

# Town of Whitby Staff Report

[whitby.civicweb.net](http://whitby.civicweb.net)



---

**Report Title: Alternative Cash-in-Lieu of Parkland Dedication Rates for Downtown Whitby and High Density Residential Development**

---

**Report to: Council**

**Date of meeting: March 29, 2021**

**Report Number: CMS 05-21**

**Department(s) Responsible:**

Community Services  
Financial Services  
Planning and Development  
Legal and Enforcement Services

**Submitted by:**

John Romano, Commissioner,  
Community Services

**Acknowledged by M. Gaskell, Chief  
Administrative Officer**

**For additional information, contact:**

Matt Powers, Sr. Manager of Parks,  
Parks Planning, Community Services

---

## 1. Recommendations:

1. That Council adopt the proposed residential Cash-In-Lieu of Parkland dedication rate of 5% of the value of the land proposed to be developed within the Historic Downtown Whitby Priority Area of the Downtown Whitby Community Improvement Plan; and
2. That Council adopt the proposed alternate residential Cash-In-Lieu of Parkland dedication rate of the lesser of 1 hectare for every 500 units or 35% of the land proposed to be developed for Town-wide High Density Residential Developments (excluding residential developments in the Historic Downtown Whitby Priority Area) that meet the eligibility requirements outlined within Report CMS 05-21; and
3. That an Alternate Cash-In-Lieu of Parkland Dedication By-law be brought forward for Council's approval that addresses the Historic Downtown Whitby Priority Area and other High Density Residential Areas within the Town; and

4. **That staff be directed to undertake the larger Town-wide Parkland Needs/Dedication Study as identified within the 2021 Capital Budget having regard for community and development industry engagement throughout the Study process.**

**2. Highlights:**

- CMS 05-21 provides a background on the Town's current parkland dedication practices.
- The report describes how the current real estate values and appraisals within the marketplace lead to financial pressures that influence how the current parkland dedication practices are being implemented.
- Changes to the Planning Act introduced through Provincial Bills 108, 138 and most recently Bill 197 regarding parkland dedication and cash-in-lieu of parkland dedication, and the ability to establish/collect a Community Benefits Charge (for high density residential development), came into effect on September 18, 2020.
- In lieu of a larger consultant-driven parkland dedication study, Staff have researched other provincial municipalities as comparators.
- Staff have provided a proposed alternative parkland cash-in-lieu dedication for residential development in the Downtown Whitby Area and Community Improvement Area, and for high density residential development in the rest of Whitby, for Council's consideration.

**3. Background:**

On January 25<sup>th</sup>, 2021, Council passed the following resolution to deal with a correspondence matter brought to Council's attention by Brookfield Properties regarding cash-in-lieu of parkland ("CILP") for the former Whitby Fire Hall re-development site on Brock Street South within the Downtown area:

1. That Correspondence # 2020-919 received by C. Harris, Town Clerk, from S. Mitchell, Senior Development Manager, Land and Housing Development, Brookfield Properties, dated November 26, 2020 regarding Whitby Fire Hall Redevelopment - Station No. 3, Cash-in-Lieu of Parkland, Brookfield Residential (Ontario) Station No. 3 Limited, be received for information; and,
2. That staff be directed to report to Council as soon as possible regarding establishing a reduced alternative cash-in-lieu of parkland rate for the Historic Downtown Whitby Priority Area within the Downtown Whitby CIP.

The Town, like many other area municipalities, is experiencing rapid growth and escalating land values and house prices. That situation, coupled with recent Provincial legislation revisions to the Planning Act, has many municipalities currently reviewing their policies/by-laws related to CILP and parkland dedication.

Historically the Town has acquired and developed parkland by utilizing provisions within the Planning Act and the Town's Official Plan that impose requirements upon developers of land within the municipality. Within new growth areas, developers are required to satisfy parkland dedication requirements by providing land for park and recreational uses based on the Town's Official Plan policy, as approved by by-law. Where it is not possible to provide land within their development, as in the case of Downtown Whitby or where land consolidation is required for park elsewhere, the Town requires developers to provide an equivalent amount of CILP at an alternative rate as permitted by the Planning Act. The CILP (within the Parks Reserve Fund) is then used to provide park and recreational spaces across the Town.

Section 42 of the Planning Act currently allows municipalities to require parkland dedication or CILP at the following rates:

- A conveyance of a maximum of two (2) percent of commercial and industrial development for park or other public recreational purposes.
- A conveyance of a maximum of five (5) percent for all other uses (e.g., residential and institutional development sites) for park or other public recreational purposes.
- The payment of money in lieu of the conveyance of land (i.e., cash-in-lieu) at a rate equal to the value of 2% of commercial and industrial development or 5% for all other uses (e.g., residential and institutional development sites) for park or other public recreational purposes.
- As an alternative rate, a maximum for the development or redevelopment for residential purposes, a municipality may require that land be conveyed to the municipality for park or other public recreational purposes at a rate of 1 hectare of land for each 300 dwelling units, or such lesser rate as may be specified in a by-law.
- In lieu of the dedication of parkland for the development or redevelopment of land for residential purposes, the payment of cash in lieu of the conveyance of land at a rate equal to the value of 1 hectare of land for each 500 dwelling units, or such lesser rate as may be specified in a by-law.

Subsection 42(2) of the Planning Act also implies that CILP by-laws are not to be applied retroactively, as it states: "A by-law passed under this section comes into force on the day it is passed or the day specified in the by-law, **whichever is later.**"

To enable a municipality to use the alternative rates there must be Official Plan policies in effect that contain specific policies dealing with the provision of lands for park and other public recreational purposes and the use of the alternative requirement.

The Town's Official Plan, modified by recent changes to the Planning Act, provides the alternative parkland dedication policies and CILP rates as follows:

“4.9.4.3 The Municipality shall require that land be conveyed at no cost to the Municipality for parkland or other public recreational purposes, based upon the following requirements:

a) for the development or redevelopment of land uses for residential purposes, up to 5.0 per cent of the total land holdings, or a cash-in-lieu equivalent. Alternatively, the Municipality may require the conveyance of lands for park or other public recreational purposes at a rate of 1 hectare for each 312 dwelling units proposed, or a cash-in-lieu equivalent **[at a rate of 1 hectare for each 500 dwelling units proposed]**, or at such lesser rate as may be determined by the Municipality;

b) for the development or redevelopment of land for commercial or industrial purposes, up to 2.0 per cent of the total land holdings or an equivalent amount of cash-in-lieu of land;

c) for the development or redevelopment of land for mixed-use development as permitted by Section 4.6 of this Plan, the lands for park or other public recreational purposes shall be calculated at the rate of 1 hectare for each 312 dwelling units, or the cash-in-lieu equivalent **[at a rate of 1 hectare for each 500 dwelling units proposed]**, or at such lesser rate as may be determined by the Municipality. However, in no case shall such contribution be less than 2.0 per cent of the land area or the cash-in-lieu equivalent, assessed on the basis of the percentage of the total floor space used for non-residential purposes; and...”

The bolded provisions in the above Official Plan policy have been statutorily modified pursuant to s. 42(6.0.1) of the Planning Act.

While the policy contemplates a lesser rate “as may be determined by the Municipality”, no staff person has the delegated authority to apply a lesser rate than the current alternative residential CILP rate of the value of 1 hectare of land for each 500 dwelling units. That alternative CILP rate, which was previously calculated at the value of 1 hectare of land for each 312 dwelling units prior to the Planning Act amendments, has been consistently applied by the Town for decades.

This report will focus on the CILP rate calculation for residential development within the Historic Downtown Whitby Priority Area of the Downtown Whitby Community Improvement Plan, and other High Density Residential Areas for the rest of Whitby.

#### 4. Discussion:

##### **CILP Rate for Residential Development in the Historic Downtown Whitby Priority Area of the Downtown Whitby Community Improvement Plan**

The purpose of the 2018 Downtown Whitby Community Improvement Plan (“CIP”) is to help achieve the vision of the Whitby Official Plan and the Downtown Whitby Action Plan by establishing programs that link land use planning with financial and

other incentives, to act as catalyst to spur new development and redevelopment in Downtown Whitby. The CIP enables Council to provide such incentives so as to directly support those projects that best meet the needs for revitalization and conservation efforts.

The goal of the Downtown Whitby CIP is to transform Downtown Whitby into a dynamic social and cultural district by incentivizing new positive downtown developments and investing in Whitby's historic commercial core. The goal of the CIP aligns with the policies in the Town's Official Plan, Downtown Whitby Secondary Plan and the Vision of the Downtown Whitby Action Plan.

The applicable objectives of the Downtown Whitby CIP regarding a proposed alternative CILP rate are to:

- Increase the population in Downtown Whitby to support the commercial core;
- Develop more office and mixed use buildings in Downtown Whitby;
- Redevelop under-utilized and/or vacant land in Downtown Whitby to achieve intensification targets and increase the liveability of the Downtown;
- Bring more people and visitors to enjoy Downtown Whitby as a destination;
- Support internal and external building upgrades and restoration;
- Remove barriers and increase accessibility to support all user groups;
- Maximize the efficient use of the existing public infrastructure;
- Preserve and enhance the viability of existing commercial and employment areas;
- Balance heritage conservation with development/redevelopment at key sites;
- Provide additional public services and amenities in existing developed areas; and
- Demonstrate municipal leadership and commitment to community improvement.

In order to achieve the stated purpose, goals and objectives of the Downtown Whitby CIP, staff propose that the Town only charge the basic 5% CILP rate for residential development in the Historic Downtown Whitby Priority Area, as set out in the Official Plan and permitted by s. 42(1) and (6) of the Planning Act. To be clear, this is a standalone change, and does not modify the Downtown Whitby CIP policies which would require a separate public process and consultation.

This CILP rate will replace the current CILP residential rate of the value of 1 hectare of land for every 500 dwelling units. The new rate is calculated at 5% of the appraised value of the subject property determined as of the day before the building permit is issued in respect of the residential development.

While the 5% rate may result in less CILP being collected for development in the Historic Downtown Whitby Priority Area, staff believe that any financial impact is justifiable compared to the long-term benefit in the success of the Downtown Whitby CIP and the local area. Other municipalities, such as Toronto, Hamilton, Burlington, Waterloo, and Guelph provide lower CILP rates or CILP rate caps depending on site size, development density, and site location.

**Alternate CILP Rate for High Density Residential Developments (Town-wide, Excluding the Historic Downtown Whitby Priority Area)**

While researching for and preparing the report for a special CILP policy to encourage development in the Whitby downtown core, staff noted (as mentioned above) that other jurisdictions include CILP payment maximums or caps for higher density developments across the municipality. One of the main reasons for this is that using the 1 hectare per 500 unit rate for higher density developments (e.g., building vertical/towers) may result in calculated CILP payments that exceed the cost of the property itself, and the cost of purchasing equivalent land for parks.

The table below shows the CILP to be paid using a 1 hectare per 500 unit calculation for developments ranging from 100 to 400 units. For the purposes of this example, it is assumed that 0.6 hectares (or approximately 1.5 acres) of land was purchased and appraised at \$3 million:

Table 1 – Example: CIL Parkland Calculations for High Density Developments of Varying Units

Site Area: 0.6 hectares (~1.5 acres) *A*  
 Appraisal: \$3,000,000 *B*  
 Cost per hectare: \$5,000,000 *B/A*

Proposed Units	CIL Parkland Dedication Payment	% of Appraisal
100	\$1,000,000	33%
150	\$1,500,000	50%
200	\$2,000,000	67%
250	\$2,500,000	83%
300	\$3,000,000	100%
350	\$3,500,000	117%
400	\$4,000,000	133%

As shown in the example/table (above):

- Based on the 1 hectare per 500 unit CILP calculation, the CILP payment starts to exceed the acquisition cost of the property around 300 units

(assuming that the appraisal of \$3 million is also the acquisition cost of the land proposed to be developed); and

- As more units are proposed above 300 units (in this example), the CILP payments to the Town (without a cap) exceeds the original acquisition cost of the property.

The 300 unit threshold at which CILP payments may exceed the value of the property will vary based on the appraisal and area of the development. However, with no maximum amount or cap, any high density residential developments could have CILP payments that exceed the purchase price/appraisal of the property being developed. Accordingly, it is recommended that a cap or alternate CILP calculation be implemented for all qualifying high density residential developments Town-wide (excluding the Historic Downtown Whitby Priority Area). The recommended cap would be an interim measure until a comprehensive update of the CILP and parkland dedication policy is completed, following a full Park needs assessment and CILP study which will be completed later this year.

This amended CILP rate for qualifying high density residential developments (see eligibility for this alternate calculation in the section below), shall be the lesser of:

- a) The value of 1 hectare of land for every 500 residential units; or
- b) The value of 35% of the land being developed.

This recommendation allows for the 1 hectare per 500 unit CILP rate to continue to be applied, but for eligible high density developments from the adoption of the by-law forward, this will be capped at 35% of the land/appraisal value of the property. As an interim measure, until the larger study is completed, this will allow the Town to not compromise the intensification goals of the Town's Official Plan.

The proposed interim alternate CILP rate for higher density residential developments Town-wide attempts to balance the Town's need to acquire parkland/other public recreational space to service future population, with the fair and reasonable encouragement of intensification within the Town. However, establishing a cap that is too low may lead to a lack of parkland in the future to properly service an increasing population residing in high density developments, or add pressure to fund parkland needs through the property tax base. That is, a cap that is too low may result in the Town not having sufficient funds in the Parks Reserve Fund (collected from developers) to acquire land to properly service an increasing population, resulting in the shift of land acquisition costs to all Whitby property taxpayers.

The proposed 35% cap is based on two recent high density residential developments that utilized the 1 hectare per 500 unit standard calculation and is at the lower end of the CILP payments in those developments. As noted above, this cap would serve as an interim maximum until a complete Parks Study and

CILP study can be completed later this year. For comparison purposes, caps implemented in other municipalities are as follows:

- Town of Newmarket
  - Inside Urban Centres – 50%
  - Outside Urban Centres – no cap
- City of Guelph – 20%
- City of Toronto - 10% to 20% (depending on size/area of site)
- City of Brampton – the greater of 10% or \$3,500\* per residential unit (note: the \$3,500 is a figure referenced in Brampton’s 2017 by-law which is subject to indexing)

The Park Needs Study to be completed later this year will provide more background, financials and projections on the parkland service levels to be planned for more urban and higher density areas. This may result in a further adjustment to this interim measure.

### **Eligibility Requirements for the Proposed Alternate Calculation on Town-wide High Density Residential Developments**

It is recommended that the alternate residential CILP rate identified above be applied Town-wide (excluding the Historic Downtown Whitby Priority Area) for high density residential developments that are five (5) or more storeys high and containing 10 or more residential units.

The five or more storeys high and 10 or more residential units eligibility criteria is based on thresholds set by the Province for the imposition of Community Benefits Charges (“CBC”) under recent Bill 197 legislation. Recognizing that higher density developments may result in additional costs for municipalities to adequately service the additional population from the development, the Province established CBC legislation allowing municipalities to impose additional charges to recover for the additional costs. The CBC would be in addition to development charges and CILP payments and, similar to development charges, would require a study to justify the charges. Currently, the Town of Whitby does not impose a CBC for high density developments, but Finance staff will be conducting preliminary analysis in 2021 to determine if the Town should undertake a full CBC study and implement a CBC by-law as part of the 2022 Work Plan.

It is also noted that any new CILP by-law is subject to a period of public notice after passage and a time for appeal to the Local Planning Appeal Tribunal pursuant to s. 42 of the Planning Act. However, similar to a development charges by-law, the CILP by-law will continue in force if it is appealed, and the Town will continue to collect fees under the by-law even during the appeal. If the appeal is successful, the Town will process any refunds after the fact.

## 5. Financial Considerations:

CILP dedication payments are collected when developers choose not to (or cannot) convey land for parks and other public recreation purposes to the Town. These payments are allocated to the Town's Parks Reserve Fund to provide for the park and other public recreation land/space needs related to growth. The current balance in the Parks Reserve Fund is approximately \$8.7 million.

The approved 2021 Budget includes funding for a Culture Parks Recreation Open Space (CPROS) Plan Update and a Parks CILP dedication study. These studies will provide further guidance and direction on:

- policies to address the expanding urban areas of Whitby and Brooklin;
- the impact/pressure of higher residential densities can place on existing park spaces especially in the Downtown and Intensification areas where additional future parkland acquisition is difficult.
- Existing parkland and other public recreational space service levels and projected requirements to maintain the existing levels of service.
- An overall Town Land Acquisition Strategy.
- Further refinements to the Parks CILP dedication policies, if required.

## 6. Communication and Public Engagement:

Parties who have expressed an interest in changes to the CILP rates have been notified of this report. Upon passage of the new CILP by-law, public notice will be provided in accordance with the Planning Act.

## 7. Input from Departments/Sources:

Staff from all affected departments (Financial Services, Community Services, Planning and Development, and Legal and Enforcement Services) have reviewed and provided input for this report.

## 8. Strategic Priorities:

Adopting the recommendations in this report supports the following 2018-2022 Council Goals:

- To continue the Whitby tradition of responsible financial management and respect for taxpayers; and to understand the importance of affordability and sustainability to a healthy, balanced community.
- To ensure Whitby is clearly seen by all stakeholders to be business and investment friendly and supportive; and to continuously improve the customer experience and the effectiveness and efficiency of communications, service delivery and approvals.

- To become the destination of choice for visitors; to realize the economic, cultural and social potential of our downtowns, waterfront, green spaces and major attractions; to support and facilitate new community events and increase recreational opportunities along our waterfront.

The recommendations in this report also support the following Corporate Strategic Plan “organization” priority objective:

- Continually improve how we do things by fostering innovation and focusing on making our processes better.

**9. Attachments:**

None.