

Clause No. 19 in Report No. 1 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on January 23, 2014.

## **19**

### **LAND USE PLANNING AND APPEAL AND DEVELOPMENT CHARGES SYSTEMS REVIEW**

**Committee of the Whole recommends adoption of the following recommendations contained in the report dated December 12, 2013 from the Executive Director, Corporate and Strategic Planning, Commissioner of Finance and the Commissioner of Transportation and Community Planning:**

#### **1. RECOMMENDATIONS**

It is recommended that:

1. Council endorse the contents of this report and *Attachments 1* and *2* as York Region's position on improving the Land Use Planning and Appeal and Development Charges Systems.
2. The Regional Clerk submit this report and attachments to the Ministry of Municipal Affairs and Housing as York Region's response to EBR Postings 012-0241 and 012-0281.
3. The Province be requested to undertake a comprehensive review of the role, operations, practices and procedures of the Ontario Municipal Board within the Land Use Planning and Appeal System.
4. The Regional Clerk circulate this report to the planning departments of all nine local municipalities.

#### **2. PURPOSE**

The purpose of this report is to seek Council endorsement of the recommendations made in response to the Land Use Planning and Appeal and Development Charges Systems review being undertaken by the Ministry of Municipal Affairs and Housing (MMAH).

### **3. BACKGROUND**

#### **On October 24, 2013, MMAH initiated a review of the Land Use Planning and Appeal and Development Charges Systems review**

MMAH is consulting from October 2013 to January 2014 on what changes are needed to improve the Land Use Planning and Appeal and Development Charges Systems. The opportunity to provide written comments is open until January 10, 2014.

#### **MMAH has provided guidance on the specific elements to be considered during this review**

MMAH has published consultation documents that guide and scope review of the Land Use Planning and Appeal and Development Charges Systems. These consultation documents identify 8 themes being addressed through these reviews, including:

1. predictability and accountability in the planning and appeal process
2. greater municipal leadership in local land use planning decisions
3. better engaging citizens in the local planning process
4. alignment of land use planning and infrastructure decisions
5. recovering the cost of growth from growth
6. prescriptive versus permissive legislation
7. transparency and accountability
8. strengthening development charges as a broader policy tool

MMAH has also been explicit in identifying items that will not be addressed through these reviews, including:

- eliminating or changing the OMB's operations, practices and procedures
- removing or restricting the provincial government's approval role and ability to intervene in matters
- removing municipal flexibility in addressing local priorities
- changing the "growth pays for growth" principle of development charges
- education development charges and the development charges appeal system

It is clear the Province does not intend this review to be a complete overhaul of either system.

## **Extensive consultation was used to arrive at the recommended Regional response**

Staff from the Long Range Planning and Revenue Forecasting and Policy Branches co- led the review of the Land Use Planning and Appeal and Development Charges Systems. Extensive internal and external consultation occurred to develop the recommended Regional response. Internally, consultation occurred with staff from a variety of departments, including:

- CAO's Office, Long Range Planning
- Community and Health Services (Policy and Program Support, Housing, Business Operations and Quality)
- Corporate Services (Legal Services, Property Services)
- Environmental Services (Environmental Promotion and Protection, Water Resources, and Capital Planning and Delivery)
- Finance (Treasury Office)
- Transportation and Community Planning (Transportation Planning, Strategic Policy and Business Planning, Community Planning) York Region Police

Externally, consultation occurred with representatives from the following:

- Local Municipalities (Planning and Finance representatives)
- York Region Planning Commissioners and Directors
- York Region Area Treasurers' Group
- Municipal Finance Officers' Association of Ontario

It is anticipated that most of the Region's local municipalities will make their own submissions. The York Region response only references local municipal comments where common areas of concern have been identified.

## **4. ANALYSIS AND OPTIONS**

York Region's comments on MMAH's review of the Land Use Planning and Appeal and Development Charges Systems are detailed in *Attachments 1* and *2*. The following discussion identifies the key recommendations that emerged through the review process.

### **LAND USE PLANNING AND APPEAL SYSTEM**

Over the past decade the Province has produced a number of planning related statutes and plans, requiring both upper and lower-tier municipalities to proceed with a series of amendments and changes to bring planning documents into conformity with these Provincial documents. As a result of this almost perpetual state of updates and appeals to the OMB, the Land Use Planning System is in need of a comprehensive overhaul. It is not sufficient to simply update the system as it is today.

**The scope of the review must be expanded to fully address the Ontario Municipal Board (OMB).**

The OMB plays a significant role in the Land Use Planning System in Ontario. Board decisions on planning matters have a tremendous impact on the shape and form of communities. York Region recommends the Province expand the scope of this review to examine the role, operations, procedures and practices of the OMB.

An expanded review is critical to fully assess the effectiveness of the Land Use Planning and Appeal System in Ontario and should include:

- resource requirements (members, staff, financial and time commitments) necessary to effectively participate in the OMB process
- costs associated with initiating or participating in an appeal
- type of issues and planning applications brought before the Board
- ability of the OMB to hear and adjudicate appeals and issue decisions in a timely manner
- qualification and selection process for members
- consistency in decision-making (role of precedent decisions)

**The ability to appeal municipal conformity exercises and whole plan appeals should be removed from the Land Use Planning System**

Appeals of new official plans, or amendments required to bring those plans into conformity with Provincially legislated plans, frustrate municipal efforts to implement Provincial planning legislation and policy. These types of appeals and resulting hearings cost municipal government millions of dollars and often years of staff time. Municipal conformity exercises should not be subject to appeal under the provisions of the *Planning Act*, except where municipalities are implementing policy more restrictive than required by Provincial direction.

It has been our experience that whole plan appeals are simply used as a bargaining tool at the OMB. A whole plan appellant will withdraw appeal on certain parts of a plan in return for beneficial policy direction changes in other parts of the plan. Clearly there was no issue with the parts of the plan for which the appeal is withdrawn. MMAH should also look at mechanisms to remove the ability to initiate whole-plan appeals and require appellants to identify specific elements of any plan that they intend to dispute.

### **The Land Use Planning and Appeals System needs to place greater priority on local decision making**

York Region and its nine local municipalities have, and will continue to develop sophisticated planning policy and plans through open and transparent processes involving significant stakeholder engagement and collaboration. These collaborative processes are often side tracked through site-specific, highly speculative development proposals. York Region recommends that privately-initiated official plan amendments only be considered at the time of the 5 year municipal comprehensive review.

Further, the OMB should give higher credence than simply having regard to municipal council planning decisions. Municipal decisions implement Provincial and municipal land use planning priorities, as identified in approved official plans that are developed through comprehensive, open and transparent processes. Section 2.1 of the *Planning Act* should be amended to prescribe how the OMB can give consideration to the context and process within which the council decision have been made, and not simply “have regard” for a municipal decision.

### **Opportunity for local decision making is removed through OMB appeal**

The review and approval of strategic planning documents and large development applications have become increasingly complex and time-consuming. As a result, Regional and local municipalities are struggling to make planning decisions within the 180-day timeframe prescribed in the *Planning Act* under Sections 22 (7.0.2) and 17 (40). Six months is not sufficient processing time to allow for all agency input to be responded to and a fulsome public participation process to be undertaken. As well, consideration of an entirely new Official Plan is subject to the same decision time frame as a development application. In our experience, the result has been that applications are appealed for lack of decision (under Section 17 (40)) and the ability to complete comprehensive consultation process and make local decisions is lost. MMAH should extend the decision time frame from 180 to 365 days and close the Section 17 (40) loophole to allow for local decisions.

### **Coordination of policy language and review dates of all Provincial planning legislation and policy will help municipalities keep their planning documents up to date**

Over the past decade, municipal plans have been in an almost constant state of review because of the number of amendments required to ensure conformity with Provincial plans and updates to those plans. This has been a strain on municipal resources and has impacted many municipalities ability to keep planning documents current.

MMAH is responsible for implementing and protecting Provincial interests through the Land Use Planning and Appeals System. MMAH should work towards addressing consistency and overlap between key legislation and policy documents, including:

- Provincial Policy Statement
- Growth Plan for the Greater Golden Horseshoe (Growth Plan)
- Greenbelt Plan
- Oak Ridges Moraine Conservation Plan
- Lake Simcoe Protection Plan
- Clean Water Act and Source Water Protection Plans
- Metrolinx's Big Move
- Endangered *Species Act*

At a minimum, MMAH should work towards combining documents and/or coordinating reviews to provide consistency in Provincial requirements and reduce the frequency of amendments to planning documents at the municipal level.

## **DEVELOPMENT CHARGES SYSTEM**

The current *Development Charges Act* was implemented in 1997. It introduced a number of restrictions and additional requirements not found in the previous Act. The 1997 Act was seen as striking a balance between municipal interests and development interests. However, over the past few years, stakeholders have raised concerns regarding the impact of development charges on housing affordability, investment in strategic infrastructure, as well as Growth Plan implementation and economic growth.

### **The growth pays for growth principle needs to be strengthened in the *Development Charges Act, 1997***

Development Charges (DCs) are the most fair and efficient way to raise funds for growth-related infrastructure, because these charges link those who pay with those who benefit. However, provisions in the *Development Charges Act, 1997* are inconsistent with the growth paying for growth principle, and limit the ability of municipalities to use DCs. This results in the transfer of growth-related costs to either the tax levy or to user fees. To further strengthen the growth pays for growth principle in the *Development Charges Act, 1997* the Province should consider the following:

- growth-related capital costs for solid waste management facilities, hospitals and municipal administrative buildings be fully recoverable through DCs
- the 10-year historic average service level cap be replaced with a forward looking service standard for transit and other services
- the planning period for transit infrastructure be extended beyond 10 years
- the 10 per cent statutory discount be removed for all services

### **Municipal flexibility regarding DCs rate calculation, structures and reporting formats needs to be maintained**

DCs calculations are based on projected growth and infrastructure needs over a long period of time. While the determination of DCs is a rigorous and technical exercise, it also relies to a significant degree on professional judgement. The current legislative framework achieves a good balance between rigour and flexibility, by allowing municipalities to determine specific details such as:

- determining the extent to which a project constitute a benefit to existing development
- choosing between an area-specific DCs rate structure or municipal-wide DCs rate structure
- devising additional policies regarding discounts, phase-ins and exemptions

The *Development Charges Act, 1997* and related regulations set out an effective system of checks and balances, including the preparation of background studies, disclosure, management of development charges reserve funds, and process for appeals. These provisions provide strong incentives for municipalities to take the utmost care to set DCs rates that are fair to both the development community, and the municipality.

Additional rules and definitions in the *Development Charges Act, 1997* simplify background studies and reduce the likelihood of OMB challenges. However, one size does not fit all. York Region recommends that any changes to the *Development Charges Act, 1997* should not limit municipal flexibility to address local circumstances. The Province may consider including a statement of principles that municipalities should have regard to when calculating DCs-recoverable capital costs.

### **There are sufficient checks and balances in the development charges system to ensure transparency and accountability**

The *Development Charges Act, 1997*, and regulations set out an effective system of check and balances, including the preparation of background studies, disclosure, management of DCs reserve funds, and appeals, and dispute resolution. Despite these provisions, members of the development industry question if development charges are spent on projects for which they are intended. In addition, there are also calls for greater transparency with respect to Section 37 agreements, parkland dedication rates and voluntary contributions.

The current level of disclosure regarding how DCs revenues are been spent is sufficient. The Treasurer's development charges reserve fund statement, required under in the *Development Charges Act, 1997*, provides detailed information on development charge reserve balances, amount collected, funds allocated for capital projects, debt payments, interest earnings and allocation, loans between services, and credits given.

To get a full picture of the Region's growth capital program, development charges reserve fund statements should be interpreted alongside the DCs background study and the capital budget. The background study lists all growth-related capital projects, and these projects are part of the negotiations the Region undertakes with the development community. In addition, projects funded by DCs reserves are listed in the Treasurer's DCs Reserve Fund Statement, as well as the Region's multi-year capital budget presented to Council each year.

Going beyond meeting the minimum requirements in the *Development Charges Act, 1997*, York Region consults extensively with the public and the development community as it prepares the Background Study to ensure that the charges are appropriate and that the process is open and transparent. The consultations not only help the Region gain support from the public and the development industry prior to the Council adopting the DCs Bylaw, but also serve as a rigorous peer review of the DCs charge calculation methodology.

### **Removing the barriers to cost recovery helps align DCs with broader policy objectives**

DCs across the GTA have risen steadily since the passing of the *Development Charges Act, 1997*. This has led to the suggestion that DCs have a direct impact on housing affordability. In addition, some academics and think tanks raised concerns that municipalities have not fully used DCs as a tool to achieve smart growth objectives, promote economic growth and support housing affordability.

DCs are predominately a financing tool, which should be used in conjunction with a suite of other financing and regulatory tools. Property tax policies, user rates, development charges, and regulatory measures should be examined comprehensively as a means to achieve broader policy objectives. The Province could consider providing greater guidance on the optimal policy mix (incentive-based and regulatory) to achieve smart growth objectives as well as municipal fiscal sustainability.

Currently, restrictions in the *Development Charges Act, 1997* make it very difficult for municipalities to raise capital for infrastructure that supports intensification and city building efforts. Transit is a good example. In addition, the *Development Charges Act, 1997* regulations mandate that the level of service used to determine an area specific development charge doesn't exceed the level of service applicable to the whole municipality. This rule can restrict the ability of municipalities with area-specific charges to recover growth-related costs through DCs, particularly if the differential in the level of service between areas is high.

The staff recommended response to the Province highlights the following key messages:

- development charges support growth by funding the necessary infrastructure
- removing the barriers to cost recovery in the *Development Charges Act, 1997* and related regulations helps align development charges with broader policy objectives
- municipalities should maintain the flexibility to adopt the development charge rate structure and policies best suited to their local circumstances and policy goals

### **The Province should ensure that municipalities and appellants of DCs bylaws are on an even playing field at the OMB**

The OMB is prevented by the *Development Charges Act, 1997* from issuing a ruling that would benefit a municipality (e.g., increase DCs payable, remove or reduce exemptions etc.). Furthermore, the onus is on the municipality to justify a charge. Consequently, appellants and municipalities bear different levels of accountability and risks. This uneven playing field may put additional pressures on municipalities. The Province should consider removing section 16(4) of the *Development Charges Act, 1997*, which limits the ability of the OMB to issue rulings that benefit municipalities. The Province should also consider amending the *Development Charges Act, 1997* to allow any Board rulings that benefit municipalities to be open to an appeal for a limited period of time by any property owner that is impacted by it.

### **Link to key Council-approved plans**

Improvements in the Land Use Planning and Appeal and Development Charges Systems supports the “Continue to Deliver and Sustain Critical Infrastructure”, “Focus Growth Along Regional Centres and Corridors” and “Manage the Region’s Finances Prudently” priority areas with the *2011 to 2015 Strategic Plan*. It also supports the “Liveable Cities and Complete Communities” and “Open and Responsive Government” theme areas in *Vision 2051*. Finally, improvements in the Land Use Planning and Appeal and Development Charges Systems also assists in implementing policy in the “Economic Vitality”, “Growth Management” and “Implementation” sections of the *York Region Official Plan, 2010*.

## **5. FINANCIAL IMPLICATIONS**

The Land Use Planning and Development Charges Systems review was undertaken within the 2013 Revenue Forecasting and Policy, Long Range Planning Branch and Community Planning Branches budget allocations. There will likely be financial impact on all Ontario municipalities should the Province elect to amend the *Planning Act* and/or the *Development Charges Act, 1997*.

### **OMB hearings can be a drain on municipal resources**

To date, York Region has spent approximately \$4 million defending the *York Region Official Plan, 2010* at the OMB including associated appeals at the local level. Removing the ability to appeal conformity exercises could prevent and/or reduce expenditures in the future.

### **DCs are a key funding source for the Region's capital program**

During the past few years, DCs revenues account for roughly 18 per cent of gross revenues. Looking ahead, DCs revenues fund over half of the Region's 10-year capital budget.

According to York Region's 2012 DCs Background study, under the current DCs calculation methodology, York Region is able to recover approximately half of the gross growth-related capital costs from 2012-2031<sup>1</sup> through DCs in the current bylaw. Of the \$7.2 billion in costs not recoverable through DCs, approximately 17 per cent (or \$1.2 billion) relate to the historic level of service cap; and approximately \$16 million relate to the 10 per cent statutory deduction.

In addition, under the current framework, growth-related costs for solid waste management, hospital and municipal administrative buildings are not eligible for development charges funding. An order of magnitude estimate for the growth-related costs associated with these services is \$50 million per year.

## **6. LOCAL MUNICIPAL IMPACT**

Regional staff consulted with the staff from our local municipalities and held a joint session to collectively discuss the 17 questions posed by the Province. In general, there was consensus on the major issues that need to be addressed including the number, complexity and difficulty in implementing Provincial planning legislation and plans. In comparison with the Region, local municipalities have a greater number of planning documents to keep current and spend more time and financial resources defending local planning policy at the OMB. Any improvements to streamline and provide greater certainty in the Land Use Planning and Appeal System process will be beneficial to York Region and more impactful to our nine local municipalities.

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<sup>1</sup> Note that the planning period for water, wastewater, roads and police is 20 years. However, the planning period for some soft services (e.g., transit, ambulance, social housing etc.) is 10 years.

## 7. CONCLUSION

The Ministry of Municipal Affairs and Housing initiated a review of the Land Use Planning and Appeal and Development Charges Systems Review. The intended purpose of the review is to ensure that the Land Use Planning and Appeal and Development Charges Systems are efficient, transparent and responsive to the changing needs of communities.

York Region is fully supportive of improvements to the Land Use Planning and Appeal System including:

- undertaking a review of the OMB
- extending decision timeframes under the *Planning Act*
- combining and/or coordinating Provincial planning legislation, plans and their associated reviews
- removing the ability to appeal whole plans and conformity exercises

York Region is also fully supportive of changes to the *Development Charges Act, 1997* which would ensure:

- the growth-related capital costs for solid waste management facilities, hospitals, and municipal administrative buildings are fully recoverable through DCs
- the historic service level cap is replaced with a forward looking service standards for transit and other services
- the planning period for transit infrastructure is extended beyond 10 years
- the 10 per cent statutory discount is removed for all services
- municipalities maintain their flexibility regarding the details of DCs rate calculation methodology, rate structures, and reporting formats
- an even playing-field for municipalities and appellants at the OMB

For more information on this report, please contact Karen Whitney, Director of Community Planning at Ext. 71505, Valerie Shuttleworth Director of Long Range Planning at Ext. 71525, or Lindsay Allison, Manager of Revenue Forecasting and Policy at Ext. 76260.

The Senior Management Group has reviewed this report.

*Attachments (2)*

# York Region Response to MMAH Review of Land Use Planning and Appeal System

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## **Theme A: Achieve more predictability, transparency and accountability in the planning/appeal process and reduce costs**

### **1. How can communities keep planning documents, including official plans, zoning by-laws and development permit systems (if in place) more up-to-date?**

York Region has been successful in keeping the Regional Official Plan current by consistently reviewing the document within the mandatory 5 year time-frame. However, the number and complexity of provincial plans and regulations, combined with Ontario Municipal Board (OMB) appeals associated with conformity exercises, has made it increasingly difficult to keep this document current. As an example, the new Regional Official Plan (to conform to the Growth Plan) was adopted in 2009 and portions of it still remain before the OMB. The length of time from appeal to Ontario Municipal Board decisions impedes the ability of municipal decision making on updates to in-force planning documents. The delays are further compounded when local municipal conformity work is also appealed and stalled at the OMB. Local municipal staff indicate that they are unable to undertake comprehensive zoning by-law updates because of constant official plan updates and managing OMB appeals.

The province has implemented major reforms to the legislative and policy framework that directs land use planning in the province. MMAH is responsible for implementing and protecting provincial interests through the land use planning and appeal system. MMAH should work towards addressing consistency and overlap between key policy documents, including: *Provincial Policy Statement, Growth Plan for the Greater Golden Horseshoe, Greenbelt Plan, Oak Ridges Moraine Conservation Plan, Lake Simcoe Protection Plan, Clean Water Act, Source Water Protection Plans, Metrolinx's Big Move and Endangered Species Act*. MMAH should also work towards combining documents

and/or coordinating plans and reviews to reduce the number of documents and the frequency of amendments to municipal planning documents.

MMAH should also consider providing guidance documents for interpreting policy to minimize error. This would assist municipalities in updating relevant planning documents in a consistent manner. Consistency amongst municipal jurisdictions in interpretation and implementation of Provincial policy would also be beneficial to the development industry. Older, outdated guidance documents should clearly be withdrawn from use.

**2. Should the planning system provide incentives to encourage communities to keep their official plans and zoning by-laws up-to-date to be consistent with provincial policies and priorities, and conform/not conflict with provincial plans? If so, how?**

The question implies that municipalities are not willing to keep documents current and incentives might “encourage” them to do so. Incentives are not necessary. Willingness is not the issue. Providing incentives will not address the underlying issues that frustrate municipal efforts to keep planning documents up-to-date. These underlying issues relate to processing times associated with official plan amendments and large, often complex development proposals. The time required to ensure that all agency concerns are addressed and meaningful public input is gathered is lengthy. This process, coupled with OMB appeals and hearings often tax municipal resources and frustrate larger processes undertaken to update comprehensive official plans and zoning by-laws.

**3. Is the frequency of changes or amendments to planning documents a problem? If yes, should amendments to planning documents only be allowed within specified timeframes? If so, what is reasonable?**

This has been an issue for the Region, given the almost never ending cycle of official plan amendments and updates required as a result of new and updated provincial legislation and becomes especially problematic when conformity amendments are appealed to the OMB. In a two-tier system it has become clear that most local municipalities have even greater difficulty keeping their official plans and zoning by-laws up-to-date.

Site-specific, highly speculative official plan amendment applications intended to accommodate individual development proposals also frustrate efforts to keep planning

documents up-to-date. These proposals are often submitted when municipalities are in the process of updating planning documents or defending those documents at the OMB. These proposals derail and divert municipal resources away from official plan updates, conformity exercises or secondary planning processes. York Region suggests that official plans should only be amended at the time of the 5 year municipal comprehensive review; unless a conformity update is required by provincial legislation. Additionally, site-specific, privately initiated Official Plan amendments should only be considered at the time of an upper-tier municipal comprehensive review. If private land owners were prevented from applying to change Official Plans (provided the documents are kept current), complexity would be reduced and Councils would again be able to focus on directional and forward thinking planning decisions rather than negotiating settlements to site-specific OMB appeals. Private land owners with development aspirations beyond or contrary to those provided for in up-to-date official plan could be invited to submit requests at the time of a municipal comprehensive review.

**4. What barriers or obstacle may need to be addressed to promote more collaboration and information sharing between applicants, municipalities and the public?**

The threat of appeal to the OMB is an obstacle to promotion of collaboration between applicants, municipalities and the public. Most often it is the development proponent that has the resources to manage a costly OMB process while municipalities and the public often do not have access to similar resources. Limits on what can be appealed and when must be set to foster a more collaborative planning system in Ontario. As long as the threat of an appeal exists, the incentives for collaboration and cooperation are not equal between all parties involved.

Currently, the land use planning system mandates one statutory public meeting occurring during the planning process. Improved information sharing and collaboration could be achieved by encouraging earlier and additional engagement through both formal and informal means.

**5. Should steps be taken to limit appeals of entire official plans and zoning by-laws? If so, what steps would be reasonable?**

Whole plan appeals should no longer be permitted. Additionally, amendments to bring plans into conformity with provincial legislation should not be subject to appeal. Appeals on conformity exercises would be permissible only where municipalities seeks to establish policy more restrictive than provincial direction (i.e. Greenbelt Plan

policies allows municipalities to implement more restrictive policies in certain circumstances). Where appeals are initiated, appellants should be required to identify the specific elements of the plan being disputed.

**6. How can these kinds of additional appeals be addressed? Should there be a time limit on appeals resulting from a council not making a decision?**

It often takes municipalities more than 180days to review new official plans, secondary plans, significant amendments or development proposals. The sheer volume of applications a municipality is dealing with can seriously impact process timeframes.

Given the number of stakeholders involved, discussions of conformity and proposed changes to lengthy documents, as well as a number of these processes occurring concurrently or overlapping, the 180-day decision time frame is not realistic. Conformity amendments to official plans and zoning by-laws should not be subject to appeal at all and timeframes for other amendment types or development proposals should be extended to 365 days.

Official plan and zoning by-law amendment applications submitted to accommodate site-specific, highly speculative development proposals often represent a significant departure from development provided for in a current official plan. As above, these proposals involve extensive consultation with residents and stakeholders, which takes time. As well, evaluation of development proposals not in keeping with an approved official plan is much more time consuming. On occasion, proponents appear to be non-responsive to requests for additional information, public meetings or suggested changes, seeming to just let the 180days pass so a non-decision appeal can be filed. For these reasons, official plan amendment applications should not be subject to non-decision appeals.

Non-decision appeals are also used by applicants to expedite applications. At the lower-tier level, these kinds of appeals are used as a mechanism to move development applications to the front of the line. Staff and Council resources are diverted to negotiating settlements and the OMB. This “queue-jumping” puts development proponents who are working collaboratively with the municipality and public through the planning process at a disadvantage.

**7. Should there be additional consequences if no decision is made in the prescribed timeline?**

No. The reasons for planning decisions not being made within prescribed timeframes are wide ranging. Not all of these are within the approval authority’s control (i.e. time

necessary for development proponents to clarify or provide additional information, respond to requested changes, and additional public engagement).

**8. What barriers or obstacles need to be addressed for communities to implement the development permit system?**

The development permit system is implemented at the lower-tier municipal level.

**Theme B: Support greater municipal leadership in resolving issues and making land use planning decisions**

**9. How can better cooperation and collaboration be fostered between municipalities, community groups and property owners/developers to resolve land use planning tensions locally?**

As mentioned previously, the threat of appeal to the OMB is an obstacle to promotion of collaboration between applicants, municipalities and the public. Limits on what can be appealed and when must be set to foster a more collaborative planning system in Ontario.

Proposals that represent a significant departure from approved plans should only be considered at the time of an upper or single tier municipal comprehensive review. If a municipality has an up-to-date official plan, submission of a site-specific, privately-initiated official plan amendment applications should not be permitted. Removal of the OMB threat will result in submission of more realistic proposals in keeping with the communities Official Plan vision and all parties may be more inclined to work cooperatively to implement stated Official Plan designations and policies.

Planning tensions often arise locally when individual development applications are proposed within neighbourhoods. This tension occurs when the development proposal is not in keeping with the community vision established through official plan or secondary planning exercises. This tension could be reduced by promoting the use of pre-zoning. In particular as-of-right zoning could be used to implement intensification areas that have been designated in official plans or secondary plans. What barriers or obstacles may need to be addressed to facilitate the creation of local appeal bodies?

**10. Should the powers of a local appeal body be expanded? If so, what should be included and under what?**

No local appeal bodies have been established in York Region. In general, municipal staff have indicated that capacity may not exist at the local municipal level to support the financial and administrative resources necessary to support a local appeal body.

It may be more appropriate that a local appeal body (rather than Ontario Municipal Board) hear appeals on minor variances and consents. The Province should consider developing resources to support municipalities in establishing and resourcing these bodies.

**11. Should the powers of a local appeal body be expanded? If so, what should be included and under what conditions?**

No local appeal bodies have been established at this time and commenting on expansion of powers would be difficult. They should have the ability to adjudicate committee of adjustment matters including minor variances and consents.

**12. Should pre-consultation be required before certain types of applications are submitted? Why or why not? If so, which ones?**

Pre-consultation is essential to ensuring timely and effective consideration of planning applications. It should be required for all planning applications but municipalities should have discretion to implement pre-consultation processes that can be scoped based on the nature of the application. The pre-consultation process goes hand-in-hand with the complete application process. It has been suggested that failure to deem an application “complete” should not be appealable.

**13. How can better coordination and cooperation between upper and lower-tier governments on planning matters be built into the system?**

Lower-tier municipalities should not be given the same deadlines as upper and single-tier municipalities for conformity with provincial plans. York Region suggests that

lower-tier municipalities be required to undertake provincial conformity exercises one year after approval of the upper-tier conformity exercise.

In this manner we can work together with our local partners on the upper-tier plans to ensure conformity at the lower-tier level later. This would avoid the drain on resources that occurs with planning documents are updated concurrently at the upper and lower-tier level.

To reduce the layers and complexity of planning documents, Official Plans documents could rest solely with the upper-tier municipality. Lower tier municipalities can then focus on implementation through Secondary Plan exercises, zoning by-laws and urban design guidelines.

## **Theme C: Better engage citizens in the local planning process**

### **14. What barriers or obstacles may need to be addressed in order for citizens to be effectively engaged and be confident that their input has been considered (e.g. in community design exercises, at public meetings/open houses, through formal submissions)?**

Early engagement is key, but it remains difficult with a currently disenfranchised public. Decisions affecting future development are made at the Official Plan stage. However, citizens are rarely interested in public meetings related to such policy documents. The challenge is to engage the public before a building is proposed next door. Citizen advisory groups for larger planning initiatives are sometimes effective, but legislation requiring them is not necessary.

Communication is critical to effectively engage citizens. Currently, the Planning Act regulates the wording used in statutory notices to advise the public of complete applications, public meetings and decisions. This language needs to be revised and provided in “plain language”. Additionally, the Planning Act should be reviewed and updated to reflect changes in technology that facilitate communication through e-mail and social media. Specifically, the Planning Act should be updated to allow the use of electronic notices in addition to or instead of newspaper ads.

### **15. Should communities be required to explain how citizen input was considered during the review of a planning/development proposal?**

York Region already does this through its reporting process. However, to report fully on all citizen input can be very time consuming and perhaps burdensome on lower-tier municipalities who receive much more input. Such an arduous process should only be undertaken if the OMB places some amount of weight on the consideration.

## **Theme D: Protect long-term public interests, particularly through better alignment of land use planning and infrastructure decisions and support for job creation and economic growth**

### **16. How can the land use planning system support infrastructure decisions and protect employment uses to attract/retain jobs and encourage economic growth?**

Requests for conversion of employment lands to other uses through the lower tier municipal comprehensive review are problematic from an upper-tier perspective. The cumulative impact of multiple requests for employment land conversions in all the local municipalities can have significant impact on Regional employment forecasts and land budget. To avoid this, the Province should prohibit the conversion of employment lands, unless initiated through an upper-tier municipal comprehensive review.

York Region is committed to providing infrastructure to its communities that is safe, well-managed, and delivered in a fiscally responsible manner while ensuring that the Region's environment is protected and enhanced. To achieve these goals, York Region undertakes master planning exercises for pedestrians, cycling, transit, roads, water and wastewater systems to identify current and future infrastructure needs to support the built form and population and employment growth envisioned in our Regional Official Plan. There need to be mechanisms to streamline the infrastructure planning and approval processes under the Planning and Environmental Assessment Acts. As an example, the requirements of infrastructure master plans are often duplicated through the secondary plan process. Explicitly recognizing master plans in the Planning Act would eliminate this duplication.

Infrastructure decisions and investments are undermined through site-specific, privately initiated, highly speculative development proposals in areas that are not contemplated for such development in approved official plan documents or in provincial and municipal infrastructure master plans. As previously discussed, York Region supports prohibitions on site-specific, private initiated high-speculative Official Plan amendment applications. These prohibitions would assist York Region in implementing infrastructure decisions in a cost effective manner.

**17. How should appeals of official plans, zoning by-laws, or related amendments, supporting matters that are provincially-approved be addressed? For example, should the ability to appeal these types of official plans, zoning by-laws, or related amendments be removed? Why or why not?**

Yes, the ability to appeal conformity amendments, including land budget exercises that implement Provincial policy, should be removed. Further, York Region recommends that the Province prepare technical guidance documents and workshops that provide direction on policy implementation and undertaking the land budget process.

# York Region Response to MMAH Review of Development Charges System

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## The Development Charges Process

### 1. Does the development charge methodology support the right level of investment in growth-related infrastructure?

Municipalities pay for the cost of growth-related infrastructure through development charges (DCs), user fees (e.g., water rates), the general tax base, and senior level government grants and subsidies. DCs (as established in the *Development Charges Act, 1997*) are arguably the most fair and efficient way to raise funds for incremental growth-related infrastructure, because DCs link those who pay with those who benefit.

However, a number of provisions in the *Development Charges Act, 1997* are inconsistent with the growth paying for growth principle and limit the ability of municipalities to use DCs. This results in the transfer of growth-related costs to either the tax levy or to user fees. These restrictions include:

- Ineligible services
- Historic service level cap
- The mandatory 10% discount for some services

These restrictions can create a number of distortions with respect to the magnitude of investments in growth-related infrastructure, as well as the types of infrastructure investment:

- Growth not paying enough for growth; if sufficient funding is not raised from other sources, service levels may decrease
- Other tax-supported capital programs such as state of good repair could compete with growth projects for capital dollars
- The restrictions in *the Act* may impact the timing of infrastructure investments

- The restrictions in *the Act* provide an adverse incentive for municipalities to continue supporting existing patterns of growth (e.g., it is easier to raise funds for roads rather than transit) in contrast to supporting a more efficient compact and transit-supportive growth pattern

**2. Should the *Development Charges Act, 1997* more clearly define how municipalities determine the growth-related capital costs recoverable from development charges? For example, should the Act explicitly define what is meant by benefit to existing development?**

A standardized approach to calculate DC-recoverable capital costs could simplify background studies and reduce the likelihood of OMB challenges. However, a standardized methodology does not necessarily have to take the form of definitions in the *Act* itself. Municipalities may benefit from additional provincial guidance, and sharing of best practices.

In the case of benefit to existing (BTE), municipalities should have some degree of flexibility in interpreting what constitutes a BTE, because circumstances may vary between municipalities and may vary over time as well. Municipal flexibility in defining BTE allows for DC rates that are fair to both the municipality and the development community. York Region works with the development community to review the list of projects to devise different BTE rates for different project within the same service category in order to correctly capture the individual characteristics of the projects.

Finally, establishing a prescriptive methodology for calculating deductions like benefit to existing, post period benefit, and level of service cap, for all municipalities and across all services may be challenging and one size does not fit all.

York Region recommends that any changes to the Act should not limit municipal flexibility to address local circumstances. The Province may consider including a statement of principles that municipalities should have regard to when calculating DC-recoverable capital costs. For example, York Region abides by the following principles when determining benefit to existing:

- Where existing development has an adequate service level that will not be tangibly increased by an increase in service, no benefit to existing is involved
- Where a general existing service problem is to be remedied, a deduction should be made as part of the DC calculation
- The percentage of the cost of the new infrastructure that is attributable to existing development depends, in part, on how well the needs of existing development are met at the present

### 3. Is there enough rigor around the methodology by which municipalities calculate the maximum allowable development charges?

York Region believes that the *Development Charges Act* and the related regulation provide sufficient rigour around the methodology for calculating the maximum allowable development charges. The current *Act* sets out detailed rules on what must be accounted for and deducted in order to arrive at the maximum allowable DC funding envelope. The *Act* also sets out an effective system of check and balances, including the preparation of Background studies, disclosure, management of DC reserve funds, and appeals.

Going beyond meeting the minimum requirements in the *Act*, York Region consults extensively with the public and the development community as it prepares the Background Study to ensure that the charges are appropriate and that the process is open and transparent. The consultations not only help the Region gain support from the public and the development industry prior to the Council adopting the DC Bylaw, but also serve as a rigorous peer review of the DC charge calculation methodology.

Consultations include:

- Holding consultative meetings with the public and representatives from the development industry prior to the release of the DC background study
- Providing the development community with position papers that clearly defined the methodologies used to calculate infrastructure investment needs, and the methodologies and assumptions used to attribute cost between development types to arrive at the proposed DC rate.
- Published notification of the passage of DC bylaw on two separate occasions

In addition, the inputs into the Development Charges Background Study and Bylaw are also generated through rigorous analysis and consultation:

- Supporting the capital costs estimates with the Region's Official Plan, and various master plans, which draw a clear linkage between growth and infrastructure needs
- Undertaking a thorough and transparent budgeting and master planning process

Based on the extensive level of consultation along with the current system of checks and balances, York Region is of the opinion that the level of rigor regarding the development charge methodology is appropriate.

In addition, the rigour of the DC calculation methodology will continue to improve as municipalities, consultants and developers continue to work together to refine the methodology. That being said, the current dispute resolution system puts municipalities and appellants on an uneven playing field. The OMB is prevented by *the Act* from issuing a ruling that would benefit a municipality (e.g., increase DCs payable, remove or reduce exemptions etc.). Furthermore, the onus is on the municipality to justify a charge. Consequently, appellants and municipalities bear different levels of accountability and risks. This uneven playing field may put additional pressures on municipalities. The Province should consider removing section 16(4) of *the Act*, which limits the ability of the OMB to issue rulings that benefit municipalities. The Province should also consider amending *the Act* to allow any Board rulings that benefit municipalities to be open to an appeal for a limited period of time by any property owner that's impacted by it.

## Eligible Services

### 4. *The Development Charges Act, 1997 prevents municipalities from collecting development charges for specific services, such as hospitals and tourism facilities. Is the current list of ineligible services appropriate?*

York Region is of the opinion that the current list of ineligible services is not appropriate as it does not adhere to the “growth pays for growth” principle. The result is that growth related costs associated with ineligible services are funded by the general tax base. This creates pressure on other investment priorities.

There needs to be a closer match between the municipal responsibility for providing the growth-related service, and the municipal ability to fund those services. The list of ineligible services should be updated so that municipalities are able to recover all growth-related costs from development charges.

The Province should consider making the following services eligible for DC funding:

#### **Solid Waste Management:**

Solid Waste Management is an integral part of the Regional services and environmental protection infrastructure. Development charges are needed to finance waste management facilities to service a growing population and increasingly diverse waste material types.

Given the regulatory environment for waste management and the lack of merchant processing capacity in the province, municipalities need to construct facilities that transfer, sort, and process waste materials. As service populations increase, so does

waste management infrastructure needs. Capital investments will likely be required for organics processing, energy from waste capacity and possible expansion of the Region's network of public depots/community environmental centres to accommodate projected growth.

York Region's proposed 10 year capital outlook projects almost \$55 million in waste management investment to meet the demands of growth. Without access to DCs, this growth will be funded by the general tax base.

**Hospitals:**

The need for additional hospital infrastructure is linked to growth. Therefore, growth should pay for its share of the required local contribution attributable to the increased service demand.

York Region has a long history of contribution to the capital costs of hospitals. Prior to 2009, York Region contributed over \$110 million for York Region hospital expansions. These contributions were funded through the tax levy. On November 19, 2009, York Region signed an MOU with the York Region hospitals and the Vaughan Health Campus of Care. This MOU sets aside \$12 million per year (indexed by assessment growth rate) for distribution among the York Region hospitals to fund capital construction through 2031. In 2013 alone, York Region Council approved a contribution of \$12.7 million towards the construction of four hospitals.

**Municipal administrative buildings:**

There is a clear link between growth and the need for additional municipal services and associated municipal staff. York Region has delayed funding facilities to consolidate locations and accommodate staffing growth. These delays resulted in additional capital expenditures for escalation costs and leasehold improvements along with the operating impacts on existing owned facilities. Departments are currently fragmented in a number of different locations, which has an impact for the Region.

If the list of ineligible services remains, the Province may consider moving the list from the legislation to the regulations to allow for greater flexibility to adapt to future changes in the type of services provided, as well as to changes in the responsibility for service planning and funding.

**5. The *Development Charges Act* allows municipalities to collect 100% of growth related capital costs for specific services (water, wastewater). All other eligible services are subject to a 10% discount. Should the 10% discount be re-examined?**

York Region believes the 10 per cent discount should be re-examined for all services, to adhere to the growth paying for growth principle. Under the current system, the cost of the 10 per cent discount falls on the property tax base rather than the new development it will service.

The 10 per cent mandatory discount was introduced as a cost control measure. However, there are more effective mechanisms already in place in *the Act*. These include the requirement to attribute costs between growth and existing development (BTE), and the requirement to consider long term operating and capital costs associated with the growth-capital program. In light of these measures, the requirement to reduce recoverable cost by a further 10 per cent provides an unnecessary restriction on the municipalities' ability to raise needed funds.

If the statutory discounts are to remain, there should be clarification as to why some services are subject to discount while others are not. The inconsistent application of the 10 per cent discount creates some unintended consequences:

- Transit and roads cannot be combined together into one service as *the Act* prevents funds collected for 100 per cent eligible and 10 per cent discount services from being combined. This is a barrier to integrated planning for transportation.
- The 10 per cent discount makes it more difficult to raise funds for some services compared to others, even though municipalities can demonstrate clear linkages between growth and either category of services.

The province must ensure that hard services continue to remain 100 per cent recoverable, particularly for those services whose service level is mandated by other provincial legislation (e.g., water and wastewater infrastructure).

**6. Amendments to the *Development Charges Act, 1997* provided Toronto and York Region an exemption from the 10 year historical service level average and the 10% discount for growth-related capital costs for the Toronto-York Subway Extension. Should the targeted amendments enacted for the Toronto-York Subway Extension be applied to all transit projects in Ontario or only high-order (e.g. subways, light rail) transit projects?**

The targeted amendments enacted for the Toronto-York Subway Extension should be applied to all transit projects in the Region.

The 10 per cent discount, and 10-year historic service level standards, and to a lesser degree the 10-year planning horizon, all limit the ability of a municipality to fund transit, a strategic priority that also supports intensification, complete communities and other Growth Plan initiatives and targets.

- As argued in the previous responses, the 10 per cent discount should be removed.
- The 10-year historic service level standards not only make it more difficult for municipalities to raise funds for transit, but also constrains municipalities' ability to promptly respond to changing infrastructure preferences, particularly in fast growing communities. Transit service levels do not always ramp up gradually but rather can move up in a step-wise fashion, particularly if they are provided when certain thresholds are met.

Replacing the backward looking service level cap with forward looking standards would address many of these concerns. Forward-looking service caps should be tied to official/capital plan or other planning document, including the Provincial Growth Plan, to ensure development charges reflect a realistic estimation of infrastructure needs.

Should municipalities elect to create a combined road and transit service category, the forward-looking service cap should apply to the entire category rather than transit only. This will help facilitate integrated system-wide planning and optimization. Municipalities can also benefit from provincial guidance on how to establish an integrated service level calculation for all transportation infrastructures, including roads and transit.

Finally, any changes to the 10-year historic service level standards requirement should be examined alongside changes to benefit to existing development.

- Currently, only the capital costs associated with growth over the next 10 years can be included in the cost estimates for the purpose of DC calculations. This restriction should be removed, so that the DC planning horizon for transit could better match with the long-term benefit associated with transit projects. This will allow DCs to recover more of the capital costs of over-sizing transit infrastructure from future developments.

This principle should also be applied to other large infrastructure projects such as waste management as the most efficient and cost effective practice is to build a large facility that can service a large portion of the population.

In addition, as noted in the response to the previous question, the current restriction in the DCA makes it more difficult for municipalities to achieve integrated financial planning for public transportation (both roads and transit). In many built-up and intensifying areas, road service levels are going to decline. Public transit and higher order transit is needed to fill the gap. They are an essential part of the Region's growth management strategy. Finally, providing municipalities with more room to raise funds for transit through DCs would also reduce the uncertainty associated with transit projects. This will provide a more favorable environment for residential development and business investments.

### **GO Transit**

Municipalities in the GTHA are required to contribute to GO capital costs, which is a Provincial responsibility. In 2001, a joint GO Transit DC Background study was completed. The DC rates for GO Transit were set based on historic service levels. Currently, municipalities continue to set and charge DCs to fund GO transit infrastructure based on historic service levels (with updates to reflect indexing).

However, GTA municipalities do not have the ability or responsibility to determine service levels or capital expenditures for GO Transit. While removing constraints to fund growth-related transit infrastructure costs could also be considered for GO transit, municipal DCs may not be the most appropriate funding mechanism.

An option to consider is to treat GO transit DCs in a similar fashion as education DCs (EDC)<sup>1</sup> under the *Education Act*. The province/Metrolinx should have the responsibility

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<sup>1</sup> EDC is a tool school boards can use to pay for land for new schools. Before passing an EDC by-law, a school board is required to prepare a background study, demonstrate school enrollment exceeds capacity, hold at least one public meeting, and receive written approval of the estimated enrolment projects, and estimated number of new school sites from the Minister of Education.

to set and justify the DC rates. In this way, the responsibility for capital planning and service delivery is matched with the ability to raise funds. This would provide greater accountability and transparency.

## **Reserve Funds**

### **7. Is the requirement to submit a detailed reserve fund statement sufficient to determine how municipalities are spending reserves and whether the funds are being spent on the projects for [which] they were collected?**

Municipalities provide a sufficient amount of disclosure with respect to how DC reserve funds are spent. A reserve fund statement is just one part of the disclosure. To get a full picture of the Region's growth capital program, DC reserve fund statements should be interpreted alongside the DC background study and the capital budget. The background study lists all growth-related capital projects, and these projects are part of the negotiations the Region undertakes with the development community. In addition, projects funded by DC reserves are listed in the Treasurer's DC Reserve Fund Statement, as well as the Region's multi-year capital budget presented to Council each year.

### **8. Should the development charge reserve funds statements be more broadly available to the public, for example, requiring mandatory posting on a municipal website?**

York Region has always made this information public through reports to Council, and by posting them on its website to be accessed free of charge.

### **9. Should the reporting requirements of the reserve funds be more prescriptive, if so, how?**

No, the existing regulations are sufficiently clear. Sections 12 and 13 of the Ontario Regulation 82/98 under the DC Act, 1997 has provided detailed rules and methods for the reporting of reserve funds.

## **Section 37 (Density Bonusing) and Parkland Dedication Questions**

### **10. How can Section 37 and parkland dedication processes be made more transparent and accountable?**

The Region does not use Section 37 agreements or parkland dedication to fund growth-related infrastructure.

**11. How can these tools be used to support the goals and objectives of the provincial Policy Statement and the Growth Plan for the Greater Golden Horseshoe?**

**Voluntary Payment Questions**

**12. What roles do voluntary payments outside of the Development Charges Act, 1997 play in developing complete communities?**

The Region does not use voluntary payments to fund growth-related infrastructure.

**13. Should municipalities have to identify and report on voluntary payments received from developers?**

**14. Should voluntary payments be reported in the annual reserve fund statement, which municipalities are required to submit to the Ministry of Municipal Affairs and Housing?**

**Growth and Housing Affordability Questions**

**15. How can the impacts of development charges on housing affordability be mitigated in the future?**

The price of homeownership includes both initial upfront cost as well as ongoing costs such as user fees, property taxes and household maintenance and financing costs. DCs are but one of many factors that impact housing affordability. Any growth related costs not captured by DCs are borne by residents either through the property tax base or through user fees. Thus the key question is what policy outcomes are desired and what is fair and equitable in distributing the costs of growth. If the costs of incremental growth are borne by the general tax base, then the principle of growth pays for growth would not be adhered to.

Currently, York Regional DCs account for approximately 6 per cent of the median price of a single family dwelling (see table below).

<b>DC as a % of Single Detached House Price</b>				
<b>Year</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Regional DC Rate	\$24,181	\$31,991	\$40,421	\$40,750
Median Price *	\$548,990	\$585,990	\$644,900	\$695,990
%	4.4%	5.5%	6.3%	5.9%

\* Year-to-date (June) median price for absorbed single detached home in York Region (CMHC)

In addition to the policy considerations, decisions regarding DC discounts should be made in the context of prudent fiscal management. Development charges pay for infrastructure and other amenities that provide tangible benefits to residents and businesses. DCs are a cheaper way to pay for large infrastructure, because it capitalizes the cost of infrastructure in home mortgages rather than through municipal debt.

Given York Region's rapid growth and low vacancy rates, home prices in York Region are largely market driven. In the current environment, it is unclear whether a DC discount would actually reduce home prices. Home and land prices are also impacted by Provincial growth management policies. The Growth Plan may have had the effect of constraining the supply of land for low-rise housing below market demand, thereby contributing to an increase in housing prices across the GTA.

Moreover, an increase in property taxes would be needed to fund the DC discount. This also has an impact on housing affordability. If DCs are discounted so that the existing taxpayers would bear more of the cost of growth, anti-growth sentiment is likely to increase.

Municipalities also play a key role in the provision of social housing infrastructure. Targeted DC reductions can help to support these initiatives. For example, York Region has a Municipal Housing Facilities (MHF) by-law that provides DC relief through grants equivalent to DC payable. The Region has the power to provide such grants to both private and public sector partners. The grants are funded from the social housing reserve fund. The Region has entered into a number of agreements to-date with non-profit partners.

Perhaps most importantly, municipalities have a big role to play in maintaining overall housing affordability by ensuring an adequate supply of housing in a range of types and locations. This is achieved primarily through land use planning controls. DCs in fact support this role by funding infrastructure (e.g., water and wastewater systems) to create developable land.

## **16. How can development charges better support economic growth and job creation in Ontario**

DCs fund the vital infrastructure that businesses depend on to thrive. Empirical research in the UK has highlighted a number of key factors in business location decisions,

including: existing institutions, good transportation links, access to risk and venture capital, and a life style that may attract knowledge workers<sup>2</sup>. The spatial pattern of office space growth in the GTA confirms this view<sup>3</sup>.

Development charges are arguably a more efficient way of raising funds for transit compared to other municipal sources. Bringing transit into the same level of importance as roads in the DC framework will allow municipalities to better support economic growth. The availability of DC funding for transit also reduces risks for developers to build offices.

York Region is undergoing a process of intensification and there is a greater need for higher order transit to connect where people live and where they work. As residential growth continues to outpace employment growth in Toronto, an increasing number of Toronto residents will likely be working in surrounding municipalities<sup>4</sup>. Transit investment in York Region helps to complete a GTHA wide network that provides enhanced mobility options for residents and commuters. There is also a need for higher order transit to better connect employment lands to each other.

The *Development Charges Act, 1997*, gives municipalities some flexibility to structure DCs to suite local circumstances, and to achieve local objectives. For example, some municipalities provide deep DC discounts in downtown areas in order to spur regeneration. Municipalities can also set area-specific rates to reflect disparity in the cost of infrastructure services across the municipality. These decisions are made after considering their policy merit, administrative complexity, and their financial impact. Maintaining municipality flexibility to make the right decisions at the right time is crucial. Finally, DCs should be viewed as one part of a suite of tools to help support economic growth and job creation.

## High Density Growth Objectives

### 17. How can the *Development Charges Act, 1997* better support enhanced intensification and densities to meet both local and provincial objectives?

Currently, restrictions in the *Act* make it more difficult for municipalities to raise capital for certain infrastructure that support intensification. Transit is a good example. The

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<sup>2</sup> HM Treasury Report on Productivity in the UK, November 2001

<sup>3</sup> Dobson, I., Miller, G., Morton, K., Shah, Y., Jattan, C., and Lamont, K., Strategic Regional Research, A Region in Transition, Canadian Urban Institute, January 2013

<sup>4</sup> According to the latest Growth Plan population and employment projections, for every person added in the 905 between 2013 and 2041, 0.43 jobs are added, compared to 0.27 jobs in the City of Toronto.

responses provided to the previous questions have already addressed these points in detail.

In addition, Ontario Regulation 82/98 can restrict the usage of area-rated DCs as a tool to support intensification. Section 4(4) of the regulation states that “if a development charge by-law applies to a part of the municipality, the level of service and average level of service cannot exceed that which would be determined if the by-law applied to the whole municipality”. This rule can restrict the ability of municipalities with area-specific charges to recover growth-related costs through DCs, particularly if the differential in the level of service between areas is high.

DCs are but one financial tool municipalities can use to meet intensification and density objectives. Property tax policies, user rates, development charges, and regulatory measures should be examined together, rather than in isolation. The types and relative mix of tools used should also evolve with time. The province could consider providing greater guidance on the optimal policy mix (incentive-based and regulatory) to achieve smart growth objectives as well as municipal fiscal sustainability.

### **18. How prescriptive should the framework be in mandating tools like area-rating and marginal cost pricing?**

The framework should let municipalities retain the flexibility to structure DCs to suit their local circumstances - one size does not fit all. However, municipalities can benefit from the sharing of best practices and latest research. The Province may consider releasing a best practice guide on marginal cost pricing/area specific rates, particularly on how they can support intensification and encourage more compact densities.

Currently, the Region employs an average cost methodology (in most cases), in part because the Region believes it is a confederation of municipalities with shared interests. Many regional services are delivered using municipal-wide level of service standard governed by legislation (e.g., water and wastewater treatment). As such, there is scant opportunity to differentiate DC rates for a significant share of the charge. In addition, the technical support required to defend marginal cost charges for complex area-rates can be difficult to establish and justify.

Area-rated charges could be explored for services that have clear boundary delineation (e.g., EMS and police). Area rates could be based on the provincially defined built boundary, which is delineated based on density and the type of development.

## **19. What is the best way to offset the development charge incentives related to densities?**

The best way to offset development charges incentives related to densities depends on the specific tool (i.e., DCs, Section 37 contribution, Parkland dedication etc.), as well as local fiscal health, and the development climate. It is very important for municipalities to maintain the flexibility to make these decisions on their own.

Targeted Regional DC incentives can play a role in supporting intensification. For example, York Region allows high density residential and office developments to defer payment of regional DCs. However, the Region does not currently offer DC discounts.

Compared to discounts, other effective incentive measures have less adverse impact on revenues. For example, municipalities may consider setting DC rates based on some factor of density (e.g., sqft. or lot frontages) rather than average occupancy. Municipalities may also consider charging different DC rates for services whose cost is particularly sensitive to density. An earlier study conducted for York Region advanced the case that medium-high density residential development occurring in centres and corridors could be assigned a lower road DC rate and a higher transit and Toronto York Subway Extension DC rate than in the case of standard greenfield rates. The differential would reflect anticipated differences in roads and transit trip generation made possible as a result of the density differences, and the transportation arrangements involved.