REGIONAL MUNICIPALITY OF OTTAWA-CARLETON REPORT
MUNICIPALITÉ RÉGIONALE D'OTTAWA-CARLETON RAPPORT

Our File/N/Réf.
Your File/V/Réf.

DATE 23 March 1997

TO/DEST. Co-ordinator
Corporate Services and Economic Development Committee

FROM/EXP. Finance Commissioner

SUBJECT/OBJET **BILL 98 - DEVELOPMENT CHARGES ACT, 1996**
SUBMISSION TO THE STANDING COMMITTEE ON RESOURCES DEVELOPMENT

DEPARTMENTAL RECOMMENDATION

That the Corporate Services and Economic Development Committee recommend Council approve of the submission of the attached *Regional Treasurers Discussion Paper* to the Clerk of the Standing Committee on Resources Development and the Minister of Municipal Affairs and Housing as Council's response to Bill 98.

BACKGROUND

The provincial government has referred Bill 98 to the Standing Committee On Resources Development in order that interested parties can make submissions regarding the proposed changes to the Development Charges Act. Staff recently received notification that the Standing Committee had scheduled March 24, 25 and 26 for public hearings. The Standing Committee will also be meeting the last week of April to review the issues raised during the public hearings as well as any issues contained in written submissions received by the Clerk of the Standing Committee in the intervening weeks.

Following the introduction of Bill 98, the Regional Treasurers decided that it would be cost-effective to prepare a joint discussion paper that could then be provided to each of the respective Regional Councils as their basis for individual submissions to the Minister of Municipal Affairs. A copy of the discussion paper is attached.

The discussion paper was not completed until March 3, 1997. Unfortunately, this has not allowed for the paper to be considered by Committee and Council in time for a submission to the public hearings of the Standing Committee. It does allow enough time, however, for a written submission to be made by Council to the Standing Committee prior to the meetings at the end of April. That is the purpose of this report.

DISCUSSION

Development Charges are a source of capital financing and are a fundamental component of the financing of growth related infrastructure without impacting the tax and user fee rates paid by existing residents. The philosophy of development charges is straightforward. Growth should pay its own costs and those costs should be calculated using a fair and supportable methodology. Since the introduction of development charges in Ontario, developers have complained that municipalities use development charge revenues to "gold plate" municipal infrastructure. More specifically, they have argued that municipalities have used development charge revenues to dramatically increase the service levels provided for by municipal infrastructure, especially in the area of "soft services" such as recreational and cultural facilities.

Based on the changes proposed in Bill 98, it appears that the Province believes that the developer associations' argument has substance. The new legislation has been designed to focus on the issues of ineligible services, service level standards, existing excess capacity and mandatory municipal subsidization of development-related costs, among others. For those municipalities currently imposing their full charge, as calculated under the current Act, the proposed legislation would definitely result in lower development charges and resulting development charge revenues. This is especially the case for lower-tier municipalities and their cultural and recreational service programs.

The attached discussion paper considers all of the changes proposed by the Bill from a regional government perspective. Staff have been involved in the development of this discussion paper and feel that it represents a comprehensive response to the proposed legislation and that it covers the interests of the RMOC in this regard.

Approved by
J.C. LeBelle
Finance Commissioner

Attach. (1)

BILL 98 - DEVELOPMENT CHARGES ACT, 1996
REGIONAL TREASURERS OF ONTARIO
DISCUSSION PAPER - DRAFT

EXECUTIVE SUMMARY

1. Purpose

The purpose of this report is to provide the Minister of Municipal Affairs and Housing with input from the Regional Chairs of Ontario with respect to the proposed development charges legislation, Bill 98-(Development Charges Act), 1996.

This report augments the previous paper submitted by the Regional Treasurer's regarding proposed amendments to the Development Charge legislation dated May 9, 1996.

It is understood that the purposes of the revised DC Act are to:

- promote job creation and economic activity by reducing development charges thereby reducing land and housing prices; and
- increase municipal accountability; and
- allow for recovery of development costs related to new growth.

To a large extent the key issue of the revised provisions are to moderate municipal service level standards thereby lowering development charges and new housing prices. Municipalities are faced with the challenge of providing services, in a consistent manner, to new development while not impacting existing residents. This report does not address the "area municipal" services specifically, however, the Regions are supportive of area municipal initiatives and discussions regarding this important issue.

More specifically, this report incorporates input provided into the on-going Provincial/municipal/development industry discussions regarding proposed revisions to be made to Bill 98.

This report outlines the critical importance for municipalities of the collection of development charges to finance growth-related infrastructure, and provides constructive input for amendments to Bill 98 to ensure that the legislation will achieve the Provincial governments goals and provide benefits to all affected parties (i.e. developers, municipalities and taxpayers).

2. Recommended Amendments to Bill 98

The key issues outlined in this submission from the Regional Treasurers of Ontario, regarding proposed amendments to Bill 98 are outlined below:

2.1 Co-Payment and Percentage Discounts

- there should be no mandatory municipal co-payment for use of DC reserve funds s.36 and s.64

- there should be no % discount or cost adjustment to the "hard" services and a reduced percentage discount for other municipal services in the DC calculation s.5(6) and s.5(1)7

2.2 Service Levels

- DC calculations should provide for service levels beyond a 10 year average for transportation, water and sewer services and where the Province has mandated a higher level (i.e. storm water) s.5(1)3

- DC calculations should allow for oversized infrastructure capacity to be charged in a DC By-law (consistent with oversized works in Development Charges Act, 1989) s.5(1)4

2.3 Ineligible Services

- hospitals should be included as an eligible service for DC funding

2.4 Non-Residential

- non-residential DC's should apply to a minimum of two categories -- one of which is industrial (definition for "industrial" to be determined)

- industrial additions should be exempt up to 50% of existing g.f.a. on a one time per property basis (or limited to every 3 years)

2.5 Services In-Lieu Credits

- service-in-lieu credit provisions in the proposed legislation should be amended to allow for "reasonable" credits (including a developer contribution to the non-growth share of the project) s.39, 40, 41, 42

- credits should acknowledge when the municipality planned on constructing the infrastructure

- the costs to be considered for service-in-lieu credit must be included in a DC By-law

2.6 Front-End Financing

- front-ending provisions should not require municipal cost sharing of the non-DC portion of capital projects (Part of Bill 98)

- the service and capital project(s) that are being front-ended may or may not be incorporated in a municipal DC By-law

- no legislated municipal co-payment for front-ending/services-in-lieu

2.7 Grandfathering Provisions

- the legislation should allow for s.14 Planning Act (lot of record) agreements to be grandfathered on a permissive basis

- the legislation should be amended to allow for grandfathering of DC collections for ineligible services which had been constructed or committed to prior to Bill 98

- Bill 98 should be amended to eliminate any co-payment for use of existing reserve funds

2.8 Other Issues

- the non-residential building cost (Statscan) index should be utilized

- all DC studies should be eligible for full cost recovery

Attached to this report as Appendix A is a more detailed analysis of these key issues and Recommended Amendments. Also attached to Appendix B is a detailed listing of other concerns with respect to Bill 98.

1. RECOMMENDED AMENDMENTS TO BILL 98

The following provisions of the proposed development charges legislation should be amended to ensure that the funds required to provide the necessary capital services for growth are paid for in a fair and appropriate manner by the new development which causes growth.

1.1 Mandatory Co-payment Provisions s.36 and s.64(1)

Bill 98 requires that DC reserve fund monies may only be spent if the municipality spends an amount equal to "10% or 30% of the total of" the costs of growth-related infrastructure.

A mandatory 10% co-payment to be funded from non-development charge sources is applicable for various designated "hard" (transportation, water, sewer, waste, police and fire) services in Bill 98, and 30% for other services. Legislated municipal co-payment will make co-payment mandatory and will lead to tax and user rate increases for existing residents/businesses to fund the costs of growth.

It is critical that the new costs of growth are paid for in a fair and reasonable manner by the development which causes the growth, and not by existing residents.

Proposed amendment:

An arbitrary co-payment percentage should not be legislated in the proposed DC Act for any services. Municipalities should be required to fund any development charge reductions attributable to exemptions or implementing a lower development charge than allowed under the Development Charge legislation from non-DC sources.

1.2 Calculation of Development Charge

1.2 (a) 10 Year Average Services Level s.5(1)3

Bill 98 specifies that the increase in the need for service attributable to the anticipated development must not exceed the average level of service provided in a municipality over the prior 10 year period.

It is difficult to quantify annual service levels for water supply, wastewater, and transportation services, and in a number of areas, service levels are mandated or prescribed by Provincial policy/legislation (i.e. storm water).

Proposed amendment:

Bill 98 should be amended to reflect that the increase in the need for water supply, wastewater, storm water drainage and transportation services be based on the level of improvements required by the anticipated development, which is consistent with current provincial and municipal policy.

The ten year average service level may be applicable to other services per each municipality's prior ten year average service standard.

1.2(b) Percentage reduction in calculating a DC rate s.s.5(6) & s.s.5(1)7

Bill 98 requires that subsequent to determining the costs attributable to growth for a specific service that the capital costs must be reduced by 10% or 30% dependent on the service.

These provisions require municipalities to undertake background studies to delineate growth and non-growth costs and then to apply an additional 10% or 30% adjustment to the growth related component of the costs. The net result is that growth costs are passed on to existing residents and businesses.

Proposed amendment:

For hard services i.e., (roads, water, sewer, transit, police, fire, storm sewer and waste) there should be no % reduction.

1.2(c) Uncommitted Excess Capacity s.s.5(1)4

Bill 98 requires that the need for service attributable to proposed development must be reduced by the part of the increase that can be met using the municipality's uncommitted excess capacity.

Essentially, Bill 98 states that no future development charge recovery can occur with respect to the increased need for service that can be met via the uncommitted excess capacity.

Municipalities typically construct oversized capital facilities in order to ensure that adequate services are available in a timely manner to accommodate growth. In particular large regional water distribution/treatment and sewage treatment facilities are constructed to accommodate the needs of the forecasted population growth in accordance with approved Official Plans.

Proposed amendment:

Bill 98 should be amended to delete s.5(1)4 regarding uncommitted excess capacity, and further Bill 98 should be amended to provide for the portion of facilities which have been specifically oversized to be allowed for inclusion in the DC By-law. This is consistent with the treatment of oversized capital works per the Development Charges Act, 1989.

1.3 Industrial Expansion Exemption s.2(3)c

Bill 98 states that a development charge may not be imposed for development to "permit the enlargement of the gross floor area of an existing industrial building by 50% or less". The provisions apply to multiple building permit applications (each being less than 50%) and could possibly lead to avoiding a development charge altogether.

A number of municipalities have undertaken a number of measures, on a permissive basis, to encourage industrial development including:

- implementing a lower than permitted non-residential DC;
- exempting one-time industrial additions;
- exempting from the payment of DC's vacant lands registered prior to 1991.

Proposed amendment:

It is proposed as a means of providing further incentives to industrial development and assessment that Bill 98 be amended to permit:

- non-residential DC's be apportioned to a minimum two land uses (one being industrial)
- a definition for "industrial" use be defined
- exemptions for industrial additions up to 50% of floor area be permitted on a one-time basis (or every three years)
- any land use changes from industrial to another category would trigger payment of a development charge for previous industrial exemptions
- all additions/expansions be on the same lot as the principal building.
- the scope of services applicable to non-residential development be limited to transportation, water, sewer, police and fire services.

1.4 Ineligible Services s.2(4)

Bill 98 identifies six categories of ineligible services. From a regional perspective, the most significant proposed exclusion is hospitals.

Given the recent provincial funding reductions for Hospital capital purposes the proposed elimination of development charges as a funding source will leave hospitals in high growth regions unable to provide the required infrastructure to meet the needs of a growing population. A number of Regional municipalities (i.e. Peel, York, Ottawa-Carleton) have traditionally, on a permissive basis used lot levies and development charges to assist hospitals with funding the local component of growth-related capital projects. It is submitted that the elimination of development charges for hospital purposes may lead to delays in a number of hospital capital improvements and in some cases make it financially impossible for some projects to proceed.

Until recently, the emphasis in Ontario has been on acute care in hospitals and to a lesser extent on chronic care. However, lately, there has been a greater need for chronic care or long term care. As our population ages, there will be more need for long term care facilities and new avenues are being explored to provide long term care in non hospital settings. The province has been downloading such services to municipalities instead of providing such services in hospitals. Funding for long term care will be shared in the future by the municipal sector with the Province. As a result, it will become necessary to raise growth related capital funding for such facilities. Long term care is not different from homes for the aged and it is submitted that the Act should define long term care as part of the homes for the aged category.

Further, Bill 98 excludes the collection of development charges to be used for purposes of museums, theatres and other cultural facilities. It is submitted that development charges for recreational facilities allow multi-program rooms to be utilized for museums, theatres and other cultural purposes. It is further suggested that Bill 98 be amended to provide for the exclusion of rolling stock (exclusive of police vehicles), minor capital (with a useful life of less than seven years) and computer and information technology related equipment.

Proposed amendment:

It is proposed that Bill 98 be amended in the following manner with respect to ineligible services:

Hospitals be included as an essential service and as such be eligible for development charge funding in a full cost recovery category for growth related capital costs.

That the area of excluded services be expanded to incorporate rolling stock (exclusive of police vehicles) and minor capital (with the useful life of less than seven years) and computer and information technology related equipment.

That area municipalities be allowed to render development charges for recreation facilities which may be utilized to fund various parks and recreation/cultural capital facilities.

1.5 Grandfathering Provisions

1.5.1 Draws from existing reserve funds s.64

Bill 98 sets out provisions for existing reserve funds pertaining to ineligible services and those pertaining to eligible services.

In the case of ineligible services, the municipality shall deem the funds to be a general capital reserve for the same purpose and within five years of the expiry or repeal of its by-law under the existing Act, it shall allocate any money remaining in the fund to reserve funds established under Bill 98 (or to a general capital reserve fund if there are no such funds).

In the case of eligible services, the municipality shall deem its reserve fund to be a reserve fund under Bill 98 (and hence subject to the 10% and 30% co-payment provisions) on expiry of its by-law under the existing Act.

For some past (eligible service) projects, debt service and developer repayment obligations have been incurred in anticipation of repaying the obligations from future DC collections, without any co-payment by the municipality.

Proposed amendment:

Bill 98 should be amended to eliminate any co-payment provisions such that existing reserve funds for eligible services can be fully utilized for growth-related capital.

Further any debt service and repayment of development obligations from future DC collections for committed/constructed projects should not require any co-payments.

Further Bill 98 should allow for reserves for ineligible services to be combined and/or utilized over a longer than five year timeframe.

1.5.2 Committed projects - ineligible services

Bill 98 specifies a number of excluded services and does not permit any future collection of development charges for these services after a revised DC By-law is enacted (a maximum of 18 months after the DC Act is enacted).

A number of municipalities have either constructed and financed, or committed funding to capital services not deemed as ineligible. In these instances, particularly where debt or internal reserve borrowings had financed the obligation municipalities are not able to finance further debt/borrowing repayments from DC's. In certain instances, municipalities have issued debt which has a committed repayment obligation from future development charge funding. It is proposed that for services where there has been debt issuance that the service be grandfathered and the municipality be allowed to carry such services in a by-law to fund the debt until the debt has been repaid.

Proposed amendment:

For services which are proposed to be excluded from future DC funding, it is proposed that Bill 98 be amended to allow for a grandfathering of DC collections. For services deemed as ineligible where facilities had been constructed/or committed to via pre-Bill 98 debt/borrowings.

1.5.3 Credits under s.13 (service-in-lieu) Development Charges Act, 1989 s.66

The grandfathering of eligible credits granted under s.13 (Development Charges Act, 1989) is supported, and the service-in-lieu credit provision of Bill 98 should be amended to make the provisions consistent with the Development Charges Act, 1989 allowing for reasonable credits subject to an appropriate local agreement.

1.5.4 Credits under s.14 Development Charges Act, 1989 s.67

Bill 98 states that credits under S.14 of the Development Charges Act, 1989 (i.e. Planning Act pre-1991 agreements) expires with the enactment of a revised DC By-law.

This is a key issue for the development industry in that a number of municipalities have a substantial inventory of vacant, registered lands that are subject to prior s.14 agreements. Under s.14 and municipal policy these lands are exempt from any additional payment of DC's.

Proposed amendment:

Subject to elimination of co-payment provisions, it is proposed that Bill 98 be amended to allow that s.14 credits be grandfathered on a permissive basis with the revised legislation.

1.6 Services in lieu/credit provisions s.39, s.40, s.41 & s.42

Bill 98 permits a municipality to give credit towards a development charge in exchange for work that relates to a service included in the development charges by-law. The legislation requires that a municipality permit and assist in cost sharing the credit portion by the percentage reduction which has been outlined earlier of 10% or 30%. It further permits the credit to be non-binding on lands and to be transferable such that an owner could utilize the credit in a different part of a municipality.

A number of municipalities have negotiated services in lieu and credit arrangements with the development industry in accordance with the existing provisions of the Development Charges Act, 1989. Service-in-lieu provisions allow a developer to accelerate development in an area not yet scheduled for municipal capital outlay and for the developer to be reimbursed for the cost, in a reasonable manner. Service-in-lieu/credit provisions allow developers to expedite or finance the construction of municipal infrastructure in exchange for reasonable credits.

Proposed amendment:

The following proposed revisions which will augment the credit/service-in-lieu provisions of Bill 98 should be incorporated in the proposed DC legislation:

- the costs for works to be considered for DC credit must be incorporated in a municipal DC By-law.
- a municipality shall authorize and agree to a development charge credit amount prior to allowing the construction of the works to be carried out. The credit will be restricted to the service component of the municipal development charge unless by an agreement a municipality agrees otherwise. The developer shall, where warranted, be required to make a contribution toward the non-growth component of the capital cost based on when the municipal works were planned for construction in the municipal capital program.
- where the capital works are not included in a municipality's capital ten-year program the developer shall be required to make a full non-recoverable contribution of the non-development charge costs of the capital works.
- a municipality may by agreement be permitted to allow for a deferred repayment to a developer of a development charge credit obligations where the credit exceeds the development charge otherwise payable related to the service component.
- credits should not be transferable, and should be explicitly bound on the benefiting lands for which the services were constructed.

1.7 Front-end provisions (Part III of Bill 98)

Bill 98 has proposed "simplified" front-ending provisions which will allow municipalities and developers to agree to accelerate development in areas not yet scheduled for municipal capital outlay and for the developer to be reimbursed for the costs.

A number of Regional municipalities utilize long term planning time frames (i.e. 25 years) to estimate costs for growth-related infrastructure. Even though a DC by-law may provide for collections for capital projects that are not forecasted to be constructed until well in the future (ten plus years) front-ending should allow a developer to finance the construction of municipal capital works subject to an agreement for recovery of the growth-related cost of the works.

Proposed amendment:

The following revisions which will augment the front-ending provisions of the proposed DC legislation should be considered in order to ensure the front-ending provisions are workable:

- the municipality should not have any mandatory cost sharing of the non-growth costs of the works that are being front-ended.
- the service and specific capital work(s) that are being front-ended may or may not be incorporated in a municipal DC By-law dependent on the capital infrastructure and planning population timeframe utilized for the by-law.
- if other developers that have not participated in the front-ending agreement are only required to pay the DC specified in the by-law there should be no right of appeal.

1.8 Other Matters

Agreements outside of DC Legislation

Where a municipality and developer(s) mutually enter into an agreement outside of the parameters of the Development Charges legislation, the agreement shall be binding and have stand-alone status.

Capital Growth Studies

All development charge and growth-related studies should be eligible for full DC cost recovery.

Indexing

It is proposed that the development industry and municipalities support one index for inclusion in the proposed legislation for indexing costs on an annual basis, i.e. Statscan non-residential building construction Index (based on awarded tenders).

APPENDIX B

OTHER CONCERNS WITH RESPECT TO BILL 98, *THE DEVELOPMENT CHARGES ACT, 1996*

SECTION	GENERAL SUBJECT MATTER	CONCERNS	RECOMMENDED APPROACH
Part I			
s.1	Definitions	• number of definitions is reduced (although some are spread through the Bill) • with seven years of experience with current Act, definition of a greater range of operating terms (eg. service, local service, credit) should be achievable; this would provide greater clarity in interpreting the Act	• provide definition for key operating terms in the Act including terms in s.s.5(1) and "Service"
Part II			
s.2(4)	Ineligible Services	• unclear as to eligibility of a facility which is, in part, or on occasion, used for ineligible "activities" (eg. community centre used for theatre production) • other ineligible services could be added at any time through Regulations, creating uncertainty with respect to long term financing commitments	• provide clearer definition of ineligible facilities (eg. primarily used for ...) • eliminate s.2(4)6 and require all ineligible services to be included in the legislation (or added through a legislative amendment process)
s.5(1)	Calculation Methodology	• the possible use of Regulations is referenced in several subsections. The impact of the Bill 98 on municipalities cannot be determined precisely in the absence of these Regulations. Also, with this (potential) key role in implementing the Act, municipalities and the public should have an opportunity to review and provide input	• publish the draft Regulations as soon as possible (preferably before the Legislative Committee hearings)
s.5(1)3	Background Study	• the "timing" of the preparation of the background study sets the end point for determining the ten year average service standards, and as well, the one year period during which the municipality may pass a DC by-law (based on the study). However, it is unclear as to what criterion reflects "the preparation of the background study (eg. completion of the draft report, completion of the final report, approval in principle by Council)	• specify that the time periods commence when the report is approved by Council or presented to Council

OTHER CONCERNS WITH RESPECT TO BILL 98, *THE DEVELOPMENT CHARGES ACT, 1996*
(Cont'd)

SECTION	GENERAL SUBJECT MATTER	CONCERNS	RECOMMENDED APPROACH
s.5(1)6 and s.5(2)	Grants, Subsidies and Other Contributions	• the wording, "the capital costs necessary to provide the increased services must be estimated. The capital costs must be reduced by the reductions set out in subsection (2)", which references grants, subsidies and other contributions, infers that these reductions are made off the growth cost, not the total cost (as under the current Act) • the total benefit is therefore provided to growth, rather than shared between growth and non-growth costs. This provides the municipality with very little incentive to fund raise or use other sources, since these would be used to reduce growth costs only	• reword the section so that it clearly states that grants, subsidies and other contributions are deducted from total costs
s.5(1), 5(7) & s.6	Rules	• these sections refer to the requirement to develop rules "to determine if a development charge is payable in particular cases and to develop the amount of the charge" (to be included in the by-law). This appears to provide for the possibility of a case by case review on an individual building permit base	• clarify that the reference to "in a particular case" does not require development-specific DC calculation tests beyond normal variations for unit type, etc.
s.5(6)4	10% services	• highway services are defined in s.s.1(1) of the *Municipal Act* • there is some concern about the wording of this section with respect to inclusion of sidewalks and streetlights as eligible costs	• wording should be clarified to ensure that sidewalks, bike paths, streetlights and streetscaping are considered eligible costs
s.13(1)	Appeal Period	• setting the final date for appeal as 40 days after the by-law passage could lead to situations where the final day is a weekend or holiday	• change wording to "a period to be determined by the municipality, but a minimum of 40 days"
s.18(3)	Interest on Development Charge Refunds	• if the prescribed rate in the Regulation exceeds the interest rate earnings on the reserve fund, the refunds will result in a revenue shortfall to complete the work identified in the study/by-law	• the prescribed rate should be a readily attainable rate for municipal accounts
s.19	Amendments to By-laws	• the Bill does not contain direct authority to amend a by-law (only references the process)	• include provision to permit a municipality to amend a development charges by-law

OTHER CONCERNS WITH RESPECT TO BILL 98, *THE DEVELOPMENT CHARGES ACT, 1996*
(Cont'd)

SECTION	GENERAL SUBJECT MATTER	CONCERNS	RECOMMENDED APPROACH
s.20(1)	Complaints	• concerns with respect to the current wording of the Complaints section (8) are not alleviated by this section • "the amount of the development charge is incorrectly determined" may still lead to appeals on the merits of the calculation	• reword section to clarify that a person may only complain if the provisions of the by-law have been incorrectly applied
s.32(1)	Unpaid Charges Added to Taxes	• the section allows unpaid development charges to be added to the tax rolls and collected as taxes. However, the wording may invite a different interpretation.	• section should specifically state that the amount unpaid shall be "deemed" to be unpaid taxes
s.37	Borrowing from Reserve Funds	• municipalities are allowed to borrow from (DC) reserve funds but must pay interest at a prescribed rate (presumably based on provisions of the yet unpublished Regulations) • potential concerns relate to a prescribed rate which is above the earning rate of the fund itself, in that taxpayers are being asked to make an additional contribution to funding growth-related works	• prescribed rate should be consistent with the earnings rate of the fund
s.39(4)	Credits for Emplacement of Works: Above Average Level of Service	• the section does not allow for credit for cost of works that relate to "an increase in the level of service" beyond the average level established in s.5(1)3. If that is measured in terms of units per capita, it could be the result of "oversizing". Many facilities are oversized for future development to take advantage of efficiencies and economies of scale. If the credit is based strictly on the average level over past ten years (at the time prior to the report preparation), the developer emplacing the facility would receive a reduced credit	• section should more specifically define "above average credit level" (and look to refinements in section 5(1)3)
s.42(1)	Use of a Credit	• the section does not deal with one of the current issues relating to the existing Act. Can the "credit" be in the form of a direct upfront payment from the existing reserve fund in order to clear the liability, if agreed to by both parties? This avoids the issue of transferring credits from the developer to the builder (where they are separate parties) and reduces administrative requirements	• clarify that the credit can be given in a form agreed to by both parties

OTHER CONCERNS WITH RESPECT TO BILL 98, *THE DEVELOPMENT CHARGES ACT, 1996*
(Cont'd)

SECTION	GENERAL SUBJECT MATTER	CONCERNS	RECOMMENDED APPROACH
s.42(4)	Use of a Credit	• the section specifies that the "co-payment" for a work emplaced under a credit agreement must be "redeemed for money" • this restricts the developer and municipality from reaching an agreement to provide the value equivalent of the credit through another method (eg. emplacement of works); if both parties agree	• provide for flexibility in how the co-payment for the work is funded, subject to agreement by the municipality and other parties (eg. provision of services-in-lieu, by the municipality)
Part III			
s.45(2)	Front-ending agreements	• local service works are not eligible for front-ending agreements. However, in a situation where there are several ownerships within a plan of subdivision, this would provide a formal structure for cost-sharing parks and storm water management works, and other local works, expediting development	• local service works under s.60(2) should be eligible for front-end financing
s.45(4) and (5)		• wording unclear re the meaning of "non-reimbursable share"	• clarify meaning
s.45	Front-ending agreements (FEAs)	• the section does not appear to provide for a sunset clause on FEAs (as per the current legislation). This would discourage municipalities from entering into agreements which may have a long term payback period (eg. several decades), due to the administrative requirements and risk to the municipality in enforcing agreement provisions over the long term (including the possibility of legislative changes which may affect municipal liability)	• include provisions for a sunset clause in FEAs
s.45	Front-ending agreements	• current Act exempts any liabilities under FEAs from inclusion in the municipality's debt capacity under s.64 of the *Ontario Municipal Board Act* (DCA, s.23). Bill 98 does not include this exemption • municipalities may be reluctant (or unwilling) to enter into FEAs if it impacts on their overall debt capacity (and their ability to fund municipality priority projects)	• include provision to exempt FEAs from s.64 of the *Ontario Municipal Board Act*

OTHER CONCERNS WITH RESPECT TO BILL 98, *THE DEVELOPMENT CHARGES ACT, 1996*
(Cont'd)

SECTION	GENERAL SUBJECT MATTER	CONCERNS	RECOMMENDED APPROACH
s.45(1)(a)		• pertains only to "work to be done after the agreement is entered into"	• broaden so as to be potentially applicable to work underway or completed
s.48	Objection to an FEA	• section refers to "any owner of land within the front-ending agreement" objecting to the agreement. Current legislation permits only benefiting owners to object. Owners who are parties to the agreement should not be able to object	• specify that only owners who are not party to the agreement may object
s.51	Amendments to an FEA	• section references procedures for amending an FEA, but legislation does not contain any direct powers to amend an agreement. In order to avoid disputes, this should be specified	• include direct legislative powers that FEAs may be amended
s.56	FEA Credits	• section is unclear as to whether the provision of a DC credit to an owner subject to a front-end payment is optional or required ("is entitled to be given") • if a credit is required, the work must be included in a DC by-law; is it then subject to a co-payment provision? This will significantly reduce the flexibility (and likely the use) of FEAs • if a credit is optional, FEAs will provide a mechanism to allow development to proceed expeditiously	• clarify that a credit on DC is not a requirement under an FEA
Part IV			
s.60(2)	Examples of Local Services	• a "local service" exemption is broadened somewhat under Bill 98 to include "local services related to a plan of subdivision". However, this key term still remains undefined	• provide a definition of local service
s.65(4)	Credits under old s.13 for Ineligible Services	• for ineligible services, payout of the full value of any credits owing must occur within 170 days of passage of a by-law under Bill 98. The time period would be onerous for municipalities with outstanding credit (i.e. parkland acquisition) requiring funds from taxes, reserves or debentures for expenditures which the DC was anticipated to fund (when agreement entered into)	• allow a longer payout period (and an opportunity for developer and municipality to reach agreement to resolve the outstanding credit liability through other mechanisms)

OTHER CONCERNS WITH RESPECT TO BILL 98, *THE DEVELOPMENT CHARGES ACT, 1996*
(Cont'd)

SECTION	GENERAL SUBJECT MATTER	CONCERNS	RECOMMENDED APPROACH
s.66(1)	Credits under s.13 for eligible services	• holder of an eligible credit under s.13 is eligible for a credit under new Act; however, it is unclear as to how the value of the credit may be included in the new DC calculation, unless it can be treated as committed excess capacity and added to capital costs to be recovered under the by-law; if it is uncommitted excess capacity, it cannot be included as a capital cost • also, s.68 does not allow s.13 credits to be treated as debt	• clarify that the total value of outstanding s.13 credits may be included as capital costs eligible for DC recovery

C.N. Watson and Associates Ltd.