

Corporate Policy and Procedure



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1. Policy Statement

The City will consider applications from Developers to advance housing-enabling infrastructure ahead of the City's budgeted timelines to accelerate residential development.

The Municipal Service and Financing Agreements Policy (Policy) establishes guidelines and requirements for the application, administration and issuance of development charge credits and reimbursements to Developers to be implemented through a Municipal Service and Financing Agreement (MSFA).

The City may, at its discretion, allow Developers to advance construction of municipal infrastructure either by permitting the Developer to finance and construct the infrastructure on the City's behalf, or permitting the Developer to finance the early construction of infrastructure by the City on the Developer's schedule.

Works to be considered for MSFAs will be included in the City's Development Charges Background Study (DC Background Study) and most recent Council approved 10-year capital budget and forecast (Capital Budget). Projects not included in the DC Background Study and Capital Budget may be considered upon request at the sole discretion of the City and subject to such projects being supported by the Master Servicing Plan, Transportation Master Plan, and other relevant City plans, policies, guidelines, and directives.

Eligible costs of development-related infrastructure (e.g. land, design, construction, and contract administration costs) can be recovered by Developers by way of a credit against development charges (DCs) payable to the City and, where

applicable, reimbursement of eligible costs in excess of DCs payable, subject to the terms and conditions of the applicable MSFA.

The appropriateness and use of MSFAs are at the sole discretion of the City and must be approved by City staff through the application process and, where applicable, by Council.

2. Purpose

In order for lands to be developed for housing, it is often necessary to build, expand and/or upgrade municipal infrastructure to accommodate the increased servicing needs arising from development. The timing of municipal infrastructure construction may not align with the plans of the development community. To accommodate their development plans, Developers may require certain infrastructure to be built ahead of the City's timing.

This Policy provides a mechanism to advance the timing of City housing-enabling infrastructure to allow lands to be developed earlier than projected in City growth plans. A key objective of this Policy is to set out the parameters under which the City will consider entering into MSFAs to provide transparency and fairness for both the City and Developers and to minimize risk associated with these agreements.

Ultimately, the objective of this Policy is to accelerate residential development by building housing-enabling infrastructure earlier than the City otherwise would have been able to, while minimizing the property tax and utility rate burden on existing residents and businesses.

3. Definitions

Annual Repayment Limit

A calculation provided annually to a municipality by the Ministry of Municipal Affairs and Housing that determines the maximum amount of new annual debt servicing costs that a municipality can undertake or guarantee without seeking the approval of the Ontario Land Tribunal.

Block Plan

A non-statutory document required to be submitted to the City by landowners within the Block Plan areas identified on Schedule 2 of the City's Official Plan and endorsed by the General Manager of Planning and Building Services and Council, prior to the approval of any development applications made pursuant to the Planning Act. Block Plans are intended to promote comprehensive planning and will be used by City staff to guide the consideration of development applications and City actions that will help achieve the vision and principles of the Official Plan.

Capital Budget

The most recent Council approved 10-year capital budget and forecast at the time of execution of an MSFA.

City

The Corporation of the City of Guelph.

City Engineer

The Engineer of the Corporation of the City of Guelph, as appointed by Council from time to time.

City-led project

Developer finances and City completes the Eligible Works.

City Treasurer

The Treasurer of the Corporation of the City of Guelph, as appointed by Council from time to time.

Council

The Council of The Corporation of the City of Guelph.

Developer

A person, corporation, group of persons and/or corporations, or their respective agents or trustees that have submitted a development application under the Planning Act to the City.

Developer-led project

Developer finances and Developer completes the Eligible Works, to the satisfaction of the City.

Development Charges or DCs

A charge imposed pursuant to the Development Charges By-law of the City.

Development Charges Act or DCA

Development Charges Act, 1997, SO 1997, c 27, as may be amended from time to time, or any successor legislation.

Development Charges By-law

The City's By-law for the imposition of Development Charges, By-law Number (2024) - 20866, as may be amended from time to time, or any successor by-law(s).

Development Charge or DC Credit(s)

The DC-creditable portion of the cost of Eligible Works, limited to the applicable DCs payable by the Developer with whom the City has entered into an MSFA.

Development Charge or DC Reimbursement(s)

The DC-creditable amount in excess of the applicable DCs payable by the Developer, which is reimbursable in accordance with a negotiated long-term reimbursement arrangement set forth in the MSFA between City and Developer.

Eligible Works

Construction of development-related infrastructure included in the DC Background Study, or as otherwise expressly approved by the City as eligible for DC Credits and reimbursements under an MSFA in accordance with this Policy.

Finance

The Finance department at The Corporation of the City of Guelph.

Local Service Costs

The cost of a local service required to be provided by a Developer as a condition or agreement under section 51 or 53 of the *Planning Act* in accordance with the City's Local Service Policy, in effect from time to time. These costs are not eligible for DC funding, as per the DCA, and are not Eligible Works.

Municipal Service Financing Agreement or MSFA

A Municipal Service and Financing Agreement between the City and Developer that details the terms and conditions of the Eligible Works being carried out and the value of the DC Credits and DC Reimbursements being earned.

Non-growth Costs

The capital costs that are not related to new development and cannot be recovered under the Development Charges By-law and are funded by tax levy, user rates or other non-development charge sources. These costs are not eligible for DC Credit.

Non-growth Cost Reimbursement

The Non-growth Costs portion of the cost of the Eligible Works, subject to a negotiated long-term reimbursement arrangement.

Planning Act

The *Planning Act*, R.S.O. 1990, c. P.13, as may be amended from time to time, or any successor legislation.

Plan of Subdivision

The area or development site pertaining to a plan of subdivision agreement under section 51 of the *Planning Act*.

Site Plan

The area or development site pertaining to a Site Plan Control Agreement under section 41 of the *Planning Act*.

Work Plan

A work plan for Eligible Works prepared in accordance with this Policy, including Appendix 1 Work Plan Submission. A Work Plan is subject to the City Engineer's review and approval.

4. Applicability & Scope

- 4.1 Any Developer requiring housing-enabling infrastructure to facilitate the development of land is eligible to make an application to the City for an MSFA under this Policy.
- 4.2 The focus of this Policy is the advancement of hard infrastructure (i.e., Services Related to a Highway, Stormwater Drainage and Control Services, Wastewater Services, Water Services) as identified in the City's DC Background Study, such as roads, intersection improvements, traffic control signals, watermains, sanitary sewers, etc. Such infrastructure is required to be

constructed and operational in advance of development. The infrastructure works that this Policy applies to, referred to as Eligible Works, may be internal or external to a Plan of Subdivision, Site Plan, or Block Plan, with the basic requirement that the works need to be constructed to allow the development to proceed.

- 4.3 This Policy also applies to the development of trails and parkland as may be appropriate from time to time in the context of a particular development. Although trails and parkland are not critical to enable development of land, there can be significant benefits to both the City and the Developer in aligning the development of public trails and parkland with the development of private land.
- 4.4 This Policy does not apply to Local Service Costs, meaning the costs of local services that are required to be installed or paid for by the owner of land as a condition of approval under the *Planning Act*. If a project includes a local service component, the Local Service Costs, including associated land costs, are not eligible for DC Credit or reimbursement under this Policy. In addition, it is noted that any costs associated with temporary works or works that are not usable by the City are not eligible for DC Credit or reimbursement.
- 4.5 Further requirements are specified in subsequent sections of this Policy and in accompanying procedures as may be established by the City from time to time.

5. Initial Interest

- 5.1 During the pre-application stage for a Draft Plan of Subdivision, Site Plan, other applicable Planning Act application (Official Plan Amendment, Zoning By-law Amendment, etc.), or as part of the initial stages of the Block Planning process, the Developer should consider whether any City infrastructure is required in advance of the proposed development. Any such infrastructure, including their DC Background Study reference and cost estimate, should be identified as part of the pre-application stage or as part of the initial discussions with City staff regarding the Block Planning process.
- 5.2 These initial discussions will help identify whether a timing difference may exist between the Developer's planned construction timeline and the City's planned timeline for constructing the City infrastructure required for the development.

6. General Provisions

- 6.1 A Developer seeking an MSFA for the construction of development-related infrastructure must submit an application to the City in accordance with the application procedure established by Finance from time to time at the discretion of the City Treasurer.
- 6.2 After a Developer completes an initial application, City staff will review the information provided and comment on the eligibility of the proposed works. If a Developer's initial application is approved for further discussion, the Developer must submit a detailed application. City staff will identify requirements for further information as well as the need for a Work Plan. Details regarding Work

Plan requirements are provided in Appendix 1. As the information is provided, City staff will work with the Developer to finalize an MSFA for the Eligible Works.

- 6.3 Once an MSFA is in substantially final form or it is determined that an agreement would not be in the best interest of the City, as determined by the City Treasurer, if a Council decision is required, staff will make a recommendation to Council to consider the MSFA treatment.
- 6.4 For certainty, a Developer must submit an application for an MSFA to the City prior to the commencement of the detailed design of the proposed works. MSFAs cannot apply retroactively. If a Developer has completed detailed design or begins construction of any works prior to receiving the requisite approval from the City through an executed MSFA, the works are ineligible for DC credit or reimbursement and will be completed at the Developer's own expense and risk, including the risk that the City may not assume the works.

7. Mandatory Requirements

- 7.1 The following requirements apply to applications and, if approved, MSFAs under this Policy. MSFAs are at the discretion of the City and the City is not obligated to approve any request, even if all criteria are met.
- 7.2 To receive DC Credit, a Developer must enter into an MSFA with the City under this Policy. The MSFA will detail the terms and conditions of the Eligible Works being carried out and the value of the DC Credit earned as well as the amount and terms of any reimbursement.
- 7.3 Where more than one Developer or a Developer group is undertaking Eligible Works, the Developers must create a Developer trust and appoint a trustee with authority to represent the interests of the Developers and bind the trust. The Developer group must submit supporting documentation regarding the trust, trustees, and beneficiaries to the satisfaction of the City. A Developer trust is required under this Policy to manage the distribution of credits among the benefiting Developers. Distribution of credits is the sole responsibility of the Developer trust. All costs associated with the creation and administration of a Developer trust are the responsibility of the applicable Developers.
- 7.4 As more fully discussed in Section 9, Credits and Reimbursements and Section 10, Approval of MSFAs, the cost estimates of the works must be submitted in a form to the satisfaction of the City Engineer and must be reviewed and approved by the City Engineer.

8. Guiding Principles

The following is a set of guiding principles for the type, nature, and location of development to be considered for an MSFA:

- 8.1 The Eligible Works set out in an MSFA must result in the acceleration of housing construction:
 - 8.1.1 The development which is the subject of an MSFA must be residential or a mixed-use development with a significant residential component.
 - 8.1.2 The construction of the Eligible Works must not negatively impact the construction of other planned and anticipated residential development.

- 8.1.3 Preference will be given to applications that propose advancing the Eligible Works by more than 3 years.
- 8.1.4 Preference will be given to applications advancing a minimum of 300 units per year and advancing a total minimum of 1,000 units.
- 8.2 The MSFA must be fiscally viable and sustainable for the City, with consideration of the following:
 - 8.2.1 Anticipated impacts arising from the construction of the Eligible Works including, but not limited to, the anticipated operating and maintenance costs of the Eligible Works, and staff resources and other infrastructure or equipment necessitated by the proposed development.
 - 8.2.2 Must not negatively impact the timing of other City capital projects.
 - 8.2.3 Advancement of the project cannot have a negative impact on the City's forecast internal Annual Repayment Limit.
 - 8.2.4 The DC Credit portion should be 70 per cent or more, subject to the following:
 - 8.2.4.1 If the DC Credit portion of the works is 50 per cent or less then the works should not be included in an MSFA, except for highly exceptional situations and would require Council approval.
 - 8.2.4.2 If the DC Credit portion is greater than 50 per cent but less than 70 per cent, a detailed financial risk analysis should be undertaken; based on the analysis, the City Treasurer may either recommend consideration of an MSFA or refuse the request. A recommendation from the City Treasurer to proceed with an MSFA in such cases is subject to approval by Council.

9. Credits and Reimbursements

- 9.1 DC Credits are limited to the applicable service of the City's Development Charges By-law. The amount of the credit will be the DC component of the cost of the Eligible Works determined in the Work Plan. Subject to Section 9.2 of this Policy, the DC Credits available for the DC component of the Eligible Works is capped at the total amount of DCs to be paid by the Developer for the private development being advanced by the Eligible Works.
- 9.2 If the value of the DC component of the Eligible Works exceeds the applicable DCs payable by that Developer, the DC component value in excess of the DCs will be subject to a negotiated long-term DC Reimbursement arrangement.
- 9.3 DC Reimbursement will be subject to the availability of funds in the City's Development Charges Reserve fund. Reimbursements from funds collected through Development Charges will be limited to the amount collected specifically for the identified service. Any amount recommended for reimbursement in excess of reserve funds available may be subject to discounting, for early payment, to the satisfaction of the City Treasurer. An approved arrangement for DC Reimbursement and/or Non-growth Cost Reimbursement must be included in, and will be paid in accordance with, the MSFA.

9.4 DC Credits and reimbursements under MSFAs will occur through the following mechanisms:

9.4.1 DC Credit

9.4.1.1 DC Credits will be provided on a monthly basis as the Developer draws building permits, related to the subject lands, and pays DCs, as set out in the MSFA.

9.4.2 DC Reimbursement

9.4.2.1 When the costs of the DC component of the Eligible Works exceed the cap on DC Credits (as provided in 9.4.1.1), then additional reimbursement will be in accordance with the following:

9.4.2.1.1 Reimbursements will not begin before the year in which the City anticipated undertaking the project, as identified in the Capital Budget.

9.4.2.1.2 If the project is deemed to have a City-wide benefit, reimbursements will be paid on a monthly basis according to the proportionate share of City-wide DC receipts for the applicable service component, as set out in the agreement.

9.4.2.1.3 If a project is deemed to have a localized area benefit, and benefiting area can be clearly defined, reimbursements will be paid on a monthly basis according to the proportionate share of DC receipts from within a delineated benefitting area for the applicable service component, as set out in the agreement.

9.4.2.1.4 For clarity, the impacts of DCA legislated discounts, exemptions, phase-ins, and any other provisions that reduce DC collections as it relates to the specific development and project will be recovered through DC Reimbursement.

9.4.3 Non-Growth Cost Reimbursement

9.4.3.1 Non-growth Costs are not eligible for DC Credits and will be funded through the tax rate, water/wastewater utility rates or other non-DC sources. If a Developer opts to construct infrastructure in advance of the City's capital expenditure plan in order to develop their site prior to the City's expected timelines, it is important that taxpayers are not burdened by this unanticipated, accelerated cost. If this circumstance exists, the Developer will be required to finance the Non-growth Costs as well and will recover these costs through a long-term reimbursement agreement included in the MSFA. The reimbursement will be in accordance with the following:

9.4.3.1.1 Reimbursements will not begin before the year in which the City anticipated undertaking the project, as identified in the Capital Budget.

9.4.3.1.2 The Non-growth Cost percentage identified in the DC Background Study for the specific works.

9.5 If the agreed upon costs of the Eligible Works exceed the stated cost of the project in the City's most recent DC Background Study (as indexed), the City will reflect the cost, and outstanding credit amount owing, in the next DC Background Study update.

9.6 In no event will DC Credits or DC Reimbursements, or Non-growth Reimbursements begin before the Developer begins drawing building permits related to the subject lands.

9.7 In no event will the DC Credits or DC Reimbursements, or Non-growth Reimbursements begin before the Eligible Works are deemed complete.

10. Approval of MSFAs

10.1 Authority is delegated to the City Treasurer to approve MSFAs, as follows:

10.1.1 If the MSFA is for works that are (i) included in the City's most recent DC Background Study, (ii) included in the City's most recent Capital Budget (iii) the cost of the Eligible Works outlined in the approved Work Plan does not exceed the amount in the Capital Budget, and (iv) 70 per cent or more of the anticipated DC collections are to come from the Developer(s) involved in the agreement, the City Treasurer may approve the agreement, as long as the works satisfy the Policy requirements, and the application has received all necessary approvals and been recommended through the application process.

10.1.2 If the MSFA request is for works not included in the City's most recent DC Background Study, even if included in the Capital Budget, the request must go to Council for approval, and Council must express intent to fund the DC Credits and DC Reimbursement from DCs, consistent with the requirements of the DCA.

10.1.3 If the MSFA request is for works included in the City's most recent DC Background Study, but not included in the Capital Budget, the request must go to Council for approval.

10.2 Council Review at the Discretion of City Treasurer – the City Treasurer may, at their discretion, determine that an application for an MSFA should be presented to Council for decision.

11. Tendering & Award of Contract

11.1 Eligible Works included in an MSFA under this Policy must receive competitive pricing to ensure proper fiscal use of DC funds. While a full public procurement process is not required for a Developer-led project, the Guiding Principles of the City's Procurement By-law must be adhered to.

11.2 For a Developer-led project, for seven years after the date of contract award, the Developer shall maintain all necessary records to substantiate (a) all charges and payments under the contract and (b) that the deliverables were provided in accordance with the contract and within the requirements of the applicable law. For seven years after the date of contract award, the Developer shall permit and assist the City, at the Developer's cost, in conducting audits of the operations of the Developer to verify (a) and (b) above. The City shall provide the Developer with at least 10 business days prior notice of its requirement for such audit.

12. Security

- 12.1 The terms of the MSFA will require the Developer to post security for the Developer's obligations under the agreement. Developers shall provide a letter of credit or other form of security acceptable to the City equal to 100 per cent of the estimated total cost of the Eligible Works, as approved by the City Treasurer, prior to the commencement of the works. The security will be held until the Eligible Works have been completed to the satisfaction of the City in the following manner:
- 12.1.1 Where the Developer is financing the Eligible Works and the City is undertaking the construction, the security shall be drawn upon throughout the construction of the works, at the City's discretion; or
 - 12.1.2 Where the Developer is financing and undertaking the construction of the Eligible Works, the City's Subdivision Assumption Guidance Manual, as may be amended or replaced by the City from time to time, is to be followed for security reductions prior to assumption of the works.
- 12.2 Where the Developer is undertaking construction of the Eligible Works, the City may require a labour and material payment bond and performance bond in addition to a letter of credit or other accepted security. The City may also require a warranty holdback as security for performance of warranty obligations. The determination of such bonds and/or holdbacks is at the discretion of the City Treasurer.
- 12.3 The details of all security requirements, including the type and amount of security and the terms of release, shall be specified in the MSFA.
- 12.4 In the event of a change in applicable law which conflicts with the security requirements of this Policy, the applicable law shall govern. A change in law shall not apply to amend the terms of an executed MSFA.

13. Termination or Amendment

- 13.1 Non-compliance with this Policy will result in the City not entering into a MSFA. In the event of default under an MSFA, the City may modify, suspend, or terminate disbursement of any DC Credits in accordance with the terms of the agreement.
- 13.2 The City Treasurer will have the authority to approve amendments or termination of an MSFA where necessary or desirable at the City Treasurer's discretion and in accordance with the terms of the agreement. For instance, an MSFA may be amended upon mutual agreement of the City and Developer if the Developer agrees to forego further credits or reimbursement; and/or amend the terms on which the credits are to be disbursed or reimbursed.

14. Administration and Legal Fees

- 14.1 A cost recovery fee applicable to each application under this Policy will be charged for the City's Engineering, Parks, Legal, and Finance Departments' costs incurred relating to the review, preparation, and administration of the MSFA.

- 14.2 All fees under this Policy are to be set out within the City's User Fees and Charges By-law and are subject to annual adjustments.
- 14.3 Consulting costs to determine the scope of the Eligible Works for projects not included in the DC Background Study will be recovered through direct cost recovery.
- 14.4 In limited circumstances where the City requests a Developer voluntarily include all or part of a Parks project at the City's cost ahead of the budgeted timeline, then the portion of the fees applicable to the requested works may be waived in full or in part, subject to the City's review.

Appendix 1: Work Plan Submission Requirements

A. Overview

A Work Plan is required for any Developer-led projects that have been identified by the City as eligible for DC Credit or reimbursement. The Work Plan must outline the engineering and construction tasks required and provide detailed construction cost estimates.

City Finance and Engineering must be engaged in discussions with the Developer to define the scope of the project and ensure coordination prior to Work Plan submission. Where the MSFA is related to Parks, references to Development Engineering refers to Parks Department.

B. Work Plan Submission Requirements

- **Description of Work**

The Work Plan is to include an overview of the Eligible Works to be constructed by the developer. This should include reference to the corresponding projects listed within the City's most recent DC Background Study.

It will be important to differentiate between DC creditable works and any Local Service Costs that fall within the Developer's responsibility, as the design and construction of these works will often coincide.

- **Project Team and Experience**

This section will specify the Developer's professional engineer consultant's proposed staff assigned to the project, along with their experience and involvement with similar engineering assignments.

- **Schedule of Activities**

An overall estimated timeline for completion is to be provided including a complete schedule of activities and key milestones.

- **Detailed Cost Estimates**

Detailed estimates, prepared and certified by a professional engineer of consulting fees and construction costs will be required as part of the Work Plan submission.

The consulting fees estimate is to include the consultant details including staff hours, hourly rates, and total costs by task. Tasks should be broken out into preliminary and detailed design, drawing preparation, preparation of construction estimates, preparation of contract documents, tender administration, contract administration, site management and inspection, and any other engineering activities.

The Developer's consultant must also provide a detailed construction cost estimate including all item and construction activity descriptions, units, unit prices, and costs. Any contingencies and provisional items should be specified.

The cost estimates must clarify the proposed amount eligible for DC Credit or DC Reimbursement, as well as any potentially non-eligible amounts (e.g. Local Servicing Costs and Non-growth Costs).

- **Detailed Design Drawings for DC Creditable Works**

The detailed design drawing submission is to highlight the Eligible Works. It is noted that the Work Plan must be updated with any design changes between the initial submission and final acceptance.

C. Work Plan Approval

City Finance, with Engineering and/or Parks, will review the Work Plan against the eligibility requirements stated within the City's Municipal Service and Financing Agreement Policy and in accordance with the Development Charges By-law and most recent DC Background Study. Consolidated review comments will be provided to the developer and their consultant.

It is up to the City's discretion to determine which of the proposed works are Eligible Works for DC Credit or DC Reimbursement, or Non-growth Cost Reimbursement. Following Work Plan approval, the City will work with the developer in completing an MSFA.

D. Work Plan Contingency

The approved Work Plan may carry a contingency allowance of up to 10 per cent to cover unexpected engineering and construction costs, subject to any other limitations set out in this Policy. If the value of additional work exceeds the 10 per cent contingency, a Work Plan Addendum must be prepared and approved by the City in advance of undertaking the works and claiming DC Credit.