Subject: 2022 Development Charges By-law Update – RDC Incentive Programs

Report to: Corporate Services Committee

Report date: Wednesday, August 10, 2022

Recommendations

1. That this report **BE RECEIVED** for information.

Key Facts

- The purpose of this report is to provide information to Corporate Services Committee on the July 21, 2022, referral motion from Council regarding Regional Development Charge (RDC) Incentive Programs.
- The Incentives Policy was approved by Council in October 2021, and included new programs for Employment-based Industrial developments and a Deferral program for Brownfield developments.
- The Region currently budgets $7.8 million for Incentives Policy programs related to RDCs.
- The Employment-based RDC Grant supports Council's strategic priority of being open for business and creating new jobs in Niagara. The current Industrial Use grant is only open to manufacturers whereas, the new Employment-based RDC grant has a wider definition making the Niagara Region more competitive.
- The Employment-based RDC Grant can be stacked with the Province's mandatory 50% exemption for industrial expansions, in addition to the Gateway CIP Incentive Program. No other region has a similar suite of incentives. This makes Niagara one of the most competitive regions to do business in Ontario.
- Brownfield developments will be able to recover remediation costs through TIG programs, as long as the local municipalities have set up Community Investment Program area programs.
- Recommended changes to the Incentives Policy program contradict the decisions approved by Council during the extensive Incentives Review Process.

Financial Considerations

RDC incentives represent a significant component of the annual RDC collections and the Region's annual general tax levy. 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.

If Industrial Developments are permitted to defer RDCs payable until occupancy, the financial impact would be foregone interest revenue and the possibility of negative DC reserve balances which are not permitted in aggregate.

Currently, the Region budgets $7.8 million for all the Incentives Policy programs related to RDCs. Should Council elect to provide a transition provision for Brownfield developments that have invested in excess of $1 million, a budget increase of $24.1 million will be required over the next five years to support the proposed motion. This will require an approximate yearly increase to the levy of $4.82 million. This represents an annual increase on the tax levy of 1.1% for five years. This is over and above the budget planning strategy increase presented to Budget Review Committee on July 21, 2022.

Should Council choose to extend the Brownfield RDC Reduction program for an additional five years for large-scale developments (10ha+), the financial impact is estimated to exceed $180 million by the time all building permits are pulled related to developments known to the Region at this time. Staff cannot estimate the annual impact on the overall tax levy at this time for these developments.

Analysis

Industrial RDC Deferral

As part of the extensive Incentives Review process, Council approved replacing the current Industrial RDC Grant Program with the Employment-based RDC Grant Program. The Employment-based RDC grant supports Council's Strategic Priority of being open for business and creating new jobs in Niagara. The new Employment-based RDC grant has a wider definition, making the Niagara Region more competitive. RDCs will be granted back to the company based on the number of new permanent full time jobs that are created:

- 1-10 Full Time positions created = 50% of RDCs will be granted
- 11-20 Full Time positions created = 75% of RDCs will be granted
- 21+ Full Time positions created = 100% of RDCs will be granted

The new Employment-based RDC stacks with the provinces mandatory 50% exemption for industrial expansions. Therefore, a company expanding their facility, and adding a single full time employee, could effectively pay zero dollars in RDCs due to Regional grants. Additionally, the Employment-based RDC can be stacked with the Gateway CIP Incentive program. The Gateway Program provides a grant of between 40% to 100% of the increased property taxes, resulting from construction for either five or ten years. The Gateway Program is available in Fort Erie, Port Colborne, Welland, Niagara Falls, and Thorold. No other region has a similar suite of incentives. This makes Niagara one of the most competitive regions to do business in Ontario.

The Industrial community has expressed concerns to Council about the new Employment-based RDC Grant requiring payment of 100% of the RDCs at first building permit issuance, as the current Industrial Grant provides an opportunity to have the grant applied at building permit issuance, if an application to the grant program is accepted before permit issuance. The motion referred to Corporate Services Committee, is that the application of RDC's for Industrial Expansions, be collected upon granting of occupancy permit. This motion addresses the Industrial community's concerns about payment of RDCs upfront, upon first building permit issuance.

Collecting RDCs for Industrial Expansions at occupancy permit poses a variety of issues in terms of program administration. The Region's LAMs have differing processes around how occupancy permits are processed and issued. As a result, Region staff envision that there may be difficulties in obtaining timely and accurate information from the LAMs to trigger the Region to collect RDCs. Additionally, this process will increase the administrative burden on the LAMs and the Region in terms of tracking and recording these details.

Collecting RDCs for Industrial developments at occupancy permit does not fully address the concerns of the Industrial community. Their concern is that RDCs are payable prior to cash flow commencing at their operations. At occupancy, there may still not be sustainable cash flow to pay their RDCs. Additionally, the Employment-based RDC Grant program requires the Region to confirm the number of new full time employees. It is estimated this process may take 24-30 months. As a result, a development may not know the exact amount of RDCs that may be payable as their grant application will not be fully approved at occupancy.

The City of Hamilton has a DC deferral program in place for Industrial developments. Interested applicants must meet the definition of an Industrial development in order to be eligible for this DC deferral program. Applicants must fill out an application form, including legal contact information (lawyer noted must be able to register the agreement as a mortgage on title), and submit the completed form along with an application fee to the city. Approved applications are able to defer their DCs owing for up to 4 years, however can pay at any point in time before the 4 year term. Interest is charged on all DC deferral agreements.

Should Council wish to create a deferral program for Industrial RDCs under the Incentives Policy, Region staff would recommend that instead of deferring RDCs payable to date of occupancy permit, that they be deferred for up to 3 years. This would allow for developments to confirm if their application is approved for the Employment-based RDC Grant and pay the new RDCs owing after the grant is applied. Approved applicants could pay their RDCs owing at any point in time. Staff would need to amend the Incentives Policy to include a deferral program.

Brownfield RDC Programs

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 (RSC) 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.

Two motions were referred to CSC from Council on July 21st, 2022, related to the Brownfield RDC Reduction Program. The first referred motion is that staff be directed to require developments that have invested in excess of $1 million before August 31, 2022 (expiry of 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 2022. As a result of this motion, the reduction received by developers, would be net against the RDCs payable at the rate in effect when a building permit is pulled.

All Brownfield RDC Reduction program applications, approved or pending, had been made aware in writing from the Region since 2018, that in order to remain eligible for the current RDC Reduction program, building permits must be issued before the expiry of the Region's existing RDC By-law on August 31, 2022. The proposed motion would act as an additional transition provision, in excess of what has already been approved and would require additional grant budget as noted in the financial implications section.

The second referred motion is that the current Brownfield RDC Reduction Program be extended for large scale (10ha+) brownfield redevelopments for five years, at which time, progress on the project will be reviewed and extended if appropriate as determined by staff and Council. Extending the Brownfield RDC Reduction program would contradict the decisions already approved by Council during the extensive Incentives Review Process and the approved Incentives Policy. Regional staff are aware of several projects within the Region with estimated remediation costs of over $180 million, therefore representing a significant financial impact to the Region if this program is extended to provide a grant for RDCs payable up the amount of remediation costs. These costs are expected to grow as remediation gets underway. Municipal Brownfield Community Improvement Plans are still available to these developers and include programs to recover remediation costs from tax increment based grants (TIG).

This motion would open the Brownfield RDC Reduction Program to any applicant with a redevelopment over 10 hectares, therefore, there could be projects that enter the program that the Region is not currently aware of, adding to the financial implications of this motion. The developments that are known are, in many cases, not imminent.

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 transition 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.

Alternatives Reviewed

Staff do not support the proposed changes highlighted in this report, as extensive engagement was undertaken on the Incentives Review process and the programs approved by Council in October 2021, were done so, after consultation with the municipalities and local stakeholders. Additionally, the RDC engagement process was well attended by members of the development community and staff from the LAMs. As a result of this engagement, amendments were made in the form of prepayment agreements for Brownfields developments that were satisfactory to the majority of developers and Council.

Relationship to Council Strategic Priorities

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

Other Pertinent Reports

- RDCPTF-C 5-2022
- RDCPTF-C 7-2022
- RDCPTF-C 8-2022
- CSC 34-2022
- CL-C 107-2022

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Appendices

None