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WOODBINE AVENUE BY-PASS PREPAID DEVELOPMENT CHARGE CREDIT AGREEMENT REVISED PRINCIPLES TOWN OF MARKHAM

The Finance and Administration Committee recommends the adoption of the recommendations contained in the following report, January 23, 2006, from the Commissioner of Finance, Commissioner of Transportation and Works and the Commissioner of Planning and Development Services:

1. RECOMMENDATIONS

It is recommended that:

1. Regional staff be authorized to negotiate the terms of a prepaid development charge credit agreement with the Town of Markham and the West Cathedral Developer Group for the accelerated construction of the Woodbine Avenue By-pass Phase 1 and Phase 2(a), in accordance with the revised principles outlined in this report.
2. Regional staff be authorized to proceed with negotiating terms with the Town of Markham for detailed design, property acquisition, contract administration, approval, tender, construction and maintenance of the Woodbine Avenue By-pass (Phase 1 and Phase 2(a), and possibly the remaining portions of Phase 2(b) and Phase 3) by the Town of Markham, which includes the terms with the Town of Markham outlined above.
3. The Regional Chair and Clerk be authorized to execute the agreements subject to the Town of Markham confirming receipt of funding from the West Cathedral Developer Group as outlined in this report.

2. PURPOSE

The purpose of this report is to obtain Council's authorization to permit Regional staff to negotiate a prepaid development charge credit agreement with the West Cathedral Developer Group and with the Town of Markham for the advanced construction of the Woodbine Avenue By-pass Phase 1 and Phase 2(a) as illustrated in Attachment 1.

The Woodbine Avenue By-pass Construction and Prepaid Development Charge Credit Agreement Principles report was initially adopted by Regional Council on June 22, 2005, and now have been amended to reflect the outcome of additional discussions held with the developer group and the Town of Markham. The construction of the Woodbine Avenue By-pass will be managed by the Town of Markham and the funding will be provided by the participating West Cathedral Developer Group. The primary changes to the principles involve:

- construction of a partial by-pass (phase 1 and 2(a) shown on the diagram below).
- ensuring the portion of by-pass essential for diverting traffic around Victoria Square is in place through appropriate funding
- consideration of limited servicing capacity and funding recovery



3. BACKGROUND

The Woodbine By-pass will primarily direct traffic around the Hamlet of Victoria Square and serve the new Cathedral Community Plan area. The Cathedral Community Plan originally adopted as Markham Official Plan Amendment 42 was recently amended through Markham OPA 123. This new amendment made some modifications to the land use plan and included the Woodbine By-pass alignment recommended through the Environmental Assessment process.

Phase 3 of the Woodbine By-pass north of the Cathedral Community is within the Markham 404 North Employment area. This area became part of the urban area through Regional Official Plan Amendment 46 which was approved on July 21, 2005. The broad land use policies in the Markham Plan were approved through Official Plan Amendment 113 on the same date. Markham is currently working on a secondary plan for the area which will provide detailed land use policies for the area.

The Woodbine By-pass is required to serve both these Planning Areas in Markham and will provide the arterial road function currently provided by the existing Woodbine Avenue that runs through Victoria Square. It is important that the phasing of development within these communities occurs in conjunction with the phased construction of the By-pass so that the primary function of the By-pass is achieved.

Construction of this project has been identified in the Region's 2005 Ten Year Capital Plan as a 2012 project at an estimated cost of \$16.5 million. It should be noted that Transportation and Works staff have revised the estimated cost of \$16.5 million to \$18.7 million for Phase 1 to Phase 3. The revised cost was based on a more detailed assessment of the Woodbine Avenue By-pass project and includes costs associated with property acquisition and provisional items on behalf of the Town of Markham.

On February 28, 2005 the Town of Markham reported to their Council on the proposed Town's involvement in the Woodbine Avenue By-pass construction. Subsequently, the Town of Markham forwarded a resolution requesting the Region to advance the construction timing of Phase 3 of the Woodbine Avenue By-pass to 2009.

In order to proceed with the buildout of its subdivision within the Cathedral Community, the Developer Group has expressed interest in advancing the construction timing of the Woodbine Avenue By-pass road project to coincide with development of their subdivisions.

The previously adopted Pre-paid Development Charge Credit Agreement Principles report to advance the construction of the Woodbine Avenue By-pass key principles included:

- The Town of Markham was responsible to manage the detailed design, property acquisition, approvals, tender, award, contract administration, construction, operation and maintenance of Phase 1 and Phase 2.
- The West Cathedral Developer Group was responsible for funding 100% of the construction of the Woodbine Avenue By-pass Phases 1 and 2, at an estimated cost of \$14.3 million.
- The West Cathedral Developer Group would achieve road development charge credits through registration of their subdivisions.

These principles remained the focus of the discussion between the Town of Markham, the West Cathedral Developer Group and the Region.

4. ANALYSIS AND OPTIONS

4.1 Planning Considerations

The amendments to the principles of the pre-paid development charge agreement are in keeping with the key principle of diverting traffic around the hamlet of Victoria Square. The principles also lay out more clearly the planning process for the Cathedral Community as it relates to the construction of the By-pass including detailed phasing and subdivision approval. Draft Approval of the outstanding subdivisions could occur once this pre-paid development agreement is in place securing the construction of the key portions of the by-pass. Draft approval of any lots without servicing allocation will require to be accompanied by a zoning by-law hold provision and a no pre-sales agreement. Registration of any lots will require servicing allocation. Markham has conditionally allocated an additional 800 units of servicing to the Cathedral Community upon successful conclusion of this pre-paid financing process.

This is all the servicing capacity that is currently available to the Cathedral Community through Markham given the current wastewater capacity constraints, restricting the buildout of developments in the Town of Markham and throughout the Region. These 800 units are in addition to the 300 units previously allocated by the Town of Markham to the West Cathedral Developer Group. Any additional sewage allocation provided to the Developer Group will be tied to the Region confirming additional capacity to the area municipality and that municipality would be responsible for allocating the capacity to any one development. The Region is not responsible for allocating capacity to any particular development within a municipality.

4.1.1 Phased Construction of Woodbine Avenue By-pass

Currently the Region has scheduled the construction of the Woodbine Avenue By-pass from Major Mackenzie Drive to 19th Avenue in the 2006 Ten Year Capital Plan for construction in the year 2012. The project is planned to be constructed in its entirety by the Region. However, the developer group and the Town have requested that the project be considered in three distinct phases. Phase 1 is the portion of road from just north of Major Mackenzie Drive to Elgin Mills Road, Phase 2 is the portion road from Elgin Mills

Road to the north limit of the current Cathedral Secondary Area Plan limit and Phase 3 is the portion from the secondary plan area limit to 19th Avenue.

Based on further discussions with the Town of Markham and the West Cathedral Developer Group, the Region identified that the Phase 2 of the By-pass can be further separated into two sub-phases, as Phase 2(a) and Phase 2(b). Phase 2(a) is the portion of road works that extends north of Elgin Mills Road approximately 200 metres and Phase 2(b) is the remaining north portion of Phase 2 of the By-pass, to the limit of the Cathedral Secondary Plan area (refer to Attachment 1). The Developer Group has proposed to initially advance construction of Phase 1 and Phase 2(a). Upon receipt of further allocation from the Town of Markham the Developer Group has agreed to fund the remaining portion of Phase 2.

4.2 Servicing Considerations

The Cathedral lands are serviced by the 404 Sewer that is presently connected to the existing YDSS at Warden Avenue through an 'interim' sewer, the 404 Bypass Sewer. The design of the 404 bypass sewer has included a population of approximately 3000 persons from the Cathedral lands in 2001.

Based on the capacity of the 404 Bypass Sewer, the Town of Markham has allocated servicing capacity of 1,100 units to the developers of the Cathedral Lands, of which 300 units has been allocated to Cathedral Town by the Town of Markham in its Council Resolution dated August 26, 2003. Subject to advancement of the Woodbine By-pass and the Developer Group entering into a Pre-paid Development Charges Credit Agreement, the Town of Markham has allocated servicing capacity to a total of 800 units to the West Cathedral Development in November 2005 (beyond the 300 units allocation for the previously Draft Approved subdivisions in West Cathedral for a total of 1,100 units).

4.3 Recovery of Funding of Woodbine Avenue By-pass

At the direction of Council, Regional and Town staff held numerous meetings with the West Cathedral Developer Group since June 2005. At these meetings, issues regarding the community plan buildout, phased construction of the Woodbine Avenue By-pass and Regional consideration regarding recovery of the funding for the project through development charges and the Group's inability to recover the funding provided due to servicing constraints were discussed.

In accordance with the Regional Development Charge Credit Policy, road works that are advanced from the time the Region has scheduled its construction must be funded 100% by the Developer Group. Recovery of the funding provided is based on the growth and non-growth components of the works advanced. Typically for road works, the growth component is 76.5% and the non-growth is 23.5%. The eligibility and the timing of this

recovery is based on subdivision registration and construction of the road works to the satisfaction of the Commissioner of Transportation and Works.

If the works are in the 10 Year Capital Plan, the Developer Group will be eligible to recover the growth component of the cost of the works through buildout of their lands, i.e. subdivision registration. The non-growth component recovery is based on the number of years that the project is advanced, for example if the works scheduled in the 2012 in the 10 Year Capital Plan and the works are advanced to 2006 then the number of years advanced are 6 years and thus this reflects the amount that the Developer Group will be eligible to recover as is the case for the West Cathedral Developer Group.

The Regional Transportation and Works department in conjunction with the Town of Markham reviewed the status of the Woodbine Avenue By-pass and the existing Woodbine Avenue. The review determined that based on the Town of Markham and the developer group's desire to accommodate the phased buildout of the Cathedral Community; there is an immediate need to construct a feasible By-pass of the Victoria Square Community. Several options were considered during these discussions, one of which the Region staff were prepared to recommend. This option involved constructing an interim By-pass of the Hamlet consisting of a portion of the Woodbine Avenue By-pass to meet with local collectors roads proposed north and south of the existing Hamlet leading back to existing Woodbine Avenue, until such time as the ultimate By-pass is fully constructed and functional. This would provide for an increased level of certainty with regards to short term road capacity constraints in the area, and was estimated to cost approximately \$7 million. However, this option did not provide for the development of southern part of the Cathedral Community which is one of the Town's objectives, and therefore, was not supported by the Town.

The principles previously approved by Council have the Developer Group providing funding for Phase 1 and 2, and achieving credits upon subdivision registration. Given that the Region has indicated that it is prepared to construct a small component of the By-pass and the limited ability of the Developer Group to achieve full credits due to capacity constraints, it is proposed that the Region will ensure that the Developer Group recovers the full cost of the above noted works estimated at \$7 million, starting in 2012 as set out in the revised principles in Section 5.

5. FINANCIAL IMPLICATIONS

The West Cathedral Developer Group has proposed to provide financing to advance the construction timing of Phase 1 and Phase 2(a) of the Woodbine Avenue By-pass.

Subject to receipt of all necessary planning approvals, the following are the principles of the prepaid development charge credit agreement between the Town of Markham, West Cathedral Developer Group and the Regional Municipality of York required to advance

the Woodbine Avenue By-pass (principles that differ from the previously points have been italicized):

1. Woodbine Avenue By-pass right-of-way of 36 metres plus additional widening where required, for Phase 1 and Phase 2 must be dedicated by the West Cathedral Developer Group to the Region upon the completion of the property plan and no later than December 31, 2006.
2. *The Town of Markham, in consultation with the Region will use reasonable best efforts to secure/acquire the Phase 3 lands from the 404 North Secondary Plan landowners to complete the Woodbine By-pass.*
3. The participating landowners will provide land for a 20 metre right-of-way free of all cost and encumbrances. The Region is to compensate, by way of development charge credits, the developers group for the additional property required beyond the 20 metre dedication (i.e. 16 metres of right-of-way DC credit compensation), as the By-pass has a 36 metre right-of-way designation.
4. *The DC credit compensation for the property shall be based upon the following:*
 - *The appraisal date for the land value based on the earlier of, one month prior to draft plan approval or execution of the agreement and no later than December 31, 2006 in accordance with Regional Policy, and*
 - *the DC credit for the land is calculated on the appraisal date.*
5. Street lighting and sidewalks will be designed and constructed as part of the same construction contract and will be funded by the Town of Markham from their Area Specific Development Charges for the Cathedral Secondary Plan Area.
6. It is proposed that The Town of Markham will manage the detailed design, property acquisition, approvals, tender, award, contract administration, construction and maintenance of Phases 1 and Phase 2(a). The design must be in conformance with York Region Road design standards and current quality assurance/quality control requirements. Provisions for Regional design sign-offs and construction acceptance will be included.
7. The operation and maintenance costs of the Woodbine Avenue By-pass Phase 1 and Phase 2(a) and possible Phase 2(b) shall be the responsibility of the Town of Markham.
8. The Town of Markham will undertake the property acquisition including the property plan, detailed design, legal plan and tender documents for the Woodbine By-pass, which shall be financed by the Developer Group.
9. The West Cathedral Developer Group shall finance 100% of the design, utility, permitting, approvals and construction costs required to complete the works.
10. *The Region shall forward any road development charges collected from the Developer Group to date within the West Cathedral Area to the Town of Markham and shall be part of the total funding required for the works.*
11. *The Developer Group will be responsible for providing the required funding to advance the construction of the Woodbine By-pass from Major Mackenzie Drive to north of Elgin Mills Road, at an estimated construction cost of \$14 million including land (Phase I and Phase 2(a)), and at an estimate cost of 1.6 million for*

Phase 2(b) as it may be required in the future upon receipt of additional allocation.

12. Construction of the By-pass and development of the adjacent lands shall be co-ordinated through the Town of Markham.
13. Costs for the road works shall be appropriately apportioned between the Town, the Developer Group and the Region for all utilities, underground services, grading, etc.
14. Existing Woodbine Avenue will remain a Regional Road until the entire By-pass has been completed. Once the entire Woodbine Avenue By-pass has been completed to the satisfaction of the Regional Commissioner of Transportation and Works, the Town of Markham will assume existing Woodbine Avenue, and York Region will assume the newly constructed By-pass.
15. Top-works for Phases 1 through 3 of the Woodbine Avenue By-Pass will be deferred until such time that Phase 3 has been completed, and will be completed within the contract for Phase 3.
16. The Developer Group will be entitled to recover the growth component of the road widening, equal to 76.5% of the cost of the works, by way of credits against the road component of the Regional development charge at time of subdivision(s) registration.
17. *Regional Road Development Charge Credits will be directed to the West Cathedral Developer Group Trustee, who in turn will be responsible for administering the road credits to the individual land owners.*
18. The Developer Group will be eligible to recover a portion of the non-growth component of the project costs in a lump sum payment subject to completion of the Phase of the Woodbine By-pass that has been constructed and to the satisfaction of the Commissioner of Transportation and Works.
19. The Region will not compensate by way of DC Credits for works that are deemed to be “throw away” costs, in accordance with the Regional DC Credit policy (i.e. not in ultimate location). The Region will work with the Town and Developer Group in order to reduce throw away costs.
20. Subject to advancement of the Woodbine By-pass and the Developer Group entering into a Pre-paid Development Charges Credit Agreement, the Town of Markham has allocated servicing capacity to a total of 800 units to the West Cathedral Development in November 2005 (beyond the 300 units allocation for the previously Draft Approved subdivisions in West Cathedral for a total of 1,100 units).
21. The Town of Markham will tender and provide contract administration for the construction of the Woodbine By-pass.
22. The financing will be by way of Letter of Credit(s), in a format satisfactory to the Town of Markham Treasurer, provided in the following manner:
 - minimum 7% at the time of execution of the agreement to cover the cost for design of all three phases and signifying approval; and (collected by Region to date to be transferred to the Town to meet this requirement)

- 93% prior to awarding the contract for construction of the Phase 1 and part of Phase 2 works.
23. The final 93% of the required funding will be adjusted up or down in accordance with the tendered price, and would be required by the Town prior to proceeding to Regional Council for approval of the award. The Developer Group undertakes to provide any additional funding within 15 days of a written request from the Town, and conversely, will be refunded any project savings upon project completion to the satisfaction of the Town. Such Letter of Credits are intended to be drawn upon during construction to pay contractor progress payments and other costs associated with the project.
 24. *The West Cathedral Developer Group will be required to provide a detailed transportation/development staging plan as it relates to the interim arrangement/connection to the existing Woodbine Avenue until the By-pass has been constructed.*
 25. The West Cathedral Developers Group will submit an updated phasing plan to the Town of Markham and the Region denoting development of 800 units for approval.
 26. *The Town of Markham will phase the development of the Cathedral West area in accordance with the approved phasing plan. For any lots abutting the Woodbine Avenue By-pass the following shall apply:*
 - *no-presales agreement shall be entered into with the developer for lots abutting the Woodbine By-pass until the design of the By-pass has been completed*
 - *a Hold provision shall be placed on lots abutting the Woodbine By-pass until the design of the By-pass has been completed*
 27. The Region will attempt to determine servicing allocation available to all municipalities within York Region including the Town of Markham in 2009.
 28. *The West Cathedral Developers Group, Town of Markham and York Region will enter into negotiations to further accelerate the construction of the Woodbine By-pass upon availability of additional servicing capacity based on the Region's completion of key servicing infrastructure, subject to the satisfaction of the Regional Commissioner of Transportation and Works (e.g. Duffin Creek Wastewater Pollution Control Plant expansion, Southeast Collector Sewer, etc).*
 29. Upon full buildout of the Cathedral Community Area, should a shortfall in Road Development Charge Credits exist, Regional staff will report to Council to present options in which the West Cathedral Developer Group can be reimbursed for the shortfall.
 30. The administration fee equal to 0.5% of the capital cost of the road works shall be payable to the Region at the time of execution of the agreement.
 31. The Developer Group will agree to pay for the Region's legal costs (external or internal) to prepare the agreement at time of execution of the agreement.
 32. *The estimated cost of the works that have been identified as an immediate need around the Hamlet of Victoria Square (partial by-pass), is estimated to be \$7M including land.*

33. *It is projected that the Developer Group will achieve road credits totalling approximately \$4.7 million through road DC's payable for their currently allocated development (1,100 units at \$4,287).*
34. *The total growth component of the partial by-pass, stated above as the immediate need, is estimated to be \$5.4 million (76.5% of \$7 million).*
35. *Any difference between the growth component of the partial by-pass, identified above, and the eligible Development Charge Credits achieved by 2012 will be paid by the Region to the Developers Group.*
36. *The Region shall provide the payment as described above in three annual instalments starting in 2012. The payment shall be reduced to reflect any road credits achieved during the payment period.*
37. *The Region will direct any future road development charges collected by the Region from non-participating developers within the benefiting area (east and west of Woodbine Avenue, east of Highway 404, north of Major Mackenzie Drive and south of 19Th Avenue) to the West Cathedral Developer Group to reduce the outstanding road credit obligation.*

6. LOCAL MUNICIPAL IMPACT

The advancement of the Woodbine Avenue By-pass road project is in accordance with the Town of Markham's request and Council resolution and will result in the advanced buildout of the plans of subdivision within the Cathedral Community Secondary Plan. The Town of Markham will manage the detailed design, property acquisition, approvals, tender, award, contract administration, construction and maintenance of Phases 1, and Phase 2(a). It will be the responsibility of the Town of Markham to allocate water and sewage capacity to West Cathedral Community developments.

7. CONCLUSION

The Woodbine Avenue By-pass has been identified to resolve traffic issues in the vicinity of the Hamlet of Victoria Square. It is proposed that the Town of Markham manage the construction and own and maintain the partially completed By-pass until Phase 3 has been completed. In order to advance the construction of the Woodbine Avenue By-pass road project Phase 1 and Phase 2(a) to permit the buildout of the subdivisions in the Cathedral Community Secondary Plan Area, the developer group within the Cathedral Community has expressed an interest in entering into a prepaid development charge credit agreement. This report outlines the principles of the agreement, subject to Council authorization.

The Developer Group will be responsible for providing prepaid development charges and or securities for the total cost of the Woodbine Avenue By-pass Phases 1 and 2(a), estimated to be \$14 million.

The Senior Management Group has reviewed this report.