

## Report to Strategic Priorities & Policy Committee

**To:** Chair and Members  
Corporate Services Committee

**From:** Anna Lisa Barbon, Deputy City Manager, Finance Supports

**Subject:** Amendments to Development Charge Alternative Payment Agreement Template and Development Charge Interest Rate Policy

**Date:** January 30, 2023

## Recommendation

That, on the recommendation of the Deputy City Manager, Finance Supports, the following actions be taken:

- a) The attached proposed by-law (Appendix "A") **BE INTRODUCED** at the Municipal Council meeting to be held on February 14, 2023 to amend By-law No. A.-7956-84, as amended, being "A by-law to approve and authorize a Development Charges Alternative Payment Agreement template to provide for the alternative payment of Development Charges for developments that qualify for deferred Development Charge payments made under Section 27 of the Development Charges Act, 1997 S.O. 1997, c. 27, as amended; and to delegate the authority to enter into such Agreements to the City Treasurer or delegate", to repeal and replace Schedule "1" to the by-law.
- b) The attached proposed by-law (Appendix "B") **BE INTRODUCED** at the Municipal Council meeting to be held on February 14, 2023 to repeal By-law No. CPOL.-400-85 being "A by-law to adopt a new Council Policy entitled "Development Charge Interest Rate Policy" CPOL.-400-85, noting that recent legislative changes through Bill 23, *More Homes Built Faster Act*, 2022, include amendments to the *Development Charges Act*, 1997, that provide the framework for determining the interest rate that can be applied to Development Charges.

## Executive Summary

The purpose of this report is to recommend changes to the Alternative Payment Agreement (APA) template, which provides applicants the option to pay development charges (DCs) for certain development types at an earlier point in time and to repeal the DC Interest Rate Policy. These changes are recommended in order to ensure alignment with the Development Charges Act as a result of recent amendments from Bill 23, *More Homes Built Faster Act*, 2022.

It should be noted that this report and its recommendation pertain to housekeeping adjustments arising from Bill 23. Staff will be providing a fulsome update regarding Bill 23 status and implications at an upcoming meeting of the Strategic Priorities and Policy Committee.

## Linkage to the Corporate Strategic Plan

This report supports the 2019-2023 Strategic Plan for the City of London through the Building a Sustainable City strategic area of focus by ensuring infrastructure is built to support future development.

# Analysis

## 1.0 Background Information

### 1.1 Previous Reports Related to this Matter

March 9, 2020 – Strategic Priorities and Policy Committee – Development Charges Housekeeping Matters Related to Bill 108

### 1.2 Background and Review

On March 9, 2020, a report titled ‘Development Charges Housekeeping Matters Related to Bill 108’ was brought forward to the Corporate Services Committee. The report contained a Development Charge (DC) Alternative Payment Agreement (APA) template, including delegated authority for the City Treasurer or delegate to enter into such agreements. The report also contained a DC Interest Rate Policy.

On March 25, 2020, Municipal Council resolved the following related to the DC Interest Rate Policy and DC APA template:

*a) the proposed by-law appended to the staff report dated March 9, 2020 as Appendix “A” being “A by-law to adopt a new Council Policy entitled “Development Charge Interest Rate Policy”, BE INTRODUCED at the Municipal Council meeting to be held on March 24, 2020 to establish a framework for determining the interest rate that can be applied to Development Charges for certain development types; and,*

*b) the proposed by-law appended to the staff report dated March 9, 2020 as Appendix “B” being “A by-law to approve and authorize a Development Charges Alternative Payment Agreement template to provide for the alternative payment of Development Charges for developments that qualify for deferred Development Charge payments made under Section 27 of the Development Charges Act, 1997 S.O. 1997, c. 27, as amended; and to delegate the authority to enter into such Agreements to the City Treasurer or delegate”, BE INTRODUCED at the Municipal Council meeting to be held on March 24, 2020;*

On November 28, 2022, Bill 23, More Homes Built Faster Act, 2022, received Royal Assent. Bill 23 amended several Acts, including the Development Charges Act. While there are many amendments to the Development Charges Act, the scope and balance of this report is limited to changes to the APA template and DC Interest Rate Policy to ensure alignment with the legislation.

### 1.3 Alternative Payment Agreement

Bill 108, More Homes, More Choice Act, which received royal assent on June 6, 2019, amended the Development Charges Act to change the timing of when DCs are calculated and paid and to provide for certain development types to pay DCs over an extended period of time. In response to the legislative changes resulting from Bill 108, an APA was developed to provide greater flexibility for payment options. The APA options outlined in the March 9, 2020 report included the following:

- 1) Rental Housing that is not non-profit and certain Institutional development that are required to pay development charges in 6 annual instalments be given an alternative payment option to pay at building permit issuance (the same time as non-deferred developments);
- 2) Non-Profit Housing that is required to pay development charges in 21 annual instalments be given the following alternative payment options:
  - a. Full DC payable at time of building permit issuance; or
  - b. Full DC payable at either 1 or 2 years after building permit issuance.

As part of the Bill 23 changes, the Development Charges Act has been further amended to provide exemptions for non-profit housing. This exemption for non-profit housing has been in force and effect since November 28, 2022. As a result, the APA option for non-profit housing is no longer required. The APA options for rental housing and certain Institutional developments remain relevant and are recommended to remain unchanged.

The retention of the APA option will provide providers of rental housing that is not non-profit and certain institutional developments with enhanced flexibility to determine if their financial projections and funding would be better served by paying DCs through installments or paying the full cost of DCs upfront.

The exemption of non-profit housing and the removal of the APA payment options for this development type will require additional changes to the APA template. Since the remaining APA payment options for rental housing that is not non-profit and certain institutional developments are for payment at permit issuance, registration of the agreement on title, along with an independent solicitor's certificate, is no longer required. Registration on title would only be recommended for APA payments beyond permit issuance.

References to interest charges in the APA are also recommended to be changed as follows:

- APA Interest Charges Up to Permit Issuance - Bill 23 has amended the Development Charges Act to now include a consistent provincial-wide approach for determining interest charges. Prior to Bill 23, municipalities had discretion for how to determine interest, which was established in the DC Interest Rate Policy. References to the DC Interest Rate Policy have been removed from the APA template. Instead, interest will be applied consistent with the Development Charges Act which is explained further below.
- Since APA options will no longer extend beyond permit issuance, reference to interest charges after permit issuance have been removed.

#### **1.4 Development Charges Interest Framework**

A DC Interest Rate Policy was developed in response to amendments to the Development Charges Act from Bill 108 that allowed municipalities to charge interest on DCs in certain circumstances. The legislation at the time did not provide a framework for how the interest rate was determined, but rather provided municipalities with discretion for establishing an approach. London adopted an approach in the DC Interest Rate Policy where the interest rate was the five-year average of the Non-Residential Construction Cost Index.

The Development Charges Act, as a result of Bill 23, now includes a framework for determining a DC interest rate. This change standardizes the approach for determining a DC interest rate for municipalities across the province. The maximum interest rate that can now be applied to DCs in certain circumstances is the average prime rate of Royal Bank of Canada, The Bank of Nova Scotia, the Canadian Imperial Bank of Commerce, the Bank of Montreal and The Toronto-Dominion Bank plus one percent, noting that the prime interest rate cannot exceed the rate in effect on the adjustment date (the adjustment date is established four times per year). Since the Development Charges Act now establishes the framework for determining a DC interest rate, the DC Interest Rate Policy is no longer aligned with the legislation and is recommended to be repealed. Future DC interest calculations will be determined in accordance with the Development Charges Act.

## **2.0 Financial Impact/Considerations**

There are no direct financial expenditures associated with this report. Overall financial impacts associated with Bill 23 will be provided to Council in a future report to the Strategic Priorities and Policy Committee.

### **Conclusion**

Bill 23 has amended several Acts including the Development Charges Act. While certain elements of Bill 23 will not become effective until proclamation, the majority of the amendments to the Development Charges Act are now in force and effect. In order to align with the legislation, changes to the APA template are recommended. In addition, the DC Interest Rate Policy is no longer required and is recommended to be repealed. Staff are assessing the full scope of changes and are developing implementation plans in response to the legislative amendments. Staff will be providing Council with a comprehensive update related to Bill 23 at a future meeting of the Strategic Priorities and Policy Committee.

**Prepared by:** Jason Senese, CPA, CGA, MBA  
Manager, Development Finance

**Submitted by:** Paul Yeoman, RPP, PLE  
Director, Capital Assets and Projects

**Recommended by:** Anna Lisa Barbon, CPA, CGA  
Deputy City Manager, Finance Supports

## APPENDIX 'A'

Bill No.  
2023

By-Law No.

A by-law to amend By-Law No. A.-7956-84 being a by-law “to approve and authorize a Development Charges Alternative Payment Agreement template to provide for the alternative payment of Development Charges for developments that qualify for deferred Development Charge payments made under Section 27 of the Development Charges Act, 1997 S.O. 1997, c. 27, as amended; and to delegate the authority to enter into such Agreements to the City Treasurer or delegate” to repeal and replace Schedule 1

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorize a municipality to pass by-laws necessary or desirable for municipal purposes and, in particular, paragraph 3 of subsection 10(2) authorizes by-laws respecting the financial management of the municipality;

AND WHEREAS section 23.1 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorizes a municipality to delegate its authority;

AND WHEREAS subsection 23.2(2) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorizes a municipality to delegate quasi-judicial powers under the *Municipal Act, 2001* to an individual who is an officer, employee, or agent of the municipality;

AND WHEREAS the Municipal Council of The Corporation of the City of London deems it appropriate to pass a by-law to delegate an alternative payment agreement template for developments that qualify for deferred Development Charge payments made under Section 27 of the *Development Charges Act, 1997* S.O. 1997, c.27, as amended;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. By-law No. A.-7956-84 is hereby amended by repealing and replacing Schedule “1” with the new attached Schedule “1”.
2. The City Treasurer, or delegate, is hereby authorized to enter into and execute Development Charges Alternative Agreements authorized and approved in section 1 above.
3. This by-law comes into force on the day it is passed.

PASSED in Open Council on February 14, 2023.

Josh Morgan  
Mayor

Michael Schulthess  
City Clerk

First Reading –  
Second Reading –  
Third Reading –

**SCHEDULE 1**

**DEVELOPMENT CHARGES ALTERNATIVE PAYMENT  
AGREEMENT**

THIS AGREEMENT made this            day of            , 20xx.

**BETWEEN:**

APPLICANT NAME

(hereinafter referred to as the "Applicant")

-and-

THE CORPORATION OF THE CITY OF LONDON

(hereinafter referred to as the "City")

**WHEREAS** the Applicant has represented to the City that the lands described in Schedule "A" hereto (the "Lands") are owned by it;

**AND WHEREAS** pursuant to the City's Development Charge By-law, a development charge is payable by the Applicant to the City for 'Rental Housing that is not non-profit in 6 annual instalments / certain Institutional Development in 6 annual instalments';

**AND WHEREAS** the *Development Charges Act, 1997, S.O. 1997, c. 27*, as amended provides that a municipality may enter into an agreement with persons who are required to pay a development charge, to authorize that all or a portion of the development charge be paid before or after it would otherwise be payable;

**NOW THEREFORE IN CONSIDERATION OF** the foregoing, the parties agree as follows:

**RECITALS**

1. The Recitals are confirmed by the Applicant and the City (the “Parties”) to be correct and to constitute the basis for this Agreement.

**REQUEST TO ADVANCE PAYMENT OF DEVELOPMENT CHARGE**

2. The Applicant acknowledges its obligation to pay a development charge in accordance with Section 26 of the *Development Charges Act, 1997*, as amended. The Applicant has requested that it be permitted, pursuant to Section 27 of the *Development Charges Act, 1997*, as amended, to pay the development charge for the ‘Rental Housing that is not non-profit / Institutional development’ before it would otherwise be payable.

**“DUE DATE” FOR PAYMENT PURSUANT TO THIS AGREEMENT**

3. The Applicant hereby covenants and agrees to pay the applicable development charge to the City with interest, on MM DD YYYY (the “Due Date”), which is on or prior to the date of initial permit issuance for the development.

**ANTICIPATED DEVELOPMENT CHARGE**

4. The anticipated amount of the development charge payable by the Applicant has been calculated on the basis of the following information:

Type	Units / m2 of Gross Floor Area (A)	Development Charges Rate (B)	Development Charges Payable (A) * (B)
Single & Semi-Detached			
Multiples / Row Housing			
Apartments < 2 Bedrooms			
Apartments >= 2 Bedrooms			
Institutional			
Credits / Discounts			
<b>TOTAL</b>			

**TIMING OF DEVELOPMENT CHARGE CALCULATION**

5. The actual amount of the development charge will be determined on the basis of prevailing rates and rules in accordance with Section 26 of the *Development*



*Charges Act, 1997*, as amended. If, before any building permit is issued, the City's Development Charge By-law is amended or is repealed and replaced or the information set out above is revised, the applicable development charge will be revised to reflect these changes and the Parties agree that this Agreement will apply to that revised information and amount. Once any building permit has been issued, the amount of the applicable development charge shall be calculated in accordance with Section 26 of the *Development Charges Act, 1997*, as amended.

#### **INTEREST ON AMOUNT OWING BEFORE DUE DATE**

6. The Applicant agrees to pay interest to the City on the amount of the development charge, in accordance with Section 26 of the *Development Charges Act, 1997*, as amended.

#### **NOTICE**

7. Any notices required or permitted to be given pursuant to the terms of this Agreement shall be given in writing sent by prepaid registered post, addressed in the case of notice given by the City, to:

City Clerk  
The Corporation of the City of London  
P.O. Box 5035  
300 Dufferin Avenue  
London, ON N6A 4L9

And in the case of notice given by the Applicant, to:

Applicant Name  
Applicant Address

#### **WARRANTY**

8. The Applicant represents and warrants to the City as follows:
  - 8.1 The Applicant is a corporation validly subsisting under the laws of Ontario and has full corporate power and capacity to enter in this Agreement; and
  - 8.2 All necessary corporate action has been taken by the Applicant to authorize the execution and delivery of this Agreement.

**BINDING ON SUCCESSORS**

9. It is agreed by and between the Parties hereto that this Agreement shall be enforceable by and against the Parties hereto, their heirs, executors, administrators, successors and assigns and that the Agreement and all the covenants by the Applicant herein contained shall run with the Lands for the benefit of the City.

**IN WITNESS WHEREOF** the Parties hereto have hereunto affixed their corporate seals duly attested by the hands of their proper signing officers in that behalf.

SIGNED, SEALED AND  
DELIVERED

)  
) APPLICANT NAME  
)  
) \_\_\_\_\_ c/s  
) Name:  
) Title:  
) I have authority to bind the corporation.  
)  
)  
) THE CORPORATION OF THE CITY OF  
) LONDON  
)  
)  
) \_\_\_\_\_  
) City Treasurer or Delegate

SCHEDULE "A"

**DESCRIPTION OF "LANDS"**

## APPENDIX “B”

Bill No.  
2023

By-law No. A.

A by-law to repeal By-law No. CPOL.-400-85, as amended, being “A by-law to adopt a new Council Policy entitled “Development Charge Interest Rate Policy”.

WHEREAS section 5(3) of the *Municipal Act, 2001, S.O. 2001, C.25*, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001, S.O. 2001, C.25*, as amended, provides a municipality with the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority;

AND WHEREAS legislative amendments through Bill 23, *More Homes Built Faster Act, 2022*, include amendments to the *Development Charges Act, 1997* that provide the framework for determining the maximum interest rate that may be applied to Development Charges.

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. By-law No. CPOL.-400-85 being “A by-law to adopt a new Council Policy entitled “Development Charge Interest Rate Policy” is hereby repealed.
2. This by-law comes into force and effect on the date it is passed.

PASSED in Open Council on February 14, 2023.

Josh Morgan  
Mayor

Michael Schulthess  
City Clerk

First Reading –  
Second Reading –  
Third Reading –