

Clause 7 in Report No. 5 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on March 24, 2016.

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Implications of the Development Charges Act Amendments

Committee of the Whole recommends adoption of the following recommendations contained in the report dated February 26, 2016 from the Commissioner of Finance:

1. Council receive this report for information.
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Report dated February 26, 2016 from the Commissioner of Finance now follows:

1. Recommendation

It is recommended that Council receive this report for information.

2. Purpose

The Province amended the *Development Charges Act, 1997* and enacted accompanying regulations in December 2015. This report provides Council with an overview of these changes.

3. Background

In 2015 the Region provided a response to the proposed changes to the *Development Charges Act, 1997*

Between October 2013 and January 2014, the Ministry of Municipal Affairs and Housing (MMAH) sought input on the Land Use Planning and Appeal and Development Charges systems, focusing on what changes were needed to improve the system. York Region provided a written submission to MMAH on January 9, 2014.

In March of 2015 the Province released Bill 73, *Smart Growth for Our Communities Act, 2015*, which amended the *Development Charges Act, 1997*.

York Region undertook a coordinated staff review of Bill 73. The Region provided a Council-endorsed response to the changes in June 2015.

The Association of Municipalities Ontario (“AMO”) and the Municipal Finance Officers’ Association of Ontario (“MFOA”) took positions similar to the Region’s with the Province’s Steering Committee on Bill 73. In addition, Regional staff participated in a number of stakeholder conference calls and webinars that provided further opportunities to articulate the Region’s concerns.

Some of the Region’s requested changes were accommodated

Table 1 compares the Region’s positions, as submitted to the Province in its response in June 2015 to the *Development Charges Act, 1997*, as amended by Bill 73 (December 2015).

Table 1
Region’s Positions (2015) versus
Development Charges Act, 1997 – as Amended

Region’s Position (June 2015)	<i>Development Charges Act, 1997</i> (as amended)
The removal of all ineligible services from both the legislation and regulations	The list of ineligible services moved to the regulations
All waste management services should be eligible for DCs	Only waste diversion made eligible
The removal of the historic level of service for all services	Only removed for transit services
The removal of the 10 per cent statutory reduction should apply to all services	Only removed from transit services
Clarification around the definition of what a first permit could be, which is when the Bill proposed DCs are paid (for condominiums)	No further clarification provided
Did not support the Province providing itself with the power to prescribe area-rated development charges	Municipalities must consider area rated rates, but the Province did not issue regulations to prescribe municipalities, areas or services, for which area rated bylaws must be passed
Clarification as to the requirements of the Asset Management Plan that is to inform the Background Study	Clarification provided for transit services Further clarification for other services is anticipated to be provided in regulations for <i>Bill 6, Infrastructure for Jobs and Prosperity Act</i>

The new legislative regime includes administrative as well as policy changes

Under the changes to the *Development Charges Act, 1997*, the Province provided for greater growth-related cost recovery for both transit services and waste diversion. At the same time the Province prescribed greater reporting requirements for municipalities (see Table 2).

Table 2
Areas of Change under *Development Charges Act, 1997* – as Amended

Increased DC recovery for two service areas	Transit Services	Waste Diversion	
Administrative Changes	DCs payable at first building permit for buildings that require multiple permits	Background Study must be published 60 days in advance	Enhanced reporting requirements for DC reserve
Other material changes	Asset management plan requirements	Requirement to consider area-specific charges	End to voluntary payments

4. Analysis and Options

Development charges can now recover a larger share of growth-related transit costs

Transit services are now able to use planned levels of service, rather than historical service levels, although the planning horizon is still limited to ten years. The ten per cent statutory reduction has been removed.

The method for determining the planned levels of service involves:

- Ridership **forecasts** for all modes of transit services proposed to be funded by the development charge over the 10-year period immediately following the preparation of the background study (by development types) and whether the forecasted ridership will be from existing or planned development;
- Ridership **capacity** for all modes of transit services proposed to be funded by the development charge over the 10-year period immediately following the preparation of the background study; and
- Identification of **excess capacity** that will exist at the end of ten years.

Implications of Development Charge Act Amendments

There are additional reporting requirements for municipalities recovering increased growth-related costs for transit services

The regulations establish new reporting requirements for growth-related transit costs. They require an asset management plan that includes:

- A section that sets out the state of local infrastructure, the type of assets, replacement cost valuation for all assets, asset age distribution and asset condition based on standard engineering practices for all assets;
- A section that sets out the proposed level of service, including defining the level of service through timeframes and performance measures, discussing any external trends or issues and showing current performance relative to the targets set out;
- An asset management strategy that sets out planned actions that will enable the assets to provide the proposed level of service in a sustainable way at the lowest life cycle cost; and
- A financial strategy that shows the yearly expenditure forecasts that are expected to achieve the proposed level of service, provides actual expenditures in respect of the categories set out, discusses key assumptions and alternative scenarios where appropriate, and identifies any funding shortfall relative to financial requirements.

Waste diversion no longer included as part of the list of ineligible services

While the Region advocated that all growth-related infrastructure should be eligible for development charge recovery, the Province only added waste diversion. This was accomplished by saying that 'landfill sites and services' and 'facilities and services for the incineration of waste' are ineligible.

The regulations did not narrowly define waste diversion, which may allow greater cost recovery in the future as new technologies to divert waste are developed.

The Act does not define what constitutes a "building permit" for the purpose of paying development charges

The new Act notes that if a development consists of one building but requires more than one building permit, the development charge is payable when the first building permit is issued. "Building permit" is left undefined, leaving open the possibility that a pre-construction building permit could trigger payment of development charges.

This could mean that development charges are paid at lower rates than they would if they were paid under a 'normal' construction permit.

Implications of Development Charge Act Amendments

The Region's Legal Services department intends to define first "building permit" in the 2017 DC Bylaw Update.

Each phase of a multi-phase development is considered a separate development

If a development consists of two or more phases that are anticipated to be completed in different years, each phase of the development is deemed to be a separate development for the purposes of development charge collections. This is already the standard practice in York Region.

The Development Charge Background Study must now be available to the public 60 days prior to passing the DC Bylaw

While not included in the original version of Bill 73, the province put in place a requirement that the Development Charge Background Study be made publicly available a minimum of 60 days prior to passing. In addition, the study must remain publicly accessible via website until the Bylaw expires or is repealed. This is already the Region's current practice.

Further clarity on the requirement for asset management plans is anticipated to come under Bill 6

The *Development Charges Act, 1997*, as amended, would require municipalities to prepare an asset management plan that demonstrates that all assets funded by DCs are 'financially sustainable' over their lifecycle. Currently the regulations only provide requirements for the asset management plans related to transit services. Further guidance is anticipated to be provided under the Regulations for *Bill 6, Infrastructure for Jobs and Prosperity Act*. This Bill, which is not yet in force, codifies the principles of asset management used by the Province and municipal governments and is intended to establish principled, evidence-based and strategic long-term infrastructure planning.

The Act prohibits voluntary payments

The amendments to the *Development Charges Act, 1997* prohibit the imposition of additional levies, commonly understood to mean voluntary payments or extralegal agreements, related to a development. Staff are investigating the definition of voluntary payment agreements to ensure the Region remains compliant in the future. Existing voluntary payment agreements are grandfathered.

Link to key Council-approved plans

Improvements to the *Development Charges Act, 1997* support several objectives in York Region's 2015-2019 Strategic Plan including: "Optimizing critical infrastructure systems capacity"; Encouraging growth along Regional Centres and Corridors"; "Preserving green spaces"; "Ensuring optimal locations for business and employment growth are available", and "Ensuring a fiscally prudent and efficient Region".

The *Development Charges Act, 1997* also supports the "Liveable Cities and Complete Communities" and "Open and Responsive Government" theme areas in Vision 2051.

Lastly, the amendments support a number of Regional Official Plan policy areas, including but not limited to the "Economic Vitality", "Growth Management" and "Implementation" sections.

5. Financial Implications

The 2012 DC Background Study identified approximately \$14.4 billion of growth-related infrastructure to be built over the following 20 year period. Of this, approximately 50 per cent was expected to be recovered through development charges during this period. The remainder was expected to be funded through future development charges (post period benefits), as well as grants, property taxes and water rates.

If the provisions in Bill 73 had been adopted in 2012, staff estimate that an additional five per cent of these costs could have been recovered through development charges (a total of 55 percent). This would be primarily due to the removal of the 10 per cent statutory reduction for transit, replacing historical with planned service level for all transit (not just for subways), as well as the inclusion of waste diversion as an eligible service. This analysis assumes that the planned level of service cap for transit would not affect cost recovery.

A significant portion of the growth-related infrastructure identified in the 2012 DC Background study will also still benefit existing development. Therefore, the property tax/user rate base will continue to be a significant funding source for growth-related projects.

6. Local Municipal Impact

In addition to any benefit they may realize related to their own infrastructure, local municipalities will benefit to the extent that the Region is better able to fund growth-related infrastructure from development charges.

7. Conclusion

The changes to the *Development Charges Act, 1997* are a positive step forward. However, even with the changes described in this report, the Region will still not be able to recover all of the costs of growth-related infrastructure from development charges.

For more information on this report, please contact Edward Hankins, Director, Treasury Office, at ext. 71644.

The Senior Management Group has reviewed this report.

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Accessible formats or communication supports are available upon request