TORONTO

STAFF REPORT
ACTION REQUIRED

Development Charges Act – Proposed Amendments (Bill 73)

Date:	April 8, 2015
To:	Executive Committee
From:	City Manager Deputy City Manager & Chief Financial Officer
Wards:	All
Reference Number:	P:\2015\Internal Services\Cf\Ec15011Cf (AFS # 21002)

SUMMARY

On March 5, 2015, the Province tabled draft Bill 73 to amend the *Development Charges Act, 1997* (the "DCA"), and the *Planning Act.* The purpose of this report is to provide Council with an assessment of the draft legislative and pending regulatory amendments to the DCA and to recommend an appropriate response. A report from the Chief Planner & Executive Director, City Planning, providing information and recommendations with respect to the proposed *Planning Act* changes will be considered by Planning and Growth Management Committee at its May meeting.

The legislative review is welcome and timely. It has been 18 years since the current DCA was implemented. Staff supports the principle that growth should pay for growth and agrees that this objective should continue to be the main principle underlying the DCA. Unfortunately, the DCA, in its current form, does not uphold this principle due to the exclusion of key services from DCs, the 10% statutory discount for some services and a historical service level cap, amongst other things. Council has requested the Province to amend the legislation and correct these deficiencies a number of times over the years.

Bill 73 goes part way toward addressing some of Council's requests for amendments to the DCA by:

- permitting the use of forward-looking service levels to determine maximum eligible costs as opposed to average service levels over the past ten years (subject to regulation for each designated service);
- exempting transit from the mandatory 10% reduction (but leaving other services subject to the reduction); and

- proposing to remove waste diversion from a list of services for which DC recoveries are prohibited (and moving the list to regulation, where further additions or deletions could be implemented without legislative amendment)

Other proposed changes, both legislative and regulatory, would affect the administration of municipal by-laws. Some of these, such as changing the timing of DC collection, or authorizing the government to require consideration of area specific charges, could have negative financial implications for municipalities, and Toronto in particular due to the predominance of condominium infill in Toronto.

The Province proposes to establish a working group of key stakeholders to provide advice on complex issues needing further consideration prior to the enactment of the bill and the issuance of regulations, which is likely not to occur before the end of the year.

The Deputy City Manager & Chief Financial Officer recommends that Council indicate its support for proposed changes that expand the scope of development charges, and encourage the Province to go further in accordance with previous Council requests. Staff also recommends that Council indicate its opposition to changes that would have the effect of advancing the timing of DC collection, or dictating the use of area specific development charges, whether now or in the future. Furthermore, staff recommends that Council support additional changes to facilitate a uniform, region-wide development charge for Metrolinx, and a review of the appeal provisions of the DCA.

RECOMMENDATIONS

The City Manager and Deputy City Manager & Chief Financial Officer recommend that City Council:

1. Indicate its support of the principle that "growth should pay for growth" and that this principle continue to be the main objective of the *Development Charges Act, 1997*.

2. Endorse the proposed amendments to the *Development Charges Act, 1997* that

    a. add transit to the list of services that are not subject to a mandatory 10% reduction;
    b. allow the use of a planned level of service for prescribed services; and
    c. allow development charge recoveries for waste diversion.

3. Urge the Province to broaden the application of development charges further by

    a. eliminating the mandatory 10% reduction to eligible costs;
    b. deleting the list of ineligible municipal services; and
    c. considering further amendments that enable uniform, region-wide collection of development charges for GO Transit and Metrolinx Capital Expansion projects.

4. Request the Province to

    a. delete section 6 of draft Bill 73 that makes development charges payable upon the first applicable building permit being issued;
    b. delete section 2 (3) of draft Bill 73 that would allow the Province through regulations to mandate the use of area-specific development charges; and
    c. review appeal provisions of the *Development Charges Act, 1997* so as to allow the Ontario Municipal Board to increase the amount of a development charge if a development charge by-law is appealed.

5. Forward this report to the Minister of Municipal Affairs and Housing, the Municipal Finance Officers' Association of Ontario, the Association of Municipalities of Ontario, and GTHA municipalities contributing to GO Transit/Metrolinx.

Financial Impact

There are no direct financial implications arising from the recommendations in this report. The proposed amendments to the DCA, however, are expected to affect development charge revenue potential in the future, in addition to increasing the potential cost of administering the Development Charges by-law.

Amendments relating to the use of a planned level of service and exempting transit from the statutory 10% reduction will result in higher revenues. Under current requirements of the DCA, the 10% reduction for transit resulted in $120 million of growth-related costs identified in the City's 2013 Development Charges Background Study not being recoverable through development charges; this equates to a theoretical reduction of, on average, $10 million in recoverable costs per annum during the 10-year study period.

Altering the timing of payment of development charges to the first building permit is likely to reduce revenues and increase costs. For the majority of development occurring in the City the first building permit is an excavation permit drawn months or years in advance of details required for the determination of development charges payable. Payment at first building permit issuance could allow developers to avoid future development charge rate increases, and lead to administrative complexities in the event of changes to development proposals between excavation and final building permit issuance. It is not possible to estimate the net effect of all the proposed amendments, since the associated regulation has not yet been drafted.

DECISION HISTORY

City Council has sought amendments to the DCA on multiple occasions; the most recent instance being the following:

At its meeting on October 8, 9, 10 and 11, 2013, as part of its deliberations to enact the current Development Charges By-law (No. 1347-2013; the "DC by-law"), City Council adopted the following:

"City Council request the Province of Ontario to amend the Development Charges Act to:

a. remove or amend the historical service level restrictions on development charge rate calculations;
b. eliminate the statutory 10 percent reduction to eligible costs; and
c. eliminate exclusions of ineligible municipal services."

(http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX34.1)

At the same meeting (October 8, 9, 10 and 11, 2013), City Council, during consideration of a report from the City Manager on Scarborough Rapid Transit Options, requested the Province to "make appropriate amendments to the Development Charges Act for the purposes of the McCowan Corridor Subway Project similar to those made by the Province for the Toronto York Spadina Subway Extension project".

(http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC39.5)

ISSUE BACKGROUND

The DCA provides the legislative authority and framework for municipalities to impose development charges upon development of land, based on the principle "growth pays for growth", and lays out the process, procedures, and reporting requirements. While the DCA enhances a municipality's ability to recover growth-related infrastructure costs from new development, the exclusion of certain municipal services and the methodology prescribed for calculating the charge constrain the ability to adequately recover the overall cost to support growth. These include the following:

- The requirement to use a 10-year historical average of the level of service to limit eligible (growth-related) costs recoverable through development charges
- The requirement to reduce eligible costs by 10% for most services
- Not all growth-related capital costs for services provided by a municipality can be recovered through development charges. The DCA includes a list of specific services, such as waste management, cultural and tourism facilities, administrative headquarters, etc., that are ineligible for development charge calculation and collection purposes.

COMMENTS

The underlying DCA principle is that growth should pay for growth and this should continue to be the main objective of the DCA.

The City, the Municipal Finance Officers' Association of Ontario (MFOA), the Association of Municipalities of Ontario (AMO), the development industry, consultants and academics have highlighted the need for amendments to the development charges system for a number of years, including through the Provincial-Municipal Fiscal and Service Delivery Review (PMFSDR) in 2007-2008.

In October 2013, the Ministry of Municipal Affairs and Housing (MMAH) launched a review of the provincial development charges system, including the DCA. This review is welcome and timely as it has been 18 years since the DCA was implemented. Following province-wide consultations, between October 2013 and January 2014, with the public, the development community, the City and other municipalities, on March 5, 2015, the government introduced draft Bill 73, *Smart Growth for Our Communities Act, 2015*, to amend the *Development Charges Act, 1997* and the *Planning Act*.

The draft bill includes proposed amendments to a number of different sections of the DCA; in addition, amended/new regulations (as yet unpublished) are contemplated. The Province has also announced the "launch of a Development Charges Working Group of key stakeholders, including municipalities and developers that would provide advice on complex issues needing further consideration." The City will participate in the working group.

The sections that follow discuss the proposed amendments and expected impact, relative to the existing legislative regime (please see Appendix 1), based on information and details available at this stage.

Historical service level cap

Proposed amendment: The draft Bill proposes to amend the DCA to prescribe services (to be indentified in regulation) for which the determination of recoverable service expenditures would be linked to the "planned level of service" during a 10-year period immediately following the preparation of the background study; the method of estimating the planned level of service and the criteria to be used in doing so may also be prescribed.

Expected impact: Depending on the regulation, this approach could be very helpful to municipalities. A forward-looking service level determination would allow recovery of growth-related costs based on a planned level of service rather than a historical average service level as was requested by Council to accommodate the Toronto-York Spadina Subway Extension and the Scarborough Subway Extension. It is recommended that Council support this proposed change.

Mandatory 10% reduction

Proposed amendment: Transit services are proposed to now be exempted from the 10% reduction.

Expected impact: Removing this mandatory statutory 10% discount for transit, as the Province did for the TYSSE in response to Council's request, will lead to higher recoveries of transit-related eligible growth-related capital costs. In the City's 2013 Development Charges Background Study, a total deduction of $230 million on account of this requirement was made, $120 million (or 52%) of which was accounted for by transit services. This change also allows for Roads and Transit services to be combined into a single "Transportation" DC service. Discounts to other services would likely continue (e.g. parks and recreation, library, etc.). Staff recommends that this change be supported, and further that there should be no mandated discount.

Ineligible services

Proposed Amendment: Subsection 2.(4) of the DCA is to be repealed and substituted so as to prescribe ineligible services (yet to be identified) in regulations. The provincial news release did, however, suggest that municipalities would be allowed to recover capital costs for waste diversion (recycling).

Expected impact: Making capital costs of waste diversion eligible for recovery through development charges, consistent with the "growth pays for growth" principle, will transfer some of the burden currently borne exclusively by existing ratepayers on to growth. The proposal to prescribe ineligible services through regulation creates both an opportunity and risk to delete or add to the list of ineligible services without seeking legislative changes. Staff recommends that Council support the change and affirm that there should be no ineligible services.

Timing of development charge payment

Proposed Amendment: The draft Bill proposes to amend the DCA by adding a subsection such that for projects that require more than one building permit "the development charge for the development is payable upon the first building permit being issued."

Expected impact: The first building permit for high-rise projects is generally an excavation permit, which is typically issued prior to the issuance of building permits for the structure. The associated work to excavate and shore a site takes months. In Toronto, the proposed amendment may encourage developers to advance applications for excavation and shoring permits months or years prior to development details for the determination of the development charge payable being finalized. Development charge revenues for the City could be adversely affected since payment at excavation permit will allow applicants to avoid future development charge rate increases, although the reduction may be partially compensated by funds being available earlier. In addition, administrative complexities will increase as a result of evolving development plans (unit type/mix/count are generally crystallized later in the process) requiring numerous and sometimes complex fee adjustments, with a likely increase in the incidence of statutory

complaints under section 20 of the DCA. This report recommends that Council inform the Minister of Municipal Affairs and Housing that it does not support this change. Municipalities should continue to have flexibility for determining the timing of when development charges are payable that reflect the unique situation and funding needs of individual municipalities, and discussions with local stakeholders.

Other/Administrative

1. Area rating, prescribed areas and services: The DCA currently allows a development charge by-law to apply either to the entire municipality or only a part of it (subsection 2.(7)), and more than one development charge by-law may apply to the same area (subsection 2.(8)). The bill would allow the Province, through regulations, to mandate the use of area-specific development charges. The relevant regulation would prescribe the service and the criteria to identify the parts of the municipality to which area-specific development charges are to apply.

   Area-specific charges reduce municipal funding flexibility, create fragmented cost regions, and can dramatically increase administrative burden, often with little benefit for a fully-built out jurisdiction like Toronto. Staff recommends that municipalities should continue to have the unfettered flexibility to determine application of city-wide versus area-specific development charge policies that reflect growth-related services needed in individual municipalities having regard to unique local circumstances and the interests of all local stakeholders.

2. Asset Management Plans: In addition to current requirements to consider and examine long-term capital and operating cost implications for each service included in a development charge by-law, development charge background studies would be required to include asset management plans that reflect full life-cycle costs and are prepared in the prescribed manner. These changes are not expected to require significant procedural change at the City, but could increase the complexity of background studies.

3. Additional levies: The DCA will be amended to ensure that municipalities do not impose additional levies, "voluntary payments", related to development. The amendment would allow the Minister to investigate compliance with the restriction, and municipalities may be required to pay for all or part of the cost of the investigation. It is our understanding that this provision does not deal with Section 37 contributions (under the *Planning Act*), and as such the City will not be impacted by this proposed amendment.

4. Statement of Treasurer: Reporting requirements under section 43 of the DCA would be amended to impose more detailed reporting. Further, providing the statement to the Minister shall be "on request" rather than within 60 days of submission to Council. The City's current development reserve fund statement reports, provided annually to Council (Budget Committee) and the public, meet the amended requirement, with the exception of the newly-introduced statement of compliance concerning additional levy restrictions in item 3 above, and any

other information that may be prescribed in regulations. Staff believes that current reporting requirements are sufficient.

5. Other amendments would allow the Lieutenant Governor to make regulations affecting service level determination, ineligible services, asset management plans and reporting requirements.

Further/Additional consideration

Metrolinx/GO Transit

Council terminated its annual $20 million contributions to GO Transit capital expansion in its recently approved 2015 Capital Budget and Plan. In doing so, the City brought attention to the inequitable arrangement for municipal contributions to GO Transit, and directed the City Manager undertake discussions with provincial officials for a permanent resolution to the problem.

The DCA reform creates an opportunity to resolve the issue through an amendment allowing Metrolinx to establish its own development charge for the GTHA. A Metrolinx DC could replace the inequitable municipal contributions and outdated municipal development charges for GO Transit with a charge reflecting the region-wide benefit of Metrolinx investments in GO Transit and related infrastructure.

This option has been identified by City staff in meetings with provincial officials, and has had support from municipal treasurers in the region. In May of 2013 Council considered (EX31.3 Metrolinx Transportation Growth Funding - Dedicated Revenues) and did not eliminate a Metrolinx DC as an option for funding the Big Move Plan. Council did resolve that any fees or charges imposed by Metrolinx should be applied uniformly across the GTHA so as not to create economic distortions at jurisdictional boundaries. (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX31.3)

Staff recommends that at this time Council articulate its support for this solution and its incorporation in the amendments to the DCA.

Appeals and the Ontario Municipal Board

A development charge by-law may be appealed to the Ontario Municipal Board (OMB) within 40 days after it has been enacted. The OMB may either dismiss the appeal, or order a municipality to repeal or amend its DC by-law. However, the OMB cannot amend the by-law so as to increase the amount of the charge or alter provisions dealing with exemptions, phase-in, etc. From an appellant's perspective, there is no risk in filing an appeal as the OMB does not have the authority to increase the charge. On the other hand, a municipality, faced with the possibility of an OMB-ordered amendment or repeal of its by-law, often finds itself compelled to commence negotiations and settle the appeal, potentially at a financial cost in terms of lower development charge collections. A

number of municipalities have expressed concern with this apparent disparity in the potential outcome of an OMB appeal for a municipality vis-à-vis an appellant. Staff recommends that Council request the Province to review the appeal provisions of the DCA to provide authority to the OMB to increase the charge in the event of an appeal of a development charge by-law.

CONTACT

Joe Farag, Executive Director, Corporate Finance
Tel: 416-392-8108; Fax: 416-397-4555; Email: jfarag@toronto.ca

Robert Hatton, Director, Strategic Initiatives & Intergovernmental Finance, Corporate Finance; Tel: 416-392-9149; Fax: 416-397-4555; Email: rhatton@toronto.ca

Robert Robinson, Solicitor, Planning & Administrative Tribunal Law, Legal Services, Tel: 416-392-8367; Fax: 416-397-5624; Email: rrobins2@toronto.ca

SIGNATURE

_____	_____
Joseph P. Pennachetti City Manager	Roberto Rossini Deputy City Manager & Chief Financial Officer

ATTACHMENTS

Appendix 1: Current Provisions of the DCA

Appendix 1: Current Provisions of the DCA

Historical service level cap

Currently development charge recoverable capital expenditures are limited to expenditures that support maintaining service levels at the average over the previous ten years. The concept is that developers should not be asked to fund improvements to services beyond what current residents enjoy. The problem occurs when growth requires an increased level of service and related capital investment, such as a subway, and development charges are limited by past investment levels. Furthermore, if spending falls below historical levels, the limit or cap is reduced, causing a ratcheting down of recoverable costs over time.

To date, the only project exempted from this requirement, through an amendment in 2007, is the Toronto-York subway extension (subsection 5.1(2)).

10% reduction

Paragraph 8 of subsection 5.(1) of the DCA mandates a 10% reduction of eligible growth-related capital costs of all services except water services, including waste water and storm water; roads; electrical power; police; fire protection; and Toronto-York subway extension (as listed under subsection 5.(5)).

The intent of this reduction is ostensibly to prevent municipalities from 'gold plating' their services. This statutory requirement means that a portion of growth-related costs has to be funded from other, existing (non-growth) revenue sources. During the last development charge by-law review, completed by the City in 2013, this resulted in almost $230 million of otherwise eligible growth costs being imposed on the tax base as opposed to being recoverable through development charges.

In addition to limiting potential development charge recoveries, municipalities, the MFOA and others have argued that the classification of services in 'discounted' and 'non-discounted' categories hampers system and service planning, since the DCA does not allow grouping of services from the two categories. For example, while roads (non-discounted) and transit (discounted) together form an integrated transportation network, these two services cannot be combined and are treated differently for development charge purposes; similarly, even though fire (non-discounted) and EMS (discounted) might share facilities and equipment, these cannot be combined and are treated separately and differently for development charge calculation and funding purposes.

Ineligible services

Under subsection 2.(4) of the DCA municipalities may not impose development charges to recover growth-related costs for the following:

- The provision of cultural or entertainment facilities, including museums, theatres and art galleries but not including public libraries
- The provision of tourism facilities, including convention centres

- The acquisition of land for parks
- The provision of a hospital as defined in the Public Hospitals Act
- The provision of waste management services
- The provision of headquarters for the general administration of municipalities and local boards
- Other services prescribed in the regulations

Capital costs of the above services have therefore been excluded from the calculation of development charges that can be imposed by the City. Determining costs eligible for recovery through development charges is a complex and involved exercise, and while no firm estimates related to the above services have been made, the amount foregone as a result of their exclusion could be significant.

Timing of development charge payment

Section 26 of the DCA states that development charges are payable at the time of building permit issuance, while allowing for variation in the amount and timing of payment for developments that require a subdivision or consent agreement. This has worked well – municipalities have been able to establish the payment schedule based on local circumstances in consultation with the development industry.

Under the City's DC by-law, development charges are calculated, payable and collected as of the date a building permit that allows above-grade construction is issued. The timing is suited to predominantly intensification and high-rise development, where multi-year development cycles of projects require a series of building permits to be issued in stages – excavation, shoring, foundation, above-grade, etc.