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L'OASBO est un organisme piloté par ses membres et engagé à bâtir le système d'éducation financé par la province de l'Ontario à l'aide d'une administration solide et efficace.

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RE: Education Development Charges and Notice by School Boards Prior to Acquiring Land Proposed Regulations

On August 23, 2019 proposal 19-EDU002 "Education Development Charges and Notice by School Boards Prior to Acquiring Land: Proposed Regulations" was posted for comment on the Regulatory Registry.

The proposed changes to the Ontario Regulation 20/98 (Education Development Charges - General) made under the Education Act relate to the calculation of Education Development Charges (EDCs) as well as other matters including alternative projects, restrictions on rate increases, notice provisions, calculations of existing capacity, exempted non-residential uses, accounting of holding students as well as notice to the Minister for approval to acquire or expropriate land.

The Ontario Association of School Business Officials (OASBO), together with the Council of Senior Business Officials (COSBO), the Ontario Association of Public School Boards (OPSBA), the Ontario Catholic School Trustees Association (OCSTA) and the Ontario Catholic School Business Officials Association (OCSBOA), have reviewed and respectfully submit the following comments for consideration by the Ministry of Education:

1. Rate Increase Restrictions

OASBO does not support the continued imposition of a restriction on EDC rate increases. There are a number of new tools which have been introduced that are intended to reduce Education Land Costs which may provide school boards and the land development industry with greater flexibility to address pupil accommodation needs.

Ongoing imposition of the rate increase restriction results in an artificially constrained charge which only defers the current cost of development to future generations of home buyers and will result in higher charges in the future.



In addition, these restrictions jeopardize the ability for school boards to collect funds, which may impact a board's ability to borrow funds, or may increase the cost of borrowing, contributing to an overall increase in net education land costs.

Analysis of only six EDC eligible boards indicates that due to the imposed caps, boards will collect \$93.3 million less than they are eligible to over the 15 year forecast term. Due to this shortfall, these six boards will have to borrow an additional \$231 million to ensure their ability to purchase school sites, which will be increasingly difficult as deficits continue to grow.

Without the ability to collect at the full eligibility calculated by a Background Study, we question what mechanism the Ministry will put in place to allow boards to purchase land when and where needed to address growth-related pupil accommodation needs. Moreover, as the cumulative shortfall in rate collections increases over the life of by-law, more clarification is needed on the mechanisms that will be introduced by the Ministry to offset the deficits.

The Bill 108 changes to the *Education Act* increased Ministry oversight over the EDC Background Study process and land purchases. The Minister's approval of the Background Study implies that there is knowledge of a board's needs and corresponding eligibility, therefore restricting collection means that despite demonstration of the need, boards may not be positioned to acquire land required to meet pupil accommodation obligations.

Recommendations:

- We request that if the Ministry retains rate increase restrictions, that a mechanism be added to the regulation to allow a Minister's exemption to increase the rate beyond the caps. Exemptions should be considered where a board is able to demonstrate circumstances which warrant relief from the cap.
- We also ask that the Ministry provide clarification of whether boards without a non-residential charge will be allowed to consider a future non-residential rate.

2. Notice of Public Meetings

There needs to be a comprehensive timeline identified with respect to the timing of discussions of Alternative Projects and Localized Education Development Agreements (LEDAs) as well as key milestones throughout the review process.

Notice of consideration of Alternative Projects 20-days prior to a public meeting, which typically occurs toward the latter half of a year-long review process, does not allow boards sufficient time to give appropriate consideration to alternatives, and draft Background Studies are usually already in the hands of Ministry staff by the time of the first public meeting. Further, proposals received late in the process may jeopardize a board's



ability to approve a new by-law before the lapsing date and by extension threaten the ability to continue to collect EDCs.

Introducing a notice of intent to renew a by-law together with notice of consideration of Alternative Projects and LEDAs at the outset of a process would allow boards the opportunity to consider options earlier in the review process. This earlier consultation can be based on boards' Long Term Accommodation Plans and Community Planning & Partnership Guideline work.

We expect that clarity will be provided by the Ministry if approval by the Minister is not granted, and how such an outcome will affect board approval timelines and by-law expiry.

Recommendations:

- That any future guidelines provide a detailed timeline for the review process to ensure sufficient time from the initiation of a review to replacement date of the by-law, and that any timelines specified by regulation ensure that the implications of amended timelines and additional obligations are fully considered.
- That given the increased complexity of the Background Studies and the potential for new by-law approvals to be delayed, that the Ministry consider introducing exemption powers that would allow the Minister to extend an in-effect by-law beyond its 5-year lifespan. This would avoid by-laws lapsing and boards not collecting charges, in the event of unforeseen circumstances having caused delay.

3. Existing School Space to be included in the calculation of EDCs

The timing of the Minister's approval needs to be clearly articulated in the regulation for boards to meet timelines associated with a by-law renewal. Submitting the rationale in the Background Study, at the end of the review process, is too late to make changes. Boards should have the ability to submit the rationale to support exemptions and expect a response from the Minister within a defined period of time, in order to avoid delay in recalculating capacities at the end of the review process.

Boards require clarity about where surplus pupil places can be used to accommodate growth, but also ensure that there is justification for where pupil places cannot be used to accommodate growth.

Clarification is also required with respect to the inclusion of the capacity of closed schools, where the Ministry has already removed this capacity from the board. At this time closed schools are not included in a board's capacity. Including closed schools may preclude a board from qualifying for EDCs, if based on the capacity of closed schools is to be considered as part of the eligibility trigger, notwithstanding that a board may have declared the site surplus and it is being used for alternate programs, or



regardless of the fact that new growth areas are far removed from areas of decline and surplus capacity.

Clarification is also required with respect to spaces leased or licensed to community partners and whether these spaces are to be considered in a board's capacity. An objective of the Ministry of Education's Community Planning and Partnership Guideline is to establish a process for boards to '*optimize the use of public assets*'. If required to include leased or licenced spaces as available capacity, boards may be negating the benefits of these partnerships.

Recommendations:

- Clarify where surplus pupil places can be used to accommodate growth, but also ensure that there is a rationale for where pupil places cannot be used to accommodate growth.
- Clarify the inclusion of the capacity of closed schools, where the Ministry has already removed this capacity from the board.
- Clarify the requirement where spaces leased or licensed to community partners and whether these spaces are to be considered in a board's capacity.

4. Changes to an Alternative Project

New Alternative Projects and LEDAs should not only form part of the Background Study review process, they should also be allowed to be considered through an amendment process. It is suggested that the consideration of Alternative Projects should be allowed at any time.

If an Alternative Project were endorsed by the Minister, and would result in a reduction in the eligible EDC charge, then the by-law could be amended to reflect the adjusted charge. This would ensure that for those projects that were not able to be fully costed and thoroughly vetted at the time of the Background Study are able to be brought forward to potentially reduce the charge.

If this flexibility is not afforded to boards, then Alternative Projects will be far less frequent and anticipated savings less attainable. Alternatively, boards would otherwise need to complete a new Background Study every time a savings opportunity presents itself, with no guarantee of success.

Recommendations:

- That new Alternative Projects and LEDAs should not only form part of the Background Study review process, they should also be allowed to be considered through an amendment process and allowed at any time.

5. Education Development Charge-Exempt Institutions

It is not clear from the consultation document when the additional exemptions may come into effect. Nor is it clear whether the intent is to



provide exemption to the list of users as non-residential exemptions or whether this may expand to include residential exemptions. Many of the listed institutions also develop residential units, as such without further detail it remains unclear whether there is an implied statutory residential exemption.

For example, retirement home units often include both cooking and washroom facilities within the unit and as such meet the definition of a “dwelling unit”. Accordingly, the units would be charged a residential EDC rate. Is it the Ministry’s intent to exempt these residential units from the residential EDC?

There is concern about the addition of Private Schools in the list of exempted institutional uses. Boards have the responsibility conveyed through the Community Planning and Partnership Guideline to consider partnerships with various institutional entities. However, there is an expressed restriction found in the Ministry’s guideline:

“Entities that provide competing education services such as tutoring services, JK-12 private schools or private colleges, and credit offering entities that are not government-funded, are not eligible partners.”

Accordingly, the exemption benefitting a competing educational service is inconsistent with the principle previously imposed on boards.

Recommendations:

- Clarify the timing of when additional exemptions will come into force.
- Clarify the exemption criteria in respect of residential and non-residential uses.
- Exclude private schools from the list of exempt institutional uses.

6. Holding Students

There is support for the expanded opportunity to capture pupils who are in temporary accommodation (i.e. portables) toward growth-related pupil place needs.

Timely provision of new pupil places to accommodate growth is critical to addressing these issues, but often is beyond the control of the Ministry and boards. Previous methodologies restricted this ability and placed boards at a disadvantage in meeting the accommodation needs of growing communities.

Recommendations:

- OASBO supports the expansion of criteria to include pupils in temporary accommodation in the calculation of growth-related needs of boards.



7. Notice to Acquire or Expropriate Site

Where the Minister is the approval authority for EDC Background Studies and therefore, approves the number of school sites required by a board, it remains unclear why additional authority is required to approve or refuse a land purchase. The approval of a Background Study implies that there is acceptance of a board's land needs, the associated costs and timing.

Given the potential of breach of contract related to agreements of purchase and sale already signed by boards, boards require the inclusion of transition provisions in regulation for any agreements signed before June 6, 2019, the date on which the revisions to section 195 came into effect.

A board may be required to enter into a binding agreement of purchase of sale with an extended closing date. The Ministry should recognize that the board will need to notify the Minister and the 60-day period will need to lapse before the board can sign the agreement. The regulation should permit this notification to occur even if it is well in advance of the anticipated closing date.

For greater clarity, providing a board with a notice only 60 days prior to closing, does not give it sufficient time to process the requirements previously agreed to in many purchase agreements.

Some boards have entered into, or will enter into agreements, which provide for the purchase price to be determined through the exchange of appraisals or other methods to determine the purchase price. When the board notifies the Minister that it wishes to enter into such an agreement or exercise an option in an agreement already signed, it may not know what the final price will be and will not be in a position to state what the maximum price could be. The same is true for sites acquired through expropriation. The Ministry's notification process must recognize this possible uncertainty as to purchase price and reflect the application of the *Expropriation Act*.

Recommendations:

- The regulation should include transition provisions for agreements executed prior to June 6, 2019.
- The regulation should permit the notification to the Minister prior to the anticipated closing date.
- Expand the 60 day closing period for a board's purchase agreements.
- The Ministry's notification process should be amended to recognize the uncertainty as to the final purchase price in various agreements and reflect the application of the *Expropriation Act*.



Summary:

Based on the foregoing, we respectfully request that OASBO's concerns and comments be considered in the drafting of modified regulation(s) and guidelines. OASBO, together with the other business and trustee associations, continue to welcome the opportunity to discuss these matters further on behalf of our EDC eligible and 72 member school boards. These organizations and members request an opportunity to review any further guidelines and draft regulations. Additional consultation would allow organizations and boards the opportunity to have an equal voice in these complex and significant changes to both the EDC guidelines and regulation(s) and site purchase procedures to ensure a workable outcome for both the Ministry and boards.

We appreciate the opportunity to provide this submission and are available at any time to begin the conversation: Virina Elgawly (Virina.Elgawly@wcdsb.ca), Chairperson and Jennifer Passy (Jennifer.Passy@ugdsb.on.ca), Planning Committee OASBO.

Yours truly,

Steve Shaw
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