



INFORMATION REPORT

TO:	Chair and Members Audit, Finance and Administration Committee
COMMITTEE DATE:	June 6, 2019
SUBJECT/REPORT NO:	2019 Development Charges Public Meeting Written Submissions – Staff Response (FCS19051) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Lindsay Gillies (905) 546-2424 Ext. 2790
SUBMITTED BY:	Cindy Mercanti Acting Director, Financial Planning and Policy Director, Customer Service and POA Corporate Services Department
SIGNATURE:	

COUNCIL DIRECTION

Not Applicable.

INFORMATION

On April 18, 2019, a public meeting related to the City's 2019 Development Charges (DC) Background Study and By-law was held during the Audit, Finance and Administration Committee (AF&AC) meeting. The public meeting was held in two parts, the first commencing at 9:30 am with the regularly scheduled AF&AC meeting and the second part commencing at 7:00 pm that same day.

During the consultation period, AF&AC received several presentations and written submissions. Report FCS19046, received by AF&AC on May 16, 2019, provided additional information in response to the presentations. Information Report FCS19051 provides AF&AC with additional information with respect to the written submissions.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

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Staff has responded to and considered all enquiries, concerns and feedback obtained throughout the public consultation process. As part of this open and transparent consultation process, an Addendum to the 2019 DC Background Study has been prepared and posted on the City's website on May 16, 2019. Supporting the external communication of this important amendment, the City proactively advised interested parties through an email notification and members of the DC Stakeholder Sub-Committee were also notified.

The Addendum includes a recalibration for the in-period calculation for identified storm projects. All projects that are included in the 2019 DC Background Study related to Elfrida have a two-thirds post period benefit applied, meaning that two-thirds of the population growth that the projects would service would be realized after the applicable population forecasts are achieved. The stormwater calculation, for identified projects, has been revised to ensure the consistent application of the two-thirds post period benefit.

The Addendum has a net impact of amending the total capital costs included in the DC calculation downward from \$2.275 B to \$2.202 B in the separated sewer system and from \$1.873 B to \$1.872 B in the combined sewer system. In addition, there are a number of smaller amendments included in the Addendum such as updating rock costs for storm facilities, clarifying language in the stormwater local service policy and an adjustment to the recreation services list.

Information Report FCS19051 is to provide detail to Council and AF&AC regarding the written submissions received at the April 18, 2019 DC Public Meeting. The Addendum referenced above is one of the action items that arose through the public consultation process.

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Table 1: Written Submissions Received by AF&AC on April 18, 2019

ITEM	FROM	ACTION
8.1.c.a	Patrick Deane, McMaster University	Academic – Staff worked with Councillors on a Councillor Motion for an Academic Grant Program (Motion – May 16, 2019 AF&AC)
8.1.c.b	Thomas Ferns, Mohawk College	Academic – Staff worked with Councillors on a Councillor Motion for an Academic Grant Program (Motion – May 16, 2019 AF&AC)
8.1.c.c	David Zietsma, Redeemer University College	Academic – Staff worked with Councillors on a Councillor Motion for an Academic Grant Program (Motion – May 16, 2019 AF&AC)
8.1.c.d	Matthias Feiner	Variable DC concerns, see section below
8.1.c.e	Mike Cope	General enquiry about Garden suites - staff provided current rates. In addition, staff worked with Councillors on a Councillor Motion to exempt Garden Suites. (Motion – May 16, 2019 AF&AC)
8.1.c.f	McMaster Students Union	Academic – Staff worked with Councillors on a Councillor Motion for an Academic Grant Program (Motion – May 16, 2019 AF&AC)
8.1.c.g	Joel Farber, Fogler, Rubinoff LLP	Variable DCs concerns, see section below Elfrida Concerns, see section below
8.1.c.h	Karl Gonnsen, Metropolitan Consulting Inc.	Staff requested specific concerns, have not received a response back at time of writing.
8.1.c.i	T. Johns Consulting Group Ltd.	No action required. Support for Laneway House Exemption.
8.1.c.j	Hamilton-Halton Home Builders' Association (HHHBA)	HHHBA Concerns, see section below. Staff Response Attached as Appendix B to Report FCS19051.

Variable DC Concerns

Through Bill 73, the requirement to consider area specific DCs was added in Section 10 (2) (c.1) of the *Development Charges Act, 1997* (DC Act). Through Report FCS18034, which was considered by AF&AC on March 26, 2018, staff was directed to calculate stormwater DCs on an area specific basis for the combined sewer system vs the separated sewer system, to continue to apply the Dundas / Waterdown Special Area Charge to only the affected lands, to calculate water and wastewater to the urban area and to calculate all other services on a city-wide basis.

In order to calculate a DC on an area specific basis, a defensible methodology for apportioning the benefit of the capital infrastructure to projected population growth is required.

Stormwater was able to be split between the combined sewer system and the separated sewer system due to a clear connection between the capital costs and the benefitting population. Water, wastewater and a further breakdown of storm was not able to be achieved on this basis due to the complexity of projects (particularly linear serving) benefiting both greenfield and built boundary development. In addition, even with imperfect apportionment of the benefit, the attempted modelling did not yield a significant variant in the calculated rate.

The apportionment of benefit is even more challenging with services without restricted access (roads, recreation centres, etc.). The City's current transportation master plan does not provide enough detailed breakdown to attempt to model a variable DC rate for either roads or transit.

The City established the methodology for the DC calculation through Report FCS18034 in March 2018 and there have not been any changes in planning documents or benefits modelling that would enable a review of this methodology.

Elfrida Concerns

The written submission from Joel Farber, Fogler, Rubinoff LLP (Fogler), on behalf of the Upper West Side Landowners Group, raised two sets of concerns during the April 18, 2019 DC Public Meeting. The first being the cost of growth on existing taxpayers and the second being the inclusion of Capital works in and around the Elfrida area in the 2019 DC Background Study.

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Firstly, there was concern by AF&AC regarding the list of projects included with the written submission from Fogler and the impact on the property tax / rate base. The written submission highlighted the gross capital cost for a list of projects in and around the Elfrida area of the City as \$344 M and the \$171 M that is included in the 2019 DC Background Study calculation. Tables 2 and 3 provide a breakdown of the gross costs and identifies whether the cost will be borne by developers or the property tax / rate base for both before the Addendum is considered and with the Addendum considered.

Table 2: Breakdown of \$344 M in Gross Capital Costs (2019\$) Identified as Elfrida Projects per Fogler Written Submission

	Developer	Tax / Rate Payers	Total
Direct Developer Costs	\$ 6,214,000		\$ 6,214,000
Post Period Benefit	155,134,100	\$2,900,000	158,034,100
Benefit to Existing		6,493,000	6,493,000
10% Statutory Deduction		<u>1,478,770</u>	<u>1,478,770</u>
Included in 2019 DC	<u>171,785,630</u>		<u>71,785,630</u>
Total	\$333,133,730	\$10,871,770	\$344,005,500

Table 3: Breakdown of Gross Capital Costs (2019\$) Identified as Elfrida Projects per Fogler Written Submission after Addendum

	Developer	Tax / Rate Payers	Total
Direct Developer Costs	\$ 6,214,000		\$ 6,214,000
Post Period Benefit	220,885,232	\$2,900,000	223,785,232
Benefit to Existing		6,493,000	6,493,000
10% Statutory Deduction		<u>1,478,770</u>	<u>1,478,770</u>
Included in 2019 DC	<u>106,034,498</u>		<u>106,034,498</u>
Total	\$333,133,730	\$10,871,770	\$344,005,500

As detailed in Tables 2 and 3, the impact on the property tax / rate bases is approximately 3% of the total gross costs.

A second concern raised was the inclusion of Capital works in and around the Elfrida area in the 2019 DC Background Study.

An Information Update (attached as Appendix “A” to Report FCS19051) was provided to members of Council on April 30, 2019. Plans to accommodate the 2031 growth targets through two urban boundary expansions (one for employment [AEGD] and one for non-employment [Elfrida] land uses) have been included in the City’s Growth Related Integrated Development Strategy (GRIDS) since 2006.

Subsection 5(1) of the *Development Charges Act, 1997* (DC Act) details the method that must be used, in developing a development charge by-law, to determine the development charges that may be imposed. The City’s 2019 Development Charges Background Study was prepared in accordance with the required methodology.

In summary, the relevant portion of this subsection states that: to include a capital cost for growth infrastructure for any service in a DC calculation, a municipality must have indicated an intent to increase the service.

The Section 3 of Regulation 82/98 of the DC Act (Figure 1) details how a municipality’s intent can be shown.

Figure 1: Section 3 of Regulation 82/98 of the DC Act

When Intention to Meet Increased Need is Shown

3. For the purposes of paragraph 3 of subsection 5 (1) of the Act, the council of a municipality has indicated that it intends to ensure that an increase in the need for service will be met if the increase in service forms part of an official plan, capital forecast or similar expression of the intention of the council and the plan, forecast or similar expression of the intention of the council has been approved by the council. O. Reg. 82/98, s. 3.

As outlined in Appendix “A” to Report FCS19051, an urban boundary expansion in the Elfrida area was identified as the preferred growth option in the 2006 adoption of the City’s GRIDS. GRIDS and the preferred growth option formed the basis of the City’s Urban Hamilton Official Plan (UHOP).

Elfrida projects were included in the City’s 2014 DC Background Study, the City’s 2011 DC Background Study and the City’s 2009 DC Background Study. Each of these studies have been adopted by Council and all of the capital projects contained within have been approved, in principle, each time subject only to annual capital budget approvals.

Further, there are capital projects planned for Elfrida as part of the 10-year forecast in the City’s 2019 Tax Capital Budget; including an Elfrida Recreation Centre and Elfrida Secondary Plan Parks.

Therefore, Elfrida is appropriately included in the 2019 DC Background Study.

On October 13, 2010, the City of Hamilton passed By-law No. 10-287 approving the Airport Employment Growth District (AEGD) Secondary Plan. The AEGD was appealed by numerous persons including: Twenty Road Developments Inco Spallacci & Sons Limited, Sullstar Twenty Limited, 909940 Ontario Inc., Lynmount Developments Ltd. and Yehezkel Zahavy (Twenty Road West Landowners Group) which were represented by Joel Farber of Fogler Robinoff LLP. Mr. Farber's letter to which this portion of Report FCS19051 responds does not individually identify the clients he represents and only identifies them as the Upper West Side Landowners Group who own lands south of Twenty Road between Upper James and Glancaster including in the AEGD.

The AEGD appeals were settled. On February 13, 2010, Mr. Farber, on behalf of the Twenty Road West Landowners Group, signed minutes of the settlement in which the Twenty Road West Landowners agreed to, among other matters, the following:

12. 456941 Ontario Ltd., 1263339 Ontario Ltd., Lea Silvestri and Lea Silvestri Investments Ltd. (collectively "Silvestri Investments") and Twenty Road Developments Inco Spallacci & Sons Limited, Sullstar Twenty Limited, 909940 Ontario Inc., Lynmount Developments Ltd. and Yehezkel Zahavy (collectively, the "Twenty Road West Landowners") will not object, directly or indirectly, to the recognition of the Elfrida area as identified in Section B.2.2.1 of the Urban Hamilton Official Plan and as shown in Schedule D to these Minutes. In furtherance of this:
 - c. Silvestri and the Twenty Road West Landowners will not object, directly or indirectly, to the manner in which the Elfrida area is recognized as the City of Hamilton's area for further urban boundary expansion to accommodate the population growth targets for 2031, whether that be by way of an urban boundary expansion, identification of a future urban growth district, or some other manner;
14. The Parties agree that it is the intent of the City of Hamilton that:
 - a. It will continue to look to the AEGD former study area as its first priority for employment lands;
 - b. The Elfrida lands are its first priority for non-employment lands; and
 - c. The Twenty Road East lands as shown in Schedule D are the City's next priority for non-employment lands after the Elfrida lands.

Based on the foregoing, if any of Mr. Farber's clients that make up the Upper West Side Landowners Group are also appellants identified as part of the Twenty Road West Landowners in the AEGD Minutes of Settlement, they have recognized Council's intent that the Elfrida lands are the City's first priority for further urban boundary expansion of non-employment lands.

HHHBA Concerns

The HHHBA submitted a list of comments and concerns to staff and the same list to the April 18, 2019 DC Public Meeting. Staff has worked to review the concerns and has provided a response in consultation with Watson & Associates Economists Ltd., attached as Appendix "B" to Report FCS19051.

Through the detailed review of the HHHBA concerns, it was determined that the concern raised in Item 34 related to the Ancaster Tennis Bubble required an amendment to the Capital List. This adjustment has been included in Addendum #1 to the 2019 DC Background Study as prepared by Watson & Associates Economists Ltd. dated May 15, 2019.

APPENDICES AND SCHEDULES ATTACHED

Appendix A – GRIDS and Elfrida Growth Area Study – April 30, 2019 Information Update
Appendix B – HHHBA Staff Response

LG/dt