



STAFF REPORT INFORMATION ONLY

Development Charges – Response to Council Request for Information

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| Date: | May 12, 2009 |
| To: | Executive Committee |
| From: | Deputy City Manager and Chief Financial Officer |
| Wards: | All |
| Reference Number: | P:\2009\Internal Services\SP\EC09007SP (AFS# 9697) |

SUMMARY

The purpose of this report is to respond to a Council request of staff to examine the possibility of seeking certain amendments to the *Development Charges Act, 1997*, to remove current exclusions and restrictions on recovering the costs of municipal infrastructure geared to growth.

The City of Toronto, the Association of Municipalities of Ontario (the “AMO”), and the Municipal Finance Officers’ Association (the “MFOA”) have in the past requested the Province to amend the *Development Charges Act, 1997*, to address a number of concerns. However, there has been no sign that the Province is prepared to consider at this time any amendments to the *Development Charges Act, 1997*. The need for various amendments was discussed again during the broader Provincial-Municipal Fiscal and Service Delivery Review process that was completed last year, and it was suggested that a review of the legislation ought to be considered as an option to address the infrastructure gap.

Financial Impact

There are no immediate financial implications arising from this report. In the event that all transit projects were afforded the same treatment under the *Development Charges Act, 1997*, as the Spadina Subway extension project – exempted from the use of the historical service level cap and the 10% statutory deduction – the calculated maximum development charge rates could have been almost 40-60% higher. Inclusion of the capital costs of computers to which the public has access is likely to have had minimal impact on the calculated development charge rates.

DECISION HISTORY

At its meeting on February 23, 24 and 25, 2009, Council, in adopting a new Development Charge By-law, issued the following directives:

- “8. The City Manager be requested to report to Council, through the Executive Committee, no later than June 2009, on the possibility of seeking the removal of the following development charge exclusions:
 - a. the statutory deduction under ss.5(1)8 of the Development Charges Act for all additional transit expansion to match the deduction accorded to the Spadina subway extension presently underway; and
 - b. the exclusion under §5(3)4(ii) of the Development Charges Act as it pertains to computers for libraries, schools, community centres and any other facilities that provide computers to which the public has access.
9. The City Manager be requested to report to the Executive Committee, no later than June 2009, on a mechanism to ensure that, in contemplation of the expansion of any future servicing capacity, the provisions of §5(1)5 of the Development Charges Act are taken into account.”

ISSUE BACKGROUND

Subsection 5(1)8 of the *Development Charges Act, 1997* (the “DC Act”), prescribes that capital costs of all services included in the development charge calculation must be reduced by 10% except for services listed under subsection 5(5). The services listed under subsection 5(5) include fire, police, roads, sewer, storm water and water, but do not include transit. Capital costs of the Spadina subway extension, however, are not subject to this deduction by virtue of a specific exception under subsection 5(5); for all other transit services eligible capital costs are required to be reduced by 10% for development charge calculation purposes. In addition, the project is also exempted from the use of the 10-year historical service level cap. As a result, a smaller proportion of transit costs can be recovered through development charges as compared to the proportion of recovery for the Spadina subway extension.

Subsection 5(3) lists capital costs that can be included in the development charge calculation and identifies, among others, “furniture and equipment, excluding computer equipment” (emphasis added). However, in a number of instances, the City acquires computers not only to provide a service to the residents, but to make those computers available for public use.

Subsection 5(1)5 requires that the increase in the need for services attributable to the anticipated development be reduced by the municipality’s (uncommitted) excess capacity

– excess capacity that Council has not indicated (an intention) would be paid for by development charges or other similar charges (section 5 of Ontario Regulation 82/98).

COMMENTS

The City, the Association of Municipalities of Ontario, and the Municipal Finance Officers' Association of Ontario have on a number of occasions in the past requested the Province to amend the DC Act and the accompanying Ontario Regulation 82/98. The requests have been predicated on the principle that growth should pay for growth and that the current provisions in the Act deviate from that fundamental principle. However, the Province has not provided any indication that it is prepared to amend the DC Act.

10% Reduction

As part of the Provincial-Municipal Fiscal and Service Delivery Review, the Infrastructure Table recommended a review of the DC Act on a priority basis. It identified the 10% reduction (for some services) among four areas that appeared to be inconsistent with the growth should pay for growth principle. The requirement to apply a statutory 10% reduction for some services results in two “classes” of services – 100% eligible and 90% eligible – and some unintended consequences. For example, while fire services and emergency medical service may often share the same facilities and equipment, development charge financing of these services is governed by separate provisions under the DC Act. The Development Charges Subgroup (of the Infrastructure Table) identified two options to address the issue – reconsider some of the services (to be exempted from the deduction), or eliminate the deduction completely from the DC Act.

Computer equipment

In addition to specific service exclusions, the DC Act expressly excludes capital costs of computer equipment from development charge calculations. While the term “computer equipment” is not defined in the DC Act, it has generally been interpreted to refer to stand-alone computer and high-tech equipment that does not form part, in a functional or physical sense, of a larger system or piece of equipment (imbedded technology).

In a written opinion provided in 2003, Legal Services advised that the ‘old’ *Development Charges Act* (prior to the amendments in 1997) did not contain such exclusion. However, the explicit exclusion of “computer equipment” in the 1997 amendments to the *Development Charges Act* “shows a clear intent of the Legislature to designate computer equipment as not being eligible for development charge purposes.” While this opinion was provided in the context of information technology expenditures by the (then) department of Public Health and the Toronto Public Library, it is applicable in general to all computer equipment capital costs.

Future capacity expansion

In adopting a Development Charge Background Study, Council also adopts the capital program included in the study and by implication expresses its clear intention that all projects in the study, including any excess capacity, will be (partially) funded through development charges. Cost recoveries through development charges for the Sheppard Subway are an example of this. Construction of the subway was completed in 2002 and included future servicing capacity. The City had indicated, by virtue of the project being included in the 1999 and 2004 Development Charge Background Study calculations, that the growth-related portion was to be development charge funded. This has allowed the City to continue to collect funds through development charges to offset some of the growth-related capital costs of the project.

Any new or capacity expansion project that is introduced or approved subsequent to the adoption of a Background Study, and that has a tangible amount of future servicing capacity, should be specifically designated for future development charge funding within the provisions of the existing legislation – section 5 of Ontario Regulation 82/98, “... either before or at the time the excess capacity was created, the council of the municipality expressed a clear intention that the excess capacity would be paid for by development charges” This is possibly best done through the capital budget process, or in exceptional cases on a stand-alone basis. Staff will be reviewing capital budget submissions and in eligible instances will seek Council’s expression of intention to fund excess capacity through future development charges.

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SIGNATURE

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