

Item:



## Committee of the Whole Report

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**DATE:** Tuesday, June 05, 2018

**WARD(S):** ALL

**TITLE: CITY OF VAUGHAN OFFICIAL PLAN - VOLUME 1 AND  
VAUGHAN METROPOLITAN CENTRE SECONDARY PLAN-  
VOLUME 2, SECTION 37 POLICIES AND SECTION 37  
IMPLEMENTATION GUIDELINE REVIEW**

**FROM:**

Jason Schmidt-Shoukri, Deputy City Manager, Planning and Growth Management

**ACTION:** DECISION

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**Purpose**

1. To report on Council's direction dated December 11, 2017 (C2, Item No. 3) regarding:
  - i) an amendment to the VMC Secondary Plan (VMC SP) to clarify that modifications to height and/or density in the VMC SP area, in conjunction with a Section 37 bonusing, should only be implemented through a Section 34 Zoning By-law amendment, and
  - ii) if an Official Plan Amendment is required, notwithstanding Policy 9.4.4 in the VMC SP and Policy 10.2.1.7 in Volume 1 of Vaughan Official Plan 2010 (VOP 2010), for modifications to height and/or density in conjunction with a Section 34 Zoning By-Law Amendment.
2. To seek Council's direction to update the Section 37 Implementation Guidelines, as it pertains to the calculation and methodology to determine the quantum and timing of a Section 37 Community Benefit contribution.

## **Report Highlights**

- Council on December 11, 2017 directed staff to report by June 30, 2018 on an amendment to the VMC SP to clarify whether modifications to height and/or density in the VMC SP area, that are being requested through Section 37 (of the *Planning Act*) bonusing should be implemented through a Section 34 Zoning By-law Amendment only such that an Official Plan Amendment would not be required notwithstanding Policy 9.4.4 in the VMC SP and Policy 10.2.1.7 in Volume 1 of the Vaughan Official Plan 2010.
- The passage of Bill 139 on December 12, 2017 and the proclamation that the legislative amendments to the *Planning Act* came into effect on April 3, 2018, significantly change the way local planning decisions are reviewed in Ontario, placing greater authority in the hands of municipal council.
- Further review is required to understand the implications of any proposed VMC SP amendments with respect to impacts on Council's decision-making authority and Planning Fee revenues.
- Council on February 17, 2015 approved the Guidelines for the Implementation of Section 37 and a further review is required to update and clarify the Section 37 implementation and negotiation process.

## **Recommendations**

1. THAT an Official Plan Amendment is required for modifications to height and/or density in the Vaughan Metropolitan Centre Secondary Plan (VMC SP), that are being requested in conjunction with a Section 37 bonusing and that staff be directed to report back to Council by the first quarter of 2019 with a report on potential amendments to the VMC SP to permit modifications to height and/or density in the VMC SP, that are being requested in conjunction with a Section 37 bonusing, taking into account the potential implications outlined below due to the new planning regime established by Bill 139:
  - a. Council's decision-making authority; and
  - b. Planning Fee revenues
2. THAT staff be directed to report to Council by the first quarter of 2019 on a review and proposed amendments to the "Guidelines for the Implementation of Section 37" to improve the process.

## **Background**

### ***Council Directed that Staff Review the VMC SP requirements for Official Plan Amendments in conjunction with a Section 37 Contribution***

Council on December 11, 2017 considered a Communication (C2, Item No. 3) (Attachment 1) from the Deputy City Manager, Planning and Growth Management, and

the Director of Policy Planning and Environmental Sustainability. The purpose of the Communication was to seek a resolution of Council to allow for Official Plan Amendments to the VMC SP to be made despite the two-year moratorium set out in the *Planning Act*, and to seek direction from Council for staff to investigate and report back on the potential elimination of the need for an Official Plan Amendment in the VMC SP area for a change in height and/or density that is initiated by a landowner in conjunction with a Section 37 bonusing request. It was confirmed that an Official Plan Amendment would be required to increase height or density even if a Section 37 contribution was provided.

In considering the communication Council recommended:

“2) That the following be approved in accordance with Communication C2, from the Deputy City Manager, Planning and Growth Management and the Director of Policy Planning and Environmental Sustainability, dated December 4, 2017:

1. That Council declare that applications for amendment to the Vaughan Metropolitan Secondary Plan in Volume 2 of the City of Vaughan Official Plan may be made prior to the second anniversary of the first day any part of the plan came into effect;
2. That such applications for Official Plan Amendment be processed concurrently with the related Zoning By-law Amendment application and in an expeditious manner in order to optimize the utilization of the transit investments made for the Vaughan Metropolitan Centre (VMC); and
3. That staff be directed to report no later than June 30, 2018 on an amendment to the VMC Secondary Plan to clarify that modifications to height and/or density in the VMC Secondary Plan area, that are being requested through Section 37 bonusing shall be implemented through a Section 34 zoning by-law amendment and that an official plan amendment would not be required notwithstanding Policy 9.4.4 in the VMC Secondary Plan and Policy 10.2.1.7 in Volume 1 of the Vaughan Official Plan 2010 (VOP 2010)...”

### ***Bill 139 Changes the Planning Process in Ontario***

On December 12, 2017, Bill 139 received third reading and Royal Assent in the Provincial Legislature, coming into force as the *Building Better Communities and Conserving Watersheds Act*. Bill 139 amends several acts, including the *Ontario Water Resources Act*, the *Ontario Municipal Board Act*, the *Planning Act*, the *Ontario Planning and Development Act, 1994* and the *Municipal Act, 2001*. Bill 139 also enacts the *Local Planning Appeal Tribunal Act, 2017* and the *Local Planning Appeal Support Centre Act, 2017*. The legislative amendments that effect these changes came into force on April 3, 2018.

Bill 139 significantly changes the way planning decisions are reviewed in Ontario, placing greater authority in the hands of municipal council. Fundamental to these changes is the establishment of the Local Planning Appeal Tribunal (LPAT), which has replaced the Ontario Municipal Board (OMB).

The legislative amendments to implement Bill 139 were released in March 2018 and came into force on April 3, 2018. Understanding the long-term implications of the new planning regime is evolving.

### ***Review of the Guidelines for the Implementation of Section 37***

Council on February 17, 2015 approved the “Guidelines for the Implementation of Section 37 of the *Planning Act*” (Guidelines). The purpose of the Guidelines was to provide more detailed direction on how Section 37 will be applied by the City of Vaughan to:

- meet the overall objectives of the Official Plan,
- identify which developments will be eligible for consideration of Section 37, and
- establish the process for negotiating and implementing Section 37 Agreements.

### **Previous Reports/Authority**

The extract from the Council Meeting minutes of February 17, 2015 - Implementation Guidelines for Section 37 Policies can be found at the following link: ([here](#))

The extract from the Council Meeting minutes of December 11, 2017- Official Plan Amendment File OP.17.003 can be found at the following link: ([here](#))

### **Analysis and Options**

A memo dated December 4, 2017 (Attachment 1) from the Deputy City Manager, Planning and Growth Management and the Director of Policy Planning and Environmental Sustainability, regarding Official Plan Amendment File OP.17.003 (VMC Residences III GP Inc.) was presented to Council to address the following concerns raised by the Applicant:

- That the new *Planning Act* provision regarding privately initiated Official Plan Amendments within the first two years following the approval of a secondary plan may impact the ability to make applications for changes to height and density to the VMC SP in a timely manner to support the growth adjacent to the subway station.
- There was a question on the need for an Official Plan Amendment for an Owner initiated request to increase the permitted height and/or density because the Owner perceived that the Section 37 request and an implementing zoning by-law was all that was required.

The above noted Communication to Council was prepared prior to the enactment of Bill 139 and the regulations that came into force on April 3, 2018.

***Bill 139: Two-year Moratorium on Amendments to Secondary Plans***

Bill 139 restricts applications to amend Secondary Plans for two years from the first day any part of the Secondary Plan comes into effect. Council does retain the authority to permit amendments within the two-year period. Council on December 11, 2017 adopted Recommendation 1 of the communication and declared that applications for amendments to the VMC SP may be made prior to the second anniversary of the first day any part of the VMC SP came into effect. As such, this matter has been addressed.

***The current legislative framework that allows a municipality to seek a Section 37 contribution is found in the Planning Act, and the City's Official Plan***

Planning Act, R.S.O. 1990, c.P. 13

Section 37, subsection (1) of the *Planning Act* allows municipalities to secure public benefits “in a by-law passed under Section 34, to authorize increases in the height and density of development otherwise permitted by the by-law”. Subsection (2) also states that “a by-law shall not contain the provisions mentioned in subsection (1) unless there is an Official Plan in effect”.

City of Vaughan Official Plan 2010 (VOP 2010)- Volumes 1 and 2

Policy 10.1.2.9 a) of VOP 2010 states “In accordance with Section 37 of *the Planning Act*, Council may authorize an increase in the building height and/or density of development otherwise permitted in areas of the City, as contained in Volume 1 or Volume 2 of the Plan, or as contained in a site-specific zoning by-law, in return for the provision of community benefits...”.

VOP 2010 under Policy 10.1.2.12 specifically states “increased building height and density provisions under Section 37 of the *Planning Act* will be implemented by site-specific Zoning By-laws”.

Notwithstanding the general Section 37 policies contained in VOP 2010, there is a more specific policy direction provided in both Volumes 1 and 2 of VOP 2010, as it relates to prescriptive or defined heights and densities.

Policy 10.2.1.7 in Volume 1 of VOP 2010 states: “That were policies of this Plan contain numerical standards, minor variations from those standards may be permitted without amendment to this Plan, with the exception of any variations to floor space index, height or environmental standards set out in Chapter 3...”

Policy 9.4.4 in Volume 2- the VMC SP states: “Minor variations from numerical requirements in the plan, with the exception of maximum and minimum heights and densities, may be permitted without an Official Plan Amendment...”

***Is there a need for an Official Plan Amendment in conjunction with a Section 37 contribution?***

It is staff's opinion, given the existing policies contained in VOP 2010 (Policy 10.2.1.7 and Policy 9.4.4), that the requirement for an OPA exists in both VOP 2010 and the VMC SP due to the inclusion of a prescriptive height and/or density number in the two documents. Staff advise that the need for an OPA is separate from the Section 37 process. The requirement for the OPA provides the City with a planning instrument and approval through which the proposed increase in height and/or density can be managed, but more importantly evaluated and considered to be good planning.

As outlined in Attachment 1, Smart Centres has submitted an application for a third tower for the project known as "Transit City" in the VMC, which seeks a height increase from 22 to 55 storeys and a density (floor space index) increase from 4.5 to 12.1 times the area of the lot. The application exceeds the permissions afforded by the VMC policy regime and requires an OPA in order to allow the proposed modification to height and density to be secured. Had there been no prescriptive numerical standards that were applicable, then staff would agree that an OPA would not be required in conjunction with the Section 37 process.

***Potential Reduction in Council's Approval Authority***

The proposal under consideration is to amend the VMC SP to permit an increase to height and density beyond the current maximums outlined within the VMC SP without the need for an Official Plan Amendment if a Section 37 contribution is supported by Council.

Bill 139 replaces the OMB with the LPAT and significantly reduces the ability to appeal Council's decision on an application as the appeal must meet the following criteria:

- Decision is inconsistent with Provincial Policy Statement
- Fails to conform with or conflicts with a provincial plan (i.e. Growth Plan) or
- Fails to conform with the applicable Official Plans.

Before a proposed amendment to the VMC SP can be advanced to Council for approval, further investigation is required to determine, if the proposed amendments to the VMC SP would reduce Council's and/or the Region's authority as the final decision maker for increases in height or density within the VMC.

***Potential Impacts to the Revenues for the Development Planning Department***

Should Council endorse that an Official Plan Amendment is not a requirement, when a Section 37 contribution is supported, then the proponent would be subject to only a Zoning By-law Amendment Application. As such, the planning fees for an Official Plan Amendment (minimum base fee of \$29,700) would not apply. Council in January 2018 adopted an updated Planning Fee Schedule By-law based on a review prepared by

Watson and Associates. The review was undertaken based on a 100% cost recovery consistent with Council's direction that development pays for development.

Planning Application Fees have been established based on the typical timelines required to process a planning application. If the OPA application is waived based on a Section 37 bonus for increases in height and/or density, it would not necessarily reduce the time required to process the application. From the perspective of the recent Bill 139 legislative changes, it is anticipated that staff reports and processing times may increase.

Therefore, staff recommend deferring a decision on any proposed amendments to the VMC SP until staff have had the opportunity to assess the implications of the new legislative requirements under the new planning regime.

***The Guidelines for the implementation of Section 37 require further clarity***

In considering Council's direction to report back on a potential amendment to the VMC SP to eliminate the need for an OPA, should a landowner contribute toward a Section 37 bonusing, staff have identified issues that require further review regarding the existing Section 37 Guidelines contribution process. The Guidelines outline that on average, the City will seek to achieve a value for community benefits that represents a range between 20 to 35% of the increase in land value resulting from the proposed increase in height and/or density. A review of this range and how it is applied is recommended.

Other matters that require consideration include density transfers, improving the flexibility of the land value matrix to apply to a greater variety of land use proposals, and clarification of land value calculation when the base line density is low rise residential. Therefore, it is recommended that staff undertake further review of the Guidelines and consult with the development industry in advance of reporting to Council.

**Financial Impact**

There are no direct financial implications resulting from this report. The potential impacts to Planning Fee revenues by waiving the need for an Official Plan Amendment application in conjunction with a Section 37 contribution, requires further review in the context of the new procedures resulting from Bill 139.

**Broader Regional Impacts/Considerations**

N/A

## **Conclusion**

Council directed that staff review amendments to the VMC SP to permit an increase in height and density beyond the current maximums outlined within the VMC SP without the need for an Official Plan Amendment if a Section 37 contribution is supported by Council.

Bill 139 includes legislative changes to the planning approval process and replaces the OMB with the LPAT. These changes may potentially increase the planning approval process timelines and thereby require a revision to the Planning Fee Schedule. In addition, Council's authority to approve or refuse an application has increased because the criteria to appeal an application to LPAT is limited. Staff require additional time to review the potential of any amendments to the VMC SP in the context of the new planning regime.

Furthermore, it is recommended that a review be undertaken of the Section 37 Guidelines to determine what improvements to the Section 37 process may be required to ensure an expeditious review and improve clarity of the process.

Staff anticipate bringing forward a report for Council's consideration for the first quarter of 2019.

**For more information**, please contact: David Marcucci, Senior Planner-LPAT, Policy Planning & Environmental Sustainability, ext. 8410

## **Attachments**

1. Memo dated December 4, 2017, Planning and Growth Management

## **Prepared by**

David Marcucci, Senior Planner-LPAT, ext. 8410

Melissa Rossi, Manager of Policy Planning, ext. 8320

Bill Kiru, Director of Policy Planning and Environmental Sustainability, ext. 8633

/LM



# ATTACHMENT 1



CANADA 150



## memorandum

PUBLIC HEARING  
COMMUNICATION

C2

Date: Dec 5/17 ITEM NO. 3

**DATE:** DECEMBER 4, 2017  
**TO:** MAYOR AND MEMBERS OF COUNCIL  
**FROM:** JASON SCHMIDT-SHOUKRI, DEPUTY CITY MANAGER, PLANNING  
AND GROWTH MANAGEMENT

MARK CHRISTIE, DIRECTOR OF POLICY PLANNING AND  
ENVIRONMENTAL SUSTAINABILITY

**SUBJECT:** COMMUNICATION  
ITEM # 3, REPORT #45 – COMMITTEE OF THE WHOLE (PUBLIC  
HEARING) – DECEMBER 5, 2017

OFFICIAL PLAN AMENDMENT FILE OP.17.003  
VMC RESIDENCES III GP INC. AS A GENERAL PARTNER AND ON  
BEHALF OF VMC RESIDENCES III LIMITED PARTNERSHIP  
WARD 4 – VICINITY OF MILLWAY AVENUE AND PORTAGE PARKWAY

### Recommendation

The Deputy City Manager, Planning and Growth Management and the Director of Policy Planning and Environmental Sustainability recommend:

1. That Council declare that applications for amendment to the Vaughan Metropolitan Secondary Plan in Volume 2 of the City of Vaughan Official Plan may be made prior to the second anniversary of the first day any part of the plan came into effect;
2. That such applications for Official Plan Amendment be processed concurrently with the related Zoning By-law Amendment application and in an expeditious manner in order to optimize the utilization of the transit investments made for the Vaughan Metropolitan Centre (VMC); and
3. That staff be directed to report no later than June 30, 2018 on an amendment to the VMC Secondary Plan to clarify that modifications to height and/or density in the VMC Secondary Plan area, that are being requested through Section 37 bonusing shall be implemented through a section 34 zoning by-law amendment and that an official plan amendment would not be required notwithstanding policy 9.4.4 in the VMC Secondary Plan and policy 10.2.1.7 in Volume 1 of the Vaughan Official Plan 2010 (VOP 2010).

### Purpose

To seek a resolution of Council that would allow official plan amendments to the VMC Secondary Plan to be made despite the two-year moratorium set out in the *Planning Act*; and to seek direction from Council for staff to investigate and report back on the potential elimination of the need for an Official Plan Amendment in the VMC Secondary Plan area for a change in height and/or density that is initiated or requested through Section 37 (s.37) bonusing.



## memorandum

### **Background and Analysis**

Smart Centres has made an application for a third Transit City tower in the VMC. The applicant seeks permission to:

- a. increase the building height from 25 to 55-storeys; and
- b. increase the density from 4.5 to 12.1 times the area of the lot for the subject lands.

The proposed amendments to the Official Plan would permit the development of a 55-storey residential apartment building containing 606 units, as shown on Attachments #3 to #9 of the report to the Committee of the Whole.

Through discussions with the applicant, concerns were raised regarding the need for an Official Plan Amendment for the adjustment in height and/or density, as they perceived that the s.37 request and an implementing zoning by-law is all that is required. The applicant also expressed concern that the new Planning Act provisions regarding privately initiated Official Plan Amendments within the first two years following the approval of a secondary plan may impact the ability to make applications for changes to height and density in a timely manner to support the growth adjacent to the subway station.

Both the VMC secondary plan and the VOP 2010 contain policies that require an Official Plan amendment for variations to height and density that is separate from the process for s.37 approvals.

Policy 9.4.4 of the VMC Secondary Plan states:

*"Minor variations from numerical requirements in the plan, with the exception of maximum and minimum heights and densities, may be permitted without an Official Plan Amendment where it is demonstrated through a site planning process to be appropriate and provided that the general intent of the plan is maintained."*

Policy 10.2.1.7 of VOP 2010 states:

*"That where policies of this Plan contain numerical standards, minor variations from those standards may be permitted without amendment to this Plan, with the exception of any variations to floor space index, height or environmental standards set out in Chapter 3, provided that such variations respond to unique conditions or context of a site, and are supported through a Planning Justification Report and/or Urban Design Brief to the satisfaction of the City."*

Staff advise that the need for an Official Plan Amendment is separate from the s.37 process. The requirement for an OPA exists in the VOP 2010 and the VMC Secondary Plan due to the inclusion of height and density numbers in the two documents. The requirement for the OPA provides the City with a planning instrument and approval through which these numerical factors can be managed.

Staff agree with the applicant that the application of s.37 does not mandate or require the need for an OPA, and staff are prepared to review and report back on potential amendments to the



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## memorandum

VMC Secondary Plan that clarify this process, and that facilitate efficient and effective approval process within the VMC.

### Conclusion

The effective and efficient approvals of development in the VMC, for which the terminus station of the \$4.2 Billion TTC line 1 extension has been built, the \$32.1 Million SmartCentres Place Bus Terminal has been built, the \$1.4 Billion York Viva bus rapid way connects, is paramount to the continued success of the creation of a world class transit hub. The review of the policy framework and its implementation is appropriate, and staff support the proposed resolution for Council's consideration.

Respectfully submitted,



**JASON SCHMIDT-SHOUKRI**  
Deputy City Manager,  
Planning and Growth Management



**MARK CHRISTIE**  
Director, Policy Planning and  
Environmental Sustainability

/lm

Copy to: Daniel Kostopoulos, City Manager  
Barbara McEwan, City Clerk