

SUBJECT: INFORMATION REPORT – Update on Parks and Open Space Acquisition, Design and Implementation Study

PREPARED BY: Jim Greenfield, Urban Designer – East District, ext. 2059

REVIEWED BY: Tom Villella, Manager – Zoning and Special Projects, ext. 2758

RECOMMENDATION:

- 1) That the report entitled, "INFORMATION REPORT – Update on Parks and Open Space Acquisition, Design and Implementation Study" be received; and,
- 2) And that Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

The purpose of this report is to update Development Services Committee on the work to date, proposed methodology, and timelines for expected endorsement, respecting the ongoing Parks and Open Space Acquisition, Design and Implementation Study ("the Study").

BACKGROUND:

Markham's parks and open spaces are a vital component of the City's structure and overall public realm. They contribute to leisure and recreation opportunities, improve connectivity, and add to the distinct character of the City. Because of this, it is intended that new development and redevelopment be planned in a comprehensive manner to ensure sufficient parks and open spaces are delivered to meet the needs of existing and future residents. As well, the City wishes to ensure an equitable distribution of parks and open space across the City.

The City has retained the Planning Partnership Ltd. ("the consultant") to provide guidance on a practical parkland strategy that takes into account recent provincial legislation, while ensuring the City attains its parks and open space goals.

Markham's Official Plan 2014 (as partially approved on October 30, 2015, May 26, 2016, March 10, 2017 and April 21, 2017, by the Ontario Municipal Board) ("Markham's OP"), notes in Chapter 4 Healthy Neighbourhoods and Communities, that it is the policy of Council to undertake a parkland deficiency analysis to determine the existing level of service for parks and open space. Markham's OP also provides that the City will acquire new public parkland in accordance with the parkland dedication policies of the Official Plan. The overall purpose of the study is to ensure existing areas of the City are equitably served with parkland, and to provide direction for future planning of the City's parks system in new development areas.

Richmond Hill Case

Following a lengthy hearing process respecting the Town of Richmond Hill's 2010 Official Plan policies related to parkland dedication, as appealed by several landowners, the Ontario Municipal Board issued a decision on January 15, 2015. The OMB determined that where the Town applies the alternative parkland dedication rate of 1ha per 300 units authorized by the *Planning Act*, a cap of twenty-five (25%) percent of the developable area of the site or the cash-in-lieu equivalent must be applied. The OMB's decision requires that this cap be applied regardless of the area of the site, the density of the development, or the number of units proposed. Richmond Hill appealed the decision to the Ontario Divisional Court. Staff reported to Development Services Committee and on March 31, 2015, Council directed staff to support the Town of Richmond Hill position by seeking leave to intervene in any court proceedings regarding the matter. In addition to Markham, the City of Vaughan, City of Mississauga, and Town of Oakville sought and were granted intervener status in the appeal before the Divisional Court. The position of the municipalities was that the OMB overstepped its jurisdiction by imposing a rate and cap for parkland dedication on the Town.

On September 6, 2016, the Divisional Court issued its decision. The Court held that the OMB did not have the authority to impose a cap on the maximum parkland dedication rate set out in section 42 of the Act, and that the Legislature had clearly intended that any reductions to the parkland dedication rate would be approved by municipal councils through unappealable by-laws.

Following issuance of the Divisional Court's decision, the respondent developers brought a motion for and were granted leave to appeal this decision to the Court of Appeal. In accordance with Council's March 2015 Resolution, Markham staff sought leave to intervene in the proceedings at the Court of Appeal. Leave to intervene was granted, and the appeal was heard on September 26 and 27, 2017. The Court of Appeal reserved its decision, and it has not yet been issued.

Should the OMB ruling stand, this would be the first instance where the OMB imposed a lesser or capped parkland alternative rate at their discretion and would be a precedent setting case for other municipalities. If the Divisional Court ruling stands, it would be confirmed that reductions from the statutory 1 ha/300 unit rate set out in the *Planning Act* are within the sole jurisdiction of municipalities to approve by municipal by-law. Bill 73 amended the *Planning Act* to require that the rate be justified by a municipal Parks Study, as described in more detail below.

Currently, the parkland dedication policies of Markham's OP are under appeal before the OMB. These are on hold until the Richmond Hill Case has been finally resolved, as the outcome will have an impact on the OMB's consideration of Markham's policies.

Provincial Bill 73 - Smart Growth for Our Communities Act, 2015

Bill 73, which came into force on July 1, 2016, amended the *Planning Act* to require any municipality that wishes to use the "alternative" parkland dedication rate of 1 ha/300 dwelling units (through its OP policies) to complete a "parks study" in order to

quantify the parkland needs of the municipality. This regulation would not apply to any Official Plan adopted prior to the effective date of Bill 73, including the Markham's OP. However, as noted above, Markham's OP nonetheless includes a policy that a Parks and Open Space Study be undertaken.

Bill 73 also introduced an amendment to the *Planning Act* respecting parkland dedication. Where the 'alternative rate' for parkland dedication is used, if the dedication is provided as cash-in-lieu, the City may only require a maximum of 1ha/500 units. When parkland dedication is in the form of 'land', the alternative maximum rate of 1ha/300 units remains applicable. City Staff began implementing this cash-in-lieu rate structure when the amendment came into force.

PARKS AND OPEN SPACE STUDY UPDATE:

Goals of the Current Study

Recently the rates at which municipalities within the Greater Toronto Area require parkland dedication have been challenged by the development industry. The parkland dedication policies of the Markham's OP are currently under appeal to the OMB. As a result, Markham may be required to demonstrate additional justification for the City's parkland dedication policies included in the Official Plan. This Study will determine the existing level of service for parks and open space facilities, identify a strategy for the acquisition of parks and open space for underserved areas and future development areas, and inform a Parks and Open Space Master Plan providing the City with a blueprint for the implementation of the Study recommendations. There are 3 phases to be implemented over the course of the study. Each phase of the study is detailed below:

Phase 1A - Parks and Open Space Provision Analysis:

The analysis will determine the existing level of service for parks and open space facilities and programs. Developed areas of the City will be examined to determine whether the existing level of parks and open space is adequate to service the needs of the residents, and future development areas will be examined to determine an appropriate amount and location for new parks and open space.

Phase 1B - Strategy for the Acquisition of Parks and Open Space:

Phase 1B will identify opportunities and strategy for the acquisition of parks and open space for underserved areas, and ensure future areas are adequately served recognizing the specific demographics and built form circumstances of each area. The Strategy will explore issues respecting land banking, cash-in-lieu under The *Planning Act*, target lands, and processes for land acquisition.

Phase 2 - Parks and Open Space Master Plan:

The Plan will translate the results of Phase 1A and 1B into a Parks and Open Space Master Plan that provides the City with a blueprint for the implementation of Study recommendations, and ultimately for the development of parks and open space to serve the community to 2031. The Master Plan will also include appropriate mapping in a GIS format, as required to identify all components of the Plan. The Plan will align with Markham's Greenprint, long-term community Sustainability Plan and the Integrated Leisure Master Plan.

Strata Title

In 2016, the City's Legal Department intended to engage a consultant to undertake a study to address strata title policies and requirements (e.g. public parks above private underground garages). Since that date, the Strata Title Study has been combined with the Parks and Open Space Study due to the integral connection between the two issues, and is now a component of the overall Acquisition Strategy, update to the Parkland Dedication By-law, and creation of the Parks Master Plan. City Staff will provide recommendations to Council addressing strata title parkland in the Recommendation Report for the Parks and Open Space Study, and will seek Council's input regarding the future acquisition of strata parks in Markham.

Parkland Dedication By-law Update

In 2013, City Staff brought forward an update to the Parkland Dedication By-law through the review of City practices and policies related to the equitability of parkland dedication for high-density development in intensification areas. Council deferred the recommendation until Provincial direction was provided to municipalities, as amendments to the *Planning Act* were expected. Staff intend to update the Parkland Dedication By-law to reflect recommendations from the proposed strata title policy and the parks acquisition strategy, including amendments to the *Planning Act*.

Public Engagement

City Staff and the consultant has interviewed many stakeholders who are involved in the delivery and maintenance of parks. These include external stakeholders such as condominium corporations, builders, and property managers. Formal open houses and public consultation are expected to occur once a draft Parks and Open Space Provision Analysis and Strategy for the Acquisition of Parks and Open Space has been prepared. This is intended to be finalized by Q1 2018. A City project website is currently under development and will be online soon. This webpage will allow the public to access relevant background information on the study and provide feedback to the project team.

The consultants have regularly met with City Staff that have direct interest in Parkland Dedication, as well as key Staff from other Departments and Commissions. Comments were received from Legal Services, Operations, Recreation, Urban Design, Policy Planning, Finance and Development Planning. These comments have been helpful in the progression of the study and continue to shape Staff's recommendation. City Staff will consider feedback from Council through future public meetings. Staff will continue to coordinate with internal and external stakeholders, as more input will be needed with the development of the overall Parks and Open Space Strategy.

NEXT STEPS:

Progression of the Study has been positive and will continue through Q1 2018. There are several components that will need to be finalized such as assessing Markham's current parkland provision, building a City-wide parkland strategy, and adapting the study to meet contemporary recreation trends. Another important component of the study is the assessment of the current and future neighbourhood needs as part of the Parks and Open Space Provision Analysis and Strategy for the Acquisition of Parks and Open Space.

These are currently under review by City Staff and the consultant. Intensification areas are expected to be treated with an alternative parkland provision in order to help achieve equitability and city building goals. In addition, Council direction with respect to whether or not to include acquisition of strata parks as part of the overall strategy will be sought. These components will supplement the City Parks and Open Space Master Plan. A framework will be created for City-wide parkland including intensification areas through an implementing Parkland Dedication By-law update. City Staff expect to complete the study by Q2 2018.

FINANCIAL CONSIDERATIONS:

The study was approved as part of the 2016 Budget process.

HUMAN RESOURCES CONSIDERATIONS:

Not Applicable at this time.

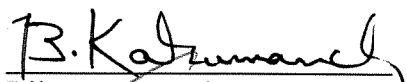
ALIGNMENT WITH STRATEGIC PRIORITIES:

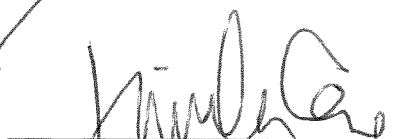
This study fits into the City's strategic priority of Growth Management by implementing Markham's OP and establishing a framework to guide the provisions of parks and open space for residents as part of the Safe and Sustainable Community Initiative. By addressing both existing areas and new communities, the City will be able to better deliver parks and open spaces to improve the quality of life of all residents in the City.

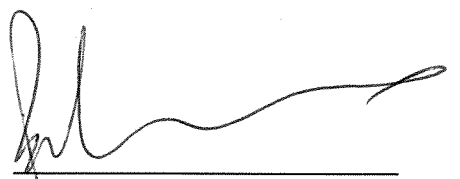
BUSINESS UNITS CONSULTED AND AFFECTED:

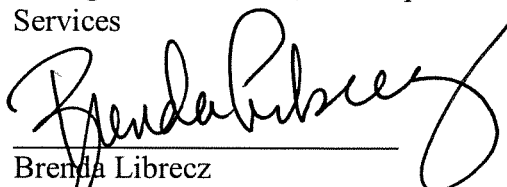
A Cross Commission staff working team has been set up to discuss project details on a regular basis, which includes Planning and Urban Design, Legal, Operations, Corporate Communications, Finance and Recreation.

RECOMMENDED BY:


Biju Karumanchery, MCIP, RPP
Director, Planning and Urban Design


Trinella Cane
Commissioner, Corporate Services


Brian Lee, P.Eng.
Acting Commissioner, Development
Services


Brenda Librecz
Commissioner, Community and Fire
Services

ATTACHMENTS:

Appendix 1 – Presentation by Ron Palmer, The Planning Partnership