that there will be another comment period in June, with details to follow.

Community Benefits Charges

Summary: CBCs are a new funding tool introduced by the Province of Ontario under the *More Homes, More Choice Act*, 2019 replacing the previous *Planning Act* s.37 density "bonusing" tool. Prior to this, s.37 authorized municipalities to seek community benefits from developers in return for certain development approvals. Now, CBCs can apply to new developments with 5 or more stories containing 10 or more residential units. They are capped at 4% of land value under provincial legislation.

Transition: Transitional rules for CBCs are set out in s.37.1 of the *Planning Act*. The previous density bonusing tools apply until the earlier of the day the City passes a CBC and the Specified Date^[1] for the purposes of s.9.1 of the *Development Charges Act*, 1997.^[2]

Appeals: The *Planning Act* requires a municipality to provide notice of a CBC by-law within 20 days of its passage. The last day for appealing the by-law will be 40 days after it is passed.^[3] Any person or public body may appeal a CBC by-law to the Tribunal by filing a notice of appeal with the clerk of the City setting out the objection to the CBC by-law and their supporting reasons.^[4] If successfully appealed, the Tribunal may order the municipality to, or may itself, repeal or amend the by-law. Additionally, a municipality will be required to pay a full or partial refund of CBCs paid under the appealed by-law plus interest.^[5]

Eligible and Ineligible Developments: Under the amended s.37 of the *Planning Act*, municipalities are empowered to pass a by-law imposing CBCs on a development in order to pay for capital costs of facilities, services and other matters required in a certain area as a result of that development, such as parkland acquisition, affordable housing and child care facilities.^[6] For example, a local municipality (i.e., single- or lower-tier) may now impose CBCs under such a by-law when application is made for a number of listed development approvals, including zoning by-law amendment, minor variance, consent or plan of subdivision.^[7]

A municipality may not, however, impose a CBC with respect to development or redevelopment of a building or structure that will have less than 5 storeys at or above ground with fewer than 10 residential units, or which are one of certain prescribed types of developments such as a long-term care homes or retirement homes.^[8]

Notably, the *Planning Act* amendments prohibit building on the land until a) payment of CBCs has been made or satisfactorily arranged for, or b) the facilities, services or matters being provided have been provided or satisfactorily arranged for.^[9] To ensure there is a mechanism to enforce payment of CBCs prior to issuance of a permit, the [Building Code](#) (O. Reg. 332/12), as made under the *Building Code Act*, now includes payment of

money required by a CBC By-law or provision of the in-kind contribution a requirement for compliance with “Applicable Law”.^[10]

Value and Amount of CBCs: Under the amended s.37, a connection must be established between the amount of CBC levied and the increased need for community services associated with the subject development.^[11] CBCs may not exceed 4% of the value of the land, and calculation of land value will be as of the valuation date, being the date the building permit is issued for the subject development.^[12]

Notably, a municipality is not prevented from imposing CBCs with respect to land for parks, other recreational purposes, or the services listed in s.2(4) of the *Development Charges Act*. The result of the CBC regime is that municipalities now have access to two primary funding streams in response to new services required as a result of new development. Note, however, that the charges may not be duplicative: a CBC, development charge or parkland dedication requirement cannot be levied for the same service.^[13] For example, where a municipality is seeking to build new park facilities, it has options as to how it may acquire the land: 1) via parkland dedication provided for under s.42 and s.51.1 of the *Planning Act*, or 2) establish a CBC by-law and collect funds to acquire lands, or acquire the lands in lieu of the CBC payment as in-kind contribution.

Municipalities are required to keep monies received from CBCs in a special account, of which funds the municipality must spend or allocate 60% in each calendar year.^[14] Note that in-kind contributions by developers are permitted, subject to the discretion of the municipality, which contributions will be deducted from the CBCs otherwise imposed.^[15]

Where a developer disputes the CBC amount due, the *Planning Act* permits payment under protest subject to provision of an appraisal of the land's value, which the municipality may respond to with an appraisal in return.^[16] Where the municipality's appraisal is within 5% of the applicant's, the municipality is to immediately refund the difference; where it exceed 5%, the applicant is to select an independent appraiser from a list provided for under the *Planning Act* amendments to conduct a final appraisal and determine the land value for determining the maximum CBC amount that can be levied on the property.^[17]

CBC Strategy: Before passing a CBC by-law, the *Planning Act* requires a municipality to prepare a CBC strategy identifying which facilities, services and matters will be funded by the CBCs.^[18] A municipality shall consult with people and public bodies as they think are appropriate when preparing a CBC strategy,^[19] and such strategy shall, at minimum:^[20]

- a. include estimates of the anticipated amount, type and location of development and redevelopment with respect to which CBCs will be imposed;
- b. include estimates of the increase in the need for facilities, services and matters attributable to the anticipated development and redevelopment to which the CBC by-law would relate;

- c. identify the excess capacity that exists in relation to the facilities, services and matters referred to in clause (b);
- d. include estimates of the extent to which an increase in a facility, service or matter referred to in clause (b) would benefit existing development;
- e. include estimates of the capital costs necessary to provide the facilities, services and matters referred to in clause (b); and
- f. identify any capital grants, subsidies and other contributions made to the municipality or that the council of the municipality anticipates will be made in respect of the capital costs referred to in clause (e).

Notably, as amended, the *Planning Act* no longer contains a requirement for a municipality's official plan to contain provisions allowing s.37 benefit authorizations, nor does it expressly provide the ability for the municipality to require execution and registration on title of an agreement with the developer to secure the community benefits.

Development Charges (Generally)

Summary: DCs are a one-time fee collected when a building permit is issued. Revenues from DCs are only used to fund growth-related capital costs.

Transition: The transitional rules are set out in s.9.1 of the *Development Charges Act, 1997* as amended by the *More Homes, More Choice Act, 2019*.

DC by-laws that would expire on or after May 2, 2019 and before the Specified Date remain in force as it relates to any service other than those described in paragraphs 1 to 10 of ss.2(4) of the *Development Charges Act, 1997*, until the earlier of:

- The day the DC by-law is repealed,
- The day the municipality passes a CBC by-law under ss.37(2) of the *Planning Act*, or
- The Specified Date.[\[21\]](#)

DC by-laws that would expire on or after the specified date continue to apply until the earliest of the following:

- The day the by-law is repealed;
- In the case of a DC by-law of a local municipality, the earlier of:
 - i. the day the municipality passes a CBC by-law under ss.37(2) of the *Planning Act*, or
 - ii. the Specified Date
- In the case of a DC by-law of an upper-tier municipality, the Specified Date.[\[22\]](#)

Appeal: The process for appeals under the *Development Charge Act*, 1997 in relation to municipal DC by-laws is largely the same as the above appeal process for CBC by-laws. The clerk of a municipality must provide notice of a DC by-law within 20 days of its passage. Any person or organization may appeal a DC by-law to the Ontario Land Tribunal by filing with the clerk of the municipality before the last day for appealing the by-law, which is 40 days after it is passed.^[23]

Parkland Dedication (Generally)

Summary: Section 42 of the Planning Act empowers municipalities to pass a by-law requiring conveyance of land for park and other recreational purposes or cash-in-lieu thereof, proportionate to the size and use of the proposed development.

The formula for determining the amount of land to be dedicated or a cash-in-lieu paid is set out in s.42, and is generally 2% of the value of the land for an industrial or commercial development, or 5% for residential.^[24] However, a municipality may, where permitted in its official plan, require that the amount of land dedication or cash-in-lieu of a land dedication for a residential development be determined at a rate of one hectare for each 300 dwelling units proposed or at such lesser rate as may be specified in the municipality's bylaw.^[25] The value of the land is determined as of the day before the day the building permit is issued.^[26] Therefore, where lands have been re-zoned, the cash payment is determined based on the value of the new zoning.

Transition: Transition rule relating to a municipality's Parkland Dedication rates will be found in the by-law itself.

Appeal: The process for appeals of a by-law passed under the authority of s.42 is largely the same as the above appeal process for CBC and DC by-laws. The clerk of a municipality must provide notice of a Parkland Dedication by-law within 20 days of its passage. Any person or public body may appeal a Parkland Dedication by-law to the Ontario Land Tribunal by filing with the clerk of the municipality before the last day for appealing the by-law, which is 40 days after it is passed.

Conclusion

If you have questions about GFTs, the draft by-laws, their impact or the information and consultation period, please contact Annik Forristal or Kailey Sutton for further guidance.

[1] The "Specified Date" is defined in s.9.1 of the *Development Charges Act*, 1997 as two years after the date on which Schedule 2 of the *COVID-19 Economic Recovery Act*, 2020 receives Royal Assent. This was assented on July 21, 2020 and thus the specified date would be July 21, 2022.

[2] *Planning Act*, s. 37.1.

[3] *Planning Act*, s.37(13).

[4] *Planning Act*, s.37(17).

[5] *Planning Act*, s.37(3)

[6] *Planning Act*, at s.37(2).

[7] *Planning Act*, at s.37(3).

[8] *Planning Act*, at s 37(4); O. Reg. 509/20, at s.1.

[9] *Planning Act*, at s.37(44).

[10] O. Reg. 332/12, at s.1.4.1.3(1)(a)(xix.1).

[11] ERO Website, s.3.

[12] *Planning Act*, at s.37(32); O. Reg. 509/20, at s.3.

[13] *Planning Act*, at s 37(5).

[14] *Planning Act*, at s.37(45)-(51).

[15] *Planning Act*, at s.37(6)-(8).

[16] *Planning Act*, at s.37(33)-(41).

[17] *Planning Act*, at s 37(37)-(43).

[18] *Planning Act*, at s.37(9) & (10).

[19] *Planning Act*, at s 37(10).

[20] O. Reg. 509/20, at s.2.

[21] *Development Charges Act*, 1997, s.9.1(2).

[22] *Development Charges Act*, 1997, s.9.1(3).

[23] *Development Charges Act*, 1997, s.13.

[24] *Planning Act*, R.S.O. 1990, c. P.13, as amended, at s.42(1).

[25] *Planning Act*, R.S.O. 1990, c. P.13, as amended, at s.42(3).

[26] *Planning Act*, R.S.O. 1990, c. P.13, as amended, at s.42(6.4).

by [Annik Forristal](#), [Kailey Sutton](#) and Patrick Pinho (Student at law)

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2022