



# **Corporate** NO: C387

# **Report** COUNCIL DATE: Jan. 27, 1998

## **COUNCIL-IN-COMMITTEE**

**TO: Mayor & Council**    **DATE: January 22, 1998**

**FROM: General Manager, Engineering**    **FILE: 2350-000**

**SUBJECT: Development Works Agreement Legislation**

## **RECOMMENDATION**

1. That Council authorize the use of a Development Works Agreement with developer(s) as an additional alternative to finance the construction of major items of infrastructure in NCPs.
2. That all City costs of preparation and administration of the Development Works Agreement be borne by the developer(s) making the application for the Agreement.

## **INTENT**

The purpose of this report is to seek Council's endorsement of an additional approach for the front-ending of major items of infrastructure within NCPs using the new legislation under Section 937.1 of the Municipal Act referred to as the "Development Works Agreement". It is essentially a form of area latecomer agreement which covers works which are included in the City's 10 Year Capital Program. Under this agreement, the developers will provide the funds to construct an engineering service. The benefiting land owners will pay their proportional amount of the cost of such works to the City in conjunction with developing or significantly improving their properties and the City will then reimburse the "front-ending" developers the funds collected.

## **BACKGROUND**

In a 1995 Corporate Report, the Engineering Department indicated concerns about the City's ability to finance the infrastructure required to support the 14 NCPs in process. A recommendation to sequence the NCPs was proposed. Council decided that the sequencing of NCPs was not an acceptable solution. It was subsequently suggested that each NCP would only be approved if it was self financed. Since that time, the City has adopted 10 NCPs under this system, one with conditions placed upon development due to funding. Previous to this policy change 2 NCPs were adopted.

There were several NCPs that were having difficulty finalizing their Stage 2 Reports due, at least in part, to financing considerations. The most problematic situation was where major items of infrastructure were required before development could commence such as a major sanitary sewer trunk or a major pump station.

Generally the City does not have the funds available at the time of the NCP adoption to construct needed infrastructure, therefore the NCP cannot proceed unless a developer, or group of developers, is prepared to advance the funds to finance (i.e., front end the costs of) the needed infrastructure.

## **CURRENT CITY PRACTICES**

The City has used two different approaches to assist developers in financing the construction of needed infrastructure in conjunction with development in new areas. These are addressed below.

### **1. DCC Rebate Policy**

This policy applies to infrastructure items which are included in the 10 Year Servicing Program and are funded by Development Cost Charges. Frequently, municipal engineering infrastructure which is part of the 10 Year Capital Program (to be funded from DCCs) must be constructed prior to any development in an area. Under current practices, the City may allow the first developer to finance and construct such works in order to allow development in the area to proceed. This “front-ending” developer would get back his Development Cost Charges to the maximum of the DCCs payable on his development for that category of service but not exceeding the value of the works which he constructed. The more expensive the infrastructure, the larger the application needed to allow the developer to recover his costs. For very expensive items of work, a single development will typically not be large enough to allow the developer to recover his costs through the current DCC rebate process.

The current DCC rebate policy is considered to be a satisfactory method for dealing with the majority of development infrastructure financing situations and is currently used on a relatively frequent basis. For more costly construction projects developers often work together to increase the size of the development application such that the DCC rebate available is sufficient to finance the construction of the needed services.

### **2. DCC Reimbursement Agreements**

A second approach which has been used to assist a developer (or group of developers) to front-end the needed major items of infrastructure is the “DCC Reimbursement Agreement”. The City can enter into an agreement (as per Corporate Report S980) with the “front-ending” developer (or group of developers) to pay him/them back over time the capital cost of the design and construction of the works covered by the Agreement. The City makes these payments from DCCs collected during the development of properties in the area which receive benefit from the works constructed under the Agreement.

More specifically, the developers “front end” the costs of the needed infrastructure and, in return, the City agrees to:

1. rebate to the developers their DCCs for that category of service to help offset the capital costs (as per current practice); and
2. pay to the front-ending developers the DCCs collected from other benefiting properties as they develop. The maximum amount to be paid under this item would be the cost of the design and construction of the works less the rebate of DCCs already provided under item 1 above.

This approach was approved by Council for use in constructing sanitary sewer works in the West Cloverdale North NCP and drainage works in the Rosemary Heights Central NCP. Further use of this approach is considered reasonable from an engineering perspective provided that in each such case separate Council authorization is received.

From an engineering perspective, a time limit of 10 years should be placed upon such agreements. This will provide the City a better opportunity to better assess the implications of this agreement upon the City's priorities. Further, money collected after 10 years will not likely have a significant impact upon the developers front ending the infrastructure (the City's Latecomer Policy includes a 10 year time limit on latecomer agreements). The criteria to be used to evaluate the use of "DCC Reimbursement Agreements" has been previously approved by Council. The use of "DCC Reimbursement Agreement" approach is not to become a replacement for the DCC rebate policy. It should only be used in rare cases where the cost of the infrastructure is very high and where all others methods of financing the construction of the necessary infrastructure have been unsuccessful.

## DISCUSSION

In addition to the approaches discussed in the previous section, new legislation has been approved which allows the City another option for assisting developers who wish to "front-end" infrastructure in support of opening new development areas. For purposes of this report this will be called the "Development Works Agreement" approach.

The practices discussed under the previous section are suitable for situations where the development on the properties which benefit from the "front-ended" project generate sufficient DCCs to fund the cost of the project. The "Development Works Agreement" approach is applicable in circumstances where the DCCs collected from development on the benefiting properties are not adequate to fund the front-ended works and must be supplemented by additional charges on the benefiting properties. A Development Works Agreement basically requires the benefiting properties at the time of development to pay DCCs plus an additional amount per unit which is then reimbursed to the developer(s) who "front-ended" the construction of the works.

A Development Works Agreement has a somewhat complicated administrative process which must be followed in accordance with legislation. The process is similar to the Local Improvement By-law process. To enter into a Development Works Agreement, Council must pass a by-law which provides for a developer (or group of developers) to provide, construct, alter or expand sewage, water, drainage and highway facilities using the developer's own funds. Under the Agreement/By-law, the properties that benefit from the constructed works will become indebted to the City and will have to pay to the City their proportionate share of the costs of the works as a condition of any of the following:

- subdivide or stratify their lands;
- obtain a building permit, development permit or development variance permit; or
- rezone their lands.

The City then reimburses the "front-ending" developer the amounts which are collected from the benefiting properties. The Act also makes provision for increasing the charges payable by the benefiting properties by an annual interest rate to be specified in the by-law (this is similar to the annual adjustments provided in latecomer agreements).

A time limit of 10 years should be placed on Development Works Agreements for the same reasons as such a

time limit is proposed for DCC Reimbursement Agreements, noted previously in this report.

The process stipulated in the Act for entering into a Development Works Agreement provides the affected property owners (i.e., owners of the benefiting properties) an opportunity to have a voice in what is being proposed. The Act requires that a “sufficient” petition (i.e., 66 2/3 % of the land owners representing 50% of the assessed value of the lands in the benefiting area) for the development works must be presented to Council and that no sufficient petition against the development works agreement has been received. Council will know through the petition process whether or not the community is in favour of the approach being advanced by the “front-ending” developers.

As is evident from the above description, the Development Works Agreement process will involve a significant administrative effort including:

- checking of the petitioning process by the City;
- the preparation and processing of a by-law by City staff and Council; and
- the ongoing administration by the City related to the collection and distribution of funds related to the Agreement.

Should Council approve the use of Development Works Agreements, staff will develop a procedure to administer the implementation of the recommendations of this report and determine the amount and method of payment of fees to cover the City's costs related to Development Works Agreements.

### **Potential Impact of Development Works Agreements**

Council have indicated that they wish to have all NCPs proceed simultaneously provided that they are self financing. The Development Works Agreement is another method of assisting developers in the financing of the infrastructure required by the NCPs without using City funds. The use of the Development Works Agreement may accelerate the development within NCPs and from this perspective may place more pressure on the provision of fire protection police, schools, libraries and park development. It may also increase the amount of under utilized engineering infrastructure that needs to be maintained for some time.

## **SUMMARY**

Where the reimbursement of DCCs from benefiting properties, as described in an earlier Corporate Report and discussed above, is supported by Council but the DCCs are not adequate to cover the costs of the infrastructure required to open up an NCP, the addition of the Development Works Agreement will be a benefit to the development industry. It will assist the developers in getting repaid for front-ending the needed engineering works. It also allows the owners of the benefiting properties to be aware of the proposal and to have some input into the process that affects the development potential of their lands.

Umendra Mital, P. Eng.,  
General Manager, Engineering

JKJ/MDD:brb

c.c. - City Solicitor

g:\wp-docs\1998\landdev\devwks2.doc

WS585 01/23/98 08:54 AM