



Report: COR-FSD-15-07

Region of Waterloo

Corporate Services

Financial Services & Development Financing

To: Chair Sean Strickland and Members of the Administration and Finance Committee

Date: March 24, 2015 **File Code:** F27-50

**Subject: Proposed Amendments to the Development Charges Act, 1997 by Bill 73
– Smart Growth for Our Communities Act, 2015**

Recommendation:

That the Regional Municipality of Waterloo request the Province of Ontario to amend Bill 73 – Smart Growth for Our Communities Act, 2015 to allow for the immediate use of a forward looking service level standard for Rapid Transit projects and to pass the amended Bill at the earliest possible opportunity.

Summary:

The imposition, collection and administration of development charges (DC) in Ontario are governed by the “Development Charges Act” (DCA) and associated regulations. Through Bill 73, the Province has introduced proposed amendments to the DCA which could have the effect of allowing a greater amount of DC’s to be collected to offset the cost of growth related capital works. The Region, together with the City of Ottawa, has been advocating for changes to the DCA since 2010 to allow for the imposition and collection of DC’s for Rapid Transit projects. While the proposed legislative amendments are a good step forward, many issues will be addressed in the regulations. One of the most important is the use of a forward looking service level for Transit Services. Under the process envisioned by the Province, which includes the creation of a Working Group, it is likely that the Region would not be able to proceed with a background study and consideration of a new bylaw to collect Rapid Transit DC’s for another year or more.

Report:

On March 5, 2015, the Minister of Municipal Affairs and Housing introduced Bill 73 –

Smart Growth for Our Communities Act, 2015. The bill has received first reading and would amend the “Development Charges Act” and the “Planning Act”. The Province indicates that the bill, if passed, will “help municipalities recover more costs, enhance transparency and accountability, and support higher density development.” This report provides information on the proposed changes to the DCA.

Staff previously reported on the Ministry of Municipal Affairs and Housing’s consultation on the Development Charges System in Ontario in Report F-14-004 dated January 7, 2014 (attached as Appendix A to this report.) At that time, Regional Council recommended that the Province make changes to the DCA to support the Region’s transition to a higher order light rail transit system, specifically by:

- Allowing the use of a 10-year forward looking level of service as the baseline for calculating development charges for transit; and
- Eliminating the 10% mandatory discount on development charges to pay for transit infrastructure.

Council passed additional recommendations regarding changes to the DCA, consistent with the principle that “growth pays for growth,” specifically to:

- Include all services funded by a municipality;
- Remove the 10% discount for all services; and
- Replace the 10 year average historic service level limits with a service level that is forward looking.

Many other municipalities, including the City of Ottawa, made similar recommendations to the Province. The development community also provided feedback to the Province through the previous consultation process.

Proposed DCA Amendments

Through Bill 73, the Province has proposed the following changes to the DCA:

1. Ineligible Services:

- Move the definition of Ineligible Services from the Act to the Regulations
- This allows for easier adjustments to add or reduce ineligible services
- The Province has indicated its intent to remove waste diversion from the list of ineligible services

2. Area Specific Charges:

- New requirements which will prescribe areas and services which must be undertaken on an area-specific basis

- New powers to allow the Province to prescribe municipalities, services and criteria so that the prescribed municipality must pass more than one by-law for prescribed services and criteria
- Provisions for area-specific charges are to be set out in regulations

3. Transit Service:

- The 10% mandatory deduction of growth-related costs will be removed
- Transit services would therefore be treated in the same manner as water, wastewater, storm water, police, fire, and other “hard” services.
- A definition of “transit services” is not included in the Bill

4. Service Standard Calculations:

- The Minister may prescribe services which will not be subject to the 10-year historic average service restriction
- Restrictions so that a planned 10-year level of service to be achieved over the 10-year forecast is not exceeded
- Methodology for determining the planned level of service will be set out in the regulations

5. New Development Charge Background Study requirements:

- An examination of the use of area-rating
- Inclusion of an asset management plan related to new infrastructure – the requirements of the asset management plan, the information to be provided and the manner in which it is prepared will be prescribed by regulation
- Requirement to demonstrate that all of the new infrastructure in the asset management plan is financially sustainable over their full life cycle (financially sustainable is not defined)

6. Payment Timing for Multiple Building Permits:

- when multiple building permits are issued in respect of a single building, the DC is payable when the first building permit is issued

7. Annual Report of the Treasurer: existing reporting requirements will be continued and new requirements added to:

- Identify all assets whose capital costs were funded by DCs and, for each asset, identify costs which were funded by other sources
- Include a statement as to the municipality’s compliance in not imposing, directly or indirectly, a charge related to a development or a requirement to construct a service related to development, except as permitted by this Act or another Act
- Require that the report be made available to the public

- Submit the report to the Ministry of Municipal Affairs and Housing if requested by the Minister

8. Voluntary Payments:

- New provisions to prohibit municipalities from imposing voluntary payments or requiring construction of a service not authorized under the DCA (note that exceptions may be made for a prescribed class of development, a prescribed class of services related to development or a prescribed Act or a prescribed provision of an act)
- Transitional provisions will make exceptions for existing voluntary payment agreements
- This addresses the Province's goal to curb municipal charges on new developments that fall outside what is allowed in current legislation
- Ministry of Municipal Affairs and Housing may investigate a municipality for compliance, and the cost of all or a portion of the investigation may be imposed on the municipality

As indicated above, Bill 73 proposes that various provisions be implemented through regulation. The Ministry has proposed to establish a Development Charges Working Group to provide additional advice on the following issues:

- the use of a planned or forward looking service average for transit and potentially other services;
- potential removal of the 10% discount for services beyond transit;
- whether currently ineligible services (in addition to waste diversion) should be eligible for the collection of development charges;
- potential provincial actions to require area rating of development charges to promote intensification.

The Working Group's output would be used to inform the regulations to be considered by the Minister.

Staff Recommendation

Staff has reviewed Bill 73 and the background information and conclude that the proposed changes are generally favourable to municipalities and meet some of the recommendations proposed by the Region. That being said, many issues will be prescribed through regulation and staff are concerned about the amount of time needed to pass such a regulation.

Since 2010, the Region of Waterloo has been asking the Province to amend the DCA to allow for its Rapid Transit project to be eligible for DC funding. The Province amended the DCA in 2006 for the extension of the Spadina subway into York Region. The

amendment has allowed the City of Toronto and York Region to recover development charges for the growth related portions of the capital costs of the extension based on the future service level rather than the historic service level. Waterloo Region requested similar treatment for the ION project. The City of Ottawa has made similar requests relating to its Rapid Transit project. Through Bill 73 the Province has indicated its willingness to meet such requests.

However, the number of issues to be prescribed by regulation means that the Region is likely at least 18 months away from being in a position to collect such DC's. Assuming the Working Group is able to complete its work by the end of 2015, the necessary regulations may not be in place until the early part of 2016. Consequently, Council would not be in a position to consider the passing of a by-law to impose development charges for the Rapid Transit project until mid-2016 at the earliest. Staff recommends that Regional Council request the Province to amend Bill 73 to allow for the immediate use of a forward looking service level standard for Rapid Transit projects and to pass the amended Bill at the earliest possible opportunity.

Corporate Strategic Plan:

This report supports strategic objectives found in the Corporate Strategic Plan, and particularly Focus Area 2: Growth Management and Prosperity.

Financial Implications:

Potential implications for the Region include the following:

1. Increased development charge funding for Grand River Transit fleet and facility expansion. The DC Background Study prepared last year sets out \$118 million in development related capital costs, with only \$24 million or 20% eligible to be funded by DCs. The elimination of the 10% deduction and the application of a forward looking service level could potentially result in \$94 million in additional DC eligible costs.
2. Under the current DCA, the Region's Rapid Transit project is ineligible for DCs. Staff completed a DC Background Study for the Rapid Transit project in 2011 and determined that approximately \$70 million of the \$818 million in capital costs would be DC eligible through the elimination of the 10% deduction and the application of a forward looking service level standard. Staff will be updating this analysis to reflect updated project costs and the growth projections used in the 2014 Background Study. Additional analysis would then be required in order to determine the potential impact on the balance of the Regional Transportation Master Plan funding strategy.
3. The Region's recently approved 10 year Waste Management capital program

includes \$10.2 million in waste diversion related capital costs, some or all of which may become eligible for DC funding.

4. Depending on the provisions of the regulation(s), additional RDC funding may be available through currently ineligible services becoming eligible, the elimination of the mandatory 10% discount for additional services and/or the use of a forward looking service level for additional services.
5. The requirement for certain services to be area-rated may impact the level of funding required for non-legislated exemptions, such as the downtown core exemption.

Other Department Consultations/Concurrence:

Input was provided by Legal Services staff.

Attachments:

Appendix A - Report F-14-004 dated January 7, 2014

Appendix B – Hemson Consulting Ltd. Letter dated March 6, 2015

Prepared By: Calvin Barrett, Director, Financial Services & Development Financing

Approved By: Craig Dyer, Commissioner, Corporate Services/Chief Financial Officer

Appendix A



Report: F-14-004

Region of Waterloo**Finance Department****Financial Services and Development Financing Division**

To: Chair Tom Galloway and Members of the Administration and Finance Committee
Date: January 7, 2014**File Code:** F27-50**Subject:** Region of Waterloo Response to Provincial Review of Development Charges System**Recommendation:**

That Report F-14-004 be forwarded to the Province of Ontario as Waterloo Regional Council's response to the Ministry of Municipal Affairs and Housing's consultation on the Development Charges System in Ontario;

And That the Province be requested to make changes to the "Development Charges Act, 1997", to support the Region's transition to higher order light rail transit system by:

- Allowing the use of a 10-year forward looking level of service as the baseline for calculating development charges for transit; and
- Eliminating the 10% mandatory discount on development charges to pay for transit infrastructure;

And That the Province be requested to make changes to the "Development Charges Act, 1997", consistent with the principle that "growth pays for growth," including the following:

- Include all services funded by a municipality;
- Remove the 10% discount for all services; and
- Replace the 10 year average historic service level limits with a service level that is forward looking;

And Further That Report F-14-004 be circulated to the Area Municipalities within Waterloo Region for information.

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Summary:

Nil

Report:

1.0 Provincial Review of Development Charges

In October 2013, the Provincial government announced a review of "Development Charges in Ontario." The stated purpose of the review is to ensure that Ontario's development charges system is "predictable, transparent, cost-effective and responsive to the changing needs of communities." Comments on this review are being sought by January 10, 2014.

The current "Development Charges Act" (D.C.A. 1997), was passed in 1997. Since that time, municipalities have faced increasing pressure to fund the replacement and rehabilitation of existing aging infrastructure through the tax rate and user rates. The provisions in the D.C.A. 1997 which restrict the financing of new capital infrastructure to support growth through development charges lead to more pressure on the tax rate and user rates to fund this infrastructure.

The funding shortfalls related to the development charge legislation have been a concern to many municipalities across Ontario. The Municipal Finance Officers' Association of Ontario (MFOA) has released a policy paper which is being submitted as a response to the provincial consultation, titled "Frozen in time: Development charges legislation underfunding infrastructure 16 years and counting," in which it outlines that it is counterproductive to limit municipalities' ability to invest in infrastructure by limiting their ability to recover capital costs through development charges at a time when governments are focused on shrinking the infrastructure deficit and stimulating economic recovery through infrastructure investment.

The Region's discussion and response to the consultation document follows.

2.0 Development Charge Methodology and Eligible Services

Prior to 1989, a municipality's ability to recover growth related costs was through the collection of lot levies under the Planning Act. The first D.C. legislation, the "Development Charges Act 1989" (D.C.A. 1989) brought forward many of the practices in calculating charges to recover the cost of growth to ensure growth pays for growth, allowed the municipality to govern its affairs and make the appropriate decisions on providing services and recovering the cost of growth as communities grew. In 1997, the implementation of the D.C.A. 1997 removed the municipality's ability to make these decisions as the recovery of growth related costs are now limited through the exclusion of ineligible services, limits on cost recovery, service level caps and mandated exemptions.

In the D.C.A. 1997, only the capital costs for water, wastewater, and roads are 100% eligible to be recovered from growth provided that historical service levels are not

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exceeded. Services such as Police, E.M.S., Airport and Transit have a limit on recovery through the 10% deduction and the 10 year service level cap. Services such as waste management, hospital, acquisition of parkland, municipal administration building and computer equipment are ineligible, despite that demand for these services is directly related to the level of growth. The result of all of these restrictions is that the related capital costs are required to be paid by the current taxpayer, further diluting the "growth pays for growth" principle.

The Province has requested input on whether the current development charge methodology supports the right level of investment in growth related infrastructure and specifically, if:

- The 10% statutory discount for soft services should be re-examined;
- The current list of ineligible services is appropriate; and
- The amendment to the D.C.A. 1997 provided to the City of Toronto and York Region which exempted the application of the 10-year historical service level average and the 10% discount for growth-related costs for the Toronto-York subway extension, should be enacted for all transit projects in Ontario or only for high order transit projects (i.e. subways and light rail).

The Region has focused its discussions with provincial officials over the past few years in relation to development charges to the challenge of funding for the major transit expansion and implementation of L.R.T. in the Region. In June 2013, the Regional Chair and the Mayor of the City of Ottawa sent a letter and Policy Brief to the Minister of Finance and the Minister of Municipal Affairs and Housing requesting that the amendment to the D.C.A. 1997 provided to Toronto and York Region be enacted for the higher order transit projects in Ottawa and the Region which are currently underway. A copy of the letter and Policy Brief are attached to this report.

The Region supports the extension of this approach to all transit projects in Ontario as the increase in transit services support policies in the Provincial Places to Grow plan for intensification of urban centres and corridors. Improvements in transit services also help to meet the need for alternatives to additional road infrastructure over the long term, and should be considered for development charge recovery on the same basis as improvements to road infrastructure.

Also, the Metrolinx Investment Strategy has advocated for amendments to the D.C.A. 1997 to remove the 10-year historical service level restriction and mandatory 10% statutory reduction for transit service.

The Region supports the "growth pays for growth" principle and recommends that all services funded by a municipality should be eligible for development charge recovery and the mandatory 10% deduction should be eliminated.

3.0 Reserve Funds

The Province has requested input on whether the current system of reporting D.C.
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reserve funds is sufficient and if sufficient information is available to the public or should it be more prescriptive.

The Region currently publishes its annual D.C. reserve fund report on the Regional website and the report provides specifics on revenue by type and exemptions, and project-by-project D.C. capital funding. The Region suggests that the current reporting requirements for the annual reserve fund statement are sufficient.

4.0 High Density Growth Objectives

The Province has requested input on how development charge legislation could better support enhanced intensification and increased densities, how prescriptive should the framework be in mandating tools like area-rating and marginal cost pricing, and what is the best way to offset development charge incentives related to densities.

Over the last decade, two provincial plans have been released that promote the importance of incorporating intensification in growth planning. Both of these plans seek to promote the efficient use of land and infrastructure, the protection of agricultural land and natural areas, seek to focus growth within intensification areas including infill, redevelopment and conversion of existing buildings.

The Region is responsible for the network of water, wastewater, roads, transit, police and other services which is not as dependant on location of services or infill or greenfield development. Therefore, the practice of using average costs of development to calculate development charges may be most appropriate unless there is a justification based on cost difference or policy choice (i.e. transit D.C. only applicable to the cities).

The D.C. framework should remain fundamentally a cost recovery mechanism and flexibility should remain for municipalities which wish to use development charges to promote a certain type or area of development as a result of local circumstances.

5.0 Growth and Housing Affordability

The Province is asking how the impacts of residential development charges on housing affordability can be mitigated in the future, and how development charges can better support economic growth and job creation in Ontario.

The Province has indicated that development charges have been rising steadily since D.C.A. 1997 was passed, leading some people to suggest development charges are having a direct impact on rising housing prices. However, development charges as a percentage of the cost of a new home have remained somewhat stable, at 5 to 9 percent since 1997. Some municipalities also discount non-residential development charges to act as a lever in the attraction of industrial, commercial and institutional development.

As described above, development charges are a cost recovery mechanism and if development charges are discounted, it means that these costs will be recovered from the existing and future taxpayers through higher taxes and user rates. There is also no

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guarantee that a discount in development charges would be reflected in lower housing prices.

While the Province notes that non-residential development charges may play a role in the attraction of industrial, commercial and institutional development which promotes job creation and growth, in fact, development charges are often rated as being less critical in the overall industrial site selection. Other criteria that influence commercial and industrial site selection decisions include access to transportation, access to skilled labour force, utility rates, property taxes, land prices and availability of serviced lands.

The decision to discount residential or non-residential development charges to promote a certain type of development should be left with the municipality.

6.0 Conclusion

Region staff have participated in the Province's consultation process through discussion with provincial staff at their consultation session hosted by the Region on November 18, 2013 and also through the Regional and Single Tier Treasurers Group. The Region continues to encourage the Province to maintain the flexibility that currently exists in the D.C.A. for a municipality to determine which of the eligible services on which to charge development charges, allowing the municipality to determine whether or not to charge full calculated development charge rates and any appropriate phase-in periods to implement development charge increases.

The Region supports changes to the D.C.A. 1997 which would provide greater flexibility to municipalities and allow for the recovery of growth-related capital costs for all services and particularly, the implementation of the Region's ION L.R.T. system.

Corporate Strategic Plan:

This report supports strategic objectives found in the Corporate Strategic Plan, and particularly Focus Area 2: Growth Management and Prosperity.

Financial Implications:

Development charges provide a key funding source for capital projects required as a result of development within the Region. Without the requested amendment to the "Development Charges Act, 1997", it is expected that the development charges available for the construction of the ION project will be zero as the new L.R.T. service will exceed the average service level for transit services. With amendments to the Act to remove the 10% discount and the 10-year historical service levels, it is estimated that up to \$70 million in development charges could be collected to support the construction costs of the L.R.T.

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Other Department Consultations/Concurrence: Nil

Attachments:

Attachment 1- Letter to Minister of Finance and Minister of Municipal Affairs and Housing dated June 25, 2013 from Chair Seiling and Ottawa Mayor Jim Watson

Attachment 2- Policy Brief **Aligning Public Policy in support of Public Transit** from the City of Ottawa and the Regional Municipality of Waterloo dated June 24, 2013

Prepared By: Calvin Barrett, Director, Financial Services and Development Financing

Approved By: Craig Dyer, Chief Financial Officer

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June 25, 2013

The Hon. Charles Sousa
 Minister of Finance
 Frost Bldg South, 7th Floor
 7 Queen's Park Crescent
 Toronto ON M7A 1Y7

The Hon. Linda Jeffrey
 Minister of Municipal Affairs and Housing
 College Park, 17th Floor
 777 Bay St
 Toronto ON, M5G 2E5

Dear Ministers,

We are writing to request that you introduce an amendment to the Development Charges Act 1997, to address our unique situation as municipalities building their first light rail transit systems.

The current Development Charges Act discourages the evolution from a bus centric transit system to a higher capacity and energy efficient light rail system because it limits the amount that can be included in the transit portion of the charge to the 10 year historical cost of service and requires a statutory 10% reduction. This prevents municipalities from recovering the growth-related costs of significant improvements in transit service – such as the implementation of a rapid transit system. Moving from a bus transit system to a light rail system has a higher initial capital cost but results in reduced operating and energy costs in the future.

The Province recognized the difficulty municipalities have when making this shift in delivering transit services in 2006 when it amended the Development Charges Act for the extension of the Spadina subway into York Region. The amendment allowed the City of Toronto and York Region to recover development charges for the growth-related portions of the capital costs of the extension based on the “future service level” rather than the “historic service level”. The City of Ottawa and the Region of Waterloo would like the same consideration to ensure that new growth helps pay for the costs of the rapid transit infrastructure that is needed to accommodate and support that growth.

The Province of Ontario and the Federal government are contributing significantly towards the capital costs of the Ottawa and Region of Waterloo projects but there is still a substantial portion of the capital cost that must be funded locally. With your assistance, Development Charges can be increased to an appropriate level to help reduce the burden on the local property taxpayer; however it is important that the requested amendment be approved and in force before year end since implementation of our respective projects is moving forward quickly. Construction on Ottawa's Confederation Line began in 2013. Utility relocation for ION is underway in the Region of Waterloo with construction scheduled to start in 2014.

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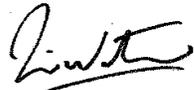
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This overall approach would be consistent with the treatment given to the City of Toronto and York Region.

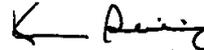
We have attached a white paper on these issues which provides a brief background on the difficulties with the current Development Charge legislation; undertakes a clear policy analysis and outlines appropriate remedies.

Staff from the City of Ottawa and the Region of Waterloo would be pleased to discuss this analysis in person with Ministry staff.

Thank you for your attention to this matter and we look forward to a positive outcome.



Jim Watson
Mayor, City of Ottawa



Ken Seiling
Regional Chair, Regional Municipality of Waterloo

Attachment:

cc: The Honourable Kathleen Wynne, Premier
The Honourable John Milloy
The Honourable Madeline Meilleur
The Honourable Bob Chiarelli
The Honourable Yasir Naqvi

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Policy Brief Aligning Public Policy in Support of Public Transit**The City of Ottawa/The Regional Municipality of Waterloo**

June 24, 2013

SUMMARY

The Ontario Government has had a policy objective of promoting expansion and improvement in public transit over the past ten years. In line with this policy, two major Ontario municipalities are currently undertaking a transition from a bus based transit system to light rail transit:

- The City of Ottawa is constructing the **Confederation Line**, a major new light rail transit project; and
- The Regional Municipality of Waterloo is constructing its **ION** Light Rail Transit System.

The move to light rail offers more manageable energy costs by replacing diesel with electric propulsion and offers better productivity helping to manage operating cost pressures caused by growth. At a certain point in the maturation of a municipality, a transition must occur to LRT to handle the increasing demands of moving residents around, most efficiently with public transit. Higher capital cost LRT enables more cost effective and manageable operating costs.

However, the Development Charges Act (DCA), 1997, does not allow for developers to meaningfully participate in the cost of this fundamental transit transition. This is because:

1. The DCA requires the use of a 10-year *historical* average level of service as the baseline for calculating development charges; and
2. There is a 10% mandatory discount on development charges to pay for transit infrastructure.

Both of these features of the DCA are out of alignment with the Province's stated focus on public transit and improved environmental outcomes. The forward looking plans to deploy rail, especially those projects already under construction, should be counted at full value in DCA studies setting our new development charges. This is consistent with the solution offered the Toronto-York Subway extension where the Act was amended to allow for inclusion of the service level associated with the project in setting development charges even though it was not yet complete.

Ottawa and Waterloo, the two municipalities in Ontario who are transitioning their transit systems from bus to light rail, are unable to secure reasonable contributions toward this growth infrastructure from developers who will benefit from this new infrastructure. Both municipalities request redress of this situation on a one-time basis during this transition with

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the requested amendment to the Development Charges Act, 1997 approved and in force before year end since implementation of the rapid transit projects in Ottawa and Waterloo is progressing rapidly. This note provides a brief background of these two features, undertakes a clear policy analysis of both and outlines an appropriate remedy for each.

BACKGROUND

In 1997, the Ontario government passed the Development Charges Act (DCA), 1997. Two of the features of this legislation are as follows:

- **average historic service levels** – Sub-section 5 (1) point 4 indicates that Development Charges will be calculated based on the average service level achieved in the ten years before the DC background study ; and
- **10% mandatory discounts** – Sub-section 5 (1) point 8 states that a mandatory 10% discount will apply to the Development Charge calculation except for those services that are listed in Subsection 5 (5).

Transit is the **only "hard" service** that is not excluded from this mandatory discount, while services relating to highways are able to recover 100% of their costs through a DC. A further challenge is that sub-section 7.1 of the DCA states that a discounted service cannot be combined with a service that is not discounted. This unfortunately means that roads and transit cannot be combined into one service called "transportation" even though roads and transit are inextricably linked.

The historical view of transit infrastructure spending is an obvious challenge where there is an inflection point in capital spending as in a bus to rail transition. The direct impact on revenues, for the City of Ottawa and the development of the Confederation Line is outlined in Annex 1. As can be seen, these two provisions have resulted in a reduction of \$67.5M in revenue from development charges, revenue that must otherwise come from increased residential and commercial property taxes for transit service. In Waterloo the historical view limitation alone has resulted in a \$70M reduction in DC revenues (Annex 2).

Ottawa and Waterloo need a degree of flexibility in service provision that is not possible under the current DCA so that they can choose to include the increased costs of LRT in the DC calculations resulting in developers contributing fairly to the cost of the rail transition.

The government of Ontario has explicitly recognized both the limitations and unfair burden that these features impose. In Budget 2006 they created an exception for the Toronto York subway extension that allowed the project to make use of prospective not retrospective levels of service for the DC calculation and allowed for 100% cost recovery through development charges. The City of Ottawa and Region of Waterloo request the same consideration to enable them to make the transition to a new and more efficient light rail system

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POLICY ANALYSIS***The 10% Mandatory Discount***

The Province has made clear in a number of its recent policy statements and in the development of new legislation that it is putting a strong emphasis on transit. A few recent examples include:

- Smart growth principles outlined in the *Places to Grow* legislation, including transit-oriented development;
- A strong emphasis on transit infrastructure in Ontario's ten year Capital Plan; and
- Statements in recent environmental policies and publications in which transit is hailed as a key tool in reducing pollution and in facilitating the improved flow of goods, services, and people.

These policy directions are clearly at odds with the inclusion of transit in the 10% mandatory discount, as this discount provides a strong incentive to build roads at the expense of transit by allowing municipalities to capture the full costs of highways but only 90% of transit.

In looking at the current DCA, a positive decision was never taken to include transit in the mandatory discount grouping; rather it was simply omitted from the excluded list. Application of this discount on transit expenditures is, in any event, inappropriate given the Province's policy priority on transit. It would seem that the inclusion by omission in the "soft" category is counter to the general logic of what divides a "hard" vs. "soft" service. Transit is more like a road than a park.

Proposed Policy Remedy: The simplest and most direct remedy for the issue of the 10% mandatory discount would be to add public transit to the list of excluded services in Subsection 5 (5). In so doing, Ontario would be aligning the existing DCA legislation and regulations with its current public policy commitment to transit and with the existing precedent set for the Toronto York subway extension.

Given the impact that a general elimination of the 10% discount could have on the overall development charge we are asking that only the two initial light rail systems being built by Waterloo and Ottawa be excluded from this requirement. This would be similar treatment as provided to the Toronto-York subway extension.

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10-year Historical Service Average

The policy purpose of the use of a 10-year historical average level of service is to ensure that, in general, developers do not bear an undue component of the cost of implementation of new infrastructure investments (in other words to help ensure that the cost of this infrastructure is born by all members of a community). In general, the 10-year historical average has worked to govern the reasonableness of spending plans. This general policy purpose, however, does not fit when there is a transition from bus to rail as the new transit infrastructure will enable increased population densities and additional intensification from which developers will directly benefit along with higher property values associated with the move to light rail transit systems.

Proposed Policy Remedy: The most direct solution for the issue of the 10-year historical service average would be to allow for the inclusion of future service levels in the calculation in cases where a new order of transit is being introduced (moving from bus transit to light rail, for example). In this case it is proposed that the Ottawa and Waterloo LRT projects now underway, funded by all three orders of government, be included in the development charge calculation without reduction from the service level cap. All other transit projects would still be subject to this limitation. This would require an amendment to the Development Charges Act and would be consistent with the treatment afforded the Toronto-York Subway extension.

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ANNEX 1: CITY OF OTTAWA FISCAL IMPACT OF THE CURRENT DCA, 1997

Ottawa Transit Services Development Charge revenue calculated in the 2009 Background Study as per the Development Charges Act, 1997 compared to the revenues with the Confederation Line not subject to the historical service level cap and the 10% statutory discount:

	With 10% discount & 10-year historical service	Without 10% discount & 10-year historical service levels	Difference
Transit Development Charges (10 year Service)	\$324.4M	\$391.9 M	\$67.5M

Impact on overall Development Charge rates if Ottawa is allowed to include the Confederation Line at the undiscounted cost:

Single Family Rate (outside the greenbelt):	3.7% increase
Non-Residential General Use Rate:	7.8% increase

The \$67.5 M equates to a 5.6% tax rate increase if the taxpayer has to fund the difference.

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ANNEX 2: REGION OF WATERLOO FISCAL IMPACT OF THE CURRENT DCA, 1997

The Region of Waterloo engaged Hemson Consulting Ltd. to complete a Rapid Transit Development Charges Background Study in 2011, after approval of the LRT project. The DC's available under the current DCA will be zero as the new LRT service will exceed the average service level for transit services. The DC Background Study was completed based on an amendment to the DCA which would provide that the ION LRT project not be subject to the historical service level cap and the 10% statutory discount:

	With 10% discount & 10-year historical service	Without 10% discount & 10-year historical service levels	Difference
Transit Development Charges (based on 20 years growth 2011-2031)	\$0.0 M	\$70.0 M	\$70.0 M

Impact on overall Development Charge rates if Waterloo is allowed to include the ION LRT at the undiscounted cost:

Single Detached Dwelling:	7.5% increase
Non-Residential Rate:	8.2% increase

The Region is currently increasing tax rates by 1.5% for seven years to fund its \$253 million share of the capital costs of the project. The \$70.0 M would mitigate a significant amount of this increase.

Appendix B

HEMSON

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March 6, 2015

Dear Sir/Madam,

You will be aware that the Province yesterday released proposed amendments to the *Development Charges Act (DC Act)* and *Planning Act*. While the *DC Act* amendments are still only at the preliminary review stage we wish to share with you our initial views on the proposals. The news release announcing the changes may be found on the website of the Ministry of Municipal Affairs and Housing.¹ The proposed legislation “Bill 73, Smart Growth for Our Communities Act, 2015” is set out on the website of the Legislative Assembly of Ontario.²

Our overall view of the new legislation is positive. It would move the list of DC ineligible services from the Act to the Regulations with the stated intention that municipalities would have new DC revenue raising powers for waste diversion and a greater ability to fund transit. The DC Background Study process will be more formally integrated with long term financial planning, a practice that Hemson strongly supports and has long advocated. Additional DC reporting requirements mean that those paying DCs would have access to more information about how funds are accounted for and spent—this directly addresses a concern the development industry has voiced for some time.

With respect to the specific proposals:

- The list of **ineligible services**, which is currently included in the *DC Act*, would now be prescribed by Regulation. This would allow the Province to more easily make changes on eligibility in the future. The Province’s news release indicates that, at a minimum, the ineligibility of waste management services would be modified to allow DC funding for recycling programs.

¹ <http://www.news.ontario.ca/mah/en/2015/03/ontario-introducing-new-rules-for-community-smart-growth.html>

² http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=3176

- **Mandatory area rating** would be introduced through Regulation for prescribed services in prescribed municipalities. The Regulation would prescribe services that are to be subject to area specific DCs and criteria for determining area boundaries. This provision could be used to restrict DCs, for transit for example, to a specific benefitting area. More broadly, the Province could through this provision require municipalities to consider area specific DCs to pursue strategic land use planning goals.
- The Regulation would prescribe services for which the all important “10-year historical average service level” restriction on DC funding is replaced by a less restrictive “10-year future planned level of service”. The method and criteria for estimating the **planned level of service** would also be prescribed. Our view is that this more permissive approach is targeted specifically at transit services.
- **Transit** would become a service with **no 10% reduction** in DC eligible capital costs (like water, waste water, storm water, police, fire, and other “hard” services). A definition of “transit services” is not included in the Bill.
- As well as the long term capital and operating cost analysis that is currently required, DC Background Studies would now have to include an **asset management plan** that demonstrates that “growth-related” capital assets are financially sustainable over their full life cycle. Although the term “financially sustainable” is not defined, this provision would ensure that Councils have more financial information at hand when making decisions about meeting the servicing needs of development and imposing development charges during the DC Background Study and By-Law process. Many of our municipal clients may be able to draw upon recently completed asset management plans to satisfy this new requirement.
- For developments that require multiple building permits, the legislation would ensure that a DC is payable upon the **first building permit** being issued. This addresses the development industry’s concern about cost certainty, particularly with high rise condominiums.
- The **reporting requirements** under s.43 of the *DC Act* are to be modified and added to. Of all the proposed amendments, this one could require more immediate action from municipal finance staff so as to ensure that adequate information for future reporting is being collected.
- Finally, a clause has been added to s.59 of the *DC Act* that would ensure that “A municipality shall not impose, directly or indirectly, a charge related to a development or a requirement to construct a service related to development.” This addresses the Province’s goal to **curb municipal charges** on new developments that fall outside what is allowed in current legislation. Transition provisions would allow any such charges that are signed before the Bill becomes

law to remain in force, though for how long isn't stated. Broad powers would be provided to the Ministry to investigate whether this new rule is being applied.

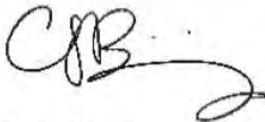
Importantly, the proposed legislation is not retroactive (though transitional arrangements for the new reporting requirements are not defined). Therefore the DC by-laws that you currently have in force and effect can remain so until they expire.

Those municipalities that are concerned about the effect of the proposed legislation on DC Background Studies that are either underway or about to start can take heart that much work remains unfinished. As well as the parliamentary review process, the most substantial changes will be enacted by Regulation rather than passage of Bill 73. A Regulation will likely not be passed until 2016 as the Province is establishing a Development Charges Working Group to advise it. The working group is expected to report back with recommendations by the end of 2015.

We will be contacting the Ministry of Municipal Affairs and Housing to ask that Hemson be represented on the Working Group so that our clients' positions on DC matters may be heard. In the meantime, should you have any questions related to the proposed amendments, or on other DC matters, please do not hesitate to contact me or my colleagues.

Kind regards,

HEMSON Consulting Ltd.



Craig Binning
Partner

HEMSON