



REPORT TO

REGULAR BOARD

EDUCATION DEVELOPMENT CHARGES BY-LAW ADOPTION

Wealth gained hastily will dwindle, but whoever gathers little by little will increase it...Proverbs 13:11

Created, Draft	First Tabling	Review
November 6, 2018	November 15, 2018	Click here to enter a date.

M. Loberto, Superintendent of Planning and Development

RECOMMENDATION REPORT

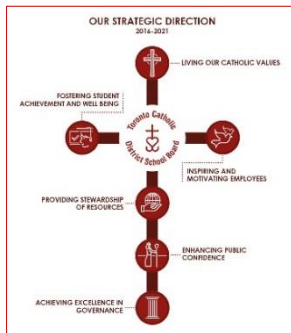
Vision:

At Toronto Catholic we transform the world through witness, faith, innovation and action.

Mission:

The Toronto Catholic District School Board is an inclusive learning community uniting home, parish and school and rooted in the love of Christ.

We educate students to grow in grace and knowledge to lead lives of faith, hope and charity.



Rory McGuckin
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Executive Superintendent
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A. EXECUTIVE SUMMARY

On June 28, 2018, the Ministry approved the TCDSB's Education Development Charges (EDC) Regulation Estimates. On June 29, 2018, the Board of Trustees approved a one- year By-law, TCDSB EDC By-law No. 190, in order to avoid a gap in EDC fund collection (the "Interim EDC By-law"). The Interim EDC By-law now in place will not raise sufficient funds to support the acquisitions of required properties that the TCDSB is contractually committed to acquiring over the next 12 months. Therefore, on September 13, 2018, the Board of Trustees directed TCDSB staff to begin the process of enacting a new EDC By-law as soon as possible.

This report recommends that the Board adopt an EDC By-law having a five-year term applying jurisdiction-wide (i.e. a singular rate applied throughout the City of Toronto) EDC rates, as required by O. Reg. 438.18, based on policy considerations detailed in the body of this report.

The primary purpose of any Board in implementing EDC charges is to provide a source of funding for new school sites and expansions of land or site services to accommodate enrolment growth generated by new housing development in the City of Toronto.

This report recommends the adoption of a successor EDC By-law based on the EDC related policies outlined in this report.

The cumulative staff time required to prepare this report was 20 hours

B. PURPOSE

The purpose of this report is to identify and establish a set of Education Development Charges (EDC) related policy considerations on which to base a decision to adopt a successor EDC By-law, and provide a draft EDC By-law for Trustees to consider for adoption.

C. BACKGROUND

1. In early 2018, the Toronto Catholic District School Board (TCDSB) began the process of replacing its Education Development Charges (EDC) By-law

before it was set to expire on June 30, 2018. The TCDSB completed all necessary steps as mandated by the Education Act and was prepared to pass a successor By-law at a meeting of the Board of Trustees held on June 14, 2018.

The Board was unable to pass the proposed By-law because the Ministry of Education did not approve the TCDSB's estimates of pupil counts and school sites as required by *O. Reg. 20/98* and set out in the TCDSB's submission to the Minister of Education dated April 17, 2018 (the "EDC Regulation Estimates").

2. The Ministry of Education subsequently advised the TCDSB that it would not be in a position to approve the EDC Regulation Estimates until a new Minister was appointed. As mandated by the Premier on June 26, 2018, the Ministry of Education advised the TCDSB that it would only approve the EDC Regulation Estimates if the TCDSB passed a one-year EDC By-law at the rates that were in place prior to June 30, 2018: \$1,493 per dwelling unit and \$1.07 per square foot of gross floor area for residential and non-residential developments respectively.
3. On June 28, 2018, the Ministry approved the TCDSB's EDC Regulation Estimates. On June 29, 2018, the Board of Trustees approved a one-year By-law, TCDSB EDC By-law No. 190, in order to avoid a gap in EDC fund collection (the "Interim EDC By-law"). There were no appeals of the Interim EDC By-law.
4. However, the Interim EDC By-law now in place will not raise sufficient funds to support the acquisitions of required properties that the TCDSB is contractually committed to acquiring over the next 12 months. Therefore, on September 13, 2018, the Board of Trustees directed TCDSB staff to begin the process of enacting a new EDC By-law as soon as possible.

Board staff have been discussing the EDC shortfall with Ministry staff in preparation for Capital Land funding requests for the TCDSB's committed acquisitions. The Ministry is receptive, however have not made any funding commitments to date.

5. Section 257.62 of the *Education Act* states "*an Education Development Charge By-law may be passed only within a period of 365 days following the completion of the Education Development Charges Background Study.*" The

EDC background study was completed on April 17, 2018 and the replacement of the Interim EDC By-law is scheduled to take place within 365 days of completion of the original Background Study. As such, the report addendum dated October 1, 2018 relies on the same mid-2018 to mid-2033 housing forecast and Review Area constructs; the same 15-year student enrolment projections; and the same school site values. In order to rely upon the TCDSB submission dated April 17, 2018, the TCDSB must replace interim By-law No. 190 prior to its expiry on July 4, 2019.

6. The original intent in adopting a new EDC By-law on November 15th was to adopt higher EDC rates that could be supported by the April 17, 2018 EDC Background Study analysis (i.e. as amended). This proposed action did not require secondary approval of the Regulation Estimates by the Minister of Education: The Board was eligible to adopt higher EDC rates and thereby close the funding gap consistent with the 15-year growth-related net education land cost requirements established in the Study.
7. However, on October 12, 2018, the Province enacted O. Reg. 438/18, which required, amongst other limitations, that school boards with existing EDC By-laws could not increase the By-law rates in place as of August 31, 2018. Additional changes to the legislative provisions include:
 - Limits the ability of boards to change the areas in their By-laws that are subject to EDCs;
 - Alter the residential and non-residential shares or adopt differentiated residential rates if it would have the effect of increasing any of the EDC rates beyond the August 31st 2018 ‘cap’;
 - Restricts additional boards from becoming eligible to pass a new EDC By-law;
 - Streamlines some of the requirements to be included in the required background study, including removing the need to adopt policy resolutions concerning any operating surpluses or alternative accommodation arrangements that could be used to reduce the EDC rates (although the Regulation removed the requirement to provide an explanation where a school board excludes available and surplus capacity in the calculation, which was an important element of the previous legislative requirements to development community stakeholders).

8. On October 15, 2018, the Ministry of Education issued Memorandum B15: ‘Temporary Cap on Education Development Charge Rates’ indicating that it is the government’s intention to undertake a review of the EDC policy framework and that further details will follow in the coming weeks. No additional information has been provided to date on the timing or structure of the proposed consultation process.

A TCDSB staff member has been assigned to the Ministry Committee examining EDC Legislation.

9. There are several immediate concerns for school boards. The delay in the timing of future capital approvals, along with the ‘pause’ on EDC rate increases creates a double shortfall in EDC funding, and there is uncertainty as to how this funding deficiency will be addressed. That is, building permits continue to be issued during the ‘EDC’ pause. The pupils generated by the construction and subsequent occupancy of these new residential units will need to be held in temporary accommodation awaiting Capital Priorities funding approval for new pupil place construction. It is unknown whether EDC boards be able to recover the retrospective growth-related site needs through the imposition of education development charges.
10. As well, where the EDC by-law capped rates are lower than the successor by-law ‘calculated’ rates, an additional shortfall in funding net education land costs will ensue. With both of these shortfalls in funding growth-related site needs be paid for from the imposition of higher EDC rates or from the tax base as a Land Priorities approval. Finally, the shortfall created in funding short-term land requirements places additional stress on internal working capital and impedes a board’s ability to access external financing for this purpose.
11. The EDC calculation is based on new pupils generated by housing units within the bylaw area, for which building permits will be issued over the next fifteen-year period and for which additional school accommodation is required within the City of Toronto.
12. The Board undertook the background analysis respecting growth projections, pupil enrolment forecasts, determination of growth-related pupil place requirements, site costing, and the appropriate EDC forms.

13. The TCDSB has conducted meetings with stakeholders, responded to a review of the Board's EDC submission by the Building Industry and Land Development Association (BILD), undertaken a secondary review of the EDC submission and made minor modifications to the charge as a result. The Board conducted Policy Review public meetings on October 11th and 18th, and the public meeting to review the proposed 'capped' charges on October 18th. The Board will be seeking additional input from the public and give consideration to all submissions received prior to the passage of its initial Education Development Charges Bylaw. The Board intends to give consideration to the passage of the EDC Bylaw on November 15th unless there is good reason to delay further.

D. EVIDENCE/RESEARCH/ANALYSIS

1. The following sets out the key policy decisions typically made by the Board in advance of adopting a new By-law. However, O. Reg. 438/18 restricts several of the policy decisions. A list of the policy decisions and the implications of each under the new Regulation are discussed below.
 - What by-law term is proposed by the Board; five years, or something less?
 - What level of EDC charge does the Board wish to impose, given that the Board is entitled to recover less than 100% of the net education land costs?
 - Is there a need to conduct any further public meetings in advance to adopting the new by-law?
 - Are the charges to be applied on an area-specific or jurisdiction-wide basis?
 - What portion of the net education land costs are to be recovered from residential and non-residential (e.g. industrial, commercial and institutional) development?
 - Does the Board wish to exempt any residential or non-residential development? If so, how does the Board propose to fund the shortfall?
 - Does the Board wish to provide any demolition or conversion credits beyond that specified in the legislation?
 - Is there any need to consider a phase-in of the charge or to grandfather the EDC rates applicable to any development applications that are in process of being approved by the City of Toronto?

Each of the foregoing policy decisions is discussed below.

2. **Term of the By-law:** The Education Act permits a school board to pass an EDC by-law with a maximum term of five years. A five-year term provides the maximum flexibility since a board has the power to amend the by-law or pass a new by-law at an earlier point, if necessary. *Staff recommend that an EDC by-law having a five-year term be adopted. Having a five-year by-law term should enable the TCDSB to adopt the ‘calculated rates’ once the policy review consultation process is completed at the Ministry level.*
3. **Recovery of Net Education Land Costs:** *O. Reg. 20/98* section 7 paragraphs 9 (iii) and 10 (vi) restrict a board to a maximum of 100% recovery of the “net” growth-related education land costs from residential and non-residential development.
 - One of the most significant considerations in the legislative treatment of education development charges is that there is no tax-based funding source to make up the shortfall where full cost recovery is not achieved. Further, there is a limited pool of funds available to the Ministry of Education to pay for land acquisition and site development expenditures in situations where the costs are not eligible to be funded through the imposition of education development charges. Finally, many of the revenue sources under the existing education capital funding model are “enveloped” and are therefore not available to be used for purposes other than that for which they were legislatively intended.
 - The new Regulation inhibits a board’s ability to achieve 100% recovery of the net education land costs, at least in the short term. Therefore, *Staff recommend that TCDSB seek to recover 100% of the net growth-related education land costs.*
4. **Additional Public Meeting Requirements:** the TCDSB has undertaken stakeholder consultation processes during the Spring and the Fall of 2018, and has complied with the requirement to:
 - Conduct a review of the education development charge policies;
 - Conducted at least two public meetings in accordance with the legislation (the TCDSB has conducted three public meetings);

- Ensure that adequate information is made available to the public by providing notice in the local newspaper and posting the EDC background study and meeting notice on the Board’s website;
- Demonstrated that the Board qualifies to adopt a successor EDC by-law and has completed an education development charges background study, and
- Has forwarded all of the background information necessary and has received approval of the Regulation Estimates from the Minister of Education on June 28th.

Staff recommend that no further public meetings are required in advance of considering adoption of a successor by-law adoption.

5. **Jurisdiction-wide or Area Specific Application of the By-law:** the existing “in force” EDC by-law is applied on a City-wide uniform basis (with the exception of the Railway Lands as required in the legislation). The rationale for this decision is primarily based on the premise that:

- A jurisdiction-wide approach is more consistent with the way in which education services are provided by the Board;
- A jurisdiction-wide charge affords more flexibility to the Board to meet its long-term accommodation needs;
- Uniform application of education development charges is more congruent with the education funding model as a whole;
- Money from an education development charges account may be used only for growth-related net education land costs attributed to or resulting from development in the area to which the education development charge by-law applies (section 16 of *O. Reg. 20/98*). Therefore, monies collected in one by-law area could not be spent outside of that by-law area and this is particularly problematic given school choice at the secondary level.
- *O. Reg. 438/18* prohibits a school board from altering the areas subject to EDCs.

Staff recommend that the Board adopt jurisdiction-wide (i.e. a singular rate applied throughout the City of Toronto) EDC rates, as required by the legislation.

6. **Percentage of Net Education Land Costs to be borne by Residential and Non-residential Development:** Section 7 paragraph 8 of *O. Reg. 20/98* requires that, “the board shall choose the percentage of the growth-related net education land cost that is to be funded by charges on residential development and the percentage, if any, that is to be funded by charges on

non-residential development.” “The percentage that is to be funded by charges on non-residential development shall not exceed 40 percent.”

However, the new Regulation only allows a change in the residential/non-residential percentage where it derives a charge that is equal to, or lower than the current rates. Altering the shares would naturally increase one of the rates (i.e. the residential or the non-residential rate) which would have to be ‘capped’. Increasing one side of the equation and capping the other side of the equation could invite an appeal of the by-law.

Staff recommended that the by-law rates continue to be based on 75% residential and 25% non-residential shares.

7. **Should the EDC Bylaw include any Non-Statutory Residential or Non-residential Exemptions:** The legislation provides for specific residential and non-residential statutory exemptions. Statutorily-exempt development is excluded from the determination of the EDC rates, so that the foregone revenue is not passed on to non-exempt development.

While the legislation permits a school board to grant additional non-statutory exemptions for both residential and non-residential development, there is no funding source currently available under the new funding model to absorb the cost of providing non-statutory exemptions.

In addition, by-law administration and collection of the charge, and the ability to treat all development applications in a fair and equitable manner, are complicated by the granting of non-statutory exemptions.

A 2007 legal opinion provided to the TCDSB, suggests that a school board must absorb the cost of exemptions voluntarily granted by the board to any non-statutory development (i.e., the board would not be in a position to make up the lost revenue by increasing the charge on the other non-exempt non-residential development under the legislation).

Staff recommend that the EDC Bylaw continue to provide for only the standard mandatory residential exemptions.

8. **Should the By-law Apply a Differentiated Residential EDC rate:** *O. Reg. 20/98* enables a board to vary the EDC rates to consider differences in size

(e.g. number of bedrooms, square footage) of dwelling units or occupancy (permanent or seasonal, non-family households or family households) although the latter (i.e. occupancy) could change over time.

Section 7 paragraph (9) of *O. Reg. 20/98* states that, “the board shall determine charges on residential development subject to the following,

- i. the charges shall be expressed as a rate per new dwelling unit,*
- ii. the rate shall be the same throughout the area in which charges are to be imposed under the by-law, ...”*

Despite this, a board may impose different charges on different types of residential development (differentiated residential EDC rates), based on the percentage of the growth-related net education land costs to be applied to residential development that is to be funded by each type. The restrictions noted above would also apply in the case of differentiated residential EDC rates.

The new Regulation requires by-law adopted rates either equal to or lower than the rates in-force as of August 31st. When differentiated rates are created, high density rates would fall below the ‘capped’ EDC rates; medium density either slightly higher or lower than the capped rates and low density higher than the capped rates.

For the same reasons outlined in the discussions respecting residential and non-residential shares, staff recommend that the TCDSB not entertain differentiated residential rates at this time.

- 9. Demolition and Conversion Credits:** Section 4 of *O. Reg 20/98* prescribes a replacement dwelling unit exemption.

Section 4 states that “*a board shall exempt an owner with respect to the replacement, on the same site, of a dwelling unit that was destroyed by fire, demolition or otherwise, or that was so damaged by fire, demolition or otherwise as to render it uninhabitable.*”

However, “*a board is not required to exempt an owner if the building permit for the replacement dwelling unit is issued more than two years after,*

- a) *the date the former dwelling unit was destroyed or became uninhabitable; or*
- b) *if the former dwelling unit was demolished pursuant to a demolition permit issued before the former dwelling unit was destroyed or became uninhabitable, the date the demolition permit was issued.”*

The Board’s proposed EDC by-law extends the exemption period to three years instead of the required two years in recognition of the complexity of development within the City of Toronto.

Section 5 of *O. Reg. 20/98* deals with exemptions for the replacement of non-residential buildings. Similar provisions apply with respect to the replacement of non-residential gross floor area (GFA), except that the credit is only applied to the extent that the amount of new floor space is equivalent to the GFA of the floor space being replaced. The grace period for the replacement of non-residential GFA is five years.

There are no legislative provisions specifically dealing with conversion of use. However, the EDC Guidelines, section 4.1, states that, “Board by-laws may include provisions for credits for land use conversion. Typically, this situation would arise if an EDC is paid for one type of development and shortly thereafter (the period of time defined in the board’s EDC by-law), the land is rezoned and a new building permit issued for redevelopment (to an alternate land use). EDC by-laws may include provisions for providing credits in this situation to take into account the EDC amount paid on the original development (generally by offsetting the EDC amount payable on the redevelopment).” The 2013 TCDSB EDC by-law provides a credit equal to the amount of the charge originally paid on the space that is being converted.

Staff recommend that the Board adopt a 3-year demolition grace period for residential uses and a 5-year demolition grace period for non-residential uses, consistent with the draft by-law before the Board. Further, staff recommend that the Board approve the EDC bylaw provision permitting conversion credits, consistent with historical practice.

10. The Proposed EDC Rates

Staff recommend a residential charge of \$1,493 per dwelling unit and non-residential charge of \$1.07 per square foot of gross floor area, consistent with the current legislative requirements.

E. STAFF RECOMMENDATIONS

1. That the Education Development Charges Submission prepared by Quadrant Advisory Group Limited, submitted to the Ministry of Education for approval, and approved by the Minister be received.
2. That the following EDC related policy considerations for a successor By-law be adopted:
 - a. A recovery rate of 100% of the Board's net education land costs through EDC's;
 - b. EDC By-law with a term of 5 years;
 - c. EDC By-law, a residential charge of \$1,493 per dwelling unit and non-residential charge of \$1.07 per square foot of gross floor area;
 - d. A single, jurisdiction-wide EDC By-law
 - e. Calculation of the charge for the EDC By-law be based on 25% of the net education land costs funded by non-residential development and 75% by residential development;
 - f. Differentiated residential rates not be approved at this time;
 - g. EDC By-law to provide a 3-year demolition grace period for residential uses and a 5-year demolition grace period for non-residential uses, consistent with the draft by-law before the Board;
 - h. EDC By-law provision permitting conversion credits, consistent with historical practice;

3. That the Board approve an Education Development Charges By-Law as contained in Appendix 'A' of this report, based on policy considerations in Recommendation #2 above.