Vuthela

ILEMBE LED PROGRAMME

CASE STUDY 1

Perspectives on development charges

January 2023

New national legislation is seeking to establish greater standardisation, transparency, predictability, and a more equitable model for the levying of development charges, but challenges lie in implementation at the local level.

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The Issue

Local municipalities within the iLembe District Municipality have developed draft policies for collecting charges from developers to cover the costs of new or expanded public infrastructure needed for new developments.

The local municipalities will now need to implement bylaws to give effect to their policies, which were developed with the assistance of the Vuthela iLembe LED Support Programme.

The Mandeni Local Municipality has processed the policy through its structures, advertised it for public comment, and adopted the policy.

The KwaDukuza Local Municipality is waiting for the Municipal Fiscal Powers and Functions Amendment Bill to be enacted into law before proceeding further.

The iLembe District Municipality has also engaged with the policy at Management Committee (MANCO) level and needs to submit it to the relevant council committees prior to obtaining public comment and proceeding further.

Meanwhile, amended regulations designed to standardise how all municipalities charge developers for new infrastructure have been introduced in Parliament and are expected to be approved in 2023.

Many municipalities have already begun implementing various forms of development charges for bulk infrastructure based on the Municipal Finance Management Act, Municipal Systems Act, Municipal Fiscal Powers and Functions Act, Provincial Land Use Ordinances and Spatial Planning and Land Use Management Act.

This has recently led to opposition from property developers and the business community, leaving some municipalities in the country facing litigation over contested regulations and others uncertain over how to proceed.

If the disputed issues are not resolved, effective implementation of the impending legislation will be at risk, and the benefits for both developers and municipalities may be severely undermined.

'development charge' means a charge levied by a municipality in terms of section 9A(1)*(a)*, and contemplated in section 49 of the Spatial Planning and Land Use Management Act, which must—

(a) contribute towards the cost of capital infrastructure assets required to meet increased demand for existing and planned external engineering services;

(b) contribute towards the cost of open parks and spaces if the land development application provides for the use of land for residential purposes; or

(c) with the approval of the Minister, contribute towards capital infrastructure assets required to meet increased demand for other engineering services not prescribed in terms of the Spatial Planning and Land Use Management Act;

Source: Government Gazette No. 46739 of 19 August 2022

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Desired outcome

Developers, municipalities, ratepayers and residents, and all other stakeholders who stand to benefit from the successful implementation of development charges under the new regulations share and discuss their respective perspectives and concerns openly to find ways of resolving areas of disagreement.

This will allow municipalities – including the local municipalities in the iLembe District Municipality – to implement regulations for the mutual benefit of all stakeholders, leading to economic growth and development.

Forging the future

The Vuthela iLembe LED Support Programme held a seminar to share iLembe stakeholders' perspectives on development charges as a step towards better understanding some of the contentious issues around the implementation of development charges.

The Vuthela Programme is a five-year comprehensive Local Economic Development (LED) Programme largely funded by the Swiss State Secretariat for Economic Affairs (SECO) in partnership with KwaZulu-Natal Department of Economic Development, Tourism and Environmental Affairs (KZN EDTEA) and the iLembe District, KwaDukuza and Mandeni Local Municipalities. The programme involves the participation of Ndwedwe and Maphumulo Local Municipalities.

It aims to improve the economic future of iLembe district residents through sustainable economic growth of the local economy and the creation of higher, better and more inclusive employment and income-generating opportunities.

The programme consists of five components:

- Public Financial Management (PFM)
- Municipal Infrastructure (MI)
- Private Sector Development (PSD)
- Building Inclusive Growth (BIG)
- Partnership and Coordination (P&C)

This case study, which falls under the Public Financial Management Component, considers the issues raised by stakeholders before and during a Development Charges Seminar hosted by Vuthela in September 2022. It is intended to assist affected role players in the iLembe district to better understand the challenges underlying development charges and to ensure the successful implementation of the new legislation.

The perspectives shared and the outcomes of the seminar will also be relevant to other municipalities in the levying of development charges.

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Legislative status of development charges

National Treasury introduced a Draft Policy Framework for Municipal Development Charges in 2011.

The Policy Framework was intended to regulate the power of municipalities to levy development charges when applications were made in terms of the Spatial Planning and Land Use Management Act 2013 (SPLUMA) or other relevant municipal bylaws.

The intention was to create equitable, fair, predictable, spatially and economically-neutral, uniform and easy-to-administer development charges.

The policy would enable municipalities to cover the costs of providing bulk infrastructure and allow developers to proceed with their developments that would enhance the municipality.

The most recent version of the amended legislation, the Municipal Fiscal Powers and Functions Amendment Bill, has been introduced in Parliament and is expected to be passed into law in 2023.

Benefits of development charges

Developers will be able to:

- accurately estimate their liabilities and have greater predictability over their costs;
- hold municipalities to account for timely delivery of required infrastructure;
- pay only for the infrastructure investment they benefit from, resulting in more fairness;
- ensure equitable and transparent allocation of costs for infrastructure; and
- proceed with development swiftly as infrastructure is installed.

Municipalities will be able to:

- enhance revenue streams for financing strategic economic municipal infrastructure;
- contribute towards and support the strategic priorities of government;
- eliminate unfair competition by creating uniformity on the application of development charges;
- minimise litigation over administration of development charges; and
- support land development by providing sufficient infrastructure.

Vuthela Programme streamlines policy for iLembe district

The Draft Development Charges Policies for the iLembe District Municipality and the Mandeni and KwaDukuza Local Municipalities were completed as a project of the Vuthela Programme in March 2021.

Although preceding the new legislation, the formulation of the policies was undertaken in close liaison with the National Treasury unit responsible for formulating the new legislation, and all efforts were made to align it with the new legislation.

The project aimed to develop a standardised policy across the three local municipalities in the district, creating uniformity and predictability for municipal planning officials, property owners and private developers.

A key shared purpose in the complementary policies is that they seek to provide bulk engineering services through development charges in a way that is aligned with the long-term goals of the Integrated Development Plan (IDP).

The policies aim to implement development charges that are realistic, support sustainable service delivery and prescribe procedures for calculating the development charges.

Guidance is provided on governance and regulatory issues, and on applying standardised exemptions and incentives for developers.

Another critical point of convergence in the policies is that the electricity, water, roads,

drainage and sanitation systems covered by development charges is clearly defined in detail, leaving little room for confusion or misinterpretation.

There are also clear guidelines on the allocation of costs for internal and boundary or "link" services provided by the municipality.

The applications that will attract development charges are specified, including which applications for rezoning, subdivision, increase of permitted area, amendment of conditions and permission to build will be subject to development charges.

The high level of standardisation between the policies will make for uniform application in the three municipalities once the policies have been adopted. Many of the issues which have led to confusion or the uneven application of development charges regulations at various other municipalities across South Africa have been addressed.

Once the Municipal Fiscal Powers and Functions Amendment Bill is passed into law, all municipalities will be required to implement development charges according to the amended legislation.

Implementation update

In November 2022 the implementation status at each of the municipalities was as follows:

- Mandeni Municipality has processed the policy through all its structures, advertised it for public comment, and the policy has been adopted by council.
- iLembe District Municipality has engaged with the policy at MANCO level and still needs to table it with Council and obtain public comment.
- KwaDukuza Municipality has taken the decision to wait for the Municipal Fiscal Powers and Functions Amendment Bill to be enacted into law before proceeding further.

Stakeholder perspectives

Enterprise iLembe

Linda Mncube is the CEO of Enterprise iLembe, the district economic development agency of the iLembe District Municipality. Its mission is to make iLembe a destination of choice for investment, business, and tourism.

"The Vuthela draft policy on development charges has been most beneficial to iLembe District Municipality. Before the draft policy was devised, there was no clear procedure for calculating developer contributions. So, what the policy intended to do was produce a process or methodology for determining contributions.

Uniform method

One of the significant costs for a development is the provision of bulk infrastructure. What the policy does is upfront give the developer some guideline as to how much the developer contributions would be. The policy has also created a uniform method for calculating the contributions.

There is such a high interest in developers coming into the iLembe area that there has not been much pushback from developers in respect of development charges.

If we look at the municipalities' tariff of charges, it does incorporate developers' contributions. But what the policy does is rationalise the three or four different procedures for calculating development charges and brings it into one document.

The main incentive for developers is that they will have access to reliable bulk infrastructure. This has been a major impediment for development.

In the absence of contributions or charges paid by developers to municipalities, there was no security of service. But once you have contributions in place, it means the municipality can roll out bulk infrastructure.

The only reason the Lower Tugela Water Scheme was approved by the Department of Water and Sanitation was that the district municipality was able to show that a portion of the project would be funded through the private sector using developer contributions. Once you install that water pipeline, you will then unlock a number of private investments into the area. So, by having developer contributions, you can provide more reliable bulk infrastructure service.

Another positive aspect of the policy is that low-income housing projects will be exempted from paying developer contributions. This will reduce the cost of social housing.

Creation of employment

The more development that happens in the municipal area, the greater will be the income for the municipality, the more infrastructure and services can be provided, and with that comes the expansion of the local economy and the creation of employment.

The current grants that municipalities have access to for infrastructure are geared towards access and do not allow them to install bulk services in the entire district. You need to find alternative funding mechanisms for bulk infrastructure, especially if it's going to unlock specific developments. One way of doing that is to have an element of co-funding with a developer. So, for instance, if a developer has gone ahead and installed bulk infrastructure, there can be an agreement with the municipality

that the developer will not pay contributions in order to offset the cost of installing that infrastructure."

Independent development consultant

Frikkie Brooks was previously a Planning Executive in the KZN Provincial Government. He has extensive experience in strategic and spatial planning as well as development facilitation in the public sector. He is now a private development facilitation consultant.

"The objective of a municipality is to serve its people. It must provide the services that have been assigned to them in terms of the Constitution and appropriate local government legislation.

But where is the municipality going to get the revenue to render all the services? Local government must be more self-sustainable and that's why there are revenue enhancement programmes such as development charges.

Local government doesn't have the resources that are required to support private sector development wherever private sector wants to develop and whatever they want to develop.

But while there are municipal development charges, you also need to have incentives to attract development.

There has to be a proper balance between what you attract to your area and how you ensure that there is an equitable contribution to that development.

The principle of development charges is something that I fully support. But it's how it's structured, how we put it together, and how it is applied, that I think I'm a little critical of in some cases.

Some municipalities have gone for a totally unbalanced approach, which is a major deterrent for any private sector interest to undertake development in those areas.

While there is no common template for how development charges should be applied, the levy must be in keeping with the competitive and comparative advantages of that municipality, with special focus on what's going to be best for them to grow and develop and to enhance their revenue, and to be able to provide better services to all the citizens.

Private sector contributions are important because if the private sector has identified a particular opportunity to get a profitable development going, then surely that profit cannot be made at the cost of local government and all the contributions made by other citizens in that municipal area. Therefore, a development charge that would be levied by local government for developers to be able to execute their functions is an absolutely reasonable model to apply.

In my view, if a municipality has got a Development Charges Policy, it should consolidate all other charges in that policy and not come up with piecemeal charges.

Holistic view

What I would be pleading for in a process that puts development charges or development contributions together would be taking a very holistic view on how this is to be done.

I have come across developers who say it is local government's responsibility to bring bulk services to the boundary of the development, regardless of where it is.

Developers must understand that everything that's inside the development must be paid for by the developer. The contention is when it comes to bulk services. If a developer wants those services and the municipality can't provide the services, the developer is going to have to

reach an agreement with local government on a developer contribution through the means of a service level agreement.

The developer can pay a contribution to the municipality to provide those services. Alternatively, a developer contribution could also be in the form of an agreement where the developer installs all the services, even the bulk services, as per the standards and requirements of local government.

Over time local government will take over these functions and the developer can redeem the capital expenditure put into the bulk services. So, the developer has to provide the bridging finance and the municipality will eventually take over the full asset and will have in time the benefit of levying the service charges on that infrastructure as it would have done if it had provided the services itself.

A utopian model for development charges does not exist at the moment. A model must be customised for a municipality based on the economic drivers of that municipality.

Perception

A major constraint on implementation of development charges is perception. The moment you talk about development charges, the private sector immediately sees that as an additional tax that is being levied.

Instead, developers should be told that development charges will consolidate all the other little bits and pieces that they are already paying.

Municipalities must make processes in the initial stages of development as easy as possible by offering soft rates, soft loans and soft charges.

If you want to entice developers, there must be incentives for them or the developer contributions start becoming totally counterproductive for the developer."

Municipalities

Interviews were conducted with the relevant municipal officials to ascertain the experiences of municipalities in implementing Development Charges Policy in the following municipalities:

- Midvaal Local Municipality
- eThekwini Metropolitan Municipality
- Ray Nkonyeni Local Municipality
- Stellenbosch Local Municipality

Midvaal Local Municipality

"Midvaal is a good example that you can have effective bulk contributions without the Act, using SPLUMA alone."

- Thys Arlow
Executive Director- Development and Planning

"The old Transvaal ordinances already made provisions for bulk engineering contributions.

We have been levying and collecting bulk contributions since Midvaal's inception in 2000. Even the predecessors to Midvaal already had a system so we continued with that system.

In 2006 we started with a new policy and a calculation tool to calculate bulk contributions, which is done by our Engineering Services Department; our Development Planning Department imposes it; and the Finance Department makes sure it gets collected.

Development charges play a part in development, albeit a very small part. It's not nearly enough to fund all the infrastructure needs that we have. Bulk contributions help us to finance the council's own portion of costs or where we have to borrow money. Securing part of the money from bulk contributions helps us to get preferential interest rates when we have to procure loans for new infrastructure.

There is a great correlation between national policy and our implementing regulations at Midvaal.

The disjuncture for us, and this might be a problem going forward, is that the SPLUMA guidelines say that if an application lapses, municipalities have to refund bulk contributions to the developer. This is difficult because often we have already committed those funds. If we have to return the contributions, it means that we have to find alternative sources of funding.

Notwithstanding anything that is in the national Bill, developers always grasp at bulk contributions as the single issue that makes their development not viable.

Resistance

There is always resistance from developers.

But we sit down with them and we translate development contributions back to the actual cost per unit of the infrastructure we need to install. Then developers realise that it's not such a big portion of the overall cost of their development and it does not have such a big impact on the project's viability; often it has an impact on profitability, but not on financial viability.

The reality is that there's no free money out there, so if a municipality puts in infrastructure, you have to fund it from somewhere, so why not from the people who benefit from it?

The national policy is out of place.

It's a case of national government trying to intervene at local government level where they are not supposed to. There are enough guidelines in SPLUMA to guide municipalities who want to implement bulk contributions and we should follow the guidelines in SPLUMA.

We don't need additional legislation to muddy the water.

Assistance versus prescriptive

Government should understand the roles and functions of the various levels of government, and create legislation whereby they can provide assistance to local authorities, but not be prescriptive.

At Midvaal most often what happens is that large developments exceed our capacity to provide bulk services, so for large industrial developments and large residential developments like Savannah City, which comprises 18 000 units in a new housing development, we have exempted the developer from paying bulk contributions, on condition that they provide all the bulk infrastructure they require to our standards.

It's mainly where you have rezonings and subdivisions, or removal of restrictions, that we have had success in charging and collecting development charges. Midvaal is a very fragmented municipality with a low-density population living in vast rural areas. Often, when there are big developments coming, we do not have the resources to provide bulk infrastructure and hence the developers have that responsibility.

Uniformity

What worked best for us was implementing the concept of uniformity. We had a uniform set of rules and we applied them uniformly. No preference was given to anybody. The uniformity was based purely on the loading of your development on our infrastructure. That gives us credibility because we apply the same rules to everybody and there is transparency.

Before we evaluate a land use application, we communicate with developers and tell them what the bulk contributions should be. We afford developers the opportunity to amend their bulk contributions or reduce the development controls to reduce bulk contributions before we

consider the applications. Unfortunately, there is no mechanism within SPLUMA to review your own decisions; you have to lodge an appeal to the appeal tribunal which is a very expensive and long-winded process to deal with a very simple matter.

One pitfall may arise if municipalities do not ring-fence the charges they collect. At the least, it should be used for infrastructure, not for new cars. The money should be put away where it can be available for new infrastructure that will be installed in the future. Where possible, municipalities should use grants like the Municipal Infrastructure Grant for eradicating backlogs and use bulk contributions for new infrastructure in developments that will generate income in the future.

We are contemplating ring-fencing going forward to see if it will assist. Often the money goes to the department that shouts the loudest, not where it's needed most. If there's no water, it goes to water, but then there's no electricity for the pump stations. The services that generate the money should be the services that get the money to spend.

In theory, bulk infrastructure charge should be spent directly on the development that has paid. But in practice a bulk contribution for a water supply, for example, does not pay for a small part of a reservoir. Developers are going to use capacity that has already been paid for by someone else. There's always spare capacity. Municipalities can use the bulk contributions to provide a reservoir in another area, so the entire community benefits.

Another example is roads – the road infrastructure is already in place, but if you intensify development along the road, you increase the traffic flow and you will need to build another lane to avoid congestion. But you cannot extend a road or build a new reservoir with bulk contribution from one developer.

If developers use infrastructure that has already been paid for, then surely their bulk contributions should be used to expand services or provide new services in the future. Collectively, if enough people have made contributions, then we can build that reservoir or road, or provide other services that are required.

At Midvaal we started implementing bulk contributions many years ago. It is coincidental that the bulk contributions legislation is close to what we were already doing. It was business as usual for us. We did not set out to specifically implement the Bill, but we were already implementing the ordinances. When we adopted SPLUMA we made provisions to implement it in our bylaws.

After the fact

The Act is a little after the fact. Midvaal is a good example that you can have effective bulk contributions without the Act, using SPLUMA alone. SPLUMA states very clearly the respective roles of who provides internal and external infrastructure. SPLUMA is adequate; you have to internalise it through your bylaws that address your municipal environment and how you calculate bulk services.

We reference our internal policy that was in existence before SPLUMA, which allows each municipality to implement in a manner that suits the requirements of that municipality.

This has worked well for us at Midvaal."

eThekwini Metropolitan Municipality

"No processes are in place to access the money and deliver the services required. How do you include smaller developers who cannot afford to pay for bulk services?"

- Lekha Allopi
Economic Development Unit

"It is important to understand where development charges originate, and what is the enabling legislation.

The first Development Charges Policy for eThekwini Municipality was crafted by the Finance Department because it was believed that the policy should reside in the Finance Department.

The Economic Development cluster was recently tasked to put a new policy together. I was one of the drafters of SPLUMA. It was never intended that SPLUMA would drive development charges. When the policy was first considered 14 years ago, it was recommended that it belongs to financial legislation.

But none of the iterations were accepted for implementation by municipalities.

eThekwini has not found a home for the Development Charges Policy yet, but some municipalities have already started implementing it, basing their policy around SPLUMA.

Joburg implemented their policy and were taken to court; their policy has had to be put on hold.

Cape Town adopted it about 12 years ago, and eThekwini looked at the Cape Town policy and adjusted and modified it for local application in eThekwini.

Treasury advertised the draft policy, and held public participation meetings. But nobody from the development planning units was present, and developers' questions could not be answered. Development planning was later invited to a meeting one week before implementation.

Some key players responded to Treasury's draft policy, like Tongaat-Hulett and the Durban Chamber of Commerce. Treasury then sent the policy to eThekwini, but we could not adopt it. We made amendments and sent it back to Treasury. We have not heard from them since.

Contentious issues

Contentious issues include:

- How does it apply to zoned and un-zoned land?
- How do you ring-fence charges for rates?
- No processes are in place to access the money and deliver the services required.
- How do you include smaller developers who cannot afford to pay for bulk services?

The old ordinance made provision for financial guarantees for planning and development of bulk services. They worked. Developers are saying there is already a system in place.

How do you fix this? We need to look at what development charges are and what are they supposed to do. How did the eThekwini Municipality sustain itself before the Development Charges Policy came about? What has changed?

Previously, we approved development subject to conditions which included financial guarantees for bulk services if needed.

But about 10 years ago we implemented development charges and were challenged in court. The court instructed us to return all the money we had collected as development charges."

Ray Nkonyeni Local Municipality

"What has not gone so well is that there are sometimes disputes with developers over the calculation of the cost of bulk services. Developers often contest the costs and question the basis on which we arrived at the levy."

- Ravi Naidoo
Senior Manager Building Control

"We use the term development levy at Ray Nkonyeni Municipality.

We used the SPLUMA legislation to develop bylaws and this has allowed us to implement a development levy to fund bulk infrastructure since 2006.

The outright response from developers has been that they are not in favour of the levy. Developers do not want to spend additional costs on issues related to planning, and developers have tried to force our hand and remove the levy at many meetings.

But when we suspended various fees during the Covid-19 lockdown, we did not receive a flood of applications. This may have been due to other reasons related to the pandemic, but it did indicate that the development levy was not a big prohibitive factor for new developments.

Test case

After implementing the levy, we had a test case involving a property developer who had applied for a rezoning and subdivision, which was approved by the municipality. But the property owner did not agree to pay the development levy, which then had to be added to the rates on the property. The owner then took the municipality to the High Court, which ruled in the municipality's favour. An appeal against the ruling was also unsuccessful, and eventually the Constitutional Court also ruled in the municipality's favour.

We proceeded to implement the development levy on the basis that it was legally correct.

We find that it is very difficult to ring-fence the levy provided by developers only for bulk services at that specific development site. It all goes into one big pot and from there it is used to provide overall bulk services that makes every individual development possible.

There have been no major developments requiring major bulk infrastructure expenditure recently, so it's difficult to assess the impact of implementing the development levy on overall development in this region.

Correct process

What has worked for us is that we have followed the correct process.

When we receive applications for rezoning from developers we take them through the reality of the situation, and show them the actual costs involved.

We also try to win them over with discounts where we can.

For example, if they have a 1 000-square metre property, we can agree to charge the development levy only on the 500-square metres that they are developing, or on the floor area only.

We went one step further, and agreed that we would waive the levy on parts of the developer's property that included a river, stream or buffer zone, which also reduces the levy.

Another strategy that has worked for us was to sign agreements between our municipal Treasury Department and developers that allowed the developers to pay off the development levy in instalments, but the municipality proceeded to install the infrastructure needed immediately.

What has not gone so well is that there are sometimes disputes with developers over the calculation of the cost of bulk services. Developers often contest the costs and question the basis on which we arrived at the levy. Our engineers have to come in and engage with them and take them through the figures so that they know where these costs come from.

But developers still complain about the development levy. They say they want an incentive to invest in our municipality, not more

levies. We do have an incentive policy that allows us to offer rebates on fees and rates.

Another issue that can be a challenge is that the municipality often deals directly with the planning consultant involved in the development, not with the owner. Sometimes, the consultant does not inform the development's owners fully about the levy, and it is not included in the overall cost of the project.

We also had one complaint from a developer that they had to pay our municipality a development levy, which they did, but when they went to Ugu District Municipality to apply for water supply and sanitation services, they had to pay another contribution."

Stellenbosch Local Municipality

The Stellenbosch Local Municipality confirmed that it has implemented the new Development Charges Policy. However, this has led to litigation contesting the implementation.

The official response from* Myra Francis, *Project Management Unit, Infrastructure Services:

"We are currently involved in a legal matter around our development contributions, and therefore we will withhold any discussions in public around our policy."

City of Johannesburg

News reports indicate that property owners are taking legal action against the City of Johannesburg (COJ) over development charges.

South African Property Owners' Association (SAPOA) launched a court application against the municipality to interdict it from enforcing its Development Contributions Policy, which was put in place in October 2021.

The policy states that landowners have to pay a once-off fee as a condition of their land development application approval. Developers complained to the court that they had to pay the fees even if the infrastructure was already in place.

Property developers

"If implemented, the DC Policy will effectively enable the COJ to levy charges which have the effect of compelling developers to cross-subsidise developments which are unrelated to their applications."

- Neil Gopal
SAPOA CEO

(SAPOA is made up of large commercial property investment organisations, whose collective portfolio is valued at more than R500 billion, representing about 90% of South Africa's commercial and industrial property.)

"In October 2021, the COJ published the final version of the impugned policy. During the public participation process before the publication of the policy, SAPOA participated and then expounded upon various difficulties and concerns it identified with the draft policy in a memorandum submitted to the COJ on 1 June 2021.

Prior to 2021, we engaged with the COJ and made submissions to them which were ignored.

Vague and unreasonable

The DC Policy is vague, irrational and unreasonable.

If implemented, the Development Charges Policy will effectively enable the COJ to levy charges which have the effect of compelling developers to cross-subsidise developments which are unrelated to their applications. This is unprecedented and SAPOA has made out a cogent case in its founding papers that the

COJ's policy is not authorised by any national legislation and is unlawful. Because of the wide-reaching impact of the policy, its legality should be determined without delay.

We have therefore approached the Deputy Judge President to facilitate the matter being heard on an expedited basis. We have been in discussion with the COJ (previous administration) more than two years ago.

The Development Charges Policy introduces a new development contributions regime (sometimes referred to as "bulk services contributions") which rescinds the current calculations and procedures used to determine these amounts due to the COJ, in cases where property developers apply to the COJ in terms of the SPLUMA for rezoning and ancillary property development consents.

SAPOA is the applicant in an application launched on 2 August 2022, wherein it seeks an interdict to restrain the respondent, being the City of Johannesburg, from implementing its 2021 Development Contributions Policy.

Our view is that most municipalities are failing in their constitutional responsibilities to provide services to the public. They are also badly run and have serious financial difficulties. We are therefore, as business and citizens, being taxed through a myriad of levies and taxes, of which the Development Charges Policy and an unsustainable rates regime, constitute a mechanism to generate more revenue.

Cost-cutting measures

We would recommend that the municipalities rather focus on cost-cutting mechanisms, deal with excessive levels of corruption, reduce expenses etc. as a way to balance their books.

Capital is mobile; businesses will simply stop investing and move more capital to jurisdictions (both locally and internationally) which are more business-friendly. This is already happening at an increased rate.

These challenges have not transpired overnight. These issues have been evolving for many years and are now increasing at an exponential rate.

This is not only specific to COJ.

Aging infrastructure, poor maintenance regimes, excessive numbers of potholes, rampant corruption, poorly maintained pedestrian walkways, leaking water mains and sewers, collapsing water treatment plants, electricity shutdowns, crime and grime, failing substations, cable theft all result in the loss of trading income, and the problem is escalating.

We stand by our views and call on local and international investors to tread cautiously and consider these matters carefully before investing into cities which are not conducive to a business-friendly environment.

Fundamental investor expectations are that:

- The rule of law and political stability are recognised and respected;
- Property rights are clearly identifiable, transferable, recognised and enforceable;
- Applicable laws will be stable in key respects for the duration of the investment;
- Property and contract rights are recognised and enforceable;
- The investor is legally entitled to recover and take back the returns it is due on exiting the investment;
- Laws and administrative procedures are transparent; and
- There are clear commitments to internationally recognised standards of enforcing against corruption and other forms of financial crime."

National Treasury

"We are working with municipalities to give them the capacity to implement the charges."

- Mmachuene Mpyana
National Treasury

"Some municipalities are already levying development charges based on SPLUMA, provincial regulations or the Municipal Finance Management Act.

But the problem is that this legislation does not provide sufficient guidance on how the development charge should be applied. Different terminology, definitions, calculation methods among others were being used by various municipalities and this led to confusion among developers.

In some cases, developers disputed the charges and pursued litigation against the municipalities.

Standardising the approach

The main objective of the Amendment Bill is to address these issues by standardising the approach to be taken by municipalities in terms of how to go about levying development charges for bulk infrastructure for providing engineering services such as water, electricity, sewerage, municipal roads, stormwater drainage etc. as outlined in SPLUMA. The Bill allows municipalities to levy development charges for engineering services outlined in SPLUMA and makes provision for municipalities to apply to the Minister of Finance to levy development charges for other engineering services not outlined in the SPLUMA.

Municipalities are responsible for the provision of external engineering services, whereas the developer is responsible for the provision of internal engineering services.

Another area that requires attention is that municipalities should ensure that an engineering services agreement has been signed with the developer. This agreement should specify the roles and responsibilities of each party (municipality and developer) in relation to the provision of internal and external engineering services to minimise confusion at a later stage.

The determination of development charges is another critical area. Developers must be made aware upfront what the costs are and how they were calculated so that there can be agreement at the outset and complaints about being overcharged can be avoided.

The engineering services agreement should also indicate what dispute resolution mechanisms are in place and what remedial action should be applied in cases of default by the municipality or the developer.

All these measures will help to avoid litigation. Going to court to resolve disputes over development charges should be the last resort.

Treasury did not leave municipalities to work out how to implement the policy on their own.

Public participation

We held several workshops and bilateral meetings and invited municipalities to engage with us throughout the public participation process. We took them through the Bill in detail, and offered assistance to align their policies with the provisions of the Bill.

Once the Bill is enacted into law, all municipalities will have to comply with its provisions.

This means that a municipality which intends to levy development charges must adopt a Development Charges Policy and enact bylaw to give effect to this policy.

To ensure that municipalities are capacitated to implement the Bill, once enacted, National Treasury will issue regulations and guidelines

including various tools and templates to assist them, such as pro forma templates of policies, engineering services agreement etc.

Treasury encourages all municipalities to levy development charges as this is the power given to them in terms of section 229 of the Constitution.

But we really want municipalities to exercise the option of levying development charges to provide bulk infrastructure and this will help to free up resources to use on other municipal priorities.

The Bill also allows municipalities to grant exemptions and rebates in some cases, but the municipality will have the responsibility of identifying alternative sources of funding for new bulk infrastructure services or upgrading existing services in these cases.

The municipalities must, in their development charges policies, set criteria for granting exemptions and rebates.

It is important to note that development charges apply to both private and public developers. If a national or provincial government department wants to develop within a municipal jurisdiction, it would have to ensure that there is funding for associated bulk infrastructure requirements unless a municipality grants them an exemption or rebates.

Municipalities should avoid levying development charges without an engineering services agreement in place.

They should also avoid short-sighted planning by installing limited infrastructure for the specific development only, instead of putting in sufficient capacity to cater for future needs. The Bill makes provisions for development charges to be paid in cash or in kind. This means that municipalities can make an agreement with developers to install excess capacity than what their land development requires, and collect reimbursements from the municipality in the future.

The Bill applies to all municipalities, not only certain categories. Treasury really encourages all municipalities to take development charges seriously. Those municipalities who do not have a policy in place should start working on it immediately if they intend to benefit from it when the Bill is passed into law."

Implementation challenges

National challenges

(Quoted from article: DEVELOPMENT CHARGES IN SOUTH AFRICA: CURRENT THINKING AND AREAS OF CONTESTATION Nick Graham and Stephen Berrisford**
*PDG, nick@pdg.co.za **Stephen Berrisford Consulting, stephen@berrisford.co.za)*

Consensus has not been reached around these issues:

- How to offset development charges for social infrastructure;
- Which circumstances justify exemption from development charges;
- Which services can be covered by development charges;
- Precise definitions of external, bulk, connector and link infrastructure and how these are charged for;
- Which calculation methodologies are acceptable in which circumstances;
- Whether there needs to be a standard formula or not;
- How to spatially differentiate development charges calculation and application;
- How to regulate the provision of infrastructure in lieu of development charges payment;
- The mechanism for reimbursement for excess capacity provision; and
- Discounts for green infrastructure.

Municipal challenges

(Summarised from interviews and desktop research)

Municipalities that have attempted to implement development charges policies have shared some similar challenges:

- Lack of clarity on the application of national policy at municipal level;
- Variations in policy at local level have led to uneven application across municipalities;
- New policy may be in conflict with previous municipal policy and regulations;
- Municipalities lack resources to develop policy and implement regulations;
- Local developers have opposed the legislation, often taking municipalities to court, and either winning their case or stalling the implementation of the new policy.

The potential benefits of development charges to unlock development and economic opportunities in cash-strapped municipalities is enormous.

The challenges and obstacles are equally significant.

The challenges can be overcome through renewed collaboration and compromise between key players: Treasury, the municipalities, residents, ratepayers and property developers.

Key issues include how to get clarity on specific details around link connections, cost estimation, rebates and incentives, green incentives, social incentives, uniform application of policy and how to foster collaborative policy development and implementation involving both developers and municipalities.

Specific issues include:

- Creating uniformity and consistency among municipalities without being prescriptive;
- Providing for flexibility to accommodate vastly different South African municipalities;

- Developing a costing method that works for municipalities, residents (ratepayers) and developers; and
- Engagement between municipalities, residents (ratepayers) and developers to build support for development charges.

"Municipal officials (should) raise awareness amongst the political leadership around the rationale for DCs and the four key principles that underpin them. This will help to resolve any mis-understandings around what the charge is for, as well as emphasise the importance of consistently applying DCs."

(Quoted from article by Stephen Beresford)

Detailed legislative framework

(Quoting from article: DEVELOPMENT CHARGES IN SOUTH AFRICA: CURRENT THINKING AND AREAS OF CONTESTATION Nick Graham* and Stephen Berrisford** *PDG, nick@pdg.co.za)

In terms of Section 229(1) of the Constitution, municipalities are empowered to impose property rates and surcharges for services provided by the municipality. These rates and surcharges are regulated in Municipal Property Rates Act, 2004 and tariffs regulated in Municipal Systems Act, 2000.

Municipalities impose levies subject to provisions of Section 75A of Municipal Systems Act 2000, Municipal Finance Management Act, and the legal framework for land development - in conjunction with Municipal Fiscal Powers and Functions Act, SPLUMA, as well as National Treasury framework.

Section 49 of SPLUMA prescribes that:

(1) An applicant is responsible for the provision and installation of internal engineering services.

(2) A municipality is responsible for the provision of external engineering services.

(3) Where a municipality is not the provider of an engineering service, the applicant must satisfy the municipality that adequate arrangements have been made with the relevant service provider for the provision of that service.

(4) An applicant may, in agreement with the municipality or service provider, install any external engineering service instead of payment of the applicable development charges, and the fair and reasonable cost of such external services may be set off against development charges payable.

(5) If external engineering services are installed by an applicant instead of payment of development charges, the provision of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), pertaining to procurement and the appointment of contractors on behalf of the municipality does not apply.

Appendix 2 TREASURY STATEMENT on AMENDMENT BILL

"A key reform in the Bill is to establish an unambiguous, fair and consistent basis for municipalities to recover development charges, for all new land development projects that require statutory approvals through the municipal land use planning system," ***Treasury states.***

"The aim of the amendment Bill is to increase the amount and the predictability of development charge revenue, to provide both municipalities and developers with more certainty and assurance that the costs of infrastructure are covered by its users," it said.

"The Bill ensures that the cost of the municipal infrastructure required to service a new land development (including an intensification in land use) is primarily borne by its direct beneficiaries. This promotes the principles of aligning costs with benefits and intergenerational equity (i.e. the burden of payment for infrastructure) is shifted from the existing taxpayers to land owners and new users of the infrastructure," the statement added.

Development charges seminar

Seminar presentations

Representatives of the iLembe District Municipality, KwaDukuza Local Municipality, Mandeni Local Municipality, the South African Property Owners Association, developers, Chamber of Commerce, Industry and Tourism, private companies providing bulk services and members of the development community present at the seminar all agreed on the need for developers to pay for bulk services.

However, the stakeholders differed on how the principle was being applied.

Sikhumbuzo Hlongwane

Executive Director: Economic Development & Planning at KwaDukuza Local Municipality:

- There is a disjuncture between current legislation being used to levy development charges and the new amendment.

- The application of incentives needed clarification: should social housing projects be incentivised at the same level as commercial shopping centres?

Sibusiso Mahlangu

Manager: Planning & IDP at iLembe District Municipality:

- A draft policy was put in place with the assistance of the Vuthela iLembe LED

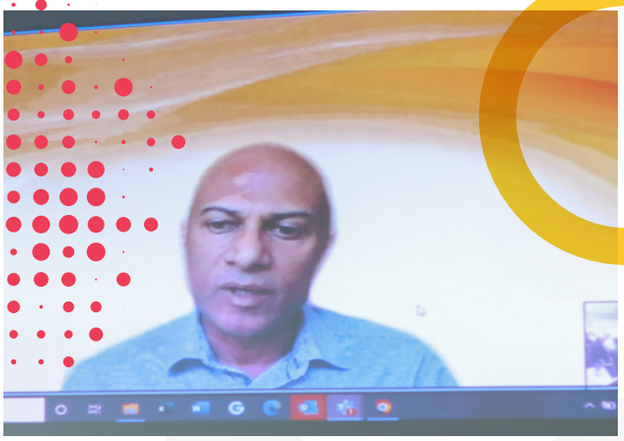
Support Programme. Further consultation was needed on the financial components, especially the calculation formula, incentives and collaborative options for funding.

- Challenges included concerns that the rationale for development charges was not fully understood and the calculation formula was not standardised among the family of local municipalities in the iLembe District Municipality.
- While it may be difficult for a uniform policy to be applied across all three local municipalities, consensus should be reached on the calculation of costs.
- Criteria for developer incentives should be informed by job creation, revenue generation and investment value.

Cobus Oelofse

CEO of iLembe Chamber of Commerce, Industry and Tourism:

- Developers were concerned that the cost burden of installing infrastructure was shifting to end users and development charges amounted to another tax on new projects.
- Estimated 26% of total project costs related to development charge costs and delays on the development process due to the levy added about 15% to the overall costs.
- Development charges increase the cost of delivering local infrastructure as municipalities do not borrow at low rates to fund installation.
- Development charges are often used for infrastructure that is not linked to the development.
- Infrastructure planning process lagged behind the development approval process, making it difficult to anticipate costs accurately.
- Chamber proposed that other opportunities to secure funding for bulk infrastructure should be explored jointly by developers and municipalities; developer contributions should be capped; rates and rebates holidays should be offered to developers as incentives; and development charges be ring-fenced for the installation of new bulk infrastructure only, not for maintenance and replacement of faulty equipment.
- Chamber supported developer-led planning which included municipal and provincial government officials and optimised the cost-sharing and risk-sharing arrangements.



Neil Gopal

CEO of SA Property Owners Association:

- The property development industry was not opposed to development charges, provided they were fair and transparent.
- If charges levied on new developments were used for infrastructure elsewhere in the municipality, this would not be a good incentive for developers.
- SAPOA hoped the Amendment Bill would create more uniformity in application and set limits on how levies are imposed.
- SAPOA has had engagements with municipalities and National Treasury for the past five years.
- SAPOA believed it was unconstitutional for municipalities to implement the charges before national legislation was passed and is waiting for the courts to provide clarity, most likely in 2023.

Kobus Fourie

Operations Manager of Siza Water:

- Developments are sometimes far from existing bulk and link services, leading to cost increases.
- Installation of bulk water takes approximately two to three years due to land acquisition, specialist studies and environmental and water use license application approvals, frustrating developers who have already gone through their own approvals processes.
- Developers can save money by developing together, however holistic rollout of link and bulk services is frowned upon due to competition in the area.
- The legal requirements, specifications and costs of private sewer pumpstations and municipal sewer pumpstations are vastly different.
- Recommended that developer contributions are ring-fenced for bulk and link upgrades only; the inclusion of guarantees into service level agreements is paramount; calculation of contributions should be demand-based, so floor area, buffer zones etc. do not matter.

Frikkie Brooks

Private consultant:

- The process of implementing development charges should focus on achieving a win-win outcome for all parties by understanding the constraints of local government and the consequences of providing free basic services on municipal finances.
- Local government is sincere about providing services but is in in a difficult situation while in the private sector,

business has to be viable and profitable.

- Development charges should be applied in a way that maximises the profitability for the developer and for the municipality in a partnership model that allows both parties to gain significant benefits.
- Municipalities needed to increase revenues by expanding their rates base and expand the scale of the services they provide, and private developers can help municipalities to achieve this.
- Failure to implement development charges effectively in iLembe district will have implications for the entire corridor between Richards Bay and Durban.

Mmachuene Mpyana
Senior Economist: Local Government Finance Policy at National Treasury:

- Cabinet granted approval for the Municipal Fiscal Powers and Functions Amendment Bill to be published for public comment in January 2022 and the Bill has been refined in line with comments received and introduced in Parliament on 8 September 2022.
- The Amendment Bill would seek to address the challenges raised by many delegates at the seminar, especially those related to creating more standardisation and clarification of disputed issues.
- National Treasury pledged to assess the capacity of municipalities to implement development charges by providing the tools and templates which the municipality needed to implement the Amendment Bill.
- Municipal councils must adopt a resolution for the municipality to levy the development charges, a policy consistent with this Act, and it must publish bylaws, in terms of sections 12 and 13 of the Municipal Systems Act, to give effect to the implementation of its policy on development charges.
- A municipality's bylaws on development charges may be integrated into other bylaws relating to municipal planning.
- A municipality which already levies development charges in terms of a pre-existing policy or bylaw must ensure that it complies with the new Act within 36 months of its enactment.

Seminar outcomes

The seminar identified several other contested issues which would need to be resolved for the successful implementation of the new legislation.

These included:

1. Standardisation: using the same formula to determine charges and moving towards greater fairness, accuracy and predictability for developers.
2. Ring-fencing: ensuring the development charges are used for the new infrastructure required for the development, and not for other developments or services.
3. Reimbursement: getting developers to pay for infrastructure upfront and receive reimbursements as other developers come in to share the costs.
4. Ease of application: regulations must not be cumbersome, which may curtail development, and all regulations should be easy to implement.
5. Timing: ensuring that the planning and approval process keeps pace with the development process
6. Capital: seeking alternative means of funding will mean that developers and municipalities are not entirely dependent on development charges for infrastructure.

It was proposed that a developers' forum would help to resolve these issues by providing a platform for further dialogue between stakeholders.

Richard Clacey

Vuthela Programme Manager and Partnership and Co-ordination key expert, who facilitated the seminar, concluded:

- The seminar succeeded in bringing stakeholders together to share their perspectives on development charges.
- While there were still many areas of disagreement between stakeholders, there was sufficient emerging agreement to implement the new legislation successfully.
- It is now essential for all stakeholders to proceed with discussions between themselves and forge further areas of agreement so that the pending legislation can be successfully implemented.
- The Amendment Bill is likely to be passed next year, providing a tactical opportunity for the region to act now, and develop policy for the future.
- Municipalities should start dealing with the issues raised by delegates and seek to reach agreement on the institutional arrangements needed to develop and implement policy on development charges.

Conclusion

"We have an opportunity to do something special here in the iLembe district. If developers, residents (ratepayers), business and municipalities put their heads together and build consensus and a modus operandi that will be good for the local economy. That way, everybody wins, and everybody has a future in this region."

- Richard Clacey

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Confederaziun svizra

Swiss Confederation

Federal Department of Economic Affairs, Education and Research EAER
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