

Lisbon – Malacca Port Cities Twin Conferences 2019 / 2020



AicE-Bs2019Lisbon

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9th Asia Pacific International Conference on Environment-Behaviour Studies,
Faculty of Architecture, Ulisboa, Lisbon, Portugal, 03-04 Jul 2019



The Procedural Issues after the Implementation of Development Charge in Malaysia

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Abstract

The development charge is levied to developers if the project is approved for either the conversion of land use, the increment of plot ratios or density, which increases the land value. To date, seven (7) states have implemented the development charges at their local authorities. Each state has a different interpretation of the policy, framework and development charges practices. An interview using a focus group was conducted to identify issues after the implementation of the development charges. Eight (8) local authorities were selected as research samples. Findings from the focus group have discovered five (5) main issues; namely duration, the collection of data, individual application, payment method, and unstandardized rate. Keywords: work procedure, development charge, local governments, issues and challenges.

Keywords: Procedural Issues; Development Charge

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DOI: <https://doi.org/10.21834/e-bpj.v4i11.1668>

1.0 Introduction

In general, local governments' role is to provide municipal and maintenance services, planning and control of land development, land use, enforcement and supervision on approved development plans, also manage and control financial budget and tax revenue in their administration areas (Nor Azalina Yusnita, Mudirah, Nurulhuda & Siti Fairuz, 2017). The term development charge is introduced to cover the cost of infrastructure for any location, which is affected do to the change of land use and approved planning development proposal (Mohd Harris, 2017).

Development charge is not a new tool to control land development. In USA, this tool has been implemented since 1920 and later was gazetted in Standard Planning Enabling Act 1922. At the early stage, the implementation of the development charge in the USA was to control urbanization and later was utilized as one of the income sources to the local government for providing utilities to the society within their gazette boundaries. That charge is also referred as connection fees, system development charges and buy-in-fees (Lurz et al, 1990).

In Malaysia, development charge was first introduced and implemented by Kuala Lumpur Town Hall (DBKL) in 1970. The charge was implemented with accordance to Ordinan No.46 (Kuasa-kuasa Perlu) Dharurat, 1970. The provision is also provided in Akta (Perancangan) Wilayah Persekutuan, 1982 (Akta 267). Under Section 32 of Act 172, this charge is levied to the developer of the land if it involves with any change of land use, which increases the land value (Abdulhan Abd Lamit, 2017).

DBKL articulates that the concept of development charge is to utilize the levied charge and channel it to fund the cost of infrastructure, landscaping and public utilities at the effected location, which has been approved for change of land use (DBKL, 2015).

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Mohd Harris (2017) further added, due to the approval of development planning and change of land use, that location needs facilities and public amenities as required by the law.

To provide sufficient infrastructures and public utilities to serve the future public or residents, local government requires huge fund (Soeb Pawi, 2013). Because of that, the local government needs to find a new source of income to be able to serve the public. Other states in Malaysia later applied this tool to control land development; Selangor (2011); Perak (2013/ amended 2014); Kedah and Kelantan (2015) and the latest is Johor (2017).

1.1 Development Charges: Definition and Concept

The implementation of development charge also known as Impact Fees (USA), Betterment Fees (Britain), New South Wales' Developer Contribution (Australia) are widely used by the local governments from various countries. According to Collin Crawford (2017), this tool is popular among the local governments around the globe in reducing the cost to provide infrastructures and public amenities.

With the provision of Development Charges Act 1997 of Canada, Section 1 interprets development charges as "a charge imposed pursuant to this By-law". The purpose of such interpretation is further explained in Section 27 of the same Act where "the council of a municipality may by by-law impose development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the by-law applies".

In addition, Oklahoma Statutes Title 62 defines municipal development fees as "any payment of money imposed, in whole or in part, as a condition of approval of any building permit, plat approval, or zoning change, to the extent the fee is to pay for public infrastructure systems that are attributable to new development or to expand or modify existing development".

Additionally in Malaysia, the interpretation of development charge is provided under Section 40 of the Federal Territory (Planning) 1982. The term development charge means "Where a local plan or an alteration of a local plan effects a change of use, density, plot ratio or floor area in respect of any land so as to enhance the value of the land, a development charge at the prescribed rates shall be levied".

From several interpretations of development charge, it can be clinched that the aim of the development charge is to cover the cost of the provision of providing and improving infrastructure and facilities in the region after the approval of the planning permission. Development charge is imposed to any applicant if there is a development on planning approval resulting the increase of land value (Nor Azalina Yusnita et al., 2017). Usually, the charge is imposed for the following causes:

1. Approval of the development involved the conversion of land use zones that have raised the value of land.
2. There is a surplus of floor area of the plot ratio specified in the development plan.
3. There is a surplus of units above the average density residential development specified in the order.

1.2 Procedural Issues in Development Charges

According to Wan Rozali (2007), the concept of an urban city and municipal city is based on the number of residents. He further added that the process of urbanization involves the increase and improvement of the total population as well as the economy, transportation, communication, infrastructures, land use, cultural and physical landscape to become an urban city. In relation to Malaysia, since Independence, the urbanization process is positive. The governments (federal, state and local) are able to provide with sufficient infrastructures, public utilities and good road communication with the good municipal system. Nevertheless, in recent times, the local governments faced with various issues and the new environment that communally forced them to be more efficient, especially after the implementation of development charges. The issue of effectiveness and credibility of the municipal's work procedure in relation to the development charge is a challenge to every local government. Among the issues related to development, charges are basic public amenities provision, road traffic, and development charge rates.

Despite the purpose of development charge to the local government is to create a new source of income; past researches articulate that this tool requires more time before it can be implemented especially in legal and land policies so this tool can meet the desired objectives. The first aspect that needs to be strengthened is legal. In Malaysia, there are several written laws that govern development charges such as the Town and Country Planning Act 1976, National Land Code 1965, Federal Territory (Planning) Act 1982 and several state enactments (Faizah Ahmad, 2014).

With different written laws, issues might arise in the implementation, the process of planning permission approval and the work procedure. Take the Johore State Government for example. The implementation was postponed to make sure that the state government could prepare Local Plan for Redang, Kota Tinggi, Mersing, Johor Bharu, and Kulai. The reason is to safeguard the interests of all parties, especially the residents of those districts. Moreover, the overlapping of the existing written laws might cause issues if the development charge is introducing without proper studies (Judith & Brian, 1999). For example, in Australia, Section 94 of the New South Wales (NSW) Environmental Planning and Assessment Act was gazetted in 1979, however, due to the problem of overlapping written laws created many issues in the execution of development charge that later was amended and fully utilized in 1989 after supported by the Simpson Commission.

In the Malaysia scenario, the development charge imposition is high, which many developers or applicants show protest and appeal to lower the rate imposed. Harris (2016) suggests that the local governments review the charge impose conferring to the applicant category; whether the applicant is an individual or developer. This is to prevent the applicants from canceling their application which later causing loss of income to the local government. With a high development charge, the development cost might increase which may result in the increase of end buyer (Andrejs Skarburskis, 2007). This is because; development charge is also a part of total development

costs. The increase in development costs will cause the selling price of the development to increase and thus will reduce the demand for that particular development (Shahuddin, 2008).

Faizah Ahmad (2014) contends that issues related to the development cost of urban planning control have appealed many researchers from around the world to carry out systematic studies to gain assurance about opinions and views from various parties, but such studies are very limited in Malaysia. In order to meet the demand for knowledge in this regard, the study aims to discern the implementation of development charge at the local government levels through the legislation and issues encountered after the implementation of the charge to provide significant input for efficient work procedure of development charge by the local governments.

2.0 Methodology

This research applies the qualitative method in order to discern the issues after the implementation of development charge by the authorities.

2.1 Data Collection

A focus group is often used when the researcher intends to support the arguments by an in-depth analysis of a group of persons in a particular project (Bryman, 2012). Therefore, to achieve the research objective, the researchers utilized a focus group for data collection in order to discern the issues in the policies and legal matters after the implementation of development charge by the authorities.

Data was gathered through the focus group discussion. The characteristics of focus group discussion are it is focused on the respondents' experiences regarding the research topic and it takes place with respondents known to have been involved in a particular experience (Onwuegbuzie, A. J., Leech, N. L. and Collins, K. M., 2012). The locations chosen for the focus group sessions are shown in Table 1.

Table 1. List of focus group sessions

Group	Session Date	Location	Number of Respondents
1	19 th – 21 st of July 2016	Centre of Town Planning and Urbanization Studies, I-KPKT, Pahang	38
2	9 th – 11 th of August 2016	Centre of Town Planning and Urbanization Studies, I-KPKT, Pahang	45
3	5 th – 7 th October 2016	Georgetown, Penang	67

(Source: Authors' Research, 2018)

The respondents involved in this research are listed in Table 2 that originated from Federal, State and Local authorities from western and southern regions of Malaysia, namely Kuala Lumpur, Selangor, Pahang and Perak governments.

Table 2. Number of respondents according to government hierarchy

Hierarchy	Group 1	Group 2	Group 3	Total	Percentage
Federal	2	1	0	3	2%
State	1	3	1	5	3%
Town Hall	1	1	4	6	4%
Municipal Hall	24	21	29	54	50%
District Hall	8	19	33	60	41%
Total	36	45	67	148	100%

(Source: Authors' Research, 2018)

Table 3 shows the respondents' department in the government sectors.

Table 3. Number of respondents according to department

Department	Group 1	Group 2	Group 3	Total	Percentage
Administrative	1	2	1	4	3%
Planning	25	21	25	71	48%
Valuation	2	12	37	51	34%
Engineering	7	9	4	20	14%
Law	1	1	0	2	1%
Total	36	45	67	148	100%

(Source: Authors' Research, 2018)

Each focus group session was given a set of questions for discussion. Questions were relevant to the research objective that is to discern the issues after the implementation of the development charge by the authorities. Group 1 came out with twelve (12) issues, Group 2 with thirteen (13) issues and Group 3, ten (10) issues.

2.2 Data Analysis

Unlike quantitative analysis, qualitative, particularly focus group analysis occurs concurrently with data collection (Krueger & Casey, 2000). The first stage of focus group analysis begins with facilitating the discussion session, and then generate information from the discussion session. After that, complement the information with observational notes and lastly transcribe the recorded information into

electronic format; for this research is the Microsoft Word (Ritchie and Spencer, 1994). Next, a thematic framework is produced from the transcribed data that involves indexing, highlighting and sorting out quotes and re-arranging to develop thematic content. With thematic content, the data is ready to be interpreted in accordance with the research objective.

3.0 Findings and Discussion

In discovering the issues, a successful focus group discussion was conducted with 148 respondents representing a response rate of 100%. From the analysis, the researcher developed a thematic framework of the issues after the implementation of development charge by the authorities. The issues are; process of payment (90%, n=133); duration (60%, n=89); individual application (40%, n=59), data collection (20%, n=30) and unstandardized rate for land use conversion (20%, n=30). The themes or issues found were illustrated in Figure 1.

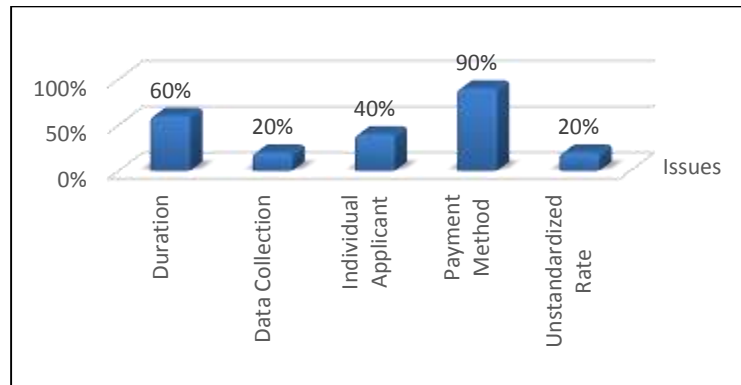


Fig. 1: Frequency of Development Charge Issues
(Source: Authors' Research, 2018)

3.1 Process of Payment

From the focus group discussion, it was found that the payment process is the most frequent issue in the implementation of development charge (n=133). The payment of development charge has a flaw which developer can manipulate. This is because to obtain planning approval, the developer is allowed to pay only part of the full payment. With the approval, although the payment is still due, the developer can commence the development. However, in some local governments, the planning approval is only issued after full settlement of the development charge. With that, the issuance of planning approval will take longer than the usual duration. Again, there is no standard method of payment applied by all local governments. This leads to inefficiency in the collection of development charge.

3.2 Duration

About 60% of the respondents articulated that the duration to process the development charge, specifically time given to the developer to make payment is not ample (n=89). Further added, the process of development charge is different from one local government to other local governments which resulted different duration of payment.

3.3 Individual Applicant

For estate duty purpose, the individual applicant or the registered proprietor need also to pay development charge if it involves with partition or subdivision of the land. The charge is generally high and sometimes burden the individual applicant or the registered proprietor to pay (n=59).

3.4 Data of Collection

From the collected data, Valuation department normally faces difficulty to get full cooperation with the developer, as they need information regarding the cost of development for charge estimation (n=30). Some developers do not provide sufficient cost details during the application, which often resulted to protest or objection of the imposed development charge. Without sufficient information, the charge imposes may be under or overvalued. Besides, location, comparable properties are hard to obtain due to fewer data of the transaction. This also affects the valuation of development charge.

3.5 Unstandardized Rate of Charge

Finally yet importantly, the unstandardized rate for land use conversion (n=30). The imposition of premium by land office and development charges by local government is different. Thus, people can question the unstandardized rates although the purpose is the same, which is the conversion of land use. This will lead to protest that will prolong the process of development charges.

4.0 Conclusion and Recommendation

Sixty-eight (68) local governments have implemented development charges. As this development charge has been gazette, this research aims to discern the issues after the implementation of development charges; particularly in the policy and legal aspects. In a legal aspect, the researcher looks into the five main processes of development charges, they are the imposition of development charges; the exemption of development charges; the issuance of planning approval; and the payment process of development charges. From the focus group findings, the payment process and duration of the development procedure are the most significant issues. There is uncertainty of how long it takes to complete one application, as different governments have different working procedure.

On another aspect, the work procedure as in the policy involves various parties such as developer, contractor, individual and local governments. In Selangor and Kedah, local governments have different policies in the issuance of planning approval. Some of the local government only involve executive members in making decision. The reason is to skip certain procedures to make the duration of the planning approval becomes shorter.

In conclusion, these findings are relevant to improve the efficiency of local governments to control land development through the implementation of a development charge. Note that local government is one of the agencies that is close to the society. Decent procedure will guarantee full cooperation with the applicant. In consequence, for further research, it is suggested that a study is done to propose a decent work procedure that is technically efficient and legally permissible based on the focus group findings.

Acknowledgements

The researcher would like to extend gratitude to Ministry of Housing and Local Government for unwaveringly supportive throughout the term of the research. Our appreciation also goes to respondents involved for giving their time to complete the questionnaires, interview and focus group sessions.

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