
Subject: Brownfield Prepayment Agreement Criteria

Report to: Regional Development Charges Policy Task Force

Report date: Thursday, May 19, 2022

Recommendations

1. That the criteria listed in Table 1 of Report RDCPTF-C 8-2022, **BE APPROVED** for the basis of prepayment agreements for the Regional Development Charge Brownfield Reduction Program.

Key Facts

- The purpose of this report is to provide the Task Force information and request approval on the proposed criteria listed in Table 1 for an approved application to enter into a prepayment agreement for the Regional Development Charge Brownfield Reduction Program.
- On April 7, 2022, the Regional Development Charges Policy Task Force (RDCPTF) approved recommendations outlined in Report RDCPTF-C 5-2022 respecting Regional Development Charge By-law Policy Considerations. These included that Regional Council delegate authority to the Commissioner of Corporate Services and Director of Legal Services to enter into prepayment agreements for the Regional Development Charge Brownfield Reduction Program for those developments that have submitted an application by June 30, 2022, and entered into an executed agreement by August 31, 2022.
- The prepayment option was recommended as a transition provision for the 2017 by-law Brownfield DC reduction program which is replaced with the DC deferral program in the Incentives Policy

Financial Considerations

RDC incentives represent a significant component of the annual RDC collections and the Region's annual general tax levy. Since the 2017 By-law approval, 9 developments have received Brownfield RDC incentive funding totalling \$3.1 million paid to date.

In addition to these incentives, there are Brownfield RDC incentive applications totalling \$24.8 million that are in approved or pending status. These developments would be potentially eligible for the prepayment agreements and the potential to secure \$24.8

million in grants that are not being offered at the expiry of the By-law. Additionally, upon commencement of the new DC By-law on September 1, 2022, DC rates are proposed to increase by 15-25% dependent on the applicable DC charge rate class for the development. By entering into a pre-payment agreement, these applications would avoid this increase in fees in addition to securing the existing benefits of the Brownfield RDC Reduction Program. Based on the estimated DCs payable for the applications, this represents a total additional savings to the applicants of \$6.6 million to \$11.0 million dependent on the applicable DC charge rate class. If these prepayment agreements do not expire at December 31, 2022, the developments will also avoid DC charge indexation based on the non-residential building construction index was an increase of 11% for 2022 for example. The DC Act specifies that DC collection deficits, as a result of offering DC incentives, cannot be made up from future DC collections; therefore, the Region funds RDC incentives from the annual tax levy in order to keep the DC reserves whole.

In addition to these new applications pending, Council may recall that at the expiry of the 2012 By-law in 2017, transition agreements were provided to four developments in order to secure the Brownfield RDC Reduction Program of the 2012 By-law and these agreements envisioned the opportunity to prepay anytime before their expiry on August 31, 2022. Based on an understanding of the stage of these developments, we anticipate that if prepayment agreements are offered to these developments, this will result in a benefit of \$3.5 million in grants. By entering into prepayment agreements these developments would avoid the increase in fees between the 2012 rates they have secured and the rates proposed under the new DC By-law resulting in an estimated total additional savings to the applicants of \$16.7 million.

Analysis

The Brownfield DC Reduction Program is currently embedded in the DC By-law and as a result expires on August 31, 2022. In order to allow developments that are currently in progress and not able to draw on building permits by August 31, 2022, to secure the existing DC Brownfield Reduction Program, staff recommended in Report RDCPTF-C 5-2022, that prepayment agreements for those developments that meet very specific criteria, be permitted to enter into a prepayment agreement to secure the current provisions. The basis for providing this provision is that developments are underway, remediation has begun and developers have been relying upon these incentives.

Developments that are not eligible for the Brownfield DC Reduction Program and who do not meet the criteria to enter into a prepayment agreement will be eligible for the Brownfield DC Deferral Program that will come into effect on September 1, 2022.

The Task Force approved staff's recommendation that prepayment agreements for the RDC reduction program would be for developments that have submitted an application by June 30, 2022, and entered into an executed agreement by August 31, 2022. Staff are recommending the criteria in Table 1 be met in order to constitute a submitted application. These items must be submitted and the Region acknowledged having received on or before June 30, 2022, in order to be eligible to enter into a prepayment agreement:

Table 1 – Prepayment Agreement Criteria

Criteria #	Criteria
1	Proof that Owner is the registered and beneficial owner of the Property
2	A completed Phase 2 Environmental Site Assessment ("ESA") for the Property
3	Proof that Owner has completed the mandatory remediation measures identified in the ESA
4	Proof that the Owner has submitted a Record of Site Condition to the Province
5	A description of the proposed development including types of units proposed and total number of each unit type
6	Estimate of DC Charges payable with respect of the proposed development
7	Application no later than June 30, 2022 and agreement executed by August 31, 2022

Significant engagement and discussion has already occurred on the Incentives Policy programs, including the Brownfield DC Deferral program. Staff have been signalling changes to the Brownfield Incentive Program since 2017. Also, any enquiry or applicant for the Brownfield DC Reduction program has been advised, as of June 2021, that the

program was ending with the existing by-law on August 31, 2022. Most Brownfields are entitled to incentives offered by the partnership the Region has with the LAMs through their Brownfield CIPs which include tax increment grants. Tax increment grants are intended to compensate for the cost of remediation, making Brownfield development on par with Greenfields. Of Niagara's 12 municipalities, seven offer Brownfield RDC Grants with only five being within their By-laws. The deferral program permits the developer to delay payment of DCs until a property is substantially complete, revenue generating and benefiting through the tax increment grant.

Further to the discussion above regarding the transition agreements from 2017, the agreements did envision the opportunity for the developments to prepay to secure their incentives. Staff would propose that the terms of the prepayment arrangements offered to those developments also include execution of an agreement by August 31, 2022, with an expiry of December 31, 2022. These agreements would expire if a building permit is not executed by this deadline.

Alternatives Reviewed

No alternatives considered at this time.

Relationship to Council Strategic Priorities

DCs are a major source of funding for growth projects in the capital budget. As such DCs assist in achieving the strategic priorities of a fiscally sustainable government.

Other Pertinent Reports

- RDCPTF-C 5-2022

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