

August 16, 2019

**Re: ERO Proposal Number 019-0183  
Bill 108 Community Benefit Charge**

Thank you for the opportunity to comment on the Proposed Changes to Regulations of the Planning Act specific to the Community Benefit Charge

The City of Guelph offers the following comments on the proposed regulations.

**1. Transition**

*It is proposed that the specified date for municipalities to transition to community benefits is January 1, 2021*

**City of Guelph Recommendations:**

The City recommends that the “specified date” be amended to no earlier than January 1, 2023 and be consistent with the “specified date in S9.1 of the amended Development Charges Act.

The Minister should ensure that related amendments introduced through schedule 12 of the More Homes, More Choice Act, 2019 removing the “alternative requirement” for parkland dedication required under sections 42 and 51.1 of the Planning Act not be proclaimed in force before the “specified date”.

The Minister should consider a legislative amendment to s. 51.1 of the Planning Act to close a potential gap with respect to parkland dedication/community benefits charges for Plans of Subdivision approved after s. 9 of Schedule 12 of the *More Homes, More Choice Act, 2019* is proclaimed in force, but before a municipality adopts a community benefit by-law as authorized by the amendments introduced through that section.

The Minister should provide transitional language for the changes impacting Section 37 that relate to; existing reserve fund balances, outstanding debt and capital obligations.. Guelph recommends that any funds/obligations be transferred to the new community benefit charge reserve fund at the date of transition.

**Commentary to support the recommendations:**

The proposed deadline for community benefit plan implementation does not provide sufficient time for municipalities to update the development charge study or plan, develop and implement a community benefit strategy. These strategies require significant community engagement and subject matter expertise including land

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value studies and population/growth projections. There needs to be more time allotted by the province for the municipal sector to adopt an entire new funding regime. As with anything new, there are implementation challenges that will inevitably occur.

Given the interdependency of the specified date in the Development Charges Act and the related sections of the Planning act, the City recommends aligning the deadlines to ensure there is no lost collections relating to parkland. The proposed regulation repeals section 42 of the Planning Act by January 1, 2020, however, a community benefit charge is not required until January 1, 2021. The City is concerned that there will be a gap in which municipalities will lack the authority to collect sufficient parkland dedication funds therefore causing an unintended loss of revenue for this period, that will ultimately be borne by the tax payers.

There remains a potential issue with respect to parkland dedication imposed as a condition of a Plan of Subdivision. As amended by the *More Homes, More Choice Act, 2019*, subsection 51.1(6) will provide that where parkland dedication is required as a condition of a plan of subdivision imposed after the date section 9 of schedule 12 of the *More Homes, More Choice Act, 2019* comes into force any development or redevelopment of lands within that plan will not be subject to any community benefits charges by-law. This potentially immunizes future redevelopment within lands defined by a plan of subdivision approved after the new section 37 comes into force, but before a community benefits charge by-law is passed, from all future community benefits charges. A legislative change may be required to address this issue.

There remains a lack of guidance to how the transition of the parkland dedication and Section 37 reserve funds will be transitioned to the new community benefit charge regime. The City will have both positive and negative balance reserve funds and in order to appropriately plan, this guidance is required.

## **2. Reporting on Community Benefit and/or Parkland Reserve Fund Activity**

*The new legislation requires that municipalities prepare an annual report disclosing; the opening and closing balances of the special account, a description of all purchases made throughout the year, details relating to borrowing and all interest earned or incurred by the special account.*

### **City of Guelph Recommendation:**

The proposed regulation should be amended to specifically state that the descriptions may be general in nature. Specific details (municipal addresses, etc.) should not be required where amounts have been allocated for future or potential land acquisitions. This will impair the City's ability to negotiate freely to acquire land at a market value.

### **3. Exemptions to the Community Benefit Charge**

*To encourage the development of certain types of development, the proposed amendments to the Planning Act includes a list of development and redevelopment types where a Community Benefit Charge may not be imposed.*

*The list includes:*

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

#### **City of Guelph Recommendations:**

The City recommends removing the proposed statutory exemptions, rather encourage municipalities to develop grant programs to incentivize developments that align with corporate strategy.

If statutory exemptions are retained, additional consultation is required to ensure precision in these definitions. Any exemptions should be explicitly tied to the functions being promoted (e.g. any exempted development by Universities and Colleges should be connected to the educational purposes of those institutions, and not extended to development for other purposes or on other lands owned by those institutions that is not used for an educational purpose).

Additional consultation with municipalities should be required with respect to certain terms. “Non-Profit Housing Development”, “Long-term Care Home” and “Retirement Home” are overly broad and may capture types of development not intended. These terms within the require more specific definition and should be rationalized and linked to approved facilities under other provincial legislation (e.g. Public Hospital Act, Mental Health Act, Ministry of Training, Colleges and Universities Act, Ontario Not-for-Profit Corporations Act) to provide clear boundaries for the organizations that are eligible for this deferral.

Further, the exemptions should mirror those defined in the Development Charge Act so that there is alignment for the calculation of all development exemptions.

#### **Commentary to support the City’s recommendations:**

Exemptions impose a significant burden on existing tax payers. This legislative change will make it impossible for growth to pay for growth or for municipalities to recover as much as was possible under the old legislation. The burden of

providing equitable service levels to the end users of the exempted development types will either need to be included within the rate of the Community Benefits Charge and applied to development types that are not exempt, will be subsidized by existing tax payers or these end users will do without soft services. None of these options seems to present an equitable solution for any stakeholder.

Ambiguity in the definition for organizations/facilities eligible for the deferral of development charges causes significant burden on the municipality to create these boundaries through the municipal by-law and then defend them through the legal system. Further, it causes administrative burden to continuously hear and advise on each development application for these requests. Clear and legislatively defensible boundaries are requested so that it is clear what the eligibility requirement is for each category.

The exemptions for community benefit charges and development charges should be consistent for ease of calculating and applying charges at time of building permit. To have differing rules creates an unnecessary complexity that should be avoided.

#### **4. Community Benefit Formula**

*The amendments to the Planning Act 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 development or redevelopment. The community benefits charge payable shall not exceed the amount determined by a formula involving the application of a prescribed percentage of the value of the development land.*

*The prescribed percentage has not yet be determined, but the intent is that the prescribed rate ensures municipalities collect as much as was possible with development charges for soft services, density bonusing, and parkland dedication including the alternative rate. The new approach is intended to make costs of development more predictable for developers.*

#### **City of Guelph Recommendations:**

The formula needs to ensure full cost recovery for all growth-related costs of new development (including redevelopment). It needs to fairly distribute the cost of amenities based upon density of sites given that higher densities are driving the need for these services.

The community benefit charge formula should derive a rate per unit (residential/multi-residential) or a rate per sqft (institutional, commercial, industrial) of development similar to a development charge if there is to be any certainty for either the municipality or the developer. This is the rate that is applied and collected at building permit. The “cap” based upon land value should

only be used as a test and therefore be set high enough that it should not apply in most circumstances, and primarily used to achieve two goals:

- Ensure a reasonable limit is imposed on the CBC, and that the capital costs of facilities and services identified in the required community benefits strategy are reasonable, appropriate and ensure service level equity between development completed under old legislative regime and the new legislation. In this respect, it would replace existing limitations on the tools replaced (e.g. average level of service for development charges).
- Ensure the CBC does not become a barrier to the types of development the changes introduced through Bill 108 seek to promote, particularly with respect to constrained or otherwise difficult development sites (e.g. Brownfield redevelopment).

It is recommended that the cost of the statutory community benefit charge exemptions be built into the Community Benefit Charge to ensure there are no unfavourable impacts on the existing tax payer.

The City recommends that the Community Benefit Charge be due at building permit for all residential and non residential developments, and not be eligible for a deferred payment unless approved by council and entered into through legal agreement.

The City recommends that municipalities be given the authority to assign community benefit charge exemptions through their Community Benefit Charge by-law.

The City recommends that any negative balance in the reserve funds relating to soft services, be an eligible expense under the community benefit charge.

The City recommends that all debt amounts outstanding for soft services be eligible expenses under the community benefit charge.

It is recommended that all studies that address the accommodation of growth within the municipality be an eligible expense.

It is recommended that the community benefit strategy consider the capital infrastructure and amenities needed to accommodate growth to build out.

### **Commentary to support the City's recommendations:**

The City believes there is no correlation between the value of land and the cost to construct facilities or amenities; so limiting the amount a municipality can recover from new development to pay for infrastructure needed to accommodate growth to the value of land, not construction costs, is without merit.

The regime based upon land value only will reduce the municipality's ability to forecast and plan for revenues over the long-term as land values are variable and reactive to market conditions. In order to achieve the goal of cost certainty up front, the CBC should likely be calculated in a manner similar to the calculation of existing development charges – that is, the need for facilities and services to which the CBC applies should be determined through the community benefits strategy. An estimate of the total capital costs to provide those facilities and services should be made, and a static charge per unit (for residential development) or per square metre (for other forms of development) should be established based on the expected growth over a certain period.

The CBC by-law will require an analysis of the need for facilities and services to accommodate growth not funded through development charges or other means, and to determine the capital costs of those required services in order to create a community benefits charge that can be applied to developments that meet the legislated criteria (the required community benefits strategy). Because this analysis, and the resultant charge, will be based on the municipality's needs, the imposition of a cap can only serve to ensure that the municipality will not achieve revenue sufficient to fund those identified needs. Shortfalls will need to be made up by other revenues, which will not meet the goal of maintaining existing revenue from the tools the CBC is intended to replace or ensure that future revenues are sufficient to meet the needs of the municipality and its residents.

## **5. Appraisals for community benefits**

*The proposed community benefit charge is limited by a percentage of the land value that will be prescribed by the regulations. If a developer believes that the municipality has applied a community benefit charge in excess of the prescribed rate, they may provide the municipality with an independent land value appraisal. The municipality may provide another appraisal of the land if it is believed that the developer's appraisal is not accurate. If the two appraisals differ by more than 5%, a third appraisal will be done by a list of municipally approved appraisers.*

### **City of Guelph Recommendations**

Provision should be made to permit the extension of the municipality's timeframe for a responding appraisal in certain circumstances (for instance, where no appraiser is available/able to provide the responding appraisal within the required timeframes, or where information required from a landowner for the purposes of an appraisal has not been provided).

Further, legislative changes or additional enabling powers for regulations should be added to address the following concerns:

- Municipalities should be explicitly authorized to charge the owner of the land the reasonable costs of any appraisals required from the municipality in this process.
- Owners should be required to allow access to the property being appraised and provide any information reasonably required for the purposes of a municipal appraisal, or an appraisal by an appraiser selected from the municipal list of appraisers.

## **6. Excluded services for community benefits**

*Similar to the previous Development Charges Act, costs relating to the following will not be eligible for recovery from growth through the community benefit charge:*

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

## **City of Guelph Recommendation**

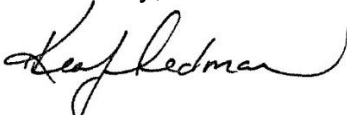
More certainty may be needed with respect to “cultural or entertainment facilities”. While it has previously been prohibited to collect a development charge related to this category of services, the provision of public art and other “cultural facilities have been eligible for contributions under the existing section 37 of the *Planning Act*. Matters that could have been funded under the existing section 37 of the *Planning Act* should not be made ineligible under the community benefit charge.

## **7. Community Planning Permit System**

The City of Guelph has no comment to this section.

Please do not hesitate to contact me if you have any questions regarding the City of Guelph’s feedback.

Sincerely,



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