
HALDIMAND COUNTY

Report FDS-01-2020 Front Ending Financing Agreement

For Consideration by Council in Committee on May 19, 2020



OBJECTIVE:

To obtain authorization to enter into a Front Ending Financing Agreement with respect to specific growth related wastewater infrastructure proposed in north Caledonia. Staff are also recommending some minor revisions to approved Front Ending Financing Agreement Principles approved by Council.

RECOMMENDATIONS:

1. THAT Report FDS-01-2020 Front Ending Financing Agreement be received;
2. AND THAT the Mayor and Clerk be authorized to execute a final the Front Ending Financing Agreement consistent with that as outlined in Report FDS-01-2020;
3. AND THAT the recommended amendments to the Front Ending Financing Agreement Principles be approved as outlined in Report FDS-01-2020;
4. AND THAT the Revised Budget as outlined in Report FDS-01-2020 be approved.

Respectfully submitted: Mark Merritt, CPA, CA, General Manager of Financial & Data Services

Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

When Council approved the revised Development Charges Rates and By-law in May of 2019, the report also included the fundamental provisions for Front Ending Financing Agreements under the Development Charges Act. A specific wastewater project was identified for inclusion in the Development Charges eligible costs, being the construction of a new wastewater pumping station including a new force main and collector gravity sewer in North Caledonia. Although the project was included in the calculations for the Development Charge rates, it was anticipated that a Front Ending Financing Agreement with a future developer would be required given the timing of future development requiring this infrastructure.

Staff have recently been approached by a developer, Gateway Commercial (Caledonia) Ltd., to initiate the required pumping station in North Caledonia and related growth related projects. Based on the proposed development and as identified in the Background Study to the May 2019 Development Charges By-law, this project will require a front ending financing agreement under the Development Charges Act with the developer to proceed at this time.

Staff have met with the Developer, and with the assistance of the County solicitor, drafted a Front Ending Financing Agreement related to the proposed underlying capital costs. The estimated total costs of the works is approximately \$9.9 million. Of these costs, approximately \$738,000 are works to be funded directly by the developer and approximately \$168,000 is cost to be shared between the developer and the County. The balance of the works, approximately \$9.0 million, we be paid by the Developer during the construction period and refunded through future Development Charge receipts paid to the County. Although this arrangement has no direct financial impact to the County, it does allow

the works to be constructed in advance of the anticipated development for which the infrastructure supports.

Staff are also recommending some minor amendments to the Front Ending Financing Agreement Principles previously approved by Council. Specifically related to how the Developer will be refunded costs paid up front for eligible projects, staff are allowing some options of how the credits are applied to future developments undertaken by the Developer. These changes have no financial impacts to the County.

BACKGROUND:

When Council approved the revised Development Charges Rates and By-law in May of 2019, the report also included the fundamental provisions for Front Ending Financing Agreements under the Development Charges Act. This was brought forward at this time as a result of Public feedback received during the review of the Draft Development Charges Rates and supporting Background Study. It was raised during the consultation sessions with the development community that the County's proposed Local Service Policy did not provide any growth related allocation of capital costs that support the development of Industrial Lands. In addition, there were no current policy/provisions for a developer to "upfront"/front end any capital costs eligible under the County's Development Charges By-law to offer the ability to expedite these capital costs in advance of the underlying anticipated development.

As a result of this feedback, staff proposed and Council subsequently approved amendments to the Development Charges Rates/By-law and the Local Service Policy as follows:

- *Local Service Policy:* The County's local service policy, which determines the responsibilities for the provisions of growth related infrastructure between the Developer and the County, was amended to provide that water and wastewater works that service primarily industrial lands will be included in the Development Charge eligible costs and not a local service responsibility of the developer.
- *Inclusion of Additional Wastewater Project:* Due to the revision of the Local Service Policy as noted above, an additional wastewater project was identified for inclusion in the Development Charges eligible costs that was previously considered a local service. The project included the construction of a new wastewater pumping station including a new force main and collector gravity sewer in North Caledonia. Although the project was included in the calculations for the Development Charge rates, it was anticipated that a Front Ending Financing Agreement with a future developer would be required given the timing of future development requiring this infrastructure.

Principles of a Front Ending Financing Agreement under the Development Charges Act:

Given the need for a Front Ending Financial Agreement was identified and a developer had expressed an interest to enter into such an arrangement for the above noted project, staff proposed the following fundamental principles/parameters that were then approved by Council to govern the execution of such an agreement:

Magnitude of Infrastructure: The timing and scope of the project should be significant to warrant entering into an agreement. As a result, the underlying project must be a minimum of \$1 million.

Percentage of Proposed Initial Development in Relation to Potential Development Area: To offset the risk that the initial development is not significant enough to offset the risk that future development does not materialize, if the proposed initial development is less than 33.3% of the total area to be serviced, the initial developer must front end the costs of the infrastructure.

Portion of Up Front Costs the Developer Must Pay: Given the magnitude of the infrastructure required and relative portion of the initial development, the developer must front end 100% of the eligible growth related capital costs. Any benefit to existing users will be shared between the developer and the County based on remaining useful life of the existing infrastructure.

Recovery of Costs Paid Up Front by Developer: Assuming all other conditions are met, the County will recover the Development Charge eligible costs paid by the Developer from relative proportionate share of all Future Development Charges collected related to the underlying front ended infrastructure.

Timeframe/Length of Front Ending Financing Agreement: The maximum term of any agreement, which matches the benefit period of the underlying services under the Development Charges Act, is the lesser of 20 years or the full repayment of the amounts front ended by the Developer, whichever comes first.

Since the approval of these provisions, no Development Charge eligible projects have come forward meeting the requirements of a Front Ending Financing Agreement.

ANALYSIS:

Staff have recently been approached by a developer, Gateway Commercial (Caledonia) Ltd., to initiate the required pumping station in North Caledonia and related growth related projects. Based on the proposed development and as identified in the Background Study to the May 2019 Development Charges By-law, this project will require a front ending financing agreement under the Development Charges Act with the developer to proceed at this time.

Staff have initiated discussions with the developer, with the assistance of the County's solicitor, to draft a Front Ending Financing Agreement (FEFA) that meets the principles/parameters approved by Council.

The draft agreement complies with all Council approved parameters, as laid out in the Background section above, with the exception of:

- *Recovery of Costs Paid Up Front by Developer* - The current provisions allow the County to repay the eligible project costs based on the relative proportion of the future Development Charges collected – essentially, for all future developments charges paid, only a portion of the charges related to wastewater services would be eligible. The developer has proposed and staff are in agreement that alternatively; the County will provide a credit on all future charges payable by the developer, related to their developments only, based on the full value of the charges related to wastewater services. The effect of this change is: the Developer receives a larger credit on each Development Charge paid, but they only receive the credits on the charges they pay. This may result in the Developer receiving their up fronted costs sooner, but it also leaves them with the risk that they may not get all their funds back if they do not have enough future Development Charges payable. The only risk to the County is that it may impact the timing of repaying the credits related to the works – which are ultimately all recoverable from future Development charges.

Staff recommend that this provision be added as an option to the Council approved parameters for recovery of costs paid up front by Developers under an approved FEFA. This will only be an option when the Developer has anticipated future development to warrant recovery of the up front costs.

This proposed option for approved FEFA's does not have any effect on the County's share of the project nor does it add any financial risk to the County's overall Development Charges recoveries.

Staff have completed a final draft of the FEFA, included as Attachment 1 to this report, and are seeking Council authorization to execute the agreement with the developer. It is recommended that the agreement be executed when the developer completes the transfer of certain lands to which some of

the works relate. The developer has a purchase agreement in place and is currently in the process of closing the sale.

In addition, there are some minor components of the agreement staff are working to finalize with the County solicitor and Developer as follows:

- *Estimated Costs:* The total estimated project costs are approximately \$9.9 million (exclusive of taxes). This estimate will be confirmed/updated at the time of execution
- *Applicable Taxes:* The best method to treat the applicable HST is being evaluated to ensure minimal impacts to both parties; the disposition of which will be included in the final agreement.
- *Title Searches and Applicable Mapping:* These components will be finalized before the execution of the final agreement.

These matters will all be addressed and incorporated into the final agreement before it is executed.

FINANCIAL/LEGAL IMPLICATIONS:

The Background Study included the estimated costs of the wastewater works in north Caledonia as contemplated in the proposed Front Ending Financing Agreement. Although the costs estimates have changed and are currently estimated at \$9.9 million, the estimated Development Charge eligible costs of approximately \$9.0 million will be recovered 100% from future development charge receipts. The proposed agreement with the Developer, provides the ability for the infrastructure to be constructed well in advance of the anticipated recovery from future Development Charges. The Agreement then provides for full reimbursement of the Development Charge eligible costs to the Developer over time as future Development Charges are received.

All relevant local service costs, as defined by the County's Local Service Policy, totaling approximately \$738,000 are the sole responsibility of the Developer. The estimated costs of approximately \$168,000, that are considered a Benefit to Existing user of the wastewater system (as defined under the Development Charges Act), will be shared between the County and the Developer based on remaining useful life of the previous infrastructure to be replaced.

The Development Charges Act provides for administration and consultant/legal costs to be included as eligible costs of the works. These costs are estimated to be approximately \$20,000 and will be recovered from future Development Charges. As a result, the Capital Budget needs to be revised as follows:

	Current Approved Budget	Proposed Revised Budget
Expenditures:		
Legal and Consulting	0	20,000
Total Expenditures:	0	\$20,000
Financing:		
Development Charges Reserve Funds	0	20,000
Total Financing:	0	\$20,000

STAKEHOLDER IMPACTS:

Projects funded by Development Charges provide the necessary underlying infrastructure for growth related development across Haldimand County.

REPORT IMPACTS:

Agreement: Yes

By-law: No

Budget Amendment: Yes

Policy: Yes

ATTACHMENTS:

1. Draft Front Ending Financing Agreement