

**RE: Environmental Registry of Ontario Posting 019-6172 - Proposed Planning Act and Development Charges Act, 1997 Changes: Providing Greater Cost Certainty for Municipal Development-related Charges**

**From: Steve Ganesh, Commissioner (A) - Planning, Building and Growth Management Department, City of Brampton;**

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**Bill Boyes, Commissioner (A) – Community Services, City of Brampton**

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To Whom It May Concern,

The City of Brampton has several comments and questions in relation to the Environmental Registry of Ontario posting 019-6172 - Proposed Planning Act and Development Charges Act, 1997 Changes: Providing Greater Cost Certainty for Municipal Development-related Charges. The City of Brampton (hereinafter referred to as ‘the City’) is supportive of efforts by the Province to address the housing affordability crisis. The City has reviewed the draft legislation and offer the following comments to assist the province. Through our assessment of the proposed changes to the Planning Act and Development Charges Act it is clear that the financial burden of financing growth related infrastructure and studies is proposed to be shifted from proponents of development to the tax base by increasing property taxes or reducing services to make up the elimination of revenue sources. This will ultimately make housing less affordable for existing residents. Additionally, in the absence of provisions to replace the loss in DC revenues, the proposal will erode the ability of municipalities to pay for growth-related infrastructure.

The proposed changes erode the affordability of existing homes and undermines the long-established principle that growth should pay for itself. Without a new revenue stream to offset these foregone DC payments the legislation will hamper the ability of municipalities to fund and deliver growth-related infrastructure. More specifically,

- The significance of this revenue reduction cannot be overstated, as there are no provisions through provincial-municipal revenue sharing, or new revenue raising tools, to make up for the loss. Instead, DC revenue shortfalls will have to be funded through increases in property taxes or reduction in services.
- With the likelihood of additional municipal property taxes being needed to cover DC shortfalls, municipal councils may need to delay the delivery of growth-related infrastructure. Such delays would not be in the interests of either municipalities or the development industry and would be contrary to the government’s efforts to spur housing construction.
- The DC reductions may undermine municipal-developer infrastructure cost sharing agreements that facilitate infrastructure in high growth areas of the province. These

complex agreements facilitate infrastructure using DC credits or reimbursement through future DC revenue. They often require the municipality to have DC revenue on hand before issuing reimbursements. In such cases, DC revenue shortfall arising from Bill 23 would delay repayment, to the financial detriment of developers who are parties to such agreements.

The following is a summary of the estimated key financial impacts to the City as a result of Bill 23 based on the current growth projections currently reflected in the DC background study:

- It is estimated that the Bill could **cost the City up to \$709 million to \$1.2 billion over the next ten years**, in development charges alone. Without corresponding provincial grants, the City of Brampton would need to recover that revenue through the tax base or by reducing service levels. In efforts to recover the DC Shortfall, the City could expect an equivalent to a **one-time increase of property taxes by 12%-18.2%**.
- Based on revisions to the Planning Act proposed through this ERO posting, **the potential CIL Parkland revenue loss for the City of Brampton is estimated to be \$700M to \$1.05 billion over the next ten years**. In efforts to recover the CIL Parkland shortfall, the City could expect an equivalent to **one-time increase of property taxes by 14%-21%**. It should be noted that these figures are preliminary projections, and staff require more time to study the consequences of Bill 23.
- In addition to the above the targets set by the Province for the number of housing units will result in additional infrastructure needs beyond what is being described in the current DC background study. This is roughly estimated at over **\$2B beyond the current infrastructure needs equivalent to a one-time 40% tax increase**.
- From a financial impact the following are key advocacy points:
  - Additional upper level government funding and or alternative revenue stream such as land transfer tax, sales tax;
  - Lower housing targets to more realistic levels;
  - More realistic targets and discount calculation for affordable/attainable housing;
  - Maintain existing CIL Parkland calculation methods;
  - Scrapping the proposed development charges exclusion categories, specifically, growth related studies land acquisition; and
  - Removal of the Phase-in provision.

	2023-2032 (10 Years)	Annual Impact	Equivalent Tax Increase *
Forecasted Development Charges Revenue	1,182,000,000.00	118,200,000.00	
Less: Lost Development Charges Revenue	442,300,000.00	44,230,000.00	8.8%
Net Forecasted Development Charges Revenue	739,700,000.00	73,970,000.00	
<b>Estimated Impacts of Affordable/Attainable Housing 100% Discount (3 Scenarios)</b>			
25% of New Development meet target of 80%	267,000,000.00	26,700,000.00	5.3%
50% of New Development meet target of 80%	534,000,000.00	53,400,000.00	10.7%
75% of New Development meet target of 80%	800,000,000.00	80,000,000.00	16.0%
<b>Total Estimated DC Revenue Lost (3 Scenarios)</b>			
25% of New Development meet target of 80%	709,300,000.00	59,872,500.00	12.0%
50% of New Development meet target of 80%	976,300,000.00	75,515,000.00	15.1%
75% of New Development meet target of 80%	1,242,300,000.00	91,057,500.00	18.2%

\* Property Tax Impact based on approximately \$5M equalling a 1% tax Increase

- Please note all estimates and numbers are preliminary and are subject to change pending additional information and analysis.
- The blanket DC exemption for all affordable, non-profit, and purpose-built rental housing removes control from local councils to determine projects deemed worthy of DC relief based on the municipality's financial situation and housing objectives and places the financial burden back on the existing tax base.
- Finally, because key provisions of the DC Act proposals are unclear, this could lead to unintended outcomes. For example, the exemption for affordable residential units applies when the unit price is no greater than 80% of the "average purchase price". If the average purchase price includes resales as well as new unit sales, then the scope of the exemption is potentially very broad.
  - The average house price (across housing types) in Brampton in 2021 according to TRREB data was \$1,041,639, meaning that applying the affordability rate proposed through this regulatory change would be affordable at a rate of \$833,311. In 2021, Brampton used the income-based approach to identify the affordability rate as \$455,656, aligning with the Provincial Policy Statement definition. The proposed regulatory change leads to a housing price that is almost double what the City currently defines as affordable using the income-based approach. The proposed change to the definition does not reflect the true affordability challenges in the City and does not solve the affordability crisis facing residents in the housing market.

**Please see below specific comments on individual aspects of the proposed legislative changes:**

**1. Provide greater cost certainty of parkland costs to enable housing developments to proceed more quickly**

**City Comment:**

- The City currently has a parkland acquisition objective of 1.6ha/1000 people. Brampton's provision of parkland has historically made it a desired place to live, work and play, and has provided additional buffering to portions of the City's extensive Natural Heritage System. Section 42 previously imposed the alternative requirement caps of 10% and 15% of land area or value, depending on the respective developable land area, for developments only within designated transit-oriented communities. By repealing subsection 42 (3.2) of the Planning Act, these caps would apply to all developable lands under the by-law. The proposal to reduce parkland dedication rates to 1 ha/600 units for land and 1 ha/1000 units for cash in lieu will significantly impact the City's ability to meet this parkland target in new greenfield areas and in rapidly urbanizing areas of the City - placing additional burden on existing parks and recreational assets and reducing the City's ability to provide high-quality parkland in high-density areas. Operationally, the proposed site-based caps would provide an inequitable distribution of parks in a high-density context. The changes to the parkland dedication rate and alternative rate put municipalities in the position of accepting potentially undesirable land identified by developers or accepting half as much cash-in-lieu with which to try to purchase expensive parkland at market value.
- The lowered alternative parkland dedication requirement and imposing caps based on the developable land area will place significant downward pressure on the amount of parkland dedication provided to municipalities. For example, a 5-storey development and a 50-storey development will typically provide the same amount of new parkland. Parkland/CIL in the range of 80% of its parkland goal of 1ha/1000, or alternatively it can be noted that the City would be deficient of 358 acres of Parkland. Assuming a current average land value of \$4M/ac - \$6M/ac would equate to deficit of \$1,432,000,000 - \$2,148,000,000 in 2022 dollars
- The City is concerned with the 50% of shortfall in parkland dedication revenue and how it will affect its delivery of capital programs and acquisition of parkland. The proposed Bill would accelerate the decline in parkland provision and compromise the City's ability to provide sufficient and high-quality parkland and recreation projects that would serve both growing and equity-deserving communities where gaps currently and are forecasted to exist. The proposed changes will make it exceedingly difficult to acquire parkland in intensification areas, where land is expensive and development activity is high, reducing the livability and parkland access to future residents. The proposed legislation will put additional funding pressure on property tax funding sources to make up the difference, or further erode the City's planned level of parks service.
- With regard to Section 42 (2.1) and Section 42 (6.4), there appears to be contradictory requirements for the determination of the financial value of a parkland dedication provided as cash-in-lieu. Section 42 (2.1) states that the amount of payment in lieu would be determined on the day of application for site plan or the day of application for a zoning bylaw amendment whereas Section 42 (6.4) states that the value of the land is to be determined as of the day before the day the building permit is issued. Please clarify.

- The Parkland rate is related to calculated land value at the time of the building permit. Freezing this rate at site plan/re-zoning means the City will lose the appreciated value of the land in the years it takes to execute the relevant agreements. In this time, the City will still have to provide the off-site parkland by the land value of building permit year. This means that if real estate in the City of Brampton appreciates by 5% each year roughly City will lose 10% of the land value. It is unclear how the legislation makes up for the shortfall of this lost revenue stream and how the changes promote the Province of Ontario's desire to create "complete communities".
- Without a corresponding increase in revenue, this will result in a drop in service provision and fewer amenities, particularly for newly developed communities without a corresponding increase in other revenue streams. This would shift the financial burden of growth from developers to taxpayers, feeding into Ontario's affordability crisis.

#### **City Recommendation:**

- The City recommends that the existing provisions for parkland dedication and cash-in-lieu of parkland dedication be maintained, and that municipalities retain the flexibility to determine appropriate incentives.
- In the alternative, the City recommends:
  - for land conveyance, the alternative requirement be imposed for densities greater than 30 units per ha.;
  - for sites of 5 ha or less, land conveyance would be capped at 10% of land area at densities greater than 60 units per ha.;
  - for sites greater than 5 ha, land conveyance be capped at 15% of land area at densities greater than 90 units per ha.;
  - for payment in lieu of parkland, imposing the alternative requirement for densities greater than 50 units per ha.;
  - for sites of 5 ha or less, land conveyance be capped at 10% of land area at densities greater than 100 units per ha.;
  - for sites greater than 5 ha, land conveyance be capped at 15% of land area at densities greater than 150 units per ha.;
  - for densities less than 30 units per ha, the standard requirement of 5% of land area for land conveyance and payment in lieu of parkland be imposed.
- Alternatively, the City recommends returning to a parkland contribution rate that is based on population rather than site sizes, to reduce disparities between suburban and urban contexts, and support the creation of complete communities.

#### **2. Support more efficient use of land and provide for more parks quickly:**

##### **City Comment:**

- The proposed changes will result in:
  - less parkland per development (over 33% less parkland on large sites greater than one hectare);

- poorer quality parkland (100% parkland dedication credit for encumbered parkland and privately-owned publicly-accessible spaces and an applicant's ability to identify park parcels);
  - less revenue for parks and recreational facilities (estimated minimum 15% reduction in revenue); less Council and public discretion regarding the provision of suitable parkland (developers/applicants now have appeal right if Council refuses proposed parkland dedication).
- Proposed section 42(4.38) provides extremely limited authority to the Tribunal, which can only find the proposed parkland is suitable for park purposes and order the municipality to accept it, or not.
- Privately owned Public Open Spaces (POPs) may not provide the same level as a public park. Hours of operation and maintenance of POPS are subject to an easement agreement with the owner, which may be limiting. POPS have limited programming ability and would rarely, if ever, include playground equipment and other needed park amenities. POPS are also considered more of a maintenance liability as opposed to publicly open parks. POPS for example result in costs to condo corporations, and are more difficult to maintain over the long term, resulting in increasing condo fees for condo residents.
- Strata parks, over private infrastructure in particular, will result in increased costs and reduced usability of parks.
- Allowing developers to determine park location interferes with municipal park delivery programs/park network plans, may result in undevelopable slivers that cannot be maintained or are costly to maintain.
- Orders given to municipalities to accept private ownership of publicly accessible spaces like POPs or to accept Strata parks may limit the legal rights the municipality has to address problems and mitigate risk and liability to the municipal corporation and members of the public with respect to such spaces. Unlike fee simple ownership of the full area of parkland, the municipality's rights and obligations (including regarding maintenance and safety matters) would be subject to easement and related agreements between the municipality and the private owner. The terms of such agreements may not be favourable to the municipal corporation or members of the public, as the private owner is likely to negotiate to protect its own property rights at the expense of public access, and the municipality's ability to negotiate in the public interest may be heavily circumscribed if it has been ordered to accept the privately owned parkland or parkland built into private infrastructure.

**City Recommendation:**

- The City of Brampton strongly recommends the Province remove 100% credit for POPS and other encumbered parkland or determine a lesser amount to disincentivize developers providing less than a full dedication of suitable parkland.
- The City strongly recommends that municipal discretion to accept parkland, identify that parkland, and to opt for cash-in-lieu be maintained and the proposed appeal right in this regard be eliminated.
- In the event that the Province proceeds with this appeal right, it is recommended that the Tribunal be given broad authority to determine the outcome of disputes between municipalities and applicants.

- The City recommends that the Province provide clarity to the City on how the proposed legislation supports the efficient use of lands for public use, and how the accepting of encumbered lands supports the public interest.
- The City of Brampton recommends that if the proposal to allow developers to choose land for parks is adopted, that criteria for acceptable conveyances be provided including, at minimum, the following:
  - Above top-of-bank of a proximate watercourse;
  - Soil quality that meets Ministry requirements for sensitive land use (ie park use) and possesses an approved Record of Site Condition demonstrating such;
  - Can be conveyed in base park condition such that the land meets Accessibility for Ontarians with Disabilities guidelines (i.e., if a ravine slope or woodlot cannot be graded to facilitate accessibility, it should not be an acceptable parkland dedication conveyance;
  - Sufficiently visible and accessible from adjacent public streets, and adheres to Crime Prevention Through Environmental Design (CPTED) principles to promote community safety;
  - Be of a useable shape and size to functionally expand an adjacent park and/or construct a small recreational facility such as a playground or splashpad or equivalent recreational facility;
  - That encumbered land only conveyed if the servient tenement of a potential easement, utility or infrastructure provider agrees that the use and programming of the land does not impede access or operation;
  - That encumbered land does not pose a threat to human health through the conveyance of environmental features or hazards; and,
  - Land must be outside the limits of any lands identified as Natural Heritage in City's Official Plan.
- Should the legislation be passed, the City requests that development applications submitted prior to Bill 23 coming into effect should adhere to the rates established in the approved municipal By-Law.

### **3. Reduce development costs to enable more housing to be built faster**

#### **City Comment:**

- The proposed phase-in is costly for municipalities and taxpayers. While there is little evidence to show that the changes will reduce the price of homes, at the very least in the near-term, the phase-in will mean a loss for the City's DC revenue and a saving for builders and developers, regardless of the type of housing being constructed (market or affordable units).
- The phase-in does not apply only to DC rate increases but rather to the total DC rate. As such, it unnecessarily reduces the City's revenues when the DC rate is stable.
- Although the phase-in is intended to stimulate residential construction, it applies to all DCs, including those imposed on commercial and industrial development. There is no apparent basis to expect that a broad application of the phase-in on non-residential development will increase housing supply.

- The proposed phase in changes result in an average annual impact of \$11.8M or \$118M over the 10 years.
- The requirement to update the DC by-law every 10 instead of every 5 years could benefit the City due to less administration of less frequent updates.
- Based on a historical service level 15 years vs 10 years, the City would see a definite impact as we continue to grow and increase service levels. Based on the trend of our historical service level change, this would have an annual impact of \$3.4M or \$34M over 10 years.
- By making Growth Related Studies and Land Acquisitions ineligible to be funded by Development Charges the tax base would have to incur and an annual impact of \$885K or \$8.8M over the next 10 years to fund growth related studies; and incur an annual impact of \$21M or \$210 over 10 years to facilitate land acquisitions over the next 10 years, based on estimates in 2019 study. It should be noted that land values have increased significantly since the completion of the study in 2019.

**City Recommendation:**

- Given that the intent of this legislation is to increase density, there will be a corresponding increase in service requirements. Therefore, it is recommended that that the 10-year service level change be maintained, or that it be amended to permit current service levels to better reflect the needs of a growing community and support development of high-quality neighbourhoods.
- That land acquisition and studies continue to be an eligible category to be funded through DC's.

**4. Encourage the supply of rental housing**

**City Comment:**

- The City is generally supportive of the proposal to encourage the supply of rental housing, however, the impact of these changes would depend on the number of units being proposed. For example, 1000 apartment units would be a discount of 20% or \$3.7M, and 500 Rowhouses would be a discount of 25% or \$4.3M for a total of \$8M of annual DC revenue forgone. The actual number and types of units are unknown.
- Based on the proposed elimination of legislation that enables municipalities to enact rental conversion and demolition by-laws, the City is concerned that developments that may be approved as purpose-built rental, receiving the benefits of DC relief, may subsequently covert the units to market units after the prescribed period of time.

**City Recommendation:**

- The City recommends that development charge relief for rental housing be left to the discretion of Council and City-lead incentive programs to provide a managed approach to reducing and mitigating the financial burden to the tax base.
- The Province should not move forward with the proposed changes to limit municipalities' authority to regulate the demolition and conversion of rental properties. If these proposed changes go forward, The City recommends that additional safeguards/alternative



measures be implemented to ensure the long-term protection of purpose-built rental units.

## **5. Encourage the supply of affordable housing**

### **City Comment:**

- Under the proposed changes to the Development Charges Act, municipalities will have to enter into agreements to ensure these units remain affordable over a period, which will increase the administrative burden (and costs) on municipalities.
- Since an agreement does not appear to be required for parkland dedication exemptions, the City is concerned that there would be no requirement to provide payment in lieu if the status of the development changes during the required affordability period.
- Under the proposed changes, all non-profit housing developments are exempt from DCs, CBCs, and parkland dedication requirements. The City requests clarity on how exemption eligibility would apply if non-profit housing developments provided market rate units.

### **City Recommendation:**

- The Planning Act changes should provide for payment of waived cash-in lieu requirements if the status of the development changes during the required affordability period.

## **6. Gentle Density**

### **City Comment:**

- The City is supportive of gentle density, however, is concerned of as-of-right zoning permissions and elimination of site plan control proposed in other ERO postings. The City is concerned about the inability to scale to accommodate the additional density where density was not already contemplated; and the growth-related infrastructure that may be deficient to support the anticipated growth (roads, transit, parking, parks, schools, water/wastewater).
- While reducing municipal requirements for the conveyance of land or payment in lieu of parkland may provide a further margin for builders to create additional housing units, the proposed parkland dedication exemptions will increase the financial burdens on municipalities to fund these exemptions from property tax sources to address shortfalls or erode the City's planned level of parks service

### **City Recommendation:**

- The City recommends that the province not promote as-of-right zoning and leave the identification of appropriate locations to support gentle densification to municipalities to determine which zones can feasibly accommodate three units, while maintaining community character and not over burdening growth-related infrastructure.

## **7. Encourage the supply of attainable housing**

**City Comment:**

- Regarding Section 42 (1.1) and Section 42 (3.0.3), what is the definition of "attainable residential unit" in the context of the "such other criteria as may be prescribed" identified in the Development Charges Act?
  - The removal of Housing Services as a service eligible for DC funding appears counterproductive to the government's stated objective of promoting affordable housing. It hampers efforts by municipalities and non-profit organizations to provide such housing since Housing Services DCs are used to pay for a portion of municipally constructed affordable units and to provide financial support for third parties to deliver those units. The objection to using DCs to fund social housing and affordable housing overlooks the substantial "benefit to existing" shares of municipal capital expenditures that are paid for by property taxpayers.
  - A full 100% discount of DC's for affordable/attainable developments could have a significant impact on revenue collection. Using a range of 25% to 75% of new developments achieving the distinction of affordable/attainable would result in annual revenue loss of \$26-80M. This by far could have the largest impact on DC revenue.
  - The potential removal of Land Acquisition as a DC eligible cost is of special concern. Land acquisition for new infrastructure and facilities is critical in capital development planning, and acquiring land is often the step that gets infrastructure projects "up and running". Not being able to use DCs to pay for land for some or all DC services will have a negative financial impact on municipalities, resulting in infrastructure delays which will negatively impact housing supply. Removal of land acquisition as a DC eligible cost will cost the taxpayer ~\$21M per year based on the figures for land in the 2019 DC Study (more in today's market). Alternative funding would need to be arranged before moving forward on Land purchases and could create delays in the projects moving forward for any service that land it excluded for.
  - Growth-Related Studies: Another proposed change is to remove the cost to undertake studies from the list of DC eligible costs. Such studies typically include master servicing plans to determine growth-related infrastructure needs. As with land, these studies form the basis of long-term capital programs and, by extension, reflect the intentions of municipal councils in managing long-term growth. Typically, projects are not approved for construction unless appropriate studies have been completed. As the need for studies is largely driven by development, they should continue to be funded from DCs. The removal of studies to support the technical merit of Official Plans, Secondary plans, Transportation Plans, and other growth-related studies will likely delay development as the shortfall otherwise required to fund these studies will have to come from the tax base, with local Councils taking a cautionary approach to impacts to property taxes.
  - 15-Year Service Level: The proposal to change the calculation of historical service levels based on 10 years to one based on 15 years, over the long-term, will erode municipal efforts to use DCs to maintain service levels in the face of rapid growth. This may delay infrastructure and facilities required to build "complete" communities (e.g., fire stations, recreation facilities, libraries).

**City Recommendation:**

- The City strongly recommends that Province not remove or limit eligibility of “costs to acquire land” for DC collection. Also request that Province restore "affordable housing" and ability to fund "studies" as eligible for DC collection

**Conclusion**

In summary, the Government's efforts to promote the construction of new affordable, rental, and non-profit housing through targeted DC incentives will to an extent be supported by the proposed changes to the DC Act. However, in the absence of provisions to replace the loss in DC revenues, the initiative will erode the ability of municipalities to pay for growth-related infrastructure. Additionally, further changes to the Planning Act to reduce parkland requirements will place significant downward pressure on the amount of parkland dedication provided to municipalities and without a corresponding increase in revenue, the proposed changes will result in a drop in service provision and fewer amenities, particularly for newly developed communities without a corresponding increase in other revenue streams. This would shift the financial burden of growth from developers to taxpayers, feeding into Ontario's affordability crisis.

Sincerely,



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