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ERO 019-1406: Community Benefits Contributions Response to Provincial Consultation Document

The Real Property Association of Canada (REALPAC)

April 2020

The Real Property Association of Canada ("REALPAC") is Canada's senior industry association for owners and managers of investment real estate. Our members include publicly traded real estate companies, real estate investment trusts ("REITs"), private companies, pension funds, fund managers, banks, and life insurance companies, with cumulative real estate assets under management between \$600 Billion a \$1 Trillion CAD. The association is further supported by large owner/occupiers and pension fund advisors as well as individually selected investment dealers and real estate brokerages.

We are encouraged to see that the Province of Ontario is undertaking a thorough review of the community benefits regime. It is our hope that through the consultation process, the government will recognize that there is widespread agreement on many of the policy proposals from the real estate and housing sectors with respect to how municipalities can effectively work with the development community to accomplish community benefits contributions from new growth in cities. We equally hope that the government will enact changes proposed through this process with the support of, and in partnership with, the industry.

REALPAC has been highly supportive of the Ministry of Municipal Affairs latest amendments to planning and development policy in Ontario. Forward progress is much needed, specifically regarding Community Benefits Contributions ("CBCs"), and the latest regulations are showing steps in the right direction. REALPAC is advocating for a balanced system. Currently, portions of the system are not working well. For instance:

- Municipalities are having to look for new ways to fund social, capital, and parks projects
- Councilors are having to negotiate between the needs of current and future residents
- Developers are seeking certainty regarding development feasibility
- End-buyers are seeking protection more affordable housing options
- Ontario needs to ensure that our growth targets are being met in a competitive development environment that provides residents with more homes and more choice.

On this last point, the industry and public policy makers all agree. What has emerged from REALPAC's analysis is that ERO 019-1406 is a reasonable first draft for advancing these goals but is not yet a full solution for adjusting development and planning regime administration in Ontario.

In this submission, we outline views on some of the most critical issues impacting Community Benefits Contributions and suggest key actions for the government's consideration. These recommendations are offered respectfully, based on inner-industry consultations with senior-ranking members who routinely evaluate Ontario's investment attractiveness, and develop the homes, offices, and infrastructure that Ontario's economy depends on.

1. With respect to non-residential development, we are asking that the proposal be modified to exempt non-residential uses from paying the land-value component of the CBC. They would otherwise be required to pay the portion of the CBC that relates to what were previously DC items, unless deemed not required by the municipalities but would not pay cash-in-lieu.
2. The new system entrenches existing problematic height and density bonusing practices (formerly Section 37 of the *Planning Act*), merging them with parks dedication and discounted soft service development charges. The new system proposed, one which creates a new "two-bucket" development charge regime is being done without the policy oversight required to

create a new revenue tool for the municipalities. The current proposed regulation effectively creates an entirely new legal framework enshrouded in a niche area of the *Planning Act*. If this is the path that the government has decided to take – that there will be two statutory charge buckets – then the second new charge needs to detangle itself from the *Planning Act*, in order to be legally viable, and be considered as part of a new *Community Benefits Charges Act*.

3. The proposed CBC regulation needs to account for discrepancies between existing zoning bylaws and municipal Official Plans. Municipalities in some areas of Ontario are also responsible for fulfilling specific targets under *A Place to Grow: Growth plan for the Greater Golden Horseshoe, 2019*. The proposed CBC formula fails to address underlying policy challenges faced by the development community when municipal zoning bylaws do not reflect the reality of viable development in the region or fulfillment of the municipalities own density obligations. Currently, Section 37 is not uniformly applied across Ontario. Some municipalities rely on *ad-hoc* negotiations while others have opted to base the implementation of Section 37 contributions on posted rates and material uplift. Such guidelines, such as those used by the City of Ottawa, use existing Section 37 powers, not as a tool to dissuade or punish new growth, as is the case in other municipalities, but rather to create a predictable framework for new growth to materially improve communities by outlining a list of draw-downs for developers to consider as part of their development applications. The City of Ottawa’s considerably transparent approach to CBCs creates a predictable system for development that acknowledges the complexities of building in growing cities. Requiring CBCs only when a development proposes density 25% beyond what is allowed creates “wobble room” that acknowledges that as-of-right density in the zoning bylaw may not yet reflect municipal plans (reflected in Official Plan documentation) for accommodating new growth. It is recommended that the new CBC regulations allow for similar “wobble room” prior to triggering the requirement for additional community benefits contributions on a new development.
4. The proposed CBC regulation fixes the calculation of how much municipalities can require in contributions from new developments; however, the new regulation effectively entrenches and formalizes height and density bonusing, allowing its use to proceed unchallenged. Not only that, but the practice can now spread to all municipalities across Ontario. When stacked together, there has collectively been a significant increase in government related charges that act to drive up the cost of new housing. New growth is now expected to cover the costs of a basket of external amenities and services that was never expected of past developments. The cumulative impact is such that the fixed cost of new development is substantially higher than it ever has been before. If Community Benefits Contributions are to become a new statutory charge for development then additional clarity needs to be established within the regulation to ensure that the cost-push to end-buyers from the formalization of the charge is either net-neutral or net-positive; that is it maintains development costs at the similar or cheaper rates. The introduction of a new community benefits system, simply put, cannot act at odds to the government’s own affordable housing goals. The net result of the implementation of CBCs should not be that the high development costs found in Toronto are not spread elsewhere but that all development costs in Ontario are capped at a reasonable rate.

We invite you to contact us with any questions or concerns with this submission at the coordinates below.

Respectfully submitted,

A handwritten signature in black ink that reads "Brooks Barnett". The signature is written in a cursive, flowing style.

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SCHEDULE 1

Executive Summary- REALPAC Policy Recommendations

ERO 019-1406: Community Benefits Contributions

April 2020

Recommendations:

1. That the proposal be modified to exempt non-residential uses from paying the land-value component of the CBC;
2. That the new CBC system be detangled from the *Planning Act* and be considered as part of a new *Community Benefits Charges Act*;
3. That the new CBC regulations allow for "wiggle room" above the as-of-right height and densities for a development site prior to triggering the requirement for CBC charges; and
4. That the cost-push to end-buyers from the new CBC system is either net-neutral or net-positive; that is it maintains development costs at the similar or cheaper rates.

