

August 20, 2019

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RE: Proposed new regulation pertaining to the community benefits authority under the *Planning Act* (ERO number 019-0183)

On behalf of the City of Toronto I am pleased to submit comments from the City regarding the proposed regulation concerning the introduction of the community benefits authority under the *Planning Act*. The City's comments are intended to assist the Province to meet its stated objective that growth continues to pay for growth through the new community benefits authority.

With a substantial number of residential units in the pipeline, planning for Toronto's long-term livability and managing the impacts of growth is of paramount importance. More residents generate increased demand for community infrastructure and parks across the city. Toronto's ability to secure in-kind dedications, cash-in-lieu contributions and payments through Development Charges has supported the local and city-wide investments that provide the spaces and facilities people need to enjoy a high quality of life and ensure the development of complete communities. The provision of in-kind facilities, through Section 37, or parkland through Section 42 are invaluable tools to ensure the provision of complete communities which are important to the City, its residents, businesses and visitors. Due to the complex nature of infill development in Toronto, the City often uses a combination of the available tools. The flexibility to use these tools allows us to collaborate with the development industry to deliver new housing and great communities.

The existing growth-based tools support a significant component of the City's capital plan for community infrastructure. The Community Benefits Authority must provide municipalities with the ability to continue to fund their growth-related capital plans, based on current growth estimates. A crucial component of the orderly migration from the current tools to the new system, established through Bill 108, is the City's ability to continue to use the alternative parkland dedication rate until the Community Benefits Authority is in force.

The Community Benefits Authority must also recognize and address that Toronto will face increased growth pressures based on recent legislative changes and the new 2019 Growth

Plan. Therefore, the Community Benefits Charge should not be based solely on matching historical revenues that have been generated by the existing growth-based tools, as this growth will be surpassed and increase in intensity. We understand that a crucial aspect of the new regime is that there be a strong connection between the rates and the municipal costs they are offsetting. Future growth-related costs will have to be recognized in order to achieve this objective. We hope this can be achieved with the appropriate cap on land value, regulations that consider the practicalities of development, and transition regulations that provide for an orderly migration from the current tools to the proposed Community Benefits Charge.

1. Community Benefits Charge ("CBC")

The amendments to the *Planning Act* in Schedule 12 of the *More Homes, More Choice Act, 2019*, provide the authority for municipalities to charge for community benefits at their discretion to fund a range of capital infrastructure for community services needed because of new development. The Province is proposing that for any particular development, the Community Benefits Charge payable could not exceed the amount determined by a formula involving the application of a prescribed percentage to the value of the development land parcel.

The Province has noted two goals for determining the prescribed percentage: 1) to ensure that municipal revenues historically collected from development charges for 'soft services', parkland dedication (including the alternative rate), and density bonusing (Section 37) are maintained; and 2) to make the costs of development more predictable.

Developing the Community Benefits Charge formula

1.1. Recommendation: Community needs, and costs to meet them, should be based on growth projections and a time horizon. This should be the foundation for the Community Benefits Charge formula. Historic municipal revenues and service levels may be deficient.

Comment: The Ministry has indicated that the CBC land value cap will be based on historical revenues from growth-based tools. The purpose of using historical revenues seems to be that it will provide the Province with 'real' numbers as they relate to the revenue and in-kind contributions related to growth. Basing the land value cap on current revenue tools assumes that these tools as currently deployed are providing community infrastructure that meets the municipalities' needs. This is not necessarily the case. The following are three examples:

1) In Toronto, parkland provision is declining. 87 percent of census dissemination areas within the city will see a decline in parkland provision per person by 2033 due to growth. Therefore, aligning the land value cap with the current revenues will only imbed the challenges of acquiring adequate parkland.

2) With respect to child care, if projected growth is achieved, and no additional child care is constructed, the current deficiency in licensed spaces will be exacerbated.

For example, in the 'Golden Mile' area, which will be served by the Eglinton Crosstown LRT, there is currently capacity to serve less than 20 per cent of children 0-4 years of age. Consequently, the planning framework for this area includes the need for new child care. This would not be picked up if historical revenues are used as the basis for the CBC formula as the need for child care has greatly increased with the level of anticipated development.

3) The current Development Charge, approved by Council in May 2018, is being phased in over multiple years, to provide for fair transition to the new rates. The full value of the Development Charge increase will not be implemented until the end of 2020. Council also approves numerous discretionary exemptions (for example: affordable housing) which vary from time to time and should not be deducted from DC revenue. Therefore, it would be inaccurate to assume that current revenues are meeting the City's needs or are an appropriate reflection of revenue expectations or potential under the current regime.

1.2. Recommendation: Many municipalities have a range of land markets. The CBC land value cap should be tailored to different land markets and the regulation should enable municipalities to account for these variations through the CBC by-law.

Comments: Municipalities that have a range of development conditions and land markets should have a range of land value caps based on different geographies, market conditions and areas in proximity to planned rapid transit. Calibrating how the CBC is used across the city will support the growth-pays-for-growth principle. For example, where land values are higher, the municipalities will require more CBC revenue to provide growth-related community infrastructure. This is because the cost of acquiring land represents a larger portion of capital costs in areas where land is expensive. Developments in these land markets may have a greater capacity to absorb a higher CBC cost while maintaining viability. It is important that the land value cap is set at a rate that enables municipalities to reflect the variability of land markets within its by-law. The City of Toronto has completed an analysis of the cumulative impact of development fees and charges, and will be providing input on

the thresholds for development viability through the upcoming consultation on the CBC formula.

The CBC, as a percentage of land value, needs to account for both the land acquisition costs for new public service facilities and the construction costs associated with delivering them. Construction costs for community facilities are relatively constant across the city. Land values, however, are not. Today, construction costs for a typical community centre are approximately \$600 per square foot in most areas of Toronto. This per square foot cost is irrespective of land values. Areas with lower land values may not generate sufficient funds to support necessary infrastructure and this may result in disparities.

- 1.3. Recommendation: Enable municipalities to index the CBC to an appropriate cost index.

Comments: The CBC should be aligned with increasing costs of construction for non-residential buildings. In the Toronto CMA, for example, the Building Construction Price Index increased by 5.2 percent for non-residential buildings between Q1 2018 and Q1 2019. This is an increase of 1.7 percent over the increase in residential construction prices.¹ If the CBC is set on the basis of the land value for *residential* uses, it will not be able to account for the costs related to non-residential construction. The appropriate price index, or a custom index can be set out in the CBC by-law.

Components of the Community Benefits Charge

The Province has suggested in the draft regulation that capital infrastructure for community services could include libraries, parkland, daycare facilities and recreation facilities. The Province has also set out a number of excluded facilities, services or matters that may be excluded from community benefits.

- 1.4. Recommendation: Enable municipalities to set, by by-law, the range of expenditures eligible for community benefits charges.

Comments: The draft regulation provides a list of capital infrastructure that will be needed to support new development. The draft regulation provides a list of capital infrastructure that are being contemplated to be included: "This capital infrastructure for community services could include libraries, parkland, daycare facilities and recreation facilities". Greater clarity is required with regard to whether

¹ Statistics Canada: Building construction price indexes, percentage change, quarterly

this list of capital infrastructure is meant to provide examples, or represents an exhaustive list. There are certain services in the City that currently have a portion of operating costs covered by growth-related revenue tools. For example, the Toronto Public Library collection, which is included in its operating budget, is currently eligible for development charges for the growth-related portion.

- 1.5. Recommendation: The regulation should include a clear definition for each type of development that is exempt from charges for community benefits.

Comments: The Minister is proposing that the following types of developments be exempt from charges for community benefits under the *Planning Act*:

- Long-term care homes
- Retirement homes
- Universities and colleges
- Memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion
- Hospices
- Non-profit housing

The above terms have not been defined in the regulation. The inclusion of definitions would ensure that any questions regarding the types of development that are to be exempt from charges for community benefits under the *Planning Act* can be dealt with in an expeditious and clear manner, which will assist in avoiding problems arising from interpretation of the regulation. For instance, the City is currently unsure as to what is meant by a memorial home.

Draft definitions should be released to municipalities prior to finalizing the CBC formula and land value caps so that municipalities can review and properly assess the financial impacts, and ensure that there are no unintended consequences related to these exemptions.

Furthermore, exemptions should be restricted to development that needs and deserves public support, which may not be the case for all developments within the categories noted in the draft regulation. For example, for-profit retirement homes which may charge rents and service fees that do not meet any measure of affordability and should be required to pay the CBC charge.

- 1.6. Recommendation: Retain cultural and entertainment facilities and tourism facilities as permitted facilities, services and matters to be included as a community benefit. Specify that non-profit facilities falling under these categories may be eligible for community benefits.

Comments: The Minister is proposing to prescribe that the following facilities, services or matters be excluded from community benefits:

- Cultural or entertainment facilities
- Tourism facilities
- Hospitals
- Landfill sites and services
- Facilities for the thermal treatment of waste
- Headquarters for the general administration of municipalities and local boards

Under the City of Toronto's Official Plan Section 37 policies, (Section 5.1.1.6d) non-profit art, cultural, community or institutional facilities are eligible for community benefits. Some examples of Section 37 contributions that have supported non-profit cultural facilities include the Wychwood Barns, Crow's Nest Theatre and the Regent Park Arts and Cultural Centre (Daniels Spectrum). Specifying that only for-profit cultural and entertainment facilities are not eligible as community benefits would enable municipalities to continue to allocate community benefits to non-profit facilities.

2. Community Benefits Charge Strategy

The draft regulation does not include information on the Community Benefits Charge Strategy. Section 37 (9) of the amended *Planning Act* indicates that before passing a community benefits charge by-law, the municipality shall prepare a community benefits charge strategy that (a) identifies the facilities, services and matters that will be funded with community benefits charges; and (b) complies with any prescribed requirements. In the absence of clarity on prescribed requirements, the City of Toronto recommends the following:

- 2.1. Recommendation: The regulation should provide flexibility to municipalities when preparing a Community Benefits Strategy to address individual municipal needs.

Comments: The legislation indicates that there may be prescribed requirements for a Community Benefits Strategy. Needs and priorities for community benefits will vary across municipalities. Within the past five years, Toronto City Council has adopted a number of strategies related to the provision of infrastructure that is now defined as 'community benefits'. These include the Child Care Growth Strategy, the Toronto Public Library Facilities Master Plan, the Parks and Recreation Facilities Master Plan, and community services and facilities strategies for a number of local geographies. The 2018 Development Charges Background Study also included an enumeration of costs of net capital costs attributable to development that is forecast

to occur in the community. Each of these strategies included extensive public consultation before being presented to City Council.

There is precedent for providing municipalities with the flexibility to develop plans as required by the *Planning Act*. Changes to the *Planning Act* under Bill 73 required a municipality to prepare a parks plan before enacting an alternative rate by-law. The legislation prescribed that the parks plan examine the need for parkland in the municipality and set out a short list of public bodies to be consulted, namely the school boards. The City is recommending similar flexibility for the CBC Strategy.

3. Establishing Land Value

The draft regulation reads, 'for any particular development, the community benefits charge payable could not exceed an amount determined by a formula involving the application of a prescribed percentage to the value of the development land on the day before the building permit is issued.'

Calculation date

3.1. Recommendation: The regulation should permit the municipality to specify the applicable permit date for land value calculation through the Community Benefits Charge By-law.

Comments: Municipalities in Ontario issue a range of building permits for any given development. For example there can be excavation and shoring, below grade, conditional and above grade permits. The regulation should enable municipalities to specify at which building permit the value of the land will be established. Alternatively, the City of Toronto is recommending that the regulation specify that the value of land is determined on the day before an above grade permit is issued.

In the City of Toronto, issuance of below grade permits do not guarantee that the development will proceed. Thus the accurate land value of the development may not be captured in an appraisal. Additionally, it may take upwards of 18 months for completion of below-grade construction. In land markets where values are increasing rapidly, such as in Toronto's high growth areas, early calculation of land value is not an accurate representation of ultimate land value and can represent a significant loss of revenue to the municipality. This in turn puts the municipality at a disadvantage when seeking to use the CBC to acquire land for community infrastructure locally. Where in-kind dedications are subtracted from a lower CBC value, municipalities will be left with lower revenues for other investments in community benefits.

Appraisals

The draft regulation sets out the process by which a municipality and the owner of the development parcel land will conduct land appraisals to ensure the CBC payment is not in excess of the amount legislatively permitted. The proposed content outlines a mechanism for dispute resolution. The draft regulation does not provide detail on the method or approach to land appraisals.

3.2. Recommendation: Require appraisers to use a Residual Land Value approach in valuations.

Comments: Site-by-site appraisals and re-appraisals to set the payable amount of CBC across all eligible development may have impacts that are contrary to the government's stated objectives. The new regime could increase administrative burden, delay the determination of the charge, increase variability and uncertainty of the charge, and reduce its relationship to municipal costs if not carefully designed.

Notwithstanding the challenge noted above, the City recommends using a Residual Land Value (RLV) approach for appraisals. RLV is an accepted approach for land valuations and financial pro forma testing. It is a future-oriented approach that does not rely solely on market comparables. The RLV model measures the impact on land prices caused by changes to development charges and fees, when other hard and soft costs are held constant. The key assumption is that the value that purchasers are willing to pay for land will increase as other costs decrease or vice versa while maintaining a project profit margin, commonly between 10-20%

During a period of policy change, a comparables-based valuation system is not an accurate method of establishing land values. This is because land may have transacted under a prior regime, which would have had a different impact on valuation, or because the prospect of policy change may induce a speculative increase on the price of land. Moreover, a comparables-based approach cannot accurately incorporate site-specific variables which might influence the value of the development land.

4. Reporting on Community Benefits

The *Planning Act* as amended by Bill 108 requires that municipalities that pass a community benefits by-law provide the reports and information that may be prescribed in the regulation to persons prescribed in regulation. The Province is proposing that municipalities will be required to prepare an annual report for the preceding year that

would provide information about the amounts in the community benefits charge special account. Neither the legislation nor the regulation sets out the timing for the reports and information to be submitted.

- 4.1. Recommendation: The regulation should allow municipalities to set the timeframe for annual reporting.

Comments: Toronto's capital budget and operating budget is approved annually in April. The 'preceding year' as set out in the draft regulation overview should be for a 12 month period set at the municipality's discretion. This will enable municipalities to align the reporting with budget approvals and will provide accurate information through the report, on matters established through regulation.

5. Community Benefits Charge in Community Planning Permit System Areas

The Province is proposing that a CBC may not be available for use in areas where a community planning permit system is in effect. This is because the community planning permit system allows conditions requiring the provision of specified community facilities or services.

- 5.1. Recommendation: Enable municipalities to *require* in-kind dedications of community benefits within community planning permit system (CPPS) areas.

Comments: CPPS areas will have specified community facilities or services that are required to support complete communities. It is assumed that the predictability provided through the CPPS meets the Province's stated desire for greater certainty related to contributions through development. It is also assumed that the Minister's approval of a CPPS includes the acceptance of the required community facilities and services, provided for in regulation 173/16 s.3(5). Further, where the Minister designates an area subject to a community planning permit system, the municipality should be able to enter into cost-sharing agreements with multiple land owners registered on title to provide the community infrastructure to these areas.

6. Transition

Alternative Parkland Dedication Rate

Bill 108 does not include a transition provision for the alternative parkland dedication rate, where parkland or cash-in-lieu of parkland is secured and where no Section 37 is

in place. As of the date of proclamation of Bill 108, municipalities will no longer be able to secure parkland under Section 42 (3) of the *Planning Act*.

Municipalities will only be able to secure the base parkland rate as set out in Section 42 (1). Municipalities must be kept whole during the period of transition.

6.1. Recommendation: Align the proclamation of the revised Section 42 until the effective date of the Community Benefits Charge.

Comments: The draft regulation speaks to that in determining the prescribed percentages in the community benefits formula, one of the goals is to ensure that historical municipal revenues from parkland dedication including the alternative rate are maintained. To ensure this occurs, and notwithstanding the City's comments under 1.1 related to establishing appropriate benchmarks for revenues, clarity is required to guarantee that the existing mechanisms for collecting these revenues are retained until the CBC by-law is adopted.

If the legislation only protects for the alternative rate by-law for developments that are subject to a by-law under the existing Section 37, municipalities will lose a significant amount of parkland. Section 37 agreements are in place for approximately six percent of all developments with a required parkland dedication in Toronto. In 2017-2018, Toronto received \$282 million in parkland cash-in-lieu payments, of which 47% were based on the alternative rate. In 2018, the City secured 31.5 hectares of parkland as land dedications (note that the value of land in Toronto has an approximate range of between \$15M-\$275M per hectare in growth areas). Using this as a measure, the City will lose significant revenue and parkland dedication if this section is proclaimed and in force prior to a Community Benefits Charge By-law being adopted.

Inadequate transition provisions will be a departure from the Province's 'growth pays for growth' objective as municipalities may only have the ability to secure the *Planning Act's* base rate for parkland in the absence of a CBC by-law.

Community Benefits Charge

The Province has proposed January 1, 2021, as the specified date for municipalities to transition to community benefits.

6.2. Recommendation: Set the specified date as the later of four years or the expiry of the current Development Charges by-law for municipalities to transition to community benefits charge by-law.

Comments: The specified January 1, 2021 date for transition to a community benefits charge system provides insufficient time for municipalities to transition to the proposed new system. Completing a single community benefits charge strategy for a city with needs as diverse and growth as intense as Toronto is a significant undertaking, particularly when providing for public and stakeholder consultation.

Furthermore, municipalities are awaiting clarity on the Provincial Regulation that would establish the community benefits formula and the prescribed land value cap. Consultation on the proposed formula is still underway. Preliminary figures from municipalities indicate not only that costs as a percentage of land values vary widely (5% to 100%+), but also that the highest ratios can be associated with high value land. These results will present challenges to the design of the CBC formula to guarantee revenue neutrality and avoid unintended development incentives. Given that it is presumed that the proposed content for the prescribed percentages will be accompanied by a consultation period, there is a very real possibility that municipalities will not receive a finalized regulatory framework underpinning the community benefits charge until late in 2019 or early 2020. This would in essence leave a municipality less than a year to do all the necessary work to prepare a strategy and bring the strategy to Council for adoption. It is assumed that such a Strategy would require detailed capital planning and extensive public consultation. Adequate transition between the current legislation and any amendments needs to be provided so that municipalities can complete the Strategy and bring forward the CBC By-law.

Securing Community Benefits

The amendments to the *Planning Act* have repealed Section 37 (4) which enabled registration of agreements against the land to which it applies, allowing the municipality to enforce the provisions of the agreement against the owner subject to the provisions of the *Registry Act* and the *Land Titles Act*, and any and all subsequent owners of the land.²

6.3. Recommendation: Add the following provisions to the proposed regulation: "Where an owner of land elects to provide an in-kind facility, service or matter because of development or redevelopment in the area to which a community benefits charges by-law applies, the municipality may require the owner to enter into one or more agreements with the municipality and may require the owner to post financial securities dealing with the facility, service or matter."

and

² R.S.O. 1990, c.P.13, s.37

“Any agreement entered into may be registered against the land to which it applies and the municipality is entitled to enforce the provisions thereof against the owner and, subject to the provisions of the Registry Act and the Lands Titles Act, any and all subsequent owners of the land.”

Comments: Under Bill 108 a municipality may allow a land-owner to provide a portion of the required CBC in-kind (facilities, services or matters required because of development). Notwithstanding the ability to secure in-kind contributions, there is no mechanism available in the legislation to permit municipalities to secure the commitment by an agreement that can be registered on title. Without this ability municipalities cannot ensure that commitments to provide in-kind contributions are binding on future owners of the land. This could lead to a situation where a subsequent purchaser refuses to provide the in-kind contribution or any on-going commitments pertaining to the in-kind contribution to the detriment of the municipality and the intended recipients of the benefit. The City assumes it may continue to secure in-kind contributions by mechanisms such as a Letter of Credit.

7. Other

The Minister's decision on the City's Official Plan Amendments 405 and 406 included matters as community benefits that are traditionally requirements of Site Plan approval that are needed to support development. In some cases, matters secured through Site Plan approval or required through the zoning by-law remain in private ownership. Some of the items listed as eligible community benefits in the Minister's decision on OPA 405 and 406 included new public streets, access to transit, cycling amenities, street trees, setbacks at grade and any easements to support public access within the setbacks, and Privately-Owned, Publically Accessible Open Space (POPS). It is not clear from the Minister's decision why these elements were included as community benefits in the modification to OPAs 405 and 406.

7.1. Recommendation: Matters that remain privately-owned or are secured through Site Plan approval should not be included in the CBC.

Comments: If such matters are considered Community Benefits, municipalities will not be able to require them as a condition of Site Plan approval under Section 41 of the *Planning Act* since Bill 108 no longer enables municipalities to require in-kind community benefits. Municipalities would be required to use the CBC to pay for and secure these matters. This will impose undue costs and procedures in order for the municipality to ensure the orderly development of communities. If the regulation is proposing to carry forward the community benefits identified through OPA 405 and

406, the CBC formula will need to account for the legal, design and construction costs for all Site Plan matters to ensure the municipality is kept whole. The City expects that these matters will continue to be secured through Site Plan Control.

Conclusion

The City would like to thank the Province for providing an opportunity to comment on the proposed content of the regulations associated with Bill 108. These issues are important in Toronto and across Ontario municipalities. The City, similar to other municipalities, desires a community benefits approach that enables achievement of complete communities now and into the future. Given the ERO posting is only a summary for a new regulation pertaining to the community benefits authority, there remains a number of questions and concerns regarding how the Bill 108 framework (both legislation and regulation) will be effectively operationalized, as set out in this letter and Toronto City Council's adoption of [Item CC7.3](#) on Proposed Bill 108 at its May 14, 2019 meeting. We look forward to further engagement on these matters with the Province,

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Lintern".

Gregg Lintern, MCIP, RPP
Chief Planner and Executive Director
City Planning Division