
REPORT TITLE: **The 2020 Development Charges By-law Update and Timeline Extension**

FROM: Stephen Van Ofwegen, Commissioner of Finance and Chief Financial Officer

RECOMMENDATION

That the Region of Peel Development Charges By-law 46-2015 (the “2015 By-law”), be permitted to remain in force until the specified date provided for under section 9.2 of the *Development Charge Act, 1997* as enacted by Schedule 1 of the *Coronavirus (COVID-19) Support and Protection Act, 2020*, that date being six months after the day the emergency was declared under section 7.0.1 of the *Emergency Management and Civil Protection Act* is terminated;

And further, that the timing of the Development Charge Background Study being prepared in support of the enactment of a by-law to replace the 2015 By-law be adjusted accordingly.

REPORT HIGHLIGHTS

- The *Coronavirus (COVID-19) Support and Protection Act, 2020* (the “*Amending Act*”) came into force on April 14, 2020.
- The Region of Peel’s current Development Charges By-law 46-2015 would, but for the *Amending Act*, have expired on October 5, 2020.
- The *Amending Act* causes the 2015 By-law to continue to be in effect during the current provincial emergency declaration period and for six months thereafter.
- The extension is a welcome measure, enabling staff to better prepare the replacement of the 2015 By-law currently under development in the manner best suited to deal with the implications and staff resourcing challenges created by a 2019 decision of the Local Planning Appeal Tribunal (“LPAT”) on an appeal of the 2015 By-law.
- Bill 108 and other legislative changes also need to be accommodated in the 2020 Development Charges By-law as well as the DC Background Study being prepared in support of it.
- The COVID-19 pandemic and ensuing emergency have made it necessary to alter the consultation process with the public, the development industry and the interaction of staff with experts retained on the DC By-law update project.
- The Peel Chapter of the Building Industry and Land Development Association (BILD) representing members from the development industry has expressed their support for the proposed extended timing.

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- Regional staff will continue to manage the 2020 By-law update project and maintain it on its planned course but taking advantage of the additional time made available for completion including assurance of a full measure of industry and broader public consultation.
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DISCUSSION

1. Background

The Region of Peel's current By-law 46-2015 would have expired on October 5, 2020 but for the enactment on April 14, 2020 of the legislation described in this report.

Staff have been working on the 2020 By-law Update Project (the Project) with a goal to table the draft DC Background Study and the 2020 By-law amendments in July 2020. The final enactment of the 2020 By-law is scheduled for September 2020.

On March 17, 2020, the Province of Ontario declared a State of Emergency under Section 7.0.1 of the *Emergency Management and Civil Protection Act*, in response to the COVID-19 pandemic. On April 14, 2020, the Province extended the Declaration of Emergency for a further 28 days, to May 12, 2020.

Since the onset of the COVID-19 situation, the Association of Municipalities Ontario, the Municipal Finance Officers' Association and the Ontario Regional and Single Tier Treasurers have been working with the Province to support rapid changes in provincial policies and also to bring municipal issues to the Province seeking immediate and practical resolutions to assist their members to manage business during and for a period after this COVID-19 crisis. These advocacy efforts have led to several positive outcomes including the enactment of the *Coronavirus (COVID-19) Support and Protection Act, 2020*, on April 14, 2020.

The *Development Charge Act, 1997* as amended by the *Amending Act* continues the Region of Peel's existing By-law 46-2015 in force until six months after the termination or disallowance of the Ontario Emergency Declaration unless the Region chooses to repeal its 2015 By-law earlier, which is not recommended. As of the preparation date of this report, the 2015 By-law is continued in force at least until November 12, 2020.

2. Risk & Analysis

Bill 108 has amended the *Development Charge Act, 1997* and the *Planning Act* in ways that impact how municipalities determine and collect development charges. Council has seen many submissions to the Province over the last year relating to Bill 108 and other changes being made to development charges legislation including the introduction of the new Community Benefits Charge (CBC). Most recently staff prepared a response to some updated proposed regulations which was submitted on April 13, 2020 through the Environmental Registry of Ontario to the province and reported to Council on April 23, 2020. There remain details and further regulations to be worked out including a process for transitioning from the development charge by-law to the CBC, specifically as this relates to municipalities like the Region of Peel with by-laws which were to have expired in 2020.

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On June 11, 2019 LPAT rendered a decision on an appeal of the 2015 By-law. The Region of Peel sought leave to appeal the LPAT decision to the Divisional Court, however such leave was denied on November 28, 2019. The LPAT decision ordered the Region to amend its current Development Charges By-law 46-2015 to reduce the residential development charges collected under it. To meet the requirements of this LPAT decision, staff have had to partially defer work on the DC Background Study in order to resource the creation of a process and the refinement of data required to issue refund cheques to certain residential development charge payors. The work required for this LPAT mandated refund process and for the LPAT decision related change to be considered in connection with the By-law renewal has been extensive.

Various internal and external resources are required to complete the by-law update project, many of which are partially being used to address priorities related to COVID-19. These staff would normally be focused on the By-law update.

Given many changes to the development charges legislation including the pending changes and continuing discussion on CBC, staff are facing many questions on risks and next steps. Changing some background thinking and analysis to review and reflect upon the recent LPAT decision is time consuming and requires thought and additional changes to be shared publicly with the development community. Without proper consultation and with a less direct approach to meeting with the development industry, a background study completed in this manner may lead to challenges by the industry and potentially costly LPAT appeals. Taking the additional time now afforded by the *Amending Act* will enable staff to better address these new requirements which if not properly addressed would heighten the risk of an appeal of the Replacement By-law to the LPAT and of the attendant uncertainty that such an appeal creates.

The Region of Peel's current By-law 46-2015, would but for the *Amending Act*, have expired on October 5, 2020. Under the *Development Charge Act, 1997*, the Development Charge Background Study being prepared in support of the Replacement By-law must be made publicly available at least 60 days prior to the passing of the development charge by-law. In addition, at least one public meeting must be held, with at least 20 days' notice and the proposed by-law and background study made available to the public at least two weeks prior to the public meeting.

Despite the challenges brought on by COVID-19, staff continue to advance work on the By-law update and would if necessary be prepared to meet the previously applicable October 5, 2020 expiration of the current By-law. However, there are concerns over the ability to meet the statutory consultation process and the ability to share information widely and publicly during the COVID-19 pandemic.

The *Amending Act* is intended to ensure that municipalities can continue to collect development charges under existing DC by-law(s) without having to replace them during the emergency period or within six months thereafter. As of this writing, the Region of Peel's existing 2015 By-law will be allowed to remain in force until November 12, 2020. If the emergency declaration period is extended beyond May 12, 2020, the timeline to complete the By-law update may be adjusted accordingly. The advantage conferred by this legislation can be usefully employed to respond flexibly to the COVID-19 pandemic while at the same time optimally managing the risks posed to the DC By-law Renewal process.

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Additionally, the Peel Chapter of the Building Industry and Land Development Association (BILD) was consulted at the Development Industry Working Group meeting held on April 20, 2020.

BILD expressed their alignment on the Region's intent to continue to advance work on the By-law update and further confirmed their support for the proposed extended timing.

CONCLUSION

The COVID-19 pandemic and the current emergency measures instituted by the province and municipalities has changed the way that business is currently conducted. The Region of Peel's Development Charges 2015 By-law was to have expired on October 5, 2020 and a project to complete a new by-law has been underway with a scheduled draft completion to Council in July 2020. The normal consultation with the public and with the development industry will be affected as is the work and analysis that is done by a wide range of staff and consultants. The *Coronavirus (COVID-19) Support and Protection Act, 2020*, described in this report, enables municipalities to employ a longer timeframe for the completion of the 2020 By-law. This is considered by Regional staff to be a helpful opportunity. Staff recommend that the Region use the flexibility being offered by the province and seek Council's support to do so. The timing of the Development Charge Background Study being prepared in support of the enactment of the By-law, to replace the existing By-law, would be adjusted accordingly. Staff will report back to Council after the emergency declaration is terminated by the Province to provide the revised timelines for the completion of the By-law and DC Background Study.

For further information regarding this report, please contact Stephanie Nagel, Ext. 7105, stephanie.nagel@peelregion.ca.

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Reviewed and/or approved in workflow by:

Department Commissioner, Division Director and Legal Services.

Final approval is by the Chief Administrative Officer.



N. Polsinelli, Interim Chief Administrative Officer