



REPORT | ADMINISTRATIVE REPORT TO COUNCIL

PRESENTED: August 17, 2021
FROM: Infrastructure Services
SUBJECT: CHEAKAMUS CROSSING SUBDIVISION SERVICING SECURITIES

REPORT: 21-099
FILE: SA.21-01

COMMENT/RECOMMENDATION FROM THE CHIEF ADMINISTRATIVE OFFICER

That the recommendation of the Municipal Approving Officer be endorsed.

RECOMMENDATION

That Council direct the Whistler 2020 Development Corporation to provide Subdivision Servicing Securities for the Cheakamus Crossing Phase 2 subdivisions, in accordance with Subdivision Bylaw No. 265, 1981.

Alternatively, if Council chooses to waive the Subdivision Servicing Securities;

That Council require the Whistler 2020 Development Corporation to provide in trust a minimum of 10 percent of the value of the Subdivision Servicing Securities for the Cheakamus Crossing Phase 2 subdivisions to cover the warranty period post-construction and for potential deficiencies.

REFERENCES

Appendix A – Letter from the WDC requesting that the RMOW waive subdivision servicing security requirements for Cheakamus Crossing Phase 2.

Appendix B – Council Policy E-2, Security for Works for Subdivision.

PURPOSE OF REPORT

The purpose of this report is to outline the legislative requirements to acquire subdivision servicing securities, and further highlight the significant financial protection that subdivision servicing securities provides the Resort Municipality of Whistler (RMOW) throughout the construction and timely delivery of costly infrastructure. This administrative report is written in response to a letter from WDC requesting that the RMOW waive the requirements for subdivision servicing securities (Appendix A).

DISCUSSION

The subdivision of land in British Columbia is governed by provincial statutes and regulations as well as local government bylaws. The Municipal Approving Officer is responsible to ensure that subdivisions are in accordance with these laws when considering Final Subdivision Approval. One example is section 509 of the *Local Government Act*, noting that the developer must construct and install works to the standards established within a bylaw. Whistler's bylaw is known as Subdivision Bylaw No. 265, 1981.

Final Subdivision Approval can only be issued when the developer has:

1. Completed the construction of the required subdivision servicing works (water mains, sewer mains, roads, paving, drainage, streetlight lighting, landscaping, bus shelters, etc.); or
2. Entered into a Subdivision Servicing Agreement complete with servicing securities.

For larger more complex subdivisions, it is not usually realistic for a developer to complete the installation of all subdivision servicing works in advance of receiving Final Subdivision Approval. Therefore, option 2 noted above is often selected as the preferred choice. Subdivision servicing securities are typically in the form of a letter of credit from a financial institution. Established processes provide for monthly progress reductions until a project reaches "Substantial Completion". Substantial Completion triggers a 10% holdback value of the subdivision servicing works as well as a 200% value of the remaining deficiencies. The 10% holdback can be drawn upon to rectify any issues that arise within one year of completion of the works. Deficiencies in the works require remedy prior to acceptance of these assets. In that case, and because deficiencies are known problems, a 200% value is withheld from the security to ensure the assets are delivered to RMOW standard.

Subdivision servicing securities are instrumental to ensure that the works are constructed to municipal standards and are completed within a predetermined timeframe. The last remaining items to complete often include: final lift of asphalt, street lighting, signage, line painting, landscaping, future bus shelters and a list of deficiencies identified by the municipality and the engineer of record. The remaining security provides the necessary motivation for the applicant to install the incomplete works, or the financial means for the RMOW to deliver or rectify these works absent participation of the applicant, and without assuming the financial burden. Without these securities the RMOW has no simple remedy and would be forced to use other mechanisms (and funding) to ensure that the works are completed. The remaining mechanism would be to withhold occupancy of the building until such time as the works have been completed. In the case of an affordable housing project, this is unlikely to be an effective tool or one available to Council and staff, as that outcome would require an undefined vacancy of completed affordable housing.

As a hypothetical scenario to demonstrate the potential risk, the following issues could occur. Utility works, including construction of new sewer lines could be identified to have deficiencies or not to meet the RMOW Standards. Should the applicant take issue with this assessment, the RMOW will have no leverage in the disagreement to force a resolution. The RMOW would likely be in a position to either pursue legal action to remedy the works, or assume financial liability for the deficient assets that could fail over time. Similarly, without the 10% holdback, any failures within one year of completion would face the same path of uncertainty with no leverage to force a resolution. These failures could be minor in nature such as cracking of curb works or more significant, such as differential settlement of the roadway over the course of a winter season.

Accepting deficient infrastructure poses a long-term financial burden on the RMOW. Remediating a failed asset or replacing infrastructure that demonstrates a reduced life expectancy means that costs are borne by the RMOW that rightly should have been assumed by the applicant had they in fact delivered assets to the RMOW standard.

Despite these substantive risks to the RMOW, staff understand that consideration is being sought for a waiver of these standard securities. Staff have obtained a legal opinion on the mechanism required to waive the aforementioned subdivision servicing security requirements. Section 498 of the *Local Government Act* notes that a local government may, by resolution, issue a development variance permit that varies the provisions of a bylaw. In this case, Subdivision Servicing Bylaw No. 265, 1981 would be varied.

Background

Phase one of the Cheakamus Crossing neighborhood was originally constructed as the Whistler Athletes Village for the 2010 Olympic and Paralympic Winter Games. The athletes' village was home to more than 3,500 Olympic and Paralympic athletes and officials. Construction of this incredible legacy asset was managed by the municipality's wholly owned subsidiary, WDC, and made possible by the support and partnership of the Province of British Columbia, the Government of Canada and the Vancouver Organizing Committee (VANOC).

In 2008, when Cheakamus Crossing Phase I was being considered for subdivision approval, a similar request to waive the subdivision servicing securities was received and approved by the municipality. WDC representatives in their letter (Appendix A) suggest that the precedent has been set and are now requesting a similar approach be taken in 2021. Staff are cautioning Council that the financial risks in this current case are very different from those evident in 2008. The most important difference being the participation of the above-noted partners and the fact that financial risks in that case were being shared. Provincial and Federal partners shared the financial risks in the first phase of this development in a manner unlike any project RMOW had undertaken at that time or has undertaken since. Further, the 2010 Olympic Games were the impetus for phase one development and had an unusually fixed completion date. In that instance the motivator for timely and satisfactory completion was the absolute necessity to deliver the athletes village in time for the Olympic Games. Separate agreements had been signed between the partners that assured these standards and timelines were in place. No such separate agreement exists in the current case.

Staff firmly believe that the factors behind the decision to waive subdivision servicing securities requirements for phase one are sufficiently different such that a waiver granted on the basis of precedent would be misguided. Council errs if it misunderstands how completely the financial risk it asks the RMOW to assume in this case, is different from the case in 2008.

POLICY CONSIDERATIONS

Municipal Council Policy E-2. (Attached as Appendix B) regulates the type and amount of security to be provided to the municipality as part of the Subdivision Servicing Agreement.

Official Community Plan

Goals, Objectives and Policies

The recommendations in this report directly support the following goals, objective and policies:

10.3. Goal

Provide effective and appropriate municipal infrastructure (including facilities and amenities) that minimizes taxpayer costs, and consider allocating the value of infrastructure replacement to future users

10.3.2. Objective

Objective ensures capital reserves and borrowing ability are maintained at levels sufficient to fund future infrastructure construction or replacement.

BUDGET CONSIDERATIONS

There are no budget considerations at this time. However, if WDC fails to deliver the site works and neighbourhood amenities without securities in place, the costs to complete these items will fall exclusively to the Whistler tax payer. This includes any warranty issues that may arise within the first 12 months following substantial completion as well as any deficiencies in material or quality of infrastructure. The potential size of these future financial liabilities can be considered to be proportionate with the size of the overall project, which at an estimated \$45 million is the largest single project undertaken by the RMOW or its subsidiaries on a standalone basis.

COMMUNITY ENGAGEMENT AND CONSULTATION

None anticipated.

SUMMARY

Staff have received a letter from WDC requesting that the municipality waive the requirements for subdivision servicing securities. Staff recommend that Council require WDC to provide Subdivision Servicing Securities for the Cheakamus Crossing phase two subdivisions in accordance with Whistler bylaw No. 265, 1981. Should Council choose to waive the securities, staff recommend that at minimum a 10% holdback be secured to partially limit the financial risk to the RMOW.

Respectfully submitted,

Jeff Ertel
MUNICIPAL APPROVING OFFICER, WHISTLER
for
James Hallisey, P Eng
GENERAL MANAGER OF INFRASTRUCTURE SERVICES
for
Virginia Cullen
CHIEF ADMINISTRATIVE OFFICER