MARKHAM

Report to: Development Services Committee Report Date: June 20, 2016

SUBJECT: INFORMATION REPORT - Bill 73, Smart Growth For Our Communities Act, 2015
Amendments to the *Planning Act*, R.S.O. 1990, c.P.13, as amended

PREPARED BY: Tom Villella, Manager, Zoning and Special Projects (x2758)

RECOMMENDATION:

1) That the report entitled "INFORMATION REPORT - Bill 73, Smart Growth for Our Communities Act, 2015 - Amendments to the *Planning Act*, R.S.O. 1990, c.P.13, as amended" be received.

PURPOSE:

This report is intended to provide Development Services Committee with an update respecting Bill 73, Smart Growth for Our Communities Act, 2015, including changes to the Planning Act. The Bill is expected to come into force in its entirety on July 1, 2016.

BACKGROUND:

Previous Report

A report was provided to DSC on May 19, 2015 respecting this matter (attached). At that time, the Bill had received first reading in the Legislature. Since that time, the Bill has received Royal Assent (December 3, 2015). Parts of the Bill came into force on January 1, 2016 (mainly changes to the Development Charges Act), and the remainder of the Bill will come into force on July 1, 2016 (mainly changes to the Planning Act).

Changes to the Planning Act

The Bill proposes over 200 amendments to the *Planning Act*. The majority of the amendments may be considered housekeeping in nature, however there are a number of major amendments proposed, which would have a direct impact upon the land use planning process that Markham and other municipalities must adhere to. The major changes to the Planning Act stemming from Bill 73 include the following:

- Added to the list of matters of provincial interest is "the promotion of built form that is well-designed, encourages a sense of place and provides for public spaces that are of high quality, safe, accessible, attractive and vibrant";

- New direction is provided to the Ontario Municipal Board to "have regard to" the information and material before Council when it is considering an appeal from Council's failure to make a decision. Information includes written and oral submissions from the public;

- Official Plans are now required to be reviewed 10 years after they come into force, and at 5 year intervals thereafter;

- There are a series of amendments requiring decision makers to explain, in the notice of decision, the effect of written and oral submissions on their decisions including those related to Official Plans, Zoning By-laws, and Plans of Subdivision;

- Global (whole plan) appeals to new Official Plans are no longer permitted;

- Appellants are required to give more fulsome reasons for appeals related to nonconformity with Provincial Policy Statements or upper tier Official Plans;

- Mediation, conciliation and other dispute resolution techniques are now explicitly permitted as strategies for resolving OMB appeals outside of a hearing, along with measures that facilitate their use;

- Privately-initiated amendments to new Official Plans or new Comprehensive Zoning By-laws are not permitted during the first 2 years after they come into force, except as permitted by Council;

- Privately-initiated minor variance applications are not permitted during the first two years following a privately-initiated zoning by-law amendment, except as permitted by Council;

- Section 37 money is required to be maintained in a special account which is subject to an annual financial statement from the Treasurer;

- The criteria for minor variance decisions now includes criteria established by municipal by-law in addition to the usual statutory tests, in order to reflect local circumstances; and

- Changes to the parkland dedication rate as outlined below.

Parkland Dedication rate will change for Cash-in-Lieu

Bill 73 also introduces an amendment to the Planning Act respecting parkland dedication. Under the amendment, where the "alternative rate" for parkland dedication is used, if the dedication is provided as cash-in-lieu, the City may only require **1ha/500 units**. When parkland dedication is in the form of "land", the alternative rate of 1ha/300 units remains applicable. As noted in Staff's May 19, 2015 report, this will result in an average of 40% less cash received in respect of townhouse development, and 17.6% less cash received in respect of apartment/condo development. A typical high-density residential unit that currently generates $24,000 in cash-in-lieu for parkland dedication will, after July 1, 2016, generate only $20,000 in cash-in-lieu for parkland dedication.

As previously reported to Committee, Staff will be undertaking a Parks and Open Space Study in 2016/2017 which will, in part, quantify the amount of parkland required for current and future inhabitants of Markham. Once quantified, staff can further examine what impact these Planning Act changes to cash-in-lieu of parkland will have on the City.

In the meantime, Staff will continue to take the dedication in land rather than cash, wherever possible, in order to maximize the amount of parkland dedication received. However, there are possible issues that arise when taking land rather than cash-in-lieu:

a) it will not always be possible to take dedication as land in respect of high-density developments, as the parkland dedication requirement can sometimes result in a required dedication that is larger than the development parcel itself; and

b) taking land can result in a number of smaller, disjointed park/open space parcels that may not effectively serve the open space needs of the area residents, and may not fit with the City's parks and open space objectives respecting larger community and city-wide parks that may only be realized through cash-in-lieu of parkland dedication.

Staff will monitor the situation and report back to Committee in early 2017 on the matter.

Ontario Regulations (O. Regs.) expected to accompany Bill 73 enactment
In addition to the above noted amendments to the Planning Act, the following regulations are also expected to come into effect on July 1, 2016. The province has not yet provided a copy of the exact wording of the regulations; however they have posted descriptions of on the Environmental Bill of Rights (EBR) Registry as follows:

- Clear transitioning regulations for applications that are "in process" at the time the Bill comes into force;

- Minutes of a public hearing related to a "Minor Variance Application" must be included in the record to be forwarded to the Ontario Municipal Board on an appeal;

- Public notice for Official Plans and Amendments, Zoning By-laws, Holding By-laws, Interim Control By-laws, Plans of Subdivision, Minor Variance Applications, and Consent Applications may now also be given by e-mail;

- In certain circumstances, notices sent to multi-tenant buildings would be required to be posted in a location visible to all tenants (to be done by the owner of the building);

- Notice of Decision requirements for Zoning By-laws would be amended to align with the Notice of Decision requirements for Official Plans (circulation area, who notice must be given to, etc);

- Notices for Official Plans, Official Plan Amendments, Zoning By-laws, Zoning By-law Amendments, Plans of Subdivision and consents will be modernized and simplified;

- In situations where an OMB appeal has been received with respect to a non-decision of Council on an official plan amendment, the municipality now has the option of providing a notice establishing a 20-day period for additional appeals to the non-decision. The new regulations will provide content requirements for this notice; and

- Regulations will require that applicants for various planning applications submit public consultation strategies as part of a "complete application".

Further Information to be provided
Additional information will be provided to Committee after July 1, 2016 once the final parts of the Bill and accompanying regulations come into force. The full content of the Bill may be found at the following link:
http://www.ontla.on.ca/web/bills/bills_detail.do?BillID=3176 .

RECOMMENDED BY:

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

Jim Baird, MCIP, RPP
Commissioner of
Development Services

ATTACHMENTS:
Appendix 1 – Report to DSC May 19, 2015

File path: Amanda\File 15 151399\Documents\Recommendation Report

MARKHAM

Report to: Development Services Committee Report Date: May 19, 2015

SUBJECT: Bill 73 – Smart Growth For Our Communities Act
Proposed Amendments to the Development Charges Act, 1997 and the Planning Act

PREPARED BY: Tom Villella, Manager, Zoning and Special Projects (x2758)
Kevin Ross, Manager, Development Finance (x2126)

RECOMMENDATION:

1) THAT the report entitled "Bill 73 – Smart Growth For Our Communities Act, Proposed Amendments to the Development Charges Act, 1997 and the Planning Act" be received;

2) THAT a copy of this report be forwarded to the Ministry of Municipal Affairs and Housing and York Region, along with a covering letter highlighting Markham's outstanding concerns from the 2014 public consultation process, and summarizing Markham's comments on Bill 73;

3) THAT the Ministry of Municipal Affairs and Housing be requested to allow Markham to participate in any working groups formulated to review Bill 73; and,

4) THAT Staff be authorized and directed to do all things necessary to give effect to this resolution.

EXECUTIVE SUMMARY:

From October 2013 to January 2014, the Province undertook consultations on the land use planning and appeal system, and the development charges system to "...ensure both systems are predictable, transparent, cost effective and responsive to the changing needs of our communities" (the "Provincial Consultations"). The government has responded to comments received through the Provincial Consultations and introduced *Bill 73, the Smart Growth for Our Communities Act* ("Bill 73"). If enacted, Bill 73 will make amendments to both the *Development Charges Act, 1997* and the *Planning Act.*

On March 5, 2015, Bill 73 was given First Reading in the Legislature. Bill 73 is intended to streamline and simplify the land use planning system, while making it more transparent and accessible to the public. The objectives of the proposed changes to the development charges system include support of higher density development and transit, and allowing municipalities to recover the cost of an increased amount of growth-related infrastructure.

The following are the major themes of reform found in Bill 73 that will be discussed in this document.

<u>Land Use Planning and Appeals System – Proposed Amendments to the Planning Act</u>

- Two year moratoriums on certain development applications;

- Proposed limitations on appeals to the Ontario Municipal Board ("OMB");
- Council referral of appeals to alternative dispute resolution prior to OMB;
- Additional emphasis on public consultation;
- OMB to "Have regard to" information and material received by Council where Council has failed to make a decision;
- Extensions of 180 day period for municipal decisions on official plans and amendments;
- Potential for new prescribed criteria for minor variances;
- Provincial Policy Statement and official plan review cycles extended;
- Park plan requirements and reduction in cash–in-lieu of parkland;
- Additional transparency and accounting requirements for Section 37 receipts;
- Mandatory Planning Advisory Committees for upper-tier municipalities;
- Minister and upper-tier municipalities may impose a development permit system.

Development Charges System – Proposed Amendments to the *Development Charges Act, 1997* ("*DCA*")

- Expansion of services eligible for development charges funding to include services such as waste diversion;
- Removal of the mandatory 10% reduction applied to some eligible services such as transit;
- Utilization of a forward-looking service level calculation to permit municipalities to improve services through development charges;
- Increased emphasis on area specific charges
- Clarification of rules for developments requiring multiple building permits;
- Requirement for municipalities to adopt an asset management plans,
- A prohibition on municipalities implementing "voluntary payments" in addition to development charges; and
- Improved annual reporting requirements.

Formal comments regarding Bill 73 will be received by the Province until June 3, 2015. Staff intends to forward this report to the Province and the Region of York as the City's response.

The Provincial government has indicated that it will be setting up stakeholder working groups to review potential solutions to complex development charges and land use planning issues. This report recommends that the City ask to be included in these working group meetings.

PURPOSE:

This report provides Development Services Committee and Council with information regarding Bill 73, which aims to reform the Development Charges System and the Land Use Planning System in Ontario.

It is recommended that this report be forwarded to the Province as Markham's formal submission respecting the proposed amendments to the *Development Charges Act, 1997*("*DCA*") and the *Planning Act*.

BACKGROUND:

From October 2013 to January 2014, the Provincial Consultations were undertaken to *"...ensure both systems are predictable, transparent, cost effective and responsive to the changing needs of our communities."* The government has responded to comments received through the Provincial Consultations and introduced Bill 73 in the Provincial legislature. This report will summarize how Bill 73 responds to comments City staff made through the Provincial Consultations.

On March 5, 2015, Bill 73 was given First Reading in the Legislature. On April 21, 2015 the Bill was given Second Reading and is now in a debate period. According to the Province, Bill 73 is intended to give residents more say in how their communities grow, set out clearer rules for land use planning, give municipalities more independence to make local decisions and make it easier to resolve disputes. Residents would be more involved at the beginning of the planning process, and municipalities would be required to set out in their official plans how and when the public would be consulted. As well, municipalities would also need to explain how public input affected their planning decisions. Bill 73 is also intended to:

- give municipalities more opportunities to fund growth-related infrastructure, like transit;
- make the development charges, Section 37 density bonusing and parkland dedication systems more predictable, transparent and accountable; and
- support higher density development.

In response to the recommendations received from various partners and stakeholders through the Provincial Consultations, the government has proposed a number of changes to the *Planning Act* and the *DCA*.

OPTIONS/DISCUSSION:

The Bill proposes over 200 amendments to the *Planning Act*. The majority of the amendments may be considered housekeeping in nature, however there are a number of major amendments proposed, which would have a direct impact upon the land use planning process that Markham and other municipalities must adhere to. These major amendments are detailed below, and are broken out into themes. After each description of an amendment, Staff provides commentary on the effect the amendment would have on Markham, if any.

I) Land Use Planning Reforms

Several major themes regarding the proposed changes to the land use planning system will be discussed below.

1. Two Year Moratoriums on Development Applications

a) Official Plan Amendments

During the two year period following the day on which any part of a new official plan comes into effect, no person or public body shall request an amendment to the New Official Plan.

The City's new Official Plan was adopted by Council in December 2013, approved by York Region in June 2014, and is currently under appeal. City staff previously commented to the Province that a 2-year moratorium not be imposed, as certain amendments may be appropriate for proper and orderly development, and to reflect Council decisions. This concern should be repeated in our current submission to the Province. Council should also be aware that a 2-year moratorium on official plan amendments would have budget implications for the Planning & Urban Design Department.

b) Zoning By-law Amendments

During the two year period following the day that Council simultaneously repeals and replaces all the zoning by-laws in effect in a municipality, no applications to amend the zoning by-law would be permitted.

This amendment deals with new comprehensive zoning by-laws. Markham's New Comprehensive Zoning By-law Project began in 2014, and is currently in Phase 1 of 4 (Background Work and Zoning Issues Analysis). This phase and Phase 2 (Strategic Direction Report) are expected to be completed by early 2016. Throughout the remainder of 2016 and into 2017, extensive community consultation will take place prior to the commencement of the actual drafting of the New Comprehensive Zoning By-law (Phase 3). It is expected that a final draft by-law will be presented to Council for approval by the end of 2017. After Council approval, the New Zoning By-law will be open to appeal, and any appeals would result in further delays to implementation. However, the effective date of the New Zoning By-law could be as early as December 2017.

The proposed two-year moratorium on Zoning By-law Amendments would not be triggered until after Council approval of the New Zoning By-law. An estimated time frame for the moratorium would be throughout 2018 and 2019.

Staff have concerns with this proposal, as it is not Markham's current practice to "pre-zone" lands for future development based on Official Plan designations. Rather, lands would be given a general land use category and specific zoning requirements would be approved by Council through review of legitimate and reasonable applications for zoning by-law amendments, after the New Comprehensive Zoning By-law is approved. As well,

the New Official Plan provides for "discretionary uses" which require a zoning by-law amendment prior to the uses being permitted on a particular site. It is staff's view that not providing a mechanism for approval of discretionary uses and site specific zoning regulations for two (2) years is onerous, and staff therefore recommend that Council oppose this proposed amendment. Council should also be aware that a 2-year moratorium on zoning by-law amendments would have budget implications for the Planning & Urban Design Department.

c) Minor Variances

During the two year period following an owner initiated site specific zoning by-law amendment, a minor variance application for the same property would only be permitted with Council approval.

There are relatively few applications for minor variances to recently approved site specific zoning by-laws that come before the Committee of Adjustment. If such an application were made under the proposed legislation, Council could either permit the application to proceed through the Committee of Adjustment, or alternatively could require that the application proceed by way of a Zoning Amendment application. The applicant therefore has options for accomplishing the land use change, despite the moratorium. This does have the potential to add time and cost to the process for the applicant. As well, there is no mention in the proposed legislation of any criteria which Council would be required to consider when determining whether or not to approve such a request. Staff is therefore of the view that the proposed amendment should be revisited by the Province, and consideration should be given to the development of criteria in this regard.

2. Proposed Limitations on Appeals to the Ontario Municipal Board

a) Time Limit for Related Appeals

Following receipt of an appeal of the approval authority's failure to give notice of a decision respecting an official plan or an official plan amendment, the approval authority may give notice to persons and entities entitled to receive notice of a decision. Any Subsection 17(40) appeal of the same official plan or official plan amendment must be filed within 20 days of the date of such notice.

The proposed amendment relates to an appeal of an official plan or official plan amendment to the OMB where the approval authority has failed to make a decision within the prescribed time period (currently 180 days). Under the proposed amendment, once such an appeal is lodged the approval authority may give notice of it to any persons or entities entitled to receive such notice. Once that notice is given, any additional similar appeals would have to be submitted within 20 days.

In Staff's view, this proposed amendment is beneficial in that it limits the time permitted to lodge such an appeal with the OMB. At present there is no such time limit and therefore appeals can be filed at any time prior to the OMB adjudicating a matter. This results in uncertainty regarding the issues before the Board, which can lead to additional

cost and resources, and a prolonged hearing process to resolve the appeals. Markham staff are in support of this proposed amendment, as it provides more certainty in resolving appeals to the Board.

b) No Global (Whole Plan) Official Plan Appeals

Global appeals of entire official plans would no longer be permitted.

The proposed amendment relates to an appeal of the entire Official Plan, as opposed to specific sections/parts or land use designations contained within the Plan. Currently there are six (6) such global appeals of Markham's Official Plan 2014 before the OMB.

Under the proposed amendment, global appeals of official plans would no longer be permitted. Markham staff are in support of this proposed amendment, as it would reduce the resources and time needed to scope the issues to be adjudicated by the Board.

c) No Appeals With Respect to Proposed Amendments to Lower-Tier Official Plans if not in Conformity with Upper-Tier Official Plan

No appeal will be permitted with respect to an application for an amendment to the official plan of a lower-tier municipality to the extent that the approval authority determines that the proposed amendment is not in conformity with the upper-tier municipality's official plan. The approval authority's decision in this regard would not be subject to appeal to the Ontario Municipal Board.

The proposed amendment relates to an Official Plan amendment that the approval authority (either Markham or York Region) has determined is not in conformity with the upper-tier (Regional) Official Plan. In such cases, there would be no appeal permitted until the non-conformity has been addressed, presumably through a Regional Official Plan Amendment (ROPA). Staff support this proposal, which is consistent with maintaining conformity with upper-tier and Provincial policy.

d) Appeals to Specifically Identify Issues Relating to Inconsistency with Provincial Policy Statements or Upper-Tier Official Plans

Appellants arguing that a decision is inconsistent with a provincial policy statement, provincial plan or upper-tier municipal plans would be required to identify these issues in their notices of appeal, failing which the Ontario Municipal Board could dismiss all or part of the appeal without a hearing.

This proposed amendment is beneficial in that it requires appellants to provide more fulsome information in their notices of appeal where such appeals relate to consistency with a provincial policy statement, provincial plan or an upper-tier municipal plan.

Markham staff are in support of this proposed amendment, as it as it would reduce the resources and time needed to scope the issues to be adjudicated by the Board.

e) ***Prohibition Against Appeals Relating to Certain Matters***

No appeals would be permitted of any part of an official plan implementing certain matters relating to: vulnerable areas under the Clean Water Act; the Lake Simcoe watershed; the Greenbelt Area; Protected Countryside or specialty crop areas under the Greenbelt Act; the Oak Ridges Moraine Conservation Plan Area; Growth Plan forecasts; or settlement area boundaries in lower-tier official plans.

Staff are in support of the proposed amendment insofar as it applies to private-sector appeals, as it provides greater certainty and clarity with respect to the supremacy of the provincial plans over local official plans. However, lower-tier municipalities should retain some form of appeal recourse to contest upper-tier policy. As well, Staff are of the view that the Province should extend this "no appeal" provision to all portions of an official plan for the purposes of conformity with the above-referenced Acts and Plans, including applicable policies.

f) ***Council May Refer Appeals to Alternative Dispute Resolution prior to OMB***

On receipt of certain appeals, including appeals relating to official plan or zoning by-law amendments, consents or subdivision approvals, municipal councils and other decision makers could elect to first refer the appeal to mediation or another form of alternative dispute resolution prior to submitting the record to the Ontario Municipal Board, in which case the time for submitting the record to the Ontario Municipal Board would be extended from 15 days to 75 days.

This proposed amendment permits Markham Council (or Regional Council as the case may be) to employ alternative dispute resolution methods prior to submitting the appeal to the OMB. Markham would have to explore whether or not there would be a net benefit in adopting such a regime at the City level. A benefit would be that fewer applications might be adjudicated by the OMB, and resolved at the local level. However, there could be a cost to adopting such a mediation method, and this would have to be explored to determine its feasibility.

Markham staff are generally in support of this proposed amendment, as it allows for the introduction of local mediation. However, as noted above, the cost of implementing such a system would have to be evaluated if this were to be considered in Markham

3. Changes to the requirements for public consultation

a) ***Alternative Forms of Public Consultation Extended to Subdivisions and Consents***

Municipalities would be entitled, but not required, to make provision in their official plans for the use of alternative forms of public consultation for plans of subdivision and consents (alternative forms of public consultation are already permitted for official plan amendments and zoning by-law amendments).

Staff considers it to be reasonable to extend alternate forms of public consultation to plans of subdivision and consents. Markham's Official Plan 2014, section 10.7.3, already

provides for alternative forms of consultation that go beyond the minimum requirements of the Planning Act. As well, section 10.7.5 exempts certain minor technical amendments from a public consultation process, provided that the amendment does not affect the policies or intent of the Official Plan or zoning by-law.

b) Official Plans to Articulate Procedure for Public Consultation

Official Plans would be required to include a description of public consultation procedures to be undertaken in respect of proposed official plan amendments, zoning by-law amendments, plans of subdivision and consents.

Section 10.7 of Markham's Official Plan 2014 currently provides general policies respecting public consultation. The Planning Act and associated Ontario Regulations already provide detailed requirements with respect to public consultation, and therefore it is unclear if this amendment would require repeating information from the Planning Act in our Official Plan. Markham would require further clarification from the Province on this matter.

c) Councils and Approval Authorities to Articulate the Effect of Oral and Written Submissions on Development Approval Decisions

When issuing decisions on development approval applications such as official plan amendments, zoning by-law amendments, minor variances, consents, and plans of subdivision, municipal decision makers would be obliged to explain the effect of written and oral submissions received with respect to their decision on the application.

This proposed amendment would require the Notice of Decision to include an explanation of how Council considered written and oral submissions on an application.

Markham staff are in support of providing transparency with respect to documenting how input was addressed in coming to a decision. Staff recommendation reports regularly include an explanation on how written and oral submissions have been considered. However, as it is often problematic to adequately capture and interpret oral submissions, they are generally characterized and categorized around common themes. Markham staff are therefore of the view that both written and oral submissions should be referred to only in general terms in recommendation reports and minutes of meetings.

4. Park Plan Requirements and Reduction in Cash–in-Lieu of Parkland

a) Park Plans

Before adopting a by-law which provides for parkland dedication to be calculated on the basis of the number of units proposed, a municipality would be required to have in place a park plan that establishes parkland needs of the municipality.

Markham staff are in support of this proposed amendment, as such a plan is beneficial in order to quantify municipal parkland needs. Once quantified, resources can then be more effectively distributed, and longer-term planning for parks may occur. As well,

quantifying the parkland needs assists in justifying any parkland dedication required through development approvals. Staff intend to initiate a parks plan exercise in 2016, subject to Council budget approval, and regardless of the status of Bill 73.

Because Markham has not yet adopted a parks plan, it is unclear whether or not Markham's future rate for parkland dedication would be curtailed once Bill 73 is passed. If the current parkland dedication by-law were to be deemed inoperative until a parks plan was adopted, the impact on revenue for parkland purposes could be significant. Therefore staff recommend that the Province be requested to provide for a minimum two (2) year transition period during which municipalities would be permitted to continue to require parkland dedication and cash-in-lieu of parkland as conditions of development approval in accordance with their existing by-laws, without having adopted a parks plan.

b) Reduction in Limits for Cash-in-lieu of Parkland For Residential Development

Cash-in–lieu of parkland payable with respect to residential development would be calculated by using a rate of up to one hectare for each 500 dwelling units proposed, down from the current limit of one hectare for every 300 units.

Bill 73 would have a negative impact on the amount of cash-in-lieu received through parkland dedication associated with medium and high density development. There would be a 40% drop in cash-in-lieu with respect to townhouse development, and a 17.6% drop in cash-in-lieu with respect to apartment/condo development. These losses would occur only in cases where cash-in-lieu is payable (i.e. where conveyance is not in the form of 100% "on-the-ground" physical parkland).

The Province has introduced this amendment in response to the development industry's concerns that the current parkland dedication rate was high enough to have a negative impact on housing pricing and affordability in the GTA and elsewhere. In Markham, cash-in-lieu of parkland dedication can be as high as $24,000 per unit for high density residential development. Under the proposed amendment to the *Planning Act*, a similar unit would be subject to a cash-in-lieu payment of approximately $20,000.

Markham has already implemented a cap of 1.2 ha/1000 persons on parkland dedication. For townhouses, this equates to 1 ha/290 units (based on 2.86 persons per unit). For apartments, this equates to 1 ha/412 units (based on 2.02 persons per unit). These current rates generate more cash-in-lieu of parkland than that proposed in Bill 73. Bill 73 provides that any municipal by-law that establishes an alternative cash-in-lieu rate of more than one hectare per 500 units is automatically deemed to be amended to require cash-in-lieu at that rate.

The 2013 Review of Parkland Dedication By-law, Policies and Practices considered by Development Services Committee in early 2014 proposed a sliding scale of further reductions in required cash-in-lieu payments, based on the Residential Floor Space Index ("FSI") of a building (only for buildings at 3.5 FSI and above). Council deferred a decision on the matter pending the outcome of the Provincial Consultations.

Upon passage of Bill 73, Staff will provide a further report to Council respecting this matter, including recommendations for City policy and by-law amendments that respond to the final amendments to the *Planning Act* with regard to cash-in-lieu of parkland dedication. However, as described above, if enacted, Bill 73 will deem Markham's alternative cash-in-lieu requirement to be one hectare per 500 units. Staff are not in support of this amendment, as it provides for an arbitrary figure of reduced parkland dedication cash-in-lieu, which is not tied to the actual parkland needs of the City. As noted, the proposed amendment would have a financial impact on Markham. There would be a reduction of 40% cash-in-lieu of parkland dedication for high-density apartment units, and a 17.6% reduction for medium density townhouse units.

5. Other

a) Ontario Municipal Board to "Have Regard To" Information and Material Received by Council Where Council Has Failed to Make a Decision

When deciding appeals resulting from the failure of a municipal Council or approval authority to make a decision, the Ontario Municipal Board would be required to "have regard to" information and material (including written and oral submissions from the public) received by the municipal Council or approval authority in relation to the matter, if any.

Currently, the Ontario Municipal Board is only required to have regard to Council's decision and the information it was based on in circumstances where a Council decision to approve or deny an application is appealed. The requirement does not apply where a decision has not been made by Council.

Markham staff are in support of this proposed amendment. It ensures that the OMB is cognizant of, and takes into consideration, all input Council received from staff, the public and other stakeholders.

b) Potential for New Prescribed Criteria for Minor Variances

A new provision has been proposed which would allow the Minister to prescribe additional criteria governing the approval of minor variances over and above the existing four part test currently contained in Subsection 45(1) of the Planning Act.

Markham staff are generally in support of this proposed amendment, but note that the Province has not made the draft regulation available so staff are not aware of the proposed content of the regulation. It is recommended that that in drafting the regulation, the Province be requested to balance the need for a better definition of a "minor variance" with the need for decision-maker discretion to consider neighbourhood/local circumstances. It is Staff's view that a definition of "minor" cannot be determined solely through mathematical means, since, for example, a "20%" variance may be inappropriate in certain circumstances but perfectly acceptable in others. Context is extremely important, and decision-makers should be permitted the discretion to consider it.

Staff recommend that the Province be requested to allow the City and other stakeholders the opportunity to comment on any forthcoming criteria prior to a regulation being passed.

c) Provincial Policy Statement and Official Plan Review Cycles Extended

Provincial Policy Statements would be reviewed on a ten year cycle as opposed to the current five year cycle. A new official plan would require revision ten years after coming into effect and every five years thereafter.

Markham staff are in support of this proposed amendment. Since the Province is contemplating amending the timeline for revisions to provincial plans and policy statements to 10 years, it makes sense to have formal municipal Official Plan reviews follow the same 10-year interval. In reality, municipal official plans are undergoing much more frequent review and update through amendments adopted by Council.

c) Additional Transparency and Accounting Requirements for Section 37 Receipts

Additional reporting requirements would be imposed on municipalities collecting money in respect of additional density benefits under Section 37 of the Planning Act. All money paid in respect of Section 37 would have to be paid into a special account.

Markham staff are in support of this proposed amendment, as it promotes transparency and accountability with respect to Section 37 funds. The Treasurer would be required to provide Council with a yearly financial statement respecting the Section 37 special account.

e) Mandatory Planning Advisory Committees

Planning Advisory Committees, which have so far been optional for municipalities, would become mandatory for upper-tier municipalities and single-tier municipalities in southern Ontario (except the Township of Pelee).

The proposed amendment would not apply to Markham; however it would affect York Region. Regional staff have indicated that they support the proposal provided that municipalities have control over what matters are dealt with through the advisory committee. Markham staff support this comment.

f) Minister and Upper-Tier Municipalities May Impose a Development Permit System for Prescribed Purposes

The Minister would be empowered to make an order requiring a local municipality to adopt a development permit system for prescribed purposes. Upper-tier municipalities would also be empowered to pass by-laws imposing similar requirements on their lower-tier municipalities for these prescribed purposes.

It is unclear under what circumstances the Ministry or York Region would impose a development permit system upon a municipality. Markham requests clarification on this issue from the Province. Such a major departure from the current zoning and site plan

approval system should not be imposed upon the local municipality without extensive prior consultation and collaboration.
As mentioned above, staff are currently in the process of reviewing and consolidating the City's zoning by-laws through the New Comprehensive Zoning By-law Project. The merits of a possible development permit system for certain areas of the City will be assessed. Council will be provided detailed information on all available alternatives prior to considering which zoning system is appropriate for Markham.

II) Development Charges System Reforms

According to the Province, the proposed amendments to the *DCA* are intended to help municipalities fund growth and make the development charges system more predictable, transparent and accountable. While the amendments did not address all the recommendations made during the Provincial Consultation, it does address some areas of concern to municipalities. These changes are discussed below.

1. Ineligible Services to be Prescribed by the Regulation and not the *DCA*

Section 2(4) of the DCA is rewritten to direct that ineligible services will be identified in the regulations, rather than the current approach where they are partly listed in the DCA and partly in the regulations.

By moving the ineligible services to the regulations, the Ministry of Municipal Affairs and Housing will no longer require the approval of the Legislature to effect changes, and any future changes once agreed, can be implemented in an expeditious manner.

The proposed new regulation has not been made public at the time this report was written. However, the Ministry of Municipal Affairs and Housing did issue a release which indicated that waste diversion, a component of waste management, will be removed from the list of ineligible services and will now qualify for development charge funding. It is unclear at this time if any other component of waste management may be removed from the list of ineligible services, and it is not clear whether the allowable capital cost relates to vehicles and/or facilities. As such, the quantum of the potential impact is not determinable at this time.

Markham staff are in support of this proposed amendment, which will allow the Region to fund future growth-related waste diversion capital expenditures from development charges, as opposed to other sources such as taxes, grants etc.

Staff recommend that the Province be requested to broaden the scope of the amendment to include all waste management services including waste collection (capital cost of vehicles and facilities) as a DC eligible service; this will be beneficial to the City. The removal of hospitals and municipal administration offices from the list of ineligible services was not addressed in the proposed amendment, the City would like to see some movement to include these services in the DC funding regime.

2. Area Specific Charges

Bill 73 seeks to provide guidance on the issue of area rates by adding clauses to the DCA that will allow the province to pass regulations to impose area-specific charges in some circumstances. The following rules are proposed for a municipality:

- *With respect to prescribed services, the Council shall pass different development charge by-laws for different parts of the municipality, and*
- *The parts of the municipality to which different development charge by-laws are to apply shall be identified.*

Municipalities will now be required to examine the use of area specific development charges ("ASDC") when preparing a Development Charge Background Study.

The City currently utilizes ASDCs to recover the cost of infrastructure in designated benefitting areas, mainly for sanitary sewers and storm water management facilities. It is also a tool used to encourage higher density development as the overall DCs owing decrease with each additional unit. This is because the charge is levied on the land area, not on the number of units.

With the information currently available, it is not clear whether this proposed amendment will impact how the City currently utilizes ASDCs. The City should retain the flexibility to choose the services and circumstances under which ASDCs are utilized. Staff recommend that Council not support this proposed amendment which will result in the Province having the power to impose ASDCs.

3. Developments Requiring Multiple Building Permits

Bill 73 provides that if a development consists of one building that requires more than one building permit, the development charge will be payable upon the first building permit being issued.

This proposed amendment will impact the assessment of DCs for high-rise developments which require more than one building permit through the development cycle. Based on the proposal, when shoring and excavation permits are issued for condominium developments, the DCs will be locked in at that time. In order to calculate the DCs at first building permit, the City will require information on the number and size of the units. This information has not been readily available at this stage of the development process for previous projects, so it is not clear how this can be implemented. Changes to the City's current process for collecting development charges would need to be made.

This amendment has the potential of creating a scenario where the development industry consciously locks in their DC rates, long before above grade work is required or anticipated, in order to benefit from a lower rate. This will make it difficult for the City to anticipate completion of the development and therefore the timing of assessment

revenue. There may also be a negative impact to DC revenues where the rates are locked in prior to indexing or a DC Background Study update.

Staff are concerned about this amendment and recommend that the Province be requested to review this proposal and fix the date of collection of DCs at a time more closely related to the construction of a given development.

4. Level of Service Cap for some Services to be Determined Based on a Planned Level of Service

Bill 73 would allow the Province to pass regulations to set out service(s) for which the 10-year historical average service level will be replaced by a forward-looking service level calculation. The estimate for DC recoverable capital costs must not include an increase that will result in the level of service exceeding the planned level of service, over the 10-year period immediately following the preparation of the background study.

This proposed amendment applies to services recovered through the soft services by-law. For Markham this includes indoor recreation, park development, library services, fire services, public works and parking. The services that will benefit from this methodology will be set out in the regulations. The full list of services is not available at this time.

While Markham staff are generally in support of this proposed amendment, it is unclear which service(s) will be assessed based on the planned level of service at this time. The general view is that the intended target for this change is the transit service.

Staff recommend that the Province be requested to consult with Markham and other stakeholders before any regulations related to this amendment are passed.

5. Transit Recovery

Under the DCA, transit was included in the services for which a 10% mandatory reduction was applied to the cost recovery. Under the proposed amendment, transit will move to the service category for which there is no reduction applied.

The proposed amendment will remove the statutory 10% reduction applied to the cost recovery for transit services.

This has no direct financial impact to the City but will be favourable for the Region. By moving transit services to a category where there is no 10% reduction being applied, Bill 73 addressed a recommendation made by the City in the DC consultation. This recommendation was that the Province remove the 10% reduction on eligible soft services.

There is a concern that transit services will still be subject to the 10-year planning horizon due to the inclusion of subsection 5.2(3), which states that the estimate for a prescribed

service shall not exceed the planned level of service over the 10-year period following the DC Background Study.

Staff recommend that Council support this proposed amendment, but request the Province to (1) expand it to include all other soft services such as indoor recreation, park development and library services and (2) amendment 5.2(3) to reference a 20-year planning period, at a minimum.

6. Asset Management Plan

Under Bill 73, the DCA would be amended to require that DC Background Studies include an asset management plan that demonstrates that all assets funded by DCs are financially sustainable over their full life cycle.

The asset management plan proposed by Bill 73 is in addition to the current requirement that municipalities examine the long term capital and operating costs required for each growth-related infrastructure included in the DC Background Study. At this point, "financially sustainable" has not been defined. It is the expectation that the regulations will provide additional information and direction regarding the requirements of the asset management plan. It is not clear if asset management plans prepared for other purposes will satisfy any new requirements under Bill 73. Staff do not have enough information regarding this proposal to make a recommendation to support it or not. Therefore, it is recommended that the Province be requested to consult with Markham and other stakeholders before finalizing the amendments.

7. Voluntary Payments

The proposed provisions will prohibit municipalities from imposing directly or indirectly, a charge not specifically permitted by the DCA related to a development or a requirement to construct a service related to development.

The proposed amendment will inhibit/restrict the City from levying a "voluntary" charge related to a development. Under the current proposal, this section will not affect charges already imposed before the day the amendment comes into force. Exceptions may be made under the *DCA* but the details of these are not currently known, as such, staff have no comment regarding its impact at this time.

The proposed amendment also grants the Minister of Municipal Affairs and Housing investigative powers regarding this section of the *DCA*, and allows the Minister to require a municipality to pay for the cost of a compliance investigation.

The City is not imposing voluntary payments at this time so this has no immediate impact. This amendment would serve as a restriction in developing future revenue generating tools and may limit the services that the City can request developers to construct on its behalf. Staff do not have enough information regarding this proposal to make a recommendation to support it or not. Therefore, it is recommended that the

Province be requested to consult with Markham and other stakeholders before finalizing the amendments.

8. Annual Reporting Requirements

The existing reporting requirements will continue and Bill 73 creates more detailed requirements, including:

a. *Statements of the opening and closing balances of the reserve funds and the transactions relating to the funds,*

b. *Identification of each capital asset funded by DCs during the year, and the manner in which costs not funded by DCs was, or will be funded,*

c. *A statement of the municipality's compliance in not imposing, directly or indirectly, voluntary payments and the requirement to construct a service related to development ,*

d. *A requirement for the report to be made public,*

e. *The submission of the report only as requested by the Minister of Municipal Affairs and Housing.*

Some of the proposed requirements (i.e. a, d & e) are already being satisfied by the City. While the current *DCA* prescribes few details regarding the contents of the annual Treasurer's statements, the proposed amendment will require additional information on the use of funds, as well as compliance with the section relating to voluntary payments. The City already tracks information on the various funding sources and will be able to incorporate this in the annual report as required. Therefore staff recommend that Council support this proposed amendment.

9. Limitation – The Powers of the OMB

Bill 73 does not address concerns relating to the powers of the OMB as per section 16(4) of the DC Act. Under this section, the OMB cannot issue a ruling that will increase the amount of DCs payable, or remove or reduce the scope of an exemption. Additionally, the onus is on the municipality to justify a charge.

This limitation in the OMB's powers creates an uneven playing field which results in appellants and municipalities bearing different levels of risks and accountability. The Region of York had requested that the Province consider repealing this section of the DC Act as it limits the ability of the OMB to issue rulings beneficial to municipalities. Markham supports an amendment to Section 16 (4) of the DC Act in this regard and would like the Province to consider it among the changes being proposed.

10. Usage of an Alternate Methodology to Calculate Service Levels

The City used new methodologies in its City Wide Soft services development charge by-laws in 2009 and 2013 to recover for the cost of services including libraries, fire services, indoor recreation, park development and public works (buildings and fleet). Both by-laws included changes in the calculation of the 10-year average historic service levels by moving from the generally accepted Net Population Approach, to the Gross Population Approach in 2009, and further to the Alternate Approach (which utilizes net population and households to calculate service levels) in 2013

The OMB rejected the use of both approaches and instructed that the Net Population Approach be used for both by-laws (2009 and 2013). They further asserted that the Net Population Approach is the only approach that can be used in the calculation of service levels. Staff take the position that the Net Population Approach does not fully recover for the cost of growth and recommends that the Province be requested to expand the permitted methodologies for calculation of service levels.

III) How Bill 73 Responds to Markham's Comments from 2013-2014 Provincial Consultation

In January 2014, Markham responded to the Province through the Ministry of Municipal Affairs and Housing as a result of the Provincial Consultations.
Appendices 1 and 2 attached to this report outline the comments made by Markham and provide Bill 73 analysis with respect to how comments were addressed. **Appendix 3** (provided electronically due to size) is the full copy of Bill 73.

NEXT STEPS:
Bill 73 has received First and Second Reading in the Provincial Legislature, and there is no known timetable for bringing the Bill back for further consideration. The Bill has been posted to the Electronic Bill Registry ("EBR") for a 90-day comment period, which ends June 3, 2015.

The MMAH has indicated that the government will facilitate working groups, which may assist in "fine-tuning" the Bill and addressing any technicalities and clarifications required. Staff recommend that MMAH be requested to include Markham in any working group discussions contemplated for the Bill and any consultations initiated with respect to the development of criteria for minor variances. Furthermore, it is recommended that this report be forwarded to the Province to serve as the City's formal comments on Bill 73.

If Bill 73 receives Royal Assent and the changes are made to the *Planning Act* and *DCA,* staff will report back to Committee with any additional information that is available. In addition, Staff will report again respecting the Review of Parkland Dedication By-law, Policies and Practices, which was suspended by Council in March 2014 pending the outcome of the Provincial Consultations.

FINANCIAL AND HUMAN RESOURCES CONSIDERATIONS:
Financial and human resources considerations will be unknown until the final form of Bill 73 has been made public. Generally, there may be positive, negative and neutral financial and human resources implications with respect to proposed amendments to the *DCA*. With respect to the proposed amendments to the *Planning Act*, there would be possible negative financial implications with respect to parkland dedication, and possible negative financial and human resources implications with respect to the moratoriums on certain planning applications.

ALIGNMENT WITH STRATEGIC PRIORITIES:
N/A

BUSINESS UNITS CONSULTED AND AFFECTED:
This report is a collaboration between the Development Services Commission and the Corporate Services Commission, as the proposed amendments to the Development *DCA* and the *Planning Act* affect services delivered by both commissions.

RECOMMENDED BY:

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

Jim Baird, MCIP, RPP,
Commissioner of
Development Services

Joel Lustig,
Treasurer

Trinela Cane,
Commissioner of Corporate
Services

ATTACHMENTS:

Appendix 1 – Table respecting Bill 73 and the Land Use Planning and Appeals System
Appendix 2 – Table Respecting Bill 73 and the Development Permit System
Appendix 3 – Full copy of Bill 73 (provided electronically due to size)
Appendix 4 – Presentation to Development Services Committee (to be distributed)

File path: Amanda\File 15 151399\Documents\Recommendation Report

APPENDIX 1 – LAND USE PLANNING AND APPEALS SYSTEM

THEME/TOPIC	MARKHAM COMMENTS FROM JANUARY 2014	BILL 73 ANALYSIS
Theme A: Achieve more predictability, transparency and accountability in the planning / appeal process and reduce costs		
How can communities keep planning documents, including official plans, zoning by-laws and development permit systems (if in place) more up-to-date?	Most Ontario municipalities keep their planning documents up-to-date as resources permit, and according to Council decisions on policy issues and development applications. Amending planning documents is a constant process, and is considered a normal course of business.	No further response necessary. Markham comments indicate that amendments are constant and result in plans always being "up-to-date"
Should the planning system provide incentives to encourage communities to keep their official plans and zoning by-laws up-to-date to be consistent with provincial policies and priorities, and conform/not conflict with provincial plans? If so, how?	Yes. The Province could consider financial incentives for municipalities, or provide direct provincial funding to municipalities for municipal plan updates.	Not addressed in Bill 73. Comment will be reiterated.
Is the frequency of changes or amendments to planning documents a problem? If yes, should amendments to planning documents only be allowed within specified timeframes? If so, what is reasonable?	No, amendments should proceed as required to facilitate proper and orderly development of the municipality, and to reflect Council decisions.	Bill 73 proposes moratoriums on various planning applications for two years after approval date. See report for details.
What barriers or obstacles may need to be addressed to promote more collaboration and information sharing between applicants, municipalities and the public?	Support technology measures and financial incentives to make it easier for all parties to collaborate "online" and share information. Examples include web-based zoning by-laws, online application forms, digital submissions and planning review, community information web pages, and municipal blogs.	Not addressed in Bill 73. Comment will be reiterated.
Should steps be taken to limit appeals of entire official plans and zoning by-laws? If so, what steps would be reasonable?	Yes. The Province should only permit appeals to specific components of an official plan or zoning by-law, in order to allow the remainder of the plan or by-law to come into force. Appeals to an entire document should not be permitted.	Bill 73 addresses this issue. Global appeals would no longer be permitted.
How can these kinds of additional appeals be addressed? Should there be a time limit on appeals resulting from a council not making a decision?	Increasingly, the 180-day decision timeframe is being considered unrealistic, due to the complexity of zoning and official plan amendment applications, especially in rapid-growth areas such as the	Bill 73 addresses this issue. Extensions to the 180-day time frame are proposed, as outlined in this report.

	GTA. As well, some in the development community are using the 180-day timeframe requirement in order to expedite an application by moving jurisdiction to the OMB. The time limit should therefore either be eliminated or extended beyond 180 days to, say, one year.	
Should there be additional consequences if no decision is made in the prescribed timeline?	No. The reasons for decisions not being made within the 180-day timeframe are varied, and in many cases are not within the control of the municipality.	Bill 73 does not speak to any "consequences" of non-decision.
What barriers or obstacles need to be addressed for communities to implement the development permit system?	A perceived obstacle may be the delegation of approval authority to Staff. Municipal Councils may not wish to relinquish control over development approval. Clear delineation of approval roles for Council and Staff need to be articulated in order to alleviate any concerns. As well, DPS removes some public consultation steps and appeal opportunities, something the public may not be comfortable with.	Bill 73 proposes to allow the Minister or upper-tier municipality to impose a development permit system upon a lower-tier municipality. Discussed further in this report.
Theme B: Support greater municipal leadership in resolving issues and making local land use planning decisions		
How can better cooperation and collaboration be fostered between municipalities, community groups and property owners/developers to resolve land use planning tensions locally?	Some examples of ways to foster cooperation and collaboration between parties include workshops, design charrettes, advisory groups, sub-committees of Council, public meetings and open houses. As well, a third-party mediator may be of some assistance at the local level, in order to focus issues and promote dialogue and nderstanding between parties.	Bill 73 proposes that Planning Advisory Committees be required for upper-tier municipalities, but not lower-tier municipalities. Discussed further in this report.
What barriers or obstacles may need to be addressed to facilitate the creation of local appeal bodies?	Some barriers/obstacles may include delegation of authority, administrative costs and issues, ensuring that the most qualified individuals are chosen for the appeal body, the avoidance of local bias, and source of funding.	Not addressed in Bill 73, other than a proposal to allow local mediation of a matter prior to forwarding it the Ontario Municipal Board for adjudication. Discussed further in this report.
Should the powers of a local appeal body be expanded? If so, what should be included and under what conditions?	Yes, the Planning Act could be amended to expand the powers of local appeal bodies to allow adjudication of site plan approvals and minor zoning amendments. Local implementation options would be at the discretion of	Not addressed in Bill 73. Comment will be reiterated.

	Council.	
Should pre-consultation be required before certain types of applications are submitted? Why or why not? If so, which ones?	Yes. Pre-consultation allows for early dialogue between parties prior to submission of a formal application. An effective pre-consultation results in clear direction for applicants with respect to the municipality's expectations regarding the formal submission (i.e. required technical studies).	No changes to existing protocol proposed through Bill 73. Pre-consultation already takes place with respect to various planning applications.
How can better coordination and cooperation between upper and lower-tier governments on planning matters be built into the system?	Upper and lower-tier consultation and coordination is generally working quite well in York Region.	No further comment.
Theme C: Better engage citizens in the local planning process		
What barriers or obstacles may need to be addressed in order for citizens to be effectively engaged and be confident that their input has been considered (e.g. in community design exercises, at public meetings/open houses, through formal submissions)?	Issues raised by the public through a consultation process need to be properly identified and addressed by Staff when they report to Council. It is important for Staff to do their best to ensure that comments received from stakeholders are constructive and helpful, and properly recorded and responded to in recommendation reports, and that Staff provide realistic alternative solutions where appropriate.	Bill 73 proposes a requirement for planning decisions to include a statement respecting how oral and written submissions on a matter were considered in the making of the decision. Further discussed in this report.
Should communities be required to explain how citizen input was considered during the review of a planning/development proposal?	Yes.	See above.
Theme D: Protect long-term public interests, particularly through better alignment of land use planning and infrastructure decisions and support for job creation and economic growth		
How can the land use planning system support infrastructure decisions and protect employment uses to attract/retain jobs and encourage economic growth?	Some larger-area planning studies such as Secondary Plans could contain an engineering/infrastructure component in order to have land use and infrastructure matters dealt with concurrently, and subsequently processed through a Class EA. As well, the conversion of Employment lands to other uses, including residential uses, affects a municipality's ability to attract new jobs and meet employment targets.	Employment land conversion has been addressed through the 2014 Provincial Policy Statement, policy 1.3.2.2. Employment lands policies are no longer required to be reviewed at the 5-year Municipal Comprehensive Review.

	The Province could introduce stronger language in provincial plans to address such conversions, if this is considered to be an area of provincial interest. The Province and Upper-tier municipalities could also provide more frequent updates to employment projections and performance against targets, including sector analyses and employment by type.	
How should appeals of official plans, zoning by-laws, or related amendments, supporting matters that are provincially-approved be addressed? For example, should the ability to appeal these types of official plans, zoning by-laws, or related amendments be removed? Why or why not?	Ideally, such amendments should not be appealable. However, there are instances where provincial plan policies may be vague or otherwise subject to interpretation. In other instances, policies in various provincial plans conflict with each other. Until such problems are resolved, it is difficult to support a "no appeal" scenario.	Partially addressed in Bill 73. Appeals of official plans in connection with specific matters would not be permitted. These matters include boundary areas within a vulnerable area identified in the Clean Water Act; the Lake Simcoe Watershed; the Greenbelt Area or Protected Countryside (as defined in the Greenbelt Plan and the Oak Ridges Moraine Conservation Plan).

APPENDIX 2 – DEVELOPMENT CHARGES SYSTEM

THEME/TOPIC	MARKHAM COMMENTS FROM JANUARY 2014	BILL 73 ANALYSIS
Theme A: Development Charges Process		
Does the development charge methodology support the right level of investment in growth-related infrastructure?	The DCA does not allow for 100% of growth-related capital costs as follows: i. There are services not eligible for funding such as central administration functions, waste services and hospitals. ii. There is a mandatory 10% discount on services such as transit, recreation, libraries, park development, general services and parking. iii. The 10-year historical service level calculation inhibits if not prohibits the establishment of new services as there is no historic service level and therefore no development charge available.	Bill 73 proposes the removal of waste diversion from the list of ineligible services thereby making it eligible for development charges funding. The mandatory 10% discount will be removed for transit however; other services such as park development and recreation have not been addressed. The regulation will prescribe the service(s) for which the 10-year historical average service level will be replaced by a forward-looking service level calculation.
Should the Development Charges Act, 1997 more clearly define how municipalities determine the growth-related capital costs recoverable from development charges? For example, should the Act explicitly define what is meant by benefit to existing development?	No. The DCA provides for a process that must be followed to determine the share of capital infrastructure projects that can be considered growth-related and furthermore the shares that can be funded from development charges.	A newly created section will require that DC Background Studies now include an asset management plan that will consist of all assets whose capital costs are proposed to be recovered through development charges.
Is there enough rigour around the methodology by which municipalities calculate the maximum allowable development charges?	Yes. The DCA is already very prescriptive, requires a public consultation process and provides a good balance between rigour and flexibility which is supported by appeal mechanisms.	Bill 73 proposes the introduction of a planned level of service which will be applied to prescribed services, as well as, the requirement for an asset management plan. Details on the requirements for these are not yet known.

Theme B: Eligible Services		
The Development Charges Act, 1997 prevents municipalities from collecting development charges for specific services, such as hospitals and tourism facilities. Is the current list of ineligible services appropriate?	No, the list is not appropriate and should be reviewed. Of particular concern are waste management, hospitals and general administration as these are not discretionary services, but rather necessary services that are directly impacted by development and growth.	Bill 73 proposes the removal of waste diversion from the list of ineligible services thereby making it eligible for development charges funding. Hospitals and municipal administration offices have not been addressed.
The Development Charges Act, 1997, allows municipalities to collect 100% of growth-related capital costs for specific services. All other eligible services are subject to a 10% discount. Should the list of services subject to a 10 % discount be re-examined?	Yes, the list of services should be reviewed with a view to eliminate the 10% discount provision. Services on which the discount is applied to are no less growth-related than the non-discounted services such as fire, roads, water and wastewater; the discount effectively creates "second tier" services. The 10% discount results in a direct growth-funding shortfall which is largely borne by the existing property tax base.	Bill 73 proposes to remove transit from the list of services requiring a 10% discount but does not address other services such as indoor recreation and park development.
Amendments to the Development Charges Act, 1997 provided Toronto and York Region an exemption from the 10 year historical service level average and the 10% discount for growth-related capital costs for the Toronto-York subway extension. Should the targeted amendments enacted for the Toronto-York Subway Extension be applied to all transit projects in Ontario or only high-order (e.g. subways, light rail) transit projects?	The preferred approach would be to have all transit considered a 100% cost recovery service allowing for a "Transportation" category of service that would include all types of transportation including roads, transit, biking, pathways and trails. The 10-year historic average should be changed to a forward looking planned service level, based on the expected build-out of the City. A change to a forward looking service level will allow municipalities the ability to define service levels that reflect the specifics of their municipality, in terms of the nature of development and the delivery of services.	Bill 73 proposes that transit services will no longer have a 10% discount applied to the growth-related capital costs. The 10-year average historic service level limitation will also be removed and replaced with a calculation based on the planned service level over the 10-year period immediately following the preparation of the background study.

Theme C: Reserve Funds		
Is the requirement to submit a detailed reserve fund statement sufficient to determine how municipalities are spending reserves and whether the funds are being spent on the projects for which they were collected?	Yes, the annual reserve fund statements provide significant and sufficient details on opening and closing balances, collections, capital project funding and interest earnings associated with the DC reserves.	Bill 73 requires the statement to identify: o The opening and closing balances of the reserve funds and the transactions relating to the funds. o Identification of each capital asset funded by DCs during the year, and the manner in which costs not funded by DCs was, or will be funded.
Should the development charge reserve funds statements be more broadly available to the public, for example, requiring mandatory posting on a municipal website?	In Markham, the statements are available and are posted with the Committee agenda when provided annually to Council. There is no objection to posting the statements online in a more permanent location.	Under Bill 73, there is a requirement for Council to ensure that the report is made available to the public.
Should the reporting requirements of the reserve funds be more prescriptive, if so, how?	No, this is not necessary as the details in the current development charge statements are sufficient.	See above.
Theme D: Section 37 and Parkland Dedication		
How can Section 37 and parkland dedication processes be made more transparent and accountable?	Municipalities could develop Community Infrastructure Master Plans detailing the projects that would benefit from Section 37 and Parkland Dedication contributions on a city-wide and area specific basis. The municipality should engage the public in the process for determining the list of projects contained in the Master Plans, through public meetings, Open Houses and workshops etc., in order to clearly understand and implement community priorities. The City of Markham has recently demonstrated this through its review of its Parkland Dedication	Bill 73 addresses transparency and accountability with respect to both Section 37 benefits by requiring that monies collected through this process be paid into a special account, and that the Treasurer give the Council a financial statement relating to the account each year. The "special account" provisions already apply in the case of parkland dedication; however Bill 73 would require that the Treasurer give the Council a financial statement related to the account each year.

	Policy, which has been an open and transparent process involving public and stakeholder participation as the draft new policy has developed over a two-year period. Markham has also engaged ratepayer groups in the application of Section 37 funds.	
How can these tools be used to support the goals and objectives of the Provincial Policy Statement and the Growth Plan for the Greater Golden Horseshoe?	With respect to Provincial goals of "intensification" and "complete communities", Section 37 benefits can be used to enhance the quality and desirability of higher-density communities in order to attract more residents. With respect to Parkland Dedication contributions, the provision of parkland within a community assists in the making of a "complete community". In addition, "cash-in-lieu of parkland" can be used to enhance parks throughout the entire municipality, to bolster parkland in underserved areas and to construct larger, specialized parks where appropriate.	Not addressed in Bill 73. Issue will be reiterated in response to province.
Theme E: Voluntary Payments		
What role do voluntary payments outside of the Development Charges Act, 1997 play in developing complete communities?	Voluntary payments can contribute to the creation of "complete communities" when used to provide neighbourhood amenities or community-wide facilities not normally funded through DCs. Examples of such amenities are public art, sustainability initiatives, enhanced streetscaping, community gardens, major sports and cultural facilities, etc. The provision of such amenities assists developers in marketing communities to potential residents and businesses, which provides some incentive for	Bill 73 incorporates provisions which will prohibit municipalities from imposing directly or indirectly, a charge related to a development or a requirement to construct a service related to development, except as permitted by the DCA or another Act.

	developers to participate in a voluntary payments program.	
Should municipalities have to identify and report on voluntary payments received from developers?	A voluntary payments reserve can be opened and reported on, consistent with the reporting requirements for municipal reserve accounts.	Bill 73 requires a statement of compliance regarding voluntary payments along with the annual reserve fund statements.
Should voluntary payments be reported in the annual reserve fund statement, which municipalities are required to submit to the Ministry of Municipal Affairs and Housing?	The municipality has no objection in reporting aggregate amounts collected.	See above.
Theme F: Growth and Housing Affordability		
How can the impacts of development charges on housing affordability be mitigated in the future?	The City and other municipalities use other mechanisms to support affordable housing, allowing for deferrals/discounts/exemptions from the payment of DCs and other municipal fees and charges. Home prices are based on market conditions independent of the DC rates as evidenced by the average price of a new single detached home being over $900,000 since 2011. Of all of the various Government Imposed Charges (GICs) on new development, the municipal charges (development charges, parkland fees, application fees etc.) relate directly to infrastructure needs and costs directly generated by the development of land. Other GICs imposed on new housing, i.e. HST and land transfer taxes, don't have that direct correlation.	Bill 73 proposes to provide cost certainty to the development industry by crystallizing the charge at the issuance of the first building permit. The proposed amendment to Section 26 states that, if a development consists of one building that requires more than one building permit, the development charge for the development to be payable upon the first building permit being issued.
How can development charges better support economic growth and job creation in Ontario?	Eliminating the discounts and ineligibility category can positively impact growth and job creation as this will lower the burden on the tax base while creating construction jobs. Markham has been a leader in structuring the development	No comment.

	charges to promote certain types of business development by using differentiated rates for industrial and retail developments, reduced rates for certain mixed-use developments, and provision of the 50% expansion exemption for business offices.	
Theme G: High Density Growth Objectives		
How can the Development Charges Act, 1997 better support enhanced intensification and densities to meet both local and provincial objectives?	The City's utilization of area specific DCs encourages intensification as the charge for developable land is based on land area and remains the same, irrespective of the density of the proposed development. If it is determined that intensification requires higher-order transit, the most significant shortfall of the DCA is the limitation that arises from deeming transit to be a 90% cost recovery service.	Under Bill 73, the regulation will prescribe mandatory area charges for prescribed services in prescribed municipalities.
How prescriptive should the framework be in mandating tools like area-rating and marginal cost pricing?	The existing legislation currently provides sufficient flexibility to capture differences in areas and infrastructure costs. The City uses area-rating to reflect local differences in the provision of growth-related capital infrastructure.	Bill 73 proposes the following rules for a municipality: • With respect to prescribed services, the Council shall pass different development charge by-laws for different parts of the municipality, and • The parts of the municipality to which different development charge by-laws are to apply shall be identified Municipalities will be required to examine the use of area charges when preparing a background study.
What is the best way to offset the development charge incentives related to densities?	The current DCA generally gives municipalities the flexibility required to differentiate charges by density of development; if it can be shown that there is a difference in cost of providing infrastructure and servicing. The DCA also allows municipalities to	No comment.

	discount, or exempt, areas of redevelopment and intensification. Under this approach the general property tax base and user fees, typically fund the discounts/exemptions. The DCA could be changed to allow for a "surcharge" on low-density development to offset, or fund, a "discount" on high-density development.	