



## The Corporation of Norfolk County

### By-Law 2024-98

#### Being a by-law to authorize the Governance Policy 018–Front End Financing Agreements (Development Charges).

Whereas the Municipal Act, 2001, as amended, section 5(3) provides that a municipal power, including a municipality's capacity, rights, powers and privileges under section 9, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise; and

Whereas the Municipal Act, 2001, as amended, section 8(1) provides that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues; and


Whereas the Municipal Act, 2001, as amended, section 10(1) provides that a single-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

Now therefore the Council of The Corporation of Norfolk County hereby enacts as follows:

1. That Policy GP-018-Governance Policy- Front End Financing Agreements, identified as Schedule "A" and attached hereto, forms an integral part of this by-law.
2. That the effective date of this by-law shall be the date of passage thereof.

Enacted and passed this 16<sup>th</sup> day of October, 2024.

  
\_\_\_\_\_  
Mayor: A. Martin

  
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County Clerk: W. Tigert



**Policy GP-18 - Front-End Financing Agreements (Development Charges)**

<b>Governance Policy GP-018</b>	<b>Section: Corporate Services</b>
<b>Issue Date:</b>	<b>Approval Date:</b>
<b>Review Date:</b>	<b>Initiating Department:</b> Financial Management and Planning

**Purpose:**

The purpose of this Policy is to establish a framework for Developer led Front-Ending Agreements in accordance with Part III of the Development Charges Act, 1997. Specifically, this Policy will address the requirements of a developer or developer group to advance the timing of County development-related infrastructure that is necessary to allow their lands to be developed earlier than current County plan.

**Scope**

This Policy is applicable to all developers, or developer groups, who apply to the County to front-ending agreements for development-related infrastructure for which DC credits and /or reimbursement are to be sought.

**Definitions**

**Developer:** A person, corporation, group of persons and/or corporations, or agent for a person, corporation or group of persons and/or corporations that have submitted a development application (under the Planning Act) to the County for review.

**Development Charges Bylaw:** The active approved DC By-law of County Council has made under the Development Charges Act, 1997 and as may be amended from time to time, or any successor by-law or by-laws.

**Development Charge Credit(s):** A credit, approved by the County, under agreement, for work performed by a Developer that relates to a service for which a credit is provided within the Development Charges Bylaw.

**DC Credit Agreement:** An agreement between the County that details the terms and conditions of the work being carried out and the value of the credits being earned.

**Development-Related Costs:** The capital costs to be recovered under the Development Charges Bylaw based on the County's capital spending plans identified in the Background Study to the Development Charges Bylaw and deemed eligible under the Development Charge Act ("DCA").

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

**Local Service Costs:** Is a condition or agreement under section 51 or 53 of the Planning Act, whereby a developer is imposed directly or indirectly a charge related to a development or a requirement to construct a service related to development. These costs are not eligible for DC funding, as per the DCA, and are not eligible for DC credits.

**Throwaway costs:** The portion of the works that are temporary or are deemed not to be usable by the County.

**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 agreement under section 41 of the Planning Act.

## **Standards and Procedures**

### **Background:**

In order for lands to be developed, it is typically necessary to expand municipal infrastructure to accommodate the increased servicing needs arising from development. The focus of this policy is on hard infrastructure as identified in the Development Charges Background Study, namely; construction of roads, intersections, traffic control signals, watermains, sanitary sewers, stormwater management facilities. Such infrastructure is required to be constructed and operational in advance of building development occurring.

In order to accommodate their developments, some developers require certain infrastructure to be built ahead of the County's timing in the Development Charges Background Study (as subject to annual budgeting review). The County may agree to allow Developers to pay for these costs in advance of the County's timing by allowing the Developer to construct the works themselves.

The works may be internal or external to a Plan of Subdivision, Site Plan or Block Plan, but must be constructed in order to allow the development to proceed. Infrastructure

projects considered under this policy must be development-related and included in the County's Development Charges Background Study and bylaw, but shall not include "local services" as defined in the Development Charges Act, 1997, as amended. In these cases, and at the County's discretion, an agreement under this Policy is necessary in order to establish the mechanism for the developer to recover all or part of their costs (i.e. including land, design and contract administration costs) and to establish the developer's obligations for construction. Council approval of the construction and the development charge credit and/or reimbursement must be obtained prior to the commencement of construction. This is particularly important when the developer is constructing municipal infrastructure and the contract award process may not be as public or transparent as the County's tendering process.

It is noted that if a project includes a local service component, the costs associated with the local component, including associated land costs, are not eligible for DC credits. Any "throwaway costs" associated with temporary works or works that are not usable by the County are not eligible for DC credits.

## **1. General**

A developer seeking a front-end financing agreement and DC credits must submit a request to the County and receive approval prior to constructing the works through a written agreement. The following general provisions are to be noted:

- The County is not required to approve all front-ending requests
- Approval will be a recommendation of County staff and decision of Council
- The County will not enter into more than two front end financing agreements in one year
- Works constructed prior to receiving DC credit approval and an executed DC credit agreement are constructed at the developer's own expense and risk
- The County is under no obligation to provide retroactive DC credits for work previously completed without County approval under this policy
- A DC Credit agreement is required for all credit issuances.
- Where more than one developer or a developer group is undertaking the work, a trustee representing the interests of the developers will be required.

After execution of the DC Credit Agreement, and subject to the completion of the capital works to the satisfaction of the County, the eligible development charge credits will be processed as follows:

- The component of the development charge credit will be applied against future development charges otherwise payable to the County for the DC service the capital works pertain to; and

- In the event the costs are not fully recovered through the above clause, then the County will reimburse as per the reimbursement guidelines set out in the reimbursement section of this policy.

Any decision made by Norfolk County which has been identified within the policy as at Norfolk County's discretion may not be appealed.

## 2. Eligibility Requirements

- A. The County will consider approving (but is not required to approval) a developer seeking front-end financing through executing a DC Credit Agreement when the criteria listed below are met. As more fully discussed in the Approval and Reimbursement sections of this policy, the cost estimates of the works and the value of DC credits and reimbursements must be reviewed and approved by the County.
- B. An front-ending application must be submitted to the County prior to the commencement of the detailed design of the works.
- C. The works to be advanced must be included in the County's most recent Development Charges Background Study that supports the County's current Development Charges Bylaw, unless otherwise authorized by the County.
- D. Any applicable application fee must be paid.
- E. Eligible work must exceed 1 million dollars and not exceed 10 million per project.
- F. The DC credit is limited to the applicable service component of the County's development charges bylaw (i.e. credits for a road project will be limited to the amount of the roads DC component). The amount of the credit is limited to the lesser of:
  - i. The stated cost of the project in the County's most recent DC Background Study, to present dollars (using the index the County uses to index DC rates); or
  - ii. The actual tender cost of the project, plus a provision for soft costs not to exceed 15% of the actual tender cost, subject to the County's review and approval.  
\*The reimbursement section of the Policy provides additional rules and guidance regarding the DC credit and reimbursement process.

## 3. Initial Application/Request

During the pre-consultation stage as part of an application for a Plan of Subdivision or Site Plan Control or other applicable Planning Act application (ZBA, OPA, etc.), the Developer should consider whether any of the required works for the proposed development may be considered eligible for DC credit or reimbursement.

Any such anticipated works, including their DC Background Study reference and cost estimate, should be identified as part of the Application for Pre-Consultation or as part of the initial discussions with County staff.

Financial Management and Planning and/or Development Engineering will identify requirements for a Work Plan for any projects as a condition of approval of the Plan of Subdivision or Site Plan. Further details regarding Work Plan requirements are provided in the Work Plan Section of this policy.

#### 4. Approvals & Reimbursement

County Council is to authorize front-ending requests.

The DC credit is limited to the applicable service component of the County's development charges bylaw (i.e. credits for a road project will be limited to the amount of the roads DC component). The amount of the credit is limited to the lesser of:

- a) The stated cost of the project in the County's most recent DC Background Study, indexed to present dollars (using the index the County uses to index DC rates);  
or
- b) The actual tender cost of the project, plus a provision for soft costs not to exceed 15% of the actual tender cost, subject to the County's review and approval.
- c) The Reimbursement section of the Policy provides additional rules and guidance the DC credit and reimbursement process.

If the DC eligible amount of the work exceeds the applicable development charge credit for the specific developer;

- any reimbursement request that exceeds the amount of development charges payable by that developer will be subject to a negotiated long-term credit and/or reimbursement arrangement recommended by Finance Management and Planning staff and approved by Council.
- Any such approved arrangement must be included in the DC Credit Agreement.
- The County requires that a minimum of 80 percent of the agreement cost be reimbursed through DC credits
- Any approved reimbursement will be paid in accordance with the DC Credit Agreement.
- The timing of reimbursement will consider the timing of the project as proposed by the applicable master plan and/or the timing of DC collections.

Developers will be reimbursed in one of the following methods, as determined by County staff:

- a) For projects with Countywide benefits, developers will be reimbursed on an annual basis according to the proportionate share of Countywide DC receipts for the applicable service component.
- b) For projects included in an area-specific charge, and those with clear benefiting areas, developers will be reimbursed on an annual basis according to the

proportionate share of DC receipts from within a delineated benefitting area for the applicable service component.

If the project costs exceed the stated cost of the project in the County's most recent DC Background Study (as indexed), the County will reflect the actual cost, and outstanding credit amount owing, in the next DC Background Study update.

If the works contain a non-growth component, which cannot be funded through DCs, or DC eligible costs that are not recoverable, the non-DC component is funded through the tax rate, water/wastewater utility rates or other non-DC sources. If a developer opts to construct public works in advance of the County's capital expenditure plan in order to develop their site prior to the County's expected timelines, it is important that taxpayers are not burdened by this unanticipated, accelerated cost. If this circumstance exists, the developer may be required to make a contribution toward the non-growth component cost, when the work is being constructed in advance of the County's capital program. The value of the non-DC recoverable share will be based on:

- the non-growth cost breakdown identified in the Development Charges Background Study for the specific works; and
- the estimated 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.

Recovery, if any, of the non-DC recoverable components of a project will be addressed in the agreement.

The Council approved DC credit and/or reimbursement for the works may be set out in a standalone DC Credit Agreement or as a schedule to a subdivision agreement, site plan or other development agreement where a developer is undertaking the works.

Reimbursements can be combined with DC Credits and may generally be considered when there are no more credits available. Anticipated reimbursement, beyond DC credits, must be identified in the agreement. The county requires that a minimum of 80 percent of the reimbursement is done through DC Credits

Any recommendation for reimbursement will be subject to the availability of funds in the County's Development Charges Reserve and may be subject to a long-term agreement. Reimbursements from funds collected through development charges will be limited to the amount collected specifically for the public works. Any amount recommended for reimbursement in excess of reserve funds available may be subject to discounting, for early payment, to the satisfaction of the Treasurer.

#### 5. Tendering & Award of Contract

The applicant's engineering consultant shall provide the County's Development Engineering and Purchasing Department with:

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- a cost estimate in the form of the draft Schedule of Prices;
- a copy of the Issued for Tender specifications and drawings which are in compliance to the County and Provincial standards; and
- a minimum of two weeks' time for review and approval by the County's Development Engineering and Purchasing Department prior to issuing the tender.

Tenders must follow the County's purchasing policy.

### **6. Security**

Developers shall provide a letter of credit (or other form of security acceptable to the County) equal to 100% of the estimated total cost of the capital works, as approved by the Treasurer, prior to the commencement of the works. The letter of credit will be held until the capital works have been completed to the satisfaction of the County.

Where the developer is undertaking the construction of the capital works, 80% of the letter of credit will be released once the County has verified and inspected the completed capital works. A 20% holdback will be retained for a two-year maintenance/warranty period.

Surety bonds may be accepted in lieu of the letter of credit at the sole discretion of Norfolk County.

### **7. Termination or Amendment**

Non-compliance with this Policy will result in the County not entering into a DC Credit Agreement or not disbursing any DC Credits. The Treasurer will have the authority to approve the termination or amendment of a DC Credit Agreement where:

- a) The Development Charges bylaw on which the credits are based has been repealed;
- b) The developer agrees to forego further credits; and/or
- c) The terms on which the credits are to be disbursed have changed.

### **8. Administration and Legal Fees**

The fee is to be set out within the County's User Fee bylaw which is subject to change annually, and is structured in the following manner subject to any amendment to that bylaw.

### **9. Work Plan Submission Requirements**

#### **A. Overview**



A Work Plan is required for all Developer-led projects to be completed under this Policy. The Work Plan outlines the engineering and construction tasks required and provides detailed construction cost estimate. The cost estimate would serve as an upset limit for inclusion in the Subdivision or Site Plan Agreement.

The County's Financial Management and Planning Department and Development Engineering are to be engaged in discussions with the Developer to define the scope of the Developer-led project and ensure coordination prior to Work Plan submission.

Work Plan submission will be required at the Draft Plan of Subdivision or Site Plan Agreement stage process as part of the first submission of engineering servicing drawings.

### B. Requirements

- I. **Description of Work** - The Work Plan should include a brief overview of the DC credit-eligible works to be constructed by the Developer. This should include reference to the corresponding projects listed within the County's most recent DC Background Study.

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

- II. **Project Team and Experience** - This section will specify the Developer's engineering consultant's proposed staff assigned to the project, along with their experience and involvement with similar engineering assignments.
- III. **Schedule of Activities** - An overall estimated timeline for completion should be provided including a complete schedule of activities and key milestones.
- IV. **Detailed Cost Estimates** - Detailed estimates of engineering fees and construction costs will be required as part of the Work Plan submission. The engineering fees estimate should include the engineering 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 engineering 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 costs estimates should clarify the proposed amount eligible for DC credit or reimbursement, as well as any potentially non-eligible amounts (e.g. local servicing costs).

- V. **Engineering Drawings for DC Creditable Works** - The engineering drawing submission should highlight the DC creditable 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

Financial Management and Planning staff, with Development Engineering, will review the Work Plan against the eligibility requirements stated within the County's Developer Front-End Funding and Reimbursement policy and in accordance with the DC bylaw and most recent DC Background Study.

- Consolidated review comments will be provided to the Developer and engineering consultant.
- It is up to the County's discretion to determine which of the proposed works are eligible for DC credit or reimbursement.
- Following Work Plan approval, the County will work with the Developer in completing a DC Credit Agreement.
- The County is permitted monthly site inspections to determine the progress and quality of works being constructed.

#### D. Work Plan Contingency

The approved Work Plan may carry a contingency allowance of up to 10% 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% contingency, a Work Plan Addendum must be prepared and approved by the County in advance of undertaking the works and claiming DC Credit.

### **Responsibilities**

#### Council

- To approve all front-ending agreements based on the recommendations of staff.

#### Application Review Team

- Consisting of a senior County representative from Development Engineering, Financial Management and Planning and Development Planning.

Attachment 3  
**Policy GP-018**

- To review application and make recommendations to Council for approval of front-ending applications.

**Communication**

**Evaluation**

This Policy will be reviewed in accordance with the following schedule:

- Upon completion of the first Front Ending Agreement, and
- Every five years

**Legislative Reporting Requirements**

- The Treasurer must report annually through the Annual Development Charges Treasurer Statement any Development Charge credits outstanding.

**Attachments**

- Front-Ending Agreement Process Flow Chart

# Front-End Financing Process Flow Chart

