



The Corporation of the Town of Milton

Report To: Council

From: Glen Cowan, Chief Financial Officer / Treasurer

Date: January 26, 2026

Report No: ES-003-26

Subject: Development Charge Hearing - 110 Heslop Road

Recommendation: That following consideration of the written and verbal submissions made by the owner and the board (or representatives thereof), Council either dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint, in accordance with the *Education Act, R.S.O. 1990, c. E.2.*

EXECUTIVE SUMMARY

- The owner of 110 Heslop Road would like to proceed with the construction of a additional dwelling unit (ADU) above a detached garage and in doing so, has been advised that Education Development Charges (DCs) in the amount of \$11,385.43 will be payable.
- In order to obtain confirmation of any potential costs in advance of proceeding further with the proposed construction of the ADU, the owner has initiated the Education DC complaint process in accordance with the Education Act, R.S.O. 1990, c. E.2. (Education Act)
- The parties to the DC hearing are the owner and the school boards. Written submissions from each are provided as attachments to this report, and each party will be provided the opportunity to address Council during the hearing.
- After consideration of the submissions, Council can choose to either dismiss the complaint, or rectify any incorrect determination or error. Draft resolutions for each have been provided to Council within the body of this report, and would need to be approved by Council in order to be enacted.

REPORT

Background

Section 257.85 of the Education Act outlines the complaint process in relation to Education DCs, including the local municipal Council's role.

Under the Education Act, an owner, the owner's agent or a board may complain to the council of the municipality to which an education DC is payable that:

- a) The amount of the education DC was incorrectly determined;
- b) A credit is or is not available to be used against the education DC, or that the amount of a credit was incorrectly determined; or
- c) There was an error in the application of the education DC by-law.

A complaint may not be made later than 90 days after the day the education DC is payable. The complaint must be in writing to the municipal clerk. The municipal Council is required to hold a hearing within 60 days of receipt of the complaint, and is required to allow the owner and the board ("the parties") to make representation at the hearing. After hearing the evidence and submissions of the parties, Council may dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint.

Following Council's decision, there is a 40 day appeal period. The Ontario Land Tribunal would hear such an appeal if it were filed with the municipal clerk by the prescribed time period.

On December 8, 2025, the Town's clerk received notice of a formal complaint pursuant to the Education Act in relation to 110 Heslop Road in Milton. The submission was prepared by Stephanie A. Fleming, Barrister & Solicitor, on behalf of Ali Moayer, the owner of the property.

On December 17, 2025, the Town's clerk provided notice of a hearing for the DC complaint to the parties, with a scheduled date of January 26, 2026.

Discussion

A copy of the DC complaint that was submitted to the Town is provided in its entirety as Attachment 1 to this report. The owner believes that there has been an error in the application of the Education DC, and as a result the charge has been incorrectly determined.

Discussion

The owner is seeking to construct an ADU above the detached garage on the property. Through the owner's discussions with representatives for both the Halton District School Board (HDSB) and the Halton Catholic District School Board (HCDSB), the owner has been advised that Education DCs of \$11,385.43 will be payable should the owner proceed with a building permit for the ADU.

The HDSB and HCDSB have provided their submission regarding the complaint, a full copy of which is provided as Attachment 2 to this report.

As both submissions refer to certain references and definitions from the Education DC by-laws as well as the Education Act and related regulations, Attachments 3 and 4 have been prepared by Town staff to provide Council several of those key references on a consolidated basis.

Following consideration of the written submissions and any verbal submissions that the parties may make at the January 26 hearing, Council may dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint.

If the former, a resolution such as the following would need to be approved by Council to formally dismiss the complaint:

THAT after consideration of the submissions of the parties in relation to the complaint pertaining to the Education Development Charges for 110 Heslop Road, the Council of the Corporation of the Town of Milton hereby dismisses the complaint in accordance with the Education Act, R.S.O. 1990, c. E.2.

If the latter, a resolution such as the following would need to be approved by Council:

THAT after consideration of the submissions of the parties in relation to the complaint pertaining to the Education Development Charges for 110 Heslop Road, the Council of the Corporation of the Town of Milton hereby determines that an error was made in the application of the Education Development Charge By-laws for both the Halton District School Board and the Halton District Catholic School Board.

AND THAT the education development charges payable for the proposed additional residential unit to be constructed over the detached garage at 110 Heslop Road in the Town of Milton should be \$0.



Discussion

In order to support Council, legal counsel for the Town will be present during the January 26th hearing to provide any clarity with respect to the hearing process and any potential legislative considerations.

Financial Impact

The Town collects development charges on behalf of the HDSB and the HCDSB, with any funds collected being remitted to the school boards. The HDSB and HCDSB remain responsible for the oversight and application of their respective Education DC by-laws through this process.

In the case of 110 Heslop Road, no Education DCs have yet been collected as the proposed ADU has not proceeded to the building permit stage at this time. By proceeding with the DC complaint at this time, the owner is afforded the benefit of clarity on any potential cost prior to proceeding further with the construction process.

Respectfully submitted,

Glen Cowan
Chief Financial Officer / Treasurer

For questions, please contact: Glen Cowan

Phone: Ext. 2151

Attachments

Attachment 1 - Development Charge Complaint (December 8, 2025)

Attachment 2 - Submission on behalf of the HDSB and HCDSB (January 9, 2026)

Attachment 3 - Excerpt and definitions from the Education DC By-laws

Attachment 4 - Excerpts from the Education Act

Approved by CAO
Andrew M. Siltala
Chief Administrative Officer



The Corporation of the Town of Milton

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Recognition of Traditional Lands

The Town of Milton resides on the Treaty Lands and Territory of the Mississaugas of the Credit First Nation. We also recognize the traditional territory of the Huron-Wendat and Haudenosaunee people. The Town of Milton shares this land and the responsibility for the water, food and resources. We stand as allies with the First Nations as stewards of these lands.

Stephanie A. Fleming
~Barrister & Solicitor~

Real Estate Development | Municipal Law | Environmental Law

December 8, 2025

VIA EMAIL

Town of Milton
150 Mary St
Milton, ON L9T 6Z5

Dear Mayor Krantz and Members of Milton Council:

**Re: Complaint Regarding EDC Assessment under s.257.85 of the *Education Act*,
R.S.O. 1990, c. E. 2, as amended
Property address: 110 Heslop Rd., Milton ON, L9T 1B4
Permit No. BP 25-000799 (Detached Garage with Secondary Unit Above)**

I represent Mr. Ali Moayer in respect of this complaint regarding the Education Development Charge (“EDC”) assessed for the above-referenced property by the Halton District School Board. He is the owner of the property known municipally as 110 Heslop Rd (the “**Property**”) in Milton and has sought to construct an additional dwelling unit above the detached garage on his property. Under Section 257.85 of the Education Act, we believe there has been an error in the application of the EDC, and as a result, the charge has been incorrectly determined.

This letter will serve as my client’s formal complaint in respect of the EDC of \$11,385.43 assessed for the proposed creation of a secondary unit over the detached garage on the above-referenced Property by both the Halton District School Board and the Halton Catholic District School Board under s.257.85 of the *Education Act*, R.S.O. 1990, c. E. 2, as amended.

Notice for the hearing may be given to the email below at 211-277 Lakeshore Road East, Oakville, L6J 6J3 as well as to my client at 110 Heslop Road.

Grounds for Complaint

My client is of the opinion that the Halton District School Board and Halton Catholic District School Board erred in its determination that the above-referenced EDC applied to his proposed addition of a secondary dwelling unit on his property. It is our position that the proposal falls under one of the exceptions set out under s.257.54(3)(b) of the *Education Act*, s.3 of O. Reg. 20/98 and s.10(2) of the Halton District School Board Education Development Charges By-law, 2023 and Halton Catholic District School Board Education Development Charges By-law, 2023.

The Property currently contains a single residential dwelling. Mr. Moayer is seeking to construct a detached garage. The additional dwelling unit, which is proposed to be a single bedroom apartment, would be located on the second storey of the garage.

Royal Building
277 Lakeshore Road East, Suite 211
Oakville ON L6J 6J3



Toronto Meeting Rooms
Brookfield Place, 161 Bay Street, Suite 2700
Toronto ON M5J 2S1

We note that s.257.54(1) states that the aim of any education development charge by-law is the following:

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.

As the proposal is for a single bedroom apartment above a garage, there is a serious question of whether this by-law should properly apply to this proposal under the stated aims set out under legislation.

Section 3 of O. Reg. 20/98 refers to “other residential buildings” as being one of the prescribed classes of residential buildings that are exceptions to the requirement to apply an EDU. A detached garage is an accessory structure to the residential dwelling and should therefore be classified as such under this section.

In the alternative, my client has noted that the Board has interpreted the phrase “in prescribed classes of existing residential buildings” / “in an existing residential building” to mean that an accessory dwelling unit (ADU) must be physically constructed inside an existing building to qualify for the exemption. Based on this interpretation, the proposed detached garage with a secondary unit above was deemed ineligible.

We respectfully submit that this interpretation is incorrect. The phrase in question refers to the class of residential buildings to which the exemption applies, not the physical location of the ADU within the structure. The regulation does not explicitly require that an ADU be constructed within the existing building footprint. On the contrary, it specifies that in any class of building (detached residential), the creation of one or two ADUs is permitted and exempt. As set out above, the property contains a detached residential dwelling; therefore another unit constructed on the property should not apply.

Direction of Legislature

I would also note that the provincial legislature has encouraged the construction of such ADUs through changes to the *Planning Act* permitting up to 3 units to be constructed as of right on a residential property, as well as encouraging the capping of development charges and parkland dedication fees for larger developments. The School Board’s decision to charge such a high fee seems contrary to the aim of the legislature in encouraging such proposals.

In addition, we note that there is some contradiction between the Act, the Regulation, and the By-law. As Council undoubtedly knows, a by-law can only be enacted in accordance with its authorizing legislation. In the event that a contradiction is found between the legislation and the By-law, we would ask Council to ensure that it makes its decision in accordance with the legislation.

Accordingly, I respectfully request that the Town:

- Confirm that the charges are exempt in accordance with section 257.54(3).; or in the alternative,
- Reconsider the EDC calculation for this property

Thank you for your prompt attention to this matter. I look forward to receiving your written response and a revised calculation consistent with the regulation.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Stephanie A. Fleming'. The signature is fluid and cursive, with a large initial 'S' and 'F'.

Stephanie A. Fleming

SAF/saf

cc: A. Moayer

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January 9, 2026

Mayor and Members of Council
Corporation of the Town of Milton
150 Mary Street
Milton, ON, L9T 6Z5

Attention: Town Clerk

Dear Sirs/Mesdames:

RE: EDC Complaint under s.257.85 of the *Education Act*
Property Address: 110 Heslop Rd., Milton ON, L9T 1B4
Permit No. BP 25-000799 (Detached Garage with Secondary Unit Above)

We are the lawyers for the Halton District School Board and the Halton Catholic District School Board (referred to collectively as the "**Boards**"). The Boards are the respondents to the above noted complaint filed by Mr. Ali Moayer (the "**Complainant**").

Milton Town Council is scheduled to hear the complaint on January 26, 2026.

Summary of Complaint

The Complainant argues that the Boards incorrectly imposed an education development charge ("**EDCs**") against the additional dwelling unit ("**ADU**") that he proposes to construct above a to be constructed detached garage on his property. According to the information the Complainant has provided, he alleges that his proposal to construct an ADU above a detached garage is exempt from EDCs under an exception prescribed under the Halton District School Board Education Development Charges By-law, 2023 and the Halton Catholic District School Board Education Development Charges By-law, 2023.

Summary of the Boards' Position

It is the Boards' position that the Complainant's proposed ADU is subject to EDCs, and not entitled to an exemption therefrom, based on the following:

- (i) the exemption from the payment of EDCs for the creation of an ADU is only available where an ADU is created in an existing single detached dwelling, existing semi-detached dwelling or row dwelling, or other existing residential building – the exemption does not apply where the ADU will be created in a new detached building or structure (such as a garage) on the same property, which is the case here;

(ii) the Complainant's proposed ADU would be constructed above a to be constructed free-standing detached garage, which is not a residential building and therefore the exemption is not available; and

(iii) to qualify for the exemption an ADU must be created in an existing residential building, this is a prerequisite of the exemption. The ADU in this case, however, will not be created in an existing residential building (even if the proposed garage were considered to be a residential building, which the Boards say it is not) because the proposed ADU will be constructed at the same time as the new detached garage - the exemption is therefore not available.

We summarize below the facts and applicable law that the Boards rely upon in support of their opposition to this complaint.

Education Act

Section 257.54(2) of the *Education Act* prescribes the various approvals that trigger the imposition of EDCs, which include the issuance of a building permit under the *Building Code Act, 1992* in relation to a building or structure.

Despite Section 257.54(2) above, Section 257.54(3) of the *Education Act* directs that the issuance of a building permit (among other approvals) does not trigger the obligation to pay an EDC where the building permit will only permit the creation of one or two additional dwelling units in certain classes of existing residential buildings. Section 257.54(3) reads as follows:

Section 257.54(3): *An action mentioned in clauses (2) (a) to (g) [these are the various approvals] does not satisfy the requirements of subsection (2) if the only effect of the action is to,*

(a) permit the enlargement of an existing dwelling unit; or

(b) permit the creation of one or two additional dwelling units as prescribed, subject to the prescribed restrictions, in prescribed classes of existing residential buildings.

The highlighted text above indicates that the ADU must be created in an existing residential building to qualify for the exemption.

Ontario Regulation 20/98

The schedule set out below, which is found in Section 3 of Ontario Regulation 20/98 made under the *Education Act*, prescribes the types of residential buildings that can qualify for the exemption for residential intensification, i.e. where an ADU is created in such a building.

Section 3: *For the purposes of clause 257.54(3)(b) of the Act [this is the highlighted provision above], the following table sets out the name and description of the classes of residential buildings that are prescribed, the maximum number of additional dwelling units that are prescribed for buildings in those classes and the restrictions for each class.*

Name of class of residential building	Description of class of residential buildings	Maximum number of additional dwelling units	Restrictions
Single detached dwellings	Residential buildings, each of which contains a single dwelling unit, that are not attached to other buildings.	Two	The total gross floor area of the additional dwelling unit or units must be less than or equal to the gross floor area of the dwelling unit already in the building.
Semi-detached dwellings or row dwellings	Residential buildings, each of which contains a single dwelling unit, that have one or two vertical walls, but no other parts, attached to other buildings.	One	The gross floor area of the additional dwelling unit must be less than or equal to the gross floor area of the dwelling unit already in the building.
Other residential buildings	A residential building not in another class of residential building described in this table.	One	The gross floor area of the additional dwelling unit must be less than or equal to the gross floor area of the smallest dwelling unit already in the building.

The above table prescribes the type or class of residential building in which an ADU must be created to qualify for the exemption – these include a single detached dwelling, semi-detached or row dwelling, or other residential building. A detached garage is not prescribed nor listed as a type of residential building. Further, while a detached garage may be used as a structure ancillary to a residential use, it does not constitute a residential building. Therefore, an ADU which is created in a detached garage cannot qualify for the exemption and is thus subject to EDCs.

The Boards’ 2023 EDC By-laws

Section 10(2) of the Boards’ respective 2023 EDC by-laws¹ implements the above table from Section 3 of Ontario Regulation 20/98. Section 10(2) of the 2023 by-laws reads as follows:

¹ The respective 2023 EDC by-laws of the Boards are identical in all material respects.

10(2) Subject to sections 10(3) and (4), education development charges shall not be imposed with respect to,

(a) the enlargement of an existing dwelling unit that does not create an additional dwelling unit;

(b) the creation of one or two additional dwelling units in an existing single detached dwelling; or

(c) the creation of one additional dwelling unit in an existing semi-detached dwelling, an existing row dwelling, or any other existing residential building.

Based on this provision, in order to qualify for the exemption, an ADU must be created in an existing single detached dwelling, existing semi-detached or row dwelling, or other existing residential building. As noted above, an ADU created in a new detached garage cannot qualify for the exemption because a detached garage does not fit within any of the prescribed classes of existing residential buildings, nor is it existing.

In sum, the proposed ADU in this case does not qualify for the exemption extended to residential intensification for two main reasons. First, the ADU will be constructed above a detached garage which does not qualify as a residential building. Second, the detached garage in which the ADU will be constructed is not yet existing.

Section 257.85(1) of the *Education Act* prescribes the three grounds upon which an owner, who is required to pay an EDC, can complain to the Council of a municipality,

(i) the amount of the education development charge was incorrectly determined;

(ii) a credit is or is not available to be used against the education development charge, or that the amount of a credit was incorrectly determined; or

(iii) there was an error in the application of the education development charge by-law.

Section 257.85(7) of the *Education Act* directs that after hearing the evidence and submissions of the parties, the Council may dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint. In this case, there was not an incorrect determination or error in the application of the Boards' EDC by-laws. As a result, there is no basis for Town Council to cancel or reduce the EDCs that the Boards will impose on the proposed ADU.

Based on the foregoing, we respectfully request that Milton Town Council accept the Boards' submissions and dismiss the complaint.

The EDCs that apply to the proposed ADU are as follows:

- (i) Halton District School Board - \$6,716.43;
- (ii) Halton Catholic District School Board - \$4,669.00.²

We will be attending the hearing of the complaint on January 26, 2026, to address Town Council. Would you kindly register the writer as a deputation.

Thank you for your consideration.

Yours truly,
Overland LLP

Brad Teichman

Per: Brad Teichman
Partner

² The indicated EDC rates apply where the building permit for the proposed ADU is issued on or before May 31, 2026. Such EDC rates are in effect until May 31, 2026, after which they increase.

Appendix 3 - Excerpts from Education DC By-laws

Halton District School Board - Education Development Charges By-law, 2023

and

Halton Catholic District School Board - Education Development Charges By-law, 2023

10. Exemptions from Residential Education Development Charges

(1) In this section,

- (a) “gross floor area” means the total floor area, measured between the outside of exterior walls or between the outside of exterior walls and the centre line of party walls dividing the building from another building, of all floors above the average level of finished ground adjoining the building at its exterior walls;
- (b) “other residential building” means a residential building not in another class of residential building described in this section;
- (c) “semi-detached or row dwelling” means a residential building consisting of one dwelling unit having one or two vertical walls, but no other parts, attached to another structure;
- (d) “single detached dwelling” means a residential building consisting of one dwelling unit that is not attached to another building.

(2) Subject to sections 10(3) and (4), education development charges shall not be imposed with respect to,

- a) the enlargement of an existing dwelling unit that does not create an additional dwelling unit;
- b) the creation of one or two additional dwelling units in an existing single detached dwelling; or
- c) the creation of one additional dwelling unit in an existing semi-detached dwelling, an existing row dwelling, or any other existing residential building.

(3) Notwithstanding section 10(2)(b), education development charges shall be imposed in accordance with section 9 if the total gross floor area of the additional unit or two additional dwelling units exceeds the gross floor area of the existing single detached dwelling.

(4) Notwithstanding section 10(2)(c), education development charges shall be imposed in accordance with section 9 if the additional dwelling unit has a gross floor area greater than,

(a) in the case of a semi-detached or row dwelling, the gross floor area of the existing dwelling unit; or

(b) in the case of any other residential building, the gross floor area of the smallest dwelling unit already contained in the residential building.

Related Definitions for Entire By-law:

(e) “dwelling unit” means a room or suite of rooms used, or designed or intended for use by one person or persons living together in which culinary and sanitary facilities are provided for the exclusive use of such person or persons, and shall include, but is not limited to, a dwelling unit or units in an apartment, group home, mobile home, duplex, triplex, semi-detached dwelling, single detached dwelling, stacked townhouse and townhouse;

(r) “residential development” means lands, buildings or structures developed or to be developed for residential use;

(s) “residential use” means lands, buildings or structures used, or designed or intended for use as a dwelling unit or units, and shall include a residential use accessory to a non-residential use and the residential component of a mixed use or of an agricultural use

Appendix 4 - Excerpt from the Education Act, 1990 and O.Reg. 20/98

Education Act, R.S.O. 1990, c. E.2

Section 257.54

What development can be charged for

(2) An education development charge may be imposed only for development that requires,

- (a) the passing of a zoning by-law or of an amendment to a zoning by-law under section 34 of the *Planning Act*,
- (b) the approval of a minor variance under section 45 of the *Planning Act*,
- (c) a conveyance of land to which a by-law passed under subsection 50 (7) of the *Planning Act* applies;
- (d) the approval of a plan of subdivision under section 51 of the *Planning Act*,
- (e) a consent under section 53 of the *Planning Act*,
- (f) the approval of a description under section 9 of the *Condominium Act, 1998*; or
- (g) the issuing of a permit under the *Building Code Act, 1992* in relation to a building or structure. 1997, c. 31, s. 113 (5); 2015, c. 28, Sched. 1, s. 149.

Same

(3) An action mentioned in clauses (2) (a) to (g) does not satisfy the requirements of subsection (2) if the only effect of the action is to,

- (a) permit the enlargement of an existing dwelling unit; or
- (b) permit the creation of one or two additional dwelling units as prescribed, subject to the prescribed restrictions, in prescribed classes of existing residential buildings. 1997, c. 31, s. 113 (5).

O.Reg. 20/98 Education Development Charges - General

PART II - EXEMPTIONS

Additional Dwelling Unit Exemption

3. For the purposes of clause 257.54 (3) (b) of the Act, the following table sets out the name and description of the classes of residential buildings that are prescribed, the maximum number of additional dwelling units that are prescribed for buildings in those classes and the restrictions for each class.

Name of class of residential building	Description of class of residential buildings	Maximum number of additional dwelling units	Restrictions
Single detached dwellings	Residential buildings, each of which contains a single dwelling unit, that are not attached to other buildings.	Two	The total gross floor area of the additional dwelling unit or units must be less than or equal to the gross floor area of the dwelling unit already in the building.
Semi-detached dwellings or row dwellings	Residential buildings, each of which contains a single dwelling unit, that have one or two vertical walls, but no other parts, attached to other buildings.	One	The gross floor area of the additional dwelling unit must be less than or equal to the gross floor area of the dwelling unit already in the building.
Other residential buildings	A residential building not in another class of residential building described in this table.	One	The gross floor area of the additional dwelling unit must be less than or equal to the gross floor area of the smallest dwelling unit already in the building.

O. Reg. 20/98, s. 3; O. Reg. 95/02, s. 2.