

CATEGORY: Administration
POLICY #: C.d. 017
OWNER DEPT: Planning
COUNCIL APPROVAL: Oct. 13, 2009

TOWN OF SLAVE LAKE

PAGE 1 of 13
REVISED:

TITLE: COST RECOVERY/COST CONTRIBUTION OF MUNICIPAL INFRASTRUCTURE

POLICY

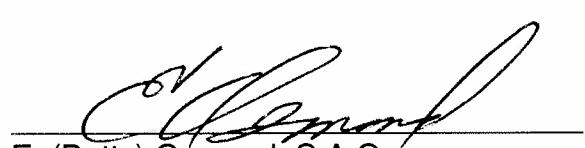
POLICY STATEMENT:

The Town of Slave Lake will implement a Cost Recovery/Cost Contribution Policy with the intent of ensuring that all new Development, whether by way of a development permit or subdivision, pay the costs associated with the municipal infrastructure required for the Development.

POLICY OBJECTIVE:

The objective of this policy is to:

1. Ensure that those Developments which benefit from new or upgraded municipal infrastructure contribute to the costs associated with the construction of the new or upgraded municipal infrastructure.


E. (Betty) Osmond, C.A.O.

October 30, 2009
Date

TITLE: COST RECOVERY/COST CONTRIBUTION OF MUNICIPAL INFRASTRUCTURE

PROCEDURE

1.0 DEFINITIONS

1.01 Benefiting Area

Benefiting Area shall mean the area of the Municipality that derives a benefit, as determined by the Municipality in their sole discretion acting reasonably, from the new or upgraded municipal infrastructure.

1.02 Council

Council shall mean the elected Council of the Town of Slave Lake.

1.03 Developer

Developer shall mean the owner of land or the person to whom a development permit or subdivision approval has been granted.

1.04 Development

Development shall mean:

- (i) an excavation or stockpile and creation of either of them;
- (ii) a building or an addition to, or replacement or repair of a building, and the construction or placing in, on, over or under land or any of them;
- (iii) a change of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building; or
- (iv) a change in the intensity of use of land or building or an act done in

TITLE: COST RECOVERY/COST CONTRIBUTION OF MUNICIPAL INFRASTRUCTURE

PROCEDURE

relation to land or building that results in or is likely to result in a change in the intensity of use of the land or building.

1.05 Development Officer

Development Officer shall mean the Development Officer for the Town of Slave Lake.

1.06 Municipality

Municipality shall mean the Town of Slave Lake.

1.07 Property

Property shall mean a parcel or parcels of land located within the Town of Slave Lake's municipal boundaries.

1.08 Town Manager

Town Manager shall mean the Chief Administrative Officer for the Town of Slave Lake.

2.0 RESPONSIBILITIES

2.01 Town Council :

Approves the Cost Recovery/Cost Contribution of Municipal Infrastructure Policy and any amendments thereto.

2.02 Chief Administrative Officer (CAO):

Ensures the Cost Recovery/Cost Contribution of Municipal Infrastructure Policy is implemented and followed.

2.03 Supervisor of Planning & Development

TITLE: COST RECOVERY/COST CONTRIBUTION OF MUNICIPAL INFRASTRUCTURE

PROCEDURE

Ensures that the appropriate agreements, as established in the Cost Recovery/Cost Contribution of Municipal Infrastructure Policy, are utilized when dealing with development permits or subdivision applications ensuring that developers are contributing towards the cost of new or upgraded municipal infrastructure.

3.0 MUNICIPAL REQUIREMENTS

3.01 The Municipality is entitled to require that Developers of lands (either an applicant for a development permit or subdivision approval) either:

- Construct – new or upgraded municipal infrastructure, necessary to serve or access the proposed Development; or
- Pay For – new or upgraded municipal infrastructure, necessary to serve or access the proposed Development.

3.02 The Municipality when requiring a Developer to “Pay For” municipal infrastructure may contemplate:

- Contribution – towards infrastructure yet to be constructed by the Municipality or another developer; or
- Recovery – of costs already incurred by the Municipality or another developer.

4.0 DEVELOPMENT PERMIT OR SUBDIVISION APPROVAL APPLICATIONS

4.01 Upon receipt of an application for a development permit or subdivision approval within an area that will benefit from new or upgraded municipal infrastructure, the Municipality may:

- Impose Development Agreement Conditions – require as a condition of any such development permit or subdivision approval, that the applicant enter

TITLE: COST RECOVERY/COST CONTRIBUTION OF MUNICIPAL INFRASTRUCTURE

PROCEDURE

into a Development Agreement with the Municipality pursuant to Section 650, 651 and/or 655 as applicable. Such Development Agreement could take the form of a standard Development Agreement, a Cost Contribution Agreement or a Cost Recovery Agreement;

- b) Impose Payment Conditions – require as a condition of any such development permit or subdivision approval, that the applicant pay any outstanding proportionate share of municipal infrastructure costs incurred by the Town and/or another Developer, if applicable, in servicing or providing access to the Parcel under Development, pursuant to Section 650, 651 and/or 655, as applicable;
- c) Documentation – the Municipality should document the obligations of the Developer:
 - i. PAYMENT ONLY – in the case of a payment obligation only (i.e. the developer is not being required to construct any new or upgraded municipal infrastructure), a “Cost Contribution/Cost Recovery Agreement” can deal with the payment obligation and any collateral obligations. If all that is required is payment of known required amount (i.e. if payment in full is received in accordance with the conditions of the subdivision approval, the subdivision plan can be endorsed for registration without the need for any agreement as the only obligation has been satisfied) no agreement is necessary. However, if there are issues associated with the timing of payment) i.e. before or after subdivision, or before or after commencement of construction under the development permit), even where the amount of the payment is known, an agreement is required. The “Cost Contribution/Cost Recovery Agreement” generally is to take the form of a simplified Development Agreement; and
 - ii. PAYMENT AND CONSTRUCTION – In cases where there is payment for new or upgraded municipal infrastructure required, as well as construction obligations, a Development Agreement is required which deals with both the payment obligations, in addition to the typical construction, performance, inspection and security obligations.

TITLE: COST RECOVERY/COST CONTRIBUTION OF MUNICIPAL INFRASTRUCTURE

PROCEDURE

5.0 STATUTORY AUTHORITY FOR COST RECOVERY/COST CONTRIBUTION AGREEMENT

5.01 The Municipality may require a Developer to enter into a Development Agreement pursuant to Sections 650 and 655 of the Municipal Government Act R.S.A. 2000, c M-26, as amended.

5.02 A Development Agreement may be required for the following purposes:

- a) to construct or pay for the construction of a road required to give access to the Development;
- b) to construct or pay for the construction of:
 - i. a pedestrian walkway system to serve the Development, or pedestrian walkways to connect the pedestrian walkway system serving the Development with a pedestrian walkway system that serves or is proposed to serve an adjacent Development;
 - or both;
- c) to install or pay for the installation of public utilities, other than telecommunications systems or works, that are necessary to service the Development;
- d) to construct or pay for the construction of:
 - i. off-street or other parking facilities; and
 - ii. loading and unloading facilities.
- e) to pay an Off-site Levy or redevelopment levy;
- f) to give security to ensure that the terms of the agreement are carried out.

TITLE: COST RECOVERY/COST CONTRIBUTION OF MUNICIPAL INFRASTRUCTURE

PROCEDURE

5.03 Under the authority of Section 650 and 655, a Development Agreement may provide that a Developer will construct, at their own cost and expense, the required municipal infrastructure, in accordance with the plans submitted and approved by the Municipality, generally accepted engineering practices and to municipal standards.

5.04 Section 650 and 655 also provides that a Developer may be required to pay for the required municipal infrastructure, rather than construction the same.

5.05 The Municipality may also require a Developer to construct or pay for all or a portion of an “improvement” with “excess capacity” pursuant to Section 651 of the MGA.

- “Excess Capacity” is defined as capacity in excess of that required for a proposed Development;
- “Improvement” is defined to include a road, pedestrian walkway, utility or facility referred to Section 650 or 655, whether or not located on the parcel to be developed or subdivided, and whether or not constructed at the time of approval.

5.06. The Municipality may require the Developer to enter into an agreement to contribute to the cost of municipal infrastructure built with an excess capacity by either the municipality or another developer, if the municipal infrastructure benefits the parcel which is being developed.

6.0 GENERAL RECOMMENDATIONS IN THE APPLICATION OF DEVELOPMENT AGREEMENTS

6.01 In drafting, negotiating and executing Development Agreements or Cost Contribution/Cost Recovery Agreements, there are some general principles which should be remembered:

- Where possible use Development Agreements to avoid incurring costs:** a complete cost recovery and avoidance protection package for the Municipality is possible through careful drafting of a Development Agreement.

TITLE: COST RECOVERY/COST CONTRIBUTION OF MUNICIPAL INFRASTRUCTURE

PROCEDURE

This is the ideal situation, as the Municipality is not required to incur any costs in relation to the Development or the new or upgraded municipal infrastructure. At minimum the Development Agreement should provide for:

- i. a process for which proposed plans for infrastructure work required are delivered to the Municipality for review and approval;
- ii. a requirement to comply with the design and construction standards established by the Municipality;
- iii. a requirement for supervision and certification by a professional engineer, and final inspection and certification process;
- iv. the provision of security (i.e. an irrevocable letter of credit) to the Municipality by the Developer, which will make adequate funds available for the Municipality to enforce the Developer's performance or complete the required infrastructure work, should the Developer default.

b) **Where possible use Development Agreements to Avoid Risk:** the best alternative to ensure that the Municipality is avoiding risk is to have the developer construct, at their own cost, the municipal infrastructure.

Therefore, the Municipality should try and avoid alternative practices that involve high risk and costs for the Municipality, including collecting a cost contribution "up front" and then committing the Municipality to complete the project on time and on budget.

c) **Use Development Agreements, Cost Recovery/Cost Contribution Agreements to Recover Costs for Municipally Constructed Infrastructure:** there are circumstances that may arise where it is advantageous for the Municipality to construct the necessary municipal improvements. When this occurs, the Municipality may recover these costs from those areas that benefit through a Cost Recovery/Cost Contribution Agreement. The Cost Recovery/Cost Contribution Agreement will generally:

- i. require an upfront contribution based on the estimated costs of the project;
- ii. provide the Municipality with the ability to collect any shortfall in the future when the actual costs are ascertained.

TITLE: COST RECOVERY/COST CONTRIBUTION OF MUNICIPAL INFRASTRUCTURE

PROCEDURE

d) **Use Development Agreements, Cost Recovery/Cost Contribution Agreements to Carefully Recover Oversized Improvement Costs:** there are several cautions which must be considered when preparing to enter into any type of Development Agreement or Cost Recovery/Cost Contribution Agreement:

- i. do not "guarantee" cost recovery – the Municipality's obligation to recover oversizing costs should only consist of a "duty to assist" and should in no way guarantee recovery of the oversizing costs.
- ii. deferred costs should be secured – the Municipality should ensure that, in the event that there is any deferral of the developer's obligations to pay for the costs of oversized infrastructure, there is appropriate security;
- iii. cost recovery should be equitable and supportable – the Municipality should ensure that the basis for calculating a developer's proportionate share, which is usually undertaken by a professional engineer, is equitable and fairly distributes the costs for the municipal infrastructure necessary to service the developer's lands.

e) **Use Development Agreement, cost Recovery/Cost Contribution Agreements to Require the Payment of Fees and Costs:**

as the Municipality will incur numerous costs as a result of development and subdivision applications which are not actual hard construction costs, these costs should be addressed in the Municipality's Development Agreement and Cost Recovery/Cost Contribution Agreements. These cost include:

- i. Engineering Expense – this typically will include the costs incurred by the Municipality in reviewing the Developer's plan for required improvements and services, periodically inspecting the work as construction progresses and providing final inspection and certificate of completion when requiring the Developer to construct the infrastructure or the costs associated with design and inspection when the Municipal constructs the infrastructure.
- ii. Legal Expense – related to the preparation of the Agreement itself, preparation of utility rights-of-way and easement agreements for the services;

TITLE: COST RECOVERY/COST CONTRIBUTION OF MUNICIPAL INFRASTRUCTURE

PROCEDURE

- iii. Surveyor Expense – the preparation and registration of various survey plans required with respect to the development or subdivision (e.g. right-of-way plans for utilities, road plans).

6.02 To support the Agreement, the Municipality should ensure adequate conditions are placed on the development permit or subdivision approval. These conditions should obligate the Developer to construct or pay for improvements and services required to properly service the Development, in addition to a condition requiring that the Developer enter into and complete the terms of the Agreement for the purpose set forth within Section 650 and 655.

7.0 COST RECOVERY AND COST CONTRIBUTIONS

7.01 In instances where the Municipality has incurred costs associated with municipal infrastructure in advance of Development or where the Municipality will incur such costs in order to benefit access or service new Development, the Municipality may:

- a) **Enter into a Cost Recovery Agreement:** In such circumstances the Municipality would require, as a condition of the development permit or subdivision approval, that the developer enter into a Cost Recovery Agreement which would address payment of the Developer's proportionate share of the municipal infrastructure. It is more likely that this type of situation will arise in relation to development permits than subdivision approvals, as any new subdivision will more than likely require additional improvements which can be dealt with in the a Development Agreement together with the imposition of any costs associated with the municipally constructed infrastructure;
- b) **Enter into a Cost Contribution Agreement:** In such circumstances the Municipality would required as a condition of the development permit or subdivision approval, a contribution towards infrastructure which has not yet been constructed which is to be constructed by the Municipality or another Developer. This type of agreement exposes the Municipality to risks as the actual costs of the project is unknown at the time the Agreement is entered into and the actual costs may vary greatly from the estimated costs.

TITLE: COST RECOVERY/COST CONTRIBUTION OF MUNICIPAL INFRASTRUCTURE

PROCEDURE

8.0 DEVELOPMENT AGREEMENT, COST RECOVERY AGREEMENT AND COST CONTRIBUTION AGREEMENT

8.01 There are a wide range of Developments which occur within the Municipality and as a result, various types of municipal infrastructure may be required and with that various types of Agreements that will need to be considered by the Municipality in the various circumstances.

8.02 Development Agreement: A development Agreement should be required upon a development permit application or subdivision approval whenever the Developer will be required to build any municipal infrastructure or improvements. If the Developer is also responsible for any oversizing costs or cost contributions towards infrastructure constructed by the Municipality or another Developer, the Development Agreement should contemplate the payment of these costs.

8.03 Cost Recovery: A Cost Recovery Agreement should be required if another Developer or the Municipality constructed any municipal infrastructure for which the development is within the Benefiting Area. This type of agreement should be used when the costs associated with the municipal infrastructure is known, as the project is already completed. This type of agreement may also provide for the payment of interest on the developer's proportionate share of the costs. Caution should be exercised in the payment of interest. This is due to the fact that there is no time limit on a municipality's ability to collect costs related to oversized improvements and depending on when the project was completed; the interest charge may make the development impractical as a result of the cost of the municipal infrastructure once the interest charges are included.

8.04 Cost Contribution: A Cost Contribution agreement is appropriate in circumstances when municipal infrastructure will be constructed by another developer or the municipality in the future. Generally, the cost contribution is based on an estimate only, with a provision requiring the developer to top up the contribution in the event that the actual costs are greater than the estimated costs. As a result, it would be beneficial for the cost contribution agreement to

TITLE: COST RECOVERY/COST CONTRIBUTION OF MUNICIPAL INFRASTRUCTURE

PROCEDURE

provide security to the Municipality for the top up contribution which may be required.

- 8.05 If a Development arises that does not fall within one of the circumstances as set out above, the Development Officer may require the agreement for the situation which, in their opinion, most closely resembles the Development being considered.
- 8.06 All Developments, whether through a development permit application or an application for subdivision approval, which requires new or upgraded municipal infrastructure or which benefits from new or upgraded municipal infrastructure will be subject to an Agreement.

9.0 CALCULATION OF A DEVELOPER'S PROPORTIONATE SHARE

- 9.01 The Municipality shall determine the amount of the Developer's proportionate share for new or upgraded municipal infrastructure constructed which benefits the Development, based upon:
 - a) The breakdown of costs per Benefiting Area provided by the Developer's engineer who constructed the oversized municipal infrastructure;
 - b) The breakdown of costs per Benefiting Area provided by the Municipality's engineer in circumstances where either the Municipality has or will construct the infrastructure or where the Developer who constructed the oversized infrastructure has not provided a breakdown of the costs per Benefiting Area; or
 - c) Any other method determined by the Municipality, in their sole discretion, acting reasonably which equitably and fairly divides the costs of the municipal infrastructure between the various benefiting areas.
- 9.02 The Municipality's CAO is hereby authorized to determine the interest that will be added to the construction and other costs associated with a municipal infrastructure project and which will form part of the amount used in determining a Developer's proportionate share. This authority includes but is not limited to:

TITLE: COST RECOVERY/COST CONTRIBUTION OF MUNICIPAL INFRASTRUCTURE

PROCEDURE

- a) The determination of the appropriate interest rate to be charged and to ensure that such interest rate is adequately reflected in all agreements dealing with a particular municipal infrastructure project;
- b) Determining if a particular infrastructure project, constructed by the municipality, will be subject to interest charges;
- c) Determining the length of time for which interest should be charged on a particular municipal infrastructure project, upon determining that the project should be subject to interest.

10.0 DELEGATED AUTHORITY

- 10.01 Notwithstanding Section 8.6 of this Policy, where the Development Officer, in their opinion acting in good faith and reasonably, determines that a particular development, whether through a development permit application or an application for subdivision approval, should not be subject to an Agreement, such Development may not be subject to a condition requiring that an Agreement be entered into.
- 10.02 The Municipality's CAO is granted the authority to negotiate and draft all Development Agreements, Cost Contribution Agreements and Cost Recovery Agreements on behalf of the Municipality. This authority includes the authority to hire or consult with an engineer, legal counsel or any other consultant in regards to the Agreement.