

Endeavour to Assist Amendment to Servicing Agreement and Development Levy Policy

Date	February 12, 2020
To	Finance and Administration Committee
From	City Planning & Community Development
Service Area	Planning & Development Services
Item No.	FA20-3

RECOMMENDATION

That the Finance and Administrative Committee recommend that City Council:

1. Approve the *Administration of Servicing Agreement and Development Levy Agreement Policy*, which is attached as Appendix A to this report.
2. Direct the City Solicitor to prepare the necessary bylaw to amend *The Development Levy Bylaw No. 2011-16* to reflect the changes set out and approved by this report and, specifically the changes to *Administration of Servicing Agreement and Development Levy Agreement Policy* and to give requisite public notice of Council's intention to consider such bylaw.
3. Approve these recommendations at its February 26, 2020 meeting.

ISSUE

The City of Regina (City) uses Servicing Agreement Fees (SAFs) and Development Levies (DLs) to fund major infrastructure work required for new growth and development in accordance with *The Planning and Development Act, 2007*.

In 2014, a major SAF/DL policy review was undertaken that resulted in a significant policy shift to focus SAF/DL on funding major infrastructure work. This decision changed the way infrastructure work was financed when constructing new areas of the city. Infrastructure work that had been funded by SAF/DL in the past, was now funded by developers directly.

To help manage this change, Part D – Endeavour to Assist was enacted within the *Administration of Servicing Agreement and Development Levy Agreement Policy*. The intent of Part D was to provide policy to help initial developers be reimbursed for the cost of infrastructure that benefits subsequent developers.

When this policy was applied to suitable agreements, it was found to lack clarity and fairness in two key areas: it was not inclusive to all infrastructure work that benefitted future developers, and the financial risk was not equitable for the initial developer.

Inclusiveness

The policy lacked definition of certain infrastructure work and excluded specific infrastructure work types. This caused issues when these types of infrastructure work are constructed for the benefit of a development area that includes multiple developers.

Financial Risk

Financially, the policy was inequitable for the initial developer, who was required to carry the debt caused by the infrastructure work until all the benefitting lands were developed. This impact is significant when development time frames span multiple decades.

IMPACTS

Financial Impact

While the policy will have no direct financial impact to the City, the policy will influence the financial relationship between the initial and subsequent developer. The proposed policy will provide the tools, clarity and support for more successful negotiations of infrastructure cost sharing between initial developer and subsequent developer. The proposed policy may reduce the involvement of the City in these developer to developer negotiations by eliminating interpretation. The administrative efforts required to implement the proposed policy would be negligible compared to the current state.

The proposed policy includes the transfer of financial risk between initial developer and subsequent developer. The initial developer was previously required to carry the debt caused by the infrastructure work until all benefitting lands were developed. The proposed policy will allow the initial developer to transfer the remaining financial risk to a subsequent developer.

For the subsequent developer, the financial decision to develop must incorporate the cost of remaining financial risk of all benefitting lands. The subsequent developer always has the option to pay their share of the costs upfront to the initial developer.

Policy/Strategic Impact

The proposed policy amendment supports *Design Regina: The Official Community Plan Bylaw No. 2013-48* (OCP) Financial Policies to ensure revenue growth and sustainability. It supports the OCP's policies to "Ensure that growth pays for growth" in Goal 4 - Revenue Sources, Policy 1.16.

The amendments support the overall servicing principle that the developer pays for the capital cost of infrastructure work required to service new areas of the City. It also provides

clarity in the application of reimbursement to a developer of these initial costs when they include the value of infrastructure work that will benefit subsequent development or subdivision of other land.

There are no accessibility, environmental, direct risk/legal or other implications or considerations.

OTHER OPTIONS

Administration is recommending approval of the attached Appendix A, the *Administration of Servicing Agreement and Development Levy Agreement Policy*.

There are two alternative options:

Alternative Option 1 – Status quo. The policy, as it exists, continue to be utilized.

This option does not address any of the development communities' concerns noted in our industry working sessions, including the following:

- The policy currently requires the initial developer to carry the financial risk of the infrastructure work until the last of the future developers within the benefiting lands developed.
- The policy currently lacks clarity in terms of how the costs would be attributed to the benefiting lands.
- The eligibility of infrastructure work types is limited by the policy either through definition or exclusion.

Without the proposed revisions in the policy, the development community would be left with uncertainty when negotiating amongst themselves. This would lead to increased risk to their financial planning of development.

Alternative Option 2 – Within the proposed policy, remove the changes that relate to the transfer of financial risk from initial developer to subsequent developers from the policy.

The existing policy has no language for the transfer of financial risk. Under the current policy, the initial developer would be required to carry the cost of the shared infrastructure until all lands with the benefitting area are developed. The concerns of the development community related to the transfer of financial risk were clearly communicated in the industry workshops.

Most industry stakeholders support the transfer of financial risk amendment to the policy. Removing the transfer of financial risk from the proposed amendment would mean that fiscally smaller developers would only be responsible to reimburse the initial developer for their land and not the remaining lands within the benefitting area.

COMMUNICATIONS

The intent and timing of this report was presented at a December 18, 2019 stakeholder engagement session and interested parties were invited to attend the committee meeting as a delegation.

If approved, online and print communications material referring to the policy will be updated to reflect changes. Stakeholders will be notified of Council's decision. Public notice of council's intention to consider an amendment to *The Development Levy Bylaw, 2011* will be advertised in The Leader Post and otherwise given in accordance with the requirements of *The Planning and Development Act, 2007*.

DISCUSSION

The Endeavour to Assist provisions form the basis for contractual terms and conditions that are included in Servicing Agreements and Development Levy Agreements. They are a tool that supports an organized approach to development and fosters the efficient provision of infrastructure that anticipates and supports future contiguous growth as per the Phasing Plan in the OCP.

The intent of the provisions was that if an initial developer constructed eligible infrastructure work that was required to support subsequent development or subdivision of lands, then the policy would support future collection and reimbursement of the value of the "excess or extended services" required to be constructed by the initial developer. The policy supports the principles of maximizing infrastructure efficiency and supporting growth of surrounding areas.

The development industry requested revisions to the Endeavour to Assist portion of the Administration of Servicing Agreement and Development Levy Agreement Policy in 2016. The primary concerns were recorded as follows:

- The policy required the initial developer to carry the debt of the infrastructure work until the last of the future developers within the benefiting lands developed.
- The policy lacked clarity in terms of how the costs would be attributed to the benefiting lands.
- The eligibility of infrastructure work types was limited by the policy either through definition or exclusion.
- There was a specific urgent need for clarity around sanitary lift stations.

A communication strategy was developed in late 2016. The strategy included the development of a City and Industry working group that was represented by Regina & Region Home Builders' Association (RRHBA) and selected members. There were several working group sessions throughout 2017 and 2018.

Administration convened an industry working group to put in practice the application of the policy and to provide clarity to the Endeavour to Assist provisions. Collectively, there was an agreement to prioritize the Endeavour to Assist provisions as it applied to sanitary pump and lift stations as the first step. This decision was with a recognition that that other infrastructure work types also required examination. As a result, sanitary pump and lift stations were prioritized first and CR18-40 resolved the related concerns.

The industry working group continued to apply examples of the policy to bring forward a collaborative resolution. The results are summarized below:

- The definitions were altered to be inclusive for all infrastructure that could provide infrastructure capacity to future lands.
- The distribution and calculation of costing for each infrastructure type was further defined to provide clarity in its application.
- The policy was altered to allow for the transfer of financial risk. This will allow repayment of initial capital carrying costs back to the initial developer when any subsequent developer proceeds.

These solutions are found in the revised policy included as Appendix A of this report. Administration has discussed all changes with the development community and has received support for this proposed amendment. These discussions have provided Administration further understanding of other related interests of the development community related to our growth policies. Some of these interests will be further explored in the upcoming 2020 servicing agreement fee policy review.

A larger engagement session was held on December 18, 2019 with the RRHBA and Regina land developers who were involved in the stakeholder engagement of CM15-14. The intent of this session was to present the findings and resolutions of the working group.

DECISION HISTORY

The City updated its Servicing Agreement Fee (SAF) and Phasing policies on December 14, 2015 by approving the following policies through report CM15-14:

- Administration and Calculation of Servicing Agreement Fees and Development Levies;
- Administration of Servicing Agreements and Development Levy Agreements.

Part D of Administration of Servicing Agreements and Development Levy Agreements is Endeavor to Assist, which is designed to allow an initial developer to recover costs when the City has required the initial developer to provide “excess or extended” services.

The City further updated this policy to accommodate sanitary lift stations with *CR18-40 Endeavour to Assist Amendment to Servicing Agreement and Development Levy Agreement Policy*.

The recommendations contained in this report require City Council approval.

Respectfully Submitted,



Fred Scarle, Director, Planning & Development Services

Respectfully Submitted,



1/29/2020

Diana Hawryluk, Executive Director, City Planning & Community Dev.

2/5/2020

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ATTACHMENTS

Appendix A- Administration of Servicing Agreements and Development Levy Agreements Policy