

Education Development Charges



Hamilton-Wentworth DSB

January 29, 2024

Overview of Education Development Charges - Agenda

1. Overview of Education Development Charges
2. EDC Eligible Costs
3. Changes to the Legislation to Address Housing Affordability
4. EDC Financial Analysis
5. Ministerial Oversight and Legislative Rate Caps
6. Legislative Engagement Process
7. EDC Calculation Process
8. Making Sufficient Information Available
9. By-law Adoption Process
10. Legislative Intent re Imposition of Education Development Charges & Qualifying to Adopt a Successor EDC By-law
11. Statutory and Discretionary Exemptions
12. Next Steps and Timelines

Overview of Education Development Charges

- EDCs pay for the costs to acquire and develop land necessary to accommodate additional pupil places generated by new housing development
- EDCs may be imposed by school boards who qualify:
 - Either average enrolment will exceed capacity over 5-year by-law period, or
 - The board has a deficit in the EDC account the day prior to the successor by-law being enacted, and has outstanding financial commitments
- The Minister of Education must approve 15-year student enrolment projections; the # of school sites required and the permanent capacity available to accommodate enrolment growth generated by future housing development, before a school board can adopt a successor EDC by-law
- The Ministry of Education requires 3 months to review each Board's EDC Submission
- EDCs are based on projections and estimates, which are later substituted for actuals, once known. Legislation was intentionally silent on a number of aspects of the calculation. The biggest challenge is to defensibly interpret the legislation given changing land development practices

Overview of Education Development Charges

- From 1998 to March 2019, the EDC scheme was designed to derive precisely the value of the net growth-related land needs (including financing and study costs) – not a penny more; not a penny less. School boards do not have access to the tax base and the Province has limited funds for land purchases other than growth-related land costs. ‘Land priorities’ funding not to be used to fund growth-related site needs.
- The EDC calculated rate is based on the total net education land costs divided by the ‘net’ new units and ‘net’ non-residential GFA (net of statutory exemptions)
- EDCs are paid at the time a building permit is issued and collected by the municipal building department, then forwarded to the Hamilton boards on a monthly basis. There are monthly reporting requirements required of the City, in the legislation
- HWDSB and HWCDSB impose EDCs on both residential and non-residential development based on 85% of the net education land costs recovered from residential development and 15% from non-residential development
- EDC boards work with their local municipalities in deriving 15-year residential (by location and by density type) and non-residential development forecasts

EDC-eligible Costs

- Education Land Costs under section 257.53 (2) of the *Education Act* include costs to:
 - *acquire land or*
 - *an interest in land (this could be a strata interest),*
 - *including a leasehold interest,*
 - *to be used by the board to provide pupil accommodation'*
- Education land costs exclude costs of any building to be used to provide pupil accommodation
- Precedent established with funding of underground parking in select locations based on business case and stakeholder engagement in 2013
- However, legislation allows the use of EDC funds for construction costs under a Minister-approved Alternative Project
- In any 5-year by-law period, EDC-eligible costs are tied to how much residential development is projected to take place. As the Board moves from one by-law period to another, the # of new residential units grows and the % EDC-eligible expenditures grows

Alternative Projects Supporting Housing Affordability

STAND-ALONE SCHOOL SITE -



TCDSB St. Mathias CS - Snyder Architects

VERTICAL SCHOOL AS PART OF A PODIUM STRUCTURE -



TDSB proposed elementary school Pinnacle One Yonge – Hariri Pontarini Architects

- In 2018, the TCDSB proposed what has become Alternative Projects in the legislation as a means of supporting housing affordability
- A Minister-approved Alternative Project must be less than the cost to acquire a conventional stand-alone school site
- Since March, 2019, EDCs could also be used to pay for Alternative Projects – costs to meet growth-related student accommodation needs – if approved by the Minister of Education

Alternative Project costs may include any or all of:

- ✓ portion of superstructure to accommodate the school;
- ✓ demising of the school portion of the superstructure to accommodate classrooms, admin space, gym, etc.
- ✓ School parking, drop-off, etc.;
- ✓ Share of nearby parkland to accommodate outdoor education programs

Education Development Charges Financial Analysis

Prior to 2019, the EDC financial analysis was designed to determine the rate that needed to be charged in order to recover 100% of the net growth-related education land costs, considering:

- The opening EDC account balance as of the day prior to by-law adoption;
- Land escalation over the term of the by-law
- Escalation rates to be applied to site preparation costs in consideration of labour and materials costs;
- Any interest earnings where annual EDC account balances are positive
- Any accrued interest expense where EDC account balances are in deficit
- Returning any EDC funds plus interest (at BOC prime rates) if the board has borrowed funds from the EDC account;
- The projected closing balance at the end of Year 15

The EDC rates are spread over the net forecast (i.e., net of statutory exemptions)

Post 2019, the EDC financial analysis is undertaken, for the purpose of:

- Determining the appropriate 'calculated rate';
- Determine the potential funding shortfall to fund 100% of the growth-related school site needs, where the revenue stream is fixed under the legislative 'cap'

Ministerial Oversight & Legislative Rate Caps

- Ministerial oversight re:
 - acquisition of land;
 - funding to pay costs to construct additional pupil places; and
 - ability for a school board to adopt an EDC by-law(s)
- As of November 1, 2019 the Province adopted the following legislative ‘caps’:
 - Increase residential rates by the greater of \$300 or 5% per annum provided that these ‘capped’ rates do not exceed the ‘calculated’ rates determined in the EDC Background Study report. Increase non-residential rates by the greater of \$0.10 per square foot of GFA, or 5% annually
 - Where the legislative ‘cap’ rate is less than the calculated rate, there is a funding shortfall, for which there is no available funding source. The shortfall cannot be made up through future by-laws
 - From a consultation perspective, the development community is less interested in the results of the ‘calculated rates’ and more interested in the legislative ‘cap’ rates
 - School boards, on the other hand, are more interested in knowing what level of financial shortfall, if any, is derived due to the legislative ‘cap’
 - If, for example, the EDC calculation determines that a charge of \$1000 per new residential unit is required to fully fund the net education land costs, but the legislative ‘cap’ is only \$500 per unit, then 50% of the projected costs have no funding source

The Legislative EDC Engagement Process

- EDCs are based on projections and estimates over a 15-year forecast period
- Board staff play a critical important role in:
 - identifying enrolment by sub-area and future student accommodation needs;
 - determining existing and future financial obligations;
 - ensuring that legislative communication requirements are met, and keeping the board informed of study progress;
 - provide recommendations to the board respecting the policy decisions
- The projected school site needs and associated costs underly the adopted EDC by-law
- While the Minister of Education must approve (through review of the EDC Submission):
 - 15-year student enrolment projections;
 - the # of school sites required, and;
 - the permanent capacity available to accommodate enrolment growth generated by future housing development

Nothing in the Minister's approval of the EDC Submission commits the province to future capital funding approvals; nor does the by-law adoption process commit the board to the land acquisitions or timing outlined in the EDC Submission (i.e. the majority of the decisions are beyond the term of the current board)

The Legislative EDC Engagement Process

- The role of the municipalities is to:
 - provide background information re location, timing and type of development
 - provide information respecting the application of the by-law, particularly exemptions as specific circumstances arise and funds are collected
 - Assist in refining the definitions in the draft by-law re: differences between DC and EDC treatment and ability to achieve consistency within each municipality
- The role of the development community stakeholders is to:
 - provide background information re residential development, especially where increased density is proposed
 - Review the draft EDC Submission and its underlying assumptions
 - Comment on the balance between residential and non-residential rates
 - Historically, this has meant one or more meetings with the development community representatives. However, now that ‘capped’ rates are in place, the by-law rates are typically known and stakeholders have less interest in reviewing the details
- The role of the board is to:
 - Undertake the required public meetings;
 - Make decisions respecting the EDC policies (the policy options are outlined during the public meeting), and;
 - Decide whether or not to adopt a successor by-law, provided that Ministry approval to proceed has been provided

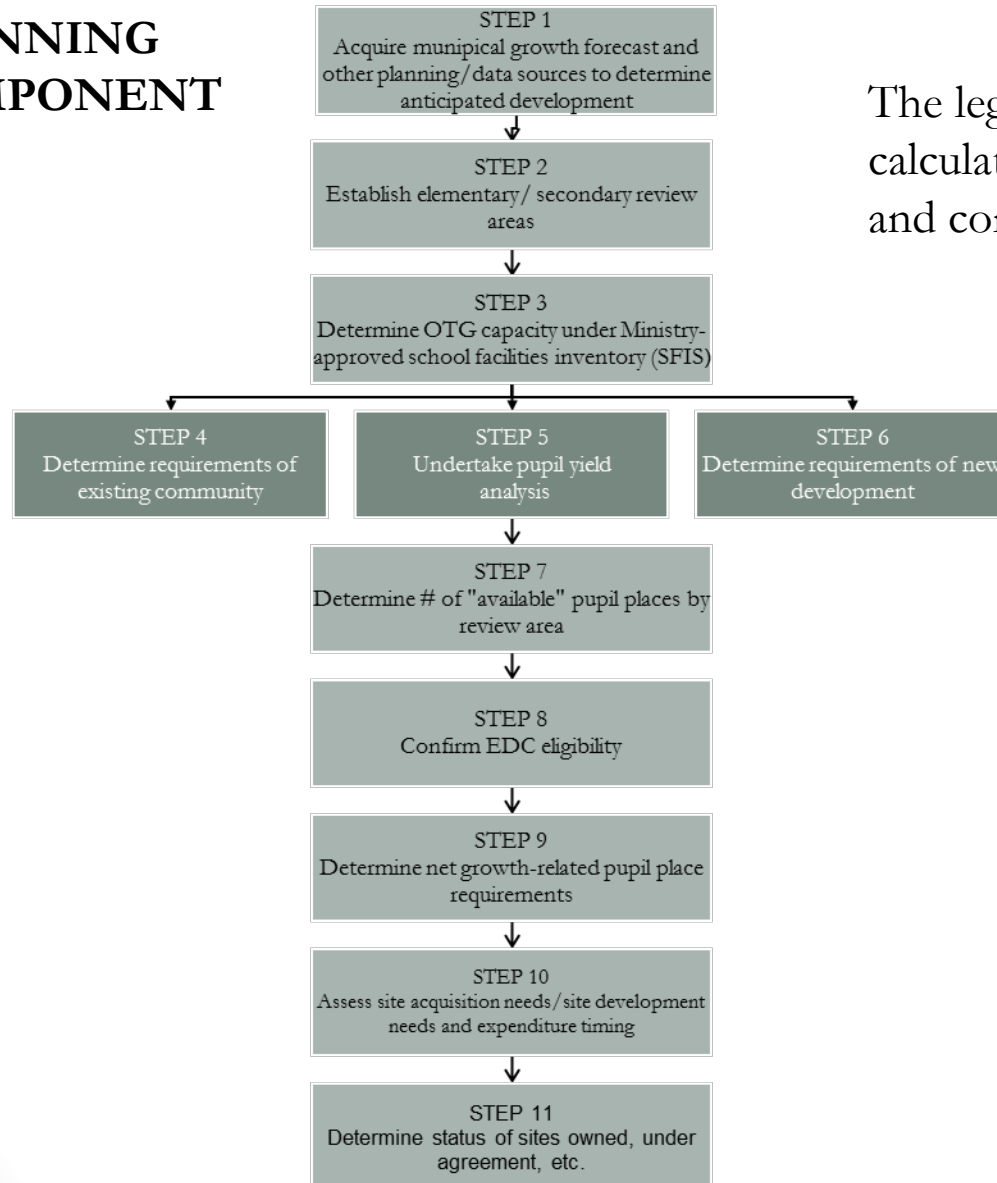
Figure 1-1

Overview of Education Development Charges Process and Timelines

PHASE ONE	PHASE TWO	PHASE THREE	PHASE FOUR	PHASE FIVE	PHASE SIX
DETERMINING ELIGIBILITY	ANALYSIS OF NGRELC ¹	ALTERNATIVE PROJECTS & LEDAs	MINISTRY SUBMISSION	STAKEHOLDER CONSULTATION PROCESS	BY-LAW ADOPTION & IMPLEMENTATION
A. Capacity Trigger Evaluation and Notify Ministry of Education if Board Intends to Exclude Capacity	A. 15-year Estimate of Amount, Type and Location of Residential Development and Non-Residential GFA Projections (net of statutory exemptions)	A. Determine Areas where Density Value & proposed growth-related sites indicate potential for Alternative Projects and LEDAs	A. Completion of Ministry Forms (EDC Submission)	A. Follow-up Consultation with Stakeholders re Basis for Charges and % Unfunded Costs	A. Liaison with Area Municipal Representatives re By-law Interpretation, Implementation & Collection Issues
B. EDC Account Analysis - determine sites proposed to be acquired & sites acquired, what has been fully or partially funded and reconcile account	B. Prepare 15-year student enrolment projections - Existing Community Requirements plus Requirements of New Development and Determine if there is a Need to Alter Review Area boundaries given Capital Priorities & planning areas	B. Prepare land valuations based on conventional and strata builds	B. Complete Background Study and Forward to Ministry, Co-terminous Boards & Stakeholders who have provided notification (90 days in advance of by-law passage date)	B. Conduct Public Meeting (s) including Policy Review Public Meeting	B. Board Consideration of Public Input and Calculation Revisions as necessary (may require additional Ministry Review /approval or request for additional data)
C. EDC Financial Obligations Evaluation (including how Financial Obligations will be repaid)	C. Review Area Analysis to Determine Schools Impacted by New Housing Development	C. Define Area Specific By-law Structure if LEDA is contemplated	C. Preparation & Public Distribution of Policy Document	C. Review of Public Submissions	C. Additional Public Meeting at Discretion of Board
	D. Forecast of Net Growth-related Pupils and Determine # of Sites, Site Expansions and/or Site development Costs by Location	D. Review Status of Ministry Approval of Site Acquisitions	D. Ministry of Education Review & Approval Process (90 days review period)		D. By-law Adoption
	E. Estimate Growth-related Net Education Land Costs (net of any surplus EDC account funds)				E. By-law Implementation
	F. Calculate NELC on a Cashflow basis and Determine Portion of NELC to be Funded from EDCs given Legislative 'Cap'				F. Notice of By-law Passage & Appeal Date, Municipal Notification of By-law Passage and Implementation Considerations

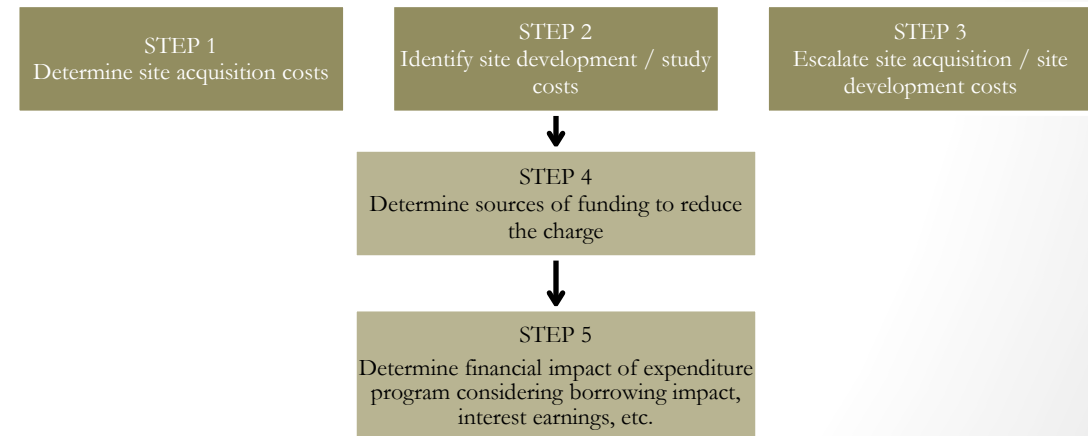
Education Development Charges Calculation Process

PLANNING COMPONENT



The legislative process is entirely prescriptive: (i.e. specific calculation steps to be followed in order set out in the Regulation and consistent the with EDC Forms (called the EDC Submission))

FINANCIAL COMPONENT



Making Sufficient Information Available

The information that must be made available to the Ministry and co-terminous school boards (although it is common practice to also provide to stakeholders and municipalities) includes:

- The EDC Submission (the full submission with formulas is provided to the Ministry as part of facilitating their review)
- The EDC Background Study report, including:
 - a description of the background information available to undertake the EDC calculations;
 - demographic & enrolment trends within the board's jurisdiction;
 - a description of the legislative requirements and how they have been interpreted, along with a description of the methodology employed;
 - historical EDC account transactions and current financial obligations;
 - a demonstration that the board qualifies to adopt a successor EDC by-law;
 - excerpts from the land appraisal report – land valuation methodology employed, concluded land value and land escalation factors to be applied;
 - forms A through H2 (part of the EDC Submission) including details respecting the determination of the net growth-related accommodation needs within each Review Area.
- The EDC Policy Review report
- The draft EDC by-law
- Notices of public meetings and successor by-law adoption, along with last date for appeal

EDC By-law Adoption Process

The following steps are typically undertaken as part of preparing an EDC by-law for adoption consideration:

1. Subject to the Board's instructions, legal counsel updates 2019 by-law to incorporate section outlining the legislative provisions respecting the application of an EDC by-law to non-residential development, as well as newly-adopted mandatory non-residential exemptions
2. Post meeting with City, some of the by-law definitions will be altered, if necessary
3. Prior to policy review public meeting, policy choices and potential impacts will be reviewed with Trustees
4. Draft by-law can be modified by the board right up to the point of by-law adoption
5. Post by-law adoption, legal counsel will ensure the final by-law wording is consistent with what was decided by the board and ensure that the by-law is signed
6. The final by-law is circulated to municipal finance and building dept officials and posted to the board's website

Residential/Non-residential Rates and Limitations on Total Net Education Land Costs

- EDC rates are expressed in absolute dollars (the following were the 2019 rate options under various residential/non-residential shares) prior to the application of the legislative cap

HAMILTON-WENTWORTH DSB Proposed EDC Rates		
Non-Residential Share	Residential Rate	Non-Residential Rate
0%	\$1,851	\$0.00
5%	\$1,758	\$0.17
10%	\$1,666	\$0.33
15%	\$1,573	\$0.50
20%	\$1,480	\$0.66
25%	\$1,388	\$0.83
40%	\$1,110	\$1.32

- In 2019 the total net education land costs (NELC) over the 15year forecast period - \$94,937,027
- Regardless of which % share is applied to the residential versus non-residential share of the NELC, the value of the total NELC does not change

Financial Implications – legislative ‘cap’ rates and borrowing impacts

Legislative ‘capped’ rate requirements:

- Increase residential rates by the greater of \$300 or 5% per annum provided that these ‘capped’ rates do not exceed the ‘calculated’ rates determined in the EDC Background Study report.
- Increase non-residential rates by the greater of \$0.10 per square foot of GFA, or 5% annually.

Impacts influencing ‘calculated’ rates:

- While ‘capped’ rate increase based on 5% annual escalation rates, unfunded costs due to exemptions, borrowing costs and land prices exceeding appraised values discount the ability to increase costs by 5% annually
- External borrowing rates now 7.2% BOC prime; were 3.2% in 2019. This can add significant borrowing costs well beyond the 5% presumed rate increases
- In 2019 land values escalated at 5%; but land price increases exceeded this figure
- The 5% increase applied to non-residential rates does not keep pace with ‘capped’ residential rate increases

Statutory and Discretionary Exemptions

There are a number of statutory residential and non-residential exemptions contained in the legislation

The following are the principal exemptions that are currently prescribed in 2019 EDC by-laws:

Lands that are owned by and are used for the purposes of:

- a) Local municipalities or a local board thereof (mandatory);
- b) a school board (mandatory);
- c) a public hospital receiving aid under the *Public Hospitals Act*, R.S.O. 1990, c. P.40 (discretionary);
- d) a publicly-funded university, community college, college of applied arts and technology established under the *Ministry of Colleges and Universities Act* or a predecessor statute, or a private elementary or secondary school (discretionary);
- e) a place of worship owned by a religious organization that is exempt from taxation under the *Assessment Act* that is used primarily as a place of public worship (discretionary);
- f) a cemetery or burying ground that is exempt from taxation under the *Assessment Act* (discretionary); and
- g) Metrolinx (discretionary).

Statutory and Discretionary Exemptions

- Subsequent to the Boards passing their by-laws in 2019, the Province amended O. Reg. 20/98 (which is the EDC regulation) effective November 8, 2019, to implement a number of additional mandatory exemptions (all of which are non-residential) as follows:
 - a) private school;
 - b) long-term care home, as defined in the *Long-Term Care Homes Act, 2007*;
 - c) retirement home, as defined in the *Retirement Homes Act, 2010*;
 - d) hospice or other facility that provides palliative care services;
 - e) child care centre, as defined in the *Child Care and Early Years Act, 2014*;
 - f) memorial home, clubhouse or athletic grounds owned by the Royal Canadian Legion;
 - g) college of applied arts and technology established under the *Ontario Colleges of Applied Arts and Technology Act, 2002*;
 - h) university that receives regular and ongoing operating funds from the Government of Ontario for the purposes of post-secondary education;
 - i) Indigenous Institute prescribed for the purposes of section 6 of the *Indigenous Institutes Act, 2017* (for the establishment of post secondary institutions)
- For clauses (g), (h) and (i) above, the user or entity must also own the land in question.

Statutory and Discretionary Exemptions

Mandatory Exemption for Residential Intensification:

- exemptions for residential intensification (which are mandatory) where one or two dwelling units are created within an existing residential building subject to certain size and temporal limitations. The legislation that governs municipal development charges offers similar but broader exemptions for residential intensification.

Mandatory Exemption for the Replacement of a Destroyed or Demolished Dwelling Unit:

- a credit or exemption with respect to the replacement of a dwelling unit that was destroyed by fire, demolition or otherwise provided the building permit for the replacement dwelling unit is issued within two years after the former dwelling unit was destroyed or demolished. As more development becomes redevelopment, this can be a significant revenue loss
- Projected statutory exemptions are removed from the EDC calculation so that there is no revenue loss as a result
- Discretionary exemptions made by the board result in a revenue loss, and unlike municipalities, school boards have no access to the tax base with which to fund the shortfall
 1. Discretionary exemption decisions made by Trustees must be reflected in the EDC by-law and apply equally to the entirety of the board's jurisdiction
 2. A decision by a school board to impose any exemptions beyond what is specified in the adopted by-law would have to be added to the EDC by-law through a by-law amendment prior to implementing the exemption
 3. Any post by-law adoption discretionary exemptions result in a funding loss that cannot be made up elsewhere and have the potential to invite a lawsuit if the application of the exemption is not considered to be fair and equitable to similar types of development.

Next Steps and Timelines

- Complete draft EDC Submission – early March
- Forward draft EDC Submission to Ministry Capital Programs Branch – 90 days in advance of by-law adoption
- Notice of Public Meeting – 20 days prior to 1st public meeting
- Meet with HHHBA representatives to review EDC calculations and proposed rates – no later mid March
- EDC Background Study & Policy Review Report circulated to Ministry and co-terminous boards and posted to Board's website – end of April
- Policy Review Public Meeting – May 27th
- 2nd Public Meeting – May 27th (following Policy Review Public Meeting)
- By-law Adoption Public Meeting – June 17th
- Liaise with City of Hamilton finance & building staff re new by-law rates and any changes to by-law definitions or exemptions – early June
- Proposed By-law Implementation – no later than July 6, 2024
- Publish Notice of By-law Passage – within 20 days of by-law adoption – July, 2024