

POLICY ON GUIDING PRINCIPLES TO REVIEW AND NEGOTIATE DEVELOPMENT AGREEMENTS

Council Policy No. 141/19

PURPOSE:

The City recognizes the importance of responding proactively and timely to meet the needs of the community. For the development of lands within the City, developers often seek innovative and creative design ideas to address, develop and construct community services infrastructure. Such innovative designs often require consideration on the flexibility in administering and regulating the City's existing development related bylaws and regulations that can be addressed through specific "development agreements". The purpose of this policy is to provide a set of guiding principles to guide and direct staff while reviewing and negotiating such development agreements to ensure consistency and adherence to Council's Vision and Strategic Plan, while remaining within regulatory framework of the City's bylaws.

POLICY:

PREAMBLE:

A development agreement is a mechanism or a tool to control and manage development while allowing a level of creative flexibility in developmental standards. The primary objective of such an agreement is to foster well-planned, sustainable communities through flexible yet controlled (within well-defined parameters) and regulated development, ensuring enhanced community development standards to better address evolving needs of the community, all the while maintaining regulatory oversight. These controls are exercised in an agreement through development specific provisions and may address one or more planning and design elements within the development.

A development agreement is a forward-looking visionary document and is a contract registered on title in the form of a covenant that imposes tangible, legally enforceable requirements on the development to ensure that the stated objectives and goals are consistently met. In order to ensure that level of consistency, it is necessary to establish a set of fundamental guiding principles to inform such development agreements.

A coherent and cogent Council Policy to guide staff in reviewing and negotiating such a development agreement is therefore required to ensure that the proposed development remains consistent with Council's vision. Having a policy driven approach to development agreements will also help developers to understand the City's approach to development before they make an application for a development requiring such an agreement.

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WHY IS THIS POLICY NEEDED?

All developments within the City of Fort St. John are guided by various regulatory documents that encapsulate the vision of the Council and the community for the future of the City. Such documents may take the form of Council's long term visionary documents such as the Official Community Plan, Parks & Recreation Master Plan, Transportation Action Plan and other plans which outline the community's vision for the future, or may be prescriptive regulatory Bylaws such as the Zoning Bylaw, Building Bylaw and other bylaws which control the space and conditions wherein such developments may occur.

Sometimes the developers attempt to differentiate their development from other developments by envisioning a specific character and form to their development, be it residential, commercial, industrial or mixed use developments. Such innovative developments may attempt to go well beyond the normal fabric of existing regulations and therefore may require special rules and framework to ensure development consistent with the Council's vision, while allowing the developer the desired creative space. These special rules and their operating framework open the door for negotiations between the City and the developer, culminating in a development agreement that addresses the need for creative flexibility while providing the City with necessary controls over the development.

Any development agreement starts with a "development proposal" that is subject to review and negotiations between the developer and the City. Once reviewed, negotiated and mutually agreed, the proposal then becomes an "agreement" between the two parties. Once the agreement is signed, it becomes legally binding upon both the parties. While reviewing or negotiating a development agreement the key fundamental issues and goals of such an agreement must be identified and addressed, which in turn, will help guide the approach staff takes during the review and negotiation process.

Some of the key goals and issues that need to be considered and addressed while negotiating and framing a development agreement include:

1. The developer, being a private enterprise, should bear the cost of development as well as risks associated with the development.

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WHY IS THIS POLICY NEEDED? (continued)

2. The City must ensure that the required and committed infrastructure & services are provided to the satisfaction of the City and that the developer must provide an acceptable security to guarantee its obligations.
3. The development agreement must be easy to manage and administer. It should be clearly worded with clear language and organized logically. It should also be as complete as possible to avoid potential disagreements at a later date.
4. Once the City has decided what services or infrastructure would be required to provide municipal services in the new development, the agreement must address:
 - a. The standards to which the developer must construct the required infrastructure or service, either through plans attached to the agreement, or referencing existing approved municipal service standards.
 - b. The time lines and triggers (if any) for municipal infrastructure and services that must be adhered during development in order to ensure that individual property owners have access to those services at the appropriate time.
 - c. The process of approval and acceptance of infrastructure and services by the City, either expressly or through an existing approved inspection/approval process.
 - d. The location of municipal services and infrastructure must be specified and addressed, especially if any of the infrastructures will be located within private property.
 - e. Although not a municipal service, shallow utilities can also be addressed in a development agreement if deemed necessary and mutually acceptable, even though the City will never become responsible for such services.

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WHY IS THIS POLICY NEEDED? (continued)

5. Other relevant issues that may be considered while negotiating/reviewing a development agreement are issues related to managing the development such as commencement approvals, phasing of construction, timing of completion, mechanism for acceptance of infrastructure, maintenance period, warranty period, acceptable form of security etc.

GUIDING PRINCIPLES:

The following principles should be considered while reviewing and negotiating a development agreement with a developer prior to bringing the draft agreement to the Council for approval:

1. **Alignment with Council's Vision:** Any development agreement entered between a developer or a group of developers and the City must ensure, at the minimum, that it aligns with Council's Vision, as expressed in various guidance and regulatory documents such as the Official Community Plan, the Zoning Bylaw, the Subdivision & Development Servicing Bylaw and other operating regulations such as the Sewer Bylaw, Water Bylaw and other similar regulatory documents approved by the Council. While reviewing or negotiating a proposed development agreement, staff should also assess the need for specific technical studies and reports in relation to the agreement being reviewed in order to ensure that the agreement aligns with the stated Council's Vision.
2. **Enhancement of Developmental Elements:** Any development agreement being proposed by the developer must ensure, that elements of planning and design incorporated or contemplated within the proposed agreement, enhance and elevate overall benefits to the community that it proposes to serve. These planning and design elements could potentially take a number of forms, including, but not limited to:
 - i. Improved safety and efficiency in transportation networks through path realignment, road curves & widths, speed control and other visual elements;
 - ii. Improved access to parks, facilities and recreation spaces through trail connectivity, travel width, green spaces;
 - iii. Improved or better economic opportunities;

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- iv. Development of sustainable neighbourhoods through Winter City Guidelines, innovative form and character, walkability, parking controls, innovative curb design, grass boulevards and swales;
 - v. Fostering energy conservation and greenhouse gas reduction through innovative neighbourhood planning and design.
- 3. Explore Potential Partnerships:** A development agreement is a legally enforceable partnership between the City and the developer in which the City agrees to provide certain amount of flexibility in developmental design and the developer agrees to provide design elements that enhance benefits to the community it proposes to serve. Since development agreements remain on land title through the *Land Title Act*, it is all the more important to ensure such agreements are reviewed with the potential of being applied to multiple developers in the future. Some other way to explore partnerships in innovative development could be:
- i. Partnership in infrastructure development, operation and maintenance or alternate servicing arrangements to provide enhanced service levels to the community, especially where the proposed infrastructure is designed to provide services to future communities outside the proposed development;
 - ii. Development of Shared Community Energy systems;
 - iii. Staged or stepped development for required infrastructure upgrades.
- 4. Ease and Efficiency in administering the agreement:** Each and every development agreement should be legally sound, complete, easy to understand, interpret, implement, enforce and administer. The proposed infrastructure or innovations envisaged in the agreement should not impose a disproportionate burden on the City, whether by means of operational costs, capital costs, specialized equipment or any such other potential requirement. On the other hand, such an agreement should advance the quality of services to the community that it proposes to serve through enhanced safety and operational efficiency and ease.

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5. ***Evaluate Fiscal Security and Financial Sustainability:*** While negotiating or reviewing any development agreement, financial sustainability of the proposal must be established and any securities necessary to ensure delivery of infrastructure and/or services must be put in place through the agreement. This allows the City to consider costs beyond capital investments. Fiscal security and financial sustainability must be viewed and assessed through various lenses including, but not limited to:
- i. Balance of projected operating costs incurred as compared to projected taxation revenue anticipated. If the projected revenue falls significantly short of costs, consideration should be given to assessing whether the development imposes a disproportionate burden to the City;
 - ii. In addition to balancing projected operating costs with projected revenues, cash-flow should also be assessed. This is important, should the development intend on connecting to existing servicing infrastructure within the City;
 - iii. Any requests by the developer to provide enhanced level of service to the residents of the proposed development should be considered to inform the decision for financial contribution by the developer. Also, the timing or phasing of such a financial contribution, if warranted, should be assessed.
 - iv. In case the proposed development envisages the requirement of specialized equipment or resource to service the community, this should be factored in the assessment of the amount of financial contribution by the developer.