



# EX30.3.8



January 23, 2018

Mayor John Tory and Members of the Toronto Executive Committee  
City of Toronto  
100 Queen Street West  
Toronto, ON  
M5H 2N2  
Sent via email to:

Dear Mayor John Tory and Members of the Toronto Executive Committee,

**RE: January 24<sup>th</sup> Toronto Executive Committee Meeting, Agenda Item: EX 30.3 Development Charges By-Law Review**

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On behalf of the members of the BILD Toronto Chapter, NAIOP Greater Toronto Chapter, the Greater Toronto Apartment Association and the Real Property Association of Canada ("REALPAC"), we submit the following comments to you in advance of the January 24<sup>th</sup> statutory public meeting on agenda item EX 30.3 Development Charges By-law Review.

We acknowledge that staff are presenting, for information, the proposed DC background study and by-law, and seeking direction to continue to consult with stakeholders from the commercial and residential real estate sectors. At this time, we are providing preliminary comments and we will have further comments when the final staff recommendations are prepared for the March Executive Committee meeting.

Firstly, we would like to thank you for the opportunity to submit these comments. Our associations met on several occasions with City staff and we obtained copies of the proposed background study and draft by-law with its public release on January 9<sup>th</sup>. We acknowledge that the fees are proposed to significantly increase from \$24,638 to \$51,740 for large residential apartments (a 110% increase) and from \$207.52 per sq. m to \$449.04 per sq. m for commercial or retail developments (a 116% increase). If adopted, these DC increases will be passed onto the new homeowners, renters and businesses of the City of Toronto.

It is imperative to note that our industry is fully committed to pay for its fair share of growth related costs. As city-builders, our members recognize and accept their responsibility for supporting the City's infrastructure that is required to service new neighbours and businesses of Toronto. We are also aware that the City has an extensive backlog of state of good repair items, and as the City looks to replace aging existing infrastructure, we are concerned that new neighbourhoods and businesses will be asked to disproportionately absorb the costs. Changes to the development charges must also be considered in the full context of all government imposed fees and charges. We need to find the right balance so that new homes are affordable and the businesses remains competitive, and that we are not pricing Toronto beyond the reach of all but the wealthy.

We have also heard from our members that these changes will significantly challenge the supply of the type of development that the City actually wants to encourage such as multi-bed units, rental and office. We would like to take this opportunity to reiterate the sentiments delivered to City Staff at the January 12<sup>th</sup> stakeholder consultation meeting that:

- We are concerned with the speed and quantum of the changes to the City's DCs, especially in the context of other policies and fees which challenge the affordability of new housing and businesses. Technical examples to illustrate how the quantum change for the DC's is overestimated is attached to this letter

(see memo from IBI Group). We believe the rates should be significantly reduced to reflect the true share of costs related to growth.

- We believe the new by-law should be brought into effect when the old by-law expires (on October 31<sup>st</sup>) and that the by-law should be accompanied by a 4-year phase-in (25% each year), to protect presold units and pre-existing lease agreements.
- We also believe that in accordance with the Provincial Development Charges Act, the collecting of development charges should happen at first below grade permit, not first above-grade permit.

We are aware that staff will return to the City's executive committee in March with final recommendations. In the interim, we will continue to work with City staff on the quantum, policies and transitions associated to this review. If you have any questions or concerns, please feel free to contact the undersigned.

Sincerely, 

Danielle Chin MCIP RPP  
Senior Manager, Policy & Government Relations  
On behalf of the industry groups: BILD, NAIOP, GTAA, RealPac

*Cc: Brooks Barnett, RealPac  
Daryl Chong, GTAA  
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# Memorandum

<b>To/Attention</b>	Danielle Chin	<b>Date</b>	January 23, 2018
<b>From</b>	Audrey Jacob/Dukhee Nam	<b>Project No</b>	0777
<b>cc</b>	Rob Howe, Steve Deveaux		
<b>Subject</b>	<b>Methodological Concerns with 2018 Toronto Development Charges Background Study</b>		

The BILD Toronto DC Consulting team has carried out a preliminary review of the 2018 Development Charges Background Study, A Report for Public Consultation prepared by Hemson Consulting Ltd, dated January 9, 2019 (2018 DCBS). This memorandum summarizes the team's major concerns with the study and its calculations. There may be additional issues pending further review and discussion.

- Based on adjustments reflecting our major concerns, the proposed DC increase is overestimated by some 50%.

The major areas of concern include the following:

1. Transit
2. Port Lands
3. Hydro Transmission projects included in Road Works and related to Port Lands
4. Subsidized Housing, Shelter, Child Care and Civic Improvements
5. Land Costs in Parks and Recreation
6. Unallocated Water and Sanitary Sewer Projects

The aforementioned concerns are addressed in greater detail below.

## 1. Transit

### a) Planned Level of Service Requirement

The 2018 DCBS notes that Transit services must be based on a “planned level of service” rather than the “10-year historical average level of service.” The 2018 DCBS, however, ignores an important qualification to the planned level of service calculation provided for in the Act. Subsection 5.2(3) of the Act states that “the increase in the need for a prescribed service shall not exceed the planned level of service over the 10-year period immediately following the preparation of the Background Study required under section 10.” It is clear from this provision that only transit services that are actually planned to be provided within the 10-year period following the 2018 DCBS may be funded by the development charge.

The 2018 DCBS appears to be based on the unreasonable assumption that all of the new services in the capital program, including all higher-order transit projects, will be operational within the next 10-year period. In fact, the 2018 DCBS acknowledges that the ridership model

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used, which includes all of the services funded by the development charge, is based on a 2031 ridership network, and not a 2018 ridership network.

**b) Allocation of Benefit / Ridership Analysis**

The 2018 DCBS employs a methodology that allocates the benefit, and attendant capital cost, of the transit capital program funded by the proposed development charge among existing development, in-period (2018-2027) development, and post-period (2028 and beyond) using problematic ridership modeling and a series of equally problematic assumptions. Some of the most significant issues identified with the methodology used are as follows:

- i. The transit ridership model is based on a system-wide assessment of ridership. The extent to which increases in service will benefit growth as compared to existing development cannot reasonably be assessed using system-wide increases in ridership. It cannot be reasonably assumed that the benefit of each new service to be funded by the development charge, particularly major rapid transit services, can be assessed based on overall system-wide ridership numbers. The 2018 DCBS should have allocated the benefit derived from such services based on ridership using individual service components.
- ii. The model assesses ridership based on a transit system that includes major new service components that are not funded by the development charge, such as the Eglinton Crosstown (ECLRT) and Finch West LRT. Increases in ridership generated by services that are not funded by the development cannot be relevant to assessing the relative benefit derived from services that are to be funded by the development charge.
- iii. The 2018 DCBS allocates the benefit of new transit services between existing development and future development by attempting to determine the relative proportions of system-wide ridership increases that would be generated by existing development versus future development. To do that, the methodology uses various runs of a transit ridership model. The model determined that the increase in ridership from base year levels assuming the new (2031) transit network and future increases in population and employment (to 2041) was 218,000 riders. The model also determined that the increase in ridership demand from base year levels assuming the new (2031) transit network but assuming base year levels of population and employment was 53,000. However, instead of assuming that the ridership increase on the transit system attributed to existing development was 53,000, Hemson arbitrarily reduced this number by 1/3<sup>rd</sup> to 34,980. No reasonable explanation is provided for that adjustment, and no such adjustment is made to any other model results used in the analysis.
- iv. The methodology used in the 2018 DCBS ignores the fact that existing transit ridership will benefit from new services funded by the development charge that replace existing services. Where existing ridership is transferred to a new service that replaces an existing service, that ridership clearly benefits from the new service. For example, the Scarborough Subway extension is effectively replacing the existing Scarborough LRT. Ridership on the Scarborough LRT is at or above the capacity of the existing infrastructure. When the Scarborough LRT is decommissioned, existing ridership using the Scarborough LRT will transfer to new services funded by the proposed development charge, including the Scarborough Subway. However, the methodology used by Hemson unreasonably assumes that this transferred ridership derives no benefit from new services. The proposed Eglinton East LRT, which will replace the existing express bus service along the same route, is another example where ridership from existing development that will be transferred to a replacement service funded by the development charge is ignored.

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- v. The methodology used in the 2018 DCBS does not adequately account for the benefit that existing development will derive from increased levels of service that new infrastructure proposed to be funded by the development charge will provide. The methodology employed by Hemson assumes that new transit infrastructure will benefit existing development only to the extent that it may attract an increase in ridership from existing development. It ignores the fact that existing ridership derives a benefit from new services. By way of example, recent reports from the TTC document the fact that components of the City's existing transit service operate in a condition considered to substantially exceed available capacity. New services proposed to be funded by the development charge, such as the Relief Line South and SmartTrack are intended to alleviate current overcrowding. To the extent that these new services will attract existing ridership they provide a benefit to existing development that is not accounted for in the 2018 DCBS.

### **c) Lack of Capacity Adjustment**

Clauses 2 and 3 of subsection 6.1(2) of the general regulation made under the Act (O. Reg. 82/98) provides that in determining planned level of transit services that may be funded by a development charge:

2. No portion of the service that is intended to benefit anticipated development after the 10-year period immediately following the preparation of the Background Study may be included in the estimate.
3. No portion of the service that is that is anticipated to exist as excess capacity at the of the 10-year period immediately following the preparation of the Background Study may be included in the estimate.  
(emphasis added)

The above provides that any portion of a transit service that is planned to service development beyond the 10-year period following the Background Study cannot be funded by development, nor can any portion of a transit service that would have available capacity at the end of that 10-year period. The 2018 DCBS assumes that new services funded by the development charge will only be available to service development to 2041. Given the nature of the higher order transit services to be funded by the development charge it is unreasonable to assume that these "portions" of the service will be at full capacity at 2041 (23 years from now). Accordingly, the cost of these services allocated to growth is overstated by the 2018 DCBS.

### **d) Lack of Information**

Through the consultation undertaken by City staff prior to the release of the 2018 DCBS, BILD's consultants attempted to obtain information it would use to assess the reasonableness of the methodology proposed by Hemson to calculate the transit development charges. While the City has provided some background documents focused on a peer review of the ridership forecast as it applies to Smart Track and discussed the model in a general way, the City has been unable to provide meaningful information that would assist us in understanding the transit ridership model and the numerous inputs and assumptions that go into the model.

IBI Group has also requested from the City information regarding the future population and employment distribution assumptions by traffic zone that would help assess the reasonableness of the methodology. This data was also the subject of a peer review. The City has not provided the requested information or the peer review indicating it is proprietary. This despite the fact that

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the BILD consultant team has entered into non-disclosure agreements. Also, Hemson relies on work carried out in support of TOcore to underpin the DC population and employment forecasts; the TOcore report was requested but has not been made available.

## **2. Port Lands – Benefit to Existing (BTE) and Post Period Benefit (PPB)**

Port Lands related capital works are included within various service categories but most notably water, sanitary sewer, storm water management, roads, transit and parks & recreation.

Focussing on the water, sanitary sewer and storm water management related costs of the Port Lands development-related cost of \$1.59 billion, approximately \$1.46 billion is considered DC-recoverable (92%), and approximately \$120 million is considered Post Period Benefit (PPB) (8%). There is no consideration given to BTE despite the fact that the flood protection proposed will benefit existing areas adjacent to the Port Lands. This is but one example.

The 8% PPB for the Port Lands items is not reasonable in that a significant portion of development in the Port Lands is expected “Post Period” (after 2041). A review of planning policy and market demand analysis for the Port Lands suggests that residential and non-residential growth by 2041 may be less than 50% of build-out. Given that there would be a substantial post-2041 growth in the Port Lands that will benefit from capital items in the DCBS, a higher PPB should be considered for items related to the Port Lands.

## **3. Hydro Transmission Related Items included in DC**

The following projects are hydro transmission related items:

- 1.6.33 Basin Transmission Station Relocation
- 1.7.7 Underground Hydro Transmission Wires on Don Roadway and Commissioner
- 1.7.8 Relocate Existing Bouchette Hydro Underground Circuits

The above three items amount to \$286 million DC-recoverable costs and account for more than 30% of the total Road (2041) DC recoverable costs. Hydro service is currently provided via the existing infrastructure; therefore, the proposed projects should be considered replacement and largely benefiting existing development. IBI Group had asked for a rationale for the inclusion of the projects in the DC capital program but has not yet received a response. Existing documentation, notably the Port Lands Planning Framework (September 2017) indicates that the proposed hydro transmission projects reflect replacement, upgrades and a new level of service.

## **4. Subsidized Housing, Shelter Services, Child Care and Civic Improvements**

### **a) Subsidized Housing**

#### **i. Test for Funding Through Development Charges Not Met**

The provisions of the Act very clearly provide that the City can only impose development charges to pay for increased capital costs required because of increased needs for service arising from and attributable to development that will occur over the 10-year period following the 2018 DCBS.

There is no direct relationship between increased needs for subsidized housing and the development that will occur over the next 10-year period. Neither new development, nor the residents accommodated in new development, create a demand for subsidized housing. The inclusion of a development charge of any amount for Subsidized Housing is not justified.

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A letter from Hemson Consulting, dated October 13, 2017, in response to inquiries raised during consultation prior to the release of 2018 DCBS states the following in respect of the proposed subsidized housing development charge:

“...As the overall population in the City of Toronto increases, there will be an associated increase in demand to provide affordable housing services. Section 2(4) of the Development Charges Act does not include Subsidized Housing as an ineligible service. Therefore, it is appropriate and defensible to include these services for consideration under a development charges 2018 DCBS.

It is recognized that development in the City, especially redevelopment and intensification, affects the affordability of housing in many ways. For example, new population and employment place an upward pressure on land and housing values. Furthermore, redevelopment in the core, shoulders, and other areas has effectively displaced previously affordable market units and affordable rental units.”

The above statements illustrate the flaw in the City’s rationale for including subsidized housing in the development charge. It might be reasonable to conclude that there is a correlation between increased population growth and increased demands for subsidized housing.<sup>1</sup> However, the Act does not provide that development charges may be imposed to pay for increases in population and employment. Rather, they may only be imposed to pay for increased capital costs arising from increased service needs arising from development. Any correlation between increased population and increased demand for subsidized housing does not in any way support the proposition that new development creates a need for more subsidized housing.

The above statement from Hemson attempts to create a nexus between development and increased needs for subsidized housing by stating that redevelopment in the core, shoulders, and other areas has effectively displaced previously affordable market units and affordable rental units. A development charge for subsidized housing cannot be justified based on that alleged connection.

The impact that previous development may have had on affordable housing is irrelevant to the calculation of a development charge for which only the needs of future development are relevant. If the suggestion is that new development will continue to displace affordable units, there is no assessment in the 2018 DCBS of the number of “previously affordable market units and affordable rental units” that might be displaced by new development that will occur over the next 10 years.

Moreover, even if new development will displace some existing affordable housing units, the City has a rental housing demolition and conversion by-law that mitigates the impact of any such displacement. In addition, the 2018 DCBS ignores the fact that the City currently secures affordable housing contributions through section 37 contributions. Finally, the 2018 DCBS also ignores the fact that the City will have inclusionary zoning powers to require affordable housing in connection with significant new development in the near future.

The 2018 DCBS also has no regard for the fact that the provision of new housing development actually has a positive impact on housing affordability. If less development were occurring and

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<sup>1</sup> While such a correlation may exist, the actual social and economic factors that result in the demand for subsidized housing are likely much more complex.

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the result was a deficit, or additional deficit, of housing supply compared to demand it would tend to have a negative impact on housing affordability overall.

Finally, even if new development did displace existing affordable housing, and the loss of affordable housing was a consequence of development (which for the reasons noted above is not accepted) the wording of the Act requires that the need for the service be directly attributable to development. The subsidized housing is simply not a service that is required to meet the needs of new development.

**ii. Service Level Standard Calculation**

Even if the funding of subsidized housing service could be justified through a development charge given the issues discussed above, the service level calculations for subsidized housing provided by the 2018 DCBS are not in compliance with the Act or reasonable.

The inventory of existing subsidized housing services is effectively expressed as an annual cost per unit. This effectively amounts to an operating cost to the City, and not the capital replacement cost of services, which the Regulations require be used as the basis for level of service calculations.

In addition, the inventory contains housing provided by a host of housing providers, not only the City. The level of service on which the service level standard is based must include services that the City is actually providing, and not programs run by others to which the City is providing annual financial assistance.

The inventory on which the service level standard is based also includes ownership housing. We understand that in respect of such housing, the City is providing financial assistance in the nature of no-payment loans to participants to finance housing units that owned by the participant (not by the City). Financial assistance of that nature cannot reasonably be considered to be a level of service provide by the City.

**iii. Benefit to Existing Calculation**

The calculation of the proposed Subsidized Housing development charge in the 2018 DCBS does not include a reasonable allocation of benefit to existing development. The Act only allows the City to impose development charges where it will incur increased capital costs arising from increased needs for services attributed to development that it intends to meet. The City is not meeting the existing demand for subsidized housing now, nor will it meet the existing demand for subsidized housing over the next 10 years (let alone any increased demand). It cannot reasonably be demonstrated that the increased needs for subsidized housing over the next 10 years will increase the costs the City will incur in respect of subsidized housing over the next 10 years.

The benefit to existing calculation in the 2018 DCBS is essentially a level of service calculation, and does not in any way assess the extent to which the subsidized housing services to be funded by the development charge benefit existing development.

The City is seeking to impose a charge against development to address an existing social and economic issue. That is not the purpose of a development charge as authorized by the Act.

**iv. Capital Program**

The capital program for Subsidized Housing in the 2018 DCBS is very generic in nature, simply assuming without any detail that the City will provide 1,000 new units of affordable housing annually and 400 new units of affordable ownership housing annually. While this may be the



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City's aspiration, we have not been provided with any basis on which to conclude that the City will provide these units.

Moreover, the Act only allows the City to fund "capital costs" related to new services, defined to include costs to acquire land or interest in land, costs to improve land, or costs to acquire, lease, construct or improve building's, structure and facilities. Such costs have to be incurred directly by the City or one of its local board, or by others on behalf of and as authorized by the City. The subsidies paid by the City to third party housing suppliers, or loans to participants to assist in the purchase of affordable ownership units, do not fall within the scope of capital costs that can be funded by a development charge.

**b) Shelters**

For many of the same reasons that the City cannot justify the funding of Subsidized Housing under the development charge, the proposed development charge for Shelter Services are not justified. New development that will occur over the next 10 years does not create a need for new Shelter Services over that period.

The level of service calculation for Shelter Services appears to be based on the annual operating cost to provide a certain number of shelter beds, and is not based on the capital replacement costs of a service, as required by the Regulations under the Act.

As with the Subsidized Housing calculations, even if a development charge could be justified for Shelter services the City is not proposing to meet any demand for the service that exceeds the current demand.

Finally, as with Subsidized Housing the capital program for Shelters in the 2018 DCBS is generic and aspirational in nature, and not based on any planned infrastructure project.

**c) Childcare**

**i. Level of Service**

The level of service calculation for Childcare services appears to be based, at least in part, on the cost of providing subsidies to fund childcare spaces provided by third parties. It is not clear how these expenses establish a level of service provided by the City.

**ii. Benefit to Existing**

As with the Subsidized Housing and Shelter calculations, it does not appear that the City is proposing to meet any demand for the Childcare services that will exceed the current demand. The 2018 DCBS unreasonably assumes that existing development will receive no virtually benefit from proposed new Childcare services.

**d) Civic Improvements**

The 2018 DCBS include a proposed development charge for Civic Improvements. There is no reasonable basis provided to conclude that new development actually creates a need for the Civic Improvements funded by the development charge. New Civic Improvements benefit all residents equally and should be funded through property taxes. To the extent that Civic Improvements can be funded by a development charge, they should have at least a 90% benefit to existing charge to account for the fact that they equally benefit all residents of the City.

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## 5. Land Costs in Parks and Recreation

The maximum DC-recoverable amount in the Parks and Recreation Service was determined using the historical service level of \$2,984 per capita. Land replacement costs for Community Centres, Arenas and Pools account for almost 50% of the service level at \$1,430 per capita.

The inclusion of land in the historical service level calculations, however, does not reflect the fact that the proposed development charge by-law and its capital program do not relate to land costs for Community Centres, Arenas or Pools. The construction/relocation of recreation facilities in the DCBS capital program are on either City-owned/leased land or land acquired through the City's parkland policy (funding through parkland acquisition reserve or parkland conveyance).

The exclusion of land replacement costs for Community Centres, Arenas and Pools adjusts the maximum DC-recoverable costs by more than \$300 million.

## 6. Unallocated Water and Sanitary Sewer Projects

There are "Unallocated Projects" in the Water (\$60 million) and Sanitary Sewer (\$40 million) capital programs. To the SCS question on the inclusion of "Unallocated Projects", the response was that the "Unallocated Projects" may be used to offset cost escalations of listed projects.<sup>2</sup>

We believe that cost escalations are not valid reasons to include "Unallocated Projects" in capital programs. Increased DC expenditures due to cost overruns would be reflected in the DC reserve fund balance and can be recovered in the succeeding DC by-law as a potential negative balance in the reserve fund. In addition, the project cost escalation can and is often reflected in the succeeding DC by-law capital program.