TO: Mayor and Members
General Issues Committee

COMMITTEE DATE: February 5, 2014

SUBJECT/REPORT NO: Public Consultation on the Development Charges Act, 1997 (FCS14010) (City Wide)

WARD(S) AFFECTED: City Wide

PREPARED BY: Adam Smith (905) 546-2424 Ext. 1434

SUBMITTED BY: Mike Zegarac
Acting General Manager
Finance & Corporate Services Department

SIGNATURE: 

RECOMMENDATION

(a) That Appendix “A” to Report FCS14010 be submitted to the Ministry of Municipal Affairs and Housing (MMAH) as the City’s official submission to the Development Charges (DC) consultation;

(b) That Report FCS14010, respecting the Provincial Consultation on the DC Act, 1997, be forwarded to the Municipal Finance Officers Association (MFOA), Association of Municipalities of Ontario (AMO) and local Members of Provincial Parliament.

EXECUTIVE SUMMARY

On October 24, 2013 MMAH announced public consultations on the DC Act, 1997. The consultation is through the form of 19 questions upon which the Province is seeking input. The City has developed answers through the combined efforts of staff across the corporation, including legal, planning and economic development, and finance, and has also taken into consideration the work of external groups. The external positions considered in developing the City’s response include the positions provided from the MFOA, Watson & Associates Economists (consultants for the City’s DC Background Study), and AMO.

City staff have attended an in-person consultation meeting held by MMAH with a number of other area municipalities, which also assisted with understanding the concerns of other municipalities. Written submissions for the DC consultation were due
by January 10, 2014. Due to the tight submission deadlines, staff have submitted a “draft” submission to the consultation, approved by the Acting General Manager, Finance and Corporate Services, and noted that a Council approved submission will follow.

The recommended submission, attached as Appendix “A” to Report FCS14010, was submitted to MMAH as the City’s draft submission.

**Alternatives for Consideration – Not Applicable.**

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS (for recommendation(s) only)**

Financial: There are no direct financial implications to the submission to the DC consultation. Actual financial implications will be dependent on the changes, if any, the Province ultimately makes to the *DC Act, 1997*.

Staffing: None.

Legal: There are no direct legal implications to the submission to the DC consultation. If the Province implements any changes to the *DC Act, 1997* it could have any number of possible legal implications.

**HISTORICAL BACKGROUND (Chronology of events)**

The first DC Act was passed in 1989 which set out a clearer methodology for municipalities to recover growth related capital costs than the previous lot levy regime. The *DC Act, 1989* was based on the premise that growth pays for growth, and was free of restrictions, as compared to its replacement by the *DC Act, 1997*.

The current DC legislation (*DC Act, 1997*) places a number of restrictions on the growth related costs that a municipality is eligible to recover. It makes a number of municipal services ineligible for cost recovery, including waste management, museums, cultural and tourism facilities, and general administration. It also restricts municipalities to recovering a cost based on the historical average level of service that has been provided (except Water, Waste Water and Storm Water), and requires municipalities cover 10% of the growth related costs on most services (except Fire, Police, Roads, Water, Waste Water and Storm Water). Additionally, the *DC Act, 1997* imposes mandatory exemptions on municipalities for industrial expansions and residential intensification.

The Provincial consultation launched on October 24, 2013 is the first review of the *DC Act, 1997* since it was passed 16 years ago.
POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

This report and the submission to the Provincial consultation will not have any direct policy implications. Any changes made by the Province to the DC Act, 1997 would have the potential to impact the City’s DC policies.

RELEVANT CONSULTATION

Planning & Economic Development, Legal Services, Community and Emergency Services, and Watson & Associates Economists all provided input, guidance or assistance in development of the City’s submission to the Provincial consultation on DCs. Additionally, AMO’s backgrounder on DC reform and MFOA’s submission to the Provincial consultation were reviewed in the development of the City’s position.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

(Include Performance Measurement/Benchmarking Data if applicable)

The City submission was developed by taking into account Council approved positions, the input of various internal City divisions, as well as the positions larger organizations that the City is a member of, such as AMO and MFOA.

Participating in the Provincial consultation ensures the City’s position on the DC Act, 1997 is being expressed. Failure to provide a submission to the Provincial consultation would miss out on an opportunity to influence Provincial legislation.

ALTERNATIVES FOR CONSIDERATION

(Include Financial, Staffing, Legal and Policy Implications and Pros and Cons for each alternative)

Not Applicable.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

1.2 Continue to prioritize capital infrastructure projects to support managed growth and optimize community benefit.

1.3 Promote economic opportunities with a focus on Hamilton’s downtown core, all downtown areas and waterfronts.

1.4 Improve the City's transportation system to support multi-modal mobility and encourage inter-regional connections.
1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

**Strategic Priority #2**

Valued & Sustainable Services

*WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.*

**Strategic Objective**

2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.

**Strategic Priority #3**

Leadership & Governance

*WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.*

**Strategic Objective**

3.1 Engage in a range of inter-governmental relations (IGR) work that will advance partnerships and projects that benefit the City of Hamilton.

**APPENDICES AND SCHEDULES ATTACHED**

Appendix “A” to Report FCS14010 – City of Hamilton Submission to the Provincial Development Charges Consultation
CITY OF HAMILTON

Development Charges Act, 1997 Provincial Consultation Submission

Prepared By: City of Hamilton - Financial Planning & Policy Division

December 2013
Development Charges Act, 1997 Consultation Issues & Questions

Executive Summary

The City of Hamilton has long believed that growth related capital and infrastructure costs should be paid for by the growth which requires that infrastructure. The Development Charges Act (DCA), 1997 included restrictions that hadn’t existed in the previous DCA, 1989, such as 10-year average historical service standards, ineligible services, and 10% mandatory deductions from certain services. It has become clear that the current DCA, 1997 methodology does not support the premise that “Growth should pay for Growth”.

The Province announced on October 24, 2013 that public consultations on the DCA would take place. The City appreciates and values the opportunity to provide input. Staff have taken the opportunity to attend in-person consultation meetings held by the Province, and the City is providing this submission as a response to the consultation document prepared by the Province, in which they posed a number of questions regarding the DCA, parkland dedication, and section 37 of the Planning Act.

The City is supportive of eliminating ineligible services, mandatory reductions, and historical level of service standards, in order to support the premise of growth paying for growth. Under the current methodology, approximately 25% of growth related costs are not recovered through Development Charges (DC’s), meaning growth is only paying for about 75% of growth related costs, and the remainder is borne by existing taxpayers. Changes to the DCA that would increase the percentage of growth related costs a municipality can recover from DC’s would be supported by the City.

The City would not, however, be supportive of allowing DC’s to be collected for Provincial responsibilities such as Hospitals and Metrolinx, if the result was a trade-off that lowered and/or further limited the amount that could be collected by municipalities for their needs. As noted, the City is only able to recover about 75% of growth related costs from growth; any further reduction would be a further burden that would be unaffordable to existing taxpayers.

In summary, the City supports eliminating the restrictions that limit the level of funding recovered from new growth, and would oppose any changes that result in any further reductions or limitations on revenue recovery.
City Response to Issues and Questions to Discuss in Provincial Consultation

The Development Charges Process

1. Does the Development Charges methodology support the right level of investment in growth-related infrastructure?

A certain level of investment in growth-related infrastructure is required in order to allow growth to proceed. The current DCA methodology does not support the required level of investment in growth-related infrastructure (as a result of exemptions, reductions, and limitations provided in the DCA), resulting in costs being picked up by the existing taxpayer through increased property taxes and/or user fees. For example, the 10% statutory deduction has cost the City of Hamilton approximately $3.5 million over the last 5 years (or $434 per single detached unit). The costs to the taxpayer of the other restrictions cannot be as easily calculated, but would easily exceed the cost of the 10% statutory deduction. The current DCA methodology clearly does not support the premise that “Growth should pay for Growth”. Should the changes to the DCA result in further limitations or reductions, a further burden would be shifted to the existing taxpayer.

The City of Hamilton is supportive of changes to the DCA methodology that would remove the restrictions on eligible services, remove the historical service standard, and eliminate the 10% statutory discount.

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?

The DCA should make it clear that a municipality may choose the most appropriate method to determine the growth-related capital costs recoverable from DC’s. The typical “per capita” determination may work for some services, and in some communities, however a municipality should have the flexibility to use the most appropriate method for its circumstances (i.e. response time for Fire departments).

Benefit to existing should not be explicitly defined, but it should be clarified that the municipality shall have the right to determine the basis for calculating the Benefit to Existing. Appeals should be limited to errors that developers believe has occurred in the calculation, and not be able to appeal the basis used.
The OMB has already refined a number of these issues and terminology through the appeal of DC Bylaws since the enactment of the DCA, 1997. These rulings from the OMB guide and set boundaries within which municipalities can determine DC recoverable costs. Further defining how municipalities may determine the charges through the DCA could result in new terms and definitions being debated and litigated, and result in uncertainty in the calculation and amount of charges until litigation has concluded.

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

Yes, the public process, and ability for the by-laws to be challenged at the OMB requires municipalities to be reasonable, and holds them accountable. Being more prescriptive about how the charges are calculated would eliminate a municipality’s ability to determine the most appropriate methodology, and limit their ability to collect funding needed to cover growth-related costs.

Under the current DCA, the maximum allowable DC is based on the service standard for all services other than Water, Waste Water and Storm Water. It could be argued that this level of rigour is too high as it doesn't necessarily allow municipalities to consider the entire growth related cost and then requires a further 10% reduction on soft services.

With respect to DC Appeals, the City believes that appellants should be required to provide preliminary evidence that the City did not act fairly, reasonably, within its powers, and in accordance with the processes set out in the DCA, at the time of appeal. There should be a presumption of correctness of the DC Study and Council’s passing of the DC By-law. Additionally, there should be a leave to appeal test and motion – by not having the leave test, there is a presumption of validity to the appeal and currently the DCA provides a very low threshold to satisfy the Board an appeal should be heard.
Appendix “A” to Report FCS14010
Page 5 of 13

City of Hamilton Development Charge Act Consultation
Submission to MMAH

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?

Setting a list of ineligible services defeats the premise that “Growth should pay for Growth”. There should not be a list of ineligible services in the DCA; if there is a service that does not have increased infrastructure requirements as a result of growth, there would be no related DC collections.

If a listing of ineligible services is to remain, the City of Hamilton has prioritized the services it would like to see removed from the ineligible services as follows:

   i) Acquisition of Land for Parks
   ii) Waste Management

On October 9, 2013, Council of the City of Hamilton approved Report FCS13044(a) “Request to Consider making Services Eligible under the Development Charges Act”. Through this report, the City of Hamilton requested that the acquisition of Land for Parks and Waste management be made eligible services under the DCA, and Council also supported the resolution of the Township of Adjala-Tosorontio, that Hospitals should be an eligible service under the DCA (given the Province’s requirement for a local share of 10% of Hospital construction cost). In the context of the DCA consultation, the City is only supportive of including a Provincial responsibility such as Hospitals in the DCA as long as there is no trade-off that lowers or further limits the amount of DC’s that could be collected by municipalities for their needs.

The City would recommend that, if they become an eligible service, Hospital DC’s should be handled in the same manner as Education DC’s, in that the hospital should do the DC Study and calculate the DC, which in most cases would be levied on a larger geographic area, rather than a single municipality. Municipalities would still be required to collect the charges prior to permit issuance. The Province should not expect significant contributions from the municipal tax base for services that are not municipal, and assets that are not owned, managed, or controlled by municipalities.

Specific to Acquisition of Land for Parks, the City believes that parkland requirements in excess of what it is able to collect through the parkland dedication provisions of the Planning Act should be recoverable. This would make the accountability and transparency requirements of the DCA apply to parkland requirements that are not met.
through the Planning Act. An alternative would be to have acquisition of land for parks remain an ineligible service, but allow municipalities to increase the amount of land or cash-in-lieu required under the parkland dedication provisions of the Planning Act.

5. The Development Charges Act, 1997 allows municipalities to collect 100% of growth-related capital costs for specific services. All other eligible services are subject to a 10% discount. Should the list of services subject to a 10% discount be re-examined?

Again, the 10% discount is a direct contradiction to the premise that “Growth should pay for Growth”. The requirement to apply the 10% discount should be eliminated as any benefit to the existing taxpayer must already be reduced from the amount recoverable through DC’s. Eliminating the 10% discount would free up property tax dollars that could be used for rehabilitation and replacement of existing municipal assets.

6. Amendments to the Development Charges Act, 1997 provided the 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?

See question 5 above regarding the 10% discount. With respect to the historical level of service average restriction, this should not exist for any service that has been made a priority for investment by the Province. The historical service level average places a significant burden on the existing tax base when expansion to any type of transit service is required to help accommodate new growth and shift transportation modal splits to support less single-vehicle traffic in order to create space on existing roads for new growth.

Specifically to the question of whether or not this should be applied to all transit projects, or only high-order transit projects, the City of Hamilton believes this should apply across the board to any and all transit projects. As noted above, the need for additional transit has been prioritized by the Province, and further, the Province (including Metrolinx) plays a significant role in determining what type of transit should go where. Whether or not a municipality can collect the true growth related cost of transit should not be based on what type of transit system the Province (or Metrolinx) feels is
appropriate. Every municipality should be able to collect the full and true cost of growth for Transit, regardless of type of transit project.

**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?

The reserve fund statement prepared and submitted annually to the Province is part of the public record, and available to anyone through the City of Hamilton’s website. The reserve fund provides how much has been spent/allocated to what projects from each of the DC reserves in a given year, and the other funding sources for that project in the given year. The reserve fund statement also provides the opening and closing balances of each reserve, amounts collected, debt payments, interest earnings, and funding transferred to capital projects. The City is of the position that the existing reserve fund statement is sufficient.

The relatively detailed information already included in the reserve fund statement has led to very few, if any, questions from the public or development industries. If further information was to be required as part of the reserve fund statement, the associated administrative cost should be considered an eligible cost to be recovered under the DCA.

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

At the City of Hamilton, the DC Reserve fund statement is a public document that is approved by Council. As such, it is part of the public record, and can be found on the City website. Requiring mandatory posting on the municipal website would have no impact on the City of Hamilton.
9. Should the reporting requirements of the reserve funds be more prescriptive, if so, how?

The reporting requirements of the reserve fund statement are already quite prescriptive in terms of the information that is required to be included. Very few municipalities follow the exact same format to provide the required information. To improve comparability from one municipality to another, however, a standardized format for presenting the required information may assist.

If the Province was to require a standardized format, it should be developed by municipalities and/or their member associations (MFOA/AMO).

Section 37 (Density Bonusing) and Parkland Dedication Questions

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

For section 37, the Planning Act could be amended to introduce statutory direction on the scope of and limits on Section 37. The difficulties in the application of this provision lie with the absence of statutory criteria that establish a framework and boundaries for the implementation of bonusing as part of the planning tool kit.

For Parkland Dedication, it should be made clear from the start of the development application process how the parkland dedication (Cash-in-lieu) will be calculated, particularly for high density development. In order to increase accountability, the Province could impose a requirement to report on Cash-in-Lieu Parkland Dedication reserves similar to that of DC’s where the reserve balance is provided as well as a listing of land purchases and any other uses of Parkland funds for a given year. In order to provide an accurate picture, this should also include land conveyed through subdivision and development agreements, and an associated value. This would likely require a significant amount of administrative work in large municipalities such as the City of Hamilton. If such reporting requirements were implemented, the associated costs should be recoverable from the Parkland Dedication reserve and included in the formula to determine the cash-in-lieu payable by developers.
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?

Use of these tools to support the goals and objectives of the PPS and Growth Plan must be done through policy at the municipal level. They can be used by a municipality setting out how the section 37 benefits, and/or parkland dedication apply in different areas of the City in order to target growth. Also, for Section 37 benefits, the municipality should be basing the benefits to be received on the City’s priorities (affordable housing, preserving heritage properties, and preserving rental units).

An additional tool that could assist in encouraging higher density development would be adding the ability for a municipality to defer payments in lieu of parkland dedication, similar to section 27 under the DCA. Additionally, wording to allow any outstanding costs to be collected through the tax roll, similar to section 32 (1) of the DCA.

Voluntary Payments Questions

12. What role do voluntary payments outside of the DC Act, 1997 play in developing complete communities?

Voluntary payments outside of the DCA, 1997 fill the role of either: a) covering costs not eligible to be recovered under the DCA, 1997, or b) limiting risk and debt exposure of a municipality. In terms of developing complete communities, both allow directly, or indirectly, for funding of infrastructure considered necessary in the development of complete communities but ineligible for recovery under the DCA, 1997. The need for voluntary payments would be much more limited, or possibly eliminated, if the principles of “growth pays for growth” were captured in the DCA through the removal of the 10% discount, historical service level average, and ineligible services.

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

By way of approving the use of funds (i.e. capital budget), a municipality would already identify what those funds were being used for.

Municipalities should have specific policies that set out how and when voluntary payments from developers are to be used.
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?

The annual reserve fund statement that is required to be submitted to the Ministry is for funds collected under the DCA, 1997. To include funds that are not collected under the DCA, 1997 with those that are would create confusion in terms of how the charges are calculated and restrictions on their use. Some form of reporting is reasonable (they would still be captured in the FIR and Financial Statements of the municipality, but not highlighted in the same manner as DC’s), but it should be kept separate and distinct from the DC reserve fund statement.

Growth and Housing Affordability Questions

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

There are two forms of affordability that must be considered when it comes to the impacts of DC on housing affordability: 1) the impact of DC’s on affordability of new homes, and 2) the impact of DC’s on affordability of existing homes.

1) When looked at in a vacuum, DC’s appear to be a significant charge which would have a large impact on the cost, and thus pricing of new homes. However, DC’s are only one of a number of factors, including land costs, construction costs, demand by housing type, interest rates, availability of financing, income levels, consumer confidence, government regulations, and economic conditions, that can impact the cost and/or price of new housing. DC’s generally make up between 5 and 10% of the cost of residential development. A significant increase in DC’s of 25% would only result in an overall increase in costs of 1-2%, which may or may not be able to be absorbed within the selling price, depending on market conditions.

2) The impact of DC’s on the affordability of existing homes must be considered as well. Having ineligible services, mandatory discounts, and service standard restrictions create limitations to amounts that can be collected under the DCA, 1997, and these costs must ultimately be picked up by the existing tax payer, by increasing property taxes and/or user fees. With an increasingly aging population, a growing number of residents are living on fixed incomes, limiting their ability to absorb the increased
property tax payments that result, in part, from covering growth related costs that cannot be recovered under the DCA, 1997. The limitations of the DCA has already impacted the affordability of the existing housing stock, and any further limitations on what can be recovered from growth would further impact the affordability of existing housing.

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

DC’s could be better used to target certain types of (re)development (mixed use, intensification), by allowing any forgone revenue as a result of incentivizing those types of (re)development to be recaptured through all other development. This would allow the growth related costs to still be recovered from growth, prioritize the types of growth that are considered a priority, and without increasing the burden on the existing tax base. The lower burden on property taxes would support economic growth and job creation (high property taxes a deterrent to economic growth, job creation).

Eliminating the restrictions on DC’s (ineligible services, 10% discount, etc.) would also reduce the burden on the tax base. DC’s are a one-time cost, while property taxes are an ongoing cost paid annually.

Additionally, the DCA currently allows for DC’s to be deferred over a period of time. Hamilton allows deferrals on non-residential development and has found it to be a successful tool for encouraging such developments.

Much like housing affordability, property taxes and DC rates are only a couple of factors that influence economic growth and job creation. All factors need to be considered when contemplating how to better support economic growth and job creation in Ontario.

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?

The most obvious way would be to further incentivize enhanced intensification and densities, and allow any potential foregone revenues from such preferred developments to be recovered through other new (re)developments. The DCA should provide for some statutory exemptions that meet Provincial standards, but also allow for local
municipalities to decide what exemptions are appropriate for their unique circumstances and allow those exemptions (related to intensification or density) to be recovered through other new growth.

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

Municipalities need to have the ability to determine the most appropriate methods for their unique situation. The tools should be available to municipalities so that they can use them if they are appropriate for that individual municipality, or a specific service, however the tools should not be mandated.

To encourage the use of area-rating tools, the Province needs to make them easier to use (for example, by elimination of the service standard). The impact of such tools may only have a limited impact, as existing areas where intensification is expected to occur, the costs to increase the service capacity can be higher, as a result of having to tear up existing infrastructure. It should not be assumed that intensification, particularly in existing urban areas, will result in lower infrastructure costs, and lower DC’s.

In summary, the framework should not be prescriptive in mandating the use of area-rating and marginal cost, but the framework could be improved to encourage and make it easier to use the tools.

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

The best way to offset these incentives would be to allow them to be recovered through other new development so that the existing taxpayer does not have to cover the shortfall. Given that the type of development that is intended to be incentivized (intensification & increased densities) may, in theory, have somewhat lower growth related cost, it would be reasonable to shift that cost from incentives to the greenfield development (and more specifically to the lower density greenfield development). Additionally, removal of the 10% cap, historical average level of service, and eliminating ineligible services would allow the Municipality to recover additional growth related costs which could potentially be used to offset additional incentives for intensification.
Conclusion

The City of Hamilton has a significant infrastructure funding deficit and continues to fall behind in its state of good repair work due to the limited funding available. The City’s recommendations in this submission would allow the City to recover the cost of growth from growth, allowing funds from the existing tax base to be used for rehabilitation and replacement of existing infrastructure and reduce the City’s infrastructure funding deficit.

It’s important to emphasize that any further restrictions or exemptions to the DCA implemented by the Province would result in an additional burden to existing taxpayers, and divert more funding away from rehabilitation and replacement of existing assets.