



April 20, 2020

Delivered through the Environmental Registry of Ontario Portal

Ministry of Municipal Affairs and Housing
13th Floor, 777 Bay Street
Toronto, ON M5G 2E5

Attention: John Ballantine

Dear Mr. Ballantine:

Re: City of Vaughan Comments regarding Proposal No. 019-1406

This letter has been prepared in response to *Proposal No. 019-1406 re: Proposed regulatory matters pertaining to community benefits authority under the Planning Act, the Development Charges Act, and the Building Code Act* and serves as the City of Vaughan's ("City" and/or "Vaughan") comments.

Executive Summary of Comments

1. The City is supportive of the proposed content of a community benefits charge ("CBC") strategy as it provides for additional flexibility in the development of same, but Vaughan remains concerned with the proposed cap on the CBC payable.
2. Vaughan is supportive of returning the previously eligible services back into the *Development Charges Act* but has concerns with what may be excluded from recovery through the CBC.
3. The proposed 10% cap on a CBC for Vaughan is not satisfactory as it threatens the City's ability to achieve the Province's goal of creating complete communities in intensification areas in a socially equitable way.
4. The timeline to transition to the new CBC regime should be 2 years after the date the proposed CBC regulation comes into effect.
5. Vaughan sees no significant issues with the proposed CBC By-law notice or the proposed minimum interest rate for CBC refunds where a by-law has been successfully appealed.
6. Vaughan supports the proposal to amend to the Building Code to add the CBC authority to the list of applicable law and encourages the Province to consider additional changes to the *Planning Act* to allow for the registration of agreements in connection to in-kind contributions.

Principles that Guide the City of Vaughan's Comments

The following principles guide the City's comments:

1. Growth should pay for growth and the mechanisms to permit cost recovery should capture the full cost of growth without adding any financial and/or administrative burden that can result in the slower delivery of requisite infrastructure and services.
2. A full range of hard and soft services is needed to build complete and vibrant communities that benefit everyone; however, the mix of these services is unique to each municipality. Any new funding regime must ensure sufficient revenues are generated to finance growth related costs for the full range of services, while providing municipalities with flexibility to develop policies to shape development to meet unique needs.
3. Efforts to reduce red tape is supported by the City and should be shared by all levels of government. Overly prescriptive processes from the Province can cost municipalities time and money and limit a municipality's ability to respond to changing circumstances.
4. Provincial legislation related to municipal governance should be enabling and permissive. Restrictive legislation places distrust in local authorities to make decisions in the best interest of its residents and businesses.

Detailed Comments on the Proposal

The City is supportive of the proposed content of a CBC strategy as it provides for additional flexibility in the development of same, but Vaughan remains concerned with the proposed cap on the CBC payable.

The proposed CBC content outlined in the Environmental Registry of Ontario ("ERO") posting is similar to the process set out in the *Development Charges Act* with a few notable exceptions.

These exceptions, such as the lack of prescription with respect to service levels and definitions of capital costs, provide municipalities with additional flexibility in the development of a CBC strategy. Vaughan appreciates this greater degree of flexibility as forward-looking service levels allow municipalities to recover costs reflective of actual needs rather than historical experience. However, despite this opportunity, Vaughan remains concerned that the additional flexibility provided will be mostly offset by the imposition of a cap on the CBC payable (which is proposed to be 10% for lower-tier municipalities).

The proposed CBC strategy also takes elements from the requirements under s.42 of the *Planning Act* for parkland acquisition.

Vaughan is supportive of returning the previously eligible services back into the Development Charges Act but has concerns with what may be excluded from recovery through the CBC.

Vaughan supports the Province's goal to maintain the revenue levels provided from development charges, parkland dedication, and density bonusing while making the costs of development more predictable.

We are supportive of returning the previously eligible services back into the *Development Charges Act* and recommend the new CBC regime (at the local level) solely consolidate the existing parkland dedication and bonusing provisions under the *Planning Act*. It should not include services previously eligible for development charge collection, which should continue to be an eligible service funded by development charges. While an improvement over the prior proposal, the current proposal still results in the need to shift some local level services from Vaughan's Development Charges By-Law to the future CBC, with no clear benefit to the municipality or the development community. Of concern is the additional administrative burden and quick transition timelines. Like all municipalities, Vaughan will need more time to complete new background studies to support both new development charges and CBC rates, develop new administration and collection systems, as well as implement processes to deal with protests of land values.

Vaughan supports removal of the 10% discount on all services that are eligible to be funded through the *Development Charges Act*.

Given that growth should pay for growth, Vaughan recommends allowing development charges and the community benefits authority to be used together, such that unrecoverable development charge growth-related costs (e.g. service level) can be recovered under the community benefits authority.

Given the intent of the CBC is to allow for more predictable development costs while maintaining cost recoveries currently available to municipalities, the exclusions applicable to the *Development Charges Act* should not be identical to the exclusions applicable to the CBC. Municipalities should be able to continue to fund works that are not development charge eligible which would have normally been paid for through density bonusing, such as public art, through the CBC.

The City recommends that:

1. Language in the regulation provide assurance that all services that were eligible under the three separate funding regimes from the pre-Bill 108 *Development Charges Act* and *Planning Act* (discounted services under development charges, parkland, and density bonusing), remain eligible under either the as-revised development charges regime and the CBC regime. The list of excluded services for the CBC must not be the same as those under the *Development Charges Act* as that would undermine those services eligible under the *Planning Act*.
2. There should be no restrictions on eligible services to fully ensure that growth pays for growth and that municipalities have enough tools to respond to their unique needs.
3. That the Province provide for regular updating of the prescribed maximum amount of the CBC.

The proposed 10% cap for a CBC in Vaughan is not satisfactory as it threatens the City's ability to achieve the Province's goal of creating complete communities in intensification areas in a socially equitable way.

Firstly, we thank the Province for providing municipalities with the opportunity to test the proposed cap within their local communities. Having had some time to review the Province's proposal, it is Vaughan's position that a 10% cap for a CBC does not ensure that municipal revenues historically collected in Vaughan will be maintained (that being the historical revenue from the development charges for some "soft services" that are still proposed to be shifted to the CBC regime, parkland dedication and cash-in-lieu of parkland and density bonusing). We had understood that revenue neutrality was the intended goal and expected different percentage caps for different municipalities, recognizing the differing degree to which municipalities had used the cost recovery mechanisms available to them. We were not expecting a "one-size fits all" cap based on municipal tier.

We have tested the proposed cap, and based on historical collections, a 10% cap on CBCs would represent a significant impact to service levels in regional, primary and local urban growth centres and corridors in Vaughan. The revenue impact is estimated to result in a significant collection deficit for the City. Attachment No. 1 provides an illustrative demonstration of the impact.

The proposed 10% cap on land value across the City would result in a higher or lower deficit depending on the scale of the development. In cases of high-rise, the deficit becomes larger than would be the case with low-rise development. This may result in arguments that low-rise development is subsidizing the lost revenue of high-rise development.

The alternative parkland dedication rate permitted by the *Planning Act* establishes a relationship between the number of dwelling units proposed for development or redevelopment and the amount of parkland required to be conveyed. The original intent for including an alternative rate in the *Planning Act* was to establish a relationship between population and parkland area. Two guideline documents produced by the Province: *Parkland for People* (Ministry of Housing, 1973) and *Parkland Dedication: A Guideline on Section 35b of the Planning Act* (Ministry of Municipal Affairs and Housing, 1981) lend support to this interpretation.

The provision of hectares of parkland per population is critical in areas of planned higher residential density. These provisions have been identified as a critical tool in measuring service levels. As provision levels fall, the demands on existing parks become more intense. When a higher residential population is planned in growth areas using the existing park space, there is an increased life cycle depreciation of amenities and facilities, including operational and maintenance costs. Suitable and appropriate parkland provision levels are critical to local and city-wide parkland needs.

With respect to planning for parkland in Vaughan, the City's Active Together Master Plan ("ATMP") formed an integral background component to the City's Official Plan and related initiatives. An objective of the ATMP was to ensure that the planned parks and facilities outlined in the City's plans fit within an overall strategic framework for future facility and service provision within Vaughan. Further reviews and updates to the ATMP identify current needs and future facility provision strategies, consistent with Vaughan's commitment to providing safe, accessible, and community responsive parks and facilities that appeal to a wide range of interests and abilities.

The ATMP was updated in 2018 and indicates that the City's active parkland provision rate is currently 1.86 hectares per 1,000 population, based on existing parkland supply relative to existing population. The ATMP recommends a provision target of 2.0 hectares per 1,000 population in order to meet identified parkland needs at a City-wide level.

The City recognizes that the tools available under the *Planning Act* (pre-Bill 108) regarding parkland dedication are not enough on their own to meet the City's active parkland needs. However, through the previous *Planning Act* alternative parkland dedication rate, the City was able to ensure that parkland provision targets in intensification areas were consistent throughout the City, such as in the Vaughan Metropolitan Centre ("VMC").

Specifically, a 10% cap on the CBC that Vaughan could levy threatens the City's ability to achieve the Province's goal of creating complete communities in intensification areas in a socially equitable way.

The park planning methodology for determining the City's active parkland needs relies heavily on the proposed provision targets of 2.0 hectares per 1,000 residents. The ATMP refers to Section 7.3.3.1 of the City of Vaughan Official Plan 2010, which states that "communities that fall short of the active and passive parkland targets are considered priorities for additional parkland resources." Areas of intensification are inherently priority areas due to the projected populations that are forecasted by the Region and the City. In addition, due to these areas of intensification and the shortfall of parkland, the City will require the acquisition of additional active parkland to keep pace with population growth, including beyond 2031 when it will be increasingly challenging to secure larger park blocks in these intensification areas.

In Vaughan, density bonusing benefits the local community based on the increased height and/or density allowed over and above the base heights and densities permitted by the Official Plan for an area. This injection of municipal service benefits is important from a financial perspective to help ensure that impacts on existing taxpayers are mitigated when increased service levels are required in intensification scenarios.

As an example, the current Secondary Plan for the VMC permits as-of-right densities which allow for the construction of roughly 39,000 residential units and 27,000 jobs. Since 2017, a recurring trend has presented itself through the filing of development applications to permit average densities of 1.6 times the density that was originally envisioned for a site. The City has been successful in securing section 37 benefits towards non-DC eligible works (i.e. park facilities, public art, and streetscape enhancements), in connection to this unanticipated and increased growth. With a higher density trend, and no ability to secure more parkland within the VMC boundary, the City will be required to plan for parkland acquisition elsewhere to secure adequate parkland provision for Vaughan's downtown residents. However, the proposed 10% cap for CBC will not allow the City to secure enough parkland in the VMC by way of dedication or the collection of additional funds required to buy parkland. This compromises the City's ability to fulfill the projected populations' needs for access to passive and active recreation amenities, and to the environmental and natural features that provide spaces for social interaction and contribute to building complete communities.

This issue is not just limited to the VMC. The issue is present in other primary centres which have experienced greater growth than originally planned for, and density bonusing has been secured to augment the local recreational and community facilities.

Based on historical collections, any CBC percentage cap should be differentiated between low density and high-density development in order to properly account for population differences and prevent subsidization between low- and high-density developments. However, without completing a full, comprehensive CBC strategy, it is not possible to reasonably evaluate the percentages of land value proposed for each density type to be prescribed in the regulation.

If the Province prescribes a 10% cap as proposed, the City would need to review alternative options to address the impact. Examples include: creating a reserve fund, funded through taxation to support new urban growth/intensification areas; reducing the levels of services provided in new urban growth/intensification areas; and/or seeking alternative funding to offset the decline in revenue under the proposed CBC regime.

The timeline to transition to the new CBC regime should be 2 years after the date the proposed CBC regulation comes into effect.

Meeting the proposed transition date of one year will be challenging for municipalities; there are many areas of uncertainty and unanswered questions regarding the new legislation and the proposed regulatory framework.

More clarity around the CBC regime would help better prepare the City to meet the proposed transition date. In addition, the more fulsome involvement of staff from lower-tier municipalities in the consultation via participation in the technical working group would help better prepare the City to meet the proposed transition date (we understand that participation in the Technical Working Group to be weighted towards regional government, as opposed to lower-tier involvement).

The City recommends that:

1. The alternative parkland dedication rate should not be repealed until a CBC By-law is passed.
2. The Province consult on the draft regulation and release the methodology for the cap to provide municipalities with the opportunity to test the proposed methodology and any cap within their local communities.
3. The specified transition date be 24 months after the approval of the caps or the expiry date of the current DC By-law, whichever is later.

The feasibility of the proposed transition date would also depend on the extent of consultation requirements. The changes from Bill 108 have significant impacts to a municipality's financial planning and policies, thereby affecting its long term stability. Clarification on whether the DC By-law must be re-opened to accommodate changes from Bill 108 is needed. If a CBC Strategy is done in tandem with development charge studies, whether by requirement from transition provisions or by their natural expiry, there is a risk of lost revenues if municipalities have limited

time to prepare comprehensive strategies for both development charges and CBCs and consult sufficiently with stakeholders.

More support from the Province would help municipalities deal with administrative challenges and/or burdens in transition, such as online resources, templates, one-time fund transfers, or additional revenue tools. Municipalities will need to increase staff and IT resources to meet the required administrative changes.

Vaughan sees no significant issues with the proposed CBC By-law notice or the proposed minimum interest rate for CBC refunds where a by-law has been successfully appealed.

Vaughan supports the proposal to amend the Building Code to add the CBC authority to the list of applicable law and encourages the Province to consider additional changes to the Planning Act to allow for the registration of agreements in connection to in-kind contributions.

Vaughan supports the proposal to amend the Building Code to add the CBC authority to the list of applicable law. This amendment is a housekeeping item that enables the mechanism for ensuring the payment of a CBC prior to the issuance of a building permit. We support the change as it ensures payments to municipalities are made promptly. However, we encourage the Province to consider additional changes to the *Planning Act* to better facilitate in-kind contributions by allowing for the registration of agreements against title where in-kind contributions are being applied toward the CBC payable.

Vaughan also encourages the Province to bring forward a regulation which would allow for the use of conditional zoning pursuant to subsection 34(16) of the in-effect *Planning Act*. Because a regulation regarding the prescribed conditions remains outstanding, the ability to utilize conditional zoning has never been realized. This represents an unutilized tool contained in the *Planning Act* for both municipalities and developers; consideration should be given to bringing forward a regulation prescribing the conditions that can be imposed by a municipal authority in connection to zoning approvals.

Yours truly,



Michael Coroneos
Deputy City Manager, Corporate Services, City Treasurer and Chief Financial Officer



Bill Kiru
Acting Deputy City Manager, Planning and Growth Management

encl: Density Scenario Study