

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

IN THE MATTER OF the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1

BETWEEN:

THE TORONTO DISTRICT SCHOOL BOARD

Applicant

and

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO

Respondent

APPLICATION UNDER section 2 of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1

**AFFIDAVIT OF CYNTHIA CLARKE
(SWORN FEBRUARY 14, 2018)**

I, Cynthia Clarke, of the City of Burlington, in the Regional Municipality of Halton, in the Province of Ontario, MAKE OATH AND SAY as follows:

Qualifications

1. I am Director, Quadrant Advisory Group Limited, and an economic consultant specializing in innovative strategic planning and fiscally prudent solutions in the

education, municipal and housing infrastructure sectors. I have 30 years of experience in this field.

2. I have been qualified to provide expert evidence before the Ontario Municipal Board in respect of Education Development Charge (“EDC”) by-laws for the Toronto Catholic District School Board; the joint EDC OMB hearing for the Simcoe County District School Board and the Simcoe Muskoka Catholic DSB; the joint EDC OMB hearing for the four co-terminous Ottawa school boards; and Hearings of Necessity regarding the Toronto Catholic District School Board.
3. I have been directly involved in assisting in the preparation and implementation of 16 of the 32 EDC by-laws currently in force throughout Ontario, as well as the majority of the EDC studies conducted since 1989 (approx. 100 studies). My experience in preparing background studies consists of undertaking all key components of a study including: demographic analyses, land needs assessment, determination of the quantum of the charge incorporating cash flow analyses, extensive public consultation, stakeholder negotiations, the development of methodological approaches and reporting requirements, and dealing with transitional by-law provisions.
4. I have provided advice to the Ministry of Education on EDCs and the capital funding portion of the Provincial funding model under the *Education Act*, including the development of policies, guidelines and reporting requirements.

5. Since 1999, I have been instrumental in the development of Long Term Plans for numerous school boards within the context of the *Education Act's* accountability framework. These Plans provide long-term (15-year) enrolment projections, an assessment of capital expenditure needs by sub-area, associated revenue sources, as well as recommendations with respect to financing and accommodation strategies to be employed by the board. Long term plans provide corroborative evidence of the need for growth-related school sites set out in EDC background studies. The consultation portion of these studies involves seeking public input on the proposed Plan, public consultation to deal with the rationalization of facility space, negotiations with various land-owners, and advocacy, when required, with the Ministry of Education to ensure that the board's long-term accommodation needs are met.

6. A copy of my curriculum vitae is attached and marked as Exhibit "A".

Scope of the Opinion

7. I have been engaged by the Applicant to provide opinion evidence on two issues:
 - i. Whether the Applicant has growth-related land acquisition needs as contemplated by Part IX, Division E of the *Education Act*, such that, absent the provisions of Section 10(2)(i) and (ii) of Ontario Regulation 20/98 under the *Education Act* ("O. Reg. 20/98"), the Applicant would be eligible to collect EDCs; and

- ii. The background, nature and scope of EDCs and of the operational impacts of O. Reg. 20/98 and, in particular, Section 10(2) thereof.
8. While the discussion below, in relation to the issue raised in paragraph 7(i) above, is akin to the analysis to be undertaken in an EDC Background Study (which is mandated by section 257.61 of the *Education Act* as a pre-condition to the passage of an EDC by-law), it is not intended to supplant the need for one by the TDSB, should it be granted the relief requested in this Application.
9. I recognize that, while I have been engaged by the Applicant to provide evidence in this proceeding, my duty is to:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.
10. I also recognize that the above-noted duties prevail over any obligation which I may have to the Applicant. Attached hereto and marked as Exhibit "B" is an executed Acknowledgement of Expert's Duty.

11. In my opinion, the TDSB has growth-related land acquisition needs as contemplated by Part IX, Division E of the *Education Act*, such that, absent the provisions of Section 10(2)(i) and (ii) of O. Reg. 20/98, the Applicant would be eligible to collect EDCs.
12. In my analysis, set out below, I have determined that there are 45 elementary schools that are projected to have enrolment in excess of capacity and have a current site size below the EDC benchmark stipulated in O. Reg. 20/98 of 1 acre per 100 pupils.
13. The growth-related education land needs derived by these 45 elementary schools is the potential to acquire in the order of 60 acres of additional land to serve enrolment growth within the City of Toronto.

EDC Framework

14. In 1989, the province enacted the *Development Charges Act, 1989*, providing the legislative authority for school boards and municipalities to adopt by-laws to collect development charges to fund growth-related infrastructure costs, infrastructure costs necessitated by increased residential development and associated increases in population, employment and the number of Ontario students requiring additional student accommodation. Specifically, the legislation afforded school boards the opportunity to fund growth-related land acquisition needs (including site servicing costs), along with the capital costs of school construction net of Provincial grant allocations.

15. Development charges, as a funding scheme, are based on the premise that “growth should pay for growth”.
16. In other words, buyers of new homes and new non-residential development (where applicable) should bear the fiscal responsibility of paying for a substantial portion of the infrastructure emplacement costs related to water, sewer, storm water management, roads, bridges, libraries, parks, vehicles and equipment, etc., as well as the schools needed to serve new residential communities; while general taxation would pay for the associated operating and capital renewal costs.
17. In 1998, the legislative authority to impose EDCs was ascribed to Part IX, Division E of the *Education Act* (and the *Development Charges Act, 1989*, was repealed). At the same time, the province introduced a new education funding model that removed the ability of school boards to generate their own capital funds through taxation.
18. While the *Development Charges Act, 1989*, provided for EDCs to fund growth-related capital costs for the construction of new schools, the EDC provisions in Part IX, Division E of the *Education Act* removed that ability. However, growth-related capital costs for the construction of new schools to serve enrolment growth were originally automatically funded through grants for new pupil places. Then, in 2006, the province revised the education capital funding model to rescind the automatic grant entitlement to school boards experiencing student enrolment in excess of capacity and needing to construct additional student accommodation. Now, school boards are required to submit capital priority business cases each year, in hopes that one or more proposed capital projects will

be funded by the province. In this regard, the Ministry of Education assesses and approves student accommodation needs not on a district-wide basis but on a sub-area basis where the area is made up of the attendance boundary of the school in question, with consideration of comparable schools within close proximity. In assessing and approving any capital project requests, the Ministry of Education recognizes that a school board has growth-related needs in certain areas of the jurisdiction of the board, regardless of whether there is excess pupil capacity elsewhere within the jurisdiction. For example, the Ministry recently approved capital funding to construct a new TDSB JK-8 facility on the existing Davisville school site, to address overcrowding within the local Yonge-Davisville community. This is consistent with the capital priority funding approved for the TCDSB to address sub-area enrolment growth through new schools (e.g. St. Edward on the Yonge St. corridor) and school additions.

19. With respect to EDC funds, more than \$1.6 billion in growth-related education land costs have been funded since the current legislation was enacted in 1998, with collections expected to exceed \$2.7 billion over the next decade. The Toronto Catholic District School Board has already collected more than \$221 million since the year 2000, and could recover an additional \$600 million, or more, over the next 15 years.

20. While currently EDC funds may only be used to cover “education land costs”, this can include a variety of expenditures to address growth-related student accommodation, some examples of which are as follows:
 - i. Acquiring land necessary to construct additional school capacity;

- ii. Site development costs, including upgrading site services to accommodate school additions required to address enrolment growth;
- iii. Installation of services (hydro, water, sewers, etc.) to property line and site grading & removal or augmentation of soil;
- iv. Acquiring an interest in land, including a strata interest (something that could be particularly useful in Toronto where there is limited land for new schools and land that is available is often cost prohibitive);
- v. Temporary relocation of students in a site redevelopment situation;
- vi. Acquiring surplus properties from co-terminous school boards;
- vii. The sale of density on EDC sites can also be used to fund other school capital, provided that a portion of the site is used to provide student accommodation, including growth-related student accommodation;
- viii. As part of site redevelopment strategies, dealing with replacement schools with building deficiencies and incorporating some element of growth-related student accommodation needs;
- ix. Servicing the construction of additional child care spaces funded by the Province;
- x. Real estate commission, appraisal reports, environmental reports, soils testing, traffic studies, SWM studies, preliminary site plan studies, legal costs, taxes (land transfer tax, etc.) and land surveys;
- xi. Interest on borrowing required to fund EDC-eligible costs;
- xii. Underground parking where the costs of the underground parking are less than the cost to acquire the equivalent surface parking due to high land values; and

- xiii. All costs associated with expropriation of lands where warranted by enrolment growth (e.g. walkway through adjacent lands, storm water run-off solutions, fencing between adjacent lands, lease-back for residents of acquired properties, snow clearing and summer grass cutting).
21. O. Reg. 20/98 also came into force in 1998 and, amongst other things, sets out the calculation methodology in a predictive manner (i.e. the calculation process is based on estimates) and prescriptive manner (i.e. the calculation steps are prescribed and must be followed in the order set out in the Regulation in order to determine the EDC rates).
22. This Regulation has not been reviewed by the province since it came into force, save and except for a review in 2001/02 resulting in some minor modifications to the Regulation and the creation of the *Education Development Charges Guidelines, Facilities Information & Analysis Unit, Business Services Branch, Ontario Ministry of Education, 2002* (the “EDC Guidelines”) providing further rules respecting EDC requirements, calculations and the consultation processes.
19. The salient provisions of the *Education Act* are as follows:

257.53 (1) Definitions – In this Division,

...

“education land cost” means education land cost within the meaning of subsection (2), (3) and (4);

“growth-related net education land cost” means the portion of the net education land cost reasonably attributable to the need for such net education land cost that is attributed to or will result from development in all or part of the areas of jurisdiction of a board;

...

“net education land cost” means the education land cost reduced by any capital grants and subsidies paid or that may be paid to the board in respect of such education land cost;

...

“pupil accommodation” means a building to accommodate pupils or an addition or alternation to a building that enable the building to accommodate an increased number if pupils.

(2) Education land costs – Subject to subsections (3) and (4), the following are education land costs for the purposes of this Division if they are incurred or proposed to be incurred by a board;

1. Costs to acquire land or an interest in land, including a leasehold interest, to be used by the board to provide pupil accommodation.

...

(3) Exclusions from education land costs – The following are not education land costs:

1. Costs of any building to be used to provide pupil accommodation

2. Costs that are prescribed in the regulations as costs that are not education land costs.

...

257.54(1) Education development charge by-law – If there is residential development in the area of jurisdiction of a board that would increase education land costs, the board may pass by-laws for the imposition of education development charges against land in its area of jurisdiction undergoing residential or non-residential development.

...

(4) Application of by-law – An education development charge by-law may apply to the entire area of jurisdiction of a board or only part of it.

...

(6) Conditions – The imposition of an education development charge by a board is subject to the prescribed conditions.

...

257.61(1) Education development charge background study – Before passing an education development change by-law, the board shall complete an education development charge background study.

(2) Same – The education development charge background study shall include,

(a) estimates of the anticipated amount, type and location or residential and of residential development

(b) the number of projected new pupil places and the number of new schools required to provide those new pupil places;

- (c) estimates of the education land cost the net education land cost and the growth-related new education land costs of the new schools required to provide the projected new pupil places; and,
- (d) such further information as may be prescribed.

257.62 By-law within one year after study – An education development charge by-law may be passed only within a period of 365 days following the completion of the education development charge background study.

257.101 (1) Regulations – The Lieutenant Governor in Council may make regulations that may have general or particular application in respect of a board,
(a) prescribing any matter that is referred to as prescribed in this Division.

The TDSB Has Growth-related Land Acquisition Needs

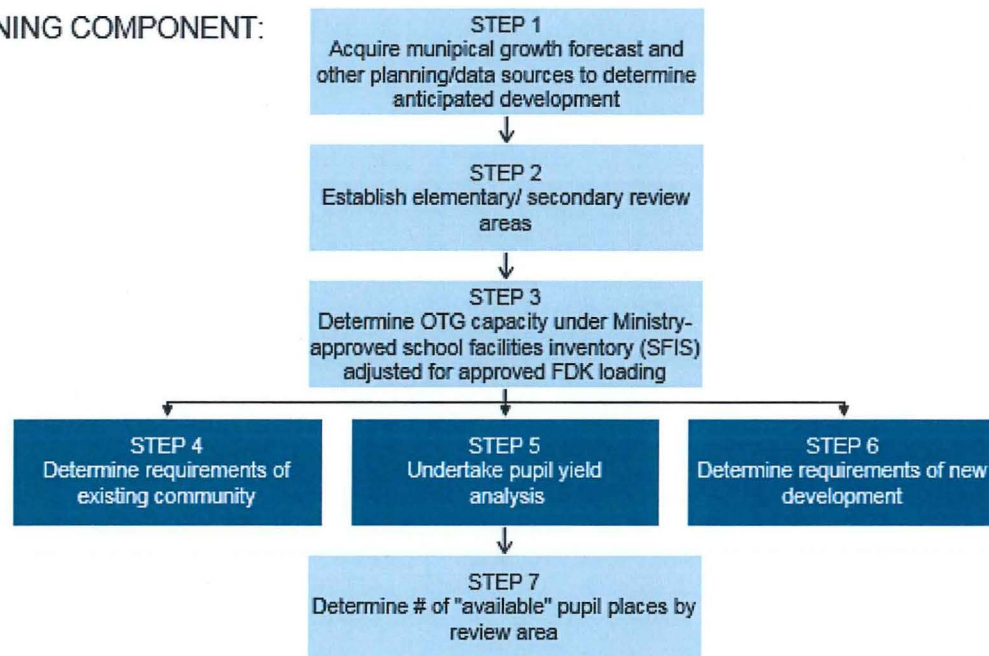
- 20. Section 257.54 of the *Education Act* set out the sole statutory criteria for adopting an EDC by-law, in stating: “if there is residential development in the area of jurisdiction of a board that would increase education land costs, the board may pass by-laws for the imposition of education development charges against the land in the area of jurisdiction undergoing residential or non-residential development”.
- 21. In my opinion, and as outlined in greater detail below, the TDSB has growth-related land acquisition needs as contemplated by Part IX, Division E of the *Education Act*. The methodology I have undertaken is in accord with the steps outlined in the *Education Act*; Section 7 of O. Reg. 20/98; and the EDC Guidelines and is consistent with my usual practice which has been accepted by Ministry of Education in all matters in which I have been involved.

22. The steps in the analysis, as outlined in section 7 of O. Reg. 20/98 and the EDC Guidelines, for determining EDC eligibility are:

- (i) Step 1: Determine anticipated development;
- (ii) Step 2: Establish review areas (i.e. a group of elementary school catchment areas making up one or more secondary school catchment areas);
- (iii) Step 3: Determine permanent student capacity for each school;
- (iv) Step 4,5&6: Determine how many new students will be generated by residential development; and
- (v) Step 7: Based on the above steps, determine if there is a need for additional capacity to accommodate new students generated by new residential development.

23. The following is a schematic diagram showing the steps in the analysis:

PLANNING COMPONENT:



24. My analysis with respect to each of these steps is discussed below, with the results set out in the chart in Table 3 (at paragraph 63 below).

(i) Step 1: Determine Anticipated Development

25. In ascertaining the eligibility for EDCs, a school board is firstly required to determine the number of new units for each of the 15 years immediately following the day the board intends to have a new EDC by-law come into force.

26. The Ministry of Finance Spring 2017 population projections for the City of Toronto (as found in the *Ministry of Finance Ontario Population Projections Update Spring 2017, Based on 2011 Census for the period 2016-2041, City of Toronto, reference scenario*) indicate a school-age population increase of persons 5 to 19 years to be almost 138,000 persons between 2016 and 2041; and more than 116,000 persons between 2021 and 2041 as shown below:

Table 1
Ministry of Finance Projected School Age Population Change - City of Toronto

	Ministry of Finance Projections ¹				Difference	Difference
	2016	2021	2031	2041	2016-2041	2021-2041
Elementary (using 5-14 years population cohort)	258,333	280,165	331,143	349,798	91,465	69,633
Secondary (using 15-19 years population cohort)	153,276	152,965	173,017	199,753	46,477	46,788
TOTALS	411,609	433,130	504,160	549,551	137,942	116,421
Places to Grow Occupied Households ²		1,162,060	1,261,920	1,341,190		179,130

Sources:

1. Ontario Population Projections Update Spring 2017 Based on 2011 Census, 2016-2041, Ministry of Finance
2. GGH Growth forecasts to 2041, Technical report (November 2012) Addendum, Hemson Consulting Inc., June 2013

Copies of the documents referenced in this paragraph are attached and marked as Exhibit “C”.

27. The GGH Growth Forecasts to 2041 indicate the potential for the construction and occupancy of an additional 179,000 households between the period 2021 and 2041. In fact, the City of Toronto experienced a spike in housing completions in excess of 30,000 units during 2015 (per: *City of Toronto Development Charges Study, Appendix B, prepared by Hemson Consulting Ltd., January 2018*, a copy of which is attached and marked as Exhibit “D”).
28. There are new communities being developed in Toronto that do not have a local school and there are more established communities that are experiencing enrolment growth and yet are historically underserved by public education facilities – the Yonge Street corridor being a prime example.
29. I undertook a detailed housing forecast by density type and by school catchment for each TDSB elementary school.
30. The City-wide housing forecast derived for this purpose is consistent with the City of Toronto’s DC Study released in January 2018. The allocation of individual residential development applications to TDSB elementary school catchment areas is derived from the City of Toronto’s development pipeline (per: *City of Toronto, City Planning Division: Land Use Information System II. The citywide development pipeline is summarized in the*

City’s annual research bulletins – *How Does the City Grow?*, a copy of which is attached and marked as Exhibit “E”).

31. The City of Toronto made available a database of all 367,770 residential units submitted for planning review and approval as of June 30, 2017. Of this total, 87,314 residential units have already been constructed and at various stages of occupancy. Additional information respecting the number of bedrooms was provided by the City where the information had been provided as part of the development application submission. The remaining 280,456 residential units at various stages in the development approvals process provides sufficient housing development supply to meet the City-wide forecast of occupied dwellings units from mid-2018 to mid-2033 as shown below:

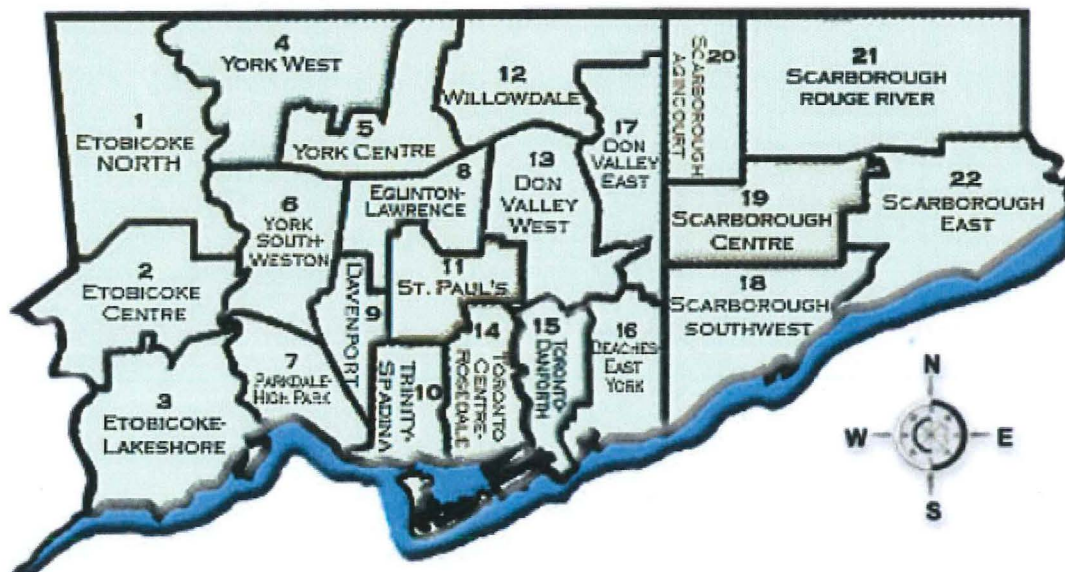
TOTAL CITY OF TORONTO	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	15-year
	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	Totals
Single & Semi-detached	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	3,750
Multiples	500	500	500	500	500	500	500	500	500	500	500	500	500	500	500	7,500
Apartments	17,550	17,255	15,450	13,700	13,510	13,455	13,090	13,090	13,090	13,090	12,745	12,400	12,400	11,589	10,777	203,191
Seniors & Student Apartments																
Totals	18,300	18,005	16,200	14,450	14,260	14,205	13,840	13,840	13,840	13,840	13,495	13,150	13,150	12,339	11,527	214,441

32. Therefore, in accord with Section 7(1) of O. Reg. 20/98, the determination of TDSB growth-related student accommodation needs is based on the 15-year forecast of occupied dwelling units, at an average of 14, 296 per annum, as outlined in Table 2 above.

33. Of the total 214,441 new occupied dwellings, almost 95% or 203,191 are expected to be high density apartment units with the remaining 11,250 units expected to be ground-related housing development.

(ii) Step 2: Establish Review Areas

34. For all school boards, it is vitally important to assess long term student accommodation needs on a sub-area basis, not on a jurisdiction-wide basis. For this reason, all EDC Background Studies determine growth-related needs on a “review area basis” which may generally be described as a group of elementary school catchment areas making up one or more secondary catchment areas.
35. I undertook a sub-area examination of elementary school growth-related needs based on the twenty-two (22) TDSB Wards as follows:



36. This review area approach to determining growth-related needs is consistent with the approach taken for every EDC study undertaken since 1998.

37. The purpose of the Review Area approach is to assess the number of pupil places that would be “available and accessible” to new housing development within the area in which the development is occurring. The Review Area concept is based on the premise that pupils should, in the longer term, be accommodated in permanent facilities within their resident area, particularly elementary school children. As such, this step allows for the repatriation of any students that are temporarily being held outside of their resident area. In the case of the TDSB analysis, TDSB Wards are used as a sub-area disaggregation of the TDSB’s City-wide facilities inventory. Within each TDSB Ward, or review area, each school was examined to assess the future impact on student enrolment due to projected new housing development.

(iii) Step 3: Permanent Student Capacity for Each School

38. The permanent capacity of each school was provided by the TDSB as part of the determination of growth-related student accommodation needs and, in the normal course, the Minister of Education’s approval process includes confirmation of the Board-reported school capacity of each school against the Ministry’s School Facilities Information System.

39. As part of determining the potential for education development charges, a school board can, under the provisions of Section 7(3) of O. Reg. 20/98, exclude any permanent capacity that, in the opinion of the board, is not available to meet the needs of new pupils generated by new residential development. For example, a school board may exclude any leased space; any Bill 30 spaces (which are spaces legislatively provided to a co-terminous school board under a perpetual lease); or any spaces allocated to non-resident pupils of the board.
40. This step, therefore, recognizes that not all surplus classroom space is available to meet growth-related needs.
41. Nonetheless, to be conservative in my approach, the analysis set out in this Affidavit to determine the potential for EDCs for the TDSB includes all permanent capacity. Making further adjustments to the capacity available to accommodate new pupils is a refinement that is normally considered as part of completing a detailed EDC submission for Ministry of Education review.

(IV) Step 4, 5&6: Determine New Students Generated by Residential Development

42. The determination of total projected student enrolment over the 15-year EDC forecast period is made up of enrolment derived from the “Existing Community” plus enrolment derived from the “Requirements of New Development”.

43. The “Existing Community” enrolment projections are based on students currently enrolled in TDSB schools and graduating from grade-to-grade over the forecast period.
44. The “Requirements of New Development” enrolment projections are based on pupils generated by new housing development over the forecast period.
45. In the interests of time, I did not prepare 15-year Existing Community enrolment projections for each elementary school; rather, I determined the facility utilization for each school as a proxy for assessing the potential for growth-related needs.
46. In the interests of time, I also did not complete a detailed analysis of growth-related student accommodation needs for secondary schools; instead focusing on the elementary schools. However, I note that 35 of the 114 secondary schools within the jurisdiction of the TDSB approached or exceeded 100% facility utilization based on 2016 Board-reported enrolments for each school. The completion of a detailed EDC Background study, in due course, will determine specific long-term accommodation needs for TDSB secondary schools.
47. The permanent capacity (called On-the-Ground, or OTG capacity) of each school is based on a Province-wide formula established by the Ministry of Education. Facility utilization is an industry-standard metric based on:

$$\frac{\text{Student Enrolment in any given school year}}{\text{Permanent Capacity of the School}}$$

48. The analysis to determine TDSB growth-related needs therefore focused on the elementary schools for which utilization approached or exceeded 100% for the 2016/17 school year.

49. I note that, the determination of long term need assumes that the school board will retain its share of the school-age population over time (i.e. apportionment will remain consistent with historical levels), unless there are factors to suggest otherwise. Further, it assumes the Existing Community enrolments of schools impacted by new housing development will not suddenly experience sharp declines in enrolment due to changes in attendance boundaries, program delivery or parent/student choice. The EDC framework requires that all calculation assumptions be revisited at least once every five years to ensure that any changes in enrolment, demographic trends or program decisions are taken into consideration in establishing the EDC rates.

50. The next step in determining 15-year growth-related needs is to determine, for each of the residential developments comprising the additional 214,441 new units, how many children will occupy the new units, and of these, how many can be expected to enrol in TDSB schools. The “Requirements of New Development” enrolment projections are based on pupils generated by new housing development over the forecast period.

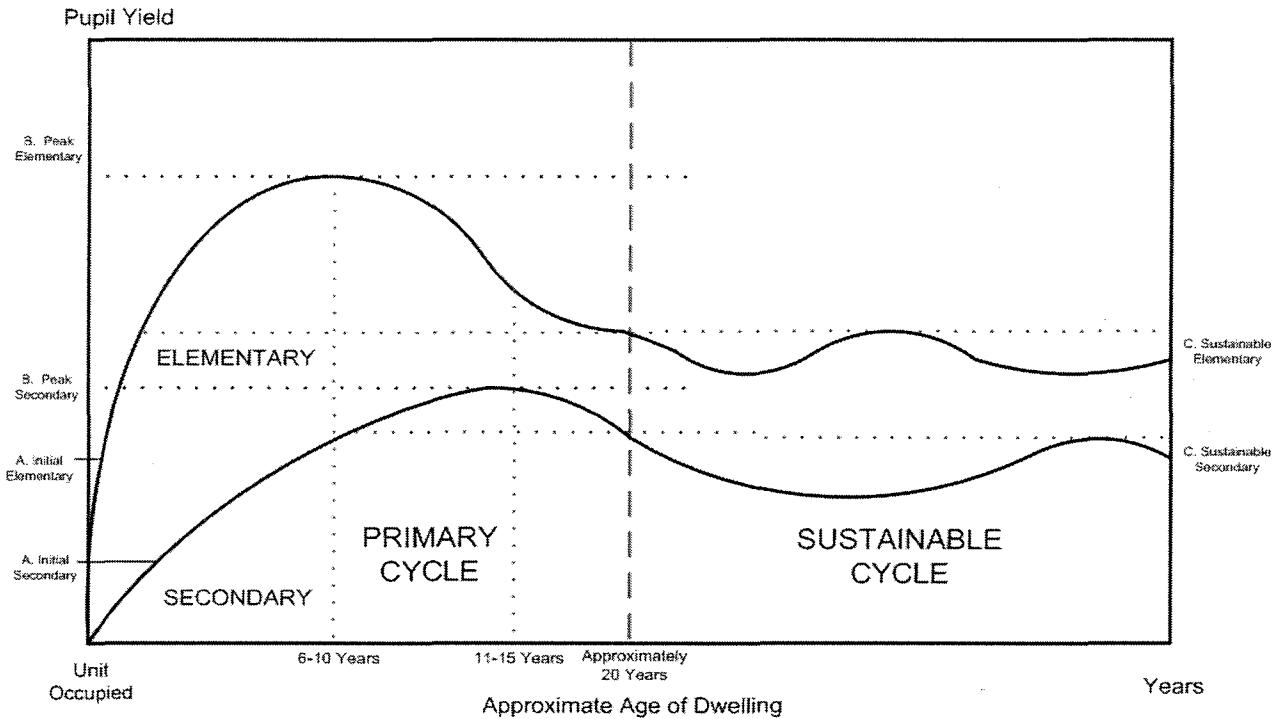
51. The “Requirements of New Development”, or “ROND” as it is known, is based on the following formula:

The blended/weighted pupil yield x the number of forecasted new occupied dwellings

52. The blended portion of the pupil yield is reflective of the density mix: that is - the mix of low, medium and high-density units attributable to each school catchment area; while the weighted portion of the yield is reflective of the phasing of development over the forecast period.

53. Pupil yields have a cycle and the phases of the pupil yield cycle are typically categorized as 'initial', 'peak' and 'sustainable'. The 'initial' phase of a pupil yield cycle is reflective of the initial occupancy of a newly constructed unit; the 'peak' portion of the yield cycle is reflective of the highest occupancy of the unit (i.e. when the family unit may encompass more than 1 child) and the 'sustainable' portion of the cycle is reflective of the school-age children in the household moving through the school system. Secondary pupil yields lag behind elementary pupil yields as children age in the household as shown above in this example of pupil yield cycles for a single detached dwelling. High density pupil yield cycles are much flatter and in some cases, townhouse developments will produce more school-age children per household than singles and semis.

Figure 3
Conceptual Representation of the Pupil Yield Cycle
for A New Single Detached Dwelling



54. I determined pupil yield cycles by density type by taking actual student data and comparing this information to the Toronto Municipal Property Assessment (“MPAC”) data. A spatial matching of student data to housing data identifies the school attended by the student, the grade enrolled and the type of dwelling unit that the student resides in.
55. Elementary pupil yields were recently derived for the TCDSB EDC Background Study using the approach described above. To transcribe the TCDSB pupil yields into equivalent TDSB pupil yields, apportionment shares for each Review Area (based on the TDSB portion of the total 2016/17 elementary enrolment for both Boards) were applied to the TCDSB pupil yields (i.e. the TCDSB pupil yields were augmented to reflect the higher share of the student population captured by the TDSB).

56. The pupil yields, by density type, were applied to each residential development application to determine the 15-year Requirements of New Development, or ROND. The ROND was added to the surplus or deficit of pupil places in each school, and as derived by the facility utilization analysis for the 2016/17 school year.

(v) ***Step 7 - Determine Additional Capacity to Accommodate New Students***

57. Based on the analysis above, which is set out in the following chart, there is a need for the TDSB to provide addition student accommodation within the City of Toronto:

58. Of the 473 elementary schools currently operated by the TDSB and providing student instruction, 246 are situated in locations that are affected by the proposed new housing development. That is, the address of the proposed new housing development is situated within the catchment area of the elementary school. Of the 246 affected schools, 154 of them have permanent capacity in excess of projected enrolment in Year 15 and are therefore not expected to generate growth-related student accommodation needs.

59. Of the remaining 92 elementary schools, 47 are expected to experience enrolment in excess of permanent capacity by Year 15; however, the existing site size exceeds the regulatory maximum of approximately 1 acre per 100 pupils (per: O. Reg. 20/98 section 2 (5)).

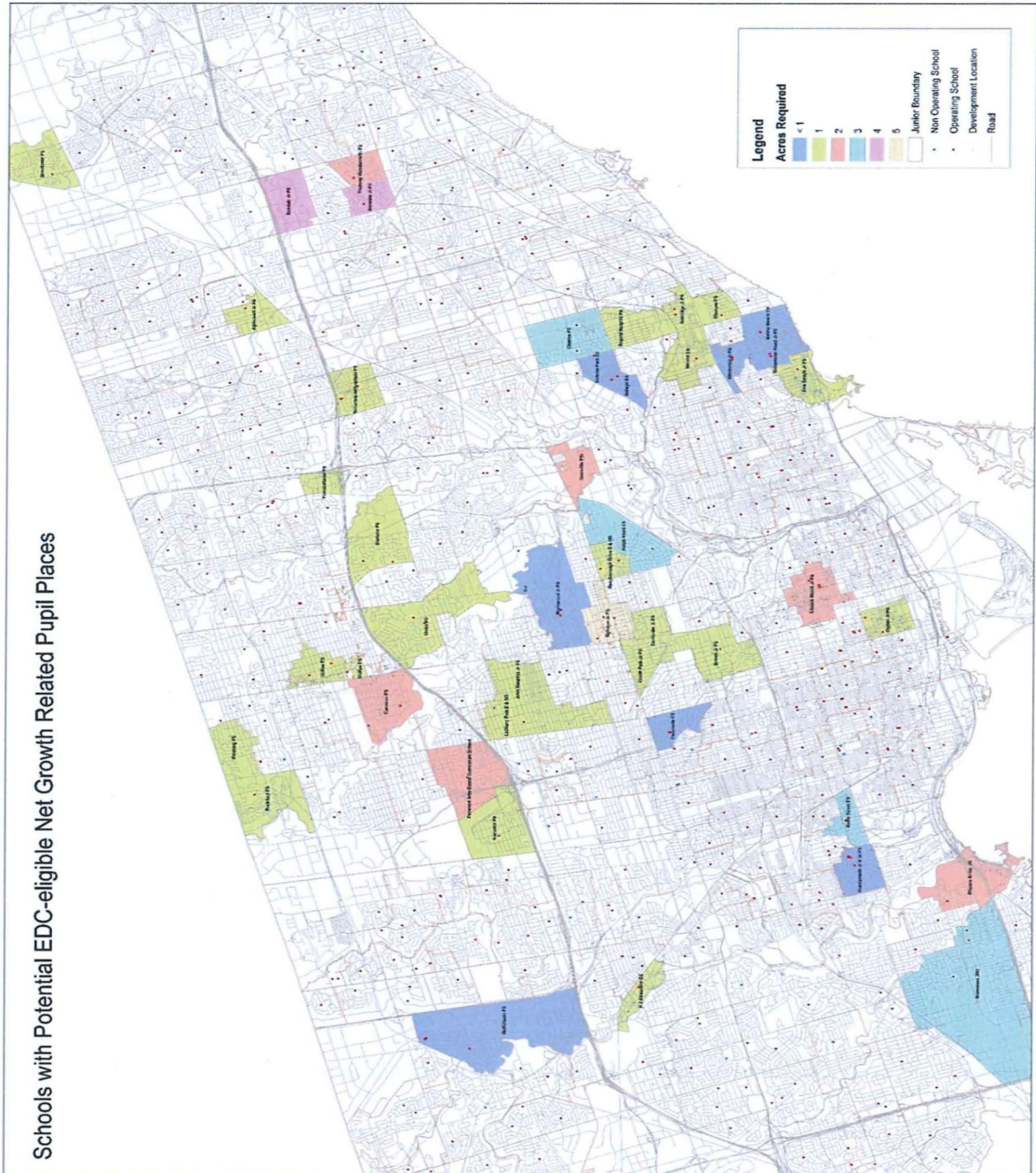
60. The final group of 45 elementary schools are projected to have enrolment in excess of capacity and have a current site size below the EDC benchmark stipulated in the Regulation. These are the schools in the chart.
61. These schools account for 38% of the 15-year residential housing forecast, or 81,902 new occupied units.
62. The growth-related education land needs derived by this group of elementary schools is the potential to acquire in the order of 60 acres of additional land to serve enrolment growth within the City of Toronto.
63. The foregoing analysis is set out in the chart at Table 3 on the next page.

TABLE 3
TORONTO DISTRICT SCHOOL BOARD
 Summary List of Potential EDC-eligible Net Growth-related Pupil Places

	Grade Structure	Name of School	Mid-2018 to mid-2033 Housing Forecast	OTG Capacity	2016 FTE Enrolment	2016 Facility Utilization	2016 Pupil Place Shortfall	Existing Site Size (acres)	Ward	'Draft' Year 15 ROND	'Draft' 15-yr NGRPP	Yr 15 Projected Enrolment	Projected Net Education Land Needs (acres)
1	JK 05	Etienne Brule JS	3,670	205	179	87%	-26	1.61	3	181	155	334	2.0
2	JK 05	Norseman JMS	1,783	654	747	114%	93	6.13	3	170	263	1010	3.0
3	JK 08	Gulfstream PS	30	541	575	106%	34	5.31	4	11	45	620	0.5
4	JK 05	Ancaster PS	236	148	123	83%	-25	2.99	5	61	36	159	1.0
5	JK 05	Faywood Arts-Based Curriculum School	2,221	440	465	106%	25	6	5	152	177	642	2.0
6	JK 06	Rockford PS	1,091	709	672	95%	-37	6.08	5	60	23	695	1.0
7	JK 05	H J Alexander CS	396	579	589	102%	10	3.14	6	46	56	645	1.0
8	JK 06	Keele Street PS	3,773	533	491	92%	-42	3.19	7	325	283	774	3.0
9	JK 06	Runnymede Jr & Sr PS	191	1011	1003	99%	-8	4.45	7	16	8	1011	0.1
10	JK 06	John Wanless Jr PS	478	755	721	95%	-34	2.84	8	64	30	751	1.0
11	JK 05	Ledbury Park E & MS	749	554	509	92%	-45	4.99	8	58	13	522	1.0
12	JK 06	Ogden Jr PS	9,342	242	201	83%	-41	1.78	10	101	60	261	1.0
13	JK 06	Brown Jr PS	1,559	601	615	102%	14	2.67	11	55	69	684	1.0
14	JK 06	Cedarvale CS	498	383	402	105%	19	4.03	11	17	36	438	0.4
15	JK 05	Davisville Jr PS	1,441	469	561	120%	92	3.81	11	49	141	702	1.0
16	JK 05	Eglinton Jr PS	14,068	507	567	112%	60	1.61	11	485	545	1112	5.0
17	JK 05	Oriole Park Jr PS	632	242	307	127%	65	3.14	11	22	87	394	1.0
18	JK 05	Cameron PS	2,586	326	325	100%	-1	4.1	12	151	150	475	2.0
19	SK 08	Lester B Pearson ES	42	429	519	121%	90	4.6	12	9	99	618	1.0
20	JK 05	McKee PS	1,135	711	767	108%	56	3.78	12	68	124	891	1.0
21	JK 06	Pleasant PS	152	418	425	102%	7	3.98	12	56	63	488	1.0
22	JK 06	Bessborough Drive E & MS	27	436	505	116%	69	3.6	13	17	86	591	1.0
23	JK 06	Blythwood Jr PS	203	369	398	108%	29	5.31	13	17	46	444	0.5
24	JK 06	Dunlace PS	192	387	446	115%	59	5.34	13	11	70	516	1.0
25	JK 06	Grenoble PS	656	706	904	128%	198	4.5	13	51	249	1153	2.0
26	JK 06	Owen PS	102	559	631	113%	72	4.99	13	36	108	739	1.0
27	JK 06	Rolph Road ES	2,829	317	390	123%	73	4.6	13	241	314	704	3.0
28	JK 06	Church Street Jr PS	16,278	421	437	104%	16	1.95	14	177	193	630	2.0
29	JK 06	Balmy Beach CS	144	398	409	103%	11	2.27	16	25	36	445	0.4
30	JK 06	Kew Beach Jr PS	89	412	523	127%	111	3.21	16	10	121	644	1.0
31	JK 06	Kimberley Jr PS	144	245	271	111%	26	2.94	16	15	41	312	0.4
32	JK 05	Secord ES	1,195	591	635	107%	44	4.66	16	98	142	777	1.0
33	JK 05	Selwyn ES	20	254	245	96%	-9	1.5	16	12	3	248	0.0
34	JK 05	Victoria Park ES	142	143	157	110%	14	2.21	16	12	26	183	0.3
35	JK 06	Williamson Road Jr PS	139	553	568	103%	15	3	16	22	37	605	0.4
36	JK 05	Forest Manor PS	1,970	717	736	103%	19	8.01	17	108	127	863	1.0
37	JK 06	Blantyre PS	2,251	323	291	90%	-32	3.9	18	128	96	387	1.0
38	JK 06	Clairlea PS	3,269	573	592	103%	19	5.29	18	278	297	889	3.0
39	JK 04	Oakridge Jr PS	228	703	664	94%	-39	3.58	18	74	35	699	1.0
40	JK 07	Regent Heights PS	12	484	544	112%	60	4.55	18	8	68	612	1.0
41	JK 06	Bendale Jr PS	3,153	376	403	107%	27	6	19	378	405	808	4.0
42	JK 06	Tredway Woodsworth PS	1,515	883	744	84%	-139	7.98	19	181	42	786	2.0
43	JK 08	Terraview-Willowfield PS	1,191	309	298	96%	-11	4.45	20	143	132	430	1.0
44	JK 06	Agincourt Jr PS	35	150	222	148%	72	2.79	21	5	77	299	1.0
45	JK 06	Brookside PS	45	743	773	104%	30	6.03	21	22	52	825	1.0
		TOTALS	81,902	21,509	22,549	105%	1,040	183		4,223	5,263	27,812	59.8

Notes: NGRPP is Net Growth-related Pupil Places

64. The following map highlights the TDSB school catchment areas where additional land would be required as a result of growth-related student accommodation needs:



65. Notwithstanding the foregoing, the TDSB is ineligible to collect EDCs by operation of Section 10(2)(i) and (ii) of O. Reg. 20/98. Section 10 of O. Reg. 20/98 provides as follows:

CONDITIONS OF PASSAGE OF BY-LAW

10. The following conditions are prescribed, for the purposes of subsection 257.54 (6) of the Act, as conditions that must be satisfied in order for a board to pass an education development charge by-law:

1. The Minister has approved,
 - i. The board's estimates under paragraph 3 of section 7, for each of the years required under that paragraph, of the total number of new elementary school pupils and the total number of new secondary school pupils, without the adjustments set out in that paragraph being made, and
 - ii. The board's estimates of the number of elementary school sites and the number of secondary school sites used by the board to determine the net education land cost under paragraph 4 of section 7.
2. At least one of the following conditions:
 - i. The estimated average number of elementary school pupils of the board over the five years immediately following the day the board intends to have the by-law come into force exceeds the total capacity of the board to accommodate elementary school pupils throughout its jurisdiction on the day the by-law is passed.
 - ii. The estimated average number of secondary school pupils of the board over the five years immediately following the day the board intends to have the by-law come into force exceeds the total capacity of the board to accommodate secondary school pupils throughout its jurisdiction on the day the by-law is passed.
 - iii. At the time of expiry of the board's last education development charge by-law that applies to all or part of the area in which the charges would be imposed, the balance in the education development charge account is less than the amount required to pay outstanding commitments to meet growth-related net education land costs, as calculated for the purposes of determining the education development charges imposed under that by-law.

3. The board has given a copy of the education development charge background study relating to the by-law to the Minister and each board having jurisdiction within the area to which the by-law would apply.

66. According to TDSB reported 2016 enrolment, there are 34,582 surplus elementary and 21,302 surplus secondary pupil places. The board's current enrolment trends dictate that, even projecting growth out for a five period, the TDSB does not satisfy the provisions of section 10(2)(i) or (ii).
67. There are today, twenty-seven school boards in Ontario that are eligible to impose EDCs. It is increasingly the case that these boards can only requalify under Section 10(2)(iii) of O. Reg. 20/98 on the basis of having a deficit in their EDC accounts. That is, they would not qualify under Section 10(2)(i) and (ii). To continue to qualify to collect EDCs to fund growth-related development needs, therefore, these school boards must manage the timing of collections and expenditures in such a manner as to create a deficit in their EDC accounts on the date that the current by-law expires. Typically, this means acquiring land several years ahead of the need to actually construct a school. This is at odds with the normalized school planning process, whereby school sites are purchased within 1 to 2 years of the opening of the new school.
68. In the result, school boards that have excess capacity on a jurisdiction-wide basis can still collect EDCs by creating a deficit in their EDC account while other boards, like the TDSB, that also have sub-area accommodation pressures, are shut out.

69. In Toronto, residential development continues to generate the need for local additional student accommodation. Moreover, existing surplus school capacity is most often not in the right location to serve increased student enrolment. This situation is equally true for the TDSB as it has been, and will continue to be, for the Toronto Catholic DSB. Yet, the Catholic board is collecting EDCs.
70. Section 10(2)(i) and (ii) of O. Reg. 20/98 are anomalies. Throughout the EDC framework, and the overall provincial funding model, the need to address local accommodation pressures is unequivocally recognized.
71. Within the EDC framework, for example, a school board is entitled to remove any capacity that, in the opinion of the board, is not available to be used to accommodate growth-related pupils. Within the provincial funding model, for example, capital priority funding is assessed and delivered based on school and sub-area need.
72. The operational impact of Section 10(2)(i) and (ii) of O. Reg. 20/98 for the TDSB, and other boards that are impacted by it, is that, contrary to the policy basis for EDCs, growth does not pay for growth.
73. Indeed, based on my experience, it appears to me that the operational impact of these sections directly undermines that purpose. In Toronto not only must the existing tax base shoulder the additional burden of growth - but the TDSB is not able to adequately plan for and address the accommodation pressures occasioned by that growth.

74. Based on my experience, and based on what is set out above, Section 10(2)(i) and (ii) bear no rational connection with the objective of ensuring that growth pays for growth. I also note the following:

- a. Given the moratorium on school closures imposed by the province in June, 2017 (per: *Ministry of Education B Memorandum 2017: B09, Plan to Strengthen Rural and Northern Education, June 28, 2017*, a copy of which is attached and marked as Exhibit “F”) accommodation needs caused by new development cannot be met by using school closure as a means of bringing a school board into compliance with Section 10 of O. Reg. 20/98. Since 2003, there has been a history of on-again, off-again school closure moratoriums.
- b. Even absent a moratorium, closing a school is a cumbersome and lengthy process with extensive public consultation and, in any event, closing a school in the east end of Toronto does nothing to address accommodation pressure at a school in the west end of the City.
- c. On September 5, 2017, the Ministry of Education announced investment into new and expanded well-being programs for students across the province (per: *Ministry of Education SB Memorandum 2017: SB31, Centralized Framework Pilot for Active School Travel, October 12, 2017*, a copy of which is attached hereto and marked as Exhibit “G”). One of the initiatives includes active transportation to create more physical activity opportunities for students and encourage more

walking and wheeling to and from school to alleviate vehicle congestion and improve student safety. This initiative supports the municipal planning policies around active transportation and “walkability to schools”. Continually busing students out of their resident area, over the lifespan of a school, is not a cost-effective approach to accommodating students. Again, this is recognized in the EDC calculation in assessing growth-related student needs on a sub-area basis.

75. In the absence of Section 10(2)(i) and (ii), once EDC eligibility is established and the by-law adopted, the TDSB would then be able to co-mingle long term land acquisition needs with long term student accommodation strategies in furtherance of the Board’s statutory mandate under Section 170 of the *Education Act* to provide instruction and adequate accommodation to all pupils who have a right to attend a TDSB school. This exercise of merging land acquisition opportunities with accommodation strategies would be conducted by the TDSB as part of preparing an EDC Background study required as part of an EDC by-law adoption process.


76. The determination of long term need assumes that the school board will retain its share of the school-age population over time (i.e. apportionment will remain consistent with historical levels), unless there are factors to suggest otherwise. Further, it assumes the Existing Community enrolments of schools impacted by new housing development will not suddenly experience sharp declines in enrolment due to changes in attendance boundaries, program delivery or parent/student choice. The EDC framework requires that all calculation assumptions be revisited at least once every five years to ensure that

any changes in enrolment or demographic trends are taken into consideration in establishing the EDC rates.

77. Long term land acquisition strategies are inextricably linked to long term student accommodation strategies. As such, a key component of the consultation process involving development community stakeholders is to demonstrate how the two strategies work together.

78. In the result, there are checks and balances within the EDC framework that help ensure an appropriate EDC funding scheme - which is a critical piece of the puzzle around long term land acquisition and long term student accommodation strategies, all in furtherance of providing instruction and adequate accommodation to students in the City of Toronto.

SWORN BEFORE ME at the City)
of Toronto, in the Province of)
Ontario, this 14th day of)
February, 2018.)
)
)



Cynthia Clarke



A Commissioner for taking affidavits, etc.
PATRICK J. COTTER.

Court File No.

THE TORONTO DISTRICT SCHOOL BOARD - and - HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
Proceeding commenced in Toronto

AFFIDAVIT

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