CITY OF HAMILTON

CORPORATE SERVICES DEPARTMENT
Budgets & Finance

Report to: Chair and Members Corporate Administration Committee
Submitted by: Joseph L. Rinaldo
General Manager

Date: September 15, 2005
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SUBJECT: Update: Go Transit Development Charges; Provincial Development Charges (DC) Act 1997; 2004 City DC By-law; and City of Hamilton support for 1997 Provincial DC Act Amendments and Go Transit Funding Principles per Region of Halton, Region of Peel and City of Mississauga Resolutions (FCS05102) (City Wide)

Corporate Services, Corporate Administration Committee
Outstanding Business Items “F” and “AA”
Public Works, Infrastructure & Environment Committee Outstanding Business Item “CC”

RECOMMENDATION:

(a) That report FCS05102 “Update: Go Transit Development Charges; Provincial Development Charges (DC) Act 1997; 2004 City DC By-law; and City of Hamilton support for 1997 Provincial DC Act Amendments and Go Transit Funding Principles per Region of Halton, Region of Peel and City of Mississauga Resolutions” be received for information, and;

(b) That the Mayor and members of Council respond to the Region of Halton, Region of Peel and City of Mississauga requests for support of their proposed Provincial Development Charges Act amendments and Funding Principles for GO Transit as identified by Appendix A (Region of Halton letter dated June 7, 2005 ), Appendix B (Region of Peel resolutions adopted July 7, 2005) and Appendix C (The City of Mississauga General Committee Report dated May 4 2004), and;

(c) That the letter to the Province regarding (b) request that in their consultations with municipalities, to consider Provincial Development Charge Act Amendments most critical to the financial sustainability of the City of Hamilton, such as but not limited to;

(1) Inclusion of Solid Waste Management as an eligible service.
(2) Replacement of the 10-year historical service standard for eligible services to more “current needs” standard.
(3) Increased incentives for development intensification such as inclusion of clean-up and rehabilitation costs for brownfield development.

(d) That CAC Agenda, Outstanding Business Items “F” and “AA” regarding Go Transit Development Charges and City Development Charges Updates be identified as completed and removed from the outstanding list, and;

(e) That PWIE Agenda, Outstanding Business Item “HH” regarding the GTA Bus Rapid Transit (BRT) funding letter from the City of Mississauga be identified as completed and removed from the outstanding list.

Joseph L. Rinaldo  
General Manager  
Finance & Corporate Services

**EXECUTIVE SUMMARY:**

**Go Transit Development Charges:**

City of Hamilton staff have been working with their GTA counterparts as it relates to the establishment of an updated Go Transit Development Charge (DC). All of the participatory municipalities/regions (Hamilton, Toronto, Halton, Peel, Durham and York) are waiting for Provincial action on several outstanding issues before proceeding with the establishment of an updated charge. Once all of the issues have been resolved, the City of Hamilton would establish a Go Transit Development Charge By-law separate from the City’s general DC By-law.

**City of Hamilton Development Charges By-law 04 – 145:**

The City of Hamilton’s current development charge by-law 04-145 came into effect on July 6, 2004 and is active for a maximum of 5 years until July 5, 2009 before a new by-law is required. For significant growth cost adjustments during the term of a DC By-law, Council may within those 5 years establish a new DC by-law provided that a new Development Charges Background Study is completed and requisite public meetings and appeals are dealt with. Due to the complexity and significant cost of such undertakings, municipalities rarely re-open their DC By-laws prior to their expiration date unless major growth cost issues force them to.

To date, the following growth issues impact our current DC By-law:

1. High Apartment DC Rates and redefining unit composition.
2. Deferred Stormwater Management Pond land acquisition costs.
3. Growth-related infrastructure excluded from 2004 Background Study.
While the above growth issues impact the City’s current DC By-law, the City is also currently looking at City urban boundary expansion options, some of which would significantly add major new growth infrastructure costs (GRIDS) to be recovered through revised development charges.

**Provincial Development Charges Act, 1997:**

Also impacting the decision of when the City should update its Development Charge Program is the fact that the Province is currently reviewing the DC Act rules and regulations regarding growth service eligibility. The Province is shortly going to begin consultations with municipalities regarding proposed Development Charge Act amendments. From these consultations will flow proposed Provincial DC Act Amendments for general review. In our discussions with the Province, the main issues on their radar screen for review are;

- Go Transit and the growth capital impact as it relates to the municipal tax levy.
- Hospitals.
- 10% Statutory Deduction.
- 10-year Service level standards.
- Accountability Provisions.
- Linkages to the Provincial “Places to Grow” document as it relates to Brownfield/Infill development versus Greenfield development.

In recommendation (c), staff identify services and growth principles which if amended in the DC Act, would have the greatest impact on the future financial sustainability for the City of Hamilton. Inclusion of Solid Waste Management Services Capital based on the City’s current Solid Waste Management MasterPlan and its goal of 65% diversion is most critical.

Based on the above mentioned developments and associated timeframes, staff feel that the most efficient and effective time-table for the City to review it’s current Development Charge By-Law would be after Council approval of a specified GRIDS option and associated Official Plan amendments (projected for the summer 2006) assuming the Province has completed its Development Charges Act review.

City of Hamilton Council is also being asked to support the amending of the 1997 Provincial Development Charge Act and Go Transit Funding positions of the Region of Halton, Region of Peel and City of Mississauga by their respective Councils. Their positions regarding these topics are identified by Appendix A (Region of Halton letter dated June 7, 2005 ), Appendix B (Region of Peel resolutions adopted July 7, 2005) and Appendix C (The City of Mississauga General Committee Report dated May 4 2004). In summary, they propose the following:

1. Changes to Development Charges Legislation which would limit municipal funding contributions for Go Transit Growth Capital to actual DC amounts collected.
2. More equitable “growth pays for growth” funding principles contained within the
Development Charges Act itself which would eliminate mandated exemptions and expand the amount and scope of eligible services such as the elimination of the current mandated 10% service discount, inclusion of solid waste management services and revised historic service level calculations.

3. That Transit services, like roads, should not be limited to a ten year planning horizon, nor should any co-payment by municipalities be required. Transit services should not be limited to historical service levels, and upper limits for future levels of transit service should be established by the Province.

Appendices A, B and C articulate in detail the various 1997 Provincial Development Charge Act revisions and Go Transit Funding Principles which our neighbouring municipalities are proposing. This report’s Background Information will also provide further detail and its relevance to the City of Hamilton.

Staff propose that this report and a covering letter from the Mayor be sent to all relevant senior levels of government ministries and those municipalities which requested our support.

BACKGROUND:

GO TRANSIT UPDATE

Since 2001, the regions of Peel, Halton, Durham and York along with the cities of Toronto and Hamilton (GTA/H municipalities) have been collectively financing a portion of Go Transit’s growth capital budget. This obligation was established by the Greater Toronto Services Board (GTSB) in 2001 at which time the GTSB also approved a 10-yr capital program for Go Transit ($1 billion gross). Costs were split between the federal government, the provincial government, and the GTA/H municipalities with each of the three levels of government contributing a 1/3 share.

The GTSB established a funding formula to apportion the 1/3 share of the GTA/H costs among the individual municipalities. The formula was based on three components - use of Go Transit; level of service provided by Go Transit; and assessment figures for each municipality. Although it was intended as a transitional formula, this distribution formula remains as the basis for cost distribution among the GTA/H municipalities. The formula allocates costs on the following basis:
Based on Go Transit’s approved growth capital budget the GTA/H municipalities collectively prepared a development charges (DC) background study in 2001 to establish the portion of their costs that could be recovered from growth via development charges. Peel, Halton, Durham, and York all subsequently prepared individual background studies and passed their own Go Transit DC by-laws to recover eligible growth-related costs. Toronto and Hamilton did not.

Hamilton did not enact a Go DC by-law in 2001 because the DC recoverable costs amounted to only about 4% of Hamilton’s overall annual liability of approximately $950,000 and would have amounted to only about $30 per new residential unit.

Since 2001, Go’s 10-yr growth capital budget has increased by about 50% and now equals $1.5 billion for the 2005-14 period. The following table outlines projects in the “Lakeshore West Corridor” portion of Go’s 10-yr capital plan of interest to Hamilton:

<table>
<thead>
<tr>
<th>Table 1</th>
<th>Cost Distribution among GTA/H Municipalities</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
</tr>
<tr>
<td>Toronto</td>
<td>44.6%</td>
</tr>
<tr>
<td>Peel</td>
<td>16.5%</td>
</tr>
<tr>
<td>York</td>
<td>13.8%</td>
</tr>
<tr>
<td>Durham</td>
<td>11.3%</td>
</tr>
<tr>
<td>Halton</td>
<td>11.0%</td>
</tr>
<tr>
<td>Hamilton</td>
<td>2.8%</td>
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</tbody>
</table>

(Provincial fiscal year runs from April to March)

Train service will be increased to Hamilton’s downtown station via the Aldershot station, by construction of a third track in the existing CN corridor. Also, peak period service to Hamilton will double from 3 trains to 6. In addition to the specific Lakeshore West projects shown above there are various system-wide projects which benefit Hamilton such as the purchase of new rail cars and buses.

Even though Go’s growth capital budget has increased by 50% since 2001 and now totals $1.5 billion, the GTA/H municipalities are still being asked to fund 1/3 of the budget which now comes to $500 million. However, the GTSB has now been dissolved, leaving the apportionment of individual municipal shares that make up the 1/3 contribution to be negotiated among the GTA/H municipalities.
Discussions on a new cost-sharing arrangement have been taking place over the last year but a consensus has not yet been reached. Based on formulas using various combinations of service, assessment, and ridership, Hamilton’s share is expected to be in the 2-4% range. That translates to between $10-20 million over the 2005-2014 period.

At this time, an updated Go DC background study is also being undertaken by the GTA/H municipalities. As it relates to Hamilton, the latest drafts of the Go DC background study indicate that $2.8 million is potentially DC recoverable.

The following table summarizes the financial impacts to the City assuming Hamilton’s cost share remains at 2.8%:

<table>
<thead>
<tr>
<th>Table 3</th>
<th>Financial Impacts - Hamilton</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005-2014 ($)000s</td>
<td></td>
</tr>
<tr>
<td>GO Growth Capital Plan (Net)</td>
<td>1,509,741</td>
</tr>
<tr>
<td>GTA/H Share (1/3)</td>
<td>503,247</td>
</tr>
<tr>
<td>Hamilton Share (2.8% of 1/3)</td>
<td>14,091</td>
</tr>
<tr>
<td>DC Recoverable</td>
<td>2,793</td>
</tr>
<tr>
<td>Tax Levy</td>
<td>11,298</td>
</tr>
</tbody>
</table>

Hamilton’s share of the budgeted costs would amount to $14 million based on a 2.8% allocation. Deducting the $2.8 million that would be DC recoverable leaves $11.3 million that would need to be financed from the tax levy.

Although a GTA/H-wide Go DC study is being prepared, a Hamilton-specific study would need to be done to establish Go DC rates for the City.

However there still remain many issues that the GTA/H municipalities have requested the province to address before agreeing on cost shares, finalizing the Go DC background study, and preparing municipal-specific DC studies. A summary of the unresolved issues follows:

**No legislative requirement to fund Go**

The requirement for the GTA/H municipalities to pay a 1/3 share of Go’s costs was originally approved by the GTSB. The GTSB has since been dissolved and as a result there is no current legal basis or legislative requirement for municipalities to fund 1/3 of Go’s growth capital budget.

In addition, as Go’s growth capital budget continues to increase there is concern about the affordability of the program for municipalities, particularly when only a portion is recoverable via development charges. In fact, the Region of Peel has passed a resolution requesting the province to amend the Development Charges Act to allow municipal contributions to be limited to the amount of development charges collected thereby eliminating any impact on the tax levy. However, the Province has also
indicated that a municipality’s non-payment of their share of Go-Transit growth capital may be deducted from the corresponding Provincial Gas Tax revenues to be transferred.

Consensus on Cost Shares

In 2001, the cost sharing formula that apportioned the 1/3 municipal share among the GTA/H municipalities was established by the GTSB. However, the GTSB no longer exists, meaning that the municipalities must decide among themselves on an appropriate cost distribution formula. Not surprisingly, it has been difficult to obtain a consensus especially given the fact that Go’s capital budget has increased by 50% when compared to 2001.

DC Act amendment to eliminate risk of by-law appeal (Council intention)

An amendment to Section 3 of Ontario Regulation 82/98 to the Development Charges Act is required to provide more clarity to the requirement for each municipality’s Council intention to carry out the Go Transit growth capital budget. Legal advisors have suggested that without such an amendment municipal Go DC by-laws could be left open to appeal on the basis that Council does not have authority over the use of Go DCs collected. Under the current regime, municipalities would bear the entire risk of appeal of a Go DC by-law.

Go’s lawyers are now drafting an agreement that would be entered into by Go and all of the GTA/H municipalities to better satisfy the requirements of the DC Act. However, legal advisers have stated that even with such an agreement in place the DC Act would still need to be amended to remove the risk of appeals.

Alternative Grant Scenario

The DC Act stipulates that if a donor or granting government specifies that a grant is for the benefit of existing development, the grants do not need to be subtracted from the amount eligible to be considered for development charges.

The GTA/H municipalities have asked that the provincial and federal governments state their intention to dedicate their 2/3 funding share to existing development before being applied to that portion of the costs attributable to new development.

This would have the effect of increasing the development charge recoverable amount and reduce the impact on the tax levy. Assuming Hamilton is assigned a 2.8% share the impact would be as follows for the 2005/06 to 2014-15 period:
Table 4

<table>
<thead>
<tr>
<th></th>
<th>Current Scenario</th>
<th>Alternative Scenario</th>
<th>Savings for Hamilton Under Alternative Scenario</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Sr Gov't funding not specifically allocated) ($000s)</td>
<td>(Sr Gov't funding allocated to existing benefit first) ($000s)</td>
<td>($000s)</td>
</tr>
<tr>
<td>GO Growth Capital Plan (Net)</td>
<td>1,509,741</td>
<td>1,509,741</td>
<td></td>
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<td>DC Recoverable</td>
<td>2,793</td>
<td>5,107</td>
<td></td>
</tr>
<tr>
<td>Tax Levy</td>
<td>11,298</td>
<td>8,984</td>
<td>2,314</td>
</tr>
</tbody>
</table>

Although Hamilton would still be responsible for funding $14 million, the development charge recoverable amount would increase substantially resulting in a $2.3 million reduction in the tax levy impact.

**Elimination of 10% Statutory Deduction**

Another issue for municipalities is the statutory requirement of a 10% mandatory reduction to the eligible DC costs recoverable. This reduction must be financed from the tax base. This adds to the already existing burden of the 10% mandatory reduction for services in existing municipal DC by-laws.

**Request for a Simplified Approach**

Due to the many issues that need to be addressed, the GTA/H municipalities have proposed a more simplified approach to assist in the funding of Go’s growth capital budget.

Rather than being subject to development charge legislation, the province has been requested to calculate a cost per unit for all areas of GTA/H based on total projected units and the growth-related cost portion of the growth capital budget over the planning period. The municipalities under a mandate from the Province would then collect these charges, hold them in reserve for Go Transit, and remit them to the province as the municipal contribution. This funding arrangement would form part of the Go Transit legislation meaning that DC legislation would not need to be amended.

This arrangement would pose no tax burden and would eliminate the risk of DC by-law appeals to municipalities. In addition, the complex process of negotiating cost shares among municipalities would not be needed and amendments to the Development Charges Act, which would be time-consuming, would not be required either. The Province has yet to respond to the requested action.

**DEVELOPMENT CHARGES ACT UPDATE**

The underlying principle of development charges is that growth should pay for capital infrastructure required to service growth. However, certain amendments to the Development Charges Act are required to enable municipalities to more fully recover growth costs.
The Municipal Finance Officers’ Association (MFOA) wrote to the Minister of Municipal Affairs requesting certain amendments to the DC Act. In response to the request, the Ministry of Municipal Affairs and Housing has stated that a review of the DC Act will begin in the fall of 2005 in consultation with interested stakeholders including municipalities.

The following is a summary of amendments that the Province has been requested to consider:

**Elimination of 10% Statutory Deduction**

Municipalities are currently required to finance 10% of the growth-related costs of some services such as recreation facilities, park development, transit, libraries, and growth studies from sources other than DC’s. These growth-related capital costs are excluded from the development charge and must be financed from another source such as the tax levy. The province has been requested to remove this requirement from the DC Act.

**Historical Service Levels**

Currently, a 10-year average historical service level calculation is required to arrive at the maximum cost recovery for each service component. This creates a cap on the growth costs that can be recovered by development charges meaning that any growth-related costs over and above the cap are transferred to the tax levy even though the costs are growth-related. A revision to the 10-year average service standard rule has been requested to ensure that municipalities can fund growth-related capital at current or increased standards.

**Excluded Services**

The Development Charges Act currently does not allow municipalities to fund certain services from development charges. The following is a list of services that cannot be funded from development charges:

- Solid waste infrastructure
- Administration buildings such as city halls
- Cultural facilities such as museums, theatres, and art galleries
- Tourism facilities such as convention centres
- Hospitals

MFOA has requested that no services be ineligible for DC funding.

**Excess Capacity**

In some cases municipalities oversize works to meet growth needs in the future. MFOA has requested that the province amend the DC Act to allow for growth to pay the costs of existing works if they have been oversized to accommodate growth. The current provisions of the DC Act makes this difficult and in some cases impossible.
DEVELOPMENT CHARGES BY-LAW 04-145 UPDATE

The City of Hamilton’s current development charge by-law 04-145 came into effect on July 6, 2004 and is active for a maximum of 5 years until July 5, 2009 before a new by-law is needed. However, it may be in the City’s best interest to re-open the by-law in advance of the scheduled 5 year limit.

Issues to be addressed in the next by-law review include the following:

GRIDS

The City’s Growth Related Integrated Development Strategy (GRIDS) project is nearing completion. GRIDS will identify where the City wants to grow in the long-term which will have associated impacts on capital projects required to service growth. Depending on the outcome of GRIDS, the current DC by-law may need to be re-opened to include projects that fall out of the GRIDS process.

SWM Pond Land Acquisition Costs

Land costs associated with stormwater management (SWM) pond facilities are being under-recovered. Original estimates were based on $200,000 per hectare but in some cases, land costs were significantly higher.

Apartment Rates

Staff have received several complaints from developers that current DC rates for apartment units are too high and make new apartment developments uneconomical.

The City-wide DC rate for a one bedroom apt is $5,225. The DC rate for a 2+ bedroom apartment is $8,750. Under new by-law 04-145 the DC rate for a one-bedroom apartment increased by about 125% and 300% for a two-bedroom apartment in the old City of Hamilton.

The increases can be attributed to the fact that DC rates have increased in general and also because the old City of Hamilton did not have a two+ bedroom apt rate (they were charged the same as a one-bedroom apt).

Staff have received several requests for relief concerning apartment developments.

Apartments with 4+ bedrooms

A couple of private developments designed to be student housing have circumvented the DC by-law by having 6 and 8 bedroom units considered to be apartments and therefore subject to the 2+ bedroom rate. The 2+ bedroom rate is based on an average of 2.21 persons per unit whereas a 6 or 8 people would actually inhabit the dwellings.

The by-law does not currently have a cap on the number of bedrooms an apartment can have.

Staff feel that another residential category class is needed to capture these types of developments in the future.
For example, staff feel it would be more appropriate to classify these types of dwellings as “multiple unit dwellings” with every 4 bedrooms considered to be one unit. In the case of the two developments above, the 6-bedroom unit would be charged 1.5 times the multiple rate and the 8-bedroom unit would be charged 2 times the multiple unit rate.

**McMaster Student Residences**

As part of report FCS05063a, Council approved a recommendation to reduce McMaster’s DCs payable on student residences by 50%. One of the affected policies was that the DC by-law would need to be revised to reflect this.

Other issues include new growth capital projects not included in the Development Charges Background study for 2004 and additional growth capital costs for existing capital projects which was not known at the time of background study completion.

**ANALYSIS OF ALTERNATIVES:**

N/A

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

There are no immediate financial or legal implications. However, the growth capital requirements of the Go Transit system are increasing and municipalities are having to fund a portion of the additional capital from their Tax Levy which is not sustainable. The goal of municipal governments is to fund 100% of the municipal share of Go Transit growth capital from development charges.

**POLICIES AFFECTING PROPOSAL:**

N/A

**CONSULTATION WITH RELEVANT DEPARTMENTS/AGENCIES:**

N/A

**CITY STRATEGIC COMMITMENT:**

Development charges are in place to recover growth-related capital costs, a principle, that is in line with the following strategic commitments:

- Investment in Infrastructure
- VISION 2020 - A Sustainable City
- Investing in Safe Water for Today and Tomorrow
- Providing Quality Community Services