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**MEMORANDUM**

**CSC-C 41-2022**

**Subject: Referral of Motion – Transition Provisions for Brownfield Developments**

**Date: August 10, 2022**

**To: Corporate Services Committee**

**From: Ann-Marie Norio, Regional Clerk**

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At its meeting held on July 21, 2022, Regional Council defeated the recommendation of its Corporate Services Committee contained in Report CSD 34-2022 (attached) which was as follows:

That brownfield remediation costs **BE GRANTED** to developers in accordance with the Incentives Policy as approved by Council rather than through an extension of the current Brownfield Reduction Program in the DC By-law.

The following motion was put before Council and subsequently referred to the Corporate Services Committee meeting being held on August 10, 2022:

That staff **BE DIRECTED** to require developments that have invested in excess of \$1 million (subject to staff verification) before August 31, 2022, (expiry of the current by-law) and who obtain a building permit within five years (August 31, 2027), to be eligible for a transition provision of a DC reduction in the amount of remediation costs incurred to the end of the 2022 (the reduction received by developers would be net against the RDCs payable at the rate in effect when a building permit is pulled).

The above motion is before Committee for consideration.

Respectfully submitted and signed by

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Ann-Marie Norio  
Regional Clerk

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**Subject:** Brownfield Exemptions

**Report to:** Corporate Services Committee

**Report date:** Wednesday, July 13, 2022

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## Recommendations

1. That brownfield remediation costs **BE GRANTED** to developers in accordance with the Incentives Policy as approved by Council rather than through an extension of the current Brownfield Reduction Program in the DC By-law.

## Key Facts

- The purpose of this report is to provide further information to Corporate Services Committee regarding the proposed notice of motion to add a grandfathering provision to maintain the Brownfield Regional Development Charges (RDC) Reduction Program, for select projects, for an additional five years.
- As part of the extensive Incentives Review process Council approved replacing the current Brownfield RDC Reduction Program with the Brownfield RDC Deferral Program however Municipal Brownfield Community Improvement Plans include program to recover remediation costs from tax increment based grants (TIG).
- At the Regional Development Charges Policy Task Force (RDCPTF) meeting on May 19<sup>th</sup> and Corporate Services Committee (CSC) on June 15<sup>th</sup> motion to approve transition provisions for the program through a prepayment agreement for projects that have incurred remediation costs and are ready to pull permits by the end of the year was carried.
- The prepayment agreement criteria was created with consultation from the development community to ensure that an extension can be granted to developments that are imminent but require additional time due to delays outside of their control.

## Financial Considerations

The current Brownfield RDC Reduction Program provides upfront RDC reduction grants up to the total audited cost of remediation once a developer's application has been approved in the program. These grants need to be funded at the time they are provided to the developer through the tax levy. The new Brownfield RDC Deferral Program

provides deferral of RDCs payable until occupancy has commenced and cash flow is generated (up to 5 years). The Brownfield Tax Assistance Program (BTAP) and the SNIP Brownfield Tax Increment Grant (BTIG) provide incentives on an annual basis to offset the remediation costs over a 10 year period. These grants are funded from assessment growth as it is generated rather than upfront from taxation.

For the recently approved transition provisions of the Brownfield RDC Reduction program there are five developments with RDC reduction grants estimated at \$24 million based on the current criteria. These five developments have circumstances where significant investment in remediation has occurred with similar circumstances to the delegate at Corporate Services Committee on June 15, 2022. This represents an impact of 5.7% on the total 2022 levy understanding that the DCs would have to be funded upfront in the year the grant is provided.

Extending the transition provisions a further five years would welcome into the program additional developments beyond these five which staff know that at a minimum would amount to at a minimum \$5.9 million in RDC reduction grants. Each of these developments have a varying investment in remediation of their Brownfield sites. If Council chooses to extend the program consideration should be made to establish a threshold to ensure the extension is provided to those developments who have made a significant investment in the remediation of a Brownfield site. Staff met with LandX (re: Cytec property) who have not been able to provide any information in order to make an appropriate estimate.

## **Analysis**

The Councillor's notice of motion was in response to a delegation from Tim Collins, LandX Developments regarding their Artisan Ridge and Cytec Property developments. Artisan Ridge is a 3 phase project. Phase 1 received a \$1.5 million reduction in from the Brownfield RDC Reduction Program under the current By-law, Phase 2 is expected to meet the recently approved transition provisions and receive a reduction of \$3.9 million and Phase 3 is not expected to occur for another several years. No application or estimate of remediation costs have been provided with respect to the Cytec Property.

In October 2021, Regional Council approved the Niagara Region Incentives Policy, which resulted in the approval of a new Brownfield RDC Deferral Program. Significant engagement and discussion has already occurred on the Incentives Policy programs, including the Brownfield RDC Deferral Program. The current Brownfield RDC Reduction program expires on August 31, 2022, and has been replaced by the Brownfield RDC

Deferral Program. This program provides an interest free deferral of Regional Development Charges (RDC) for eligible Brownfield sites until an occupancy permit is issued or up to five years from signing of agreement, whichever is earlier.

At the RDC Task Force on April 7 and May 19, 2022, the criteria for prepayment agreements with developers with pending or approved applications was discussed and approved. The criteria originally required remediation to be complete and a Record of Site Condition to be submitted to the province by August 31, 2022, with a building permit deadline of December 31, 2022 (a four-month extension from the current By-law requirement). This criteria was amended by the Task Force from staff's original recommendations to address concerns from the development community to give developers whose projects are near completion additional time for delays that are out of their control, for instance delays related to Provincial approval of the RSC or delays related to City building permit issuance. The date for completion of remediation, submission of Record of Site Condition (RSC) and obtaining Building Permits was extended to December 31, 2022.

All Brownfield RDC Reduction program applications, approved or pending, have been made aware in writing from the Region that in order to remain eligible for the current RDC reduction, building permits must be issued before the expiry of the Region's existing RDC By-law on August 31, 2022. This notification has occurred in several formal letters issued to developers in addition to being communicated via email upon any inquiries made regarding applications.

It should be noted that submissions of incomplete applications before the expiry of the By-law for developments that are not expected to occur until many years into the future, is not consistent with the prepayment concept or the new program design and is an unreasonable request of the program. In most cases, these applications are submitted by very experienced developers and consultants who are aware that the DC By-law expires every five years and that these discretionary incentives are not guaranteed.

Brownfield incentives are meant to assist with remediation costs to even the playing field and make development of Brownfields equivalent to development of greenfields. Some of the advantages of the new program design is that the grants and remediation costs are not funded up front from the tax levy but rather from the assessment growth dollars created from the growth which assists in easing the pressure on taxes. Additionally it encourages timely development of the property as the developer will be eager to recover remediation costs while still being able to defer the payment of DCs until the development becomes revenue generating for them.

The following provides a list of Regional Brownfield incentives in the order that they would generally occur. Note that during the Incentives Policy review Council made the decision to extend the SNIP Brownfield TIG to October 2024 however Council did not decide to continue any of the Brownfield RDC Reduction Program in favour of adopting the Brownfield RDC Deferral.

#### Current

- a) **SNIP Environmental Assessment Study (ESA) grant** – Region matches up to \$5,000 per study, maximum two studies per property, if approved under a LAM CIP program – expires Oct 1, 2023.
- b) **Brownfield Tax Assistance Program (BTAP)** – provides a freeze or cancellation of the property taxes on a property that is undergoing remediation and redevelopment under calculation and parameters outlined by the local CIP program; Region must approve through Council resolution – expires Oct 1, 2023.
- c) **Brownfield RDC** – under current bylaw expiring, eligible brownfields can receive grant of 100% of RDCs up to eligible costs – expires Aug 31, 2022, to be replaced as Brownfield RDC Deferral.
- d) **SNIP Brownfield Tax Increment Grant (BTIG)** – provides a matching tax increment grant for locally approved projects under the calculation and parameters outlined by the local CIP program and agreement; these may include remediation and redevelopment costs depending on the local program – expires Oct 1, 2024, as a result of Council continuing it post January 1, 2023. This is to be replaced as new Brownfield Tier 1 and 2 BTIG.

#### New

- **New Brownfield Tier 1 and 2 BTIG** – Region will match BTIG grants approved under local CIP programs which meet specific criteria including location in an urban area, eligibility under the definition of brownfield, minimum remediation costs. Tier 1 BTIGs, for larger projects over \$1 million, will receive a grant of up to 80% for 10 years, and Tier 2 projects will receive a grant of up to 60% for 10 years. Both tiers can increase their grant percentage by 20 points if eligible affordable housing is included in the project. Grant up to remediation costs only. Operational Fall 2022.
- **Brownfield RDC Deferral** – provides a deferral of 100% of RDCs for eligible brownfield properties for up to five years or issuance of occupancy permit, whichever is first. Operational September 1, 2022.

- Refer to Appendix 1 for an example of how developments benefit from these incentives to recuperate their remediation costs.

In addition, brownfield projects may be eligible for other RDC-based grants depending on their nature, including the Smart Growth RDC grant (expires Oct 1, 2024) or the Affordable and Supportive Housing RDC deferral.

### **Alternatives Reviewed**

Council may choose to transition the provisions of the current Brownfield Development Charges Reduction program, however they would extend to all developments to avoid bonusing implications and appeal of the Bylaw. Staff does not support this option as it is contradictory to the provisions and decisions made with the incentive review.

Alternatively Council may choose to consider transition to developments that meet a specific set of criteria such as those that closer aligned with the criteria of the new Brownfield Tier 1 and Tier 2 TIG which requires remediation costs for developers who have invested over \$1 million for the Tier 1 incentives. One option is to require developments that have invested in excess of \$1 million (subject to staff verification) before expiry of the current by-law and who obtain a building permit within five years (August 31, 2027) to be eligible for a transition provision of a DC reduction in the amount of the remediation costs incurred to the end of the year. The reduction received by developers would be net against the RDCs payable at the rate in effect when a building permit is pulled. Staff does not support this option as it has incremental financial implications to the tax levy and is contradictory to the provisions and decisions made with the incentive review. However, it does assist developers who have proceeded to make remediation investments under the current program to be compensated for those costs to date in a similar fashion.

### **Relationship to Council Strategic Priorities**

Development charges are the major source of funding for growth projects in the capital budget. As such RDCs assist in achieving the strategic priority of a fiscally sustainable government.

### **Other Pertinent Reports**

- RDCPTF-C 5-2022
- RDCPTF-C 8-2022

- CSC-C 12-2022

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**Recommended by:**

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Commissioner/Treasurer  
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**Submitted by:**

Ron Tripp, P.Eng.  
Chief Administrative Officer

This report was prepared in consultation with Margaret Murphy, Associate Director, Budget Planning & Strategy, and reviewed by Helen Chamberlain, Director, Financial Management & Planning.

**Appendices**

Appendix 1 – Brownfield Remediation Cost Example

## Appendix 1 – Brownfield Remediation Cost Examples

Brownfield developments may be entitled to several programs to help recuperate the cost of remediation. These Brownfield incentives are meant to assist with remediation costs to even the playing field and make development of Brownfields equivalent to development of greenfields.

It is important to note that RDC Reduction under the Brownfield RDC Reduction Program is reduced to reflect any amounts recovered by a development from other sources/programs to ensure that there has not been a duplication of remediation costs claimed. There are few examples of Developments in the Region in recent years that have obtained incentives through both a Brownfield Tax Increment Grant (BTIG)/Brownfield Tax Assistance Program (BTAP) and Brownfield RDC Reduction Program as a result. In most cases Developers are able to recuperate their remediation costs through one program.

The following example outlines how developments can recuperate their remediation costs through grants and incentives under the current and new programs.

In this example the developer has estimated remediation costs of \$950,000. The developer plans to build 10 single detached homes with total Regional DCs totalling \$224,990.

As outlined in Table 1 under the current program the developer is eligible for the Brownfield RDC Reduction Program and has received a grant for their RDCs payable of \$224,990. Additionally, the development is entitled to receive a BTIG which over the 10 years of annual grant payments will result in recovered costs of \$725,010, therefore recovering the full amount of their remediation costs of \$950,000.

**Table 1 – Current Brownfield Incentive Programs**

	<b>Pre-Construction</b>	<b>Post-Construction</b>	<b>Incremental Taxes</b>	<b>Annual Grant @ 80%</b>	<b>10 Year Total Grant</b>
Year	2010	2013			
Development Charges	\$224,990				\$224,990
Assessment	\$1,155,101	\$6,488,201			
Region Taxes	\$13,738	\$77,164	\$63,425	\$50,741	\$382,241*
City Taxes	\$12,319	\$69,196	\$56,877	\$45,502	\$342,769*
Total Taxes (BTIG)	\$26,057	\$146,360	\$120,303	\$96,242	\$725,010*
<b>Total Brownfield Grants Received</b>					<b>\$950,000</b>



\*Note – 10 year total BTIG capped at total remediation costs of \$950,000 apportioned across the Region and City grant amounts.

As outlined in Table 2 under the new programs the developer is eligible for a BTIG grant which over the 10 years of annual grant payments will result in recovered costs of \$950,000, therefore recovering the full amount of their remediation costs. The developer is also eligible for the Brownfield RDC Deferral program which allows them to defer payment of RDCs payable until occupancy (or up to 5 years).

**Table 2 – New Brownfield Incentive Programs**

	<b>Pre-Construction</b>	<b>Post-Construction</b>	<b>Incremental Taxes</b>	<b>Annual Grant @ 80%</b>	<b>10 Year Total Grant</b>
Year	2010	2013			
Development Charges	Deferred	\$224,990			\$0/Deferral Program Only
Assessment	\$1,155,101	\$6,488,201			
Region Taxes	\$13,738	\$77,164	\$63,425	\$50,741	\$500,861*
City Taxes	\$12,319	\$69,196	\$56,877	\$45,502	\$449,139*
Total Taxes	\$26,057	\$146,360	\$120,303	\$96,242	\$950,000*
<b>Total Brownfield Grants Received</b>					<b>\$950,000</b>

\*Note – 10 year total BTIG capped at total remediation costs of \$950,000 apportioned across the Region and City grant amounts.