



Report to: Development Services Committee

Report Date: March 20, 2017

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**SUBJECT:** Markham Centre Parkland Funding and Delivery Agreement  
**PREPARED BY:** Andrea Wilson-Peebles, Assistant City Solicitor  
Mark Visser, Senior Manager, Financial Strategy & Investments

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**RECOMMENDATION:**

- 1) That the report titled “Markham Centre Parkland Funding and Delivery Agreement” dated March 20, 2017 be received;
- 2) That the Markham Centre Parkland Funding and Delivery Agreement be terminated;
- 3) That the Mayor and Clerk be authorized to execute an agreement to terminate the Markham Centre Parkland Funding and Delivery Agreement; and
- 4) And that staff be authorized and directed to do all things necessary to give effect to the recommendations set out in this report, including execution of additional documents.

**PURPOSE:**

The purpose of this report is to obtain authority to terminate the Markham Centre Parkland and Delivery Agreement.

**BACKGROUND:**

In September 2003, Council endorsed a report entitled “Parkland Strategy for Markham Centre” in which a series of ‘Parkland Principles for Markham Centre’ were approved to guide the dedication and delivery of public parks, squares and urban plazas throughout the Markham Centre Secondary Plan Area (OPA 21). Eleven principles were identified, one of which was that “The Town may use cash-in-lieu monies to purchase parkland, including improved parkland within Markham Centre”, and that “The majority of developed parkland will be urban in nature and developed to a higher standard of design and finish (than typical suburban parks).” These principles further described, in general terms, how the improved parkland would be conveyed and what credits, if any, towards Park Development Charge rates, and/or towards cash-in-lieu of land dedication payments would be applied.

In October 2006, Council endorsed a report entitled “Markham Centre Parkland Principles Up-date” in which updated “Markham Centre Parkland Principles” were approved. Twelve principles were identified which were further refinements on the Parkland Principles approved in 2003. Of particular consequence was the added principle that “The Town negotiate a Parks Delivery Agreement with the Trustee and/or the Markham Centre Landowners Group.”

The development of the Park Delivery Agreement was to consider matters related but not limited to:

- Securement of all the required Markham Centre parkland dedications, by park size and location;
- Establishment of a trust account for cash-in-lieu of parkland contributions;
- Proper and professional accounting practices and regular reporting procedures, including independent audits, related to the trust account for parks delivery;
- Establishment of levels of improvement for parks, by location and type;
- Procedures for delivery of required parkland (in an improved state) to the Town, including the design, construction, contract administration, public consultation, and Town review and approval of park design;
- Arrangements for project management, satisfactory to the Commissioner of Development Services;
- Return of any remaining cash-in-lieu of parkland dollars, retained by the Trustee, following park build-out, to the Town;
- Credits to developers, or reimbursement from the Town, for an appropriate portion of the park development component of the Town-wide soft services development charge;
- Mandatory and regular updating of the agreement;
- Establishing a timing and terms for the termination of the agreement and possible terms for its extension; and,
- On-going monitoring and tracking of development approvals, density and unit counts and associated parkland requirements and, updates to Council to identify any necessary adjustments to the Parkland Principles for Markham Centre.

In 2013, Council authorized a Markham Centre Parkland Funding and Delivery Agreement (the “Agreement”), to be entered into by the City, the Trustee of the Markham Centre Landowners Group, and landowners within Markham Centre. Council also directed staff to engage a Trustee to manage the trust account and transactions related to collection and spending of Parks Cash-in-lieu (“CIL”) funds from developers within Markham Centre. The City engaged Delta Urban Inc as the trustee. As of the end of 2016, Delta Urban Inc has collected approximately \$10 million in Parks Cash-in-lieu from Markham Centre developers.

#### **OPTIONS/ DISCUSSION:**

The urban parks planned for Markham Centre are proposed to be developed at a much higher cost per acre than more traditional Markham parks. The common interpretation of the Planning Act, at the time the Agreement was contemplated, was that CIL could only be used on the acquisition of land, not parkland development. Further, Development Charges (“DCs”) cannot be used to fully fund the incremental amount (that is, the difference between the level of park improvement that can be paid for from DCs and the upgraded Markham Centre parks). Therefore the Agreement, which provided that developers would construct the parks to the higher Markham Centre standard and the City would acquire them using CIL, was the only way Markham could use CIL on parkland development.

In 2016, an external legal opinion was sought regarding whether CIL could be spent on items beyond just acquisition of land for park purposes. The opinion stated unequivocally that CIL could be used for the acquisition of land, and also for a majority of parkland development costs, as well as the replacement of assets. In late 2016, Markham staff met with Delta Urban and representative signatories to the Agreement (Ruland Properties Inc and Times Development Group) to discuss the potential termination of the Agreement. Delta Urban also consulted with H&W Development Corp and Aryeh Construction Limited on this issue. All parties agreed that based on the new legal opinion the City received, it was not necessary to continue with the Agreement so long as the main principles, CIL calculation methodology and the treatment of strata parks, continue to apply.

**FINANCIAL CONSIDERATIONS AND TEMPLATE: (external link)**

The termination of the Markham Centre Parkland Agreement has a positive financial benefit to Markham in two ways:

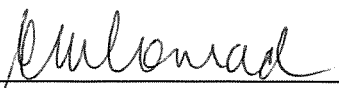
- 1) Elimination of annual trustee fees, estimated to be \$10,000-20,000 per year
- 2) The City did not allow the trustee to invest the available funds because Delta Urban did not have the appropriate levels of insurance the City requires. By transferring the money to the Markham, the Parks Cash-in-lieu account can earn an additional \$200,000 per year (assuming \$10 million at a 2% interest rate).

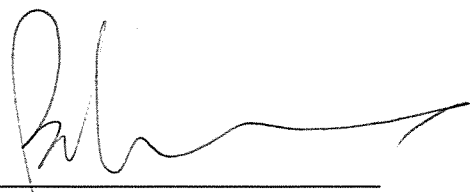
Staff recommend the termination of the Agreement because of the financial benefits outlined above.

**BUSINESS UNITS CONSULTED AND AFFECTED:**

This report reflects discussions between Planning and Urban Design, Legal and Finance staff as well as representatives of the Markham Centre development community and the Trustee.

**RECOMMENDED BY:**

  
Catherine M. Conrad  
City Solicitor

  
for Jim Baird  
Commissioner of Development  
Services