



Development Charges in Ontario

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Submitted by: The Ontario Bar Association,
Municipal Law Section



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Introduction

The Ontario Bar Association (“OBA”) appreciates the opportunity to provide comments on the Ministry of Municipal Affairs and Housing Consultation Document, Fall 2013, relating to Development Charges in Ontario (the “DC Consultation Document”).

The OBA

The OBA is the largest voluntary legal organization in the Province representing nearly 16,000 lawyers, law professors and students. In addition to providing legal education for its members, the OBA has assisted governments with many legislative and policy initiatives – both in the interest of the profession and in the interest of the public.

This submission was prepared by the OBA Municipal Law Section, which has more than 350 lawyers who are leading experts in land use planning matters, representing proponents for and against policy documents and development applications, municipalities and the public before tribunals and the courts, including the Ontario Municipal Board (“OMB”).

Overview

As the Municipal Law Section of the OBA is comprised of lawyers representing developers, municipalities and ratepayers, our primary objective is to ensure that the review of the development charges (“DC”) system, density bonusing and parkland dedication results in a more efficient and streamlined process which achieves greater accountability and transparency than currently exists.

Comments

As requested in the DC Consultation Document, this submission is structured as responses to and/or comments on the themes identified on pages 10 and 11 of the DC Consultation Document.

The Development Charges Process

With respect to the DC process, there is some concern that the current methodology focuses too much on a one size fits all approach to determining eligible contributions. This approach is ill suited to accommodate the diversity of municipal circumstances in terms of investment needs and development patterns.

It is recognized that the establishment and collection of levies, which includes DCs is both a function of municipal funding needs and growth strategies. Within a transparent and accountable system which is subject to scrutiny and challenge, municipalities should have the discretion to choose an



appropriate mix of funding tools that respond to local circumstance. Where a municipality elects to alter the balance of funding tools to influence growth/private developer's decisions, those municipal decision should be transparent.

Concern exists that capital charge by-laws are used to recover growth related costs that are excluded by the current development charge methodology. Consideration could also be given to integrating capital charge by-laws with the DC system to ensure that they are not used to undermine the DC system by using a parallel funding system that does not include the same public processes, procedural protections, or ability to challenge decisions.

Methodologies could be considered to require that infrastructure development and redevelopment required to service both existing residents and new growth be integrated into a comprehensive planning process (i.e. an infrastructure plan) that is based on a municipality's Official Plan, and then provide flexibility for costs to be allocated between the existing and future residents on an ongoing basis (property tax revenues) and growth specific costs (development charges) according to the local municipality's preference.

To address municipal differences in existing and desired infrastructure development, consideration could be given to allowing municipalities to set desired service levels as part of the planning processes, and have those levels form the basis of infrastructure planning and funding decisions.

Additionally, there is concern that prescriptive provisions / definitions in the *Development Charges Act, 1997* (the "Act") are unlikely to resolve disputes or result in optimum investment decisions / growth strategies that respond to local circumstances. As such, the Act should continue to establish a broad structure for determining and assessing development related infrastructure funding needs, but consideration could be given to allowing municipalities greater individual flexibility in defining and determining capital costs that are to be funded through development charge levies, provided such decisions are transparent and continue to be made within an accountable system that allows for challenges by those who do not support the municipal decision.

Finally, to improve accountability, transparency and understanding of the DC system, any changes to the Act should consider the amount of time provided for stakeholders to review a DC background study, and the process for consulting all stakeholders prior to a municipality passing a DC by-law.

Eligible Services

With respect to the current list of ineligible services, there is some concern that it may not be appropriate for all municipalities in light of prevailing funding arrangements between the Province and municipalities and the provincial requirements for the development of complete communities. Similarly, a default 10% reduction may not be warranted or be the appropriate deduction for specific services in all circumstances. The list of services subject to a 10% discount should be



reviewed through this process to ensure that the implications of any changes thereto are fully understood prior to implementation.

One method of providing flexibility with respect to mandatory exclusions and discounts so that they respond to local circumstances would be to remove them from the Act and have them established by way of regulations that are either Province wide, or local area specific.

Reserve Funds

The current reserve fund system does not provide sufficient public reporting, and may encourage the retention of collected funds by allowing them to be “borrowed” for purposes unrelated to the project for which they are collected. More detailed reporting requirements could be considered, such as having reserve fund statements prepared similar to an annual report which would include comparable historical information for the preceding 5-10 years (in the same way a corporation’s annual report includes past information for trend analysis).

Consideration could also be given to requiring that the asset mix of each reserve fund be reported, including amounts held as a municipal debt (i.e. the total of all currently accrued borrowing).

A higher degree of transparency and accountability should be required for reserve funds by making reserve fund statements publicly available through their posting on each municipal websites and making them available at municipal offices.

Section 37 (Density Bonusing) and Parkland Dedication

There needs to be greater transparency with respect to the requirement for section 37 payments. In practice, density bonusing is problematic and can be inconsistent with current provincial planning policies regarding intensification, efficient use of infrastructure, and the creation of complete communities.

If specific funding or facilities are required to support a particular height or density which achieves those provincial policies, consideration could be given to have the funding for those facilities identified and established in an independent manner or through the DC system.

With respect to parkland dedication, the Province should review these sections of the *Planning Act* to ensure that they are consistent with current provincial planning policies regarding intensification.

Further, consideration could be given to integrating the cash-in-lieu parkland elements of the *Planning Act* with the DC system, such that municipalities could decide in advance those areas where they would be looking for physical dedication of land and those areas where they would be requiring a cash payment to fund the future purchase of parkland.



Such a system may provide more transparency to stakeholders in knowing when municipalities will require cash-in-lieu payments and when they will require land dedication. Under such a system, if a municipality elected to proceed with a requirement for a cash-in-lieu payment, the contributors would have the protections of the process under the Act and the municipality would have a fund to acquire land for park or other public recreational purposes when available.

Alternatively, the Province could keep the parkland dedication process separate from the Act, but incorporate some of the transparent and accountable elements of the Act. For instance, similar to DC by-laws, parkland dedication by-laws could be subject to a background justification study, a right of appeal to the Ontario Municipal Board, and an expiry period. Either way, decisions regarding parkland dedication including cash in lieu should be required to be consistent with the Provincial Policy Statement and, where applicable, conform to the Growth Plan for the Greater Golden Horseshoe.

Voluntary Payments

Concern exists regarding the use by some municipalities of voluntary payments and the lack of transparency and accountability that surrounds them. Any review of these voluntary payments must consider the serious public policy issues surrounding the use of these payments.

The Act could either prohibit municipalities from using voluntary payments or alternatively could establish a transparent and accountable method for reporting any such payments received by a municipality. Such a reporting requirement should require clear and accurate information on the amount and purpose of the voluntary payment so that it is available for future planning exercises.

Consideration should also be given to requiring a voluntary payments reserve fund together with the necessary reporting requirements for such a reserve fund in order to assess their impact in relation to future DC requirements.

Growth and Housing Affordability

To address the impacts of DCs on housing affordability, one approach for consideration would be to require municipalities to comprehensively identify and plan for all projected infrastructure development or redevelopment and then allocate that between property tax revenue and DCs. Comprehensive planning may allow municipalities to more clearly understand long term infrastructure funding needs and the impact of DCs on housing affordability.

Consideration could be given to limiting or prohibiting municipal borrowing from reserve funds for non-infrastructure related matters or only allowing borrowing to fund other DC eligible activities so as to ensure funds collected are used to support infrastructure development.



High Density Growth Objectives

There is concern that a one size fits all approach limits the ability to meet local demands, as does an overly prescriptive framework and methodology. Amendments to the Act that facilitate flexibility in the identification, assessment and allocation of DCs to allow municipalities to respond to local circumstances and pressures could be considered. Additionally, broad regulation making power could be retained to address instances where municipal levies are being set in a manner that is inconsistent with local and provincial policy objectives.

Conclusion

Overall, the approach that is supported by the OBA is one that provides for and promotes transparency and accountability, while providing sufficient flexibility to reflect local circumstances and different municipal circumstances relating to growth, development patterns, and servicing needs.

It is recognized that funding infrastructure to support intensification and the creation of complete communities is a balance that is highly dependent upon local circumstances and objectives. To address this diversity, the Act could provide greater flexibility to individual municipalities to develop home grown solutions to balancing DCs and intensification subject to the necessary checks to ensure such decisions conform to Provincial Plans and policies.

The OBA looks forward to continuing discussions with the Ministry of Municipal Affairs and Housing and other key stakeholders regarding the potential changes to the current DC system.