

# Windermere Crescent Local Improvement - Exemptions to Policies C200B and C535

## Recommendations

That Executive Committee recommend to City Council:

1. That exemptions to City Policy C200B and City Policy C535, to allow local improvement financing to fund the construction of a water system to service 20 properties located on Windermere Crescent, be approved.
2. That Attachment 2 of the August 19, 2019, Urban Form and Corporate Strategic Development report CR\_7284, remain private pursuant to sections 24 (advice from officials), 25 (disclosure harmful to economic interests of a public body) and 27 (legal advice) of the *Freedom of Information and Protection of Privacy Act*.

## Executive Summary

There are 20 estate properties located on Windermere Crescent (Attachment 1), which have been without water and sewer servicing for many years. Developers have constructed water mains nearby and the property owners wish to have their properties connected to the water system, which is estimated to cost approximately \$1 million.

There are two options for servicing these properties. The first is through a Servicing Agreement and the second is financing through a Local Improvement. Administration recommends the Local Improvement financing option because the property owners' upfront financial requirements are substantially reduced.

Local Improvement financing is a mechanism whereby the City borrows money for construction, and then incrementally recovers from the owners through a Local Improvement tax added to the tax roll of the benefiting properties. Payments would occur over a period of 25 years, estimated to be in the range of \$3,500 to \$4,000 per property per year.

The properties are zoned as country residential properties. Therefore, an exemption to Policy C200B is required in order to permit these properties to access Local Improvement financing. Considering that the water system would be built and operated by EPCOR Water Services Inc. ("EPCOR"), which is a private utility, it would also require an exemption from Policy C535.

## **Report**

The 20 properties in Windermere Crescent were developed 40 to 50 years ago as estate properties before water and sewer servicing were readily available in the area. The residents would like to have both water and sanitary sewer servicing, but the costs of bringing sanitary servicing, in addition to water, are prohibitive.

The cost of bringing water servicing to Windermere Crescent is estimated to be \$1 million - roughly \$50,000 per lot. This includes installing a water main in the street, and the service connections to the property line of each lot, plus five fire hydrants. This estimate is subject to change and does not include the additional costs that the property owners would incur to install water lines within their own properties to connect their homes to the water service connections at the property line.

Due to the relatively high cost of water servicing, the existing property owners have expressed an interest in taking advantage of Local Improvement financing so that those costs can be amortized on their tax roll to be paid over time. This is expected to result in roughly \$3,500 to \$4,000 per year for 25 years for each property, but will depend in part on a refinement of the estimate of the construction costs and the interest rate that is in effect at the time the City borrows the money.

### **Servicing Options under Policy C535**

Policy C535 provides two options for servicing of existing developed properties that are currently unserviced:

1. The first option is for the owners to enter into a Servicing Agreement with the City to construct the required infrastructure. The owners would be required to hire an engineering firm and a contractor to undertake the design and construction at their cost, then seek inspections and approvals from the City and EPCOR. This option would require the owners to pay the full costs up front plus provide a Letter of Credit (in an amount equal to 100 percent of the estimated construction costs) to the City to mitigate the risk to the City and to EPCOR.
2. The second option is to pursue Local Improvement financing. The City would borrow the required money from the Alberta Capital Finance Authority with a preferred rate of interest and then recover the money over time as an additional charge on the tax roll of the benefiting properties. The costs would be amortized on the tax roll over 25 years.

Policy C535 does not allow the City to provide funding for private utilities such as water, only “City Services” as defined in the policy:

“City Services shall mean services that are owned by the City of Edmonton. This shall include water services only if the construction is done in conjunction with sanitary services”.

In order to allow the properties in Windermere Crescent to be serviced with water servicing using local improvement financing they require an exemption from Policy C535.

### **The Local Improvement Process**

Exemptions to the two policies is the first step in the local improvement process for these properties. An estimate of the total costs will be refined once the design has been completed and approved. The Owners will be given the opportunity to sign an “Expression of Interest” indicating their support for the project. The City requires a minimum of 75 percent of the owners representing at least 50 percent of the assessed value of the benefitting properties to be in support. When the City receives a valid Expression of Interest, it is required under the *Municipal Government Act* to send a formal local improvement notice to each property owner. If a property owner does not want the local improvement to proceed then they must file a petition against the project. The *Municipal Government Act* requires a minimum of two-thirds of the owners representing at least 50 percent of the assessed value of the benefitting properties to file petitions against the project in order for it to be a sufficient petition. If a sufficient petition is received by the City, the local improvement tax/borrowing bylaw cannot proceed.

If there is no sufficient petition against the project, a local improvement tax/borrowing bylaw will be presented to City Council for approval. If approved, the project will proceed and water servicing will be provided to all properties including any minority that may not have been in support.

Once construction is complete, local improvement charges are put on the tax roll of all benefitting properties the following year.

### **Eligibility for Local Improvement Financing under Policy C200B**

Policy C200B provides guidelines on eligibility for local improvement financing:

“2. In serving New Residential Subdivisions, the Property Share of the Cost of the Local Improvements will **not** be eligible for City debenture financing.

3. Local Improvements of any Developed Residential Subdivision will be eligible for financing from City debentures recovered by Local Improvement Assessments”,

where:

“1.04 Developed Residential Subdivision: shall mean any subdivision (or parcel of land) containing existing residential development previously serviced ...”

“1.07 New Residential Subdivision: shall mean any residential subdivision (or parcel of land) ..., that

(a) Has not been previously fully serviced (excluding alley paving)...”

These provisions and definitions preclude Local Improvement financing for existing country residential properties that were not previously serviced. The properties in question are designated as country residential properties. Therefore, an exemption is required.

Furthermore, the properties are consistent with the intent of section 3.04(g)(ii) of Policy C200B as the value of the properties exceeds the value of the local improvement assessment, reducing the financial risk to the City, except as outlined in Attachment 2.

#### **Previous Similar Examples**

There was a similar request for exemption from Policy C535 in 2017 for 25 properties on Windermere Drive located to the south of Windermere Crescent (Report CR\_4574 that was approved by City Council on April 18, 2017). The total costs for water and sewer servicing were approximately \$80,000 per lot for water and sewer. Before Beaverbrook Development Inc. constructed water and sewer mains along Windermere Drive, they requested a contribution from the existing country residential lots on the opposite side of the street which would also potentially benefit from the new infrastructure. A contribution from the existing residents was negotiated and Local Improvement borrowing bylaws were later approved to finance the existing residents' portion of the costs.

Another project involved six property owners on Donsdale Crescent who applied for an exemption to Policy C200B (Report CR\_448, approved September 18, 2013). The owners subsequently opted out of the local improvement financing option and signed a Servicing Agreement to construct the required utilities. However, the final estimated costs were too high for the owners and the project did not proceed under a Servicing Agreement. The properties currently remain without water and sewer servicing.

#### **Benefits of Approving the Recommendations (to the Owners and the City)**

The benefits of supporting Local Improvement financing for Windermere Crescent:

- The Owners will receive water services (with minimal risk to the City except as outlined in Attachment 2)
- The Owners will be able to pay over time rather than up front
- The Owners' property values are expected to increase
- The installation of five fire hydrants will increase fire safety in the area.

### **Implications of Not Approving the Recommendations**

Should the recommendations of this report not be approved, the residents of Windermere Crescent will be left with the Servicing Agreement option. If they do not have the necessary resources, they will have to seek other means of financing. However, once the water system is constructed and passes a Construction Completion Certificate inspection, most of this risk would be eliminated, and the security would be reduced to 20 percent of the construction costs. Once the project is complete, upon issuance of a Final Acceptance Certificate, the remainder of the security would be released.

Due to the stringent requirements of the Servicing Agreement option, it is unlikely that this project would proceed, leaving the residents without the desired water servicing and increased fire protection.

### **Budget/Financial Implications**

If Council exempts these properties from City Policy C200B, a budget report and local improvement borrowing bylaw will be presented to Council for consideration. At an estimated \$50,000 per lot for 20 lots, the City would finance approximately \$1,000,000 over 25 years for these residential properties.

Some administrative charges will be incurred by Administration and by EPCOR which could be rolled into the local improvement charges that can be placed on the tax roll for recovery.

### **Legal Implications**

In accordance with the requirements of section 254 of the *Municipal Government Act*, the local improvement borrowing bylaw must be passed prior to the start of any construction of a local improvement.

Full consideration should be made of the legal implications contained in Attachment 2 before any properties are waived from the application of City Policy C200B. Should the City consider this financing scheme for these Windermere Crescent residential properties, City Council must direct Administration to exempt these properties from Policy C200B. An exemption is required before Administration can begin the statutory local improvement process and put forward a local improvement bylaw for Council's consideration.

### Public Engagement

The property owners have been in discussion with City Administration since 2012 to find a way to get their properties serviced.

### Corporate Outcomes and Performance Management

<b>Corporate Outcome(s):</b> The City of Edmonton has sustainable and accessible infrastructure			
<b>Outcome(s)</b>	<b>Measure(s)</b>	<b>Result(s)</b>	<b>Target(s)</b>
Effective and Efficient Service Delivery: improve efficiency, consistency, and quality of service delivery	<b>Number of</b> lots in the Windermere Crescent subdivision with access to water servicing	0 (2019)	100% of the lots in the Windermere Crescent subdivision have access to water servicing in year 2020

### Risk Assessment

Risks if Recommendation is Approved:

<b>Risk Element</b>	<b>Risk Description</b>	<b>Likelihood</b>	<b>Impact</b>	<b>Risk Score (with current mitigations)</b>	<b>Current Mitigations</b>	<b>Potential Future Mitigations</b>
Property Damage - Slope instability	Misuse of water could jeopardize the stability of the abutting slope	2 - unlikely	3 - major	6 - low	none	Restrictive Covenant to be registered on title to limit activities that could jeopardize the stability of the slope
Financial - Unpaid Local Improvement tax	There is a risk that some residents may not pay the Local Improvement tax	3 - possible	1 - minor	3 - low	none	Unpaid Local Improvement charges can be dealt with in the same manner as unpaid property taxes

Risks if Recommendation is Not Approved:

Risk Element	Risk Description	Likelihood	Impact	Risk Score (with current mitigations)	Current Mitigations	Potential Future Mitigations
Property Damage - Fire Safety	The absence of fire hydrants leaves the residents at higher risk of loss due to fire	2 - unlikely	3 - major	6 - low	none	Proposed installation of 5 fire hydrants (with local improvement financing)
Financial - Loss of Incremental Property Tax	The City would lose out on the incremental property tax based on the homes' increase in value	4 - likely	1 - minor	4 - low	none	n/a

**Attachments**

1. Plan of Windermere Crescent Properties
2. Private - Legal Implications

**Others Reviewing this Report**

- A. Laughlin, Acting Deputy City Manager, Financial and Corporate Services
- C. Owen, Deputy City Manager, Communications and Engagement
- G. Cebryk, Deputy City Manager, City Operations
- J. Meliefste, Acting Deputy City Manager, Integrated Infrastructure Services
- B. Andriachuk, City Solicitor