Report to: Council Meeting Date: July 26, 2019

SUBJECT: City of Markham Comments on Proposed Regulations – Development Charges Act, 1997 and Community Benefits Charge Authority

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RECOMMENDATION:

1. THAT the report entitled, "City of Markham Comments on Proposed Regulations – Development Charges Act, 1997 and Community Benefits Charge Authority" be received;

2. AND THAT this report, with the recommendations from the City of Markham on the proposed regulations to the *Development Charges Act, 1997* and the Community Benefits Authority, be forwarded to the Minister of Municipal Affairs and Housing and to York Region;

3. AND THAT the City of Markham supports the Province's intent to ensure that the implementation of the Community Benefits Charge will result in municipalities like the City of Markham remaining revenue neutral;

4. AND THAT the City of Markham supports the Province's efforts to bring more affordable housing to our communities;

5. AND THAT the City of Markham supports the implementation timeline of January 1, 2021 to transition to the Community Benefits Authority;

6. AND THAT municipalities be allowed to register a priority lien on the tax roll of properties with mandatory development charge deferrals to protect the municipality against losses in the event of bankruptcy or land ownership changes;

7. AND THAT municipalities be allowed to use additional tools, other than a priority lien, to ensure that mandatory development charge deferrals are secured in a manner that protects municipal interests;

8. AND THAT the Commercial Development subject to payments in equal installments under Section 26.1 of the *Development Charges Act, 1997* should not include retail development;

9. AND THAT Section 26.2 of the *Development Charges Act, 1997* regarding when development charges are to be determined/frozen specify that for zoning by-law

amendment applications, that the date that an application is deemed complete pursuant to section 34(10.4) of the Planning Act be the date upon which development charges are determined and, further that a provision be made for municipalities to determine what constitutes acceptance of a site plan application for the purposes of determining development charges;

10. AND THAT that any major revisions to an application require a recalculation of the applicable development charges from the date the major revision is accepted by the municipality, or the date such revision is deemed major by the municipality;

11. AND THAT the City of Markham supports the Minister's proposal not to establish a maximum interest rate to be applied during the deferral and freeze of development charges;

12. AND THAT the proposed regulations related to secondary dwelling units in new residential buildings should be clarified to indicate that a secondary dwelling unit is subordinate to, or accessory to, a main residential building in order to be identifiably differentiated from other residential development such as multi-unit buildings (e.g. multi-plexes, stacked townhouses);

13. AND THAT the City of Markham supports the community benefits reporting requirements as proposed;

14. AND THAT the City of Markham supports the parkland reporting requirements as proposed;

15. AND THAT the City of Markham support the proposed list of developments included in the community benefits exemptions, to the extent that they are applicable to non-profit developments only;

16. AND THAT the Province add a fixed component to the Community Benefits Charge formula to account for the costs of building growth-related infrastructure;

17. AND THAT if the Community Benefits Charge cap is solely linked to a percentage of land value, that the percentage for low density development be a minimum of 20% of land value in order to maintain revenue neutrality for the City of Markham;

18. AND THAT if the Community Benefits Charge cap is solely linked to a percentage of land value, that the percentage for high density development be a minimum of 85% of land value, with the percentage increasing as intensification increases in order to maintain revenue neutrality for the City of Markham;

19. AND THAT the proposed range of the Community Benefits Charge cap be based on building type (low density vs high density) and geographic location within Ontario;

20. AND THAT the proposed process for land appraisals will add additional costs to the administrative process that should be recoverable through a fee;

21. AND THAT the City of Markham supports the proposed list of services to be excluded from the Community Benefits Charge;

22. AND THAT municipalities be granted authority to levy a Community Benefits Charge in a Community Planning Permit area, which should not be subject to any proposed cap;

23. AND THAT where the Minister designates an area subject to a Community Planning Permit System, the municipality may be allowed to enter into cost-sharing agreements with multiple landowners to provide community services to those areas;

24. AND THAT staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:
This report provides staff comments in response to the Province's proposed regulations for the *Development Charges Act, 1997* and the Community Benefits Charge Authority.

BACKGROUND:
Bill 108, *More Homes, More Choice Act, 2019* ("Bill 108") received Royal Assent on June 6, 2019. Bill 108 included changes to the *Development Charges Act, 1997* and the creation of a new Community Benefits Authority with the intent of making housing more affordable and development costs more predictable. The Community Benefits Charge Authority will replace development charges for soft services, Section 37/density bonusing and parkland dedication through a new Community Benefits Charge ("CBC").

Municipalities across Ontario expressed concern during the passage of Bill 108 that the intent of the Community Benefits Charge Authority, through its proposed cap, seemed to be a reduction in the amounts currently collected. It was communicated to the Province that a reduction in revenue will impact a municipality's ability to fund growth-related infrastructure. The Minister of Municipal Affairs and Housing indicated in a letter to municipalities dated June 7, 2019, that the intent of the new legislation is to maintain municipal revenues, so the goal is for municipalities to recover similar revenues from CBCs as they would from development charges for soft services, Section 37/density bonusing and parkland dedication.

On June 21, 2019, draft proposed regulatory guidelines were made available by the Province for the *Development Charges Act, 1997*, *Planning Act* and the new Community Benefits Authority. The Ministry of the Attorney General also released a proposal to make a regulation under the amended *Local Planning Appeal Tribunal Act* arising from the changes in Bill 108. Municipalities have been invited to provide feedback on the proposed regulations by the following dates:

- *Development Charges Act* [Environment Registry of Ontario (ERO) 019-0184] – August 21, 2019
- Community Benefits Authority, under the *Planning Act* (ERO 019-0183) – August 21, 2019
- *Planning Act* (ERO 019-0181) – August 6, 2019
- *Local Planning Appeal Tribunal Act, 2017* – August 5, 2019

This report will review and comment on the proposed regulations for the *Development Charges Act, 1997* and the new Community Benefits Authority.

OPTIONS/ DISCUSSION:

The proposed regulations to the *Development Charges Act, 1997* and the Community Benefits Authority, along with staff comments and recommendations are discussed below.

Development Charges Act

Upon receiving Royal Assent, the Bill made changes to the *Development Charges Act, 1997* that require additional details to be prescribed by regulation. Below are the regulations proposed by the Province.

1. Transition

The amendments in Schedule 3 of the Bill would, upon proclamation, provide transitional provisions for development charges for discounted (soft) services under the *Development Charges Act, 1997.* The transition provision is intended to provide some flexibility for municipalities as they migrate to the Community Benefits Charge Authority.

Municipalities would be able to transition to the Community Benefits Charge Authority once the legislative provisions come into force (as will be set out in proclamation). It is proposed that the legislative provisions related to Community Benefits Charges would come into force on January 1, 2020, however municipalities have until January 1, 2021 to implement the charge.

Proposed Regulatory Content
The Minister proposes that the specified date for municipalities to transition to community benefits is January 1, 2021.

From this date to beyond:

- *Municipalities would generally no longer be able to collect development charges for discounted services*

Staff Comments
The timeline to switch to the Community Benefits Charge appears to be compressed, given that all municipalities in Ontario that currently collect development charges will more than likely transition to the Community Benefits Charge regime. It is anticipated that this will result in difficulty to obtain the services of the few consulting firms that are equipped to guide municipalities through this new process and calculation.

City staff have worked proactively to secure the services of Hemson Consulting who has worked with the City on its last 4 to 5 Development Charges Background Studies to assist in the transition to the Community Benefits Charge. A 2020 capital budget request to hire Hemson Consulting Ltd. has been submitted for Council approval.

Recommendation

5) That the City of Markham supports the implementation timeline of January 1, 2021 to transition to the Community Benefits Authority.

2. Scope of types of development subject to development charges deferral

The Bill amended the *Development Charges Act, 1997* ("Act") to provide for the deferral of development charges for specified types of development, until occupancy. The rationale for this deferral is the alleviation of cashflow pressure on cost-sensitive developments (e.g. purpose-built rentals), with the hope that this will lead to an increase in these types of development.

The Act provides for the payment of development charges in six (6) equal annual installments commencing on the date of building occupancy and, on the five anniversaries of that date for rental housing, institutional, industrial and commercial development. It also provides for twenty-one (21) equal annual installments commencing on the date of occupancy and, on the twenty (20) anniversaries of that date for non-profit development.

Proposed Regulatory Content
The regulation provides more detail and defines the type of development that will qualify for the deferral of development charges. These are as follows:

- *Rental housing development - means construction or addition or alteration to a building for residential purposes with four or more self-contained units that are intended for use as rented residential premises*
- *Non-profit housing development - means the construction or addition or alteration to a building or structure for residential purposes by a non-profit corporation.*
- *Institutional development - means the construction or addition or alteration to a building or structure for:*
  - *long-term care homes;*
  - *retirement homes;*
  - *universities and colleges;*
  - *memorial homes; clubhouses; or athletic grounds of the Royal Canadian Legion; and*
  - *hospices*

- *Industrial development - means the construction or addition or alteration to a building for:*
  - *manufacturing, producing or processing anything,*
  - *research or development in connection with manufacturing, producing or processing anything,*
  - *storage, by a manufacturer, producer or processor, of anything used or produced in such manufacturing, production or processing if the storage is at the site where the manufacturing, production or processing takes place, or*
  - *retail sales by a manufacturer, producer or processor of anything produced in manufacturing, production or processing, if the retail sales are at the site where the manufacturing, production or processing takes place.*
- *Commercial development - means the construction or addition or alteration to a building or structure for:*
  - *office buildings, as defined under subsection 11(3) in Ontario Regulation 282/98 under the Assessment Act; and*
  - *shopping centres as defined under subsection 12(3) in Ontario Regulation 282/98 under the Assessment Act.*

Staff Comments

It is noted that the institutional developments that benefit from the deferral of development charges are exempt from the Community Benefits Charge. The main concern relates to the inclusion of retail shopping centres in the deferral. Based on the definition, this could include any structure with at least three units that are used primarily to provide goods and services directly to the public and that have different occupants. Retail shopping centres are a disproportionate burden on municipal services, particularly roads services, as they are significant trip generators. This is overly broad and would benefit large corporations not in need of a deferral to make an investment viable. Also, in instances where builders sell units in a shopping centre, this could result in the purchasers not being aware that there are development charges due to the City, leading to owners being blindsided with additional costs.

Staff are also concerned about how best to secure the installment payments for development charges over time. Currently, while the City may apply any unpaid development charges to the tax roll of an individual property, those unpaid charges do not have "priority" lien status. As a result, the City may not be able to recover those unpaid charges in the event of a foreclosure or power of sale, and the difference would need to be recovered through the general property tax.

Lastly, staff anticipate that these additional requirements will place additional administrative burdens on the City. Staff will be assessing tools for the cost recovery of those additional administration costs.

Recommendations

6) That municipalities be allowed to register a priority lien on the tax roll of properties with mandatory development charge deferrals to protect the municipality against losses in the event of bankruptcy or land ownership changes;

7) That municipalities be allowed to use additional tools, other than a priority lien, to ensure that mandatory development charge deferrals are secured in a manner that protects municipal interests;
8) That the Commercial Development subject to payments in equal installments under Section 26.1 of the *Development Charges Act, 1997* should not include retail development.

3. Period of time for which the development charge freeze would be in place

The amendment to the Act will, upon proclamation of Bill 108, provide that the amount of a development charge would be set at the time Council receives the site plan application for a development; or if a site plan is not submitted, at the time council receives the application for a zoning amendment (the status quo would apply for developments requiring neither of these applications). The freeze would remain in place until a certain time after the application is approved by the municipality or the LPAT.

The proposed regulatory change establishes the period of time in which the development charge rate freeze will be in place, in order to encourage development to move to the building permit stage as soon as possible.

Proposed Regulatory Content
In order to encourage development to move to the building permit stage so that housing can get to market faster and provide greater certainty of costs, the Minister is proposing that the development charge would be frozen until two years from the date the site plan application is approved, or in the absence of the site plan application, two years from the date the zoning application was approved.

Staff Comments
The inclusion of a sunset date in the regulation is welcomed, as this was a concern raised in the initial feedback provided to the Province in May, 2019. However, linking the sunset timeline to the approval of a site plan or zoning by-law amendment, could encourage non-viable, speculative or place-holder applications to be filed in an effort to circumvent development charge increases, doing little to incent developers to progress to building permit in an expeditious manner. In order for a site plan or zoning by-law amendment to be approved, conditions must be satisfied and documentation must be submitted by developers. Delays in providing this information will not be penalized under this proposed regulation and provides no incentive for developers to expeditiously seek approvals.

The amendment to the Act, upon proclamation of Bill 108, will allow the City to charge interest on the development charges outstanding over the period of a rate freeze. Staff will manage this process and apply a rate appropriate to the circumstances to ensure that the City is not negatively impacted.

Recommendation:
9) That Section 26.2 of the *Development Charges Act, 1997* regarding when development charges are to be determined/frozen specify that for zoning by-law amendment applications, that the date that an application is deemed complete pursuant to section 34(10.4) of the Planning Act be the date upon which

development charges are determined and, further that a provision be made for municipalities to determine what constitutes acceptance of a site plan application for the purposes of determining development charges;

10) That any major revisions to an application require a recalculation of the applicable development charges from the date the major revision is accepted by the municipality or the date it is deemed major by the municipality.

4. Interest rate during deferral and freeze of development charges

The amendment to the *Act* will, upon proclamation of Bill 108, provide municipalities with the ability to charge interest on development charges payable during a deferral of the charges, as well as during a development charge 'freeze' from the date the applicable application is received, to the date the development charge is payable. The amended Act in both cases, states that interest cannot be charged at a rate above a prescribed maximum rate.

Proposed Regulatory Content

The Minister is not proposing to prescribe a maximum interest rate that may be charged on development charge amounts that are deferred or on development charges that are frozen.

Staff Comments

Staff support the Minister's proposal not to establish a maximum interest rate. The absence of a prescribed interest rate will allow municipalities to apply a rate applicable to their own financial circumstances.

Recommendation

11) That the City of Markham supports the Minister's proposal not to establish a maximum interest rate to be applied during the deferral and freeze of development charges.

5. Additional dwelling units

The amendment to the *Act* will, upon proclamation of the Bill, provide that:

- the creation of an *additional dwelling* in prescribed classes of residential buildings and ancillary structures does not trigger a development charge; and
- the creation of a *second dwelling* unit in prescribed classes of new residential buildings, including ancillary structures, is exempt from development charges.

Proposed Regulatory Content

The existing O. Reg. 82/98 prescribes existing single detached dwellings, semi-detached/row dwellings and other residential buildings as buildings in which additional residential units can be created without triggering a development charge and rules related to the maximum number of additional units and other restrictions. It is proposed that this regulation be amended so that units could also be created within ancillary structures to

these existing dwellings without triggering a development charge (subject to the same rules/restrictions).

It is also proposed that one additional unit in a new single detached dwelling; semi-detached dwelling; and row dwelling, including in a structure ancillary to one of these dwellings, would be exempt from development charges.

It is also proposed that within other existing residential buildings, the creation of additional units comprising 1% of existing units would be exempt from development charges.

Staff Comments
Additional dwelling units were already allowed within existing units as per the existing regulation and, over garages (i.e. coach houses) as per the City's development charge by-laws, without triggering development charges.

Staff are concerned that this provision could be used to evade the payment of development charges for single detached or semi-detached dwellings. For instance, creativity in the design of "stacked" dwellings could blur the lines and leave the City open to challenges on whether a unit is a stacked townhouse or a single dwelling with a second dwelling unit. There should be a clearly established process for identifying stacked townhouses or other form of main dwelling unit, from dwelling units with additional or second dwelling units.

Recommendation

12) That the proposed regulations related to secondary dwelling units in new residential buildings should be clarified to indicate that a secondary dwelling unit is subordinate to, or accessory to, a main residential building in order to be identifiably differentiated from other residential development such as multi-unit buildings (e.g. multi-plexes, stacked townhouses).

Community Benefits Authority, under the *Planning Act*

Bill 108 will upon proclamation, make amendments to the *Planning Act* to provide the authority for municipalities to charge for community benefits in order to fund a range of capital infrastructure for community services that benefit new development. There are provisions that require additional details to be prescribed by regulation. The following are proposed to be prescribed in the regulation.

1. Transition

The amendments in Schedule 12 of Bill 108 will, upon proclamation, provide transitional provisions for section 37 and section 42 under the *Planning Act*. The transition provision is intended to provide the flexibility necessary for municipalities as they migrate to the Community Benefits Charge Authority.

An amendment to the *Development Charges Act, 1997* through Bill 108, provides for a date to be prescribed in regulation to establish a deadline for when municipalities must transition to the Community Benefits Authority. Municipalities that do not transition to the Community Benefits Charge Authority, will not be able to collect for the capital cost of discounted (soft) services and under previous section 37 of the *Planning Act*.

Proposed Regulatory Content
It is proposed that the specified date for municipalities to transition to community benefits is January 1, 2021.

Staff Comments
As per the development charges transition, City staff have proactively made preparations to ensure this compressed timeline is met.

Recommendation

5) That the City of Markham supports the implementation timeline of January 1, 2021 to transition to the Community Benefits Authority.

2. Reporting on community benefits

The amendments to the *Planning Act* (Schedule 12 of Bill 108) require municipalities that pass a Community Benefits Charge by-law to provide reports and information as prescribed in the regulation, to persons prescribed in regulation.

Proposed Regulatory Content
The Minister is proposing to prescribe reporting requirements that are similar to existing reporting requirements for development charges and parkland under section 42 of the Planning Act.

Municipalities will be required to prepare an annual report for the preceding year that provides information about the amounts in the community benefits charge special account, such as:

- *Opening and closing balances of the special account*
- *A description of the services funded through the special account*
- *Details on amounts allocated during the year*
- *The amount of any money borrowed from the special account, and the purpose for which it was borrowed*
- *The amount of interest accrued on money borrowed*

Staff Comments
Annual reports with similar requirements are currently prepared for development charges to provide information on the collection and use of the funds. These reporting requirements are reasonable.

Recommendation

13) That the City of Markham supports the community benefits reporting requirements as proposed.

3. Reporting on parkland

The amendments to the *Planning Act* (Schedule 12 of Bill 108) provide that municipalities may continue using the current basic parkland provisions of the *Planning Act* if they opt not to collect Community Benefits Charges. Municipalities with parkland special accounts will be required to provide the reports and information as prescribed in the regulation, to persons prescribed in regulation.

Proposed Regulatory Content

In order to ensure that cash-in-lieu of parkland is collected and used in a transparent manner, the Minister is proposing to prescribe reporting requirements for parkland. Municipalities would be required annually to prepare a report for the preceding year that would provide information about the amounts in the special account, such as:

- *Opening and closing balances of the special account*
- *A description of land and machinery acquired with funds from the special account*
- *Details on amounts allocated during the year*
- *The amount of any money borrowed from the special account, and the purpose for which it was borrowed*
- *The amount of interest accrued on money borrowed*

Staff Comments

Annual reports with similar requirements are currently prepared for development charges to provide information on the collection and use of the funds. These reporting requirements are reasonable.

Recommendation

14) That the City of Markham supports the parkland reporting requirements as proposed.

4. Exemptions from community benefits

Amendments to the *Planning Act* enable the Province to prescribe types of development or redevelopment for which a Community Benefits Charge cannot be imposed. The aim of the Province is to help reduce the costs associated with building certain types of development that are in high demand.

Proposed Regulatory Content

The Minister is proposing that the following types of developments be exempt from charges for community benefits under the Planning Act:

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

Staff Comments
It is staff's expectation that the City will continue to provide (soft) services such as libraries, parks and community centres to the occupants/users of these developments. However, without the corresponding funding source from these developments, this will put upward pressure on the City's existing tax base as long as the same level of service is to be maintained.

Recommendation

15) That the City of Markham support the proposed list of developments included in the community benefits exemptions, to the extent that they are applicable to non-profit developments only.

5. Community benefits formula

The amendments to the *Planning Act* in Schedule 12 of the *More Homes, More Choice Act, 2019*, 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 new development.

This capital infrastructure for community services could include libraries, parkland, daycare facilities, and recreation facilities.

For any particular development, the Community Benefits Charge payable could not exceed the amount determined by a formula involving the application of a prescribed percentage to the value of the development land. The value of land that is used is the value on the day before the building permit is issued to account for the necessary zoning to accommodate the development.

Proposed Regulatory Content

It is proposed that a range of percentages will be prescribed to take into account varying values of land.

In determining the prescribed percentages, there are two goals.

- *Firstly, to ensure that municipal revenues historically collected from development charges for "soft services", parkland dedication including the alternative rate, and density bonusing are maintained.*
- *Secondly, to make costs of development more predictable.*

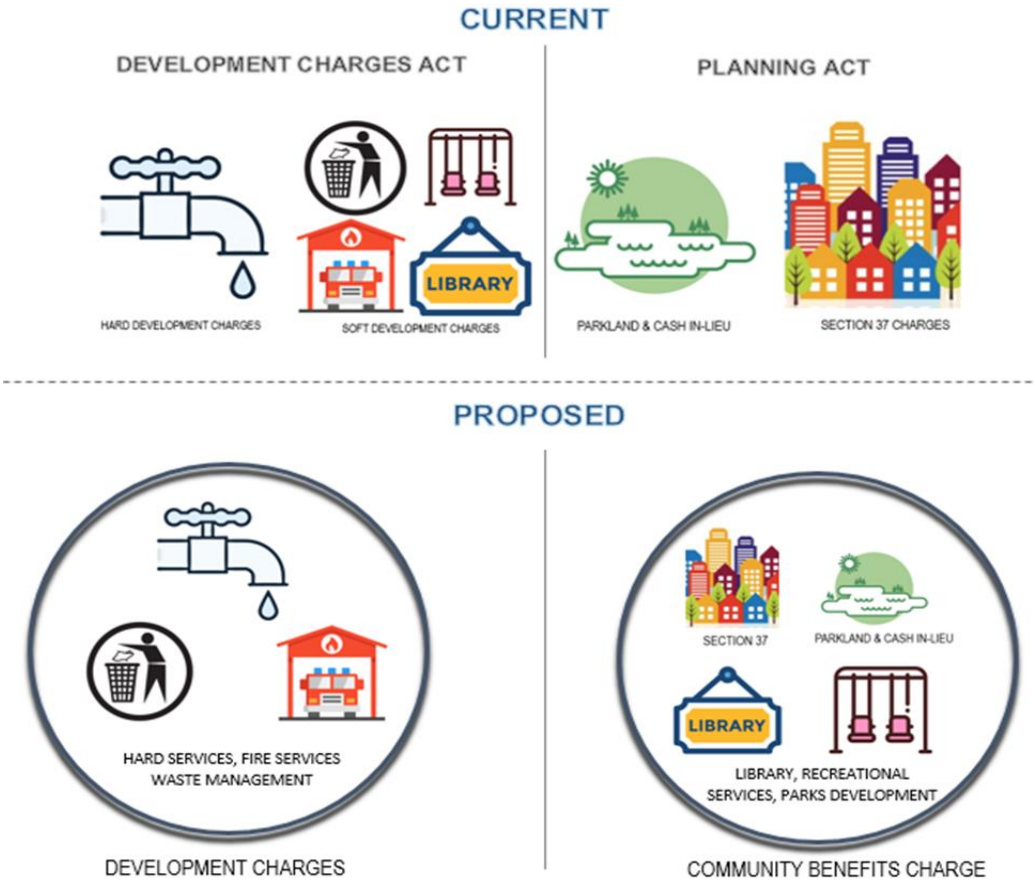
This Ministry is not providing prescribed percentages at this time. However, the Ministry would welcome feedback related to the determination of these percentages. There will be further consultation on the proposed formula in late summer.

Staff Comment
The new "Community Benefits Authority" will be created under the *Planning Act*, which will allow municipalities to charge directly for services such as libraries, recreation, and park development. This authority will replace section 37 of the *Planning Act* (density

bonusing), parkland dedications, and development charges for discounted soft services (e.g. library, recreation, parks). The proposed charges permitted under the Community Benefits Authority – which will be a Community Benefits Charge ("CBC") – is proposed to be capped based on a range of percentages of the appraised value of land in the City.

Hard services including water, wastewater, stormwater, and roads will remain, and still be recovered through the *Development Charges Act*. It is our understanding that some soft services such as fire services, public works, and waste diversion will also remain in the *Development Charges Act*.

The following image summarizes the major Bill 108 funding changes:



In assessing the implications of this change, the following two key points have been considered in the financial analysis:

1) "For any particular development, the Community Benefits Charge payable could not exceed the amount determined by a **formula involving the application of a prescribed percentage to the value of the development land."**
2) One of the goals of the Province for determining a CBC formula is to "**ensure that municipal revenues historically collected** from development charges for "soft services", parkland dedication including the alternative rate, and density bonusing **are maintained**".

Keeping these two points in mind, it is important to know a) the current revenues collected by Markham for items that are being moved to the CBC and b) land values within Markham.

The following table illustrates the amounts Markham can currently collect per unit of new development:

Residential	Singles/Semis	Townhouses	Apartments/ Condos
Total Remaining Soft DCs	**$14,816**	**$11,331**	**$7,699**
Section 37[1]	**$1,400**	**$1,100**	**$2,600**
Parkland (Low to Mid- Density)[2]	**$33,333**	**$33,333**	
Cash-in-Lieu (High Density)[3] – 12-16 story			**$50,000**
Total Current Revenues	**$49,549**	**$45,764**	**$60,299**

Notes:
1) Section 37 includes funds collected for Public Art for all residential development and density bonusing for apartments/condos
2) Assumes low density developments fulfil their parkland requirements though land dedication at a rate of 1 ha/300 units (maximum allowed under the Planning Act) at an average land value throughout the City of $10M per hectare
3) Assumes high density developments fulfil their parkland requirements through cash-in-lieu at a rate of 1 ha/500 units (maximum allowed under the Planning Act) at an average land value throughout the City of $25M per hectare

An important factor to note is that even though high density developments often fulfil their parkland requirements through cash-in-lieu (which is at a lower maximum rate than standard parkland dedication as prescribed under the *Planning Act)*, their parkland costs are typically higher as the land values in intensification areas exceed those in low density areas. Consequently, it is also more expensive for the City to purchase parkland in intensification areas, which justifies the higher charge.

The above table does not include any potential CBC collections for York Region. The Region does not currently collect parkland or Section 37 funds and the majority of their existing Soft development charges will remain under the *Development Charges Act*. However, the Region will be eligible to collect CBC money for Social Housing, Public Health, Senior Services and Court Services estimated to be less than 1,000 per unit.

Proposed Community Benefits Charge Cap

The regulations state that there will be a cap involving the application of a prescribed percentage (or range of percentages) to the value of the development land.

The following table outlines the percentage required in order for Markham and York Region to be able to recover a similar level of revenues as it does under the current methodologies:

Development Type	Estimated Land value/ha	Units/ha	% of Land Value Required for Revenue Neutrality
Singles/Semis	$10M	25-30	16%
Townhouses	$10M	40-50	24%
Apartments/Condos	$25M	300-350*	85%

AVG = 20%

* represents a 12-16 story condo

As more units are built on a parcel of land, the larger the requirements are for infrastructure and parkland. As municipalities intensify and land values increase (as a result of greater development opportunity), the percentage of land value required for revenue neutrality also increases. This will make it difficult for the Ministry to implement a range of percentages that will a) work for different types of development and b) account for a wide array of land values throughout Ontario.

However, if the Province is determined to use the percentage of land value approach, staff recommend approximate minimum 20% rate for low density development and that the high density rate should have tiers of percentages tied to the intensification of a site, with 85% being the minimum percentage applied.

These percentages would keep Markham revenue neutral based on typical developments throughout the City.

Concerns with Linking CBC Solely to Percentage of Land Value

Staff do not agree with the approach of tying the CBC formula/cap solely to a percentage of land value for the following reasons:

- Land values can be highly variable depending upon market factors outside of the control of either municipalities or developers – could create greater uncertainty than existing regime.
- Construction costs for infrastructure are not correlated with land values. If land values rise by 20%, municipalities don't require 20% more money for infrastructure. Conversely, if land values drop 20%, municipalities will be short the funding required for growth infrastructure.
- The exact percentage of land value required to fund growth-related expenditures can vary greatly between municipalities (urban vs suburban) and by types of development.
- People, not land, use services. If people are the driver for new services, then a proper formula should account for new population within each development. (i.e. development charges are calculated based on a per capita charge, and parkland is currently calculated based on a per capita or per unit rate and linked to land value).

Alternate Cap Approach - Fixed Charge plus % of Land Value

An alternate approach would be to have a cap linked to a fixed charge per capita (with an average persons per unit applied to different types of development) to cover infrastructure requirements AND a percentage of land value to account for the parkland component.

The following table outlines the fixed per capita charge and percentage of land value required in order for Markham to be able to recover a similar level of revenues as it does under the current methodologies:

Development Type	Estimated Land value/ha	Units/ha	Fixed Charge per Capita	% of Land Value Required for Revenue Neutrality
Singles/Semis	$10M	25-30	$4,300	11%
Townhouses	$10M	40-50	$4,300	18%
Apartments/Condos	$25M	300-350	$4,300	73%

The $4,300 per capita fixed charge is approximately what Markham collects now for new Park Development, Recreation, and Library infrastructure plus the public art component of Section 37 contributions. By keeping that as a fixed charge as part of a CBC cap, the percentage of land value required decreases. This approach would be better for both municipalities and developers as a) there will be fixed revenue/unit to cover fixed costs (i.e. infrastructure) and variable revenues/unit to deal with variable costs (parkland) and b) it creates more cost certainty for developers (which is a goal of the Province).

Recommendation

16) That the Province add a fixed component to the CBC cap to account for the costs of building growth-related infrastructure;
17) That if the Community Benefits Charge cap is solely linked to a percentage of land value, that the percentage for low density development be a minimum of 20% of land value in order to maintain revenue neutrality for the City of Markham;
18) That if the Community Benefits Charge cap is solely linked to a percentage of land value, that the percentage for high density development be a minimum of 85% of land value, with the percentage increasing as intensification increases in order to maintain revenue neutrality for the City of Markham;
19) That the proposed range of the Community Benefits Charge cap be based on building type (low density vs high density) and geographic location within Ontario.

6. Appraisals for community benefits

The amendments to the *Planning Act* provide for the landowner of a proposed site to provide the municipality with an appraisal of the site, if they are of the view that the Community Benefits Charge exceeds what is legislatively permitted. Similarly, a municipality can also provide the landowner with an appraisal if it is of the view that the landowner's appraisal is inaccurate. If both appraisals differ by more than 5 percent, a third appraisal is prepared.

Proposed Regulatory Content

The Minister is proposing the following:

- *If the owner of land is of the view that the amount of a community benefits charge exceeds the amount legislatively permitted and pays the charge under protest, the owner has 30 days to provide the municipality with an appraisal of the value of land.*
- *If the municipality disputes the value of the land in the appraisal provided by the owner, the municipality has 45 days to provide the owner with an appraisal of the value of the land.*

- *If the municipality's appraisal differs by more than 5 percent from appraisal provided by the owner of the land, the owner can select an appraiser from the municipal list of appraisers, that appraiser's appraisal must be provided within 60 days.*

Staff Comments
Development on a property is typically for the highest and best use therefore it is anticipated that land valuations will reflect this. The City will through its normal process make a determination on when an appraisal should be "refreshed" for multi-phased and staged developments. The appraisal process as proposed will add administrative time and cost which staff will assess when the Community Benefits Charge is enacted.

Recommendation

20) That the proposed process for land appraisals will add additional costs to the administrative process and this should be recoverable through a fee.

7. Excluded services for community benefits

Amendments to the *Planning Act* provide that Community Benefits Charges cannot be levied for facilities, services or matters that are being collected for under the *Development Charges Act, 1997* (e.g. roads, fire stations). It also provides for the Province to prescribe facilities, services or matters for which the Community Benefit Charges cannot be imposed.

Proposed Regulatory Content
The Minister is proposing to prescribe that the following facilities, services or matters be excluded from community benefits:

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

This would be consistent with the ineligible services list currently found under the Development Charges Act.

Staff Comments
Development charges for soft services were not previously levied against the facilities on the proposed exclusion list, so there is no impact from this proposed amendment.

Recommendation

21) That the City of Markham supports the proposed list of services to be excluded from the Community Benefits Charge.

8. Community planning permit system

The community planning permit system is a framework that combines and replaces the individual zoning, site plan and minor variance processes in an identified area with a single application and approval process. *O. Reg. 173/16 "Community Planning Permits"* outlines the various components that make up the system, including the matters that must be included in the official plan to establish the system, the process that applies to establishing the implementing by-law and the matters that must or may be included in the by-law.

Proposed Regulatory Content

Amendments to the Planning Act in the More Homes, More Choice Act, 2019 establish a new authority for municipalities to levy charges for community benefits to make requirements in this regard more predictable. As the community planning permit system also allows conditions requiring the provision of specified community facilities or services, it is proposed that a community benefits charge by-law would not be available for use in areas within a municipality where a community planning permit system is in effect.

In considering making a proposed new regulation and changes to existing regulations under the Planning Act, the government will continue to safeguard Ontarians' health and safety, support a vibrant agricultural sector, and protect environmentally and culturally sensitive areas, including the Greenbelt.

Staff Comments

Development Permit Systems, now Community Planning Permit Systems ("CPP") have been a land use planning tool available to municipalities since 2007. CPP's have been described as a by-law combining zoning by-law amendment, site plan, and minor variance applications into a predictable set of regulations. Once a CPP is in place, review of a development application within the affected area is completed in a shorter time frame, provided it conforms to the rigid provisions of the CPP.

CPP by-laws have broader municipal regulatory authority than zoning, site plan, and variance individually. Existing CPP by-laws further regulate design criteria including signage, bonusing for increased density requests, and cash in lieu of parking. CPP regulations also allow a city to request specified facilities through the CPP by-law provisions. It's unclear the extent to which a city can leverage these conditions to obtain parkland or cash in lieu of parkland, libraries, or other recreational facilities within a CPP area.

While amendments establishing the Community Benefits By-law are proposed to place caps on a City's ability to collect soft services on traditional development applications, Community Benefits By-laws cannot be applied to a development within a CPP System. It is unclear if any cap is proposed on the City's ability to negotiate bonusing, parkland, or other soft services within a CPP area.

Further, while the CPP may provide broader authority to obtain services within the regulated area, the nature of development may require the City to request facilities from individual landowners that benefit the CPP area. As a result, the CPP regulations should

include the authority for municipalities to enter into and require cost sharing arrangements with one or more landowners to provide services that benefit the larger CPP area.

Recommendation

22) That municipalities be granted authority to levy a Community Benefits Charge in a Community Planning Permit area, which should not be subject to any proposed cap;

23) That where the Minister designates an area subject to a Community Planning Permit System, the municipality may be allowed to enter into cost-sharing agreements with multiple landowners to provide community services to those areas.

NEXT STEPS:

It is recommended that this report be forwarded to the Ministry of Municipal Affairs and Housing as the City of Markham's comments on the proposed regulations as it relates to the *Development Charges Act, 1997* and the Community Benefits Authority on or before August 21, 2019.

Staff will report back to Committee when the Province provides information on the community benefits formula and the cap (percentage of land value) to be placed on the charge.

FINANCIAL CONSIDERATIONS:

It is anticipated that there will be a financial impact associated with the cap – based on a percentage of land value – on the Community Benefits Charge. At this time, staff are not in a position to quantify the impact of the cap as the Province has not yet indicated what these proposed percentages may be.

There will be a cashflow impact associated with the development charge deferral and freeze however, the City is allowed to charge interest on the amounts outstanding until payment is received. Staff will manage this process to mitigate against any negative revenue impact.

HUMAN RESOURCES CONSIDERATIONS:

Not applicable

ALIGNMENT WITH STRATEGIC PRIORITIES:

The comments in this report on the proposed regulations to the *Development Charges Act, 1997* and the Community Benefits Authority, support the City's efforts to enable a strong economy, manage growth and, ensure growth-related services are fully funded, which are the key elements of the Engaged, Diverse and Thriving City; Safe and Sustainable Community; and Stewardship of Money and Resources strategic priorities.

BUSINESS UNITS CONSULTED AND AFFECTED:
Comments from the Planning & Urban Design, Finance, and Legal Departments were included in this report.

RECOMMENDED BY:

Joel Lustig
Treasurer

Trinela Cane
Commissioner Corporate Services

Claudia Storto
City Solicitor