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VIA ELECTRONIC MAIL – exc@toronto.ca

Julie Amoroso, Secretariat Contact
Executive Committee
City of Toronto
100 Queen Street West
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Attention: Members of the Executive Committee

Dear Sirs / Mesdames:

**Re: Toronto Growth Funding Tools 2022
Proposed Parkland Contribution and Community Benefits Charge
EX 34.2 and EX 34.3**

We are solicitors for Pearl Group Growth Fund LP, the owner of a number of development sites in the City of Toronto.

We are writing to you today with respect to two of the three growth funding tools currently under consideration by the City, being the proposed Community Benefits Charge (the "CBC") and the City's proposed update to the alternative parkland by-law (the "**Parkland By-law**").

While we understand the City's need to adopt the CBC and the Parkland By-law, we have concerns with some of the proposed provisions. The majority of these comments relate to implementation measures that, if adopted, could enhance the operation of both by-laws 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 each of the proposed by-laws.

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.

Parkland By-law

As it relates to the proposed Parkland By-law, we appreciate that the City has decided to, in effect, adopt an interim by-law that will continue the current regime, with the intent of returning to a more extensive overhaul in 2023. Recognizing this, below you will find some suggested revisions to the proposed Parkland By-law that we believe will assist in its effective implementation:

1. Determination of the Site: One aspect of the Parkland By-law that would benefit from further policy direction is the determination of what is the "site" for the purpose of calculating the parkland contribution. Having clarity in this is important as alternative parkland rates are growth related tools, not tools intended to address parkland for existing residents. For example, the proposed by-law does not detail how to address lots with an existing building on it or lands that are not currently the subject of a development proposal. As with the CBC, many sites have legal lots that include not only the excess property currently subject to a development proposal, but also a significant amount of land that forms part of the existing development on that site. We understand that it is not the intent of a growth funding tool that the parkland contributions be calculated against, for example, an existing apartment complex, but rather that the parkland relates to the development proposal before the City.

As such, we believe that the Parkland By-law would benefit from a definition that would exclude the lands of an existing building, or lands that are not proposed for redevelopment, from the "site". This could be done by the addition of a definition of "Site" to the Parkland By-law, similar to the following:

"Site –

The total net area of a lot or parcel of land that is subject to development."

2. Phased Development Applications: As the City is aware, on most larger developments the City currently looks at the "site" as one larger site (for example, while a 5ha site would be developed in many phases, the parkland contribution rate of each would be triggered by the overall site size). This approach of considering a single development as one property should be integrated into the Parkland By-law such that in the event the first building in a phased developed qualifies to a particular parkland regime, then the same parkland regime should apply to the remainder of the site even if the parkland requirements are otherwise amended later.
3. Existing Parkland Agreements: On a similar note, as the City is aware, there are many existing agreements with the City that relate to the contribution of parkland and confirm that the amount of parkland being contributed satisfies the total parkland contribution required for a given development. This is most commonly secured through s. 37 Agreements. Currently, the Parkland By-law does not specifically address these situations and clarity here would be to everyone's benefit.
4. Existing Residential Units: The Parkland By-law should be amended in a manner similar to the CBC – in the event that there are existing residential units on a property, or being replaced as part of a development application, then parkland should not be required with respect to these units. This

is most often an issue with development applications to add units to an existing apartment building – while it is recognized that there would be a parkland contribution for the new units, the existing units are not new growth and should not be considered in the parkland calculations or the land value in the event of cash-in-lieu payments.

5. PMTSA's: We would suggest that the City consider introducing alternative maximum parkland contributions for sites that are in specific areas. For example, sites near major transit station areas could, similar to the treatment given to Provincially designated Transit Oriented Communities, be treated differently depending on the transit station nearby. We suggest that the City should consider having major transit station areas, or certainly any protected major transit station areas, subject to the same alternative parkland maximums as the Transit Oriented Communities. Such a policy is not only fair, but would account for the already significant public benefits being made by these properties as a result of inclusionary zoning.
6. Deductions from Net Site: The calculation of "net site" is consistent with the City's longstanding calculations that historically excluded roads and environmental lands. However, in recent years conveying lands for public infrastructure similar to roads have become increasingly common, such as transit reserves, and these lands should also be deducted, along with any other lands that are being conveyed for public purposes.
7. Flexibility in Encumbrances: In a City as complex as Toronto, public lands should be used for maximum public benefits. Parkland, for example, should, in the right circumstances, be available for other public uses as well (where such uses do not interfere with the parkland's intended use). For example, the use of parkland to also include certain public servicing infrastructure above or below grade. The desirability of this scenario has already been recognized in the Province of Ontario's Transit Oriented Communities legislation and we respectively suggest that the City's Parkland By-law follow suit.
8. Conveyance or Cash-in-Lieu: As you are aware, the determination of whether lands should be conveyed or payment of cash-in-lieu is one that primarily resides with the City. In this regard, Toronto has been a reasonable partner to the development industry, pushing for parkland contributions where appropriate and accepting cash-in-lieu in other circumstances, following the actual parkland locations and sizes identified through the development approval process. To provide certainty to landowner's, we suggest that the City insert a provision formalizing this by recognizing that on sites which have a site specific development approval, the City will only seek parkland dedications that are consistent with those approvals.
9. Costs: One final minor comment, there are certain sections of the Parkland By-law that purport to impose cost requirements on applicants. One such provision is 415.29, which states that the applicant shall pay the City's appraisal costs. It is clear that this cannot be a blank check to appraisers to spend whatever they want. Such provisions should be clear that any costs must be reasonable.

Conclusion

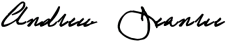
Overall, we believe that if the City made the amendments set out above, the proposed by-laws would be greatly enhanced.

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

Yours truly,

BENNETT JONES LLP

Per:

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