
Subject: Repealing C-F-014 Residential Development Letter of Credit Agreement Policy

Report to: Corporate Services Committee

Report date: Wednesday, September 9, 2020

Recommendations

That Policy C-F-014 Residential Development Letter of Credit Agreement Policy **BE REPEALED.**

Key Facts

- The purpose of this report is to seek Council's approval to repeal C-F-014 Residential Development Letter of Credit Agreement Policy (included as Appendix 1 to this report) which was approved in 2012.
- This policy was created as a result of research conducted in preparation of the 2012 Regional Development Charge (RDC) By-law to ensure that residential development was committed to water and wastewater servicing by providing a letter of credit and entering an agreement with the Region for the amount of Water and Wastewater RDC payable for their development at the time of planning approvals.
- The practice of securing the water and wastewater RDC in advance of building permit issuance via a letter of credit was a practice that was not implemented with the policy as new procedures were put in place to mitigate risk and respond to the development community concerns (most notably discounting the practice of allocating servicing until final registration of plans).
- Repealing policy C-F-014 is a housekeeping item and will not impact current RDC administrative practices.

Financial Considerations

There are no direct financial implications to repealing policy C-F-014. Practices relating to this Policy were not fully implemented and was not contemplated during the inception of the 2017 Regional Development Charge (RDC) by-law 2017-98. The 2017 RDC By-law specifies that RDC are payable at time of first building permit issuance and no security for the water and wastewater amounts in advance of permit issuance is required.

Analysis

The Policy, included as Appendix 1, was prepared based on Background Study research conducted for the preparation of the 2012 RDC By-law 62-2012. This policy was created to ensure that residential development was committed to water and wastewater servicing and to ensure the Regional commitment to allocation of servicing was matched by developer commitment in moving a development forward with the design and construction of services in a timely manner. To achieve this, the Policy required residential development to provide the Region with a Letter of Credit in the amount of the water and wastewater RDC payable for their project at the time of planning approvals.

The residential development industry expressed concerns about the conditions in the policy and stated that they had experienced difficulty complying with the policy as a result of the timing/phasing of their developments and financial constraints. As such, the Policy was placed under review in 2015 by Planning and Public Works staff. As a result of the review, the practice of the Region committing servicing allocations at time of subdivision draft approval was discontinued. Consideration for repealing the Policy should have occurred at that time. There were also a number of other changes initiated by the Regional Policy Planning Team at that time that had provided new information and tools with respect to the long term growth strategy for Niagara and the phasing of development. As such, the practice of securing the water and wastewater RDC at the time of subdivision draft approval was not a practice that was carried forward in the 2017 RDC by-law. As such, the requested repealing of this policy is recommended as a housekeeping matter as it is no longer relevant to the current DC bylaw. This recommendation was reviewed and is supported by Region Planning staff.

Alternatives Reviewed

No alternatives reviewed as the Policy is not utilized.

Relationship to Council Strategic Priorities

Not applicable.

Other Pertinent Reports

None.

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Appendices

Appendix 1 C-F-014 Residential Development Letter of Credit Agreement Policy

C-F-014 Residential Development Letter of Credit Agreement Policy

Policy Statement

To ensure that residential development is committed to water and wastewater servicing, the policy of the Niagara Region is to receive a security for the water and wastewater portion of the Regional Development Charges within 12 months of Draft Plan Approval or Extension of a Plan of Subdivision, unless evidence of a Ministry of the Environment (MOE) application for servicing has been made within this time frame,

This policy outlines the requirements of residential development to provide as security a letter of credit for the water and wastewater portion of Regional development charges. The policy identifies when a letter of credit is required and provides the details around the requirement.

Policy Purpose

This policy has been prepared based on Background Study research conducted for the preparation of Development Charge By-law 62-2012. This policy was created to ensure that residential development is committed to water and wastewater servicing and to ensure the Regional commitment to allocation of servicing is matched by developer commitment in moving a development forward with the design and construction of services in a timely manner.

Statement of Policy

As part of the subdivision approval and extension of draft approval process for the Niagara Region, residential developers may be required to provide a letter of credit to secure the water and wastewater portion of Regional development charges through a letter of credit as a condition of subdivision approval.

A letter of credit is required to be submitted within 12 months of draft approval or extension of the draft plan approval when no application has been made for Environmental Compliance Approvals to the Ministry of the Environment (MOE) for the instalment of services. A request to exercise discretion to adjust the timeframe may be submitted to the Region's Director of Legal Services where best efforts to meet the 12 month timeframe has been demonstrated and clear proof of progression towards submitting an application for Environmental Compliance Approvals from the MOE. The timeframe of the condition may be adjusted accordingly.

A letter of credit need not be submitted if the developer has applied for Environmental Compliance Approvals from the MOE for the instalment of services within the identified timeframe. If the application has not been made to the Ministry of the Environment within 12 months (or as adjusted on a discretionary basis), the letter of credit in the amount of the Regional water and wastewater development charges is to be provided and held by the Region. The Region will request, as a condition of subdivision approval, or as a condition of the extension of draft approval, that the subdivider enter into an agreement with the Region to provide a letter of credit for the water and wastewater portion of Regional development charges, as outlined in the provisions above.

Enforcement

Should a developer not provide the letter of credit when required, the Region will not provide allocation of services for the development in question. The condition of draft approval will be considered not to be met and the Region has sufficient reason to request that extension of draft approval not be approved.

Should the condition not be met, staff should contact the local municipality with this information and ensure they are aware that extension of draft approval should not be granted. The Region has the right to appeal any extension of draft approval granted at the local municipal level should this condition not be met.

Procedure

Procedure in obtaining the letter of credit, when required, from a residential developer:

1. The Region's legal department has drafted an agreement for this letter of credit, should a generic agreement not be appropriate, contact the Region's legal department for any modifications required.
2. The agreement is to be signed by a representative of the developer with signing authority and by the Region's Commissioner of Public Works, or delegate as assigned.
3. The original agreement must be filed by Legal and an electronic copy uploaded to the iDarts system for the development.
4. The letter of credit must be submitted to the Region by the developer's financial institution within 10 business days of signing the agreement.
5. The letter of credit must be in the amount of the estimated water and waste water portion of Regional development charges, as estimated by the Region's development charge administration analyst.
6. The letter of credit will be returned once the developer provides proof of application to the Ministry of the Environment for the instalment of services.

Guidelines

When a Letter of Credit is Required

- a. A letter of credit is not required if the developer has applied for Environmental Compliance Approvals from the Ministry of the Environment for the instalment of services within 12 months of draft approval of the plan of subdivision.
- b. If the application has not been made to the Ministry of the Environment within 12 months, the letter of credit for the Regional water and wastewater development charges is to be provided to the Region; and an agreement signed between the Region and the developer.
- c. The letter of credit will be held by the Region.
- d. Should the developer submit an application to the Ministry of the Environment following the securement of a letter of credit to the Region and provide evidence of such application, the Region will return the letter of credit to the developer.

The Agreement

- a. The Region and the developer will be required to enter into a legal agreement for the letter of credit.
- b. The agreement will be drafted by the Region's legal department, to the satisfaction of the Region.

Servicing Allocation

- a. Following the receipt of a letter of credit and signed agreement to the Region: servicing, as available at the time of entering into the agreement with the Region, will be conditionally allocated based on final approval. Once the final subdivision approval is obtained, final allocation of servicing will be assigned to the development.

Drawing Down on Letter of Credit

- a. It is not the intent that the Region draw upon the letter of credit. Should there arise a situation where the Region has imposed a condition of draft plan of subdivision approval for front-end financing of services, the Region may draw on the letter of credit or cancel the letter of credit where another agreement for servicing is required by the Region. DEFINITIONS

Definitions

Definitions as outlined in the Regional Development Charges By-law 62-2012 shall be applicable.

Key Terms

DCA - Development Charges Act, 1997

Previously C3.006; Now C-F-014

Last Revised 01-Oct-12