

City of Markham Comments on Bill 108 Proposed Regulatory Matters – Community Benefits Authority, Development Charges Act and Building Code Act

April 20, 2020

General Committee



Agenda

1. Summary

2. Feedback

1. Required content of a community benefits charge strategy
2. Services eligible to be funded through development charges
3. Percentage of land value for determining a maximum community benefits charge
4. Timeline to transition to the new community benefits charge regime
5. Community benefits charge by-law notice
6. Minimum interest rate for community benefits charge refunds where a by-law has been successfully appealed
7. Building code applicable law

3. Recommendations

1. Summary

- The Province released on February 28, 2020 a regulatory proposal for the Community Benefits Charge (“CBC”), which outlines a framework to implement CBCs and seeks input for the further development of the CBC regime under the *Planning Act*.
- Initially, the Province provided a 31-day consultation period to elicit public feedback, which has since been extended to April 20, 2020.

1. Summary

Key Aspects:

- **Soft services** (library, park development and recreational services) will **remain within the Development Charges Act with the mandatory 10% discount removed**
- *Required content of the CBC strategy* – Identifies benefits to be funded, requires study of current service levels and future needs for benefits.
- *Transition timeline* - one-year after the proposed CBC comes into effect.
- *Requirement for a CBC by-law notice* – Similar to development charges.
- *Interest rate for CBC refund* – Bank of Canada rate for refunds due after successful appeal of the by-law. Similar to development charges.
- *Building Code Amendment* – Addition of CBC authority to list of applicable law items.

1. Summary

Key Aspects:

- **CBC Cap** – Amount of CBC payable cannot exceed the prescribed percentage of land value as follows:
 - Single-Tier Municipalities: 15%
 - **Lower-Tier Municipalities: 10%**
 - Upper-Tier Municipalities: 5%
- CBC can fund Parkland Acquisition, Parking and By-law Enforcement, Social/Subsidized Housing and Shelters, Childcare, other community amenities previously funded under s.37.
- **If the City has a CBC by-law in place, it cannot apply the basic parkland dedication provisions of the *Planning Act*.**

2. Feedback

To implement the new CBC authority, the Province is seeking feedback on the following regulatory matters under the *Planning Act*, the *Development Charges Act* and the *Building Code Act*:

1. Required content of a community benefits charge strategy
2. Services eligible to be funded through development charges
3. Percentage of land value for determining a maximum community benefits charge
4. Timeline to transition to the new community benefits charge regime
5. Community benefits charge by-law notice
6. Minimum interest rate for community benefits charge refunds where a by-law has been successfully appealed
7. Building code applicable law

2.1. Required Content of a CBC Strategy

A municipality would need to prepare a CBC strategy similar to a DC background study, including historic service levels, and capital programs.

Services that have been identified to be funded include parkland acquisition, parking and by-law enforcement, childcare, affordable housing and shelters (it is currently unclear if this is a complete list or if municipalities will have greater flexibility).

Recommendation

That the Province provide municipalities with wide latitude to determine what community facilities can be supported through CBCs

2.2. Services Eligible to be Funded Through DCs

Recreation, library, and park development remain within the DC regime.

The 10% mandatory reduction for these services has also been removed – it is unclear if municipalities can take advantage of this without having to undertake a new DC Background Study.

Recommendation

That the City of Markham support the Province's proposal for the development charge regulation.

That the Province allow municipalities to fully recover the capital cost of development charges without the requirement of preparing a background study until the development charge by-law is next updated.

2.3. % of Land Value for Determining a Maximum CBC

CBC Cap – Amount payable cannot exceed the prescribed percentage of land value as follows:

Single-Tier Municipalities: 15%

Lower-Tier Municipalities: 10%

Upper-Tier Municipalities: 5%

The CBC regime and remaining parkland dedication regime are mutually exclusive: if a CBC by-law applies to the land subject to development, then the City cannot require the dedication of parkland. Conversely, if the City requires parkland to be conveyed (at the 2% rate for commercial/industrial, 5% for everything else), the City cannot collect CBCs.

2.3. % of Land Value for Determining a Maximum CBC

Background

Current Practice:

- **Land Dedication** – the greater of:
 - 5% of land area
 - 1 ha. per 300 unitsTo a maximum of:
 - 1.2 ha per 1,000 residents (Markham OP)
- Any under-dedication would be topped up with cash-in-lieu at a rate of 1 ha. per 500 units.

2.3. % of Land Value for Determining a Maximum CBC

Assumptions Used in Analysis

- The City currently collects **parkland** from **low-density developments** (1 ha. Per 300 units) and **cash-in-lieu** from **high density developments** (1 ha. Per 500 units).
- All CBC collections will be directed towards the **acquisition of parkland**
- The City will **opt into the CBC regime** and charge the full 10% of land value. (If the City chooses to not have a CBC by-law, the City can only collect up to 5% of the land as parkland – this would result in even greater shortfalls than what is indicated in the following analysis).

2.3. % of Land Value for Determining a Maximum CBC

Impact – Low Density

<u>Assumptions:</u>	<u>Single/Semi</u>	<u>Towns</u>
PPUs	3.8	2.9
Units per Ha	30	50
People per Ha	114	145
<u>Current Methodology</u>	1 Ha./300 units	1 Ha./300 units
Parkland Dedication (Ha)	0.10	0.17
Ha per 1,000 people	0.88	1.15
<u>New Methodology (CBC)</u>	10% land value	10% land value
Parkland Equivalent (Ha)	0.10	0.10
Ha per 1,000 people	0.88	0.69


Avg =
1.0 Ha/1,000 people

Avg =
0.8 Ha/1,000 people


Municipalities can only receive 10% CBC OR 5% land now. If City opts to receive land, “New Methodology” service levels would be reduced by 50%.

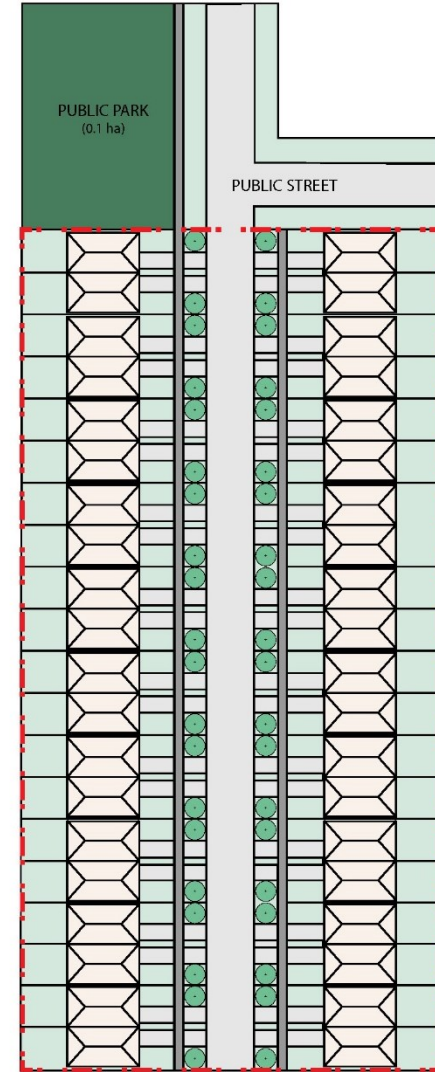
Parkland Comparison: Semi-detached



 PUBLIC PARK (CBC)
(CURRENT PLANNING ACT)

 PUBLIC STREET

 DEVELOPMENT BLOCK (1.0 ha)



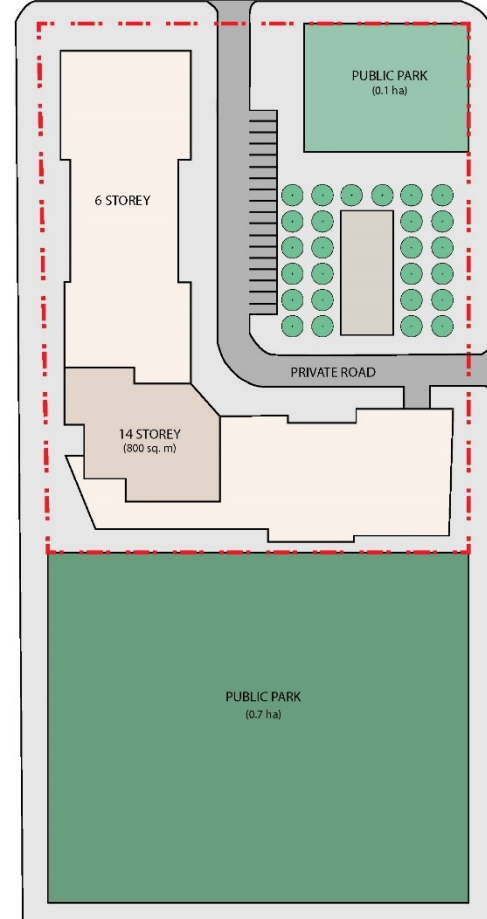
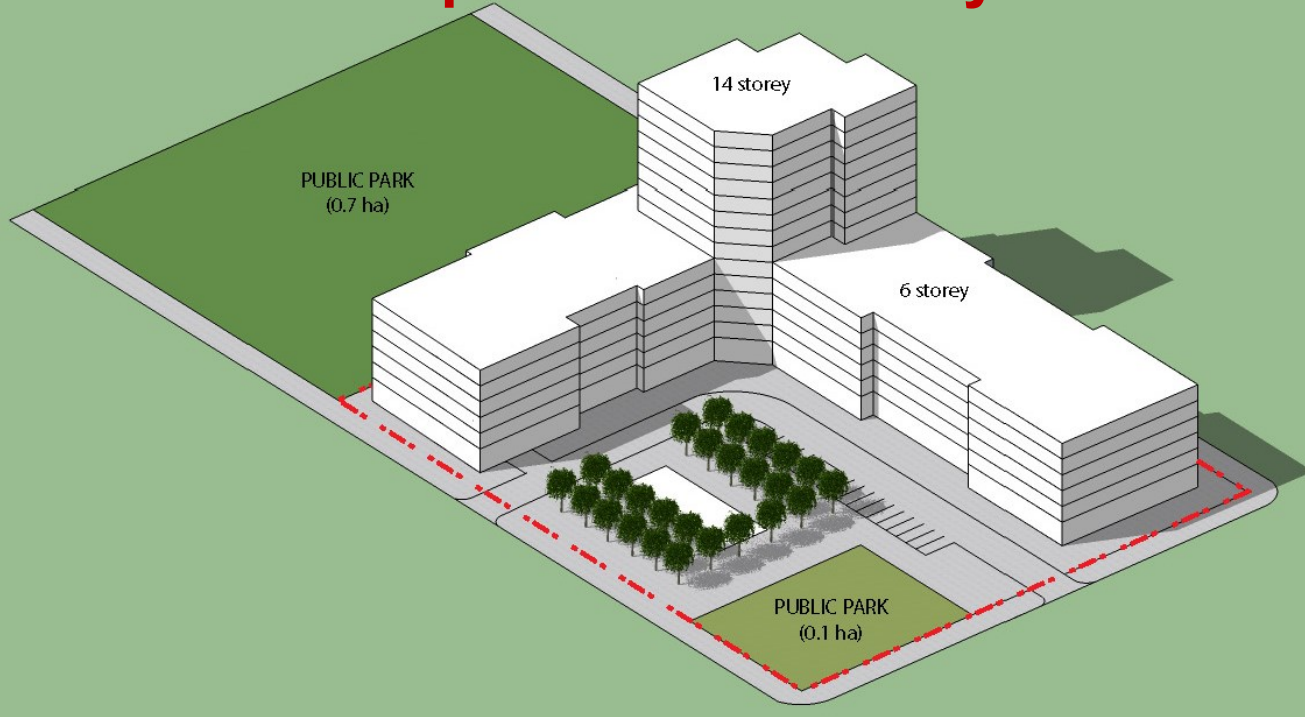
2.3. % of Land Value for Determining a Maximum CBC


Impact – High Density


Assumptions:	<u>14-storey Condo</u>	<u>40-storey Condo</u>
PPUs	2.0	2.0
Units per Ha	350	1,000
People per Ha	700	2,000
<u>Current Methodology</u>	1 Ha./500 units	1 Ha./500 units
Parkland Equivalent CiL (Ha)	0.70	2.00
Ha per 1,000 people	1.00	1.00
<u>New Methodology (CBC)</u>	10% land value	10% land value
Parkland Equivalent (Ha)	0.10	0.10
Ha per 1,000 people	0.14	0.05

Service levels dramatically decrease (86-95% reduction) since people, not land, drive the need for parkland


Parkland Comparison: 14 Storey Condo



 PUBLIC PARK (CBC)

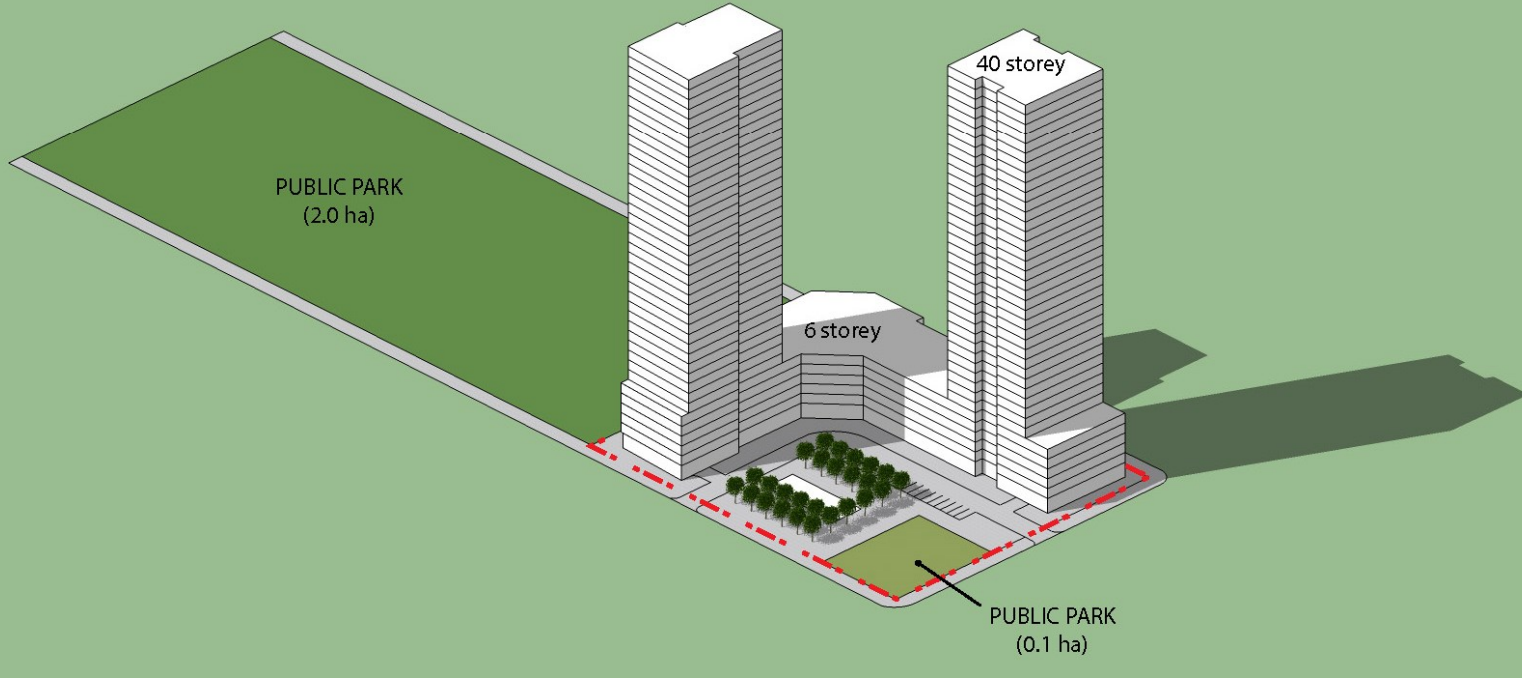
 PUBLIC PARK
(CURRENT PLANNING ACT)


 PRIVATE ROAD


 DEVELOPMENT BLOCK
(1.0 ha)




Parkland Comparison: 40 Storey Condo

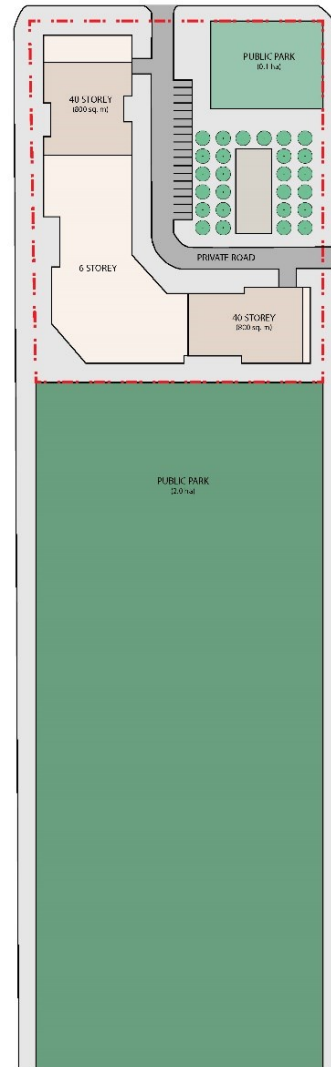


 PUBLIC PARK (CBC)

 PUBLIC PARK
(CURRENT PLANNING ACT)

 PRIVATE ROAD

 DEVELOPMENT BLOCK
(1.0 ha)



2.3. % of Land Value for Determining a Maximum CBC

Financial Analysis

The City's growth forecast used for Markham's 2017 Development Charges Background Study assumed the following average growth per unit type from 2017-2026:

- Singles/Semis: 855
- Townhouses: 718
- Apartments: 1,076

For the purpose of this analysis, it is assumed that Markham will take the 10% CBC charge for all developments. The analysis also assumes that condo buildings built during this time will be of the 25-30 storey variety

2.3. % of Land Value for Determining a Maximum CBC

Financial Analysis:

Annual Impact:

	Singles	Towns	Apt/Condo Units
Average volume per year	855	718	1076
Additional DC Collections per Unit	\$1,583	\$1,211	\$823
Elimination of Section 37 per Unit	(\$1,400)	(\$1,100)	(\$2,600)
Change in Parkland/Cash-in-lieu Per Unit	\$0	(13,333)	(\$80,857)
Total Change in Revenue/Unit	\$183	(\$13,223)	(\$82,635)
Total Annual Impact per building type	\$156,495	(\$9,493,803)	(\$88,914,754)
Total Annual Impact			(\$98,252,062)

This represents an approx. 65% decrease in forecasted revenue for parkland acquisition

2.3. % of Land Value for Determining a Maximum CBC

The preferred approach is that the Province revert to the existing provisions in the *Planning Act*, but this is highly unlikely.

CBC methodology should allow for residents in high density areas to have a reasonable amount of parkland within walking distance, at a similar level to low density developments under the CBC regime (approx. 0.8 hectares per 1,000 residents).

A CBC cap of 50% would improve the City's ability to provide parkland at a rate of 0.8ha per 1000 residents, as well as provide cost certainty to developers.

Recommendation

That the Province implement an escalating CBC collection limit tied to density to allow municipalities to be able to provide 0.8 hectares of parkland per 1,000 residents, and that the maximum limit of the Community Benefits Charge eligible to be collected be set at 50% of land value.

2.3. % of Land Value for Determining a Maximum CBC

Examples:

	14-story Condo	40-story Condo
Units per Ha	350	1,000
Land Value/Ha	\$25,000,000	\$60,000,000
1) Current CiL (@ 1 Ha per 500 units)	\$17,500,000	\$120,000,000
2) CBC (10% cap)	\$2,500,000	\$6,000,000
3) CBC (to achieve 0.8 Ha of parkland per 1,000 people)	\$14,000,000 (CBC @ 56%)	\$96,000,000 (CBC @ 160%)
4) CBC (to achieve 0.8 Ha of parkland per 1,000 people) – capped at 50%	\$12,500,000	\$30,000,000

This would reduce the estimated negative annual impact to Markham from \$98 million to \$72 million.

2.4. Timeline to Transition to the New CBC Regime

It is proposed that the specified date for municipalities to transition to the CBC regime would be one year after the date the proposed CBC regulation comes into effect.

Constraints:

- 1) few number of consultants that can assist in this type of work; and
- 2) COVID-19 emergency (suspension of various commercial, legal and government services).

Recommendation

That given the ongoing emergency situation and scale of work required to implement a CBC regime, the timeline for implementation of a CBC by-law be the later of

- (1) two (2) years from the date the community benefits comes into effect or,**
- (2) the expiration of the current development charges by-laws.**

2.5. CBC By-Law Notice

A municipality would be required to provide notice to the public when it passes a community benefits charge by-law. To implement the by-law appeal mechanism, requirements associated with how to provide public notice would be prescribed in regulation.

Proposed consultation process is similar to DC Background Study process.

Recommendation

That the proposal for a public notice to be provided prior to the enactment of a community benefits by-law be supported.

2.6. Minimum Interest Rate for CBC Refunds

It is proposed that the minimum interest rate a municipality would be required to pay on amounts refunded after successful appeals would be the Bank of Canada interest rate on the date the by-law comes into force.

This proposal aligns with the prescribed minimum interest rate for refunds of development charges after successful appeals under the *Development Charges Act, 1997*.

Recommendation

That the City supports the application of interest on refunds in the event of a successful appeal to a community benefits by-law.

2.7. Building Code Applicable Law

It is proposed that the Building Code be amended to add the community benefits charge authority to the list of items under Division A - Article 1.4.1.3 Definition of Applicable Law.

This ensures that construction cannot proceed until the CBC payment is made, and that the funds may be utilized as the need for those community services arises.

Recommendation

That the City supports the proposal to add the community benefits charge authority to the applicable law list under the Building Code.

3. Recommendations

- 1) That the report entitled, “*City of Markham Comments on Bill 108 Proposed Regulatory Matters – Community Benefits Authority, Development Charges Act and Building Code Act*”, dated April 20, 2020, be received;
- 2) That this report, including the recommendations from the City of Markham on Bill 108 Proposed Regulatory Matters, be forwarded to the Minister of Municipal Affairs and Housing and to the Regional Municipality of York;

3. Recommendations

3) That the City of Markham supports the following:

- a) The proposal for the regulation under the *Development Charges Act, 1997*;
- b) The community benefits proposed to be included within the community benefits charge regulation;
- c) The proposal for a public notice to be provided prior to the enactment of a community benefits by-law;
- d) The proposed application of an interest rate on refunds in the event of a successful appeal to a community benefits by-law; and,
- e) The proposal to add the community benefits charge authority to the applicable law list under the Building Code.

3. Recommendations

- 4) That the City of Markham request that the Province:
 - a) Provide municipalities with wide latitude to determine what community facilities can be supported through community benefits charges;
 - b) Amend the Community Benefits Charge legislation to allow a municipality to require the conveyance of parkland in lieu of payment of a community benefits charge;
 - c) Implement an escalating Community Benefits Charge collection limit tied to density to allow municipalities to be able to provide a minimum of 0.8 hectares of parkland per 1,000 residents, and that the maximum limit of the Community Benefits Charge eligible to be collected be set at 50% of land the value of the fully developed land; and

3. Recommendations

- 4) That the City of Markham request that the Province:
 - d) Given the ongoing emergency situation and scale of work required to implement a Community Benefits Charge regime, increase the timeline for implementation of a Community Benefits Charge by-law be the later of, (1) two years from the date the community benefits regulation comes into effect or, (2) the expiration of the current Development Charge by-laws;
 - e) Allow municipalities to fully recover the capital cost of Development Charges without the requirement of preparing a background study until the development charge by-law is next updated; and further
 - f) Allow municipalities to utilize the community benefits charge by-law and the parkland dedication provisions of the Planning Act for specific types of developments, i.e. allow the municipality to specify the types of development that would be subject to a CBC vs. parkland dedication provisions.
- 5) That Staff be authorized and directed to do all things necessary to give effect to this resolution.