

Report

Date November 20, 2024
Subject Drinkwater and Ford Road Excess/Extended Service Latecomer

File:

PURPOSE

To consider three latecomer agreements for excess/extended services related to the construction of the RCMP building at 6430 Drinkwater Road.

BACKGROUND

Construction of off-site services for the RCMP building at 6430 Drinkwater Road required upgrading and installing watermains, sanitary sewers, storm drains, and roadways along the property frontage and beyond the property boundaries. Drinkwater Road and Ford Road along the frontage of the new RCMP building site did not meet the works and services standards required by the Bell McKinnon Local Area Plan (BMLAP). Drainage, sewerage, and water supply mains were found to be undersized, and roadworks reflected the rural nature of the area prior to the adoption of the BMLAP.

The Works and Services Bylaw No. 2275 states the following:

"An owner of land shall: (a) prior to subdivision of land; or (b) to the extent that works and services have not been previously provided, prior to issuance of a building permit for a development in respect of the land, provide all works and services directly attributable to the subdivision or development, on the entire length of all highways immediately adjacent to the land and on the site being developed."

The above requirement is interpreted to mean that a project must meet the standards at the time of development consistent with Subdivision Control Bylaw No. 1851. The BMLAP standards were adapted for this project for road frontage works and utilities.

In paying the costs of the excess/extended services, North Cowichan is entitled to cost recovery through latecomer agreements. Advice from the municipal solicitor has been to prepare agreements with the Municipality as the developer represented by Council and the local authority represented by the Director of Engineering based on the Delegation of Authority Bylaw.

Legal advice also describes this process as a technicality, as the developer really has no say in a latecomer agreement.

The Delegation of Authority Bylaw section 27 states:

"Council delegates its powers, duties and functions under sections 507 [Requirements for excess or extended services] and 508 [Latecomer charges and cost recovery for excess or extended services] of the Local Government Act to the Director of Engineering."

The relevant sections of the *Local Government Act* are paraphrased below:

1. The Municipality has, pursuant to section 507 of the *Local Government Act*, required the Developer to construct the Excess or Extended Services, considers the Municipality's costs to provide the Excess or Extended Services in whole or in part to be excessive, and requires the Owner to pay the costs of the Excess or Extended Services.
2. The Municipality is authorized to enter into this agreement under section 508(3)(a) of the *Local Government Act*.

DISCUSSION

The works determined to be eligible for cost recovery (latecomer) are identified in the relevant agreements in Attachments 1, 2, & 3. They are also briefly described below.

Storm Drainage:

A new storm drain was required along the Ford Road frontage and Drinkwater Road frontage due to a lack of formal drainage on Ford Road and undersized piping along Drinkwater Road. This also required extending the drain piping across the E&N railway to replace a substandard shallow culvert.

Improvements made in 2008 along Drinkwater Road did not foresee the BMLAP and the increase in land use density expected. So, despite being new, storm drains could not accommodate the RCMP development. New works needed to consider the upland area (benefitting area) that essentially was limited to the newly acquired parkland and the development (Woodsmere) directly across Ford Road from the RCMP building.

The benefitting area and cost recovery calculations for storm drainage are shown in Attachment 1.

Sanitary Sewer:

A sanitary sewer was extended along the RCMP site frontage on Ford Road so that road improvements would not have to be excavated upon adjacent development. This was done despite the fact that the RCMP sewer connection was directed to the pipe on Drinkwater Road. In theory, this work could have been deferred, but it would have meant a realignment of infrastructure and more significant disruption in the future that could affect RCMP access and operations. The benefitting area and cost calculations for sanitary sewers are shown in Attachment 2. The piping is the same work that Woodsmere would be required to do if it had been deferred.

Roadworks:

Legislation allows a local government to require improvements to the centreline of the dedicated roadway from adjacent property upon development. Ford Road had been constructed to what could best be described as a very rural standard, suiting a small number of homes. The paved width was narrow, and drainage consisted of an open ditch with some shallow piped infill. The BMLAP envisions a "local street, urban" design with parking on both sides and landscaped boulevards with sidewalks. Cyclists are accommodated in this plan by sharing the road with vehicles.

The RCMP project was required to overbuild the road width to ensure that safe two-way access to the RCMP parking lot was provided and that disruption to Ford Road would be minimized when and if development on the east side occurred.

The benefitting area and cost calculations for roadworks are shown in Attachment 3.

Watermains:

The watermain along Ford Road was required to be upgraded to provide better fire protection flow to the RCMP building and the aging original watermain. It was determined that this work was part of frontage works and not eligible for latecomer based on the knowledge that:

- the watermain needed to be upsized to suit fire flows for the RCMP;
- the difference between the RCMP fire flow needs and similarly sized buildings is negligible for all intents and purposes;
- the existing watermain was 55-year-old asbestos cement and near the end of its useful life; and,
- frontage improvements are often necessary for redevelopment projects.

It is of obvious consequence that the watermain replacement is able to provide fire flow capacity to others adjacent and further along Ford Road.

Summary:

The non municipal benefitting area falls upon two properties that front the corner of Drinkwater Road and Ford Road (Woodsmere). These properties are held under one ownership and have been recently approved for building permits based on a development covenant and works and services agreement. The covenant and works and services agreement contemplated latecomer payments.

In order to expedite permits, the calculation of latecomer recovery costs was determined by the Director of Subdivision and Environmental Services (also acting as the infrastructure project manager for the RCMP project) and accepted by the Director of Engineering. The amounts were shared with the developer, who recently paid plus interest. This was done in order to expedite a building permit and not cause delays.

The cost recovery is shown in the following summary table (not including interest; actual recovery amounts include simple interest):

Eligible Infrastructure	Benefit Amount to 4019 Ford Rd	Benefit Amount to 4020 (A and B) Ford Rd
Storm Drainage	\$ 57,372.85	\$ 60,016.12
Sanitary Sewer	\$ 50,432.43	\$ 52,755.95
Roadworks	\$ 25,969.55	\$ 30,691.28
TOTAL	\$133,774.83	\$143,463.35

OPTIONS

(Recommended Option)

1. That Council authorize the Mayor to sign latecomer agreements for storm drainage, sanitary sewer, and roadworks included in the attachments to the Director of Subdivision and Environmental Services Drinkwater and Ford Road Excess/Extended Service Latecomer report dated November 20, 2024.
 - Latecomer recovery was contemplated during the final design and construction of the works for the RCMP project.
 - Provides recovery of costs incurred by North Cowichan that benefit future developments and have been deemed excess or extended services.
 - Latecomer fees were contemplated and acknowledged to the owners within the benefitting area at the time of rezoning through the building permit process.
 - Payments received to date from latecomers will be used to reduce the amount of debt borrowed for the RCMP detachment. Any future payments received will be allocated towards reducing the debt servicing costs associated the RCMP detachment.

2. That Council waive the Municipality of North Cowichan's right to latecomer recovery and return funds that have been prepaid.
 - Developers have a choice in instances where excess/extended services are constructed to waive their rights to a latecomer agreement. This could occur in a situation where other consideration is deemed equivalent. An example could be waiving the right in exchange for being granted an easement or right of way from an affected property owner. It's very rare for latecomer cost recovery to be waived.

IMPLICATIONS

There is standard practice that developers are required to pay for frontage improvements, and in doing that, there may be a requirement to install works that will benefit the future development of a benefitting area. This includes extensions beyond the property frontage and the centreline of existing roadways. The legislation provides for a level of equity to those developers that provide the excess/extended services, and North Cowichan is no different when it develops land.

If North Cowichan had not provided the extra capacity, the benefitting area developers would have needed to do the same work, abandon undersized utilities, and create disruption due to the excavation of recent improvements. Thus, it is not onerous for the benefitting area developers to pay latecomer fees and could be construed as removing an element of risk.

RECOMMENDATION

THAT Council authorize the Mayor to sign latecomer agreements for storm drainage, sanitary sewer, and roadworks included in the attachments to the Director of Subdivision and Environmental Services Drinkwater and Ford Road Excess/Extended Service Latecomer report dated November 20, 2024.

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Attachments:

- (1) Latecomer Agreement Drinkwater Road Storm Drains
- (2) Latecomer Agreement Ford Road Sanitary Sewer
- (3) Latecomer Agreement Ford Road Roadworks