

DEVELOPMENT CHARGES AMENDMENT STUDY

City of Peterborough

HEMSON Consulting Ltd.

October 17, 2011

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I INTRODUCTION & BACKGROUND

In December, 2009 the Council of the City of Peterborough passed a development charges by-law, By-law 09-167, for the recovery of the city-wide engineering capital costs of roads and related and sewage treatment in the municipality. A recommendation by staff proposed that, due to the uncertainty of the roads and related projects and the costs that were included in the 2009 City-wide Development Charges (DC) Background Study, the roads and related component of the City-wide DC rate be held at the rate that was in force in 2009 for a maximum of two years to allow time for the updated Transportation Plan to be completed.

Since then, the City has undertaken a Transportation Plan and it is in its final stages of completion. The Transportation Plan will act as the foundation for the growth-related capital program and will identify roads and related projects that are needed to service future population and employment growth. It was the intention that the City-wide engineering DC By-law be revised and updated before its expiry date of December 31, 2011, however, at the time of the release of this DC Amendment Study, the Transportation Plan was not yet approved by Council.

Because the review and update of the City-wide engineering by-law relies upon the Council approved Transportation Plan, the DC rates levied through By-law 09-167 cannot be updated at this time. As such, this Amendment Study sets out to amend one section of the existing by-law, and that is the expiry date.

The Council of the City of Peterborough has retained Hemson Consulting Ltd. to complete a DC Amendment Study that complies with all of the requirements of the *Development Charges Act, 1997* and its related regulation (Ontario Regulation 82/98). The report also outlines and initiates the process for amending the City's existing development charges by-law, including taking the background study and associated by-law amendment through the legislated public process.

The main objective of the study is to amend the expiry date of By-law 09-167 and extend it to December 31, 2014. This would be five years after the original date of passage of By-law 09-167, and also the maximum shelf life of a DC By-law under the *Development Charges Act*. In addition, this would also align with the existing expiry date of the City's General Services By-law, By-law 09-166. However, it should be noted that

the City has full intention to pass a new City-wide engineering services by-law once the Transportation Plan has been approved by Council. It is anticipated that this will occur within a year of the passage of the amendment by-law. At that time, an additional public meeting would be held and Council and the public would be able to comment on the newly calculated City-wide engineering rates.

II BY-LAW AMENDMENT PROCESS & SCOPE

A. DEVELOPMENT CHARGE BY-LAW AMENDMENT PROCESS

The *Development Charges Act, 1997*, allows a municipality to amend an existing development charges by-law. Section 19 of the 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. [emphasis added]*
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 *DCA, 1997* are summarized as follows:

- s.10 - complete a development charge background study;
- s.11 - development charge 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] (background study and draft by-law must be available at least two weeks prior to the public meeting);
- s.13 - municipality must 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 (OMB);
- s.15 - outlines the duties of the Clerk if an appeal is received;

- s.16 - outlines role and powers of 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 of the amendment and the rationale for the amendment. This document serves as the background study required under s.10 of the *Act*.

A municipality also must hold a public meeting on the amendment, having provided three weeks notice of the meeting, and has to have made the background study and proposed by-law amendment available two weeks prior to the public meeting.

Section 19(2) of the *DCA* 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 charge by-law, only the section(s) of the by-law amended or added is subject to appeal and consideration by the OMB.

This document is the Development Charges Amendment Background Study as required under s.10 of the *DCA*. The City has scheduled a Public Meeting for November 7, 2011 pursuant to s.12 of the *DCA*. Upon passage of the Development Charges By-law Amendment, the City will complete the other requirements outlined in the *DCA*.

B. SCOPE OF THE PROPOSED AMENDMENTS

The City of Peterborough currently imposes City-wide uniform development charges and planning area-specific charges, for the provision of some wastewater services, against all new development in the municipality.

The proposed amendment will not result in development in the City being subject to higher development charges than those currently contained in By-law 09-167. The only change to the existing by-law will be the extension of section 27, the expiry date of the

by-law. The amended expiry date is proposed to be December 31, 2014. The current rates presently being levied for the recovery of roads and related, and sewage treatment services will remain at the same amounts as per Schedules B and C of By-law 09-167, but indexed as per the provisions of the by-law.

Section 10(1) of the *DCA*, 1997, sets out the requirement for a municipality to complete a development charge background study prior to the passage of a development charge by-law or amendment. Subsection 10(2) identifies what is to be included in the development charge background study. These legislative requirements are summarized as follows:

- s.10(2)(a) - estimate the amount, type and location of development to which the development charge [amendment] is to apply;
- s.10(2)(b) - establish the eligible growth-related costs and services (as determine under paragraphs 2 to 8 of subsection 5(1) of the *DCA*, 1997) to which the development charge by-law [amendment] would relate;
- s.10(2)(c) - examine, for each service to which the development charge by-law [amendment] relates, the long term capital and operating costs for the capital infrastructure required.

As noted above in Section A, when a municipality amends an existing development charge by-law, the development charge background study requirements of the *DCA* are to be modified to reflect the content and nature of the proposed amendment. The amendments proposed here are not altering the “amount, type and location of development” to which the by-law applies or growth-related capital costs that form the basis of the charge. As such, it is considered that the requirements of s.10(2)(a) are not relevant to them. In addition, since the proposed amendment will not alter the rates, the capital program and eligible growth-related costs have not been changed. Furthermore, no long term capital or operating costs need to be examined because no changes were made to the growth-related cost recovered through the city-wide engineering by-law. It is therefore considered that the requirements of s.10(2)(b) and (c) of the *DCA* have been met.

APPENDIX A

***DRAFT AMENDMENT
BY-LAW***

DRAFT**THE CORPORATION OF THE CITY OF PETERBOROUGH****BY-LAW NUMBER 11-XXX****BEING A BY-LAW TO AMEND THE CITY OF PETERBOROUGH CITY-WIDE
ENGINEERING SERVICES BY-LAW NO. 09-167**

WHEREAS the City of Peterborough has and will continue to experience growth through development;

AND WHEREAS development requires the provision of physical infrastructure and other services by the City;

AND WHEREAS subsection 2(1) of the *Development Charges Act*, 1997, S.O. 1997 c.27 (the "Act") provides that the council of a municipality may by by-law impose development charges against land to pay for increased capital costs required because of increased needs for services arising from the development of the area to which the by-law applies;

AND WHEREAS Council has before it a report entitled "Development Charges Amendment Study", prepared by Hemson Consulting Limited, for the City of Peterborough, dated October 17, 2011, (the "Study");

AND WHEREAS the Study was made available to the public prior to a public meeting held on November 7, 2011, in accordance with Section 12 of the Act, at which time Council heard comments and representations from all persons who applied to be heard (the "Public Meeting");

AND WHEREAS Council, at its meeting on December 12, 2011, approved and adopted the Study;

AND WHEREAS Council determined that no further public meetings were required under Section 12 of the Act;

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

1. THAT Peterborough Development Charge By-law No. 09-167 is hereby amended by changing the wording of section 27 to read:

27 This By-law expires on December 31, 2014

2. THAT, in all other respects, By-law No. 09-167 shall continue to apply.
3. THAT this By-law comes into force on date of passage.

By-law read a first, second and third time this 12th day of December, 2011

(Sgd.) Daryl Bennett, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk