

April 20, 2020

John Ballantine
Municipal Finance Policy Branch
College Park 13th floor, 777 Bay St
Toronto, ON
M7A 2J3

Dear Mr. Ballantine:

RE: Proposed regulatory matters pertaining to community benefits authority under the Planning Act, the Development Charges Act, and the Building Code Act (ERO Number: 019-1406)

The City of Brampton (the “City”) appreciates the opportunity to provide comments and feedback on the proposed regulatory matters pertaining to the new community benefits authority as it applies to the Planning Act, the Development Charges Act, and the Building Code Act. The City’s review and comments are limited only to the official documentation issued by the Ministry of Municipal Affairs and Housing (MMAH) on February 20, 2020, through the Environmental Registry of Ontario website (the “ERO”).

In addition to the ERO, the City is also taking the verbal advice of MMAH staff to submit comments on the Ontario Regulation 454/19 which came into force on January 1, 2020. The key comments are categorized into the 6 main components described below with detailed policy-specific comments included as Appendix A.

Please note, these comments are provided as City staff comments in order to meet Ministry commenting timelines. This commenting letter is also included on the April 22 City Council meeting agenda for Council consideration, and any supplementary Council comments and/or Resolution will be provided to the Ministry on or immediately after April 22, 2020.

1. Consider varying community benefits charge percentages based on land use

Firstly, the City was encouraged to hear from MMAH staff during the conference call held on February 28, 2020, that the Community Benefits Charge (CBC) is not considered to be a tax, but rather a charge. We trust that the MMAH received a legal opinion that demonstrates the relationship between the value of the land and the increase in need for service (e.g. the nexus test).

City staff have conducted an analysis of the financial impact resulting from the proposed CBC percentages, and whether or not the City would remain revenue neutral, as per

Minister Clark's assurances. From our analysis, it is clear that there will be "winners" and "losers," if the proposed regulations were to pass in their currently proposed form.

A largely greenfield lower-tier municipality in which ground-related units are the predominant built form could potentially achieve revenue neutrality. The reality, especially in the GTA, is that most municipalities, including Brampton, are encouraging and requiring intensification as directed by Provincial policy, including the Growth Plan.

This proposal poses significant fiscal challenges to municipalities issuing building permits for high density residential development. Our analysis shows that the CBC percentage would need to be upwards of 45% in order to achieve revenue neutrality for this type of project. The significant delta between the proposed cap of 10% and what our analysis shows, is extremely concerning. Municipalities would need to turn to the tax base to fund parkland acquisitions that were previously funded from the CIL reserve. As the City approaches the imminent build-out of its remaining greenfield lands, Brampton will be unable to stay whole and if the proposed regulations are not altered as set out below, the City will need to adjust for the anticipated revenue losses and decline in parkland supply and service levels that will result from a high density-only scenario.

The 10% cap is to be imposed on all forms of development in the current proposal, and Brampton's view is that it is unfair to achieve revenue neutrality by applying the upper limits of the cap to all types of development (be it non-residential, low density and high density residential). This places an undue burden on, for example, the non-residential sector, to make up for the lost revenue from high density residential development. While we appreciate the 10% is the maximum and municipalities have the discretion to charge less, we do not have the ability to charge more on other land uses that are not paying their "share".

The City recommends the Province consider the following proposal:

- up to a 10% cap on low density residential development;
- up to a 10% cap on all non-residential development;
- up to a 25% cap on high density residential development; and
- Province pledges to review the percentage caps after a period of time to ensure revenue neutrality.

2. Allow municipalities to require dedication of parkland in satisfaction of a CBC

The City is extremely concerned with the proposed wording under the second option of acquiring land needed to build new parks. The proposed wording being, "If *both* a developer and municipality agree, a developer could provide land for parks (rather than a payment)."

Brampton strongly urges the Province to leave the decision to require parkland with the municipality. Should municipalities lose control over the application of parkland dedication, this would completely undermine the City's ability to implement the recommendations of the *Parks and Recreation Master Plan* and its overall long-term strategy to deliver adequate

parkland, as well as jeopardize the City's planning initiatives. On any given development application, a developer is concerned with site specific matters. This differs greatly from the goals of a municipality, one of which is city building and ensuring the creation of complete communities. Municipalities are in the best position to determine what is beneficial for the community as a whole, on a City-wide basis, and not solely on a plan-by-plan basis.

If this proposal is adopted, the only mechanism a municipality could utilize to require the conveyance of parkland where no draft plan of subdivision approval is required would be through expropriation. The City is concerned that this could result in longer approval times and would add to the costs of development.

The City recommends the Province consider the following proposal:

- Municipalities be authorized to require dedication of parkland to satisfy a CBC, subject to appropriate Official Plan policies.

3. Allow for the continuation of all soft services to be funded by development charges

The continued inclusion of Public Libraries, Parks Development and Recreation within the *Development Charges Act, 1997* (DC Act) is a positive change. This provides a level of funding certainty for these services. With respect to the removal of the 10% deduction, this is also a welcomed amendment to the legislation. While the soft services are still subject to the 10-year historic service level limitation, this proposal will ease the pressure that was formerly placed on the property tax base when funding growth-related capital infrastructure.

However, Finance staff still have concerns with the proposed funding framework for the remaining "soft services" (e.g. Animal Control, Parking, Planning-related studies) through the CBC. Brampton feels that the maximum CBC caps prescribed in the regulation will not ensure revenue neutrality for the "soft services" which are intended to be funded through the CBC.

The City recommends the Province consider the following proposal:

- Keep the CBC solely dedicated to the collection of funds for parkland acquisitions; and
- Allow for the recovery of all "soft services" through development charges.

4. Extend timeline to enact CBC by-laws to ensure smooth transition

The current one year transition to the CBC after the regulation comes into effect is too short. To put this into context, there are over 200 municipalities in the Province that levy DCs, with only two properly qualified municipal finance consulting firms. As such, there is no conceivable way these two firms could assist 200 municipalities to enact CBC by-laws in one year.

As a reminder, when the DC Act was amended in 1997, the Province allowed for a two year timeline for municipalities to pass new DC by-laws.

The City recommends the Province consider the following proposal:

- Extend the timeline to transition to be the later of:
 - two years after the proclamation of the Regulation, or
 - expiration of each municipality's current DC By-law.

5. Area rating of the CBC By-law

Under the proposed framework, CBCs are only permitted to be levied on a City-wide basis. While the imposition of CBCs needs to be further examined by the City and its consultants through the development of the CBC Strategy, Brampton is looking for flexibility on area-rating, similar to what is contained in the DC Act with respect to area-specific DC by-laws.

The City recommends the Province consider the following proposal:

- Allow municipalities the flexibility to impose the CBC by-law on a City-wide, or area-specific basis.

6. Difficulties encountered since the implementation of O.Reg 454/19

- a) The City encountered a situation in which the developer wished to make the full DC payment at the point of building permit issuance for a rental building. However, the language in section 26.1 (3) of the DC Act states: " A development charge referred to in subsection (1) **shall** be paid in equal annual instalments beginning on the earlier of the date of the issuance of a permit under the Building Code Act, 1992 authorizing occupation of the building and the date the building is first occupied..." Due to the word "shall", execution of pre-payment agreements was required. This cost the applicant more time and money, ultimately slowing down the construction of rental units.

The City recommends the Province consider the following proposal:

- Amend the word "shall" to "may" to allow for the full payment of the development charges at the time of permit issuance, should both parties consent.
 - Alternatively, payment in full at the time of permit issuance could be at the developer's option.
- b) Per the new Section 26.2 of the DC Act, the City encountered an instance with respect to a site plan application. The developer specifically retracted his site plan agreement and applied for a "new" site plan, solely for the purpose of freezing the DCs payable. For reference, the City indexes its DC rates on February 1 and August 1 of each year. The developer retracted his site plan application during the last week of January. We do not believe that this was the spirit of the DC Act Amendment.

The City recommends the Province consider the following proposal:

- Prohibit re-application for rezoning and site plan approval if an application for a similar development was already submitted prior to January 1, 2020.
- c) The Building Code Act should be amended to ensure that the payment of DCs is applicable law upon occupancy. This is in reference to the 6 to 21-year deferral payments on institutional and rental buildings. Currently, there is no mechanism to withhold the issuance of the occupancy permit if the first installment of the DCs haven't been paid. Division C, Part 1, Subsection 1.3.3 of the Regulations to the Building Code Act, the "Occupancy of Buildings", should be amended. This subsection contains the prescriptive requirements for the occupancy of the buildings and currently, if inspections are passed, the CBO is required to issue an occupancy permit regardless of whether deferred DCs have been paid.

The City recommends the Province consider the following proposal:

- Add language into Subsection 1.3.3., similar to what is already in Section 8(2)(a) of the BCA, which requires payment of DCs that are subject to deferral, prior to the issuance of an occupancy permit. For example, add the following provision:

"1.3.3.1. Occupancy Permit — General

(1) Prior to the chief building official or a person designated by the chief building official issuing a permit authorizing occupation of the building or part of it; Development Charges that have been subject to a deferral shall be paid for that part of the building subject to occupancy."

Summary

Thank you again for the opportunity to provide feedback on MMAH's important proposed regulations. We trust our comments and recommendations herein will be taken into serious consideration as part of the consultation process.

The City's detailed comments are attached as Appendix A.

With regards,



David Barrick
Chief Administrative Officer and Acting Commissioner of Corporate Services
City of Brampton
2 Wellington Street West
Brampton, ON L6Y 4R2

Attachments:

Appendix A: Detailed Comments on the ERO Number: 019-1406

Appendix A

City of Brampton Detailed Response to the Proposed Regulatory Matters Pertaining to Community Benefits Authority Under the Planning Act, the Development Charges Act, and the Building Code Act
ERO: 019-1406

1. Required Content of a Community Benefits Charge Strategy

The City of Brampton (the "City") generally supports the proposal with regards to the content of a Community Benefits Strategy (the "Strategy"). In step with a Development Charges (DC) Background Study, it is important to demonstrate the nexus between the need for the service in relation to development. There is concern that any planning direction provided in advance of the OP Review may be premature, and subject to change once the City's land use policies are updated. Need for provisions within the regulations that allow for periodic updates to the strategy to align with city-wide planning initiatives and conformity exercises. The City is unsure if a Community Benefits Charge (CBC) By-law will be managed similarly to a DC By-law and can be re-enacted every 5 years. If not, it will be difficult for the City to anticipate the necessary demand of community services.

Overall, the Parks and Recreation Master Plan (PRMP) is the City's guiding document on how the City's parkland provision is planned and implemented. Current supply service level ratios have been calculated based on available parkland (ha) per 1,000 people. By acknowledging the City of Brampton's anticipated growth a recommended supply target ratio has been also established based on a forecasted population to determine projected surplus and deficiencies.

An update to the PRMP is recommended after five years (2022) given the rate of change in Brampton's population and the ongoing evolution of trends affecting the parks and recreation sector. The timing of the Strategy would need to align with the DC By-law, PRMP, and the growth scenarios of the 2040 Official Plan.

With respect to the Strategy itself, the City recommends the Province to consider the following proposal:

- Confirm that the CBC Strategy be reviewed at a minimum of every 5 years
- Confirm that the Parks Plan is envisioned by the Ministry be similar to what has been historically included in the "Capital Program/Plan" which are contained in a Development Charges Study (e.g. - a high level overview of the parkland parcel in which the City intends to purchase), which is backed by the City's Parks and Recreation Master Plan.
- Remove the requirement from bullet point #4 to demonstrate if parkland is "planned to increase, decrease or stay the same". City of Brampton staff do not see the merit in expressing this in the Strategy.
- Allow municipalities the flexibility to impose the CBC by-law on a uniform, City-wide basis, or area-specific. While this still needs to be further examined, City of Brampton is requesting that the imposition of the CBC be similar to the DC Act in which area-specific by-law could exist.
- Allow municipalities the flexibility to frame and create the Strategy in a form that meets its needs while meeting the require content.
- The PRMP recognizes the anticipated growth and demonstrates a clear need for parkland in the municipality. With that said there needs to be an amended approach to dealing with parkland

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Appendix A: Detailed Response to Proposed Regulation - ERO #019-1406

through greenfield development versus redevelopment in intensification areas. Not all areas can be treated the same when considering availability of land, cost, and park type to be delivered.

2. Services Eligible to Be Funded Through Development Charges

The continued inclusion of Public Libraries, Parks Development and Recreation within the Development Charges Act, 1997 (DC Act) is a positive change. This provides a level of funding certainty for these services. With respect to the removal of the 10% deduction, this is also a welcomed amendment to the legislation. While the soft services are still subject to the 10-year historic service level limitation, this proposal will ease the pressure that was formerly placed on the property tax base when funding growth-related capital infrastructure.

However, Brampton still has concerns with the proposed funding framework for the remaining “soft services” (e.g. Animal Control, Parking, Planning-related studies) through the CBC. Brampton's position is that the maximum CBC caps prescribed in the regulation will not ensure revenue neutrality for the “soft services” which are intended to be funded through the CBC.

The City recommends the Province consider the following proposal:

- Keep the CBC solely dedicated to the collection of funds for parkland acquisitions; and
- Allow for the recovery of all “soft services” through development charges.

3. Percentage of Land Value for Determining a Maximum Community Benefits Charge

Firstly, the City was encouraged to hear from MMAH staff during the conference call held on February 28, 2020, that the Community Benefits Charge (CBC) is not considered to be a tax, but rather a charge. We trust that the MMAH received a legal opinion that demonstrates the relationship between the value of the land and the increase in need for service (e.g. the nexus test).

Under a CBC by-law, the amount of the benefit is predetermined based on the value of the land, without considering the extent of the impact a proposed intensification development would cause in a specific community. For municipalities that are now built-out and are experiencing significant intensification, it will be a substantial loss. The impacts for Brampton may not be apparent over the short term, but might be significant over the medium-long term once the City starts experiencing more intensification. Under the CBC By-law, the City has to prepare a strategy to anticipate the type and need of community benefits that will be needed. It may not be possible during the preparation of the strategy to anticipate all the benefits and where they will be needed.

City staff have conducted an analysis of the financial impact resulting from the proposed CBC percentages, and whether or not the City would remain revenue neutral, as per Minister Clark's assurances. From our analysis, it is clear that there will be "winners" and "losers," if the proposed regulations were to pass in their currently proposed form.

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municipalities, including Brampton, are encouraging and requiring intensification as directed by Provincial policy, including the Growth Plan.

This proposal poses significant fiscal challenges to municipalities issuing building permits for high density residential development. Our analysis shows that the CBC percentage would need to be upwards of 45% in order to achieve revenue neutrality for this type of project. The significant delta between the proposed cap of 10% and what our analysis shows, is extremely concerning. Municipalities would need to turn to the tax base to fund parkland acquisitions that were previously funded from the CIL reserve. As the City approaches the imminent build-out of its remaining greenfield lands, Brampton will be unable to stay whole and if the proposed regulations are not altered as set out below, the City will need to adjust for the anticipated revenue losses and decline in parkland supply and service levels that will result from a high density-only scenario.

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- up to a 10% cap on all non-residential development;
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- Province pledges to review the percentage caps after a period of time to ensure revenue neutrality.

4. Timeline to Transition to the New Community Benefits Charge Regime

The current one year transition to the CBC after the regulation comes into effect is too short. To put this into context, there are over 200 municipalities in the Province that levy DCs, with only two properly qualified municipal finance consulting firms. As such, there is no conceivable way these two firms could assist 200 municipalities to enact CBC by-laws in one year.

As a reminder, when the DC Act was amended in 1997, the Province allowed for a two year timeline for municipalities to pass new DC by-laws.

The City recommends the Province consider the following proposal:

- Extend the timeline to transition to be the later of:
 - two years after the proclamation of the Regulation, or
 - expiration of each municipality's current DC By-law.

5. Community Benefits Charge By-law Notice

The notice provisions proposed in the ERO posting mirror those set out in the DC Act. As such, municipalities with DCs will be able to leverage existing processes while transitioning to the new CBC regime. The City of Brampton sees no significant issue with the community benefits charge by-law notice provisions as written.

6. Minimum Interest Rate for Community Benefits Charge Refunds Where a By-law Has Been Successfully Appealed

City of Brampton staff understand that by making the CBC by-laws appealable, processes need to be established to allow for refunds of by-laws which have been successfully appealed. Brampton staff see no significant issues with the proposed minimum interest rate for community benefits charge refunds where a by-law has been successfully appealed.

7. Building Code Applicable Law

The City of Brampton supports the proposal to amend the Building Code to add the community benefits charge authority to the list of applicable law. This amendment is a housekeeping item that enables the mechanism for ensuring the payment of community benefits charges prior to the issuance of a building permit. Brampton supports the change as it ensures payments to municipalities are made promptly.