



July 20, 2022

VIA ELECTRONIC MAIL – councilmeeting@toronto.ca

Council Secretariat
12th Floor, West Tower City Hall
100 Queen Street West
Toronto, ON
M5H 2N2

Attention: Marilyn Toft

Your Worship Mayor John Tory and Members of Council:

**Re: Toronto Growth Funding Tools 2022
Proposed Community Benefits Charge
EX 34.3**

We are solicitors for Greenland Group (Canada). It is both the owner of development sites in the City of Toronto, as well as having an interest in development sites throughout the City.

We are writing to you today with respect to the proposed Community Benefits Charge (the "CBC").

Our client and its consultants have been monitoring and participating in the City's 'growth funding tool review over the last year (plus) and wish to provide the following comments.

While we understand the City's need to adopt the CBC, our client has concerns with some of the proposed provisions. The majority of these comments relate to implementation measures that, if adopted, could enhance the operation of the by-law and would, in our view, avoid misinterpretations and disputes on an ongoing basis as these policies are implemented in the coming months and years.

In this regard, below you will find some detailed comments and proposals with respect to the proposed by-law:

CBC

As you are aware, the proposed CBC is applied as a charge of 4% against the value of the lands as of the day before the first building permit is issued. While this basic formula is set out in the *Planning Act* and its regulations, the Province has left it for the implementing municipal by-laws to fill out the details of that calculation. In particular, what are the "lands" and how are you to calculate "value"?

In many developments, there will be relatively little confusion as to how this calculation is to be done. A single-phase pure residential condominium development on an empty lot will have little issue in determining what the "lands" are with respect to that development and their "valuation" will be done based on straight forward market principles.

We are pleased to see that the City has already built off this base case scenario, first in its initial draft and then further in the late June updated proposal. In this regard, the City's provisions to specifically take into account "phased" developments and recognize that the CBC should not be charged on existing development on a lot are big steps in the right direction. However, there remains a few other scenarios that have not yet been addressed by the draft CBC and, if not addressed prior to its final adoption, could cause issues with the CBC implementation.

Mixed Use Building Disincentive

In particular, the draft CBC, as currently drafted, has a disincentive for mixed use development projects. As the City is aware, the CBC is only charged on residential developments of five stories or more that include at least 10 residential units. In the event of a pure non-residential building, the CBC is quite clear that it does not apply. However, while the proposed draft CBC would exclude the value of existing non-residential GFA from the calculation of "value", it includes no such exclusion for new non-residential GFA.

The net effect of this is that any non-residential area in a mixed use building with 5 stories or more and at least 10 residential units, would, in effect, be indirectly charged the CBC if that non-residential area is included in the calculation of "value". Such a result would effectively punish otherwise desirable mixed-use developments, making them financially disadvantaged against single use developments, clearly not the intended outcome.

Additional Exemptions and Transition Provisions

The June revisions to the CBC included new provisions relating to potential exemptions to the CBC that are, again, an improvement over the initial draft. We believe, however, that to ensure the smooth operation of the CBC, and fairness in its application, the final by-law would benefit from some additional transition/exemption provisions.

A second matter would be a detailed transition provision to address transition between developments that have already been approved and those that are approved in the post CBC environment. The community benefits charge provision of the *Planning Act* are relatively light in terms of transitional matters, noting that developments with a City adopted zoning by-law that includes a section 37 provision continue under the previous s. 37 regime, but failing to address many of the details as to how this will be done. What, for example, happens in the event of a minor variance or a zoning by-law amendment to the previously approved zoning? Is it clear that the previous s. 37 regime will continue to apply to developments where an entity other than City Council adopted the zoning by-law with a s. 37 provision? While these are all matters where the answers are implied by the provisions of the *Planning Act*, the inclusion of a detailed transition provision would address these matters in a clear and consistent way between development proposals and address the gaps in the Provincial legislation, similar to the approach the City took with Inclusionary Zoning.

Rental and Affordable Housing

Finally, we believe that the CBC would benefit by adding clarity to the calculation of the CBC that the "value" of the lands should take into account the type of housing that is proposed: for example, the extent at which rental or affordable housing units are being provided.

As part of the background studies supporting the City's adoption of its Inclusionary Zoning By-law along with its new definition of "affordable" it was recognized by the City that the way in which more affordable housing units would be achieved was not to be through an increase in the price of new market units, but rather through a reduction in land values. This should be reflected in the CBC by the inclusion of a policy

directing that the determination of "value" for sites with inclusionary zoning units need to account for the reduction in land value associated with the same. Similarly, where a building is proposed to be developed as a purpose built rental building, this impacts the actual value of the lands. As such, the same should be accounted for in the CBC calculation of value.

Conclusion

Overall, we believe that if the City made the amendments set out above, the proposed by-law would be greatly enhanced.

We thank you for considering these submissions and would appreciate an opportunity to meet with the City to further discuss the same.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Andrew Jeanrie', with a long horizontal flourish extending to the right.

BENNETT JONES LLP

Per:

Andrew Jeanrie

cc: Client

ALJ/cmt