

**Subject: Community Benefits Charge Strategy and By-law**

**File Number: ACS2022-PIE-GEN-0004**

**Report to Planning Committee on 25 August 2022**

**and Council 31 August 2022**

**Submitted on August 15, 2022 by Charmaine Forgie, Manager, Planning, Real Estate and Economic Development**

**Contact Person: Ranbir Singh, Community Benefits Charge, Planning, Real Estate and Economic Development Department**

**613-867-2466, 27702, Ranbir.Singh@ottawa.ca**

**Ward: Citywide**

**Objet : Règlement municipal et stratégie sur les redevances pour avantages communautaires**

**Dossier : ACS2022-PIE-GEN-0004**

**Rapport au Comité de l'urbanisme**

**le 25 août 2022**

**et au Conseil le 31 août 2022**

**Soumis le 15 août 2022 par Charmaine Forgie, Gestionnaire, Services de soutien techniques et aux activités, Département Services de la planification, de l'immobilier et du développement économique**

**Personne ressource : Ranbir Singh, Coordonnateur Redevances pour avantages communautaires, Services de soutien techniques et aux activités, Département Services de la planification, de l'immobilier et du développement économique**

**613-867-2466, 27702, Ranbir.Singh@ottawa.ca**

**Quartier : À l'échelle de la ville**

## **REPORT RECOMMENDATIONS**

**That Planning Committee recommend Council:**

1. **Approve the Community Benefits Charge Strategy Report (Document 2), including the prioritization of the capital program list within the report.**
2. **Adopt the Community Benefits Charge By-law (Document 3).**
3. **Approve the Community Benefits Charge policy, as contained in Document 4.**

## **RECOMMANDATIONS DU RAPPORT**

**Que le Comité de l'urbanisme recommande ce qui suit au Conseil :**

1. **Approuver le rapport sur la Stratégie des redevances pour les avantages communautaires (document 2), y compris la priorisation de la liste du programme d'immobilisations qu'il contient;**
2. **Adopter le Règlement municipal sur les redevances pour les avantages communautaires (document 3);**
3. **Approuver la politique sur les redevances pour avantages communautaires, telle que présentée dans le document 4.**

## **EXECUTIVE SUMMARY**

### **Staff Recommendation**

This report recommends the adoption of the Community Benefits Charge (CBC) Strategy Report provided by Hemson (consultant) and the Community Benefits Charge By-law. This report also recommends the adoption of the Community Benefits Charge policy.

The Community Benefits Charge Strategy Report highlights this new Growth-Funding Tool under the *Planning Act*. The report outlines the regulatory requirements of the charge, the application of the charge, revenue forecasts and the modelling of projected capital costs associated with a capital program list.

It is a legislative requirement to pass the prioritization of projects (the Capital Program List) established in the Community Benefits Charge Strategy Report (Document 2), before the adoption of a CBC By-law.

Staff recommend that the implementation of the charge apply across the city. If a by-law is not adopted by Council before the statutory deadline set by the Province, September

18, 2022, the existing section 37 authority will expire, and a charge to replace the former density bonusing regime will not be in place.

The CBC By-law stipulates a variety of clauses that establish the application of the charge, its calculation, exemptions and credits, in-kind contributions, the administration of the special account for the collection of funds, and other matters. Within the Other Matters section of the by-law are clauses that outline transitional measures of current and complete development and redevelopment applications submitted to the City.

Recommendation 3 is the adoption of the CBC policy. This policy outlines the in-kind framework regarding the charge within a development application. The policy also delineates the decision-making process of the spending of funds collected from the charge which are unallocated and unspent each year.

As per Council's direction on February 2021, the "Framework for adopting a Community Benefits Charge By-law to replace Section 37 policies", staff, over the course of 2021 and 2022, have met most Council objectives regarding this project. What remains outstanding is tabling the CBCs to a public meeting and if passed, service of notice of the CBC By-law. Stakeholder feedback and supportive documentation conducted in preparation for this report are provided as appendices to this report.

The passing of multiple bills and legislation by the Province, including changes within the *Planning Act*, establishes the requirements and regulations behind the collection of the CBC charge. The description of requirements is outlined in the consultant's report attached as an appendix (Document 2). The background behind the charge also includes foundational work regarding land/development economics highlighted by N. Barry Lyon Consultants Ltd. (NBLC) which is also attached as an appendix (Document 6) to this report.

The implementation of a CBC charge involves the discussion of the consultant's report and its highlights, transitioning from Section 37 to the new Community Benefits Charge, and a discussion of clauses behind the proposed by-law. Additional themes regarding the feedback provided on CBCs are found in an 'As We Heard It Report' attached as an appendix to this report (Document 5).

In addition to the discussion above are legal matters pertaining to the CBC strategy, policy and by-law, along with additional financial implications on the collection of the charge.

## **Applicable Policy**

For additional guidance regarding the Community Benefits Charge, a policy has been created to provide procedural direction as to how the money will be spent by the City from the collection of the charge and the framework for in-kind contributions. See appendix (Document 4) for the Community Benefits Charge policy in its entirety.

## **RÉSUMÉ**

### **Recommandation du personnel**

Le présent rapport recommande l'adoption du rapport sur la stratégie sur les redevances pour avantages communautaires (RAC) élaboré par Hemson (consultant) et du Règlement sur les redevances pour avantages communautaires. Le présent rapport recommande également l'adoption de la politique sur les redevances pour avantages communautaires.

Le rapport sur la stratégie sur les redevances pour avantages communautaires met en évidence ce nouvel outil de financement de la croissance prévu par la *Loi sur l'aménagement du territoire*. Le rapport souligne les exigences réglementaires associées aux redevances, l'application de ces redevances ainsi que les prévisions de recettes et la modélisation des coûts d'immobilisation prévus en fonction d'une liste de programme d'immobilisations. Il est prescrit par la loi de prioriser les projets (la liste de programme d'immobilisations) énoncés dans ce rapport, avant l'adoption d'un Règlement sur les RAC.

L'application du Règlement sur les RAC est recommandée pour assurer la mise en place de redevances. Le personnel recommande l'adoption de ce règlement pour appliquer les redevances sur tout le territoire municipal. Le fait de ne pas adopter un règlement avant la date limite prévue par la province, c'est-à-dire le 18 septembre 2022, empêche toute collecte de fonds associés à la bonification de la densité sur le territoire municipal.

L'adoption du règlement prévoit diverses clauses établissant le calcul, l'application et l'échéancier des redevances, les exemptions, les crédits, les contributions en natures, l'administration du compte spécial pour la collecte des fonds et autres questions. Dans la section Autres Questions du règlement, on trouve des clauses qui décrivent les mesures transitoires des demandes d'aménagement et de réaménagement actuelles et complètes soumises à la Ville.

La troisième recommandation est l'adoption de la politique sur les RAC. Cette politique décrit le cadre de contributions en nature associé aux demandes d'aménagement. Elle énonce en outre le processus décisionnel entourant la dépense des fonds provenant des redevances et qui ne sont ni attribués ni dépensés chaque année.

Conformément à la directive émise par le Conseil en février 2021 sur le « cadre d'adoption d'un Règlement sur les redevances pour avantages communautaires en remplacement des politiques de l'article 37 », le personnel a, en 2021 et 2022, atteint la plupart des objectifs du Conseil concernant ce projet. Il reste à présent à mettre les RAC à l'ordre du jour d'une réunion publique et, si elles sont adoptées, à émettre un avis de Règlement de RAC. Les commentaires des parties prenantes et la documentation à l'appui obtenus pendant deux ans sont joints en appendices au présent rapport.

L'adoption de nombreux projets de loi et de règlements par la province, y compris les modifications apportées à la *Loi sur l'aménagement du territoire*, correspond aux exigences et à la réglementation associées à la perception des redevances pour avantages communautaires. La description de ces exigences est proposée dans le rapport de Hemson ci-joint (document 2). Le contexte des redevances comprend par ailleurs le travail de fond entourant l'économie de l'aménagement du territoire décrite par N. Barry Lyon Consultants Ltd. (NBLC), également joint en appendice (document 6) au présent rapport.

La mise en place d'une redevance pour avantages communautaires implique d'entamer des discussions autour du rapport de Hemson et de ses points saillants, de la transition des politiques de l'article 37 vers la nouvelle redevance pour avantages communautaires, et des clauses sous-jacentes au règlement proposé. On peut prendre connaissance d'autres thèmes concernant les commentaires émis sur les RAC dans un rapport « Ce que nous avons entendu » joint en appendice au présent rapport (document 5).

Outre les discussions mentionnées plus haut, on retrouve des questions juridiques entourant la stratégie la politique et le Règlement sur les RAC, ainsi que les répercussions financières relatives à la perception de ces redevances.

### **Politique applicable**

Pour plus de clarté au sujet des redevances pour avantages communautaires, une politique a été élaborée en vue de fournir une marche à suivre sur l'utilisation des fonds provenant des redevances et sur le cadre de contributions en nature. Veuillez vous

reporter à l'appendice (document 4) pour consulter la politique sur les redevances pour avantages communautaires dans son intégralité.

## **BACKGROUND**

The City of Ottawa has the option to adopt a new CBC strategy and by-law by the statutory deadline of September 18, 2022. Through the Government of Ontario's *More Homes, More Choice Act, 2019* (Bill 108), *Plan to Build Ontario Together Act 2019* (Bill 138), and *COVID-19 Economic Recovery Act 2020* (Bill 197), changes have been made to the *Planning Act* regarding density bonusing in municipalities in Ontario. Recent changes within the *More Homes for Everyone Act, 2022* (Bill 109) has provided additional regulations regarding the charge, including the requirement of CBCs to be reviewed every five years and subject to formal consultation. Failure to review the charge in five year intervals (or sooner) renders the collection and administration of the charge expired.

The CBC strategy and by-law addresses the financial support for community-oriented projects. The proposed CBC strategy and by-law would replace density bonusing of mid to high-rise residential and mixed-use development permissible by Section 37 of the *Planning Act*. Density bonusing is associated with the legislative process of zoning by-law amendments from as-of-right-zoning, the permitted zoning heights within the City's zoning by-law, to a requested zoning height, usually additional heights/Gross Floor Area of floors, requested in a development application. The permission to grant additional heights to buildings involves titled Section 37 agreements on land in exchange for community benefits.

Given that the CBC charge is new to the City, staff recommend it be reviewed alongside the scheduled Development Charges By-law in 2024. Upon adoption, the charge is to be implemented on a piloted basis. Reviewing the Community Benefits Charge with Development Charges will bring clarity as to how costs of projects between both charges are better aligned. The City will continue to monitor the CBC's revenue generation, its effectiveness in paying for projects within the city, and administrative efficiency.

This charge is currently associated as a Growth Funding Tool (GFT). Alongside other revenue tools within the City, the CBC charge is based on the principles that growth pays for growth. GFTs are a new terminology used within this strategy to emphasize that this charge's collection is not to be a burden on taxpayers. GFTs are additional streams of revenue to offset the costs resulting from growth. This charge aims to create

more certainty and predictability for developers regarding charges associated with density bonusing, while funding prioritized projects within the City.

The statutory requirements state that no double recovery is allowed specifically between this charge and a development charge applied to the same costs of a project. Although the CBC charge may pay for the acquisition of parkland, it is not permitted to double recover with the City's Parkland Dedication By-law. In-kind contributions are permitted within the *Planning Act*. In-kind contributions would reduce the CBC charge on development at the time of development application approval.

Since the framework directive was approved by Council in February 2021, staff have engaged with multiple stakeholders and industry to gather feedback on multiple aspects of the CBC charge including, receiving input into the strategy report and the proposed by-law.

The *Act* permits all Section 37 agreements and contributions made with the City prior to the enactment of the CBC By-law to continue to be enforced beyond the statutory deadline of September 18, 2022.

Document 1 outlines how the objectives of the approved framework were achieved as set out in the Council framework on CBCs in February 2021. An 'As We Heard It' report is provided as Document 5, summarizing feedback from stakeholders on a variety of themes regarding this project. A background study provided by N. Barry Lyon Consultants Ltd. (NBLC) on the discussion of the CBC charge and development/land economics is also provided.

## **DISCUSSION**

The CBC is a new charge for municipalities in Ontario. Staff have engaged with comparable municipalities across Ontario, including Toronto, Mississauga and Hamilton, sharing insights on the administrative, procedural and legislative options available to this new charge. Elements of the By-law, including stipulations regarding phasing, calculation and timing of the charge, have been influenced by these discussions. However, the proposed CBC strategy report and by-law is unique to the City of Ottawa and its circumstances.

Various pathways to implementing the CBCs were considered. However, the consensus among all municipalities is an adoption of a "strategy report" which highlights a prioritized project list. Unique to the City of Ottawa, is the proposed Community Benefits Charge Policy, which stipulates that the provisions regarding in-kind

contributions and the spending of the CBC charge are spent in the wards in which the funds are collected (locally).

The following section provides highlights of the CBC strategy report recommendations. The strategy outlines the background, regulatory requirements, as well as the limitations of the CBC charge. The consultant's report also highlights the capital program list. Prioritization of projects and service areas for the CBC charge is a statutory requirement within the *Planning Act*. The CBC strategy report projects, within a 10-year time horizon of 2022-2031, modelling and forecasting of gross capital projects within the city and projected revenues. The projected possible revenue is \$35 million within the 10-year horizon less amounts which are not to be collected due to exemptions/transition provisions provided in the by-law.

Staff have reviewed alternative options for the CBC charge. The alternatives of the charge are a flat 4% charge on land where development applies, "up to 4%" charge (meaning a charge between 1 to 4%), or a per-door rate for each unit over and above the CBC criteria. Each option has pros and cons, including its revenue projections in a 10-year horizon. The decision behind how the charge is applied to development applications is a decision for each municipality. Staff recommend implementing the flat 4% charge to maximize the recovery of costs illustrated in the Capital Program list in the consultant's report (Document 2) and to prevent a loss of revenue in a 10-year time horizon compared to the alternatives.

#### **Consultant's Report Highlights (Document 2):**

1. CBC legislation does not specify the amount of the CBC charge, provided it does not exceed 4% of the land value. The strategy report is based on projections of the full 4% charge on land values where development applies. This highlight is found in Section 2B of the consultant's report.
2. The collection of the charge is recommended to be city-wide.
3. Section 2C highlights a summary of the CBC Capital Program. This is a summary of how the City prioritizes its service area and project list. Note, the gross costs associated with all categories totals \$533.9 million in comparison to the CBC share of these costs at \$70.7 million. The strategy illustrates that the total recovery of projected costs will not be fully recoverable by the collection of a CBC charge alone.
4. Section 4 of the report explains the capital program list in depth. Provisions have been made within the broader categories for certain city services and projects.



These categories and services have an additional background with an explanation and rationale behind their forecast and needs within the City, methodology of the provisions, and relation of CBC cost projections with other Growth Funding Tools. Staff have made efforts to refine this list to provide additional clarity to industry on what specific projects can be addressed by the collection of the charge. Projects within each service category are examples within this illustration and are by no means the only projects that can be selected for each ward.

5. Section 6D of the report highlights the dispute mechanism if a charge is paid under protest. One point of concern behind the implementation of this charge is the appraisal of land. Statutory requirements clearly state the procedure, timelines and mechanisms behind disputed land appraisals. Section 6, Figure 2, explains the payment dispute mechanism.

### **Transition from Section 37 to a Community Benefits Charge:**

There are multiple changes regarding previous Section 37 agreements to the new CBC charge.

#### Transition Highlights:

1. Section 37 agreements exclusively involve Zoning By-law Amendment applications requesting further relief from as of right height and density zoning regulations. The new CBC charge applies to all types of development and redevelopment applications that are subject to the threshold of the charge.
2. The calculation of uplift from Section 37 involved ratios inside and outside the greenbelt multiplied by the Gross Floor Area of requested zoning in a development application. These Gross Floor Area calculations no longer apply as the charge is a flat 4% based on the land value in which the development applies.
3. Section 37 agreements are registered on the title of land and are contingent on the approval of a Zoning By-law amendment. The CBC charge will be collected before the issuance of a building permit, similar to Development Charges.
4. The effect of the Province's statutory requirements is to restrict the negotiated practices perceived in Section 37 agreements and with zoning applications. The implementation of a CBC charge moves away from negotiated practices –prioritizing a category and service area list made in advance of collecting the charge. In addition, in-kind contributions can be drawn down from a CBC charge, subject to the staff approval and ward Councillor engagement.

5. All approved Section 37 agreements, for which a zoning by-law amendment has already been passed by Council, will remain enforceable after the enactment of the CBC By-law and beyond the statutory date of September 18, 2022. Existing Section 37 funds and accounts will be transferred to a new Community Benefits Charge 'special account'.
6. An exclusionary clause in the by-law stipulates that any in-stream complete development application that meets the CBC threshold will be exempt from the charge, permitted that these development applications have a building permit issued within 5 years of the by-law being passed.

### **Proposed CBC By-law:**

The passing of a CBC By-law is optional. However, recent bills passed by the Province have now regulated the CBC charge further, limiting the City's options in creating a revenue tool to address density bonusing.

Eligibility for the CBC charge will apply only to residential and mixed-use developments and redevelopments that are five or more storeys and that add ten or more residential units. This charge is subject to statutory exclusions on types of developments.

The proposed by-law highlights the designated area of the collection of the charge which is the entire boundary of the City. The by-law's calculation of the charge is a flat charge of 4% of the land value in which development occurs. The recommendation of a 4% charge is based off the projections made within the consultant's report which is also based on a 4% calculation. It is recommended by staff to implement the full 4% to maximize the amount of recoverable revenue to pay for projects within the City.

For phased developments, the timing of the payment to the charge will be a part of the development application process. A figure will also be provided within development review to applicants highlighting the amount of payment due for a charge. A clause has been added that the valuation of lands expires after 24 months if a building permit is not obtained, in which case the valuation of the land will be re-evaluated. This clause is unique to Ottawa among other jurisdictions in Ontario. The collection of the charge will be made by Building Code Services. No permits for buildings are granted unless the charge is collected.

Upon development applications, applicants may draw down from the charge with in-kind contributions such as affordable housing units. The valuation of these contributions

must be confirmed by the City, and the Director of the service area where these contributions apply.

While there are mechanisms in place for land appraisal disputes, there are no statutory requirements as to how to resolve disputes over the valuation of in-kind contributions. Thus, a target date has been established by which staff will attempt to agree with the applicant on disputed drawdowns of the charge within the CBC policy (not by-law).

The by-law accounts for phased developments, where deferred payments are allowed subject to the discretion of the General Manager of Planning, Real Estate and Economic Development and/or the Director of Planning Services.

Additional exclusions have been granted to applicants beyond the statutory requirements for the by-law to off-set other clauses, creating a regime that staff deem fair and balanced in regards to the principles of revenue neutrality. The by-law provides an exemption on development that includes inclusionary zoning units. Additionally, a credit is provided to applicants, that through the course of redevelopment, designate and preserve an undesignated heritage structure. This credit is a 10% discount to the CBC charge. These exemptions are intended to be re-evaluated when the CBC charge is reviewed.

This by-law will require continued monitoring as to its ability to recover costs for projects within the city and its administrative effectiveness. Clauses within the by-law may be subject to amendment by Council upon future review.

## **RURAL IMPLICATIONS**

The collection of a Community Benefits Charge will apply to the entire territorial limits within the City of Ottawa. The project list within the strategy report may include projects within the rural area. Drawdowns of in-kind contributions can be made on a development application within the rural areas in the City where development meets the CBC threshold. The quantity of applications eligible for a CBC charge from rural areas in comparison to other parts of the city are likely to be lower – hence it is anticipated that less funds will be collected from this charge in rural wards within the city.

## **CONSULTATION**

As per the CBC framework of Document 1 from February 2021, the Community Benefits Charge project has extensively consulted with internal and external stakeholders and industry partners. Consultation was conducted between September 2021 to August

2022. Please see the appendix for a description of feedback provided in the As We Heard It Report (Document 5).

## **LEGAL IMPLICATIONS**

Recommendation 1 adopts the Community Benefits Charge Strategy Report and Recommendation 3 adopts a new Community Benefits Charge policy. The report and the policy inform the community benefits charge by-law but are not specifically subject to appeal. Adopting a community benefits charge strategy prior to adopting the by-law is a legislative requirement.

Recommendation 2 adopts the CBC By-law. If Council adopts the by-law the Planning Act sets out a right of appeal by any person or public body within 40 days of the passage of the by-law. While the likelihood and scope of such an appeal is not known at this time, an appeal could require a hearing before the Ontario Land Tribunal of between 5 and 10 days and could be completed within existing Legal Services staff resources. If this occurs, the City would likely need to retain the consultant that prepared the strategy report, Hemson, to prepare for such an appeal and act as an expert witness at the hearing.

As described in the Discussion above, the adoption of the CBC by-law triggers transition provisions in s. 37.1 of the Planning Act which prohibit Council from passing new zoning by-law amendments which incorporate a requirement for an agreement under the old s. 37 provisions. Section 37 zoning by-law amendments which have been passed prior to the date upon which the CBC by-law is enacted, and agreements which have been entered into (or will be entered into) pursuant to such by-laws, remain in force and enforceable.

## **RISK MANAGEMENT IMPLICATIONS**

If a by-law is not adopted by Council before the statutory deadline set by the Province, September 18, 2022, the existing section 37 authority will expire, and a charge to replace the former density bonusing regime will not be in place

## **ASSET MANAGEMENT IMPLICATIONS**

There are no direct asset management implications associated with the recommendations of this report.

## **FINANCIAL IMPLICATIONS**

The estimated revenue is \$35 million within the 10-year horizon, less the value of the exemptions/transition provisions provided in the by-law. Funds will be collected, allocated and reported on as outlined within the report.

## **ACCESSIBILITY IMPACTS**

Decisions on projects will be assessed using the City of Ottawa's Accessibility Design Standards, as projects are selected with development applications. The Accessibility Office will be consulted as required.

## **ECONOMIC IMPLICATIONS**

A report provided by N. Barry Lyon Consultants Ltd. titled, "Discussion in support of Ottawa's ongoing Community Benefits Charge Analysis: Effects of Increasing Development Related Costs on Real Estate Economics", highlights land economics, development construction and the CBC charge.

Industry partners use the Residual Land Value (RSV) equation when purchasing land for development. Since the CBC charge is contingent on the valuation of land, this charge is directly connected to project costs. The consideration of this charge would be embedded in the land valuation before land is purchasable. The *cumulative effects* of Growth Funding Tools, previously defined, are a concern for industry partners. These GFTs include increased costs of development charges, fees raised in relation to the City's parkland dedication by-law, Inclusionary Zoning, this CBC charge, among others. N. Barry Lyon Consultants Ltd. conclude that a CBC charge in isolation does not represent a major impact on the viability of development. The NBLC report is provided as an appendix to this staff report and provides further analysis.

The framework for CBCs in February 2021 direct staff that this charge consider the impact of its future inclusionary zoning measures on development. Staff have recommended within the CBC by-law an additional exclusionary measure regarding inclusionary zoning units, to assist in encouraging mid to high-rise development within the City.

## **INDIGENOUS GENDER AND EQUITY IMPLICATIONS**

The provisional amount attributed to art within the capital program list in the strategy report highlight projects featuring artists from Ottawa's First Nations, Algonquin Anishinaabe peoples, Inuit, Métis, Francophone, and new Canadian artists. If projects

are selected under this category, they may require Indigenous consultation on a case-by-case basis.

### **TERM OF COUNCIL PRIORITIES**

This charge addresses the following Term of Council Priorities:

- Economic Growth and Diversification: Encourage economic growth and diversification by supporting business investment and expansion, talent attraction and retention, and branding Ottawa as a place to be.
- Thriving Communities: Promote safety, culture, social and physical well-being for our residents.
- Sustainable Infrastructure: Ensure sustainable infrastructure Investment to meet the future growth and service needs of the city.

### **SUPPORTING DOCUMENTATION**

Document 1 Councillor Sponsor Group framework objectives met from “Framework for adopting a Community Benefits Charge By-law to replace Section 37 policies” Report tabled to Council in February 2021

Document 2 Community Benefits Charge Strategy Report from Consultant (Hemson)

Document 3 Community Benefits Charge By-law

Document 4 Community Benefits Charge Policy

Document 5 As We Heard It Report

Document 6 NBLC Report, Discussion in support of Ottawa’s ongoing Community Benefits Charge Analysis: Effects of Increasing Development Related Costs on Real Estate Economics

### **DISPOSITION**

1. Notice of CBC By-law to be given by the Office of the City Clerk
2. Administration/Reporting of Ontario Land Tribunal Appeals (if any) to be conducted by Legal Services and Business and Technical Support Services, Planning Real Estate and Economic Development

3. Accounting, reporting and providing information in regards to CBC accounts and funds to be completed by Financial Services
4. Collection of the CBC Charge to be administered by Building Code Services
5. Confirmation on the appraisal of land valuations to be completed by Corporate Real Estate Office, Planning Real Estate and Economic Development
6. Disputed appraisals and payments made under protest to be addressed by Corporate Real Estate Office, Planning Real Estate and Economic Development
7. Timing of charges in the context of applications for development or redevelopment to be determined by Planning Services, Planning Real Estate and Economic Development
8. Confirmation on the valuation of in-kind contributions to be completed by the service area to which the contribution pertains (Under Planning Real Estate and Economic Development)
9. The Administration of the CBC By-law, Business and Technical Support Services, Planning Real Estate and Economic Development

**Document 1 – Councillor Sponsor Group framework objectives met from “Framework for adopting a Community Benefits Charge By-law to replace Section 37 policies” Report tabled to Council in February 2021**

Objectives of discussion with Councillors Sponsors Group that have been met:

1. Confirmation on legal parameters guiding the CBCs have been communicated through presentations and email correspondence.
2. An interdepartmental working group comprised of various city departments and service areas was formed as a Steering Committee guiding stakeholder engagement and to confirm priorities.
3. An inter-municipal working group of various representatives from municipalities across Ontario have met on multiple occasions.
4. A background study, titled “strategy” as a report from a hired consultant has been made available to the public and is attached to this report as an appendix, recommended for adoption.
5. Materials have been provided regarding this project and made available on Engage Ottawa.
6. A Councillor Sponsor Group has been established and is comprised of Councillors Leiper, Moffatt and Tierney. Councillors were presented various materials, decision points and matters pertaining to the CBC charge.
7. A workplan regarding the CBCs has been provided to the Industry.
8. The Federation of Citizens’ Association of Ottawa have been engaged and presented with the statutory requirements of CBCs, highlights of the background study, and have been presented with priorities of CBC fund applications.
9. The purposed projects listed within the “strategy” report include a reference to adopted community design plans, long-range financial plans, capital forecasts and other documents of the City assisting in the modelling, forecasting and establishment of the purposed project list.
10. Throughout discussions, it has been reiterated that projects funded by a CBC charge can have no overlap with the same costs of a project funded by Development Charges.



11. Parkland dedication (acquisition of parkland) has been excluded from discussion of CBCs, however, there are specific projects within the strategy outlining cost estimates for park upgrades across the City.
12. A draft proposal of an in-kind contribution framework has been purposed and is incorporated within the “Community Benefits Charge Policy”.
13. The strategy (report) included as an appendix includes a cost-benefit analysis regarding a CBC charge.
14. A draft by-law regarding CBCs has been presented to stakeholders along with input/feedback. The by-law has been presented to the FCA and Industry (jointly).
15. Internal staff discussion has taken place regarding calculation tools associated with the permit application and the process for evaluating land values. The dispute mechanisms in place regarding the appraisal of land associated with a CBC charge has been provided to stakeholders and is within the “strategy” report. The accounting, tracking and statutory requirements pertaining to the CBC charge has been communicated to members of the Councillor Sponsor Group and Financial Services.
16. Input from the public and various internal and external stakeholders have been provided throughout the process of this project, portions of this input have been incorporated in the final draft of the “strategy” report (attached as an appendix in a As We Heard It Report).

The CBC by-law, if passed, may be subject to an appeal to the Ontario Land Tribunal. This portion of the objectives outlined in the CBC framework from February 2021 has been conveyed to the Councillor Sponsor Group and various City staff members.

According to the *Planning Act*, after the notice of the by-law’s passing, the CBC by-law may be appealed within 40 days after it has been passed.

**Document 3 – Community Benefits Charge By-law**

BY-LAW NO. 2022-XX

A by-law of the City of Ottawa for the imposition of Community Benefit Charges.

WHEREAS the Council of the City of Ottawa may by by-law, pursuant to Section 37(2) and Section 37.1 of the *Planning Act*, impose community benefits charges against land to pay for the capital costs of facilities, services and matters required because of development and redevelopment in the area in which the by-law applies;

AND WHEREAS this by-law aims to factor in the provisions of Section 37 by addressing intensification of mid- to high-rise residential development or mixed-used development containing residential units in correlation with growth projections of population and development types outlined in the Official Plan;

AND WHEREAS the Community Benefits Charge addresses residential and mixed-use development and redevelopment within the City of Ottawa that meets the threshold of five (5) storeys or more in height and is a development that includes 10 or more residential dwelling units or a redevelopment that adds 10 or more such units;

AND WHEREAS the imposition of a Community Benefits Charge reduces the burden on taxpayers as it provides funds to be allocated or spent on capital costs, facilities, services and matters addressing growth within the City;

AND WHEREAS the Community Benefits Charge may address services listed in Section 2(4) of the *Development Charges Act, 1997*, provided that the capital costs that are intended to be funded by the community benefits charge are not capital costs that are listed to be funded under a development charge by-law or from the special account referred to in the *Planning Act*, Subsection 42 (15).;

AND WHEREAS Council approved a community benefits charge strategy pursuant to Section 37(9) of the *Planning Act* at the Council meeting of August 31, 2022;

AND WHEREAS the City consulted with persons and public bodies in the development of the community benefits charge strategy pursuant to Section 37(10) of the *Planning Act*;

Therefore the Council of the City of Ottawa enacts as follows:

1. In this by-law:

**Basement** means that level of a building having more than half of its floor to ceiling height below Grade:

**City** means the City of Ottawa;

**Council** means the Council of the City of Ottawa;

**Community Benefits Charge Strategy** means the community benefit strategy prepared pursuant to Subsection 37(9) of the *Planning Act* and approved by City Council.

**Development or redevelopment** means any activity or proposed activity in respect of any land, building or structure that requires

- a) The passing of a zoning by-law or of an amendment to a zoning by-law;
- b) The approval of a minor variance;
- c) A conveyance of land to which a part lot control exemption by-law applies;
- d) The approval of a plan of subdivision;
- e) A consent to sever;
- f) The approval of a description of a plan of condominium pursuant to the *Condominium Act, 1998*, S.O. 1998, c. 19; or
- g) Issuance of a permit under the *Building Code Act, 1992*, S.O. 1992, c. 23, in relation to a building or structure.

**General Manager** means the General Manager, Planning, Real Estate and Economic Development or the General Manager's designate;

**Grade** means the average elevation of the finished level of the ground adjoining all the walls of a building:

**Gross floor area** means the total area of each floor (including a mezzanine) whether located above, at or below Grade, including floor area occupied by interior walls but excluding: floor area occupied by mechanical, service and electrical equipment that serve the building; steps and landings; motor vehicle parking facilities that serve the building; laundry facilities that serve the building; play area accessory to a principal use on the lot; living quarters for a caretaker of the building; amenity space; and accessory uses located below grade;

**Newly Designated Heritage Structure** means a building or structure that is of cultural heritage value or interest, which may or may not be described in the Heritage Register but which is not designated under Part IV or Part V of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18 at the time the first development application is submitted for the redevelopment, and which building or structure, prior to issuance of a building permit for the redevelopment in question, has been designated under Part IV or V of the said Act.

**Owner** means the registered owner of the property or a representative (applicant or developer) of the registered owner of the property.

**Planning Act** means the *Planning Act*, R.S.O. 1990 c. P.13, as amended.

**Residential Unit:** means a self-contained set of rooms located in a building, designed to be lived in by one or more persons, and which contains sleeping, kitchen and bathroom facilities that are intended for the exclusive use of the residents of the unit; and is not a mobile home or other vehicle.

**Storey** means a level of a building included between the surface of a floor and the ceiling or roof immediately above it, and includes a mezzanine but does not include a basement.

#### Application

2. Community benefit charges shall be imposed to fund services and capital projects listed and outlined within the capital program framework within the Community Benefits Charge strategy and report adopted by Council on June 22, 2022.

3. The community benefits charge shall be imposed on:

- a. all development of a proposed building or structure of five or more storeys and ten or more residential units, and
- b. all redevelopment of a building or structure that has five or more storeys, after the redevelopment, and that adds ten or more residential units,

occurring within the territorial limits of the City of Ottawa.

#### Exemptions and Credits

4. All development or redevelopment solely for uses within the exclusions prescribed in Section 1 of Ontario Regulation 509/20 made under the *Planning Act*, or successor regulations, as applicable, is exempt from the community benefits charge.

5. Where development or redevelopment includes uses which are within the exclusions prescribed in Section 1 of Ontario Regulation 509/20 made under the *Planning Act* (or successor regulations, as applicable) as well as non-exempt uses, the gross floor area of the exempt uses shall be deducted from area of the land subject to development or redevelopment for the purposes of calculating the value of the land which is subject to development or redevelopment.

6. Where redevelopment incorporates and retains a Newly Designated Heritage Structure, and is otherwise eligible to pay a community benefits charge, a reduction of 10% of the value of the community benefits charge otherwise payable under this by-law will be applied.

7. The requirement to pay a community benefits charge shall not apply to a property subject to the requirement to provide affordable housing units pursuant to the *Planning Act*, Sections 16 and 35.2.

8. The onus is on the owner or applicant to produce evidence to the satisfaction of the Chief Building Official establishing that the owner or applicant is entitled to an exemption or credit under the provisions of this by-law.

#### Calculation of Charge and Land Valuation

9. No building permit will be issued for development or redevelopment unless (a) the payment required by this By-law has been made or (b) arrangements that conform with this By-law for payment at a future date have been made.

10. The amount of the community benefit charge payable prior to building permit issuance is 4% of the value of the land that is the subject of the development or redevelopment.

11. The City shall provide to the applicant a valuation of the lands that are the subject of the development or redevelopment and an estimate of the community benefits charge based on that valuation upon the earlier of:

- a. site plan approval for the development or redevelopment in question, or
- b. application for a building permit for development or redevelopment.

12. The estimate of the Community Benefit Charge, described in section 11 above, is subject to change if at any point up to the date of building permit issuance if:

- a. the area of the lands which are the subject of development or redevelopment changes;
- b. the underlying valuation expires in accordance with section 13 below; or,
- c. The City and the owner mutually agree to update the valuation of the lands.

13. The valuation of land provided by the City, described in Section 11, above, or any updated valuation described in Subsection 12 (c), above, will expire 24 months from the date on which it was provided, if a building permit has not been issued for the development or redevelopment in question. If this occurs, an updated valuation on the land that is the subject of development or redevelopment will be provided by the City prior to building permit issuance or earlier if requested by the applicant.

14. Notwithstanding Section 13, above, the valuation of land provided by the City described in Section 11, above, or any updated valuation described in Section 12 (c), above, may be extended for a further twelve (12) months if it is demonstrated to the satisfaction of the General Manager that construction has been delayed due to factors outside of the control of the owner.

15. The terms for community benefit charge timing and phasing of payments may be described in a development agreement required as a condition of approval of a development application. Such an agreement may allow for phased payments, for in-kind contributions, and any other matters, as determined by the General Manager, subject to the payment being required no earlier than such date authorized by the *Planning Act* and the in-kind contributions being determined in accordance with this by-law.

16. Notwithstanding Section 13, above, the valuation of land provided by the City described in Section 11, above, or any updated valuation described in Section 12 (c), above, shall not expire if a development agreement specifically provides for a different expiry date for the said valuation.

17. Any dispute regarding land valuation will be subject to the mechanisms and timelines outlined within the *Planning Act*.

#### In-Kind Contributions

18. Unless otherwise provided in this by-law or directed by Council, the community benefits charge shall be payable in cash.

19. The owner of land may provide an in-kind contribution in respect of an imposed community benefit charge, or a portion thereof, subject to the City of Ottawa

Community Benefit Policy and with the written approval of the Director of the service area in question.

20. The City shall advise the owner of land of the value that will be attributed to in-kind contributions prior to the provision of the in-kind contribution.

21. All approved in-kind contributions for a given development application will reduce the community benefit charge otherwise payable by the value attributed to the in-kind contribution.

22. In circumstances where the valuation of the land which is the subject of the development or redevelopment described in expires in accordance with section 13, above, the value attributed to any in-kind contributions which have not already been provided or which the applicant is not already legally bound to provide based on a signed agreement will expire and a new valuation of any such in-kind contributions will be provided prior to building permit issuance or upon the request of the applicant.

#### Special Account

23. All monies collected by the City pursuant to this by-law will be placed in a special account and adhere to all requirements for the administration of such accounts as per the *Planning Act* and regulations thereto, as amended.

24. Reports and information regarding the special account for community benefit charges shall be provided in accordance with the requirements of the *Planning Act* and regulations thereto, as amended.

#### Other Matters

25. The General Manager has delegated authority to enter into retainer agreements with and maintain a list of appraisers who are not City employees or members of Council to prepare appraisals required for dispute resolution pursuant to subsection 37 (38) of the *Planning Act*.

26. Development or redevelopment for which a complete development application of one of the types listed in subsection 37 (3) of the *Planning Act* has been submitted to the City on or before the date upon which this by-law is passed is exempt from the Community Benefit Charge, provided that a building permit for the said development or redevelopment is issued within five (5) years of the date on which this by-law is passed.

27. Within five years after this by-law is passed, and every five years thereafter, Council shall ensure that a review of this by-law is undertaken and shall pass a resolution declaring whether this by-law requires revision.

28. Headings do not form part of this by-law and are editorially inserted for convenience of reference only.

29. This by-law may be cited as the "Community Benefits Charge By-law 2022".

30. This by-law comes into force on September 19, 2022.

ENACTED AND PASSED this 31<sup>st</sup> day of August, 2022

CITY CLERK

MAYOR



## **Document 4 – Community Benefits Charge Policy**

### *In-kind contributions*

In-kind contributions are to be addressed as conditions of site plan approval.

In-kind contributions must adhere to the broad categories provided within the adopted strategy report as follows:

1. Housing
2. Traffic Calming & Road Safety
3. Public Realm
4. Community Facilities
5. Active Transportation
6. Urban Parks

Provisions and capital projects detailed in each service category can be used as examples of what could be accepted as in-kind contributions, however, the City on a case-by-case basis can determine the appropriate contribution, subject to the approval of the Director in which the service category applies.

The lead planner of a development application will consult with the strategy report capital program list. The lead planner of a development application will determine the project(s) which will be provided as an in-kind contribution, with the engagement of the service area and the local Councillor where the development applies, among any projects listed within the ward (on the capital list). If no project is listed, discretion for in-kind contributions are acceptable so long as they are associated with the broad categories and or provisions within them regarding the capital program list within the strategy report.

Any in-kind contributions must be approved by the Director of the service area where the project applies.

In-kind contributions have to be included to projects or service areas that are within the strategy report.

All in-kind contributions will be made public for transparency reasons and used as a benchmark for the industry for in-kind contributions in development applications.

City staff shall make efforts to ensure that the valuation of any in-kind contributions be agreed upon by the City and applicant(s) within 50 days of receiving a complete development application/site plan application.

If an agreement cannot be reached for any in-kind contribution, the full 4% charge on the land value will apply.

*Money to be spent from the collection of the CBC charge*

- Revenue collected through the charge shall be paid into the following accounts:
  - o 12% to a city-wide account for the purpose of paying the costs of implementing and administering the community benefit charge program; and
  - o 88% to a ward-specific account for the ward in which they development or redevelopment is taking place. Where the development/redevelopment occurs within two or more wards, the General Manager, Planning, Real Estate and Economic Development is delegated authority to direct the Treasurer to apportion the ward-specific funds between the wards in proportion to the land under development/redevelopment in each.
- Revenue collected through the charge is to be allocated to a project either through budget approval or under delegated authority to the General Manager, Planning, Real Estate and Economic Development, in accordance with the following:
  - o Revenue collected from the charge is to be spent on projects within the capital program list in the strategy report if there are projects applicable to the ward in which the funds were collected.
  - o If multiple projects exist, the General Manager, Planning, Real Estate and Economic Development or the General Manager's designate may decide which project would be funded and in what amount in consultation with the Councillor of the applicable ward.
  - o Notwithstanding the foregoing there is no specific project listed, the General Manager, Planning, Real Estate and Economic Development or the General Manager's designate may consult with the local Councillor of the ward and Director in the service area that pertains to the contribution and decide on a new project or projects to which to allocate the funds

- Revenue from the charge in a CBC special account (ward-specific accounts or the City-wide administration account) may be disbursed by the Chief Financial Officer upon written direction from the General Manager, Planning, Real Estate and Economic Development in accordance with this policy.
- The Chief Financial Officer may not disburse or allocate funds in excess of those collected for any given CBC special account.
- In exceptional circumstances where:
  - o the ward that collects the charge has no project(s) on the project list,
  - o a new project cannot be identified by the General Manager, Planning, Real Estate and Economic Development or the General Manager's designate after consulting with the ward Councilor and service area staff, and
  - o the statutory requirement to, within each calendar year, allocate 60% of the funds present in a ward-specific CBC special account at the beginning of the year will not be met unless funds are allocated to a project,

then such funds may be transferred to another ward-specific account(s) and allocated to a project/projects within that ward. Such funds will be placed within a ward adjacent to the ward in which the charge was collected. The said funds shall be transferred between accounts and allocated to projects by the Chief Financial Officer at the direction of the General Manager, Planning, Real Estate and Economic Development.

## Document 5 – As We Heard It Report

### Community Benefits Charge - As We Heard It Report

#### Introduction:

Organizations, residents, and industry across Ottawa were engaged in the “Framework for adopting a Community Benefits Charge By-law to replace Section 37 policies.”

This report outlines stakeholder engagement from members within the Federation of Citizens’ Association (FCA), members representing various Community Associations and Industry within the City of Ottawa. Presentations were provided to FCA members and Community Associations. The project background, consultation timelines, presentation and reports were shared with residents on the Engage Ottawa platform.

This report will highlight the key themes submitted by stakeholders through email correspondence, consultation meetings, formal feedback letters and a survey circulated to Community Association members.

#### City-wide themes

Topic	Feedback
<p>Concerns were shared regarding where the collection of money is to be spent.</p> <p>(e.g. city-wide projects, ward-by-ward/local, hybrid model)</p>	<p>Consensus that money should be spent locally in the ward where the charge is collected.</p> <p>A Community Benefits Charge policy outlines how the funds are to be spent on a local level where development applies.</p>
<p>What categories of projects should be prioritized with the CBC strategy.</p>	<p>The following categories are ranked from 1 to 4 in order of importance regarding the capital program list in the consultant report. 1 being the highest. Some categories were tied in ranking.</p> <ol style="list-style-type: none"> <li>1. Urban Parks</li> <li>2. Community Facilities/Active Transportation</li> </ol>

	<p>3. Traffic Calming</p> <p>4. Housing/Public Realm</p> <p>All categories are addressed within the capital program in the consultant report. If the strategy (report) is adopted, specified projects and programs within these broad categories would be adopted.</p>
<p>What facilities/activities are used the most within the city, in relation to the capital program list.</p>	<p>The following categories are ranked from 1 to 4 in order of importance regarding the capital program list in the consultant report. 1 being the highest. Some categories were tied in ranking.</p> <ol style="list-style-type: none"> <li>1. Parks</li> <li>2. Childcare/Daycare, Community Gardens/ Community Recreation Centres</li> <li>3. Libraries</li> <li>4. Other Services</li> </ol> <p>Additional projects have been added to the capital program list within the activities above.</p>
<p>How does Affordable Housing work with a Community Benefits Charge</p>	<p>Non-profit housing cooperatives and other corporations are exempt.</p>

<p>How will Inclusionary Zoning work with the Community Benefits Charge.</p>	<p>The charge may work alongside the Inclusionary Zoning policy within the City.</p> <p>The adoption of the CBC by-law will stipulate any exemptions (such as Inclusionary Zoning) above and beyond the statutory requirements of the <i>Planning Act</i>.</p>
<p>How will the consultation process work with CBCs upon its implementation</p>	<p>A pre-list has been determined in regards to projects and programs funded on a ward-by-ward basis within each service category.</p> <p>Provisional estimations within the capital program list permit projects to be selected under 6 categories – with local Councillor engagement.</p> <p>The project list and service categories, alongside the CBC by-law, is subject to review every 5 years according to statutory requirements (or sooner).</p>
<p>Is there leeway on the calculation of the 4% charge of CBCs in comparison to previous Section 37 agreements.</p>	<p>Current Section 37 calculations are determined by the Gross Floor Area (GFA).</p> <p>The new CBC charge is up to 4% of the land valuation where development applies.</p> <p>There is some leeway in regards to the application of the 4% CBC charge. Staff recommend the adoption of the CBC by-law that will stipulate the calculation of the charge, timing and its payment.</p>

<p>How do Development Charges work with Community Benefits Charges</p>	<p>Statutory requirements prevent city projects to be funded by both a Development Charge and a Community Benefits Charge – both are separate Growth Funding Tools (GFTs) that pay for separate types of projects (with some exceptions).</p> <p>Both GFTs are legislated differently. Both GFTs are calculated differently. Both GFTs are applied and charged to development applications subject to different thresholds and criteria.</p> <p>Both GFTs are similar in that their payment is subject to building permit issuance within a development application.</p>
<p>How comparable are Section 37 revenues with CBC revenues</p>	<p>The expectation of revenue associated with CBCs are comparable with the average collection of Section 37 funds from the city in the last 8 years (since 2013).</p> <p>The projected revenue from the consultant report regarding the CBC charge is \$35 million between 2022-2031. On average that is \$3.5 million a year.</p>
<p>How will current development applications work during the transition from Section 37 agreements to the new CBC charge.</p>	<p>The proposed by-law will address all in-stream applications that meet the CBC charge threshold.</p> <p>All Section 37 agreements on title remain enforceable beyond the September 18, 2022 statutory deadline.</p> <p>The onus is on the landowner or applicant to produce evidence to the satisfaction of the City establishing that the owner or applicant is entitled to an exemption under the provisions of the proposed by-law.</p>

<p>How will the process of “in-kind contributions” work and how will they be given a valuation</p>	<p>The Community Benefits Charge policy will outline the in-kind contribution framework regarding the CBC charge.</p> <p>The process in accepting in-kind contributions and drawdowns from the 4% cap on the CBC charge will be determined in a development application.</p> <p>The valuation given to a contribution in order to reduce a charge is required by the <i>Planning Act</i>.</p> <p>The City will confirm valuations of contributions, subject to the approval of the Director in the service area in which the contribution applies.</p> <p>The request to make all in-kind contributions public/transparent for the community will be met within the CBC policy.</p>
--	---