



Report to: General Committee

Report Date: May 21, 2013

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**SUBJECT:** 2013 Development Charges Background Study  
**PREPARED BY:** Kevin Ross, Ext 2126

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**RECOMMENDATION:**

- 1) THAT the report on the “2013 Development Charges Background Study” be received;
- 2) THAT the summary responses to the comments from the public and the development community be received for information;
- 3) THAT no further public meeting is required under Section 12 of the Development Charges Act 1997;
- 4) THAT Council approve the development charge Background Study prepared by Hemson Consulting Ltd. dated April 2013;
- 5) THAT it is Council’s intent to ensure that the increase in the need for services to service anticipated development will be met;
- 6) THAT it is Council’s intent that development related to post 2018 mid year capacity identified in the Background Study shall be paid for by development charges or other similar charges;
- 7) THAT it is Council’s intent that infrastructure related to post 2031 development identified in the background study shall be paid for by development charges or similar charges;
- 8) THAT Council recognizes that there are operating costs associated with the implementation of the capital program;
- 9) THAT Council approve the policy/methodology changes as outlined in this report;
- 10) THAT Council approve the enactment of the City Wide Hard, City Wide Soft and Area Specific development charges by-laws effective on May 29<sup>th</sup>, 2013;
- 11) THAT Council approve the policy whereby complete building permit applications, as determined in accordance with the *Building Code Act*, filed prior to the enactment of the new development charge by-laws be charged the existing

(2008 and 2009) by-law rates so long as a building permit is issued by September 30, 2013;

- 12) THAT Council approve a new 2013 capital project in the amount of \$150,000 of which \$135,000 (90%) will be funded from the Development Charges reserve and \$15,000 (10%) will be funded from the Capital Contingency project, for the defence of the Soft Services calculation methodologies used in the 2009 and 2013 Development Charges Background Studies;
- 13) THAT Council intends that the future excess capacity identified in the Development Charges Background Study, dated April 2013, prepared by Hemson Consulting Ltd. shall be paid for by the development charges;
- 14) THAT these recommendations including the implementing by-laws be forwarded to the May 28, 2013 Council meeting for adoption; and
- 15) THAT staff be directed to do all things necessary to give effect to this report.

#### **EXECUTIVE SUMMARY:**

Markham's existing City Wide Hard (CWH) and Area Specific Development Charges (ASDC) by-laws are set to expire on June 23<sup>rd</sup>, 2013. While the City Wide Soft (CWS) by-laws are not scheduled to expire until June, 2014, it was determined that it was a more effective and efficient use of resources to update all the development charges by-laws at the same time.

Throughout the review process, staff held consultative meetings with the development industry and responded to the industry's concerns while providing updates to the General Committee.

The draft Background Study and by-laws have been prepared and the legislated public meeting held on May 13<sup>th</sup>, 2013 where developers were provided with a forum to raise any concerns about the proposed development charges and policy changes.

In staff's view, the proposed development charges and by-laws are based on City policies and established service levels which the City intends to maintain, and comply with the applicable legislation.

#### **PURPOSE:**

The purpose of this report is to update Council on the proposed changes to the information, assumptions, and rates in the draft April 2013 City of Markham Development Charges Background Study, and to obtain General Committee's approval to forward the revised Development Charge rates and Development Charge by-laws to Council on May 28<sup>th</sup>, 2013 for approval.

## BACKGROUND:

The review of the current City Wide Soft, City Wide Hard and Area Specific development charges by-laws commenced in 2012 in order to have new by-laws in place by June 23<sup>rd</sup>, 2013, the expiry date of the CWH and ASDC 2008 by-laws. In May 2012, a Development Charges Sub-Committee was formed and undertook a review of the policy and methodology changes being introduced in the 2013 by-laws, along with their cost implications, over a series of 5 meetings. These policy and methodology changes were later presented to General Committee for review and consideration. Throughout this process, the City held consultation meetings with the development community to discuss the proposed new charges, policy and methodology changes and any issues arising from the changes to the city wide and area specific recovery process. The stakeholder group submitted their comments with respect to any issues with the development charges calculation and policies, and these were then taken to the Development Charges Sub-Committee and General Committee for discussion.

### Policy/Methodology Changes

The 2013 Development Charge Background Study was prepared with the following changes to methodologies and policies utilized in the previous 2008 (CWH and ASDC) and 2009 (CWS) studies and approved by the Development Charges Sub-Committee:

- 1) *Sanitary Sewer Oversizing* – The cost of oversizing sanitary sewers are fully recovered through development charges.
- 2) *Expansion to Service Levels* – The calculation of the soft services level of service included a recovery for a new parking service.
- 3) *Public Works Capital Infrastructure* – The soft services capital program for public works, consistent with the provisions of the *Development Charges Act, 1997*, will be funded 100% from development charges.
- 4) *Enhanced Streetscaping* – The construction of enhanced streetscapes on internal roads within a plan of subdivision or abutting site plan will now be treated as 100% local cost; these were previously partially recoverable through development charges.
- 5) *Recovery for Road Costs* – The CWH recoveries include the 4<sup>th</sup> lane of a road in a residential subdivision with the first 3 lanes in a residential subdivision being funded 100% by the local developer. The previous by-laws included the 3<sup>rd</sup> and 4<sup>th</sup> lane in a residential subdivision being funded through DCs.
- 6) *By-law Indexing* – the by-laws will be amended to eliminate the impact of a reduction in the non-residential construction price index.
- 7) *Closure of Area Specific Development Charge Reserves* – The net reserve balance of closed and inactive ASDC by-laws are to be transferred to the City Wide hard reserve at every by-law review.
- 8) *Development Charges at Building Permit Issuance* – The development charges will be calculated based on the rate in effect at building permit issuance, which is a change from the current process of locking in the rates at building permit application.

- 9) *Deferral for Site Plans* – Similar to the provision in subdivision agreements, high rise condominiums and offices of 3 storeys or more will benefit from the option to pay CWH and ASDCs over a 12-Month period (30% at agreement execution and 35%, 6 and 12 months after agreement execution).
- 10) *Incentive for Community Use Facilities* – Development charges for a non-profit corporation may be deferred if it offers a facility traditionally provided by a municipality which serves a municipal purpose provided that:
  - a. The services provided would otherwise be provided by the City of Markham, or other approved services, at the sole discretion of the City
  - b. The building or structure is owned by the non-profit corporation
  - c. The owner consents to the deferral being registered on title
  - d. The owner agrees that DCs will become due as a result of a change in use that triggers payment of DCs, and will be calculated and payable on the date the actual change of use occurs.
- 11) *Expansion Exemption for Office Buildings* – The industrial exemption for expansion of up to 50% of a structure as per the *Development Charges Act, 1997* will be broadened to include office building expansions.
- 12) *Determination of DCs for New Non-residential Buildings* – Where new non-residential structures are being built but there is no concrete determination of the non-residential class, the average of the non-residential rates (Retail: Industrial/Office/Institutional) will be applied.
- 13) *Alternative Methodology* – The City has utilized an alternative methodology to calculate the historic service level and maximum allowable funding envelope as opposed to the gross population methodology used in the 2009 Background Study. This methodology appropriately accounts for service requirements in new households and its adoption will maximize the funding envelope and provide the City with the funds required to achieve its development-related capital infrastructure programs. The service levels are calculated as follows:
  - a. Library Services and Indoor Recreation – Population and Households
  - b. Park Development – Population and Households
  - c. Fire Service and Public Works – Households and Employment.
- 14) *Apartment Size* – the definition of apartments will be aligned to that of the Region of York, so large apartments are units of 700 sq.ft. or larger and small apartments less than 700 sq.ft. The size will be reduced to 650 sq.ft. on June 19, 2014.
- 15) *Live/Work Units* – Development charges will be assessed to live/work units as all residential (on the entire gross floor area) assuming the work area is less than 100m<sup>2</sup>.

#### City Wide Consulting Process

The Stakeholder Group, inclusive of the Building Industry and Land Development Association (BILD), has participated in a number of meetings with staff to review, in detail, their issues and comments related to the City's new development charge background study and by-laws. The Group submitted their comments in March 2013.

The primary issues raised by the developers during consultations were:

- 1) **The usage of the alternative methodology to determine the maximum allowable recoverable through development charges** – BILD suggests that the City should re-adopt the Net Methodology as the alternate methodology:
  - a. Does not appropriately account for excess capacity arising from the decline in population
  - b. Results in DC funding levels of service that exceed the legitimate 10-year historic service levels
  - c. Is contrary to the decision of the Ontario Municipal Board (OMB) and Superior Court in the Orangeville case.
- 2) **The amalgamation of the large and small apartment categories** – The change will impose higher costs on the most affordable housing type (small apartments) and will be a disincentive to build small apartments. The Stakeholder Group indicated that large apartments constitute a high percentage of unsold inventory in condominium buildings and additionally it stated that:
  - a. Demand for services differs between large and small apartments
  - b. Amalgamation of the categories is counter intuitive to the Provincial *Growth Plan* policies for promoting intensification
  - c. The new Markham Draft Official Plan contemplates affordable housing that may require the provision of small units
  - d. The City should adopt the Region of York's approach in establishing a threshold of 700 sq.ft between large and small apartments (to be reduced to 650 sq.ft. in June 2014).
- 3) **Increase in the non-residential DC rates** – The proposed increase of 29% is a disincentive for the provision of office and retail space within mixed use centres.
- 4) **Transition provision** – There are units that have already been sold for which building permits have not yet been issued, and increasing the DCs (soft services) at this juncture increases the cost of these units. Projects already have an established cost base and revenue stream therefore the City should implement transition and/or prepayment policies prior to the expiry of the existing by-laws.
- 5) **Enhanced streetscaping** – Removing the enhanced streetscapes from within the plan of subdivision (as included in the 2008 by-laws), places additional costs on local developers. The design and plans for Markham Centre were based on the understanding that 50% of the cost would be refunded through DCs.

#### **Staff Response & Revision:**

City staff reviewed the issues raised during the consultative process and respond as follows:

- 1) **The usage of the alternative methodology to determine the maximum allowable recoverable through development charges** – The recommendation of BILD would result in the City not raising sufficient DC monies to fund development-related infrastructure. The City is of the view that the usage of the alternative methodology to calculate the service levels and maximum allowable funding envelope, accurately reflects the expected growth and service level requirements. It is the opinion of Hemson Consulting that the proposed methodology is defensible as it recognizes the Orangeville OMB decision, gives consideration to “notional” excess capacity arising from net population, and complies with the *Development Charges Act, 1997*. The City will continue to pursue the alternative methodology.
- 2) **The amalgamation of the large and small apartment categories** – City staff communicated the concern of the stakeholder group to the DC Sub-Committee and Council. Pursuant to a resolution of Council on April 16<sup>th</sup>, 2013, Council recommended the calculation of differentiated rates for large and small apartments for the purposes of the Background Study.
- 3) **Increase in the non-residential DC rates** – The increase in the City’s charge is only 2% - 4% of the total non-residential development charges collected by the City, Region and School Board. These rates are determined based on the proposed capital program and attained service levels and are appropriate to ensure adequate recovery through the development charge process.
- 4) **Transition provision** – Subsequent to the DC Sub-Committee meeting of March 26<sup>th</sup>, 2013 the recommendation which was adopted and approved by Council was not to institute a transition policy. However, at the May 17<sup>th</sup> DC Sub-Committee meeting, the Committee endorsed a transition provision for complete building permit applications filed prior to the enactment of the new development charge by-laws.

One of the policy changes to be instituted with the enactment of the 2013 by-laws is the change in the calculation of DCs from building permit application to building permit issuance. This change will impact persons who have already applied for a building permit but are unable to complete the process through to issuance prior to the enactment of the 2013 by-laws. In recognition that current building permit applicants will have reasonably anticipated that their costs will be fixed at permit application, the following transition is recommended:

- That complete building permit applications filed prior to the enactment of the new by-laws, be charged the existing rates so long as a building permit is issued by September 30, 2013.
- A complete building permit application will be one that meets the application requirements in the building code, as determined by the City’s Chief Building Official and substantially complies with other applicable laws (such as site planning, subdivision and other approvals).

Staff estimates that the approximate cost of this transition policy is between \$0.6M - \$1.2M.

- 5) **Enhanced streetscaping** – Enhanced streetscapes for which commitments have been made by the City have been included in the CWH capital program for the purpose of providing developers with a development charge credit to offset the costs of these works.

The revised approach to the calculation of the apartment rates, from the amalgamated (single) to the differentiated large and small apartment rates, has been communicated to the stakeholder group. The DC rates calculated reflect the change in the policy and were presented at the Public Meeting on May 13<sup>th</sup>, 2013.

## **OPTIONS/DISCUSSION:**

### Public Meeting

On May 13<sup>th</sup>, 2013 a public meeting was held to present the proposed development charge rates and by-laws in accordance with the *Development Charges Act, 1997*. A number of written submissions were received and some verbal presentations made (see minutes attached – Appendix A).

Written submissions were received regarding the proposed development charges from:

- a) Danielle Chin, Building Industry & Land Development Association (BILD)
- b) Fred Darvish, Liberty Development
- c) Hal Beck, Schaeffers Consulting Engineering.

Deputations were made by:

- d) Rob Howe, Goodmans LLP representing BILD
- e) Charles Sutherland, representing Cornerstone Community Church
- f) Niomie Massey, representing Cornell Rogue Development Corporation
- g) Nick Pileggi, Malone Given Parsons Ltd. representing Times Group and the Buttonville Properties LP
- h) Chris Rombis

## **Summary of Written and Verbal Comments**

### Submissions/Deputations

Rob Howe in his deputation on behalf of BILD expressed concern about the usage of the alternative approach. He along with Niomie Massy, Nick Pileggi and Chris Rombis spoke to the lack of a transition policy for developments in an advanced stage in the development process. These issues were raised in the consultation process and have been addressed earlier in the report.

Fred Darvish in his letter requests that Markham implement development charge policies and provide financial incentives for office developments.

- Response – The City currently offers a (discounted) mixed-use non-residential development charge rate for offices that are combined with residences. There is also a proposed policy to extend the 50% industrial expansion exemption to office buildings.

Hal Beck in his written deputation sought clarification on infrastructure works included in the CWH and ASDC for Wismer Commons.

- Response – City staff have convened a meeting with the Wismer Commons Group to discuss their concerns.

Charles Sutherland in his deputation requested that the City take into account the recreational space being provided by the Cornerstone Community Church when assessing the development charges for the proposed place of worship. He also sought clarification on whether worship space is exempt from development charges.

- Response – The City has added a policy granting an incentive for community use facilities (see Policy/Methodology Changes on page 3) which will be reviewed when assessing the development charges for Cornerstone Community Church. The place of worship is currently exempted from the City's soft services development charge and the Region of York provides an exemption for worship space.

## FINANCIAL CONSIDERATIONS

### Revised Development Charges

The chart below outlines the existing development charges, the proposed charges as included in the April 2013 Development Charges Background Study and the relevant variances.

Category	Unit Type	Existing Development Charge	Proposed Development Charge	Difference Existing vs Proposed Charge	Difference Existing vs Proposed Charge
Hard and Soft	<b>Residential</b>	<b>\$/unit</b>	<b>\$/unit</b>	<b>\$/unit</b>	<b>%</b>
	Single/Semi Detached	\$19,626	\$22,357	\$2,731	13.9%
	Townhouse	\$15,424	\$17,344	\$1,920	12.4%
	Large Apartment	\$12,138	\$14,672	\$2,534	20.9%
	Small Apartment	\$7,292	\$10,913	\$3,621	49.7%
Soft	<b>Non-Residential</b>	<b>\$/m<sup>2</sup></b>	<b>\$/m<sup>2</sup></b>	<b>\$/m<sup>2</sup></b>	<b>%</b>
	Industrial/Institutional/Office (IOI)	\$8.64	\$11.11	\$2.47	28.6%
	Retail	\$9.39	\$12.09	\$2.70	28.8%
	Mixed Use	\$5.92	\$7.55	\$1.63	27.5%
Hard	IOI/Retail	<b>\$/ha</b> \$191,243	<b>\$/ha</b> \$220,450	<b>\$/ha</b> \$29,207	<b>%</b> 15.3%



The City has 21 proposed area specific development charges by-laws (see Appendix B attached) for defined development districts across the City.

Staff note that in addition to the expected increases in the capital costs for the projects included in each area specific development charge by-law, there will be a larger than expected increase in the cost of the Highway 7 sanitary sewer (shared between areas 9, 42B-6 and 42B-8 in Appendix B). This results from a dispute between the developer, 1771107 Ontario Inc. ("Times"), and the general contractor for the project which is currently the subject of a commercial arbitration process. The final costs will not be known until this dispute is either settled through mediation or the arbitration is complete and a decision is rendered.

Times constructed the Highway 7 sanitary sewer on behalf of the City, and has provided the City with an indemnity for all costs relating to the defence of the relevant area specific by-laws.

### **Development-Related Share**

#### **Hard Services**

The 19-year (2013-2031) capital program totals \$969.9M of which the development-related share that is recoverable through development charges is \$593.3M. The remaining amounts are to be financed through (1) local developers - \$160.0M, (2) Non-DC shares - \$70.4M and (3) ASDCs and other sources - \$146.2M.

#### **Soft Services**

The total 10-year (2013-2022) capital program is approximately \$524.4M of which \$225.3M represents the development-related capital costs that can be recovered through development charges in this period. The remaining amounts are to be financed through (1) previous DC collections - \$60.2M, (2) future DCs in the post 2022 period - \$164.6M, (3) grants and subsidies - \$31.9M and (4) Non-DC shares - \$42.4M.

### **Non-Growth Share**

The hard services non-growth share is not a legislated percentage and is based on the benefit the infrastructure will provide to the existing population. Consistent policies are applied to all hard service capital projects to determine the non-growth share.

There is a mandatory reduction of 10% for the non-growth share of the capital program for all soft services excluding Fire Services and Public Works.

The amount to be funded from non-development charge sources for hard and soft services identified in this background study, equates to approximately \$112.8M from the City through non-development charge sources (e.g. grants/subsidies, taxes, reserves etc.). \$12M of non-development charge funding has already been approved for the Pan Am and South East Community Centre and Library facilities.

## **Implementation of Capital Program**

The *Development Charges Act* requires Council to indicate that it intends to ensure that the increase in the need for service attributable to the anticipated development will be met. Therefore, the enactment of the development charge by-law commits Council to ensure that the capital program is undertaken as outlined in the Development Charge Background Study.

The capital program included in the Background Study anticipates a large portion of the infrastructure will be installed in advance of development. The City will be required to borrow internally and/or externally to meet this capital program. The borrowing costs associated with the front-loading of the capital program have been included in the development charge. It is projected that borrowing will peak around 2019 at approximately \$120M - \$130M. This places an increased commitment on Council to ensure that the capital program is implemented as outlined in the Background Study.

Council, in approving the 2013 Development Charges Background Study, will signify its intent that the future excess capacity (occurs when the current year service level exceeds the 10-year historic service level) identified shall be paid for by the development charges.

## **Operating Costs**

In approving the development charge by-law, Council is also committing to the costs associated with the ongoing operation and maintenance of the assets included in the capital program. This cost is anticipated to be approximately \$12M – \$13M annually once all the infrastructure included in the Background Study is constructed. The City has a practice of setting aside sufficient funds as a part of its annual budgeting process to offset the net operating costs of new facilities (e.g. currently ramping up for South East CC&L, Pan Am, Sports Park).

Staff will continue to ramp up for expected costs, where possible, in the operating budget to help offset the impact the capital program may have in any given year.

## **Funding for City Wide Soft Appeal**

The City, in its 2009 update of the CWS by-law, utilized the gross population methodology to calculate the 10-year historic service levels and funding envelope. The methodology was used by a number of municipalities and appealed by BILD in every instance. An Ontario Municipal Board hearing into the usage of the gross methodology in the municipality of Orangeville, resulted in the Board ruling against the utilization of the methodology in Orangeville.

Markham has utilized an alternative methodology to calculate the 10-year historic service levels and funding envelope for the 2013 Background Study, which methodology has been opposed by BILD. It is anticipated that a Board hearing scheduled for July 2013 relating to the 2009 appeal will also serve to examine the usage of the alternative methodology. Staff are requesting funding in the amount of \$150,000 to undertake the

defence of this important methodology which provides a larger funding envelope and thereby more development charge funding for the 2013-2022 soft services capital program.

It is recommended that Council approve a new 2013 capital project in the amount of \$150,000 of which \$135,000 (90%) will be funded from the Development Charges reserve and \$15,000 (10%) will be funded from the Capital Contingency project, for the defence of the Soft Services calculation methodologies used in the 2009 and 2013 Development Charges Background Studies.

**ENVIRONMENTAL CONSIDERATIONS:**

Not applicable.

**ACCESSIBILITY CONSIDERATIONS:**

Not applicable.

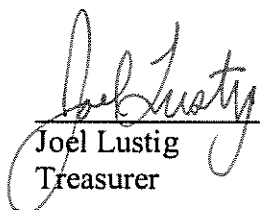
**ENGAGE 21<sup>ST</sup> CONSIDERATIONS:**

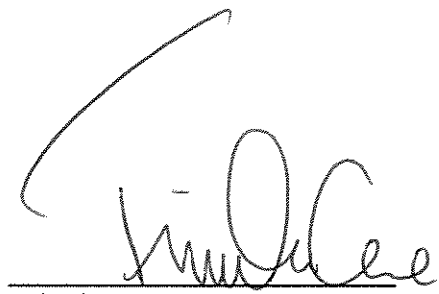
Not applicable.

**BUSINESS UNITS CONSULTED AND AFFECTED:**

Legal Services.

**RECOMMENDED BY:**

  
Joel Lustig  
Treasurer

  
Trinela Cane  
Commissioner, Corporate Services

Att: Appendix A - Minutes – Development Charges Public Meeting  
Appendix B – Development Charge Tables