



Building a Highway Network: Who Pays for Highway Improvements as a Result of Development

Friday, February 20, 2009

Executive Summary

Introduction

The highway network throughout Alberta is a vital contributor to the economic health of the province and municipalities. Rural municipal roadways and provincial highways weave through this province as the arteries which link resources to refineries; suppliers to buyers. Municipalities and Alberta Transportation are partners in delivering this important service to the residents and businesses in Alberta.

When a new development comes to Alberta, roads must be built to a standard that satisfies the current and future needs of all traffic that may use the road in the future. With improvements to provincial highways, there is often an expensive price tag, so Alberta Transportation created Policy TCE-TS 509 in order to designate who will be responsible to pay. The policy implicates levels of responsibility to the developer, the municipality, as well as the Government of Alberta to pay for the improvements under various circumstances.

The AAMDC is in agreement that all three parties have a role to play in ensuring the highway improvement is carried out, but we believe that improvements can be made to the process that will leave all parties feeling that the situation was handled in a fair and reasonable manner.

Principles for Moving Forward

Through the development of the report, the following principles emerged:

1. Consistency should be the main focus of the policy.
2. It is imperative that both provincial and municipal long-term planning processes be respected.
3. Transparent communication is needed for the policy to be successful.
4. Balanced and effective funding for highway improvements is needed to ensure development continues across the province.

Identified Issues

Issues facing members can be summarized into five broad categories:

1. Offsite Levies
2. Municipal Debt Load
3. Lack of Communication and Timing of Notification
4. Appearance of Inconsistent Application
5. Discouraging Development

Recommendations

Based on the above principles, the report provides recommendations for Alberta Transportation to take into consideration to address members' issues:

1. Creation of a provincial cost-recovery regime akin to off-site levies but restricted to provincial infrastructure costs.
2. Distribution of a copy of policy TCE-TS 509 to all municipalities.
3. Ensure the policy is applied consistently.
4. When implementing this policy, ensure the long-term development of the area is taken into account when deciding who is responsible for the improvement costs. This can be achieved by allowing a legal instrument to be filed on title to lots that will impact traffic flows at the improved intersection, but are yet to be developed.

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Introduction

The highway network throughout Alberta is a vital contributor to the economic health of the province and municipalities. Rural municipal roadways and provincial highways weave through this province as the arteries which link resources to refineries; suppliers to buyers. Municipalities and Alberta Transportation are partners in delivering this important service to the residents and businesses in Alberta.

When a new development is established, the traffic considerations are one of the most important factors surrounding the planning process. Roads must be built to a standard that satisfies the current and future needs of all traffic. When development occurs that increases the usage of a provincial highway, it is often necessary for improvements to be undertaken to bring an intersection up to standard. With these improvements, there is often an expensive price tag, so Alberta Transportation created Policy TCE-TS 509 in order to designate who will be responsible to pay for the highway improvements. The policy implicates levels of responsibility to the developer, the municipality, as well as the Government of Alberta to pay for the improvements under various circumstances.

The AAMDC is in agreement that all three parties have a role to play in ensuring highway improvements are carried out, but we believe that enhancements can be made to the process that will leave all parties feeling that the situation was handled in a fair and reasonable manner.

This policy deals with four scenarios as to who is responsible to pay for highway improvements. There are two scenarios that this paper does not address and are seen as fair processes with appropriate levels of accountability for all parties. These involve single developments with their own highway access and developments that have already been set as a priority to be improved by the province.

The scenarios that the AAMDC currently sees as requiring enhancements so that developers, municipalities, and the province have appropriate responsibility are:

- 1) A single development that accesses the highway through a local road
- 2) Multiple developments creating the need for a highway improvement

Principles

A number of overall principles have surfaced during this investigation that should guide any changes to Policy TCE-TS 509.

1. Consistency should be the main focus of the policy.

The policy should be applied to all municipalities in the same fashion, regardless of the administration or municipality involved.

2. It is imperative that both provincial and municipal long-term planning processes be respected.

Municipalities and the province must be aware of all capital spending projects in order to make effective long-term planning decisions. This policy must recognize this need for both parties.

3. Transparent communication is needed for the policy to be successful.

It is vital to have communication and a full understanding as to how this policy will effect a municipality when development takes place near provincial highways. Without a clear understanding of the policy by municipalities and the province, the policy will not be an effective tool. could.

4. Balanced and effective funding for highway improvements is needed to ensure that development continues across the province.

The impacts of this policy can have significant ramifications on the municipal budgeting process. Appropriate funding must be in place for municipalities to ensure that the policy is adhered to and development is not hindered.

1.0 Identified Issues

Input from various sources drew out major issues that were consistently brought forward. These issues vary from legal concerns to improved implementation practices. For the sake of clarity, these items have been grouped into five broad headings reflecting the issues of concern.

1.1 Lack of Communication and the Timing of Notification

Municipalities are mandated in this policy to build highway improvements to provincial standards. This policy should bring together Alberta Transportation and Alberta's municipalities to work as partners in the maintenance and improvement of the province's highway network.

In that regard, policy TCE-TS 509 has not been communicated to municipalities in an appropriate manner, as many have not been notified of its existence until improvement costs come forward. This policy directs a great portion of financial responsibility towards municipalities and it is only fair that all municipalities are made aware of the policy.

In order for municipalities to have effective and sustainable long-term planning in place, they need to be aware of all capital projects that may be needed in the future. If municipalities are not made aware of this policy until the development permit approval stage, budgets will not include dollars to coordinate a highway improvement. This enables a defensive dialogue with Alberta Transportation and promotes an expectation that the province should pay for a portion of the highway improvement.

Further, it is necessary that developments which may trigger policy TCE-TS 509 be flagged at early stages of planning when they are brought forward to Alberta Transportation for approval, such as with a Highway Vicinity Management Agreement, Area Structure Plans, or Regional Plans.

If municipalities are not aware of this policy, nor notified of its potential effects on specific municipal economic development initiatives, then municipalities cannot be expected to have the planned financial capacity to take on these highway improvements.

1.2 Offsite Levies

Upon a legal review of Policy TCE-TS 509, the AAMDC brings to question a municipality's legal ability to collect offsite levies for provincial infrastructure. According to the *Municipal Government Act* (MGA) section 648(2)(c.1), a municipality may use an offsite levy to pay for "new or expanded roads required for or impacted by a subdivision or development." However, applying the definitions of the MGA and the *Public Highways Development Act* (PHDA), it

becomes clear that municipalities may only enact offsite levies for costs concerning municipal roads and secondary highways. Improvements made to primary highways and secondary highways numbered from 900-999 are clearly outside of a municipality's power to apply off-site levies. Therefore, this policy sets out an incorrect premise when it states that municipalities may collect off-site levies for certain provincial infrastructure.

A municipality must be cautious about relying on offsite levies for primary highway improvements because of potential litigation, as the recent case of the Urban Development Institute (UDI) vs. the City of Leduc shows. Within this case, UDI brought forward arguments that offsite levies were used inappropriately, including when applied to provincial infrastructure. This argument was dropped because UDI was incorrect in believing Leduc had included provincial infrastructure within their bylaw, but it clearly shows that the development industry is aware of this issue.

In situations where municipalities could utilize offsite levies for cost-recovery, it is important to note that the offsite levy process requires a capacity that not all municipalities have. There is a sophistication to internal accounting systems that is needed to recover funds through an offsite levy, which could make levies a real challenge for many municipalities to implement.

1.3 Municipal Debt Load

Even when improvements need to happen on secondary highways, it is unreasonable for municipalities to be expected to use their limited debt load on provincial infrastructure. The policy requires that, in certain circumstances, the municipality is required to pay for or arrange payment for the cost of constructing provincial infrastructure. As a result of this requirement, the municipality is left as guarantor for the costs of the infrastructure as it must either pay the cost or collect it from developers who benefit from the infrastructure project. If the municipality is required to advance funds for provincial infrastructure, it will either use funds that are available to them or borrow the funds. Due to the limits placed on municipal debt loads by the MGA, making municipalities cover the cost of provincial infrastructure can have a serious impact on the ability of municipalities to address their own capital infrastructure requirements. Essentially, municipalities are being asked to act as a 'banker' for the province and this is inappropriate.

1.4 Appearance of Inconsistent Application

Policies are developed in order to create consistency and to ensure that similar situations are handled in an equitable manner. Alberta Transportation has

commented that this policy has been in place, but not formalized for many years. However, it is the experience of municipalities that the policy has not been applied consistently. There is a notion amongst municipal governments that if a more forgiving person at Alberta Transportation is found, improvements will not be required to be completed or the province will contribute more to the project. While the people sitting in a room shapes reality within any political arena, this policy should be applied consistently to all municipalities.

With Policy TCE-TS 509, it seems the province wishes to create increased consistency across the province in dealing with highway improvements caused by developments. As such, it should not matter who the people in the room are when applying it.

1.5 Discouraging Development

This policy is greatly affected by the Province's priority projects as listed within the 20 year capital plan. While major traffic corridors surrounding large urban centers are vital for Alberta's economy, the province must also recognize this value in our rural highways and prioritize capital investment accordingly.

In some areas of Alberta, development comes easily. Industries are drawn to clusters of complimentary businesses and this increases the ability for municipalities to collect significant funds for highway improvements.

However, in other areas, Alberta municipalities struggle to attract development that will increase their tax base and strengthen the local economy. Often, developers choose to come to a municipality because of economic development programs meant to decrease the cost of moving to the new location. When a municipality subsequently finds out that the local and provincial road intersection needs to be upgraded because of future development at the site, there are few choices that a municipality has to recover costs without undoing the relationships that have been established with the developer.

2.0 Recommendations

In keeping with the principles, there are several recommended courses of action to address the issues noted throughout this paper.

Recommendation 1: Creation of a provincial cost-recovery regime akin to off-site levies but restricted to provincial infrastructure costs.

This will be important when applied to Primary Highways and Secondary Roads numbered 900-999. Municipalities are unable to invoke offsite levies in these areas, so the province must have their own cost-recovery regime for improvements in this situation. These are debt loads that municipalities will be unable to take-on without a cost-recovery mechanism.

While municipalities may use offsite levies for secondary roads, municipal off-site levies are not the appropriate instrument for cost-recovery on provincial highway improvements because of debt limits and municipal capacity. The Public Highways Development Act provides the authority for the province to establish its own cost-recovery regime and the AAMDC recommends that the province do so. This new regime would recover the costs for provincial highway improvements directly from the developer, while the municipality would ensure their affected local road was up to the standard for the development.

Recommendation 2: Distribution of a copy of policy TCE-TS 509 to all municipalities.

Municipalities have long-term capital plans in place, and are aware of development that may come to the community in the future. In order for these capital plans to be useful, a municipality must be aware of all capital investments that may need to take place over a ten year period. Though this policy may be considered by Alberta Transportation to be for internal use, it names both municipalities and developers as being responsible for large infrastructure investments. Alberta Transportation should distribute this policy to all municipalities so that local councils can function knowing that they are in possession of all the information required to make prudent and effective decisions.

Municipalities are also often the main contact with developers who would be affected by this policy. If all municipalities were in possession of the policy, they could communicate any future expectation that the province may have of developers in terms of highway improvements, before projected budgets for a development are finalized.

If municipalities are not aware of this policy, nor notified of its potential effects on specific economic development initiatives, then municipalities cannot be

expected to have the planned financial capacity to take on these highway improvements.

Recommendation 3: Ensure this policy is applied consistently.

Whether in urban, rural or remote communities, development in this province should be viewed as a positive addition to our local and provincial economies. The AAMDC encourages the province to deal with all comparable municipal situations in the same manner, regardless of the personalities involved.

Recommendation 4: When implementing this policy, ensure the long-term development of the area is taken into account when deciding who is responsible for the improvement costs. This can be achieved by allowing a legal instrument to be filed on title to lots that will impact traffic flows at the improved intersection, but are yet to be developed.

Municipalities often plan for clustering of development, particularly in rural areas. When a single large development within an area moves forward, it can be considered by the policy as a 'single development,' making the developer liable for the entirety of the cost. As the remainder of the area develops and more businesses take advantage of the highway improvement that the single developer paid for, there is no ability for the other businesses to pay their fair share for the improvement. The first developer is forced to pay the way for other businesses that make use of the improvement. These long-term development areas are not always taken into account when policy TCE-TS 509 is in effect and this should be addressed.

To solve this, there should be room within the policy for a legal instrument to be placed on-title designating that when a lot is developed, the owner is responsible for contributing back to the original funder of the improvement.

2.1 Alignment of Recommendations

Tables 5.2 and 5.3 are provided to show the alignment of this paper's recommendations with the issues voiced by members and their congruence with the principles derived from the interviews and the data analysis.

Table 2.1 – Recommendations versus Principles

	Principle 1: Consistency should be the main focus of the policy.	Principle 2: It is imperative that both provincial and municipal long-term planning processes be respected.	Principle 3: Transparent communication is needed for the policy to be successful.	Principle 4: Balanced and effective funding for highway improvements is needed to ensure that all parties can afford bringing the development into a community.
Recommendation 1: Creation of a provincial cost-recovery regime akin to off-site levies but restricted to provincial infrastructure costs.	✓	✓	✓	✓
Recommendation 2: Distribution of a copy of policy TCE-TS 509 to all municipalities.	✓	✓	✓	
Recommendation 3: Ensure this policy is applied consistently.	✓	✓	✓	
Recommendation 4: When implementing this policy, ensure the long-term development of the area is taken into account when deciding who is responsible for the improvement costs. This can be achieved by allowing a legal instrument to be filed on title to lots that will impact traffic flows at the improved intersection, but are yet to be developed.		✓	✓	✓

There is a high level of congruence between this report's recommendations and the defined principles. Critical to this alignment will be a focus on transparency and long-term planning processes.



DEPARTMENT POLICY STATEMENT

TITLE	Who Pays For Highway Improvements Caused By Single Developments, Multiple Developments, or in support of New Developments identified by the Department as Future Work.	
Division/Branch	Transportation and Civil Engineering	
	Technical Standards Branch	
Version Number 001	Replaces Previous Policy Number New Policy	Effective Date
Purpose	<p>To provide clarity on who should pay for highway improvements when:</p> <ul style="list-style-type: none"> • A single development generates traffic volumes that create the need for highway improvements. • More than one development generates the traffic volumes that create the need for highway improvements. • New developments advance the need for highway improvements or infrastructure identified by the department for future construction. 	
Context	<p>Municipalities have been given autonomy for land use decisions and development approvals under the Municipal Government Act. Municipalities are the land use approving authorities for new developments within their boundaries.</p> <p>Provincial policy requires municipalities take responsibility for addressing impacts on provincial highway systems resulting from land use decisions and development approvals.</p>	
Principles	<p>Municipalities have the ability to collect off-site levies from developers and receive provincial transportation grants which can be used to fund highway improvements associated with new developments.</p> <ol style="list-style-type: none"> 1. When a single development with a private means of access to the provincial highway causes the need for highway improvements the developer shall be responsible for the costs and construction of highway improvements to standards approved by the department. 2. When a single development accesses a provincial highway at a local road intersection, the municipality responsible for approving the land use and who is the road authority is to submit application to the department for approval of the highway improvement and pay for and construct the highway improvement(s) to department standards. 3. When a public road intersection is utilized by more than one development, and when an engineering assessment indicates highway improvements are required to support the total traffic generated, the 	

municipality is to arrange payment for and construct the highway improvement(s) to department standards.

4. When a new development is proposed it may often generate new traffic that results in a need to advance highway improvements previously identified by the department for future consideration.
 - a. Developers are to work with the municipality to provide an analysis of road improvements required and to address local road intersection concerns.
 - b. The municipality is to submit all resulting proposals to the department.
 - c. When an engineering assessment of the highway intersection identifies the need to advance highway improvements, a development permit shall be issued by the department if the highway improvements are constructed or written confirmation from the municipality advising they will pay for the highway improvement.
 - d. In all instances, municipalities shall pay for any changes required to highway intersections either constructed, to be constructed or under construction that are a result of developments approved by the municipality.
 - e. When the department has identified the need for future highway improvements at an intersection where a proposed new development is located, it may, budget-permitting, provide the opportunity for a cost-share arrangement based upon the following criteria:
 - i. Only projects already identified on the department's business plan shall qualify for cost-sharing (see Note 1).
 - ii. The municipality shall provide funding based upon the following formula.

Years Advanced	Municipal Contribution (%)	Provincial Contribution (%)
1	10	90
2	20	80
3	30	70
>3	40-100	0-60

Any cost sharing requests for projects outside of the 1 – 3 year time horizon shall be at the determination of Technical Standards Branch, and will range between 0% and 60% depending on the benefit to the Department, and the number of years the work is advanced.

Note 1: When a highway is under construction or within the three-year business plan, and new development traffic changes the magnitude of work being planned by the department, the municipality shall pay for the additional costs, or construct the improvements to department standards.

Criteria	The highway improvement, prior to approval, must meet all department standards.
Definitions	Highway Improvement is defined as any construction, placement or modification of highway infrastructure. Examples include, but are not limited to: intersection improvements, interchange construction, pavement of gravel highways, capacity improvements necessitated by development, installation of traffic control devices.
References	Public Highways Development Act, Provincial Land Use Policies, Municipal Government Act, Subdivision and Development Regulation Highway Geometric Design Guidelines.
Approved by	<p style="text-align: center;"> Jay G. Ramotar, Deputy Minister</p> <p style="text-align: right;"><i>Oct 10/07</i> Date</p>