Review of the Development Charges System in Ontario

Submission to the Provincial Government on the Development Charges System Consultation

Prepared by the:
Ontario Homes Builders' Association, and the
Building Industry & Land Development Association

In conjunction with the other 30 OHBA Local Associations:

Bluewater
Brantford
Chatham-Kent
Greater Dufferin
Durham Region
Grey-Bruce
Guelph & District
Haldimand-Norfolk
Haliburton County
Hamilton-Halton
Kingston-Frontenac
Lanark-Leeds
London
Niagara
North Bay & District
Greater Ottawa
Oxford County
Peterborough & the Kawarthas
Quinte
Renfrew
Sarnia-Lambton
Saugeen County
Seaway Valley
Simcoe County
St. Thomas-Elgin
Stratford & Area
Sudbury & District
Thunder Bay
Waterloo Region
Greater Windsor

Submitted to: **Honourable Linda Jeffrey**
Minister of Municipal Affairs and Housing
January 2014

About OHBA

The Ontario Home Builders' Association (OHBA) is the voice of the new housing and professional renovation and land development industry in Ontario. OHBA represents over 4,000 member companies, organized through a network of 31 local associations across the province. Our membership is made up of all disciplines involved in land development and residential construction including: builders, renovators, trade contractors, manufacturers, consultants and suppliers. The residential construction industry employed over 322,000 people and contributed over $43 billion to the province's economy in 2012.

OHBA is committed to improving new housing affordability and choice for Ontario's new home purchasers and renovation consumers by positively impacting provincial legislation, regulation and policy that affect the industry. Our comprehensive examination of issues and recommendations are guided by the recognition that choice and affordability must be balanced with broader social, economic and environmental issues.

OHBA members are critical partners to the Provincial Government and municipalities in the creation of complete communities and transit-oriented development that will support the implementation of the Provincial Policy Statement and other Provincial Plans.

About BILD

With more than 1,400 members, the Building Industry and Land Development Association, one of OHBA's largest local associations, is the voice of the land development, home building and professional renovation industry in the Greater Toronto Area. BILD represents the residential, non-residential, retail and mixed-use sectors, and many of the recommendations in this report reflect comments and input provided by these members.

We are committed to improving new housing affordability and choice for Ontario's new home purchasers and renovation consumers by positively impacting provincial legislation, regulation and policy that affect the industry. Our comprehensive examination of issues and recommendations are guided by the recognition that choice and affordability must be balanced with broader social, economic and environmental issues.

Our members are critical partners to the Provincial Government and municipalities in the creation of complete communities and transit-oriented development that will support the implementation of the Provincial Policy Statement and other Provincial Plans. Our members live, work and play in the municipalities that make up their communities, and our comments should be taken in balance with the fact that we not only do business in the cities, towns and villages in Ontario, we also live and raise our families there.

Acknowledgements

We would like to take this opportunity to thank the numerous members who shared their extensive knowledge and expertise, and submitted invaluable comments to assist in the preparation of this report.

Member Consultation

In an effort to prepare a comprehensive response to the Development Charges System in Ontario, the Ontario Home Builders' Association solicited the feedback of its local Associations. Several meetings took place over the course of the consultation period to obtain the feedback that is consolidated in this document, including:

November 8th – BILD Land Council meeting
November 18th – Waterloo Region Home Builders' Association consultation meeting
November 19th – Hamilton Halton Home Builders' Association consultation meeting
November 29th – London Home Builders' Association consultation meeting
December 9th – Greater Ottawa Home Builders' Association consultation meeting
December 12th – OHBA/BILD Consultation Steering Committee Meetings

In addition to these Association meetings, a number of working group meeting were held with industry representatives on specific policy themes and numerous written submissions were received.

This submission represents the key points where member consensus emerged in the consultation process. Many points were raised by members that were either outside the scope of the government review or represent further more detailed points.

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SUMMARY OF ISSUES

The Province has implemented: a *Greenbelt Protection Plan*, the *Growth Plan for the Greater Golden Horseshoe*, the *Northern Growth Plan*, a new *Endangered Species Act*, *Clean Water Act*, *Lake Simcoe Protection Act*, overhauled the *Provincial Policy Statement* in 2005 with the next edition anticipated in 2014, created Metrolinx and established a *Regional Transportation Plan* in the GTHA as well as implementing significant changes to the *Planning Act* and OMB appeals process through the *Strong Communities Act* and *Planning and Conservation Land Statute Amendment Act*. The cumulative impacts of these changes are significant and the new communities built in Ontario today are very different from those built a decade ago.

The review of the land use planning and appeals system as well as the development charges system provides an opportunity to consider streamlining improvements and ensure that municipalities are implementing provincial policy, while enhancing accountability and transparency. We believe that our recommendations will improve the financial tools used in the land use planning process. This submission will recommend a number of legislative and regulatory changes to achieve more predictability, transparency and accountability and most importantly, better outcomes for new neighbours – both new home owners and new businesses – and communities across Ontario.

This submission responds to the part of the process launched by the provincial government reviewing: The *Development Charges Act,* Section 37 of the *Planning Act,* Sections 42 and 51.1 of the *Planning Act*, and non-voluntary payments not legislated under the tools otherwise noted.

The purpose of the review is to investigate these tools to ensure that government legislation is up to date and is responsive to the provincial priorities around complete communities and the provincial themes of affordability, economic growth, and transparency and accountability. Our industry continues to develop communities that support the shift in government policies and development goals in the last decade to promote complete communities through growth planning principles, intensification and mixed-use development near or in centres and corridors.

As part of a complete community, we believe that the Province should recognize that there are great opportunities to enhance the use permissions to include, among other uses, mixed-use (office, retail, residential, etc.) to achieve mutual development objectives. Also, all elements of growth, such as assessment and water and sewer rate increases must be part of a financial toolkit to build the infrastructure needed for complete communities. Municipalities must be committed to build the infrastructure required to meet Provincial growth forecasts.

The global nature of investment is being recognized by the province as it also seeks to create a better business environment for international investment. For instance, the Province has demonstrated leadership in attempting to identify investment ready land as part of the 'Ontario Certified Site Program', launched by the Ministry of Economic Development, Trade and Employment. However, there seems to be a lack of recognition that it is ultimately the municipality that determines local investment flows as development charges, Section 37, parkland dedication, permits and other local approvals, fees and taxes are the main cost drivers for site investment. Therefore, while the province can identify "investment ready sites", without provincial involvement it has a very limited capacity to actually affect site-specific investment outcomes.

SUMMARY OF INDUSTRY RECOMMENDATIONS

Highlights of the industry recommendations are found in the following few pages. The complete set, and related explanations are found in the body of the submission.

New Neighbours Tax – How Much do they pay?

- The provincial government should change the name of the ***Development Charges Act*** to the ***New Neighbour Tax Act*** in order to provide clarity to Ontarians about the purpose, intent, and cumulative effect that these charges have on families being able to afford a new home or businesses being able to invest in new jobs in Ontario.

Development Charges – Affordability, Transparency & Accountability for our New Neighbours

- The new neighbour – new homeowner and new employer - should receive a direct accounting from the development charge reserve fund as to what infrastructure their payments contributed to, along with the construction schedules and estimated project completion for all projects that receive development charge funds.
- A public meeting should be required, by Regulation, to review the development charge reserves and project lists in a development charges background study so that residents are fully aware of the contribution of infrastructure by new developments in their community.
- In the event that a listed project does not get included in the capital budget for the year anticipated in the background study, the development charge shall be required to be amended in the manner set out in the Act. The item should be eliminated, and the funds should be transferred to another current development charge project within the capital budget with similar timing.
- The process should be amended to require mandatory and regular consultation with stakeholders, where stakeholders shall have access to all detailed input background information.
- No provincial infrastructure, including hospitals, shall be eligible for inclusion in the charge and the Act should stipulate this exclusion specifically.
- A Best Practices Manual related to the development charges by-law review process should be developed by the Province with consensus input from the consultants and stakeholders who are employed by the municipalities and the industry.
- Provincial mediation services and/or the services of the Office of the Provincial Development Facilitator should be available to resolve disputes arising in the development charge by-law review process.
- Reserve funds should track each project on an annual basis recording all funds received and spent, and any deviations including additional costs anticipated and variances in timing. In the event that there is a deviation in excess of 20 per cent, the project must be the subject of a public meeting and report to Council, with a potential amendment to the corresponding development charge by-law.
- The Regulations should specify that any requirements imposed upon growth-related infrastructure by the Ministry of the Environment or equivalent, or by a Conservation Authority shall be borne equally and pro rata by all taxpayers. This would ensure a proper benefit to existing attribution.

- The Regulations should provide that contingencies and engineering fees are limited to those expended in previous similar tendered contracts, and should set standards for service levels for soft services. This would ensure accountability.
- Where borrowing costs are included in the development charge background study, these costs must be used for municipal borrowing for development charge eligible projects.

Co-Mingling of Service Categories & Inclusion of Non-DC eligible items in Municipal DC by-laws

- Regulations should be clarified to confirm that service categories should not be combined for the purposes of the development charge calculation. When this occurs, it results in a flawed and inflated rate.
- Municipalities must uphold the legislative intent of the *Development Charges Act*, and refrain from including ineligible and items that are not permitted.

Development Charges - Social Housing & Asset Replacement (Rolling Stock)

- The Province should consider whether it is appropriate to include social housing and police vehicles in the development charge. If it is to be included, all details regarding the nature and location of the proposed projects must be included in the development charge background study in order to provide confidence that the Region intends to ensure that the projects and/or facilities will be provided as already required by Regulation.
- Development charge revenue must not subsidize asset replacement and the policy basis around the asset replacement requirements for a municipality must be better defined.

Development Charges Review Timelines

- The background study review process should be amended to require a minimum of six months for public consultation, including monthly consultation with stakeholders where draft documents are made available to the public for comment. This should be over and above the prescribed statutory public meeting requirements for the general public.
- The *Development Charges Act* should be amended to provide that the reserve fund accounting section require that a minimum of one annual meeting be held with stakeholders to review the debits and credits for each item in each reserve fund for the previous year.
- Five year by-law review periods should be maintained and reinforced at five years, and no new by-laws outside this framework should be introduced.

Development Charges - Transition, Grand-fathering & Phase-In Provisions

- Grand-fathering provisions should apply for complete applications as defined by the *Planning Act* that were submitted prior to any new by-law being enacted.
- Transition, whether it be from one generation of by-law to the next, or as a result of changes to legislation that may arise in the context of this discussion, should be regulated and should not be treated as a negotiation tool.
- Where there are variances in excess of 20 percent of a development charges budget, or where project timing, parameters or viability change, the impact of increases in transition between by-laws should be minimized. Where such increase exceeds 20 percent, it should be capped as it would not have received

the appropriate scrutiny during the by-law period. Where transition is due to legislative change, the by-law should be extended as necessary to allow all by-laws to be brought up to date within 1.5 years.

- Mandatory phasing of a development charge should also be instituted. Where there is a percentage of development charge increase of 20 percent or more, Councils should be required to approve a phasing of the new development charges by-law.

Development Charges - Categories & Unit Types

- It is recommended that a municipal requirement be mandated for a consistent set of categories within the residential and non-residential sectors where the development charges would apply, with the objective of supporting an equitable contribution from each new neighbour.
- Many members have expressed concern for the methodology of using unit versus another mechanism such as square footage to determine development charges. We recommend that this provincial review is an opportune time to re-evaluate the metrics used for calculating development charges.

The 10% Co-Payment for Soft Services & The 10-year Average Historic Level of Service

- The industry would be prepared to explore other options that would ensure that there is transparency and accountability in establishing the inputs to growth related infrastructure for the full life cycle of the asset, with the caveat of a specific framework being acknowledged and applied, as elaborated upon within the body of this submission.

OMB & Divisional Court Decisions: Gross vs. Net DC Methodology for Soft Services

- Municipalities should not be permitted to impose a development charge which has been calculated using gross population increases, or any related alternative-hybrid methodology.
- The Regulations should be amended to prescribe that net population increases should be used to calculate "soft service" development charges.

Development Charges as a Funding Source for Transit

- For municipalities that are just starting to create light rapid transit and other higher-order transit projects, it is recommended that they need to demonstrate that they also have the capacity to actually fund these items from their property tax base on a continuous basis.
- Transit should not be included in a local development charge unless funded in equal pro-rated shares by existing and new residents and businesses as a benefit to the existing population.
- Transit options should be subject to provincial scrutiny in the same manner as was done with infrastructure grants to ensure that they choice of transit capital best matches the benefit and can be cost justified.

Development Charge Matters Specific to the Employment & Non-Residential Sectors

- We recommends that for employment and non-residential sectors, municipalities should be providing services based on the type of growth that is predicted and not based on historical growth patterns which provides no substantive evidence for the level of service requires for the future.

Mixed Use Development Rate

- Special consideration should be paid to mixed-use development projects that are in keeping with the provincial, regional and municipal policies to promote intensification and growth plan principles. The province should support mixed-use developments by encouraging municipalities to adopt a reduced development charge rate offset by the benefits of a live, work, shop and play community.

Non-Voluntary Payments

- The *Development Charges Act* shall state that it, along with provisions found in the *Planning Act* and the *Municipal Act*, represents a complete code for the funding of growth related infrastructure and any other payment outside of this code shall be deemed illegal with the right to go to court by application to determine the legitimacy of the payment, where desired.
- The *Planning Act* and *Places to Grow Act* should be amended to provide that servicing allocation cannot be withheld where the proper *Planning Act* approvals are in place. Section 41 and 52 of the *Planning Act* should include a section that clearly states that conditions of approval should not relate to service allocation. The appropriate legislation should also be amended to include a provision to reflect that if there is not an approved development charge in place, infrastructure delivery and servicing allocation cannot be withheld.
- In the case of a willing payor, the *Development Charges Act* should be amended to say specifically that any funds provided outside of the Act are to be recorded as debt, regardless of whether there is an explicit guarantee of repayment by the municipality.

Section 37 (Density Bonusing) Agreements

- We recommend that Section 37 not apply to development applications that are in conformity with the Provincial Growth Plan.
- In the North York Centre Secondary Plan, there is an established protocol applied to development applications that are seeking additional densities. The benefitting and positive principles of the North York Centre Secondary Plan should be examined, and be the basis for establishing a consistent and predictable application for Section 37 on new developments.
- Municipalities should only be allowed to access Section 37 when a municipality has established a development permit system or has updated their zoning to be consistent with the requirements of *The Planning and Conservation Land Statue Law Amendment Act (Bill 51)* which requires zoning to be updated within 3 years of an Official Plan update.
- We recommend that when there is no development permit system in place, or the municipality has not brought its zoning into conformity with either an Official Plan that is in conformity with the Growth Plan, or Provincial Policy Statement (whichever applies) then bonusing only applies where height and density exceed the Official Plan or what could be reasonably contemplated by the Growth Plan or Provincial Policy Statement.
- We recommend that Section 37 contributions be invested by a specific date and that the community be provided with an assurance that the funds collected will be spent on community improvement projects. If the projects do not proceed, the funds should be returned to the applicant. To support this recommendation of a specific date and use of the Section 37 contribution, funding should be posted by way of a letter of credit. This will incent the municipality to complete the community improvement within its proper use and time frame, reflecting its true intent.

- Section 37 funds should be spent in areas of most need and in close proximity to the project.
- Municipalities should be required to create community needs assessments, based on public interests, for projects that would benefit from Section 37 funding. Section 37 funding should not be collected in perpetuity for unassigned projects. As part of a needs assessment, geographical proximity of the proposed community improvements must be taken into account to ensure that those that are paying for the new improvements have the appropriate access. A definition of "close proximity" should be provided to ensure that any community improvements are in fact in close proximity to the development site.
- A reasonable Section 37 negotiation package should be made at a consultation meeting, well in advance of a final staff report being finalized. This will ensure that no surprise additional costs are absorbed by the new neighbours or are incurred very late in the development approval process without a clear rationale. Last minute negotiations should not be permitted. Also, elements related to Section 37 agreements must be identified in the staff reports related to the project-specific zoning by-laws.
- Yearly reporting by the municipality, and a ceiling or cap on any valuation of the Section 37 benefits is recommended.
- In a situation where the height or density of the building has been reduced from a predetermined Section37 negotiation, a reduction in amount of Section 37 monies should apply.

Parkland Dedication

- The *Planning Act* should be amended to establish a new maximum limit for the amount of cash-in-lieu of parkland that could be taken by the municipality. We recommend that municipalities cap their parkland dedication fees at 5 to 10 percent of the value of the development site or the site's land area as was done in the City of Toronto.
- Alternative standards that are being used by municipalities should be capped to harmonize with the 5 percent land area provisions in keeping with the original intent of this *Planning Act* provision.
- Parkland dedication by-laws, similar to many other municipal by-laws, must be appealable.
- The Province should consider additional policy guidance for parkland dedication provisions which look at requiring that the rate be based on persons per unit and not units. Smaller apartments should not be treated the same as larger apartments, townhouses or semi-detached dwellings.
- In accordance with Provincial Growth Plan initiatives, as the density of sites increase, rates should decrease in order to incent greater levels of intensification.
- Funds from municipal parkland cash-in-lieu accounts should only be used for parkland needs which arise from growth. In the interest of transparency and accountability, any funds previously misspent from cash-in-lieu accounts must be repaid.
- The municipality should be required to prepare a community needs assessment for parkland. This assessment should include an evaluation of the benefit to the existing population by reviewing the catchment area for any new parks. In turn, a reduced proportional share of the costs associated to the new park should be applied to the new development. This will help to provide a more appropriate balance between the needs and desires of existing residents. Outlining a strategy for obtaining parkland early in the development of a community will also ensure that the municipality is receiving the best value for its parkland acquisitions. Parkland dedication should be restricted to the parkland needs generated from growth and should not subsidize the parkland needs of existing residents.

- Other mechanisms that could be considered include sliding scales dependent on a needs analysis for a particular community and/or neighbourhood.
- The formula for the calculation of land value for parkland should be based on no more than the average price of the actual cost of acquisition of land to provide for parks in the municipality (i.e. not land zoned for high-density, but rather lands where the majority of parks are provided, being in traditional ground related single family developments). The City of Brampton has a high rise rate that uses a reduced percentage of the value of the land which is also worthy of strong consideration across municipalities.
- We recommend that the Minister of Infrastructure exercise the ability to amend the Growth Plan to establish a mandatory approach to parkland dedication within intensification areas.
- Off-site dedication should be used to satisfy parkland requirements. Such an approach would allow for parkland to be located nearby, but outside of, the nodes and corridors within which intensification is to be focused, and would accordingly contribute to greater intensification in the locations that would most directly support transit and other intensification objectives.
- Strata Parks should be used to satisfy parkland dedication requirements. This would support efficient land use patterns and be in keeping with the provincial Growth Plan objectives for intensification.
- Greater flexibility in the definition of acceptable parkland dedication is needed. In an urban context, greater flexibility is needed to allow for a range of park types and locations. Lands which may be accepted as parkland should include, with any appropriate discounts, lands above private underground parking facilities, woodlots, trails, floodplains and so on that can be used to fulfill public parkland functions. Additionally, both "active" and "passive" parkland should be permitted to meet the needs of municipal parkland dedication requirements.
- Consideration for the provision of private recreational facilities in the calculation of required parkland or cash-in-lieu is necessary. Where developments provide facilities, such as open spaces, exercise equipment, easements over open space in condominiums land for public through fare, etc., a discount on parkland requirements or levies should be provided or a tax rebate should be provided back to the new homeowner representing the capital/operating savings to the municipality.
- Sustainable development features should be given credit towards parkland contributions.
- The requirement in Section 42(6.4) of the *Planning Act* is that cash-in-lieu be calculated as of the day before a building permit is issued needs to be amended. At this point, a project has received all of its development approvals, which means that cash-in-lieu is calculated when the value of land is at its highest, ultimately having the largest financial impact on the new neighbour.
- The municipality should be required to report annually to the new homeowners and new employers what their parkland funds have provided. These reports should illustrate where parkland funds came from (applicant and geography) and how the dollars were spent or pooled into other accounts including how parkland was delivered by a municipality. This direct accountability is necessary for both the new neighbours and the established community to facilitate a great understanding of the value and benefit new developments bring to the entire municipality and in creating complete communities.
- The parkland formula should be amended to reflect the necessary green space that developers must set aside. Ultimately, the land efficiency of an application will reflect in greater affordability for the

new homeowner and for new employment centres as additional services like transit and community amenities can be financed and supported in the long-term.

- The Province should assist in any and all legal disputes where exorbitant parkland fees work against goals for Provincial growth and the legislated intent of planning fees in general.
- We encourage the Province to continue to actively promote the Ministry of Municipal Affairs and Housing own Building Blocks for Sustainable Planning which notes that municipalities can authorize a reduction in the amount of cash-in-lieu of parkland payments if sustainability features are included in redevelopment proposals.

Additional Issues & Recommendations

- Municipalities, by legislation, must be required to borrow to construct critical infrastructure in keeping with the Provincial Forecasts found in Table 3 of Places to Grow. Servicing of future development is a municipal responsibility.
- The province should recognize the enormous borrowing capacity within municipalities and while they continue to ask the province for more funds, their ability to carry debt is actually greater than the provincial government according to credit agencies.
- Where borrowing capacity of 25 percent is not being used reasonably to assist with the cost of growth related infrastructure, it serves to undermining the Growth Plan. The *Development Charges Act* and related municipal fees should provide that the obligations to growth under the Growth Plan are mandatory and servicing allocation and other permits cannot be withheld as a result of a municipal decision not to borrow to reasonable capacity within debt limits.
- Municipalities must look to a Full Cost Municipal Revenue Model. It is essential that municipalities articulate that "full revenue" growth contributes to public services. Calculations to properly articulate the concept of "growth pays for growth" must include more than just development charges. A full cost municipal revenue model will more fairly allocate the cost of capital projects and new infrastructure to all that benefit from infrastructure that has a long life cycle. This model should include development charges, assessment increases, user fee rate growth and any grants from senior levels of government which would be taken into account in all calculations.
- A portion of municipal property assessment growth (a minimum of half) has to go towards paying for growing infrastructure and asset replacement.
- In circumstances where municipalities "refuse" to plan for growth, including debt financing to support infrastructure, the borrower should consider withholding transfer payments or declare a Provincial Interest and proceed to approve necessary infrastructure to allow development to proceed.
- The Province should look to create new mechanisms for municipalities to finance infrastructure. While recognizing funding challenges within the federal system, Ontario could provide the legal mechanisms for municipalities to issue debt and finance infrastructure in innovative ways.
- Front-ending Agreement provisions of the *Development Charges Act* should be amended to make them less cumbersome. The Act should specify that municipalities have the jurisdiction to enter into agreements that allow them to reimburse landowners from development charge reserve funds for capital infrastructure provided by, or funded by the landowner, without having to use the current front-ending agreement provisions of the Act.

- Revisions to Section 59 of the *Development Charge Act* are recommended to since the Act does not provide adequate protection for landowners to impose equitable cost sharing among all benefitting landowners.
- It is recommended that the higher construction standards imposed by agencies and senior levels of government be recognized in the development charges and benefit to existing calculations.
- Industry members would like to work with the Province, the public and all related agencies to develop an understanding and approach to limit the use of various, more cost-effective delivery of services such as requiring tunnelling only in those instances that are absolutely necessary.
- The *Development Charges Act* should be amended to ensure that new growth only pays for the delivery of the basic service and not all of the additional costs that are a direct result of environmental protection, as this also provides a benefit for the existing residents. Additional costs could come through other funding revenues sources such as the general tax revenue, realty tax and water sewer rates.
- Municipalities should be asked to explore other delivery mechanisms to provide critical infrastructure, such as utility models. There are many successful models used in other parts of the world that could be examined and applied in Ontario.
- The province must update the $400,000 HST threshold and commit to a regular review of HST thresholds on a regular basis to maintain and improve housing affordability.
- The Province of Ontario should not extend new land transfer taxes to any additional municipalities.

(a) NEW NEIGHBOURS TAX – HOW MUCH DO THEY PAY?

We are pleased to provide our comments on this important review of Development Charges in Ontario. As the voice of the land development, new residential housing and professional renovation industry in Ontario, OHBA through our local associations advocate for housing choice and affordability. This consultation is the opportunity for the industry to present to the provincial government the impact of the current growth-related tax regime on housing choice and affordability on Ontario's new neighbours – new homeowners and new employers – who will be living in new sustainable communities across the province.

Ontario continues to operate in a growth environment. The recent 2041 people and employment growth amendment by the Provincial Government confirms that reality. In this growth environment governments at all levels must provide infrastructure and services to support new neighbours, while also renewing and improving infrastructure and services for the existing community. Ontario's quality of life is continues to be an important economic factor in competing for international investment to support economic expansion and secure jobs. Simply put, all levels government need to be mindful of the impact of growth-related tax regime on Ontario's new neighbours as it has an impact on our global economic competitiveness.

We are taking this consultation as an opportunity to educate the provincial government of the industry experience of working through the current provincial growth-related tax regime. As the province has reminded the industry for many years, the province creates the framework and the municipalities implement and determine the final growth-related taxes. This consultation provides an opportunity to connect for the province how the provincial framework through municipal implementation generates costs that our new neighbours ultimately have to pay as part of their new home and new business.

As the OHBA press release stated in August 2013, "By placing the new neighbours at the centre of this discussion in terms of affordability and fairness, we welcome the opportunity to have a detailed discussion on the impact of development charges, parkland dedication fees, section 37 agreements and voluntary charges on housing affordability. "

Across Ontario, new neighbours are paying more than their fair share in growth-related taxes. As taxes and other government charges increase, these are absorbed by the new homeowner and new employer. These new neighbours ultimately carry the cost of all government imposed fees and charges. This is the fundamental reality of this provincial consultation, and by recognizing and acknowledging this reality the focus can and should be on the necessary improvements needed to make all of these growth-related taxes - the new neighbour tax - transparent and accountable to these new neighbours.

New neighbours do their fair share to contribute to municipal, provincial and federal growth related costs. As noted in the Ministry's Development Charges in Ontario Consultation Document, in 2012 alone, development charges contributed $1.3 billion directly toward the construction of growth-related infrastructure like sewers, roads and transit in the GTA through development charges paid to municipalities.[1]

[1]p.1 Development Charges in Ontario Consultation Document, Fall 2013.

We recognize that the purpose of this consultation is to review the *Development Charge Act* and *Planning Act* with respect to its related fees and charges, those being development charges, parkland dedication Cash-In-Lieu (CIL) and Section 37. It is important, however, to note that the beyond these three major branches of fees are a whole host of additional fees and charges that are paid by new neighbours.

For example, the typically development will pay the following in addition to the charges being examined in this submission:

1. Municipal development charges
2. Regional development charges
3. Education development charges
4. GO Transit development charges
5. Potentially – area-specific development charges
6. Planning review fees
7. Building permit fees
8. Engineering and servicing review fees
9. Conservation Authority review fees
10. Peer review costs
11. Hydro/utility fees
12. Property taxes
13. TARION enrolment fee
14. CMHC mortgage insurance
15. HST
16. Land Transfer Tax

It should also be noted that there are several "voluntary payments" that are demanded by municipalities that are in addition to the growth-related taxes listed above. These are discussed below in Section (c).

Additionally, new neighbours will not only pay for existing municipal services through their residential property taxes and user fees, but, by virtue of the manner in which the financial tools currently operate, they will also pay the greatest proportion for all new services that are implemented and for upgraded services that can be enjoyed by all residents. When the provincial government updates environmental and engineering standards for all communities, municipalities often only implement and finance these improvements that are required for the entire community through the Development Charges process, placing an unfair burden on new neighbours to the finance provincially required infrastructure renewal.

To qualify these remarks, the Building Industry and Land Development Association commissioned and released a report looking at the impact of a variety of government charges and fees on the affordability of a new home in the GTA. Please see the BILD Altus Report on Government Imposed Fees and Charges dated July 2013 found in Appendix A of this submission.

The study looked at six municipalities and found that on average, more than one-fifth the cost of a new home is paid to government through a variety of fees and charges such as development charges, parkland fees and taxes.[1]

The issue of housing affordability poses significant challenges for the industry as it does for new homebuyers in the GTA. Since 2005, the average selling price of new low-rise homes across the GTA has increased by 70%, while the average selling price of new high-rise homes has increased by 61%.

In most municipalities, the most significant government charge for new homes are development charges, which comprise of 33% to 52% of the government charges on new homes (in the five municipalities outside of the City of Toronto as per the BILD Altus Report). Since 2004, for the municipalities studied in this report, development charges have increased between 143% and 357%.

In dollars, the average total government charges on a new single-detached home amount to $116,200 – which represents 22.6% of the cost of a new home. The average total government charges on a new high rise home amount to $64,000 – roughly 20% of the cost of a new high rise home.

In a preliminary case study of 3 municipalities in the Province (Brampton, Vaughan and Whitby), prepared by IBI Group in January 2014, the study revealed that from 1999 to 2013 development charges have significantly challenged the affordability of new low density developments. All municipal development charges quoted below reflect both lower and upper tier charges.

Since 1999, the City of Brampton's development charges for a Single Detached Unit (SDU) increased more than 339% from $14,571 to $63,991. This was the third highest component cost increase for Brampton only next to the cost of land and the development application and processing fees. In the City of Vaughan, development charges for a SDU increased more than 245% from $15,960 to $55,068. The Town of Whitby has also seen significant increases (168%), with development charges for SDU's increasing from $13,836 to $37,111 over the period.

Development charges have also increased substantially as a proportion of total building costs in all three of the case studies assessed. In Brampton, development charges comprised 7% of the total costs-to-build in 1999 and increased to 12% by 2013. In Vaughan, development charges comprised 7% of total cost-to-build and increased to 9% in 2013. In Whitby, development charges grew from 7% of total building costs in 1999 to 8% of total building costs in 2013. Factors related to building costs include: land, servicing costs (including the cost of getting development approvals), development application and processing fees, parkland dedication costs, building construction (hard and soft costs), HST, broker commissions, land transfer taxes and development charges.

CMHC's 2009 Report "Government-Imposed Charges on New Housing in Canada" confirmed similar results as it determined that in municipalities like Windsor these cost make up 14.8% of the purchase price, 14.3% in London, 17% in Hamilton and 16.3% in Waterloo.[2] This study can be found in Appendix B.

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[1] Government Charges and Fees on New Homes in the GTA, Altus Group, July 2013

Over the last decade, about 400,000 new homes have been purchased across the GTA – the government revenue generated from these homes is in the tens of billions. With every increase in costs, the industry's ability to re-invest and build complete communities around the GTA and to keep 200,000 plus people employed in Ontario becomes more and more difficult.

As noted, these fees are collected directly from the new neighbour and therefore added to their borrowing costs within the mortgage. The following example provides the impact of development charges increase on mortgage interest: a house with a $500,000 mortgage would pay about $291,800 in interest costs over the life of the mortgage (over and above principal repayment). For every additional $10,000 in mortgage principal (i.e. development charge increase), the interest costs increase by $5,820 over the life of the mortgage (mortgage costs are based on 25-year amortization, 4% interest rate, monthly payments).

It is a commonly held view that when interest rates rise, the ability of the current homeowner to afford their existing obligations become increasingly difficult and could well cause significant adverse economic impacts. The time to correct these rising costs is now in an effort to minimize the impacts that will already occur in a rising interest rate environment.

Recommendation:

- The provincial government should change the name of the ***Development Charges Act*** to the ***New Neighbour Tax Act*** in order to provide clarity to Ontarians about the purpose, intent, and cumulative effect that these charges have on families being able to afford a new home or businesses being able to invest in new jobs in Ontario.

(b) DEVELOPMENT CHARGES

When the *Development Charges Act* was passed in 1997, it attempted to strike a balance between stakeholders. At the time, the Act attempted to fine-tune the overall principle that growth pays for growth as there were issues arising particularly with respect to service level standards and contributions from the tax base.

However, since the passage of the *Development Charges Act*, municipalities have interpreted the Act in ways unanticipated with the earlier amendments and they have found alternative ways to raise revenue for infrastructure that go beyond the scope of the legislated requirements in the Act. Charges have increased significantly over the last generations of development charge by-laws and these increases do not match either tax increases or cost of living increases.

The rise in development charge revenue is often met with barely any upward movement in property taxes by municipalities. In fact, in many cases, property taxes have been declining in certain municipalities when

[2] p.5 Government-imposed Charges on New Housing in Canada (2009). CMHC Research available: http://www.cmhc-schl.gc.ca/odpub/pdf/67163.pdf?fr=1388763809242

adjusted for inflation.[3] We recognize that municipalities have increasing pressures to provide for the costs of infrastructure that were not considered ten or more years ago, such as enhanced provincial environmental standards as well as changing transit and mobility needs and increasing consumer expectations and other funding constraints. However, there needs to be a fair balance in how these costs are allocated, and these increases shouldn't be disproportionately borne by the new neighbour.

(1) Affordability, Transparency & Accountability for Our New Neighbours

We believe that a better balance needs to be struck between the costs assigned to new neighbours and existing home and businesses. Failing to address this imbalance now will have an impact on current and future affordability of homes and employment centres and challenge economic growth. It will also exacerbate current frustrations with a decline in transparency and accountability in some areas of the Province.

As seen in our recommended changes below, the industry attributes the large escalations to the costs included in development charges to many sources. It stems in part from the ever changing variety of ways in which the *Development Charges Act* has been interpreted. This includes, but is not limited to, mechanisms such as excessive soft costs for hard infrastructure (ie. staff time and higher than standard contingencies), excessive historical service standards, disproportionate shares between benefit to existing taxpayers and new neighbours, and absorption of post-period benefit costs.

Municipalities have also found ways to limit their infrastructure-related borrowing obligations using mechanisms that fall outside of the original intent of the *Development Charges Act*. In recent times, the burden of this municipal financial obligation has fallen on new neighbours – both the new homeowners and new employers - to absorb.

There is also an issue with municipalities constructing "gold-plated" services using development charges as the funding source. Developers are being leveraged to pay more than what municipalities are permitted to collect through the Act, often building the unnecessary "Cadillac-type" infrastructure. Similarly, our members have found that some municipalities "pad" the charge with infrastructure projects that never seem to come to fruition.

To address affordability issues as well as matters of transparency and accountability, we suggest the following for consideration:

Recommendations:

- Reserve funds should track each project on an annual basis recording all monies received and spent and any deviations including additional costs anticipated and variances in timing. In the event that

[3]For example, the Average property tax increase for Regional services in Halton has been 0% over the past seven years. Halton 2014 Proposed Budget: http://www.halton.ca/userfiles/Servers/Server_6/File/PDF/Budget2014/2014_Budget_Book_FINAL.pdf

there is a deviation in excess of 20 percent, the project must be the subject of a report to Council and a public meeting with a consequent amendment to the development charge by-law.

- Regulation should require a public meeting to review the development charge reserves and project lists in the development charges background study so that residents are fully aware of the contribution of infrastructure by new development in the community.

- Separate reserve funds must be kept for each category of service. For example, parks improvements and recreational services should be separate. Transit (if applicable), roads and active transportation measures such as cycle paths and walkways should be tracked separately.

- In the event that a listed project does not get included in the capital budget for the year anticipated in the background study, the development charge shall be required to be amended in the manner set out in the *Development Charges Act*. The item should be eliminated, and funds should be transferred to another current development charge project within the capital budget with similar timing.

- The new homeowner and new employer should receive a direct accounting from the reserve fund as to what infrastructure their payments contributed to, along with the construction schedules and estimated project completion for all projects that receive development charge funds.

- The regulations should be amended to require that current usage rates such as water consumption and sewage flows are required inputs. In terms of roads, it should be mandatory that where active transportation modes including transit, cycling, and pedestrian paths are included, that road infrastructure requirements for cars be reduced to reflect the change.

- The process should be amended to require mandatory and regular consultation with stakeholders, and where reductions are substantiated, they too shall be noted.

- The regulations should stipulate that stakeholders shall have access to all background information including modelling and all detailed inputs. Confidentiality agreements will be made available to qualified consultants where necessary prior to disclosure.

- The regulations should stipulate that Master Plans conducted as Phase 1 and Phase 2 Environmental Assessments are not sufficient to use for cost inputs. Comments on the Master Plans should be considered to be preliminary and should not constitute a detailed costing exercise as required by the *Development Charges Act*.

- No provincial infrastructure, including hospitals, shall be eligible for inclusion in the charge and the Act should stipulate this exclusion specifically.

- The Act should stipulate that the exclusion of city halls includes any administrative space within these buildings to avoid the space being parsed out and included in eligible service categories.

- The Regulations should specify that any requirements imposed upon growth-related infrastructure by the Ministry of the Environment or equivalent, or by a Conservation Authority shall be borne equally and pro rata by all taxpayers. This would ensure a proper benefit to existing attribution and lessen some of the matters of greatest impact in recent years.

- The Regulations should provide that contingencies and engineering fees are limited to those expended in previous similar tendered contracts. Where exceeded, the excess cost can be recovered either through a scoped amendment or as a part of the 20% adjustment noted above. In addition, as is the case now, any unforeseen costs can be added to the opening balance of a new by-law.

- Staff costs, if included must, by Regulation, be limited to demonstrated new positions being required and not as a percentage of contract cost.

- The Regulations should set standards for service levels for soft services such as an amount per person for park improvements or space per person for community facilities. This would ensure accountability.

- Where borrowing costs are included in the development charge background study, these costs must be used for municipal borrowing for development charge eligible projects.

- A Best Practices Manual should be developed by the Province with consensus input from the consultants and stakeholders who are employed by the municipalities and the industry. Much of what is listed above could be discussed in this context. Government input, by way of mediation, should be used to settle matters where consensus cannot be achieved. The Environmental Commissioner of Ontario also made a similar recommendation with a specific focus on sustainability.[4]

- Provincial mediation services should be available to resolve disputes arising in the development charge process including the background study and any subsequent complaints.

(2) Co-Mingling of Service Categories & Inclusion of Non-DC Eligible Items in Municipal DC By-laws

When a development charge by-law review consultation process occurs between a municipality and the relevant industry stakeholders, the industry goes through great lengths to verify the proposed quantums, and the associated assumptions and inputs that are part of the proposed charge. Great lengths are taken by home building associations, landowners and landowner groups with their review teams of consulting engineers, planners, legal counsel and economists, to ensure that the intentions of the *Development Charges Act* are upheld in newly introduced development charge by-laws.

In recent years, we have seen a “co-mingling” of service categories as municipalities calculate their proposed development charges as part of the review of a new by-law. This results in a flawed development charge. For example, the recreation and parks categories are often combined which has an adverse impact

[4] P.34 Building Momentum Environmental Commissioner of Ontario 2012 http://www.eco.on.ca/uploads/Reports-Energy-Conservation/2013v1/13CDMv1.pdf

on the quantum. More municipalities are combining services for the purpose of the calculations, and as a result are often using a parkland development standard to fund indoor recreation facilities. It is always left to the industry teams reviewing the proposed development charge by-law to uncover these methodological irregularities. This all has the potential to artificially inflate the available service funding envelope which can result in a higher development charge for the new neighbour – both new homeowners and new employers.

Recommendation:

- Regulations should be clarified to confirm that service categories should not be combined for the purposes of the development charge calculation. When this occurs, it results in a flawed rate.

A recent example of methodological irregularities occurred in the City of Hamilton, which over-charged new neighbours for wastewater infrastructure allocation in their 2011 development charges background study. This resulted in a disproportionate share of infrastructure charged to new neighbours who were over-charged by $520 per single family home. Fortunately, the Hamilton-Halton Home Builders' Association (HHHBA) provided the City with a detailed analysis of the flawed methodology and challenged their development charge. The challenge ultimately resulted in a settlement with the City. The work of the HHHBA will result in savings to the new neighours that had over-paid the municipality and to future new neighbours that will live in the City. The settlement was communicated to the public by the HHHBA through an advertisement to new neighbours that the Association placed in the Hamilton Spectator. See Appendix Q for additional details.

Similarly, the industry is finding more and more often that municipalities are including items that are not development charge eligible, as per the *Development Charges Act*, in their new development charge by-laws. Providing the long list of municipalities that we have experienced fall in to this category would only serve to undermine existing relationships and embarrass the municipality. Alternatively, as stakeholder discussions on these consultations move forward, we would be pleased to provide lists of the ineligible services that appear to be the responsibility of the industry to uncover during the development charge by-law review process.

Without the oversight provide by the industry, new neighbours would be forced to finance ineligible municipal infrastructure in their mortgages.

The practise of including ineligible items, and ignoring the legislative intent of the *Development Charges Act* must come to an end so that we can concentrate our efforts instead on building complete communities.

Recommendation:

- Municipalities must uphold the legislative intent of the *Development Charges Act*, and refrain from including ineligible and items that are not permitted.

(3) Social Housing & Asset Replacement (Rolling Stock)

With respect to social housing provisions the connection between the need for sewage capacity, water, and other 'hard' infrastructure services is straightforward. However, when a builder builds a new home for a family, there is no connection between that family and the provision of additional social housing. For example, the *Development Charges Act* speaks to the increased need for services. We continue to question the inclusion of social housing in development charge by-laws, as it is unclear as to how the development of new housing in a municipality would generate the need for new units of social housing in the entire Region to which a municipality belongs. If it is the wish of a municipality to have a share of new housing units be developed as social housing, they could include those provisions in their Official Plan, Secondary Plans, etc.

Recommendation:

- The Province should consider whether it is appropriate to include social housing and police vehicles in the development charge. If it is to be included, all details regarding the nature and location of the proposed social housing projects must be included in the development charge background study in order to provide confidence that the Region intends to ensure that the projects and/or facilities will be provided (as required by Section 3 of O.Reg 82/98 to the DC Act).

It is often the case that projects are included in municipal budgets, yet no additional details are provided as to the location and exact nature of each project. The industry requires greater transparency in this regard.

In addition, speaking to the issue of asset replacement for rolling stock, under the *Development Charges Act*, rolling stock that has a useful life of seven years or more (which covers most public works and fire vehicles) may be included in the development charge capital costs. However, the seven year or more life requirement means that most ambulance and police service vehicles are not eligible to be collected for or funded from development charges. Despite this, we see time and time again, items such as police vehicles regularly included in development charge by-laws, as municipalities will claim that the replacement of existing vehicles is the responsibility of new neighbours.

Recommendations:

- Development charge revenue must not subsidize asset replacement. Replacement of existing vehicles is not growth related, and should therefore be paid from other sources such as the property tax base.

- The policy basis around the asset replacement requirements for a municipality must be better defined. The way a municipality can apportion the replacement of existing infrastructure assets which are past their useful life, and how much if being funded as a portion of development charges must be made clear.

(4) Development Charges Review Timelines

Currently, the preparation of a developments charges background study can take several months and the industry is granted a 20-day period to review this information. The current 20-day consultation process is insufficient for public engagement, and doesn't allow the industry and stakeholders to adequately review the details of the development charge background study.

Notwithstanding the aforementioned, there are municipal partners that understand this pitfall and they bring industry representatives to the table well in advance of the release of the development charges background study. This results in a better understanding of background study and supplementary reports, and generally this also results in less appeals to the OMB as discrepancies or errors are mitigated through this extended consultation period.

It is important that development charge by-law review timelines, and the process of consultation and stakeholder engagement, be assessed as part of this Provincial review.

Recommendation:

- OHBA recommends a minimum of six months be required for public consultation. Typically, those municipalities that abide by a 20-day consultation period result in numerous appeals to the OMB.

- The background study review process should be amended to require monthly consultation with stakeholders and should require that draft documents be available to the public for comment. This should be over and above the prescribed statutory public meeting for the general public.

- The *Development Charges Act* should be amended to provide that the reserve fund accounting section require that a minimum of one annual meeting be held with stakeholders to review the debits and credits for each item in each reserve fund for the previous year.

- Five year by-law review periods should be maintained and reinforced at 5 years, and no new by-laws outside this framework should be introduced.

(5) Transition, Grand-fathering & Phase-In Provisions

The calculated amount of development charge payments is unpredictable during a review process which begins with a proposed amount and accumulates into a negotiated amount between the municipality and typically the industry. During this process, projects are impacted in terms of pricing for the new homeowners and new employers since the final development charges amounts are unknown until the review process is finalized.

The topic of transition is incredibly significant to developers and builders, especially when they are entrenched in discussions related to a development charges by-law review. When a development charge by-law review consultation process occurs between a municipality and the relevant industry stakeholders, the industry goes through great lengths to verify the proposed quantums, and the associated assumptions and inputs that are part of the proposed charge. Review teams which include consulting engineers, planners, legal counsel and those that assist with an economic analysis are retained by the home builder association and landowner groups. This group dives in to the minutia of the components that make up a development charge.

However, the discussion around transition is often left as part of last-minute negotiations separate from this specific quantum analysis. Because they are aware of its significance and impact on development projects, transition is often used as a "bargaining chip" by the municipality. Our members often feel that they have been forced into accepting a quantum in exchange for a "reasonable" transition, which comes with them agreeing not to appeal the proposed development charge by-law to the Ontario Municipal Board. They are often left agreeing to a "flawed" development charge which then becomes the benchmark for the next development charge by-law review cycle. Our members have explained to us that the host of assumptions, methodology and capital programs that were not contested, in exchange for a "reasonable" transition are often brought forward to the next development charge by-law because they felt forced in to not exercising their right to appeal. This also forces new neighbours to finance municipal infrastructure and priorities that are not consistent with the legislative intent of the Act through the purchase of their new home or by establishing a new business in the community.

In association to this, we understand that the OMB has said that on matters of an appeal to a development charges by-law, they generally do not address policy of Council unless it is unreasonable. Decisions related to transition, grandfathering and phasing are that of a municipal or regional Council, and these provisions are embedded within a development charges by-law. If our members appeal a development charge by-law, they run the risk of any part of that by-law changing, and that does include any "reasonable" development charge rate transition provisions.

In order to ensure that new neighbours are not faced with the uncertainty and burden of an unexpected development charge increase, our recommendations below related to mandatory phasing, transition and grandfathering capture the need to institute a Regulatory framework around transition prior to a new development charges by-law being introduced.

When a pre-construction home has been purchased, and there is an unexpected development charge increase prior to closing, someone still has to pay the difference. For example, if a municipality increases its development charge rates when a project is in pre-construction sales, the added cost could be absorbed by the builder or passed on to the new neighbour. If passed on to the new neighbour, their financing has to be re-confirmed that the can still afford the additional municipal costs or the deal doesn't close.

In the case of projects with longer building timelines such as a condominium builder, these development charge adjustments significantly impact the purchasers final closing dates. For example, if a condo building has 400 homes, a $10,000 increase in development charges on that building amounts to $4 million. If the builder cannot absorb this cost, the increase will be added to the purchase price of the home and applied upon closing.

In the Agreement of Purchase and Sale between a builder and a new homeowner, there will be information about what cost increases can be adjusted at time of closing. This will often add significant, unanticipated and frustrating closing costs for the new homeowner, creating instability in the market place and a possible unpleasant new home buying experience. For reference, a conceptual development project timeline has been included in Appendix R.

A significant and necessary reform is the need for transition provisions to accompany any newly enacted development charge by-law in order to provide certainty and fairness for both new homeowners and new employers.

Recommendations:

- Grand-fathering provisions should apply for complete applications as defined by the *Planning Act* that were submitted prior to any new by-law being enacted. This will permit certainty for financial viability and for calculating the development charges amount for projects that are in the planning and design phases.

- Transition, whether it be from one generation of by-law to the next, or as a result of changes to legislation that may arise in the context of this discussion, should be regulated and should not be treated as a negotiation tool. Where there are variances in excess of 20 percent of a development charges budget, or where project timing, parameters or viability change, the impact of increases in transition between by-laws should be minimized. Where such increase exceeds 20 percent, it should be capped as it would not have received the appropriate scrutiny during the by-law period. Where transition is due to legislative change, the by-law should be extended as necessary to allow all by-laws to be brought up to date within 1.5 years.

- Mandatory phasing of a development charge should also be instituted. This would eliminate sudden and dramatic increases in charges. Where there is a percentage of development charge increase of 20 percent or more, Councils should be required to approve a phasing of the new development charges by-law. Development charges should be treated similar to that of property tax assessment values which are phased-in over a four year period. This would not be difficult to administer since development charges are currently indexed annually. A mandatory phase-in provision would also eliminate the negotiation that often takes place between stakeholders and municipalities that results in the varying and inconsistent phasing or increases from one municipality to the other. This is transparency and certainty that would be to the benefit of all involved parties, including the new homeowner and new employers. Administratively for the municipality's perspective, this process would also prevent, what they term, the "rush to the permit desk" by applicants before significant increases are known to take effect.

(6) Categories & Unit Types

The Development Charge Act does not mandate charges be based on a specific set of categories, such as unit type (i.e. townhouse, multi, single-detached). However, some municipalities have different categories within the residential and non-residential charge. Municipalities also sometimes differentiate charges on a projects location and produce area-specific charges (urban vs. non-urban). These matters could be addressed as part of the "Best Practices Manual" as previously recommended above.

The concept of a legislated distinction between unit types for municipal DC rate setting is a policy recommendation that has been advocated by other stakeholders such as the Ontario Environmental Commissioner[5], environmental NGO's[6] and the academic community[7] which seek to tie the development charge to environmental externalities in a municipality. While we are sceptical of the narrative in much of these reports which oversimplify a cost dichotomy between greenfield versus urban development, there may be merit to the rationale and purpose of exploring some of these proposals.

Recommendation:

- It is recommended that a municipal requirement be mandated for a consistent set of categories within the residential and non-residential sectors where the development charges would apply, with the objective of supporting an equitable contribution from each new neighbour. In addition, category requirements would support the provincial Growth Plan objectives by providing incentives to the development of smaller unit types.

- Many members have expressed concern for the methodology of using unit versus another mechanism such as square footage to determine development charges. We recommend that this provincial review is an opportune time to re-evaluate the metrics used for calculating development charges.

(7) The 10% Co-payment for Soft Services & The 10-year Average Historic Level of Service

It has been suggested by some municipalities that these two current legislative standards mean that growth is not paying for growth. It continues to be the role of the industry to remind municipalities that the 10 percent co-payment for soft services was included in 1997 to ensure not only that the service levels were realistic, but also to reflect that existing residents use these services and should pay their proportionate share. In addition, mandating a small municipal co-payment for soft services meant that municipalities were at least partially fiscally accountable for the feasibility of certain projects.

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[5]*Building Momentum* Environmental Commissioner of Ontario. Annual energy Conservation Progress Report – 2012 (Vol. 1) September 2013
[6]"The High Costs of Sprawl" Environmental Defence. August 2013http://environmentaldefence.ca/blog/costs-sprawl-too-high-ignore
[7]Blais, Pamela. *Perverse Cities*. UBC Press 2012 http://perversecities.ca/

Simply eliminating the 10% co-payment only serves to increase the growth-related taxes paid by the new neighbours and eliminates a clear cost control from the development charges formula. The principles of affordability and fairness, along with governments own stated themes of affordability, economic growth, transparency and accountability must be maintained in the Act for the benefit of the new neighbour.

The same applies to the 10-year average historic level of service. It has been used to ensure that expenditures are properly assessed in terms of growth shares. Service level standards have increased significantly as consumer expectations have risen along with provincial transit priorities that accompanied Places To Grow, the creation of Metrolinx, and the new emphasis on transit-oriented communities. A mechanism to ensure that capital is thoroughly reviewed for cost/benefit and for ongoing upkeep is essential to the development charge process.

OHBA and its local associations cannot support a change to the 10-year average historic level of service that only serves to increase growth-related taxes on new neighbours. As we stated in our opposition to the Metrolinx financing plan that included a 15 per cent increase in development charges as a means to finance the Big Move with no additional accountability or transparency requirements, this approach will simply make transit-oriented communities less affordable for new homeowners and new employers.

OHBA and its local associations do appreciate the subsequent work of the Golden Panel to establish a thoughtful framework to determine the cost-benefits of any transit projects and to recognize that conditions to build the proposed transit before the financing and taxing arrangements can be made. This approach makes the discussion around the 10 year service average more responsible to the industry and more accountable to the new neighbours who are being asked to contribute and eventually support the transit decision.

Recommendation:

- The industry would be prepared to explore other options that would ensure that there is transparency and accountability in establishing the inputs to growth related infrastructure for the full life cycle of the asset, with the caveat of the following framework being acknowledged and applied:

Framework:

A framework would have to be established built on principles similar to those enunciated by the Golden Panel in its Report from the Provincial Transit Advisory Panel:

- Every project should have a published cost-benefit analysis.
- Every project should be directly matched to a revenue stream.
- Every revenue scenario should include the ongoing cost of operating and maintaining a service, not just its upfront construction cost.

A framework must include project specific reserve funds in the background study denoting not only development charge contributions but also: other government imposed fees and charges that are received, grants, mandatory tax based contributions for benefit to existing and post period benefit at the time of growth contributions, and user fees. Mandatory annual contributions for operation and maintenance could be discussed provided that it was a part of a package of changes as set out herein.

The background study would be subject to update as noted above on 20 percent variances by project and would be required to translate taxpayer cost into percent increases in the tax rate.

It is essential to the industry that any changes proposed to the legislation be the subject of a future dialogue which would include the municipalities and the Province and perhaps the services of a mediator if necessary. In our view a collaborative resolution is much better than imposed change. The issues affect all of these stakeholders so dramatically that change should be carefully canvassed before being implemented given the consequences of any unintended misstep in implementation.

(8) OMB & Divisional Court Decisions: Gross vs. Net DC Methodology for Soft Services

In 2009, the Building Industry and Land Development Association appealed several development charge by-laws across the Greater Toronto Area that adopted a new methodology employed by Hemson Consulting which uses gross population to calculate development charge rates for soft services.

In a 2010 decision of the Ontario Municipal Board regarding a development charge by-law proposed by the Town of Orangeville, where a motion for leave to appeal was dismissed by the Divisional Court, the appropriateness of the gross population methodology to calculate soft service development charges was assessed. In the Orangeville case, the Board, (confirmed by Divisional Court), decided that a methodology calculating development charge eligible costs using estimates of the gross population in new units does not conform to three separate provisions in the Development Charges Act, namely section 2(1), section 5(1)4 and section 5(1)5. The OMB held that the use of estimates of the net increase in population in the municipality to calculate soft service development charge does conform to the requirements of the Act. Please see appendix for related OMB and Divisional Court decisions. These decisions have been attached to this submission and can be found in Appendix D and E.

As a result of this OMB and Divisional Court decisions, several municipalities amended their by-law to reflect the proper change to methodology. This change amounts to an average of $1,100 savings to the new homeowner.

However, there are municipalities that have chosen not to honour the OMB and Divisional Court decisions, and these by-laws continue to be a point of appeal at the OMB. Although it has been almost six years since the initial OMB appeal, and despite attempts at mediation, the matter is not scheduled to be before the Board until October 2014. This has resulted in a significant degree of uncertainty for all parties involved.

As more than five years have passed since this matter has surfaced, we find ourselves in a new round of development charge by-law reviews. Some municipalities are looking again to use the methodology that

BILD contested, while others are using a hybrid "alternative" methodology which has since also been appealed by BILD.

Industry legal opinions confirm that this "alternate" soft service methodology which uses a combination of population and households is not reasonable or in conformity with the requirements of the *Development Charges Act* and the Act's regulations, or the 2010 decision of the OMB in the *Town of Orangeville vs. Orangeville and District Home Builders' Association* and Superior Court.

Library, indoor recreation and park facilities are city-wide services available to all residents, of which the demand for these soft services is created by residents, and not houses. Simply adding residents and houses together in the calculation results in the use of an artificial number that does not result in a legitimate measure of need for service or level of service. The effect of co-mingling residents and houses for the purposes of the calculation is to inflate the maximum allowable funding envelope, and in turn increase the development charge above that which would be calculated using the net increase in residents. That is the obvious purpose of this "alternate" methodology. In doing so, the calculation is not based on the actual increase in need for service. It does not appropriately account for excess capacity arising from the decline in population in existing housing, and it results in the development charge funding levels of service that exceed the legitimate 10-year historic average. Again, these are all contrary to the decision of the Board and the Superior Court in the *Orangeville* case, and the current provisions of the *Development Charges Act.*

Recommendations:

- Municipalities should not be permitted to impose a development charge which has been calculated using gross population increases, or any related alternative-hybrid methodology.
- The Regulations should be amended to prescribe that net population increases should be used to calculate "soft service" development charges.

(9) Development Charges as a Funding Source for Transit

We recognize the need for significant investment into transit by all levels of government. As has been noted by numerous submissions to the Province from other consultations, Canada is the only country in the G-7 that does not have a national transit strategy.[8] The industry has also been a vocal supporter for an increased federal presence in funding transit. OHBA passed a Board Resolution in 2012 calling for the federal government to dedicate funding to support municipal transit infrastructure[9] (See Appendix I). We recognize that the scale of modern transit related infrastructure is well beyond previous eras of transit funding.

However, municipalities need to recognize the significant efforts made by the provincial government in uploading services to alleviate fiscal pressures. The Provincial Municipal Fiscal and Service Delivery Review (PMFSDR) released in Fall 2008 uploaded numerous services and therefore provided additional

[8]http://www.mowatcentre.ca/research-topic-mowat.php?mowatResearchID=38
[9]OHBA 2012 Resolution #4 "National Transit Strategy (Capital Expansion)" September 2012.

fiscal capacity for municipalities to invest in core infrastructure. In 2016 when the agreement is fully phased in, it will total $1.5 billion in annual fiscal relief.[10] That agreement is in addition to direct funding provided by the Ontario Municipal Partnership Fund which totalled over $1.9 billion in municipal assistance in 2013. In total the Province is providing municipalities with ongoing support of approximately $3.4 billion in 2013 which is three times more than the level provided in 2003.[11] In addition the Federal government has increased support for municipalities in recent years including the GST rebate for municipalities and made permanent the transfer of five cents of existing gas tax to municipal infrastructure. Therefore while the industry recognizes more can be done by higher order governments in delivering infrastructure dollars, municipalities need to appreciate the additional financial capacity they have due to recent major policy decisions by the Province.

The capital costs associated with the transit is enormous. More importantly, relying on development charges as a funding source is an unrealistic, unfair, regressive and unreliable metric for funding operating costs. Typical transit systems require significant operating subsidies from the municipality. In Toronto, this totals $534.5 million annual operating subsidy and represents the second largest item in a property's property tax assessment after police services.[12]

The funding of higher order transit should not fall to the municipal levels of government creating negative policy consequences and affordability challenges. Any additional obligation for new neighbours - new homeowners and new employers - to fund transit is harmful to provincial objectives that attempt to direct development towards transit corridors. In addition, using a development charge to support transit is counter-intuitive to the initiatives of the Provincial Growth Plan which encourages transit-supportive land uses.

Recommendations:

- For municipalities that are just starting to create light rapid transit and other higher-order transit projects, it is recommended that they need to demonstrate that they also have the capacity to actually fund these items from their property tax base on a continuous basis. As noted in the provincial consultation documents, there was an exemption to the historical average on the Spadina Subway extension. However, this was done within an urban context and with an established transit operator (TTC) on a well-utilized transit line (Yonge/University/Spadina).

- Transit options should be subject to provincial scrutiny in the same manner as was done with infrastructure grants to ensure that they choice of transit capital best matches the benefit and can be cost justified.

[10]Provincial-Municipal Fiscal and Service Delivery Review.http://www.mah.gov.on.ca/AssetFactory.aspx?did=6050
[11]p.140, 141 2013 Ontario Budget: Budget Papers.
[12]http://ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2013/November_18/Reports/2014_TTC_AND_WHEEL_T.pdf

- Transit should not be included in a local development charge unless funded in equal pro-rated shares by existing and new residents and businesses as a benefit to the existing population. If transit is included in the development charge, it shall be a separate service category from roads.

(10) Matters Specific to the Employment & Non-Residential Sectors

In a global economy where Ontario is competing for new investment, it is important for all levels of government to understand the economic impact of growth-related taxes on our economic competitiveness.

Development charge increases have grown dramatically for non-residential development over the past decade. It must be recognized that these costs are ultimately absorbed in the lease costs to being new employment centres on stream, and undermine some of the other advantages that Ontario presents to the world to invest here.

In a preliminary case study of 3 municipalities in the Province (Brampton, Vaughan and Whitby), prepared by IBI Group in January 2014, the study revealed that from 1999 to 2013 development charges have significantly challenged the affordability of new retail and office developments. All municipal development charges quoted below reflect both lower and upper tier charges.

Since 1999, retail development charges in the Town of Whitby grew by 1135%, rising from $1.25 psf to $15.44. During the same period, the total cost-to-build for a retail development increased by 116%. Relative to other development costs, retail development charges now comprise 5% of total cost-to-build, compared with 1% in 1999. A typical 40,000 sf retail building would have paid $52,380 in development charges in 1999. By 2013, the same 40,000 sf building would command development charges of $646,000.

Whitby's office development charges increased more than 1100% from $1.25/psf in 1999 to $15.44/psf in 2013. This was the highest component cost increase for Whitby office development. For a 61,000 sf building the development charges increased from $76,230 to $941,593. Vaughan's office development charges increased by 995%, increasing from $2.44/psf to $26.71/psf. For a 61,000 sf building the development charges increased from just under $148,696 to $1.63 million. Brampton has also seen significant increases, with development charges increasing 372% in value from $4.94/psf to $23.31/psf, over the period.

Development charges have also increased substantially as a proportion of total building costs in all three of the case studies assessed. In Whitby, development charges comprised 1% of total costs-to-build in 1999 and increased to 5% by 2013. In Vaughan, development charges comprised 2% of total cost-to-build and increased to 8% in 2013. In Brampton, development charges grew from 3% of total building costs in 1999 to 7% of total building costs in 2013. Factors related to building costs include: land, servicing, building (hard and soft costs), parking, HST and development charges.

In a recent case study of historical industrial development charges data of three municipalities in the Province (Brampton, Vaughan and Whitby), prepared by IBI Group (January 2014), the study revealed that from 1999 to 2013 the industrial development charges have significantly challenged the affordability of new industrial developments. Please refer to Section M of the Appendix for complete details. All municipal development charges quoted below reflect both lower and upper tier charges.

During the period, the Town of Whitby's industrial development charges increased more than 3000%, from $0.25/psf in 1999 to $7.90/psf in 2013. This was the highest component cost increase for Whitby industrial development. For a 50,000 sf building the development charges increased from $12,500 in 1999 to $394,000 in 2013.

Since 1999, the City of Vaughan's industrial development charges increased by 995% from $2.44/psf to $26.71/psf. For a 50,000 sf building, development charges increased from just under $122,000 to $1.34 million.

Since 1999, the City of Brampton's industrial development charges increased by 264.4%, from $4.83/psf to $17.6/psf. For a 50,000 sf building, development charges increased by more than half a million dollars, from just under $241,500 to $880,000.

Industrial development charges have also increased substantially as a proportion of total building costs in all three of the case studies assessed. In Whitby, development charges comprised 0.3% of total costs-to-build in 1999 and increased to 6% by 2013. In Vaughan, development charges comprised 3% of total cost-to-build and increased to 13% in 2013. In Brampton, development charges grew from 6% of total building costs in 1999 to 9% of total building costs in 2013. Six cost factors were identified: land, servicing, building (hard and soft costs), parking, HST and development charges.

The employment forecasts and assumptions being used in the various development charges background studies are also a source of concern for the development industry. Employment densities on employment lands are being overestimated which artificially increases non-residential development charges, specifically, industrial.

A key reason for this is that the information provided by the Census on housing is more extensive than information on employment. In addition, planning for employment is complicated by the changing composition of the economy.

As expressed to us by many of BILD's industrial and commercial members, Ontario has shifted from a manufacturing economy to a knowledge based and service economy. As a result of this shift in the type of employment growth, there has been an increase in the logistics sector as a percentage of total employment occurring on employment lands. This employment is accommodated in very large logistics buildings resulting in low employment densities. Therefore, the overestimation of employment targets impacts land use planning and development charges because development charges background studies use the employment forecasts and assumptions contained in Official Plans.

Below is an example of the impact of employment densities on the development charge applicable to industrial development:

Typical Municipal Assumptions:	
Capital Program attributable to industrial growth	$2.0B
Industrial Employment Growth in the period	200,000 employees
Municipal Employment Density (historical figure) on Employment Lands (Industrial)	1 employee/90 m2
Resulting GFA	18,000,000 m2
Development Charge	$2,000,000,000 / 18,000,000 m2
Industrial Development Charge	**$ 111.11/m2**

If we use actual current employment densities in the above calculation:

Capital Program attributable to industrial growth	$2.0B
Industrial Employment Growth in the period	200,000 employees
Current Employment Densities on Employment lands	1 employee/300 m2
Resulting GFA	60,000,000 m2
Development Charge	$2,000,000,000 / 60,000,000 m2
Industrial Development Charge	**$ 33.33/m2**

The figure of 1 employee/300 m2 is representative of actual new Employment Land Density in Brampton.

Recommendation:

- We recommend that for employment and non-residential sectors municipalities should be providing services based on the type of growth that is predicted and not based on historical growth patterns, which provides no substantive evidence for the level of service requires for the future.

Some will contest that the sole reason that residential and non-residential development has continued is because of the low interest rate environment that, notwithstanding the continued increase in costs, have maintained an ability to finance the higher prices. Any significant increase in interest rates will create an unsustainable cost structure for non-residential development.

(11) <u>Mixed-Use Development Charge Rate</u>

Given the shift in provincial, regional and municipal policies and development goals over the last decade years which aim to promote intensification, smart growth and mixed use development near or in centres and corridors, our members design for this shift in development projects to adapt to such development goals.

Accordingly, our industry is assisting in the achievement of these new development goals and are proud to implement such developments.

In areas that have these characteristics, we believe that the province should recognize that there are great opportunities to enhance the use permissions to include, among other uses, mixed-use (office, retail, residential, etc). The expansion of existing uses would allow better opportunities by providing the development industry flexibility to maximize land uses to achieve the objectives to be developed within new policies, regulations and statutes.

Mixed-use developments provide the possibility of the live, work, shop and play provincial policy directive, along with the potential to reduce infrastructure cost. Given the provincial policy directive and municipal focus to promote the development of mixed-use communities, the province should support these projects by encouraging municipalities to adopt a reduced rate of development charges for mixed-use developments that is offset by the benefits of a live, work, shop and play community. This has been done in some areas. For example, the City of Markham has acknowledged the contribution that mixed-use developments make and have adopted a separate development charge for mixed-use developments.

Please see Appendix K for addition reference.

Recommendation:

- Consideration should be paid to mixed-use development projects that are in keeping with the provincial, regional and municipal policies to promote intensification and growth plan principles. The province should support mixed-use developments by encouraging municipalities to adopt a reduced development charge rate offset by the benefits of a live, work, shop and play community.

(c) <u>NON-VOLUNTARY PAYMENTS</u>

The application of fees and charges outside of the *Development Charges Act* and *Planning Act* is known as voluntary charges or non-voluntary payments. These payments include such things as the 10 percent development charge soft service exemption, payment of other exemptions from the development charge such as non-residential charges, community facilities that are not eligible either in part or in whole under the *Development Charges Act*, hospital contributions, general shortfalls of cash due to limits on financial tools in the legislation, and more recently, funding for private hockey rinks and Conservation Authorities.

In addition, to compound the impact of the issue, some municipalities are asking for the development charge to be front-ended by the developer, and are also asking for the up-front payment, or front-ending of non-voluntary charges as well.

These payments are out of control, and arguably, represent tax contributions and given the reluctance to increase taxes are instead imposed as special payments absorbed by new neighbours - new homeowners or new employers. It is assumed that these voluntary payments are meant to support an expansion of municipal infrastructure and not to subsidize existing municipal services or to recovery non-development chargeable items.

For a contribution to be voluntary it must have two willing parties. It is usually the case that the party paying these charges is not willing. Rather, the payment is often made because it would take too long to appeal it to the courts or the Ontario Municipal Board and it also creates a difficult working relationship in communities where there will be ongoing future relationships.

In certain regions, access to municipal services (allocation) is not provided unless the developer provides funds to the municipality, and the funds can be used at the discretion of the municipality. Recently, municipalities have successfully levied additional charges on developers for a variety of proposed projects with questionable public policy merit.

While 'voluntary' in the sense that it is a contract or agreement between two parties, the agreement is only agreed to because there is no other way of getting approvals, permits or servicing to a project. Within that context, there is a significant amount of coercion that we believe requires additional provincial oversight or else this will become commonplace in the development process. The consequence of this practise, if left uncontrolled, is and will be devastating to the Ontario economy, job creation and housing affordability, as many small-scale developments that support the provincial planning directors and municipal Official Plans, do not have the financial means to typically front-end non-voluntary payments.

These voluntary payments are generally determined on a "per-unit" basis, and are typically required to be front-ended years in advance of development, yet there is no accountability to the new neighbours as to what the additional cost that they ultimately absorb will fund in relation to municipal infrastructure.

We suggest the following remedies which would leave it open to a willing payor to make a payment but also make it easier to allow an unwilling payor to object to such a payment.

Recommendations:

- The *Development Charges Act* shall state that it, along with provisions found in the *Planning Act* and the *Municipal Act*, represent a complete code for the funding of growth related infrastructure and any other payment outside of this code shall be deemed illegal with the right to go to court by application to determine the legitimacy of the payment, where desired.

- The *Planning Act* and *Places to Grow Act* should be amended to provide that servicing allocation cannot be withheld where the proper *Planning Act* approvals are in place. Section 41 and 52 of the *Planning Act* should include a section that clearly states that conditions of approval should not relate to service allocation. The appropriate legislation should also be amended to include a provision to reflect that if there is not an approved development charge in place, infrastructure delivery and servicing allocation cannot be withheld.

- In the case of a willing payor, the *Development Charges Act* should be amended to say specifically that any funds provided outside of the Act are to be recorded as debt, regardless of whether there is an explicit guarantee of repayment by the municipality. This will serve to support greater transparency and accountability to the new neighbours -new homeowners and new employers - whom ultimately absorb these unrecorded payments.

(d) SECTION 37 (DENSITY BONUSING) AGREEMENTS

To accommodate the 100,000 people and 50,000 jobs that come to the GTA every year, the Province encourages intensification, or the construction of new mid and high-rise projects. That's often more easily encouraged than achieved. For several years, the regions and local municipalities have feverishly worked to bring Regional Official Plans and Municipal Official Plans into conformity with the Growth Plan. The next incremental step in the conformity exercise is to update all affiliated by-laws with increased height and density permissions. In failing to execute this last step, and arguably the most essential step in the conformity exercise, transparency and accountability is lost.

Section 37 of the *Planning Act* allows for the municipality to increase height and density of a development beyond their current zoning provisions. For this reason it is an established feature of the development application process in the City of Toronto and some other areas of the GTA.

The application of Section 37 is an example of the lack of municipal accountability and fairness to the new neighbour. In 2011, the City of Toronto published a historical record of 438 development projects (organized by Ward) which captures secured Section 37 community benefits per project. An excerpt of this report can be found in Appendix P of this submission. As seen in the excerpt (page 1 of the 109 page record), with only four projects listed, the total cash contributions shown are over $1 million dollars and there is no publicly available companion record to ensure that the collected funds were spent on these designated community benefits.

Developers and builders contribute millions of dollars as Section 37 contributions, which are intended to provide community amenities and facilities that should provide direct benefit to the new neighbours and the existing community. There needs to be a greater public awareness that these amenities, which are enjoyed by the community, have been provided by the builder. Some of our members have suggested that this awareness could come in the form of signage on these community amenity projects which would indicate the builder who has provided the facility or space that the neighbourhood residents and employers are enjoying. The same argument can be made for those developers and builders who are building community parks.

According to a report prepared for BILD by the Altus Group, which is found in Appendix A of this submission, from 2012 and 2013, the City of Toronto by-laws show that the average Section 37 cash contribution per unit (excluding public art) is $3485.00 per unit, and ranges from a low $66 per unit, to a high of $11,806 per unit. This shows the incredible disparity, but also the uncertainty that the industry faces when involved in Section 37 discussions with municipalities. This also shows the potentially high charge which is borne by the new neighbour as part of their new house price.

Many municipalities continue to support the out-dated zoning (under-zoning) of areas to facilitate the negotiation of appropriate densities. Ultimately, the Section 37 contribution provided by the developer is included as a cost that is absorbed by the new neighbour. In the broader planning context the collection of these fees provides questionable benefits to the surrounding community and an uneven playing field depending on local political context, as opposed to local planning context.

The application of Section 37 could be resolved if municipalities had up-to-date official plans and zoning by-laws. However, the City of Toronto experience continues to demonstrate that through the maintaining of out-dated zoning along transit corridors, the developer must negotiate a Section 37 benefit for densities that are consistent with provincial growth objectives.

Recent rulings by the Ontario Municipal Board argue that Section 37density bonusing is not to be treated as a vehicle to generate general revenue. It has also held that bonusing must be fair, transparent, predictable and relevant. Please see the OMB case found in Appendix F of this report. These findings provide the foundation for the discussion.

In this section, the discussion and recommendations for Section 37 (Density Bonusing) are under the premise that the Provincial Growth Plan policies and objectives are the overarching guidance to land development in the planning system of Ontario.

BILD members have been actively working with its members and the City of Toronto regarding the current application of Section 37. The following recommendations reflect that ongoing advocacy on behalf of the industry.

Recommendations:

- As a matter of transparency and accountability, we recommend that Section 37 <u>not</u> apply to development applications that are in conformity with the Provincial Growth Plan. We recommend that the Province look to the City of Toronto Official Plan Section 5.1.1., policy 3, which states: *"If the applicable zoning has not been updated to implement this Plan or where a change of use is proposed, then the City will consider whether additional height and/or density beyond that permitted by the Zoning by-law for the use is warranted without recourse to Section 37 of the Planning Act."* A similar, but stronger provision should be included as an amendment to the *Planning Act.*

- In the North York Centre Secondary Plan, there is an established protocol applied to development applications that are seeking additional densities. The benefitting and positive principles of the North York Centre Secondary Plan should be examined, and be the basis for establishing a consistent and predictable application for Section 37 on new developments. Please refer to Appendix G of this submission for a full description of the North York Secondary Plan example.

- Municipalities should only be allowed to access Section 37 when a municipality has established a development permit system or has updated their zoning to be consistent with the requirements of the *Planning and Conservation Land Statue Law Amendment Act (Bill 51)* which requires zoning to be updated within 3 years of an Official Plan update. OHBA supports the principle of a development permit system as this establishes regulatory simplicity and incents conformity with official plans.

The development permit system, as it stands, requires more rigorous policies to implement bonusing. And at the same time, it is better suited to regulate how the bonus density and height is deployed. It also provides a path to de-politicize deal making. Using it instead would address the need to improve transparency, consistency and accountability around bonusing. Section 37 is usually used in larger municipalities' at the most intense sites, and would therefore not be missed in most circumstances. Nor would the concept of bonusing be eliminated. Municipalities, developers and the public would experience greater certainty. The role of traditional zoning would be clarified. The perverse incentive to keep density and height artificially low to trigger Section 37 would be gone, allowing more land to be pre-zoned consistent with intensification goals in the official plan.

Recommendation:

- We recommend that when there is no development permit system in place or the municipality has not brought its zoning into conformity with either an Official Plan that is in conformity with the Growth Plan or Provincial Policy Statement (whichever applies) then bonusing only applies where height and density exceed the Official Plan or what could be reasonably contemplated by the Growth Plan or Provincial Policy Statement.

Permitting Section 37 only through a development permit system or after complying with Bill 51 and updating zoning would incent municipalities to move toward a development permit system.

While a primary reason for reform of Section 37 is due to distortions it creates for compatible development encouraged by the Growth Plan, it also remains a contribution on new development absorbed by new neighbours that is difficult to monitor.

The following transparency and accountability recommendations related to Section 37 Agreements are a result of the advocacy work that BILD has promoted.

Recommendations:

- We recommend that Section 37 contributions be invested by a specific date. Our members often hear in public consultation meetings that the community is not realizing the benefit of Section 37 contributions. That is, the municipality is not acting upon the capital projects swiftly enough or not completing them at all.

- The community should be provided assurance that the funds collected will be spent on community improvement projects. If the projects do not proceed, the funds should be returned to the applicant.

This will incent the municipality to determine what community projects should receive Section 37 funds, along with creating direct accountability between the municipality and the existing community and the new neighbours that are funding these improvements. This direct accountability will serve to strengthen the transparency of all Section 37 contributions back to the community infrastructure it is expected to improve.

- To support this recommendation of a specific date and use of the Section 37 contribution, funding should be posted by way of a letter of credit. This will incent the municipality to complete the community improvement within its proper use and time frame, reflecting its true intent.

- Section 37 funds should be spent in areas of most need and in close proximity to the project. The funds collected should not just be directed to projects of interest to the local councillor, but on projects that better areas close to the development.

- Municipalities should be required to create community needs assessments, based on public interests, for projects that would benefit from Section 37 funding. Section 37 funding should not be collected in perpetuity for unassigned projects. As part of a needs assessment, geographical proximity of the proposed community improvements must be taken into account to ensure that those that are paying for the new improvements have the appropriate access. A definition of "close proximity" should be provided to ensure that any community improvements are in fact in close proximity to the development site.

- Early consultation is an essential component of the process and in most circumstances is currently not occurring. A reasonable Section 37 negotiation package should be made at a consultation meeting, well in advance of a final staff report being finalized. This will ensure that no surprise additional costs are absorbed by the new neighbours or are incurred very late in the development approval process without a clear rationale. Most notably, last minute negotiations should not be permitted. Also, elements related to Section 37 agreements must be identified in the staff reports related to the project-specific zoning by-laws.

The *Development Charges Act* and the *Planning Act* cannot be used by municipalities to simply extract the maximum amount possible from the new home owner and new employer. A purpose of the DCA, and indeed Section 37 is to create consistent metrics for municipalities to follow. As Section 37 is an open-ended negotiation, this is the most problematic in terms of providing a consistent framework for transparency and accountability.

Recommendations:

- Yearly reporting by a municipality, and a ceiling or cap on any valuation of the Section 37 benefits is recommended. A very detailed list of Section 37 benefits may be appropriate. Other considerations would be included in this calculation, and could potentially include, for example: mandating that heritage building improvements are included as Section 37 benefits based on actual expenditures.

- In a situation where the height or density of the building has been reduced from a predetermined Section 37 negotiation, a reduction in amount of Section 37 contribution should apply.

(e) PARKLAND DEDICATION

It is essential for all members of the public to know that as an underscored principle, our industry is firmly committed to providing parks for new development and recognize the value of parks to the natural and social environment in new community areas. Our industry is heavily entrenched and committed to the future well-being, functionality and fiscal responsibility of these development sites.

Including Parkland in this consultation is both important and timely. It has been 40 years since the alternative parkland dedication provisions were introduced into the *Planning Act* in 1973 and more than 30 years since the Province issued its most recent guideline regarding the use of the parkland dedication provisions in 1981.

A review of parkland dedication legislation is also overdue because of the rising challenge to meet housing affordability and the apparent counter-intuitive nature of parkland policies when considering the Provincial Growth Plan objectives for intensification.

Since 2005, the application and impact of outdated parkland legislation and policies including cash-in-lieu provisions in the new "intensification" regime have been raised by various local home builder associations, both by being included in numerous submissions and through meetings directly with the Ministry of Municipal Affairs and Housing.

OHBA first raised issues regarding the application of parkland policies in 2005 as part of the association response to Ontario's Grow Plan consultations. The 2005 document, "Tools to Support Intensification", OHBA submitted recommendations to the Province which related to parkland dedication and cash-in-lieu policies. Some of these included appropriate credits for low-rise development when these projects are mandated to set aside increasing amounts of space for open space, conservation authorities, natural linkages and storm water management ponds. All of these requirements decrease the amount of developable land and make it more difficult to achieve provincially mandated densities. As part of this submission, OHBA will resubmit its 2005 document, as its recommendations continue to be valid (see Appendix H).

Parkland dedication policies, or the improper use of, remain as one of the more regressive tools within the development process that create distortions that lower densities along growth corridors and/or has the potential to render many medium and high density development projects undevelopable by requiring nearly equal, or in some cases greater than the site areas to satisfy the parkland dedication requirements.

In order to satisfy parkland dedication requirements, especially with an insufficient amount of parkland to dedicate, developers can opt to make a cash-in-lieu of parkland payment. However, when parkland dedication policies are transferred into a cash-in-lieu fee, not only does the cash-in-lieu of parkland methodology run counter to the goals of Places to Grow, but it is also a highly regressive tax for the new homeowner and new employer.

The timing of this Provincial review is appropriate because of the increasingly negative impact of parkland dedication requirements, in particular the use of the alternative parkland dedication requirement, on the achievement of Provincial intensification objectives as set out in the Provincial Policy Statement (2005) and the Growth Plan for the Greater Golden Horseshoe (2006).

The rigid and arbitrary application by municipalities of the alternative parkland dedication provisions in the *Planning Act* has rendered medium and high density residential developments unfeasible and, accordingly, jeopardizes the achievement of important residential and mixed-use intensification objectives.

The specific issue impacting infill and intensification projects is the inequity of the existing legislation related to the maximum parkland cash-in-lieu formula. Cash-in-lieu of parkland fees, often charged at the maximum allowable amount under the *Planning Act* significantly adds to the cost of medium and high density projects often without any relative correlations between funds received and park facility expectations for the community in question. It is also concerning when these funds are collected and the associated parkland is delivered outside of the new community area, or the associated parkland is not delivered.

As such, parkland contributions can often represent one of the largest single growth-related costs that new neighbours – both new homeowners and new employers – will fund through their purchase. This financial contribution requires direct municipal accountability to the new neighbours to ensure that the municipality has appropriately allocated the cost of park needs to their community. In absence of greater transparency, nebulous parkland dedication charges represent a large cost burden on new home buyers and are simply unacceptable.

When the parkland contributions are applied under the ratio-based formula at the maximum rate, the financial impact on the new neighbours serves as a strong disincentive to proceed with high-density development projects. The effect of these potential responses can potentially undermine municipal and provincial objectives for this type of development, resulting in appropriate high density projects being converted to mid-density or even low density communities that do not support Places to Grow objectives.

In addition, a common form of development in an urban context is mixed-use development, which can take many forms and often includes both residential and non-residential components. Although highly-promoted throughout the Places to Grow Plan, such forms of development can create difficulties in determining the cash-in-lieu contribution from the new home owner and new employer owed to the municipality for parkland contributions, especially where the land use approvals provide flexibility between residential and non-residential uses at different parkland dedication rates.

If the intensity of land use is reduced as a result of the financial impact of the parkland cash-in-lieu application, the change does have a direct impact on growth plan objectives:

- Public transit may not be as well supported as would be achieved with more density
- Existing and planned infrastructure would not be as well used making the cost of this infrastructure on a per unit basis more expensive
- Housing affordability and choices is less likely to be achieved when units are made larger to avoid higher parkland contributions.

As stated in the *Parkland Dedication Guideline* 3 published by the Ministry of Municipal Affairs and Housing in 1981, the purpose of parkland contributions are to *"provide municipalities with an alternative mechanism for ensuring that sufficient land is available for use as open space to meet the needs of both present and future residents."* Provincial efforts to simply encourage responsible municipal approaches to intensification and cash-in-lieu of parkland policies have failed. The arbitrary methodology of determining parkland dedication cash-in-lieu has also created significant challenges to appropriately planning development projects. This Guideline and parkland standard were also created at a time when other "green" initiatives were not supported by public policy. Now, more and more recent development community projects are far more "greener" than previously seen.

OHBA and BILD have been addressing the inequities of parkland policies and their implementation throughout various GTA municipalities. Many of the BILD submissions that reinforce the recommendations in this report are included in the appendix for additional review and consideration. Appendix J also includes parkland dedication/CIL examples provided by association members.

The example highlighted in Appendix V compares two proposals for a development within York Region on a parcel of land adjacent to an established transit corridor. Both proposals are for an identical building form with the same square footage. However, the number of units within the building will dramatically impact the parkland dedication cash-in-lieu requirements for the project.

As highlighted in the chart, if a developer decides to build large luxury condominium units on that site, they have the ability to save over 65 percent in parkland cash-in-lieu costs over building smaller, more affordable units that are appropriate for the area. The cost difference between the two proposals is enormous as building luxury condominiums would result in a savings of over $6 million in parkland contributions to the municipality.

This example demonstrates that the cash-in-lieu requirements are so large in certain municipalities that they prohibit a reasonable business case for the private sector to build the type of dense, infill development that is often consistent with good planning. Unfortunately, parkland dedication requirements are currently having lasting implications on the scale and type of housing being built around newer transit corridors across Ontario.

Some municipalities have taken steps to address this inequity problem by either establishing a pre-determined cash-in-lieu value per unit (i.e., $5,500 to $6,700 per unit), or they have provided a cap on the amount that will be taken (i.e., 10 percent to 25 percent of the value of the land). For example, the City of Toronto caps its parkland dedication rate at 0.4 hectares per 300 people, and has instituted a maximum parkland dedication 'cost' of 10 percent of developments less than 1 ha in size.

The City of Brampton has a high-rise rate that uses a percent of the value of the land. As a condition of approval, Council may from time to time, offer temporary reductions to these rates to encourage economic development within defined areas of the City or to meet other objectives. For example, by way of a by-law, for multi-unit residential residential development blocks, the cash-in-lieu shall not exceed the greater of ten percent of the value of the lands, or $3500 per residential unit. For any residential development or redevelopment of row-houses or apartments, the City may reduce the amount of cash-in-lieu by imposing a cap on the amount payable expressed as a percentage of the overall value of the land being developed or redeveloped, but not less than $3500 per residential unit.

The City of Kitchener-Waterloo also passed a community improvement plan applicable to the downtown core area, which results in developments in the downtown core area being exempt from both development charges and parkland. Victoria Common is an example of a current development which has received a parkland dedication reduction of 85 percent relative to the 1 ha per 300 unit rate.

In addition, Goodmans LLP has provided BILD with information and potential solutions when examining parkland policies within the lens or context of the Provincial Growth Plan. We would be pleased to elaborate on the items as consultations on these matters with the Province continue. Highlights are as follows:

- Section 6 of the *Places to Grow Act* contains sufficient authority for the Minister of Infrastructure to establish a mandatory approach to parkland dedication within intensification areas.
- Policy 5.4.3.2 of the Growth Plan requires the Minister to monitor the implementation of the Growth Plan, including reviewing performance indicators concurrent with any review of the Growth Plan. As part of this monitoring, the Minister should be aware of the negative impact of certain parkland dedication standards on the intensification goals of the Growth Plan. This monitoring requirement would be supportive of the Minister's ability to amend the Growth Plan to establish a mandatory approach to parkland dedication within intensification areas.
- The Growth Plan is generally silent regarding the provision of parkland. However, Policy 3.2.1.1 provides that infrastructure planning, land use planning and infrastructure investment will be coordinated to implement the Growth Plan. Infrastructure includes numerous items such as *"community infrastructure"* which is defined as *"lands, buildings and structures that support the quality of life for people and communities by providing public services for health, education, recreation, socio-cultural activities, security and safety, and affordable housing."* This definition is board enough to certainly include parkland.
- Under Policy 3.2.6 (Community Infrastructure), planning for growth will take into account the availability and location of existing and planned *community infrastructure* so that *community infrastructure* can be provided effectively and efficiently. Further, an appropriate range of community infrastructure should be planned to meet the needs resulting from population changes and to foster *complete communities*. Therefore, the efficient and effective provision of parkland is already an underlying goal of the Growth Plan, and should be further emphasized.

The legal team working with BILD is prepared to provide the contents of a potential amendment to the Growth Plan which would build on this existing foundation by establishing a mandatory approach to parkland dedication within intensification areas.

The Ministry of Municipal Affairs and Housing's *"Building Blocks for Sustainable Planning"* are a series of 12 single sheets detailing the range of planning tools available for municipalities for implementation. These buildings blocks help municipalities move towards more sustainable and investment-ready planning. There is a section included devoted entirely to parkland titled "Reduction in Parkland Dedication Payments (s.42 (6.2) and (6.3) which notes that municipalities can authorize a reduction in the amount of cash-in-lieu of parkland payments if sustainability features are included in redevelopment proposals. Despite MMAH often speaking about this material, few municipalities have chosen to grasp any of the document's suggestions and have not created local parkland by-laws to support intensification. The Province must do more to ensure that municipalities are using the tools outlined.

In order to encourage and promote complete communities in keeping with the Growth Plan Objectives, we have the following recommendations:

Recommendations:

- The *Planning Act* should be amended to establish a new maximum limit for the amount of cash-in-lieu of parkland that could be taken by the municipality. We recommend that municipalities cap their parkland dedication fees at 5 to 10 percent of the value of the development site or the site's land area as was done in the City of Toronto.

- Alternative standards that are being used by municipalities should be capped to harmonize with the 5 percent land area provisions in keeping with the original intent of this *Planning Act* provision.

- Parkland dedication by-laws, similar to many other municipal by-laws, must be appealable.

- The Province should consider additional policy guidance for parkland dedication provisions which look at requiring that the rate be based on persons per unit and not units. Smaller apartments should not be treated the same as larger apartments, townhouses or semi-detached dwellings.

- In accordance with Provincial Growth Plan initiatives, as the density of sites increase, rates should decrease in order to incent greater levels of intensification.

- The municipality should be required to prepare a community needs assessment for parkland. This assessment should include an evaluation of the benefit to existing population by reviewing the catchment area for any new parks. In turn, a reduced proportional share of the costs associated to the new park should be applied to the new development. This will help to provide a more appropriate balance between the needs and desires of existing residents. Outlining a strategy for obtaining parkland early in the development of a community will also ensure that the municipality is receiving the best value for its parkland acquisitions. Parkland dedication should be restricted to the parkland needs generated from growth and should not subsidize the parkland needs of existing residents.

- Funds from municipal parkland cash-in-lieu accounts should only be used for parkland needs which arise from growth. In the interest of transparency and accountability, any funds previously misspent from cash-in-lieu accounts must be repaid.

- Other mechanisms that could be considered include sliding scales dependent on a needs analysis for a particular community and/or neighbourhood.

- The formula for the calculation of land value for parkland should be based on no more than the average price of the actual cost of acquisition of land to provide for parks in the municipality (i.e. not land zoned for high-density, but rather lands where the majority of parks are provided, being in traditional ground related single family developments). The City of Brampton has a high rise rate that uses a reduced percentage of the value of the land which is also worthy of strong consideration.

- We recommend that the Minister of Infrastructure exercise the ability to amend the Growth Plan to establish a mandatory approach to parkland dedication within intensification areas.

- Off-site dedication should be used to satisfy parkland requirements. Such an approach would allow for parkland to be located nearby, but outside of, the nodes and corridors within which intensification is to be focused, and would accordingly contribute to greater intensification in the locations that would most directly support transit and other intensification objectives. As well, the use of off-site dedication has the potential to reduce land acquisition costs and cash-in-lieu requirements.

- Strata Parks should be used to satisfy parkland dedication requirements. This would support efficient land use patterns and be in keeping with the Provincial Growth Plan objectives for intensification.

- Greater flexibility in the definition of acceptable parkland dedication is needed. In an urban context, greater flexibility is needed to allow for a range of park types and locations. Lands which may be accepted as parkland should include, with any appropriate discounts, lands above private underground parking facilities, woodlots, trails, floodplains and so on that can be used to fulfill public parkland functions. Additionally, both "active" and "passive" parkland should be permitted to meet the needs of municipal parkland dedication requirements.

- Consideration for the provision of private recreational facilities in the calculation of required parkland or cash-in-lieu is necessary. Although the 1973 guideline recognized the need to take this factor into consideration, it does not appear that municipalities have generally accounted for it in the implementation of their parkland policies.

- Where high density developments provide facilities, such as open spaces, exercise equipment, easements over open space in condominiums land for public through fare, etc., a discount on parkland requirements or levies should be provided or a tax rebate should be provided back to the new homeowner representing the capital/operating savings to the municipality.

- Sustainable development features should be given credit towards parkland contributions. Although the *Planning Act* currently contains a provision to allow for a reduction in cash-in-lieu where sustainability criteria have been met, we are unaware of any municipalities that have implemented this provision.

- The requirement in Section 42(6.4) of the *Planning Act* is that cash-in-lieu be calculated as of the day before a building permit is issued needs to be amended. At this point, a project has received all of its development approvals, which means that cash-in-lieu is calculated when the value of land is at its highest, ultimately having the largest financial impact on the new neighbour.

- The municipality should be required to report annually to the new neighbours - new homeowners and new employers - what their parkland funds have provided. These reports should illustrate where parkland funds came from (applicant and geography) and how the dollars were spent or pooled into other accounts including how parkland was delivered by a municipality. This direct accountability is necessary for both the new neighbours and the established community to facilitate a great understanding of the value and benefit new developments bring to the entire municipality and in creating complete communities.

- The parkland formula should be amended to reflect the necessary green space that developers must set aside. Ultimately, the land efficiency of an application will reflect in greater affordability for the new homeowner and for new employment centres as additional services like transit and community amenities can be financed and supported in the long-term.

- We encourage the Province to continue to actively promote the Ministry of Municipal Affairs and Housing own Building Blocks for Sustainable Planning which notes that municipalities can authorize a reduction in the amount of cash-in-lieu of parkland payments if sustainability features are included in redevelopment proposals.

- The Province should assist in any and all legal disputes where exorbitant parkland fees work against goals for Provincial growth and the legislated intent of planning fees in general.

(f) ADDITIONAL ISSUES & RECOMMENDATIONS:

1. Financing Municipal Infrastructure & Borrowing Capacity

Municipalities have a responsibility to plan for, and finance growth using all of the tools available to them. Some municipalities are hesitant to take on additional debt. However, there is policy merit that capital related debt may be needed to fund long-term growth related capital investments that future generations would also enjoy. In addition, the cost of this debt is fully entrenched into the *Development Charges Act*, and as such, there is limited to no cost recovery by the municipality. In short, the concept of using debt to finance growth-related infrastructure is critical to the infrastructure financing model which is statutorily embedded in the *Development Charges Act.*

Most GTA municipalities continue to be below the Provincial 25% guidelines for borrowing (Altus, November 2013):

- Toronto – 10.4% according to provincial guideline calculation - additional capacity for $1.2 billion more in annual debt charges (principal and interest) under the provincial guideline
- Durham Region – 3.4% - additional capacity for $177 million more in annual debt charges
- Halton Region – 8.0% - additional capacity for $106 million more in annual debt charges
- Peel Region – 6.2% - additional capacity for $246 million more in annual debt charges
- York Region – 14.3% - additional capacity for $133 million more in annual debt charges

It is notable that, although York Region has a debt capacity limit that is higher than all GTA municipalities, they still retain a AAA Debt Rating from Moody's Investor Service which is the highest rating possible. This rating allows the Region to borrow at the lowest possible cost. According to Moody's Investor Service, *"The Regional Municipality of York's AAA debt rating reflects a high level of cash and investments, prudent and far-sighted fiscal management and consistent reporting of positive operating outcomes."* The region has received this rating for 13 years in a row.[13] The Regional Municipality of York took one percent of their assessment growth and earmarked it for reserve of asset management.

In order to minimize debt servicing costs, it is more prudent for municipalities to borrow infrastructure-related debt costs than offload onto new home buyers and the provincial government.

Recommendation:

- Municipalities, by legislation, must be required to borrow to construct critical infrastructure in keeping with the Provincial Forecasts found in Table 3 of Places to Grow. Servicing of future development is a municipal responsibility.

- The province should recognize the enormous borrowing capacity within municipalities and while they continue to ask the province for more funds, their ability to carry debt is actually greater than the provincial government according to credit agencies.

- Where borrowing capacity of 25 percent is not being used reasonably to assist with the cost of growth related infrastructure, it serves to undermine the Growth Plan. The *Development Charges Act* and related municipal fees should provide that the obligations to growth under the Growth Plan are mandatory and servicing allocation and other permits cannot be withheld as a result of a municipal decision not to borrow to reasonable capacity within debt limits.

[13]Proposed 2014 Budget. Presentation to York Region Council (Slide 35)
http://www.york.ca/wps/wcm/connect/yorkpublic/4da66d14-1760-44e3-a71a-cc1f3d65b18f/Proposed+2014+Budget+Presentation+to+Council.pdf?MOD=AJPERES

- Municipalities must look to a Full Cost Municipal Revenue Model. It is essential that municipalities articulate that "full revenue" growth contributes to public services. Calculations to properly articulate the concept of "growth pays for growth" must include more than just development charges. A full cost municipal revenue model will more fairly allocate the cost of capital projects and new infrastructure to all that benefit from infrastructure that has a long life cycle. This model should include development charges, assessment increases, user fee rate growth and any grants from senior levels of government which would be taken into account in all calculations.

- A portion of municipal property assessment growth (a minimum of half) has to go towards paying for growing infrastructure and asset replacement.

- In circumstances where municipalities "refuse" to plan for growth, including debt financing to support infrastructure, the borrower should consider withholding transfer payments or declare a Provincial Interest and proceed to approve necessary infrastructure to allow development to proceed.

The Province recently announced a proposal for 'green bonds' as a new way to fund transit projects across Ontario. "The new bonds would capitalize on the province's ability to raise funds at low interest rates, and serve as a tool for the government to address critical infrastructure needs, create jobs and strengthen the economy."[14] Similar financial instruments could be created by municipalities and regulated by the provincial government through the Ontario Securities Commission and Infrastructure Ontario. There are numerous examples the Ministry should examine in the United States[15] and Britain[16] where this practice is commonplace.

Recommendation:

- The Province should look to create new mechanisms for municipalities to finance infrastructure. While recognizing funding challenges within the federal system, Ontario could provide the legal mechanisms for municipalities to issue debt and finance infrastructure in innovative ways.

- Municipalities should be asked to explore other delivery mechanisms to provide critical infrastructure, such as utility models. There are many successful models used in other parts of the world that could be examined and applied in Ontario.

[14]http://news.ontario.ca/opo/en/2013/10/province-proposes-new-way-to-fund-infrastructure.html
[15] Colorado Department of Regulatory Agencies http://cdn.colorado.gov/cs/Satellite/DORA-SD/CBON/DORA/1251627081273
[16]http://www.telegraph.co.uk/finance/newsbysector/transport/8933384/Local-councils-turn-to-the-bond-markets-to-pay-for-infrastructure-projects.html

2. Front-Ending Agreements, Developer Cost Sharing Burdens and Proposed Section 59(2) Revision

The current *Development Charges Act* does not provide adequate protection for landowners to impose equitable cost sharing among all benefitting landowners. This is true for both infrastructure and public land that is required in order to obtain land development approvals within identified planning areas.

Landowners who proceed to develop first are often required to construct or fund infrastructure that is not included in the applicable development charge by-law(s), are ineligible for inclusion or development charge recoveries are not available for a period of years after the financial commitment is made.

While the front-ending agreement provisions in Part III of the DCA are intended to assist with this situation, those provisions capture only a portion of the infrastructure that is required for development to proceed. In addition, the front-ending agreement provisions are cumbersome and few municipalities have shown any interest in administering these agreements. Where they have, municipalities have entered into development charge pre-payment and credit agreements outside the formal front-ending agreement provisions. Please refer to Appendix W for additional information related to this section.

Recommendation:

- Front-ending Agreement provisions of the *Development Charges Act* should be amended to make them less cumbersome. The Act should specify that municipalities have the jurisdiction to enter into agreements that allow them to reimburse landowners from development charge reserve funds for capital infrastructure provided by, or funded by the landowner, without having to use the current front-ending agreement provisions of the Act.

Where public land conveyances are required as a condition of development proceeding within a benefitting area, significant carrying costs are associated with holding land such as school sites for up to ten years before the land is either acquired or released. In other circumstances, public land conveyances that benefit more than one landowner are not eligible for compensation pursuant to the *Planning Act.* In both of these circumstances, there is no clear entitlement to recover the associated costs from benefitting landowners, even though their land could not proceed to develop without this land being reserved or conveyed.

Recommendation:

Proposed revisions to Section 59 of the *Development Charge Act:*

59 (1) A municipality shall not, by way of a condition or agreement under section 51 or 53 of the *Planning Act;* impose directly or indirectly a charge related to a development or a requirement to construct a service related to development except as allowed in subsection (2).

Exceptions

(2) A condition or agreement referred to in subsection (1) may provide for,

(a) local services, related to a plan of subdivision or within the area to which the plan relates, to be installed or paid for by the owner as a condition of approval under section 51 of the *Planning Act;*
(b) local services to be installed or paid for by the owner as a condition of approval under section 53 of the *Planning Act.*
(c) costs incurred for the benefit of an identified area within a municipality including land required by a municipality for public purposes where no remuneration is payable pursuant to the *Planning Act* and land or services that are eligible for inclusion in a development charge by-law prior to the availability, if any, of a credit or other recovery.

Limitation
(3) This section does not prevent a condition or agreement under section 51 or 53 of the *Planning Act* from requiring that services be in place before development begins.

Notice of development charges at transfer
(4) In giving approval to a draft plan of subdivision under subsection 51(31) of the *Planning Act,* the approval authority shall use its power to impose conditions under clause 51(25)(d) of the *Planning Act* to ensure that the persons who first purchase the subdivision land after the final approval of the plan of subdivision are informed, at the time the land is transferred, of all the development charges related to the development.

Exception, old agreements
(5) This section does not affect a condition or agreement imposed or made under section 51 or 53 of the *Planning Act* that was in effect on November 23, 1991.

3. Construction Standards, Tunnelling & Valley or Infrastructure Crossings

Provincial and other regulatory agencies have imposed higher construction standards that municipalities are now required to meet. However, for years, trunk sanitary services were constructed in the low points of the watershed. The construction impact on the environment was naturally restored over time and has left no long-term damage to the environment. The issue that our members are finding with the new and higher standards is that more often than not, they do not provide any added benefit to the delivery of the service in question. The higher standards benefit the municipality or community as a whole, yet those benefits are not recognized in the development charge benefit to existing calculation which results in a larger development charge to the new neighbour.

One example of Provincial and other regulatory agencies imposing higher construction standards on infrastructure projects is on the Hanlan Water Project in the Region of Peel. Please see Appendix L. The Hanlan Water Project is the largest and most expensive infrastructure project ever undertaken by the Region. It is clear that growth is the main driver behind this project. There is also a cost saving to existing residents associated with an upgrade of infrastructure and deferral of the replacement of aging infrastructure.

The existing watermain follows a watercourse from the Lakeview Water Treatment Plant to the Hanlan Reservoir Pumping station. The Hanlan Feedermain will be constructed on Lakeshore Road East, Dixie Road, Eastgate Parkway and Tomken Road in the City of Mississauga. As municipalities are no longer permitted to locate trunk sewers in valleys, over half of this route is now required to be tunnelled.

The time to construct, the actual construction costs, the mitigations costs and life cycle costs are intuitively, exponentially greater than twinning the sewer in its original location. If the twinning could occur in its existing location, the valleys would be restored over time and millions of dollars from the Region's new homeowners would not be wasted on this construction method.

There is a continuing and increasing emphasis on tunnelling of major infrastructure projects, for which the costs of the projects dramatically increase. Our members are very concerned with the costs involved with tunnelling infrastructure and question the benefit to both the Region and respective municipalities and the future residents.

Municipal road projects often cross creeks and streams in many locations. Similarly, rather than creating box culverts, municipalities are now requiring that bridges be built as a result of environmental considerations. Again, the higher environmental standards benefit the municipality or community as a whole, yet those benefits are not recognized in the development charge calculation for a benefit to the existing population which results in a higher development charge for new growth – which is ultimately borne by the new neighbour.

Recommendation:

- It is recommended that the higher construction standards imposed by agencies and senior levels of government be recognized in the development charges and benefit to existing calculations.

- Industry members would like to work with the Province, the public and all related agencies to develop an understanding and approach to limit the use of various, more cost-effective delivery of services such as requiring tunnelling only in those instances that are absolutely necessary.

- The *Development Charges Act* should be amended to ensure that new growth only pays for the delivery of the basic service and not all of the additional costs that are a direct result of environmental protection, as this also provides a benefit for the existing residents. Additional costs could come through other funding revenues sources such as the general tax revenue, realty tax and water sewer rates.

4. Conservation Authority Fees

As they are a part of the ever-increasing list of items that are included in the price of a new home, industry members have expressed significant concern with the rate at which Conservation Authority (CA) fees are increasing. More worrisome is that no methodology calculation or justification is required to support these fee increases. Conservation Authorities do not have a defined methodology to calculate fees, as municipal planning fees and development charges do.

We are also finding that there is a significant difference in CA fees across the Greater Toronto Area, and more often times than not, neighbouring CAs will have fees substantially higher (in some instances, three times or more) than the other. The disparity is particularly significant for large development applications and represents a challenge for developers conducting business in neighbouring watersheds.

Recommendation:

- We recommend that the Province develop a methodology to determine Conservation Authority fees, in order to provide transparency and accountability to the industry.

By implementing a methodology to calculate fees, we hope to have Conservation Authorities acknowledge the economies of scale in the review process, specifically that the Authority's costs to review an application do not increase proportionately as the development increases in size. For example, the costs of reviewing a 200-unit application will not be substantially different than the costs of reviewing a 300-unit subdivision application, all other things being equal.

While we acknowledge that larger developments may require additional review time by Authority staff, we would argue that the time required for review does not increase in direct proportion with the number of units. The time to review would increase in proportion to the complexity of the development application. It is reasonable to expect then, that the scope of review and staff time required to complete the review would be substantially less for less complex applications.

We believe that through the implementation of a fee calculation methodology, the Conservation Authority review fee schedule will more accurately reflect the variable nature and the scope of environmental complexity of planning applications and as such, that the cost of processing and reviewing an application, is not primarily driven by the number of units in a development.

It should also be noted, that regardless of the size of a proposed development, the Conservation Authority incurs certain fixed costs in processing an application, such as wages and staffing costs, GIS and technical support, office and occupancy costs, workshop and vehicles, corporate administration, staff training, department materials and supplies, legal costs etc. Of these costs, many would be fixed costs that the Authority would incur regardless of the size of development application reviewed and thus not warranting an increased fee.

Our recommendation for a defined methodology to calculate fees would ensure that the fee reflects the level of effort required by Authority staff so that the CA fully and properly recovers its costs to perform the review function in addition to ensuring that it is on par with the fee structures of all CAs. This would in turn provide fairness in the cost of this development line item, which contributes to the cost of a new home in the CAs legislated area.

The principle of fee fairness ensures that planned growth and development pays for itself and is consistent across watersheds, thereby helping to ensure the price of new homes is not unnecessarily skewed across CAs. Furthermore, the implementation of a fee calculation methodology should be expected to significantly reduce the number of fee appeals and challenges filed with a CA.

5. HST

The introduction of the HST against the new housing and renovations sector in March 2009 created an undisputed tax windfall for the Ontario Treasury. Resale homes are exempt from the application of HST. The initial 2009 Budget proposal protected new home buyers through a New Housing Rebate with a threshold of $400,000 to $500,000. The Rebate was designed to capture only the pre-HST provincial tax impact at 2% for new homes under the provincial $400,000 threshold but had an effective tax impact of 8% on the total cost of the new home over $500,000.

Based on this original New Housing Rebate structure determined that the provincial treasury would collect $800 million (see section S in Appendix) in new net tax revenue from the new homeowner then before the introduction of the HST. On the renovation side, the HST applied the provincial 8% tax to all renovations projects that had previously only had the required 5% GST, for an effective total of the 13% HST. The renovation industry in Ontario is a $22 billion dollar sector, and the additional 8% captured by the implementation of the HST serves to capture $750 million (see Section T in Appendix) in new tax revenue from the renovation consumer before the introduction of HST.

OHBA publically advocated for an improvement to the HST structure on new housing and a Renovation Tax Credit for all renovation consumers. In June 2009, Ontario introduced an Enhanced New Housing Rebate, with additional transition provisions and extended protections for substantially renovated homes. The Enhanced New Housing Rebated maintained the thresholds of $400,000 to $500,000 but established an effective tax rate of 8% against the value of the new home over $500,000 million. Based on the New Rebate, OHBA has determined that the provincial treasury is capturing an addition $400 million more in tax revenue from the new homeowner then before the introduction of HST. (See Appendix U)

OHBA continues to publically support the Enhanced New Housing Rebate with the recommendation to that the Province commit to a 5-year review of the New Housing Rebate to ensure that the effectiveness of the rebate is not undermined by new housing prices increases that push new homes out of the threshold. OHBA has a long experience regarding the current GST threshold established in 1991 ($350,000 to $450,000) as an example of where the intent of protecting new homeowners has been lost without an increase in the thresholds. In 1991, over 91% of the new homeowners received a full rebate, with no adjustment to the $350,000 threshold, in 2006 only 65% received a full rebate.

As we have illustrated through this submission, new housing prices are rising in part due to the increase of growth-related taxes being applied by municipalities and other government agencies, and it is important that the Province update the HST thresholds to reflect these increase to protect new homeowner affordability and the intent of the HST New Housing Rebate. Without adjusting the HST thresholds on regular bases the Province is guilty of an unjustified enrichment of tax revenue based on a “tax on tax” principle, undermining affordability, accountability and fairness to new neighbours.

OHBA will continue to advocate for a Renovation Tax rebate for renovation consumers, as they have not received sufficient support from the province in making their home improvements affordable. OHBA recognizes and publically supported the very limited scope of the *Healthy Homes Renovation Tax Credit*, but more must be done to support the homeowner initiated improvement to Ontario’s current housing stock, including the creation of secondary suites as part of Ontario’s *Long-term Affordable Housing Strategy.*

Recommendation:

- The province must update the $400,000 HST threshold and commit to a regular review of HST thresholds on a regular basis to maintain and improve housing affordability.

6. LAND TRANSFER TAX

Under the *City of Toronto Act (2006)*, the Province of Ontario provided Toronto the special planning tools including the powers to implement a Toronto Lands transfer tax (TLTT). Toronto implemented the TLTT on February 1 2008, and in 2013 collected over $356 million from this new neighbour tax. The TLTT is collected in general revenue and used to fund Toronto’s budget with no direct accountability Toronto’s new neighbours.

Recommendation:

- The Province of Ontario should not extend new land transfer taxes to any additional municipalities.

CONCULUSION

We appreciate the opportunity to submit our recommendations with respect to Ontario’s development charges and growth-related tax system. Just as our members focus on bringing forward communities that new homeowner and new employers will support, we have focused our recommendations on putting new neighbours at the centre of this discussion.

OHBA, with the support of the network of 31 local associations - from Toronto to Thunderbay, Windsor to Cornwall and Niagara to Sudbury – support an evidence-based discussion on improving affordability and fairness for new neighbours regarding the impact of development charges, parkland dedication fees, Section 37 agreements, voluntary payments and all other growth-related taxes and policies on their housing choices and business opportunities.

OHBA members from across Ontario have been very engaged with both the government and their provincial association throughout this consultation. Going forward, we expect provincial leadership to engage and meet with OHBA, its local associations, and other stakeholders to review and discuss the recommendations put forward in the consultation. We welcome and expect additional consultations prior to any new legislation, focused on providing solutions and mechanisms of greater accountability and transparency to our new neighbours.

Provincial Issues & Questions to Discuss – Development Charge Consultation Document

The following section answers the questions as outlined in the ***Development Charges in Ontario Consultation Document***. Its purpose is to provide a summary of the context, industry position and recommendations based on the consultation questions. This section is not a comprehensive response to the review and references our formal submission document for additional background.

We are pleased to provide our comments on this important review of development charges in Ontario. As the voice of the land development, new residential housing and professional renovation industry in Ontario, OHBA through our local associations advocate for housing choice and affordability. This consultation is the opportunity for OHBA to present to the provincial government the impact of the current growth-related tax regime on housing choice and affordability on Ontario's new neighbours – new homeowners and new businesses – who will be living in new sustainable communities across the Province.

The summary below should be read in conjunction with our formal response which we hope will inform the government to make a development charges regime that is more predictable, transparent and accountable to new neighbours across Ontario.

For additional context and recommendations that reflect the highlights that you see in the section below, please refer to the main body of this report.

THE DEVELOPMENT CHARGE PROCESS

1. Does the development charge methodology support the right level of investment in growth-related infrastructure?

The cornerstone of any changes to the *Development Charges Act* must be affordability and fairness to new neighbours. OHBA recognizes that the three themes the Ministry has identified: affordability, economic growth, and transparency and accountability support these themes.

Through the consultation documents the Province has determined that municipalities annually collect $1.3 billion dollars from new neighbours through development charges alone. The province should take the next step in their research and determine the total annual municipal revenue collected from all growth-related taxes such as parkland dedication fees, Section 37, and voluntary payments that new neighbours fund.

The development charge methodology as defined under the Act attempted to strike a balance between stakeholders. However, municipalities have found alternative ways to raise revenue for infrastructure that go beyond the scope of the legislated requirements, using mechanisms including contingency reserve funds, enhanced historical service standards, and disproportionate share between a benefit to the existing population and new communities. New growth municipalities have also found ways to limit their infrastructure-related borrowing obligations using mechanisms that fall outside of the original intent of the Act. The burden of this municipal financial obligation has fallen on the shoulders of new neighbours.

The recommendations in this report focus on a better recognition in the methodology of cost allocation between new and existing residents.

2. 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?

The industry recognizes and supports the principle that 'growth should pay for growth'. However, municipalities often do not live up to this standard and impose a significant financial burden on new neighbours to fund infrastructure that benefits existing residents. When this occurs, new neighbours end up paying for more than their fair share. In this submission, we recommend that the *Development Charge Act* must clearly define what is meant by benefit to the proposed development and what is considered a benefit to the existing population. One example of improving accountability in this area would be to have the Act require that current usage rates such as water consumption and sewage flows to be required inputs in a development charge background study. This will ensure a more equitable distribution of costs.

Additional comments on this topic area can be found Section (b) of this report.

3. Is there enough rigour around the methodology by which municipalities calculate the maximum allowable development charges?

Accountability and transparency must be fundamental cornerstones of a development charges regime. It is essential that municipalities articulate that 'full revenue' growth contributes to public services. Calculations must be more than simply development charges to properly articulate the concept of 'growth pays for growth'. Its primary purpose would be to more fairly allocate the cost of capital projects and new infrastructure to all that benefit from infrastructure that has a long life cycle. A full revenue model would include development charges, property assessment increases, user fee rate growth, and any grants from senior levels of government.

Additional comments on this topic area can be found in Section (b) of this report.

ELIGIBLE SERVICES

4. 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?

The industry supports the principle that 'growth should pay for growth'. Therefore we agree that infrastructure related to the direct core infrastructure costs that result from the new community should be included in a development charge. However, many of the development charges being levied on new neighbours do not actually correspond with that new neighbour moving in. For instance we do not see a correlation between the development of a new single-detached house in a municipality to generate the need for a new unit of social housing in a region. If municipalities want a share of new housing units to be social housing, they could include those provisions in their Official Plans. We also have similar concerns about development charges cross-subsidizing already needed asset replacement in communities such as police cars. The industry does not support expanding the current list of ineligible services. No provincial infrastructure, including hospitals, shall be eligible for inclusion in the charge and the Act should stipulate this exclusion specifically.

5. *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?

The current system was established in order to create some municipal fiscal accountability in the design and construction of new capital expenditures. Without a 10 percent discount, municipalities would have no incentive to control costs even when it is the existing tax base that must fund the operating costs after the project is complete. The industry associations would be willing to consult further to changes to the present system only if new and robust measures were established through legislative changes that better mandate future municipal cost ownership post-asset construction.

Additional comments on this topic area can be found in Section (b)7 of this report.

6. 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?

No. To be clear, the suggestion that new neighbours should carry an additional financial cost to support the transit runs counter to the provincial objectives to support affordable transit-oriented communities. This suggestion only serves to generate a new cost for those new neighbours to carry. It should be recognized that the existing community will benefit from the improvement in transit long before new neighbours move into their new communities.

The industry recognizes and supports the investment and creation of transit-oriented communities. Our associations have been a strong supporter of an increased role by the federal government in funding transit and welcomed the transfer of gas tax to fund municipal infrastructure. OHBA also supported Provincial initiatives such as the *Provincial-Municipal Fiscal and Service Delivery Review* released in Fall 2008 and the *Ontario Municipal Partnership Fund*. The province has made significant changes that should allow municipalities more fiscal capacity to meet the challenges and costs associated with delivering more transit options without adding to the current level of growth-related taxes.

RESERVE FUNDS

7. 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 they were collected?

The current practice of providing detailed reserve fund statements is insufficient. In recent times, municipalities have benefited from a high volume of building permit activity and the associated reserve funds reflect this activity. As noted in the province's consultation document, in 2011 municipalities had over $2 billion in development charge reserves. We believe that part of the reason this figure is so high is because there are not enough incentives that compel municipalities to spend the money as outlined in their background study.

Project specific reserve fund tracking should occur along with more direct communication and accountability for new neighbours that expect their development charge to go towards infrastructure they have already paid for.

Additional comments on this topic can be found in Section (b) 1 of this report.

8. Should the development charge reserve funds statements be more broadly available to the public, for example, requiring mandatory posting on a municipal website?

New neighbours continue to pay significant amounts for specific infrastructure as part of the development charge, yet they have no knowledge of how or when this money is spent. This is unfair. We believe that the municipality has an obligation to provide details on the status of projects in a community directly to those new neighbours. This will provide accountability to new neighbours, and the community at large, as to what the municipality is responsible for delivering as a result of a new development.

Additional comments on this topic can be found in Section (b) 1 of this report.

9. Should the reporting requirements of the reserve funds be more prescriptive, if so, how?

Reporting requirements should be strengthened to mandate project-specific reserve funds along with better public engagement that explains to new and existing residents the development charge project funding sources, construction timeframes and completion.

Additional comments on this topic can be found in Section (b) 1 of this report.

SECTION 37 (DENSITY BONUSING) AND PARKLAND DEDICATION QUESTIONS

10. How can Section 37 and parkland dedication processes be made more transparent and accountable?

The Section 37 and parkland dedication process are among the most opaque and unevenly applied revenue streams that municipality's utilize. This lends itself to abuse and undesirable policy consequences that can create uneven development outcomes, often distorting provincial planning objectives within the same municipality.

Section 37 of the *Planning Act* allows for the municipality to increase height and density of a development beyond their current zoning provisions. There should not be issues around Section 37 if municipalities had up-to-date official plans and zoning by-laws. In the consultation on the Land Use Planning Process we recommend that municipalities must have up-to-date zoning as per the *Planning Act* requirements before they can apply Section 37. Our recommendations include: increasing transparency and accountability by de-politicizing the Section 37 negotiation process by mandating a standardized approach in calculating Section 37 amounts.

We also support additional accountability measures that would ensure that Section 37 funds are spent in a timely fashion, in close proximity to the project and spent towards projects that meet a community needs assessment as opposed to a sometimes arbitrary project identified by the Councillor.

Parkland dedication contributions can often represent one of the largest single government imposed costs that new neighbours will fund through their purchase. This financial contribution requires direct municipal accountability to new neighbours to ensure that the municipality has appropriately allocated the cost of park needs to their community. As part of educating and informing new neighbours, the municipality should be required to report annually what their parkland funds have provided. This would create direct accountability which is necessary for new neighbours and the established community to understanding of the value and benefit new developments bring.

Additional comments on this topic can be found in Section (d) of this report.

11. 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?

PARKLAND

It has now been 40 years since the alternative parkland dedication provisions were introduced into the Planning *Act* in 1973 and more than 30 years since the Province issued its most recent guideline regarding the use of the parkland dedication provisions in 1981. Since this time the planning regime in Ontario has evolved considerably.

The Provincial Policy Statement and Growth Plan for the Greater Golden Horseshoe promote compact and transit oriented communities. The application of Parkland Dedication policies by municipalities often make achieving provincially-mandated density targets difficult as parkland requirements incent less dense building forms and larger unit sizes. OHBA and BILD have been long called for reforms of parkland dedication policies, which should be updated by standardizing municipal best practices so all areas of the Province have policies that are more responsive to the current provincial planning framework.

Some of our recommendations include:

- The *Planning Act* should be amended to establish a new maximum limit for the amount of cash-in-lieu of parkland that could be taken by the municipality. We recommend that municipalities cap their parkland dedication fees at 5 to 10 percent of the value of the development site or the site's land area as was done in the City of Toronto.

- Alternative standards that are being used by municipalities should be capped to harmonize with the 5 percent land area provisions in keeping with the original intent of this *Planning Act* provision.

For additional context and the full explanation of our recommendations, please see Section (e) of this report.

SECTION 37 AGREEMENTS

Section 37 agreements must be transparent and consistently applied. Too often the agreements are levied on new neighbours for purchasing units in projects that meet provincial planning objectives or as a result of out-dated municipal zoning. In other words, new neighbours should not be penalized for living in more compact, urban settings in the type of built-form the province supports.

In the submission for the *Planning Act* Review, OHBA has provided recommendations that promote progressive planning features such as the Development Permit System. Related to Section 37, we argue that where there is no development permit in place, or the municipality has not brought its zoning into conformity with either an official plan that is in conformity with the Growth Plan or PPS (whatever applies) then bonusing only applies where height and density exceed the official plan or what could be reasonably contemplated by the Growth Plan .

For additional context and the full explanation of our recommendations, please see Section (d) of this report.

<u>VOLUNTARY PAYMENTS QUESTIONS</u>

12. What role do voluntary payments outside of the *Development Charges Act, 1997* play in developing complete communities?

The term "voluntary payment" implies two willing parties. However, in this scenario, it is usually the case that one party is less willing. Payment is typically made because it would take too long to appeal it to the courts or the Ontario Municipal Board and any attempt to not pay might jeopardize goodwill and may strain the working relationship in the future. In such an environment, there is an enormous amount of coercion on the developer that is seeking to invest in a community. Our industry does not believe this is appropriate.

Non-voluntary payments occur *because* there is no planning or community building-merit found in the *Planning Act* or *Development Charges Act*. For this reason they can have questionable public policy merit and should be forbidden by legislation.

For additional context and the full explanation of our recommendations, please see Section (c) of this report.

13. Should municipalities have to identify and report on voluntary payments received from developers?

Non-voluntary payments can be abused by the municipality to provide funds for projects the public may not understand or want. New neighbours should not have to pay for vanity projects on behalf of local political leadership.

Along with identifying and reporting requirements, the municipality must record funds collected as debt, regardless of whether there is an explicit guarantee of repayment by the municipality.

For additional context and the full explanation of our recommendations, please see Section (c) of this report.

14. 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?

We welcome any additional reporting requirements by municipalities that would add to transparency and fairness for the new neighbour in the process. While we disagree in principle with non-voluntary payments of any type, we support the suggestion noted in the question and urge the Province to go further in restricting the use of these types of payments.

For additional context and the full explanation of our recommendations, please see Section (c) of this report.

GROWTH AND HOUSING AFFORDABILITY QUESTIONS

15. How can the impacts of development charges on housing affordability be mitigated in the future?

Only by placing the new neighbours at the centre of this discussion can the Province effectively mitigate the impact of all growth-related taxes on housing affordability.

This submission elaborates on the key themes identified by the Province. While recently Canada has been under a low interest rate environment that allows new neighbours to borrow at historically low rates, this will end. When rates do rise, the sharp development charge increases experienced in recent times will only further erode affordability and make it more difficult for Ontarians to find an affordable home for their family. Municipalities need to recognize that new growth is not an unending pool of funding to draw from. As built-out municipalities have demonstrated, the end of growth is often accompanied by sharp property tax increases.

This submission highlights the need for additional financing mechanisms that municipalities should utilize, along with more accountable policy decisions that direct development charge money towards affordable and practical infrastructure that doesn't burden new neighbours with excessive borrowing costs.

16. How can development charges better support economic growth and job creation in Ontario?

Ontario continues to operate in a growth environment. The recent 2041 people and employment growth amendment by the Provincial Government confirms that reality. In this growth environment governments at all levels must provide infrastructure and services to support new neighbours, while also renewing and improving infrastructure and services for the existing community.

Ontario's quality of life continues to be an important economic factor in competing for international investment to support economic expansion and secure jobs. Simply put, all levels government need to be mindful of the impact of growth-related tax regime on Ontario's new neighbours as it has an impact on our global economic competitiveness.

The infrastructure program that development charge is funding must recognize both the need for strategic infrastructure to support new investment and also the need for community development plans that compliment where future families seeking employment will live.

There are many examples of where employment opportunities came forward but the growth-related taxes to bring the jobs to the community are the barrier. In these instances we have seen municipal council work to "discount" or "adjust" cost to secure the investment. The fact that municipalities need to "rework" development charges to secure new jobs for their communities clearly proves that the current thinking on development charges and economic growth are not working.

In a recent *Toronto CMA Conference Board of Canada 2014 Outlook* presentation, they noted that "increases in development charges may lower both residential and non-residential construction through the medium term."

HIGH DENSITY GROWTH OBJECTIVES

17. How can the *Development Charges Act, 1997* better support enhanced intensification and densities to meet both local and provincial objectives?

The relationship between intensification and development charges needs to be acknowledged, improved and supported at the provincial and municipal level of government. Some stakeholders, including the Ontario Environmental Commissioner, have argued that the *Development Charges Act* creates a financial regime that makes 'greenfield' development cheaper and urban, more dense development more expensive. We disagree with the simplistic infrastructure cost dichotomy between urban versus 'rural' housing forms and we urge the government to independently explore in greater detail the subsidization narrative that development charges are "subsidizing sprawl".

In our submission, we provide recommendations that municipalities should be required to produce a consistent set of categories within the residential and non-residential sector where the development charges would apply. We also provide a series of significant recommendations in both the Parkland and Section 37 sections which provide solutions to enhance intensification and densities to meet both local and provincial objectives.

18. How prescriptive should the framework be in mandating tools like area-rating and marginal cost pricing?

Consistency and fairness in the application of charges needs to be at the cornerstone of the development charge regime. Many municipalities provide incentives or area-specific lower development charges to incent development in areas where there less consumer demand. When this occurs, there is a recognition that development charges often act as a cost impediment for new neighbours. Our members support adjusting development charges in areas where there is local policy merit in doing so. Municipal consultation with local home building associations is critical to producing positive market outcomes for specific issues such as area-rating and marginal cost pricing, along with broader development charge issues.

19. What is the best way to offset the development charge incentives related to densities?

If the point of the original offset is to support densities in a location that the municipality has identified for this opportunity, then it is important that the municipality support the benefits from the density – such as improve ridership that help to lower the operational cost of transit, less cars on the roads, and so on, in this way, offsets can be found in new operation efficiencies of infrastructure or municipal services.

Mixed-use developments are an excellent example of the provincial directive towards live, work, shop and play community. The offsets created by improved transit ridership, reduced traffic, and environmental benefits should serve as the policy rational for any offset.