

MEMORANDUM

To: Julia Merritt, Chair, Federation of Ontario Public Libraries
From: Stefan Krzczunowicz, Thomas Kempster
Date: August 16, 2021
Re: Development Charges and Ontario Public Libraries

This memorandum summarizes and provides broader context to a workshop on development charges delivered by Hemson Consulting Ltd. to members of the Federation of Ontario Public Libraries on April 9, 2021. The matters addressed include changes made recently to Ontario's development charges legislation, the impact on capital development planning for libraries, and library board best practices for participating in formal development charges background studies.

A. DEVELOPMENT CHARGES AND INFRASTRUCTURE FUNDING IN ONTARIO

In Ontario, development charges and their predecessor lot levies have been imposed by municipalities against land since the 1950s. The charges are currently regulated by the *Development Charges Act, 1997*. For library boards they are the most important source of funding for "growth-related" capital costs.

i. What are Development Charges?

As growth occurs, the need to provide capital infrastructure (facilities, land, vehicles and equipment, etc.) for the wide range of services provided by a municipality generally increases. A myriad of factors influence the amount of capital investment required. Typically, the amount, type and location of development are of prime importance in determining the nature and quantum of required capital investment. Added to this are factors such as municipal standards and levels of service that are desired: the regulatory requirements of senior governments; topography; physical or human geography (such things as river crossings, railway lines, airports); the timing of development; the availability of capacity that is already in place to service new development or redevelopment; and the aspirations of municipalities related to such factors as providing equal access to services as set out in corporate strategic or sustainability plans.

Development charges are charges imposed by municipalities to pay for the “growth-related” portion of capital investment. By implementing development charges, municipalities can maintain service levels as growth occurs and reduce the financial burden on existing taxpayers of expanding services. The underlying principle of development charges is the “benefits received” principle of municipal finance: that those who benefit from service enhancements should pay for them; or that “growth should pay for growth.”

Development charges are imposed by by-law, with the maximum term of a by-law being 5 years after the day it comes into force. Prior to passing a by-law a municipality must undertake a Background Study and hold at least one public meeting. After by-law passage, any person can appeal the provisions of the by-law, including the development charge rates themselves, within 40 days. Appeals are heard at the Ontario Land Tribunal.

Any municipality in Ontario can impose a development charge. Therefore in two-tier jurisdictions there may be a lower-tier and an upper-tier charge, each funding different municipal services. Also, while a development charge is paid as a single charge, it is comprised of several charges, one for each service that is funded. As such, any charge for Public Library services will be separately identified in a development charge by-law.

ii. Funding Framework for Growth-Related Capital in Ontario

In municipal finance, a distinction is made between funding the *initial* cost of growth-related capital infrastructure and the operating and maintenance costs that arise after growth has taken place. Development charges cannot be used to fund operating and maintenance costs. Nor are they typically used to pay for the eventual rehabilitation or replacement of capital assets. These capital costs are typically funded through the property tax and, for water and wastewater infrastructure, utility rates.

In the context of initial capital costs, an additional distinction is typically made between growth-related infrastructure that is internal to subdivisions (“on-site”) and that which is external or “off-site” (or “on-site” but sized beyond local servicing requirements). The distinction is made since most municipalities have historically required developers to pay for and/or provide on-site infrastructure such as local roads, street lights, sidewalks, storm sewers and drains, local sanitary sewers, water mains and connections, hydrants, site grading, landscaping of parks and boulevards, and so on. These direct payments are over and above development charge payments, which cover infrastructure with broader community-wide benefits, such as library and indoor recreation facilities.

As a result of recent legislative reforms to the *Development Charges Act* and *Planning Act*, off-site growth-related infrastructure and services can be funded using:

- Development charges, for a prescribed list of eligible services.
- The provisions of Section 42 of the *Planning Act*, which authorizes municipalities to secure land from developers, or cash-in-lieu of land, for public parks. A standard dedication rate of 5% of the land from residential development or 2% of the land from non-residential development applies. However, municipalities can adopt an alternative, higher dedication rate based on the number of units per hectare.
- Community benefits charges, for services ineligible for or already paid by development charges and Section 42 contributions. Authorized under recent amendments to Section 37 of the *Planning Act*, community benefits charges are designed to fund local community services for high density development. They can only be imposed on development that is 5 storeys or more and with 10 or more housing units and only by local (i.e. single or lower-tier) municipalities. Although they can complement development charges by funding similar services, including libraries, community benefits charges are capped at 4% of the land value of a property.

All three funding tools are appealable to the Ontario Land Tribunal, with conditions (see Figure 1).

Figure 1: New Framework for “Growth-Related” Capital



iii. Development Charges Legislation

Development charges are authorized by the *Development Charges Act, 1997* (DCA), which sets out a methodology for determining the charges, prescribes eligible services, and defines eligible capital costs. Provision is made for development charge exemptions for certain types of development, for example residential expansions, residential intensification (with conditions), industrial expansions (up to 50% of an existing building), and school board and municipal buildings. The contents of a development charges by-law, including a public process before passing a by-law, and appeals and complaints procedures after passage, are covered by legislation. The DCA also regulates the collection and administration of development charges and establishes rules for managing and reporting on development charge reserve funds.

Under the DCA, a background study must include:

- development forecasts;
- detailed calculations of the development charge for each service;
- an examination of the long term capital and operating costs for capital infrastructure required for each service; and
- a scoped asset management plan.

The background study must be made available to the public at least 60 days in advance of passing a by-law and is valid for one year. Before passing a by-law a municipality must hold at least one public meeting.

Many of the key provisions of the DCA are expanded on under *Ontario Regulation 82/98*.

iv. Eligible Services and Eligible Costs

Development charges are imposed on services. Since the DCA was enacted in 1997 there have been significant changes to the eligibility of services. A list of ineligible services was included in the Act between 1997 and 2015. Between 2015 and 2019 the list was modified and moved to the Regulation. The introduction of Bill 108, the *More Homes, More Choice Act, 2019*, briefly removed several important services, including library services, from being eligible for development charge funding; their eligibility was restored in 2020. All eligible services are now set out in the DCA itself (see Figure 2).

Up to 2019, the DCA distinguished between two types of services:

- Services for which municipalities could use development charges to fund only 90% of growth-related capital costs (“soft” services). Charges for these services could only be set to recover costs up to 10 years after passage of the by-law. Library services was deemed to be a soft service.
- Services such as fire and police protection, as well as engineering services, for which municipalities could use development charges to fund 100% of growth-related capital costs (“hard” services). There was no time limit on the time horizon for establishing the hard services charges.

The 2020 amendments to the DCA did away with the 90% service category. As such, 100% of all eligible costs can now be funded, with no limit on the time horizon covered by the charge. These changes have both expanded the potential development charge funds available to library boards and broadened the flexibility of municipalities in setting the charge for libraries.

Figure 2: Development Charge Eligible Services and Costs

Eligible services under <i>Development Charges Act</i>		
• Water	• Police	• Housing
Eligible capital costs under <i>Development Charges Act</i>		
• Storm and wastewater	• Fire protection	• Emergency preparedness
• Roads	• Ambulance	• Airports (in Waterloo)
• Drainage	• Long-term care	• Services provided by a board
• Highway-related	• Parks and recreation	• Transit
• Waste diversion	• Public health	• Child care
• Acquiring land	• Equipment	• Furniture
• Improving land	• Development studies	• Rolling stock lifespan > 6 years
• Building costs	• Interest and financing	• Materials for circulation by a library board

In addition to prescribing the eligibility of services, the DCA defines what capital costs can be included in the development charge calculation. Eligible capital costs are set out in Figure 2 above, and include:

- the cost to acquire and improve land, including a leasehold interest in land;
- building and structure costs;
- rolling stock, with a useful life of seven years or more;
- materials acquired for circulation, reference or information purposes by a board within the meaning of the *Public Libraries Act*,

- furniture and equipment, other than computer equipment;
- development-related studies; and
- interest and financing costs associated with the above.

B. FUNDING LIBRARIES WITH DEVELOPMENT CHARGES

The recent legislative changes have ensured that library services remain an integral part of the development charge framework. The changes provide expanded revenue raising authority to municipalities for growth-related library capital costs.

This section focuses on the general approach used by Ontario municipalities to pay for library capital costs using development charges. The importance of maintaining service levels is also discussed.

i. Library Development Charges are a Minor Component of Overall Charges Paid

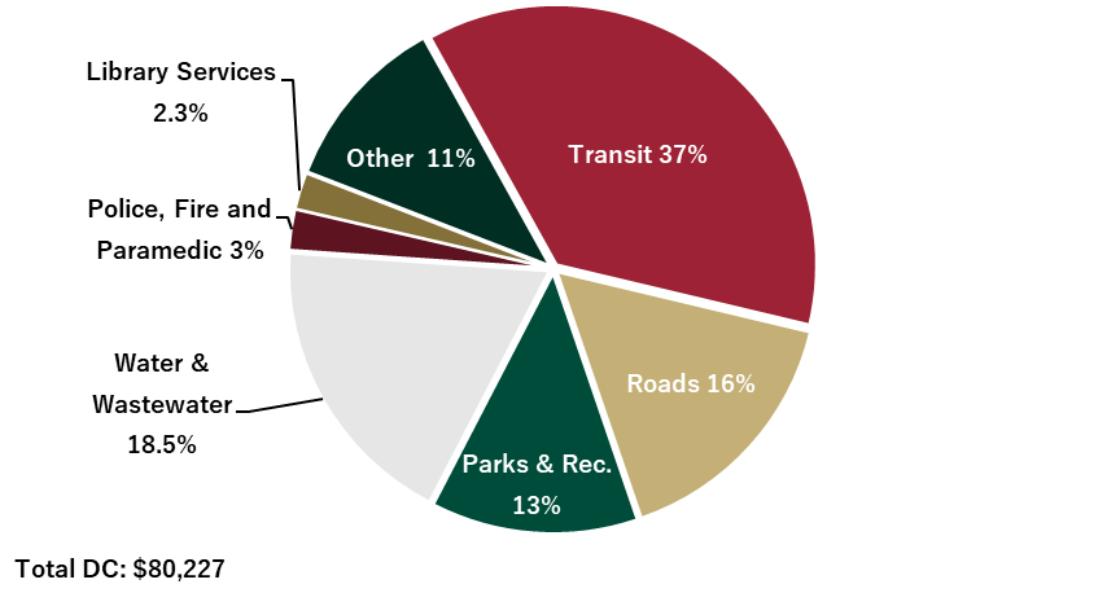
Development charge funds paid to libraries vary considerably across Ontario municipalities due to differences in existing service levels and capital development plans. The level of population growth and rate of development in a municipality can also affect how much is available to libraries for the recovery of growth-related capital costs. Regardless, libraries continue to receive a significant portion of their growth-related capital funding through the development charge framework.

That said, libraries tend to be a minor component of the overall charge paid—anywhere from 1% to 6% of most lower-tier or single-tier charges (see Figure 5). The services that comprise the largest share of overall charges are typically the engineered services of roads, water, and wastewater. In some jurisdictions, such as the City of Toronto, transit services are a significant part of the charge.

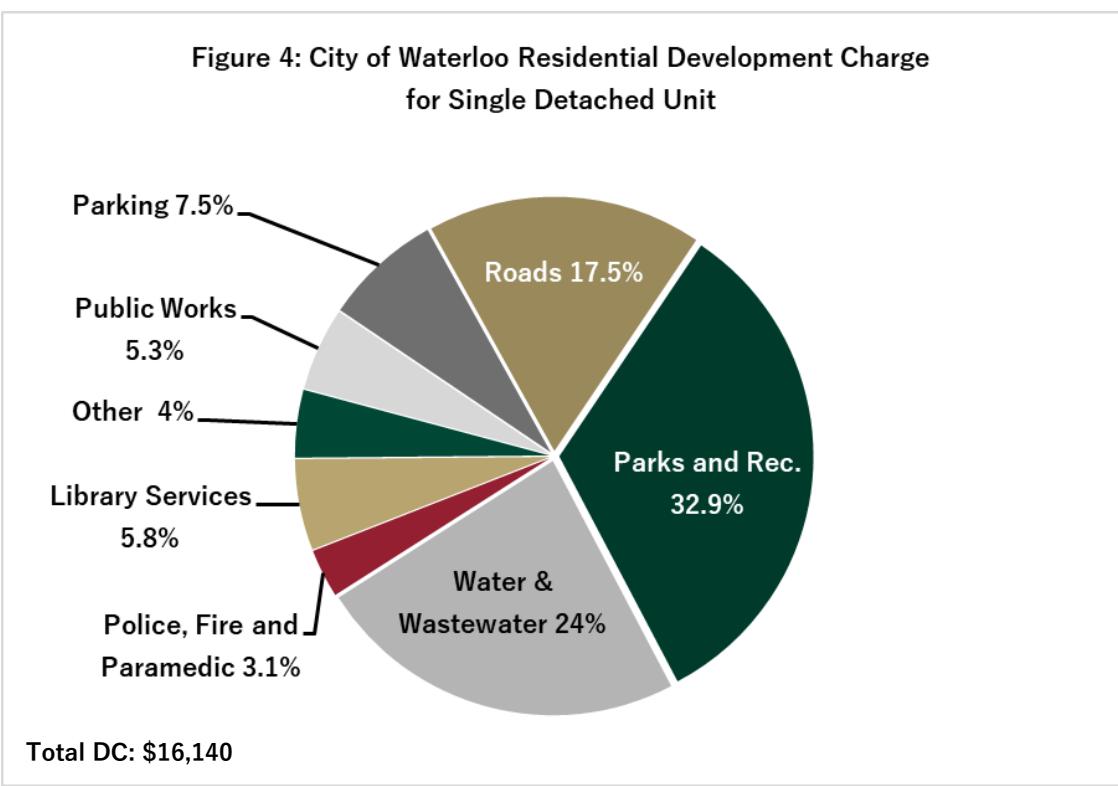
- Figure 3 shows the break down of the residential development charge for a single detached home in the City. The total charge is \$87,299 per unit. Library services costs make up 2% of the charge whereas roads, water, and wastewater services comprise 35% of the total. Transit, including the Scarborough Subway Extension, is 38% of the total charge.
- In the City of Waterloo, two residential development charges apply: a \$16,140 charge per single detached unit imposed by the lower-tier City; and a \$29,132

charge imposed by the Regional government. Library services comprise 6% of the lower-tier charge and 2% of the total \$45,272 charge per unit payable (Figure 4).

**Figure 3: City of Toronto Residential Development Charge
for Single Detached Unit**



**Figure 4: City of Waterloo Residential Development Charge
for Single Detached Unit**



Source: City of Waterloo Development Charge By-law 2021

Expanding to a broader survey of Ontario municipalities shows that the development charge funding pattern holds for most municipalities (Figure 5). Library services development charges rarely exceed 6% of the total charge, even in lower-tier jurisdictions such as Bracebridge and Midland where there is an additional upper-tier charge. For single tier municipalities such as Toronto and Ottawa the library services component of the charge is very low, anywhere between 1% and 3%.

In the context of the development charges for “soft” services, the amount of the charge for libraries can vary widely depending on the scale of library expansion being planned for: 22% and 12% of the soft service charge in Midland and Whitby respectively as opposed to 8% in Vaughan, 7% in Mississauga, and 3% and 2% in Toronto and Ottawa.

Municipality	% of "Soft" Services	% of Total Services
<i>Bracebridge</i>	6.8%	6.0%
<i>Waterloo</i>	9.3%	5.8%
<i>Midland</i>	22.4%	5.7%
<i>Markham</i>	10.6%	4.7%
<i>Kitchener</i>	7.1%	4.6%
<i>Muskoka Lakes</i>	6.4%	4.4%
<i>Mississauga</i>	7.0%	4.0%
<i>Whitby</i>	11.5%	3.2%
<i>Vaughan</i>	7.8%	2.8%
<i>Toronto</i>	3.4%	2.2%
<i>Brampton</i>	3.8%	2.0%
<i>New Tecumseth</i>	6.4%	1.9%
<i>Ottawa</i>	2.0%	1.0%

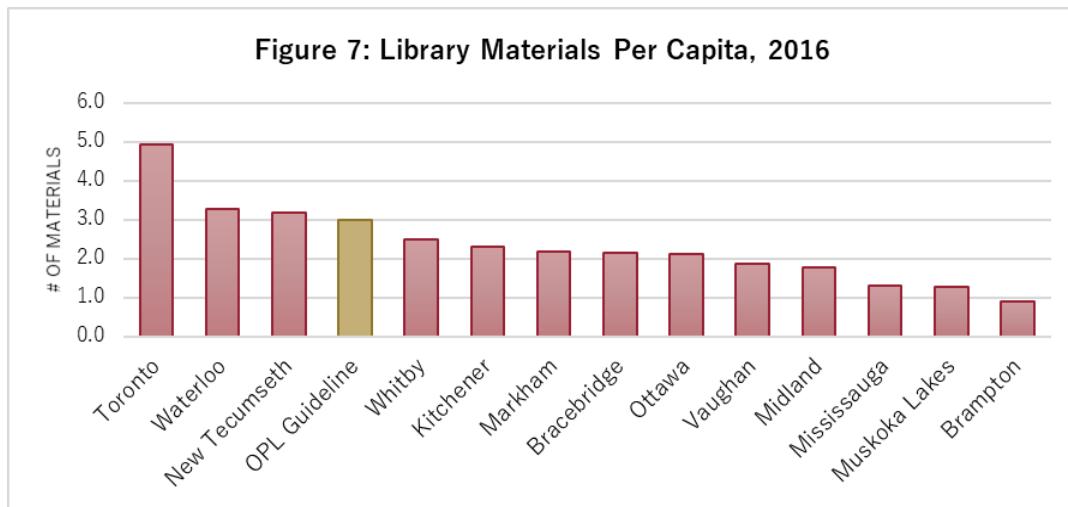
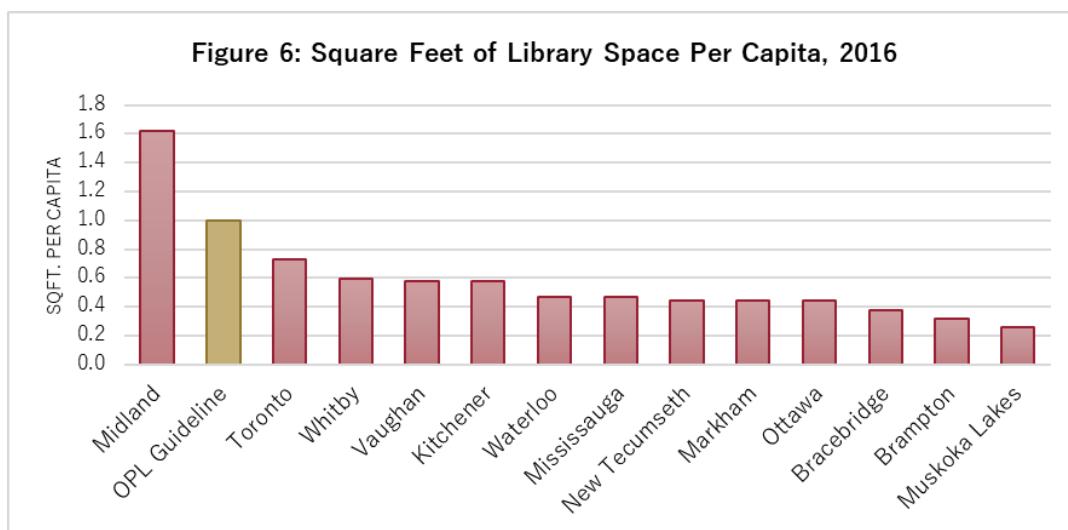
Source: Municipal DC by-laws 2017-2020

ii. Service Levels Set Limits on Development Charge Funding

The DCA effectively prohibits development charges from being used to increase the level of service beyond the average level of service provided over the previous ten years, on a service by service basis. As such, the historical average level of service establishes a

“funding cap” or “maximum allowable funding envelope” for a development charge for each service.

Given this framework, differences in the development charges for library services from one municipality to another arise in part from differences in service levels; all other things being equal, a higher service level results in a higher development charge. Ontario Public Library Guidelines¹ direct that public libraries should aim to provide a minimum of 1 square foot of library space per capita and 3 units of library materials per capita. Figures 6 and 7 demonstrate that the actual space and materials per capita vary considerably across the province. As a result, the Town of Midland can in theory raise more development charge revenue per capita for library facilities than the City of Brampton or the Township of Muskoka Lakes. Likewise, the City of Toronto has more flexibility in theory to fund library materials from development charges than other municipalities.



¹ *Ontario Public Library Guidelines*, 6th Edition for Municipal and County Public Libraries.

iii. What is Growth-Related?

The DCA prohibits development charges from being used to fund capital costs associated with an increase in need for service that would “benefit existing development” (“BTE”).

Neither the DCA nor its associated Regulation provides further direction on how to establish the BTE. A key consideration for municipalities in calculating development charges is how to appropriately distinguish growth-related capital costs from BTE costs.

For libraries, the following conventions typically apply:

- Costs associated with expanding library space or services are considered to be growth-related. Space expansion can take the form of an addition or reconfiguration of an existing building or construction of a new facility. Ancillary uses, such as driveways, parking areas, landsca. Source: Hemson Consulting, 2017-2020; Ontario Public Library, 2013 common areas are also typically considered eligible for development charge funding.
- When facilities undergo repair, rehabilitation, replacement, or other qualitative improvements, such improvements are typically treated as BTE unless they result in the expansion of service capacity. Costs associated with redeploying a facility so that it is not available to serve a library function are also treated as a BTE.
- The cost of acquiring new library materials (physical and electronic), vehicles, furniture, and equipment—that is, over and above the replacement of older capital assets—are generally considered to be growth-related.
- The cost of studies associated with the above—strategic plans, master plans, business cases, and concept and design studies for example—may be included in the development charge calculations though there may be elements of these studies that are deemed to be a BTE cost.

Generally, the DCA prohibition against funding computer equipment has not prevented municipalities from using development charges to pay for technology in libraries. Online resources, Internet public access terminals, Radio Frequency Identification (RFID) scanning tools, and other systems used to deliver services to library uses are typically deemed to be eligible for development charge funding. Only computers used by library staff for administrative purposes are excluded from the development charge calculations. The ongoing development of library technology will likely mean that what constitutes “computer equipment” under the DCA will need to be revisited on a regular basis.

C. ENGAGING WITH THE DEVELOPMENT CHARGE PROCESS

This section provides advice to library boards on how to prepare for and engage in a development charge background study process. Recommendations for best practices in between background studies are also made.

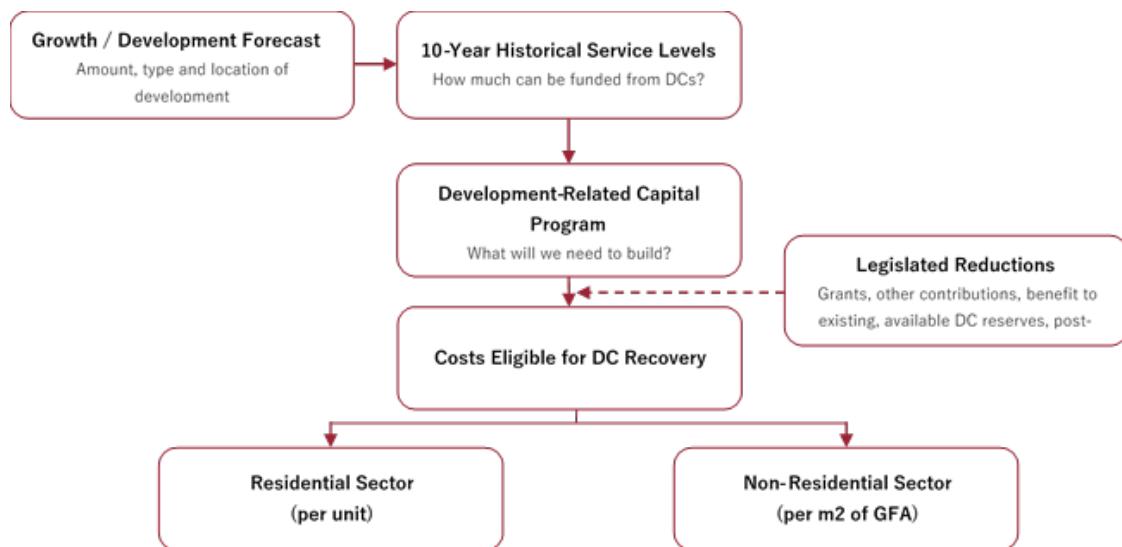
i. Overview of Development Charge Study Process

Development charge background studies are a requirement prior to passing a new development charge by-law, and the participation of municipal and library board staff involved with delivering eligible services is an important element in their success. To the extent that a background study involves discussing long-term growth forecasts and capital development plans, many municipalities structure a background study to be a strategic and/or capacity building exercise that involves senior management as well as all service areas.

Library board staff should therefore communicate with their municipality early on in the process in order to ensure they are involved in the background study process. Key staff should be identified to identify growth-related projects and develop capital asset inventories.

Background studies are typically conducted every five years, prior to the expiry of an existing by-law, and can take anywhere to between six months and a year to prepare. In fast growing municipalities, studies and by-laws are prepared more frequently in order to maintain up to date development charge rates.

Figure 7: Background Study Process Map



A background study generally follows the steps set out in Figure 7:

In **Step 1**, the amount, type and location of development is forecast over a fixed time horizon. The development forecast will include forecasts of residential and non-residential development and is usually rooted in forecasts of population and employment. A requirement of the DCA is that the background study “consider” the use of area-specific development charges to reflect the different needs for services in different areas. Since the benefits of libraries are systemic, collective, and cannot easily be assigned to individual areas, and all residents in a municipality have access to all facilities, an area specific approach to library development charges is very rare and not recommended.

Step 2 involves calculating the ten year historical average service level for each eligible service (see below).

The growth-related capital costs required to meet the increased need for service arising from the forecast development are estimated in **Step 3**.

In **Step 4**, the growth-related capital costs are reduced in order to determine the costs eligible for development charge funding within the time horizon; for example, by removing costs associated with the BTE share, to reflect existing development charge reserve funds, or to reflect external grant funding.

The development charges are calculated in **Step 5**. Most municipalities differentiate the charge between residential and non-residential development, reflecting the different demand for and benefit from various services required by these two sectors. Further differentiation is often reflected in charges by housing unit type, reflecting the different occupancy levels and resulting service demands in, for instance, single family versus higher density housing forms. The non-residential charges are sometimes differentiated between industrial versus commercial uses, typically reflecting different traffic generation between these two land uses.

Municipalities may at their discretion exempt certain developments from development charges. For instance, a municipality may exempt specific land uses, classes of development, or development within defined areas from the charge, and they it may do so in order to attract more development to a given area or to encourage specific types of development. Hospitals, universities, schools, and places of worship are all commonly exempt development. In addition, the DCA mandates exemptions for certain types of development (e.g. municipal buildings). Generally, however, exemptions result in a revenue

loss for the municipality and, under the benefits principle, may not be recovered from other development.

Development charge revenues are required to be deposited into one or more reserve funds that are separate from the municipality's other funds. The funds and any accrued interest are to be used only for the purpose for which they were collected, or for debt incurred by the municipality as a result of expenditures incurred or to reimburse an owner for payments from subsequent benefitting owners, although it is noted that there may be specific requirements related to flow-through of payments from subsequent benefitting owners.²

Finally, as noted above, a public meeting of Council is an important part of the background study process.

ii. Step 2 – Calculating Service Levels

The DCA and Regulation 82/98 require that the development charges be set at a level no higher than the average service level provided in a municipality over the ten-year period immediately preceding the preparation of the background study, on a service by service basis.

For library services the legislative requirement is met by documenting service levels for the preceding ten years. Typically, service levels for libraries are measured as a ratio of inputs per capita. When defining and determining historical service levels both the quantity and quality of service must be examined. In most cases, the library service levels are initially established in quantitative terms. For example, service levels for buildings are presented in terms of square feet per unit. The qualitative aspect is introduced by considering the replacement monetary value of the facility or service. In the case of buildings, for example, the cost would be shown in terms of dollars per square foot to replace or construct a facility of the same quality. This approach helps to ensure that the development-related capital facilities that are to be charged to new development reflect not only the quantity (number and size) but also the quality (value or cost) of service provided by the municipality in the past.

Both the quantitative and qualitative aspects of service levels in a background study will invariably be based on information provided by library staff. This information is generally based on historical records and the library board's experience with costs to acquire or construct similar facilities, equipment and infrastructure.

² The DCA has specific "front-ending" provisions to deal with such situations.

Figure 8 sets out what a library service historical service level calculation looks like in a background study.

- The first highlighted box in red shows the historical population between 2009 and 2018.
- The second highlighted box shows the current value of the inventory for each year.
- The third highlighted box shows the value of the inventory expressed on a per capita basis. This represents the service level for each year. The average service level over the ten year period, \$358.19 per capita, is shown in the right-most cell in the bottom row.

The historical average service level is used to determine the maximum allowable funding envelope for the library service over the time horizon covered by the background study; in this case the ten year period from 2019 to 2028. This is done by multiplying the average service level of \$358.19 per capita by the forecast population growth of 36,285 over the next ten years. The results is a maximum allowable funding envelope of approximately \$13.0 million—or what the municipality would need to spend in order to maintain the historical average level of service over the next ten years.

Figure 8: Service Level Calculation

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Historical Population	213,238	216,173	219,150	221,896	224,677	227,493	230,344	233,230	236,538	239,893
INVENTORY SUMMARY (\$000)										
Buildings	\$60,691.2	\$60,691.2	\$51,091.2	\$51,091.2	\$41,066.4	\$64,405.1	\$64,405.1	\$64,405.1	\$64,405.1	\$64,405.1
Land	\$3,574.1	\$3,574.1	\$3,574.1	\$3,574.1	\$3,574.1	\$3,583.7	\$3,571.5	\$3,571.5	\$3,571.5	\$3,571.5
Materials	\$19,819.4	\$16,903.9	\$16,760.1	\$16,946.9	\$16,504.2	\$16,977.4	\$17,761.3	\$17,513.6	\$17,743.8	\$17,806.5
Furniture And Equipment	\$925.0	\$1,031.0	\$1,102.7	\$1,107.6	\$1,110.6	\$1,507.3	\$1,509.3	\$1,782.3	\$1,684.3	\$1,684.3
Total (\$000)	\$85,009.8	\$82,200.3	\$72,528.0	\$72,719.8	\$62,264.8	\$86,461.2	\$87,247.2	\$87,272.5	\$87,404.7	\$87,467.4
SERVICE LEVEL (\$/capita)										
Buildings	\$284.62	\$280.75	\$233.13	\$230.25	\$182.78	\$283.11	\$279.60	\$276.14	\$272.28	\$268.47
Land	\$16.76	\$16.53	\$16.31	\$16.11	\$15.95	\$15.70	\$15.51	\$15.31	\$15.10	\$14.89
Materials	\$92.95	\$78.20	\$76.48	\$76.37	\$73.46	\$74.63	\$77.11	\$75.09	\$75.01	\$74.23
Furniture And Equipment	\$4.34	\$4.77	\$5.03	\$4.99	\$4.94	\$6.63	\$6.55	\$7.64	\$7.12	\$7.02
Total (\$/capita)	\$398.66	\$380.25	\$330.95	\$327.72	\$277.13	\$380.06	\$378.77	\$374.19	\$369.52	\$364.61
Average Service Level										
10-Year Average Service Level 2009-2018 (A): \$358.19 per capita										
Net Population Growth 2019-2028 (B): 36,285										
Maximum Allowable Funding Envelope = A * B = \$13.0 million										

Given the importance of service levels in determining potential development charge funding for libraries, library staff should ensure that they are involved in preparing asset inventories and estimating asset replacement values. Generally, the more thorough the accounting and valuation of assets, the more funding flexibility will be available.

iii. Step 3 – Growth-Related Capital Program

The DCA requires that the development-related, or growth-related capital program, reflect Council's intent to undertake capital works and that that intent be reflected in an approved capital forecast or "similar expression of intent". For that reason, it is important for the program for library services be tied as closely as possible to existing and approved capital budgets and forecasts. Additionally, library boards should ensure that capital forecasts are informed by:

- Library Development Guides that provide information on "basic", "enhanced", and "comprehensive" sq.ft. per capita service standards for municipalities.
- Comprehensive master plans, which can establish needs based on demographics, the location of development, and the development of technology.
- Records on the existing usage of facilities, including any excess capacity in facilities that may be available to meet future needs.
- Opportunities to co-locate library services in multi-purpose facilities, for example recreation centres.

Library boards should also ensure that growth-related components of project costs are set out in budget requests.

Items to include in a background study's growth-related capital program include any projects that expand the servicing capacity of the library board as well as any debt or negative library development charge reserve fund balances that may have resulted from previous growth-related expenditures. The timing of projects will be required in order to undertake a cashflow analysis as part of the calculation of the charge.

iv. What to do Between Background Studies

In order to ensure that the most up to date information is available at the time a background study is undertaken, library boards can take the following steps during the years between studies:

- Carefully maintain asset inventories and track capital expenditures, particularly for collection materials and furniture and equipment;
- Undertake master plans, business cases, and architectural and design plans for future capital works;
- Ensure long-term capital development plans are accurate and comprehensive for at least ten years into the future;
- Ensure long-term capital development plans and project budgets identify growth-related elements, and associated costs;
- Advocate through FOPL for clarity from the Province about the scope of the “computer equipment” prohibition in the DCA;
- Ensure development charge funds get spent! Remember that improving service levels will eventually translate into increased potential development charge funding for libraries in subsequent studies. Spending development charges also avoids having to reduce development charge calculations when reserve funds are in a surplus position.