

DEVELOPMENT CHARGES BACKGROUND STUDY
PREPARED BY HEMSON FOR THE TOWN OF MIDLAND

DEVELOPMENT CHARGES AMENDMENT STUDY: COMPLIANCE WITH COVID-19 ECONOMIC RECOVERY ACT

October 2, 2020



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1. BACKGROUND

Development charges are imposed against land to pay for increased capital costs required because of increased needs for services arising from development. Council of the Town of Midland (Council) passed Development Charges By-Law 2019-80 on November 20, 2019 under section 2(1) of the *Development Charges Act, 1997 (DC Act)*. The by-law established Town-wide and area-specific development charges that took effect on November 25, 2019.

On May 2, 2019 the Provincial Government introduced Bill 108, the *More Homes More Choice Act* which, among other things, proposed to replace development charges with a community benefits charge (CBC) to fund “discounted” services such as libraries, recreation facilities, parks, and parking. These services are included in the Town-wide development charges imposed by By-law 2019-80.

Transition provisions in Bill 108 were to allow the Town to pass development charges for discounted services until the earlier of: the date at which the Town passed a new CBC by-law; or January 1, 2021. To accommodate the proposed transition, By-law 2019-80 included the following footnote to development charges for discounted services in Schedule B (Residential Development Charges—Town-Wide) and Schedule C (Non-Residential Development Charges—Town-Wide):

“This schedule will no longer be in force upon the Town passing a CBC By-law or January 1, 2021, whichever is first.”

On July 21, 2020 the *COVID-19 Economic Recovery Act, 2020*, designed to assist municipalities and other public bodies with pandemic recovery efforts, received Royal Assent. Among many other changes, this legislation brings the discounted services (except, in the case of Midland, parking) back to the development charges funding framework. It also extends the timeframe for municipalities to transition to the CBC regime for non-eligible services, such as parking, to two years. The two year period started on September 18, 2020.

The implications for the Town of Midland are that the above footnote in By-law 2019-80 needs to either be removed or changed to read:

“This schedule as it relates to the Parking service will no longer be in force upon the Town passing a CBC By-law or September 18, 2022, whichever is first.”

Without this change the Town will not be able to continue to impose development charges for discounted services after January 1, 2021.

The DC Act requires that a formal process be followed for any amendment to a development charges by-law, even a housekeeping change such as the one proposed here. This report, together with a public process, satisfies these DC Act requirements.

2. DEVELOPMENT CHARGE AMENDMENT PROCESS

The DC Act allows a municipality to amend an existing development charge by-law. Section 19 of the DC Act sets out the requirements related to this procedure:

19. (1) Sections 10 to 18 apply, with necessary modifications, to an amendment to a development charges by-law other than an amendment by, or pursuant to an order of, the Ontario Municipal Board.¹
19. (2) In an appeal of an amendment to a development charges by-law, the Ontario Municipal Board may exercise its powers only in relation to the amendment.

Further to Section 19(1), the requirements of Sections 10 to 18 of the DC Act are summarized as follows:

- s.10 complete a development charges background study, which must be posted on the website of the municipality at least 60 days prior to by-law [amendment] passage;
- s.11 by-law [amendment] must be passed within one year of the completion of the background study;
- s.12 hold at least one public meeting prior to passage of by-law [amendment] (draft by-law must be available at least two weeks prior to the public meeting);
- s.13 give notice of passage of by-law [amendment] within 20 days of the by-law being passed. The notice must identify the last day for appealing the by-law;
- s.14 anyone may appeal the by-law [amendment] to the Ontario Municipal Board;

¹ The DC Act still refers to the Local Planning Appeal Tribunal (LPAT) as the Ontario Municipal Board (OMB). The names are used interchangeably in this memo.

- s.15 outlines the duties of the Clerk if an appeal is received;
- s.16 outlines role and powers of the OMB if an appeal is received;
- s.17 effective date of OMB repeals and amendments is the day the by-law [amendment] came into force; and
- s.18 outlines rules governing the giving of refunds under an OMB order.

In simple terms, to amend a development charges by-law a municipality must go through the same public process associated with enacting a development charges by-law. It needs to complete a background study outlining the purpose and rationale for the amendment. This report, together with the Town of Midland Development Charges Background Study—Consolidated Report, January 16, 2020, serves as the background study required under s.10 of the DC Act and can be used as the basis for passing the proposed amendment.

A municipality also has to hold at least one public meeting on the amendment, having provided at least 20-days notice of the meeting(s), and has to have made the proposed by-law amendment available two weeks prior to the meeting. The background study must be made available to the public by posting the study on the website of the municipality at least 60 days prior to the by-law amendment being passed.

Section 19(2) of the DC Act is important because it allows for an amendment to an existing by-law to be passed without exposing the unaltered portions of the by-law to appeal. When amending a development charges by-law only the sections of the by-law amended or added are subject to appeal and consideration by the LPAT.

3. TOWN'S PROPOSED AMENDMENT MEETS DC ACT REQUIREMENTS

The DC Act requires that a development charge background study include estimates of the anticipated amount, type and location of development, calculations of development charges for each service to which the development charge by-law would relate, and an examination of the long term capital and operating costs for capital infrastructure required for each service. The background study must also include an asset management plan and consideration of the use of more than one development charges by-law. These requirements have been met:

- The Town of Midland Development Charges Background Study—Consolidated Report released January 16, 2020 contains detailed estimates of the amount and type of development anticipated within the Town to 2041. The Consolidated Report reflects minor edits and corrections made since the initial release of the Background Study on September 6, 2019, and reflects the development charges rates approved by Council on November 20, 2019.
- The process of undertaking and revising the Consolidated Report was considered. However, a straightforward amendment to the existing DC by-law was deemed to be a more appropriate at this point in time. Staff at the Town, together with Hemson, have determined that there have been no significant changes since the passage of the by-law to historical service levels (a factor in the calculation of discounted development charge rates), the development forecast, and anticipated growth-related capital costs. As such, a full comprehensive study for discounted services is not warranted at this point in time.
- No recalculation of the Town's development charges is required to implement the proposed amendment. **The proposed amendment would not result in any change to the development charges imposed by the by-law.**
- As well, no change to the Town's development-related capital program would result from implementing the proposed amendment. As such, the effect of the amendment on the Town's long term operating costs is anticipated to be nil.
- The Consolidated Report also includes an asset management plan and consideration of the use of more than one development charges by-law to reflect different needs for services in different areas.

- The sole purpose of the proposed amendment is to bring By-law 2019-80 into compliance with the *COVID-19 Economic Recovery Act* and allow the Town to continue to impose development charges under the provisions of the *DC Act* over the term of the by-law.

This report will be released on the Town's development charge webpage prior to October 10, 2020 and, together with the Development Charges Background Study—Consolidated Report released January 16, 2020, will serve as the background study required under section 10 of the DC Act.

The Town is proposing to hold a public meeting under s.12 of the DC Act on November 18, 2020. Notice of the public meeting will be published in a newspaper of general circulation more than 20 days prior to the meeting. The draft by-law amendment will be made available to the public two weeks prior to the public meeting.

In following this schedule, it is our opinion that all the DC Act requirements for passing the proposed amendment will be met. Therefore, should no objections to the proposed amendment be received before or at the public meeting, Council could consider passing the amendment on December 9, 2020.

Upon passage of the Development Charges By-law Amendment, the Town will complete the other notice requirements outlined in the DC Act.

4. RECOMMENDATION

It is recommended that Council pass an amendment to Development Charges By-law 2019-80 so that the footnote attached to development charges rate schedules for discounted services in Schedule B (Residential Development Charges—Town-Wide) and Schedule C (Non-Residential Development Charges—Town-Wide) be amended to accommodate the new provisions of the *COVID-19 Economic Recovery Act, 2020*.

The footnote would be amended to read:

“This schedule as it relates to the Parking service will no longer be in force upon the Town passing a CBC By-law or September 18, 2022, whichever is first.”