

<b>TO:</b>	<b>CHAIR AND MEMBERS STRATEGIC PRIORITIES AND POLICY COMMITTEE MEETING OF JULY 27, 2015</b>
<b>FROM:</b>	<b>MARTIN HAYWARD, MANAGING DIRECTOR, FINANCE AND CORPORATE SERVICES &amp; CITY TREASURER, CHIEF FINANCIAL OFFICER</b>
<b>SUBJECT:</b>	<b>PROPOSED AMENDMENTS TO THE DEVELOPMENT CHARGES ACT, 1997 (BILL 73: SMART GROWTH FOR OUR COMMUNITIES ACT) SECOND READING</b>

**RECOMMENDATION**

That, on the recommendation of the Managing Director, Finance and Corporate Services and City Treasurer, Chief Financial Officer, the following report regarding proposed amendments to the Development Charges Act, 1997 **BE RECEIVED** for information, **IT BEING NOTED THAT** Staff will provide a follow up report to the Strategic Priorities and Policy Committee regarding Bill 73 and its implications on the 2019 Development Charges Background Study once it has received Royal Assent.

**PREVIOUS REPORTS PERTINENT TO THIS MATTER**

“Information Report Bill 73 Amendments to the Planning Act,” Planning and Environment Committee, June 1, 2015

**PURPOSE OF REPORT**

This report provides information on proposed amendments to the *Development Charges Act*, 1997 and the implication of the proposals on the upcoming 2019 Development Charges Background Study.

**BACKGROUND**

In the fall of 2013, the Ministry of Municipal Affairs and Housing (MMAH) commenced consultations for revisions to the *Development Charges Act*, 1997. City Staff provided the Ministry with suggested changes regarding ineligible services, historical service standards, “soft services” mandatory deductions, Development Charges (DC) exemptions, methodology for determining DC funding for intensification infrastructure projects, and appeals to the Ontario Municipal Board.

Proposed amendments to the Development Charges Act in the form of Bill 73, the *Smart Growth for Our Communities Act*, was tabled in the Legislative Assembly on March 5, 2015. The Bill received a second reading on April 21, 2015. Bill 73 can be obtained at [http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&BillID=3176](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=3176)

In addition to amendments to the *Development Charges Act*, the Province is proposing amendments to the Planning Act. As such, Bill 73 represents an “omnibus” bill to address a multitude of development-related amendments. The changes to the *Planning Act* were described in an information report to the Planning and Environment Committee on June 1, 2015.

MMAH has established working groups composed of key development, municipal and third-party subject experts on several key DC policy areas, with the intent of having the recommendations of the working groups inform the final changes to the Act. The working groups are anticipated to report back in the fall of 2015. As a result, third reading and Royal Assent for Bill 73 will likely occur in 2016; however, the timeline is unknown at present.

## IMPLICATIONS FOR THE 2019 DEVELOPMENT CHARGES BACKGROUND STUDY

Appendix 'A' provides a detailed summary of the proposed changes to the *Development Charges Act*. The topics are as follows:

- Ineligible services (municipal services with growth-related capital needs that cannot be subject to DC recovery);
- Area rating (differing DC rates for areas of the City based on growth-related capital needs for the benefitting area);
- Services with no percentage reduction (services not subject to the 10% mandatory deduction);
- Service levels for determining maximum DC recovery (growth costs paid for by taxpayer contributions);
- Growth assets and asset management plans (long-term asset replacement costs); and,
- DCs payable with the issuance of multiple permits (phased development).

If adopted, the amendments to the *Development Charges Act* would impact the 2019 Development Charges Background Study, tentatively scheduled to commence in June, 2016. Several changes could have significant implications for calculating DC rates:

- **Recovery for Transit Services:** Two amendments pertain to Transit Services that will have implications for the 2019 DC Study. First, the removal of the mandatory 10% reduction would result in full DC recovery for identified growth costs, without the need for taxpayer contributions (other than the “non-growth share” required for all services). Second, the use of a planned level of service for determining service levels may result in a higher “ceiling” for DC recovery. This may result in increased funding for transit vehicles and infrastructure to support the future Rapid Transit lines. It should be noted, however, that the historic level of service used for the 2014 DC Study did not result in a “cap” for DC funding for Transit (the capital costs were lower than the maximum recovery amount).
- **Area rating requirements:** A form of area rating is likely for the 2019 DC Study, should the DC Act amendments be adopted. Although the details have not been specified, certain services and/or areas of the city will likely be required to have different DC rates, reflective of capital need requirements and identified growth. DC area rating was a policy issue considered in the 2014 DC Study and a subsequent review is planned for the 2019 DC Study. The detailed requirements for area rating, if the DC Act amendments are adopted, will inform Staff's policy review and the recommendations to Council.
- **Ability to recover for waste diversion:** If the DC Act permits DC recovery for waste diversion as proposed, Council will have the opportunity to consider whether it wishes to include waste diversion as a new service component as part of the DC rate. In the past, Staff have recommended additional service components (i.e., water supply and operations centres), but Council has opted not to include these services in the DC rate due to concerns regarding affordability. Staff will be requesting direction from Council for service components to consider with the 2019 DC Study, and if waste diversion becomes a permissible service, it can be included with the list of services for detailed review of growth-related capital needs requirements for DC recovery, reducing taxpayer contributions.

Staff continue to be of the opinion that further amendments to the *Development Charges Act* are required to maximize Council's flexibility in policy-making and to permit DCs to fully recover for growth-related capital costs:

- **Area rating:** The present DC Act provisions for area rating permit Municipal Council to determine if certain services and/or areas of the City should be subject to differing development charges. This is an important policy decision, with discretion held by Council. While the proposed changes to the DC Act regarding area rating are still being “fleshed out”, it appears likely that the amended Act will be prescriptive in area rating requirements. Staff is of the opinion that the present provisions in the Act are preferable as Municipal Council has the flexibility to determine its policy on area rating reflective of local needs and circumstances. However, Staff would be supportive of a new

requirement that Municipal Council must consider area rating for services and/or location, which would make the policy decision more explicit than it is at present.

- **10% mandatory reduction for “soft services”:** The City of London Official Plan contains many policies related to the principle that “growth should pay for growth” – in essence, that demonstrable capital needs requirements related to the growing city should be supported through DC sources. At present, the DC Act contains a mandatory 10% deduction for capital needs recovery for “soft services” (parks, recreation facilities, libraries, and transit service). It is the opinion of Staff that this deduction is arbitrary and results in taxpayers funding legitimate growth costs that should be borne by DC rates. Although the proposed amendments to the DC Act would remove the 10% deduction for transit services, Staff believes that this requirement should be removed for all services.
- **Ineligible municipal services:** The DC Act does not permit recovery for growth-related capital costs associated with cultural or entertainment facilities, tourism facilities, park land, hospitals, waste management or municipal general administrative buildings. As a result, these costs are borne by the taxpayer. The proposed amendments to the DC Act have not modified this list, with the exception of permitting DC recovery for waste diversion. Staff is of the opinion that the list of ineligible services should be removed from the DC Act to provide Municipal Council with the flexibility to determine what services it believes warrant DC recovery, based on demonstrable growth-related costs.
- **Ontario Municipal Board appeals:** Per the DC Act, appeals of DC By-laws to the Ontario Municipal Board can only result in maintaining a Council-approved DC rate, or the lowering of an approved rate. No changes have been proposed to these provisions. Staff believes that Board Members should be provided with the option on appeal to increase a DC rate, should the Member deem it warranted due to evidence presented in an appeal.

## CONCLUSION

Amendments to the *Development Charges Act, 1997* have received second reading and are presently under review by Provincially appointed working groups. The proposed amendments to the DC Act are anticipated to impact the policy choices available to Council and how DC rates are calculated.

Staff is of the opinion that several areas of the DC Act still require amendment to provide greater flexibility to Council in determining DC rates and to ensure that the principle of “growth pays for growth” is reflected in the Act.

Once Bill 73 receives Royal Assent, Staff will report back to the Strategic Priorities and Policy Committee with information on the changes to the *Development Charges Act* and the implications for the 2019 Development Charges Background Study. It is anticipated that the approval of Bill 73 will not result in implementation challenges for the 2019 Study.

<b>PREPARED BY:</b>	<b>SUBMITTED BY:</b>
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<b>RECOMMENDED BY:</b>	
<b>MARTIN HAYWARD, CGA, CPA MANAGING DIRECTOR, FINANCE AND CORPORATE SERVICES &amp; CITY TREASURER, CHIEF FINANCIAL OFFICER</b>	

July 21, 2015

- c.c. George Kotsifas, Managing Director, Development and Compliance Services & Chief Building Official  
Peter Kokkoros, Deputy Chief Building Official  
John Braam, Managing Director, Environmental and Engineering Services & City Engineer  
Edward Soldo, Director, Roads and Transportation  
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Appendix 'A': Overview of Potential Changes to the DC Act (Bill 73 – Second Reading)

## **Appendix 'A': Overview of Potential Changes to the DC Act (Bill 73 – Second Reading)**

The second reading of the amendments to the DC Act includes a number of changes of some significance to the City of London and all growth municipalities in the province of Ontario. These change and there potential impact are discussed below:

### **A. Ineligible Services.**

Currently, the legislation outlines a number of ineligible services, or services that cannot be funded from development charges. The current list includes :

- cultural or entertainment facilities,(eg. museums, theatres and art galleries);
- tourism facilities, including convention centres;
- acquisition of land for parks (acquired through Parkland Dedications and cash-in-lieu of parkland under the Planning Act);
- provision of a hospital as defined in the Public Hospitals Act;
- provision of waste management services;
- headquarters for the general administration of municipalities and local boards;

The proposed change would see the list of ineligible services moved from the legislation into the regulations. There has been some indication that provision of waste diversion such as recycling will be a permissible DC funded service in the future. In the interests of “growth paying for growth,” most advocates from municipal councils have maintained that there should be no ineligible services – that all services and capacity expansion necessitated by growth should be eligible for funding of the growth share of those works from development charges.

### **B. Area rating**

Area Rating is currently an option for municipalities that want to distinguish certain services from municipal wide charges. In London, area rating is used to distinguish the DC rates charged to rural areas from the rates charged to urban areas receiving full municipal services. For rural areas – since these areas do not receive municipal water, sanitary sewer collection and treatment and storm sewers - these areas have been excluded from DC charges. This provision for exclusion is possible under the current legislation, which is permissive in the use of area rates.

The proposed changes to the legislation would allow for “prescribed services” in “prescribed locations” to be required by provincial regulation. The changes would also require Council to consider the need for different services in different areas (amendment to clause 10 (2) c.1). There is speculation that this legislative change may be used to promote differential DC rates to encourage intensification. The Municipal Finance Officers Association (MFOA) has stated the position that municipalities are best suited to choose between area and municipal wide DC rates, and that legislative provisions to guide this use are not necessary.

### **C. Services with no percentage reduction**

Certain services are currently subject to a mandatory 10% reduction in their DC rate calculation. This reduction of the growth costs eligible for recovery through DC rates is in turn funded from the taxpayer.

The DC Act prescribes the services which shall not be subject to a 10% reduction, with the remaining services subject to the reduction, by default. Services not subject to the reduction are generally infrastructure – roads, water, sanitary and storm services – as well as Fire and Police. This leaves a number of services – most notably Transit, Libraries, Park Development and Recreation Facilities – that are subject to reduction. In the 2014 DC study, the 10% reduction to these services rendered approximately \$5.3M of growth costs ineligible for recovery under the DC's, which in turn costs taxpayers approximately \$500k per year.

The legislative changes to the DC would see Transit no longer subject to the 10% reduction. In London, for the 2014 DC study, this would have account for \$1.1M (of the \$5.3) in reductions, thereby saving taxpayers an average of \$110k per year, with the cost allocated to new home buyers and owners of new non-residential space.

### **D. Service Levels**

The so called “Soft Services” – Fire, Police, Library, Transit, Parks and Recreation – have all been subject to rate calculations that limit the amount of DC rates that can be collected in future

years, by limiting the service levels in those services to historical average levels that precede a DC study. This implies that despite intentions to improve service levels to standards now considered appropriate, the DC rate calculation will “cap” those services at historical standards, even when a service review has identified higher capital and funding needs.

This limitation has been most apparent in the area of Parks and Recreation, where plans for new park and recreation amenities have surpassed the historical service levels over the past 10 years. Again, the impact is to impose a portion of the growth related costs for this service on the existing tax base.

The proposed amendments to the legislation introduce the concept of “planned level of service” and identify the period immediately following (rather than prior to) the completion of the DC rate study as the pertinent period. Planned level of service may in the future be prescribed for use by the province for certain services, and speculation is that Transit will be among those services for which DC rate calculations would no longer be limited to historical but rather “planned” service levels for the period following the study. This will result in a more flexible approach to how certain prescribed services may calculate the DC rate and may result in slightly increased DC rates where historical service levels have acted as a “cap” on the DC rates for certain “soft services”.

#### **E. Growth assets and Asset Management Plans**

Currently, the DC legislation requires municipalities to complete “an examination, for each service to which the development charge by-law would relate, of the long term capital and operating costs for capital infrastructure required for the service”. The proposed revisions to the Act would require that the assets planned for acquisition and construction within a development charges study be reflected in the asset management plan, demonstrate that the growth related assets being acquired and built are financially sustainable over their full life cycle; and contain any other information that is prescribed in the manner prescribed.

#### **F. Where multiple permits are issued**

The draft legislative revisions also deal with those limited circumstances where more than one building permit is required (such as may occur for example, with the construction of a shopping mall). The proposal is the DC rate at the level be fixed at the level of when the first building permit was issued. Presumably, this revision is intended to protect an applicant from increases in DC rates (due to rate indexing or new DC rate by-laws, coming into effect during the course of construction).

The City of London’s current policy allows, with certain limitations related to expiry of a building application, to determine the DC rate applied to a building permit application to the time a building permit is applied for, rather than when it is issued.