CITY COUNCIL AGENDA

DATE **April 13, 2011 – 6 p.m. – Council Chambers**

Please turn off or place on non-audible all cell phones, PDAs, Blackberrys and pagers during the meeting.

PROPOSED NEW WELLINGTON-DUFFERIN-GUELPH HEALTH FACILITY BUILDING

To provide an overview of the status of the proposed new Wellington-Dufferin-Guelph Health Facility Building. See attached report.

PRESENTATIONS:

- Donna Jaques – General manager, Legal/Realty Services/City Solicitor
- Jim Stokes – Manager of Realty Services
- Margaret Neubauer – Chief Financial Officer/City Treasurer
- Ann Pappert – Executive Director, Community & Social Services

ADJOURNMENT

COUNCIL REPORT

TO	**City Council**
SERVICE AREA	CAO
DATE	April 13, 2011
SUBJECT	**New Public Health Facility**
REPORT NUMBER	

RECOMMENDATION

That the report regarding the new Public Health Facility, dated April 13, 2011, be received for information.

BACKGROUND

On February 2, 2011, the Wellington-Dufferin-Guelph Board of Health issued a press release announcing it had entered into a long term lease of land and was building a new facility on Chancellor's Way in Research Park North on lands owned by the University of Guelph.

The Board of Health's search for a new facility in Guelph began in 2003 and escalated in 2007 following relocation of some public health services to the Southgate location given health concerns with the former Delhi Street location.

The City, through its representatives on the Board of Health, has been aware of the search for a new facility (including representation on the Facilities Committee of the Board of Health) and the various proposals being considered, including leasing of land and construction of a new building.

Concerns about funding for a new building and the Board of Health's authority to impose debt on the financial records of the obligated municipalities were raised by the City in early 2010. It is the City's position that the Board of Health's authority under the Health Protection and Promotion Act (HPPA) to own real property with the consent of the majority of municipalities covered by the Health Unit, should not extend to the imposition of debt on those municipalities.

Meetings were held between the City, the Board and provincial representatives in 2010 to discuss provincial funding for the new facility. The Province has made it clear it will not provide capital funding for the proposed new facility. Provincial funding for Public Health costs is currently 75% for operating expenditures, and the remaining 25% of costs are funded by the City of Guelph and the Counties of Wellington and Dufferin—known as the 'obligated' municipalities. With no provincial funding for the new facility, the obligated municipalities would be responsible for 100% of the facility's capital costs.

Given new requirements for public sector accounting, if the new facility proceeds as per the arrangements announced by the Board, the City will be required to reflect its share of any debt incurred by the Board to finance the new facility on the City's financial records, severely curtailing the City's ability to borrow money to fulfill capital infrastructure requirements which support services to Guelph residents.

As a result, and despite the City's attempts to work with the Board to find an alternative to the proposed facility, the City felt it had no recourse but to seek an injunction to prevent the Board from taking any further action on the proposed facility. On March 30, 2011, the City was granted a temporary injunction pending the argument for a more permanent injunction.

The City does not debate that a new location for the Board of Health is required. Furthermore, the City fully supports the public health programs and services delivered by the Board as a vital component of health care service delivery in the community.

The City's issues are summarized as follows:

1) The decision of the Board of Health to construct a brand new building and the manner in which the financing is proposed will put up to $17 million of debt on the City's financial records, knowing the Province has said it will not contribute to capital costs.

2) The City believes other options are available that would be less costly to local taxpayers, and would allow the Province to fund a portion of the costs.

3) The City does not believe that an unelected Board of Health has the authority to place debt on the City's financial records without Council's consent or without community consultation.

The following report summarizes issues from the City's perspective and provides information with respect to:

1) Legal/governance issues

2) The proposed agreement to Lease and Build between the Board and the University of Guelph

3) Financial issues should the Board of Health proceed with its proposed location

4) Community engagement and integrated community health service delivery

REPORT

1) Legal/Governance Issues

Legal Framework for Board of Health

Creation of the Board:

The City and the Counties of Wellington and Dufferin entered into an agreement in 1967 pursuant to the provisions of the *Public Health Act* to create the Wellington-Dufferin-Guelph Health Unit (WDGHU) and establish the Board of Health. Once the agreement had been received by the Ministry of Health, a regulation was passed setting the composition of the Board. The agreement contained provisions regarding funding of the Board.

The Health Protection and Promotion Act was passed in 1983 and continued the health unit and the Board.

In 1997, the City and the two Counties entered into a new agreement that included a change in funding requirements and contained some governance provisions. This agreement is currently in effect.

Dissolution of the Health Unit and Board

Both the 1967 and 1997 agreements provide that any party could dissolve the health unit by providing 12 months notice to the other parties and the Ministry. A clause regarding the division of the Board's assets and liabilities is also included.

The HPPA includes sections relating to the changing of the boundaries of a health unit and the ownership of assets and liabilities within the boundaries of the new health units. The HPPA also states that regulations may be made altering the boundaries of or dissolving any health unit continued under the HPPA. It would be necessary for a regulation to be passed to complete the dissolution of the health unit and the Board.

The health unit and the Board can also be dissolved following an assessment under section 82 of the Act of the quality of the management or administration of the affairs of the Board, among other things.

Ownership of Capital Property by the Board
1997 Agreement

The 1967 Agreement stated in Section 10 that the funding agreement would not include capital expenditures which were to be paid in accordance with Section 7, which stated that all capital expenses were to be paid for by the relevant municipality and the Board would not own capital property. In the 1997 Agreement, a clause identical to Section 10 was included with a reference to a Section 9. The Section 9 in the 1997 Agreement does not relate to Section 10. It is the City's position that the intention of the parties was to include in the 1997 Agreement the same provisions as were in the 1967 regarding capital expenses, however this clause was inadvertently deleted.

Legislation

Section 52 of the HPPA allows a Board to acquire and hold real property with the consent of the majority of the municipalities within the health unit. The City's position is that the consent of the majority of all the single, upper and lower tier municipalities in the geographical area of the health unit must be obtained, not simply the consent of the three "obligated municipalities," which is defined to mean the upper and single tier municipalities in the health unit.

There is also an issue regarding whether or not the arrangement that the Board is currently contemplating, being a long term lease of land with an owned building on the land, is an "acquisition of real property."

Funding Obligation of the Municipalities and the Province

Legislation

Section 72 of the HPPA states that the municipalities must contribute to the Board's expenses that are incurred in the performance of its functions and duties under the Act and which will ensure the provision of health programs and services mandated by the Act. The obligated municipalities may enter into an agreement regarding the sharing of expenses.

The Board must provide a notice regarding the amounts required to perform its functions and duties under the Act to each obligated municipality on an annual basis. The municipalities must pay the amounts set out in the notice. There is no explicit provision in the Act, as there is in other acts, such as the *Public Libraries Act*, requiring the Board to present its budget to the Councils of the municipalities for approval.

The HPPA provides that the Ministry may make grants to the Boards for the purposes of the Act on such conditions as considered appropriate. The Ministry traditionally pays approximately 75% of the expenses of the Board. The Ministry, in this case, has stated it will not contribute any money for capital expenses
The position of the City is that the Province could not have intended to give the Board a blank cheque to be funded by taxpayers with no oversight by the Councils of the municipalities. The City argues the obligation to pay only extends to the amounts that are required for the Board to perform its functions and provide the mandated programs and services and the City can refuse to pay any amounts which it determines are not necessary to meet that obligation. In this case, the City's position is that the Board cannot require the City to fund a building which the City considers unnecessary and an excessive expense. The City's position is augmented by the fact the Province, by not funding these capital expenses, is also stating capital expenses are not necessary for the Board to fulfill its functions and mandate.

Agreement

As stated above, the municipalities agreed that the expenses of the Board that would be shared would not include capital expenses. If Section 7 of the 1967 Agreement is implied to be a term of the 1997 Agreement, each municipality would be responsible for the provision of capital property for the Board and the Board would be unable to own property.

Public Input in the Decisions of the Board of Health

The Board has held all discussions regarding the acquisition of property and the construction of the buildings in closed session meetings. There has been no public meeting to allow delegates of the public to have input into the decisions. To the best of the City's knowledge, there was no direct consultation with other community service providers regarding the Board's plans for delivery of services.

2) Lease for new Guelph Public Health Facility

The Board of Health for Wellington-Dufferin-Guelph currently occupies space as follows:

Location	Existing Approx. Area (sq. ft.)	Proposed Future Areas (sq. ft.)
Fergus	Unknown	None
Orangeville	8,000	15,000
Guelph (Shelldale)	1,500	<1,500 *
Guelph (Southgate Drive)	16,000	60,000
Mount Forest	Unknown	None
Shelburne	Unknown	None

* The Board has stated it intends to reduce the services provided at Shelldale and move most of the staff to the new building. The amount of space, if any, the Board intends to continue to occupy at Shelldale is unknown.

The Board occupied the lower three floors of 125 Delhi Street (approx. 12,300 sq. ft.) until 2007 when it moved to Southgate.

According to the Space Study prepared for the Board by Ventin Group Architects, "…about 140 FTE's (staff, consultants, and students) are estimated to require office or workstations at the new Guelph Centre currently or in the very new future." The Study also indicates that an expansion of between 20 and 30 staff can be anticipated over the next 5-10 years and concludes there is potential for about 175 staff and students to occupy the new building.

The Highlights of the Lease between the Board and the University of Guelph for the land on which the proposed building will be constructed are provided in Appendix 1.

3) Financial Implications

The 2011 Board of Health Budget includes approximately $16.8 million in expenditures, of which obligated municipalities' funding share is $5 million, with the City of Guelph portion equal to $2.3 million. This budget represents 1.38% of the City's 2011 tax levy ($167 million) with a cost to the average residential taxpayer of $40 per year.

The Board of Health currently provides services through several leased facilities in the geographic area covered by the Health Unit. The 2009 occupancy cost for these leased facilities was $885,000, representing 5.5% of total expenditures. The Province contributes base funding of up to 75% of the leased occupancy cost.

The current annual cost for the Orangeville and Guelph facilities, including subsidy is as follows:

Guelph	$221,000
Orangeville	$372,000
	$593,000
Provincial subsidy@75%	$445,000
Net municipal cost	$148,000

The City of Guelph is responsible for 46% of this cost or $68,000 per year.

The Board of Health is proposing to build and own new facilities in Guelph and Orangeville. The Province has indicated that it may consider additional base funding for facilities provided through an operating lease, but will not contribute to capital or debt servicing costs.

The Board of Health proposes the bulk of the costs will be financed through debt issued by the obligated municipalities or through a long term capital lease, which has the same effect on the City's debt position and credit rating as the issuance of debt. While the obligated municipalities will be liable for the debt repayment, they will not have title to the asset.

The Board of Health also proposes to use reserves to fund some of the initial financing costs of the capital facilities. These reserves have been established from municipal overbilling in 2009 – 2011. The City has paid its share of the over-levy, but challenges the legal authority of the Board of Health to levy these surpluses for capital.

For the Guelph site, land is to be leased from the University of Guelph at a cost of $119,000 per year. The estimated construction cost is $17 million, and there are estimated one-time costs of $1.35 million, for a total of $18.35 million. In Orangeville, both land and building are to be purchased by the Board of Health, and including one-time costs, the total for the Orangeville facility is $5.168 million. As the Province will not pay for capital, the Board of Health's position is that the obligated municipalities must finance these costs, totaling $23.518 million, through contribution to reserves or debt.

The annual cost for the new Orangeville and Guelph facilities are as projected as follows, based on financing $23.5 million over 20 years:

Operating costs	$1,049,000
UoG land lease	$ 119,000
Debt servicing	$1,855,000
Provincial subsidy@75% excluding debt repayment	- $ 876,000
Net municipal cost	$2,147,000

The City of Guelph would be responsible for 46% of this cost or $988,000 per year, an increase of $920,000 to Guelph taxpayers, representing a 40% increase in funding for this service area, and requiring a tax levy increase of .6% or $16 per average residential ratepayer. In addition, this scenario adds $10.8 million to the City's outstanding debt for financial reporting and credit rating purposes.

An alternative for financing is that the Board of Health has no direct ownership of facilities. Public Health facilities could be provided through commercial lease or provided by the host municipality through an operating lease arrangement, similar to that provided by Wellington County in Fergus and Mount Forest.

Under this alternative, the City of Guelph would own and finance the Guelph facility requiring capital financing of $18.35 million and Dufferin County would finance the $5.168 million for facilities in its community. The facilities would be leased to the Board of Health at cost recovery. This alternative would reduce debt financing available for other Guelph capital projects by about $7.5 million more than the proposal whereby the Board of Health owns the facility.

However, subject to Provincial budget constraints, operating leases are eligible for Provincial subsidy. If the province pays 75% of the increased occupancy cost, the annual municipal share of the new facility costs would be reduced by $1,391,000. This would reduce the increase caused by new, expanded facilities from $920,000 (if the Board of Health owns) to $280,000 in additional funding requirements, and the City would retain title to the asset. Availability of Provincial funding subsidy would need to be confirmed.

The preferred alternative is that a commercial operating lease be negotiated, with similar savings from the provincial contribution of 75% of operating costs, however, there would be no impact on debt, and the City's capital program would not be impacted by the decision of the Board of Health to build a new facility.

4) Community engagement and integrated community health service delivery

The Board of Health's proposals for the construction of a new facility within Guelph, raises a number of questions for the City, the broader community of partners who play a role in securing improved community health and wellbeing, and residents themselves.

In raising these questions, the City aims to gain a clearer understanding of the process through which the proposals were created, how much the process has engaged partners and the community in identifying local need, and how the new facility aligns with strategies to meet those needs both now and into the future.

Although the *space needs assessment* prepared for the Board provides some information regarding the process through which the recommendations were formed, there are a number of areas where there are gaps and that the City wishes to explore further:

The Engagement Process

How were local stakeholders, partners and the broader community involved in the development of the facility plans?

As a Board of Health, services and programs aim to achieve outcomes and goals outlined by the Ontario Public Health Standards (2008).

These standards are underpinned by four principles, or pillars. Each of these principles articulate in some way the need to work in partnership with a variety of organizations e.g. community partners, non governmental organizations, governmental bodies and others in order to better understand and meet the complex challenges that a community faces in terms of realizing health and wellbeing goals. This is particularly evident regarding the impact of the determinants of health and the need to reduce health inequalities that exists in the community. As local organizations begin to work in a more collaborative, cross-sectoral way to achieve individual and community wellbeing through holistic planning and service integration, it is important that service providers work together and engage the community in these key decisions to ensure that plans accurately reflect local need.

Strategic Planning and Service Delivery

How does the development of the new facility reflect the Board of Health's new Strategic Plan, which has set priorities for the next five years?

There is a need to better understand the Strategic Plan goals, the process through which they were developed and what plans are in place to achieve them.

Many public health services and programs are currently planned and delivered throughout the community at different locations. The proposal for a new facility also appears to bring many of these into the new central location. The true extent of this shift is unknown; it is not clear which services will be directly affected and what impact this might have on those community members who access them. For example, although the space needs assessment indicates that the Shelldale Centre will retain services, it is unclear exactly what will remain and what will change.

There is also a need to further explore how this service delivery model integrates with many current and emerging initiatives that aim to improve service integration at both an operational and systems level, for example the development of 'community hubs' that enable easier access to individuals and families to access the services and supports they need.

One example of this model would be changes in the provision of early childhood services, as outlined in Ontario's Our Best Future in Mind, which speaks of reengineering often disconnected local services into a more accessible and effective system. One important element of this particular example will be the development of Best Start Child and Family Centres, where children and their families can access a variety of services (e.g. pre and post natal supports and parent resources) in one location.

Accessibility and Priority Groups

How will the new facility improve the accessibility of local public health services for a growing and changing community? How will centrally locating more local public health services, many of which are currently delivered and planned at multiple locations, make them more accessible to those in most need of them?

Have priority groups been identified, and have they been engaged sufficiently in order to fully understand the barriers they face in accessing critical services? These are important questions to answer in ensuring that those who may experience barriers to accessing services are not negatively impacted through this move. It is a critical component to reducing health inequalities that exist in the community as outlined in the Public Health Standards.

CORPORATE STRATEGIC PLAN

Goal 5 – A community focused, responsive and accountable government
Objective 5.3 – Open, accountable, transparent conduct municipal business

FINANCIAL IMPLICATIONS

N/A

DEPARTMENTAL CONSULTATION

N/A

COMMUNICATIONS

N/A

ATTACHMENTS

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APPENDIX 1 - Highlights of the Lease Agreement.

Item	Detail
Landlord	University of Guelph
Tenant	Identified as "Wellington-Dufferin-Guelph Public Health Unit". Note that the legal name is "The Board of Health for Wellington-Dufferin-Guelph."
Date on which Board of Health Approved the Lease	Unknown.
Date of Lease	November 22, 2010
Term	49 Years, commencing on April 1, 2012
Site Improvements to be Complete by	December 30, 2012
Rental Commencement Date	April 1, 2012
Use	A facility operated by the Tenant primarily for health care, related services and uses ancillary thereto in accordance with the Guidelines and in accordance with municipal zoning. (Guidelines refers to University of Guelph Site Development Control Guidelines). The property may not be used for any other purpose whatsoever without the prior written approval of the landlord, which approval may be unreasonably withheld.
Rights to Extend	First – 10 years Second – 10 years (These extensions would also be subject to Planning Act Consent)
Ownership of Improvements	Ownership of improvements remains with the Tenant until expiry or termination of Lease. On expiry or termination, ownership transfers to the University unless the University requires that the improvements be removed by the Tenant (see Removal of Improvements).
Original Site Improvements	A building containing three floors with a total gross floor area of approximately 60,000 square feet.
Annual Rent (Years 1-10)	$119,360.00 per annum
Land Area under Lease	3.73 acres, together with rights to use common areas
Removal of Improvements	If requested by the Landlord at the expiration of the Term, the Tenant shall, at its cost, remove all improvements and re-grade the land suitable for future development.
Rental Increases	At the beginning of each consecutive 10-year period, rent shall automatically increase by the change in Consumer Price

	Index over the preceding 10-year period.
Net Lease	Tenant shall be responsible for all costs, charges, outlays, expenses, and obligations of every kind and nature whatsoever arising from the property and any business carried on therein or thereon (exemptions include items relating to landlord specifically, including depreciation, initial capital costs of the development, debt service costs, taxes on income or profits, etc., and tax credits.) This also includes costs and expenses of the landlord relating to approval or consideration of design drawings, inspections, approval or consideration of transfer, or any request by the Tenant.
Municipal Capital Facility	The Lease is silent in regard to the possibility of this facility being declared a Municipal Capital Facility. With an additional agreement between the City, University, and Health Board, this facility could be exempted from Development Charges and municipal and school taxes.
Additional Rent (common area costs)	Tenant to pay proportionate share of operating costs, taxes such as GST or HST, and an administration fee equal to 15% of the foregoing costs and taxes, in regard to common area costs.
Maintenance	Tenant, at its own cost, is responsible for maintaining the building and site improvements.
Development Agreements	Tenant agrees to comply with the provisions of any development agreements now or hereafter in place for the development so far as same affects the property.
Planning Act Consent	Tenant shall obtain Planning Act consent for the lease to have a term in excess of 21 years. Until the consent has been obtained, the Term of the lease shall be 21 years less one day.

WDGHU Financial Context

CURRENT ACCOMMODATIONS – ALL LEASED

- Fergus & Mount Forest leased from County of Wellington in shared facilities
- Dufferin County – 2 commercial leased facilities – main branch and satellite
- Guelph – 2 commercial leased facilities – main branch and satellite
- 2009 occupancy costs $885k or 5.5% of total audited expenditures
- Province contributes base funding which covers up to 75% of leased occupancy cost

WDGHU Financial Context

WDGHU 2011 BUDGET - EXCLUDING NEW FACILITIES

• WDGHU Budget	$ 16.8 M
• Municipal share	$ 5.0 M
• City of Guelph share	$ 2.3 M

WDGHU as a percentage of Guelph tax levy

1.38% = $40 per average residential home

WDGHU Financial Context

ORANGEVILLE & GUELPH LEASES – CURRENT COSTS

Orangeville	$ 372k
Guelph	$ 221k
	$ 593k
Provincial Subsidy@75%	$-445k
Net municipal cost	$ 148k

City share @ 46% = $68k

WDGHU Financial Context

WDGHU PROPOSAL

- Build and own new facilities in Guelph & Orangeville
- Use reserves sourced from municipal over-billing 2009 – 2011
- City has paid but challenges legal authority of WDGHU to levy for operating surplus or capital
- Provincial contribution to capital facilities = $0
- Balance to be debt financed
- Municipalities liable for debt but don't have title to asset

City of Guelph
Making a Difference

WDGHU Financial Context

PROPOSED NEW FACILITIES – CAPITAL REQUIREMENTS

	GUELPH	ORANGEVILLE	
LAND	UoG Lease	$1.1M	
BUILDING	$17M	$3.75M	
ONE TIME	$1.35M	318K	
TOTAL CAPITAL	$18.35M	$5.168M	$23.518 M

WDGHU Financial Context

Annual cost for WDGHU Owned Guelph/Orangeville facilities:

- Operating costs $ 1,049k
- UoG land lease $ 119k
- Debt Servicing (20 years @ 4.8%) $ 1,855k
- Provincial subsidy for non-debt $ - 876k
- Net municipal cost $ 2,147k

Increase to Guelph taxpayers $ 920k

Required increase in Guelph taxes
.6% = $16 per avg residential home

Increases City debt by $10.8 million

WDGHU Financial Context

Alternative financing:

- WDGHU has no direct ownership of facilities
- Public Health facilities provided by host municipality through operating lease, similar to Wellington arrangement
- Province pays 75% of operating increase
    - Requires confirmation of eligibility
- Reduces municipal cost by $1,391
- City pays 46% of remaining 25%
- Increase to Guelph taxpayers is $280k per year, rather than $920k per year if WDGHU owns

WDGHU Financial Context

Alternative financing (continued)

- Guelph debt/reserve financing = $18,350
- Reduces financing for other city capital projects by $7.5M from WDGHU proposal
- City has title to asset
- If commercial operating lease available, similar savings from provincial contribution, and no impact on debt and City capital program.