Grey County

Committee Report

To:	Warden Hicks and Members of Grey County Council
Committee Date:	October 27, 2022
Subject / Report No:	CAOR-CW-11-22
Title:	Development Charge Deferral and Conditional Exemptions and Challenges with Mortgage Financing
Prepared by:	Randy Scherzer
Reviewed by:	Kim Wingrove
Lower Tier(s) Affected:	
Status:	Recommendation adopted by Committee as presented per Resolution CW141-22; Endorsed by County Council November 10, 2022, per Resolution CC98-22.

Recommendation

1. **That report CAOR-CW-11-22 be received, regarding challenges with the Development Charges Deferral and Conditional Exemption policy and priority of conditionally deferred development charges; and**
2. **That staff be authorized to use discretion on when to register the notice of the deferral and conditional agreement on title to the property if this would address a lender's perceived risks, but in no case shall it be later than time of occupancy; and**
3. **That such discretion be subject to the approval of the CAO or their delegate and the Director of Legal Services; and**
4. **That a by-law be brought forward to amend the Development Charges Deferral and Conditional Exemption Policy (Policy #11-1) accordingly for Council's consideration; and**
5. **That a letter be sent to CMHC from the Warden requesting that CMHC reconsider their approach to not provide financing when there are outstanding deferred development charges that have been conditionally exempted in the interest of making housing affordable for everyone.**

Executive Summary

The Development Charges (DC) Deferral and Conditional Exemption policy is intended to encourage both purpose-built rental housing development as well as development that aligns with the priority areas identified in the County's Community Improvement Plan program. County staff were recently made aware that the Canada Mortgage and Housing Corporation (CMHC) was not willing to provide financing for development projects with the potential that the deferred DC amounts become payable. Those amounts become payable if the terms of the conditional exemption are not fulfilled (e.g., the developer is unable to build the project within five years). If the DC amounts become payable, they take priority over mortgage financing in the same way that property taxes do, and CMHC does not wish to have this level of risk.

Representatives of lenders administering funds from (CMHC) have noted that registration of notices of conditionally exempt DCs on title to development properties may prevent CMHC from providing funding for a project. It is the County's normal practice, as a matter of transparency, to register these notices.

While a developer can always resolve an issue with deferred and conditionally exempt DCs by simply paying the DC amounts, that undermines the intent of the deferred DC exemption approach. Staff have attempted to identify approaches that will provide as much flexibility for developers' lenders as possible while maintaining the intent of the deferred DC exemption approach. In particular, the County could apply flexibility on the timing of the registration of the notice on title if this addresses the perceived risk of the lender for CMHC. Staff would recommend that the general approach remain that notice still be registered as soon as possible after the notice of the conditionally exempt DC's, but that delaying registration until no later than time of occupancy be allowed where approved by the CAO or delegate, and the Director of Legal Services. This approach would provide for additional flexibility without impairing the County's ability to enforce payment of DC amounts if the conditional exemption criteria are not met.

Background and Discussion

Deferrals and Conditional Exemptions of DCs

The Development Charges (DC) Deferral and Conditional Exemption Policy was approved by Council in January 2021, through By-law 5105-21. The latest Development Charges By-laws, 5127-22 and 5128-22, were approved by Council in December 2021. The Development Charges Deferral and Conditional Exemption policy is intended to encourage both purpose-built rental housing development as well as development that aligns with the priority areas identified in the County's Community Improvement Plan program and has received a CIP incentive through the local municipality. The Policy along with the County's Development Charges By-laws provide for the following opportunities:

1. Conditionally Exempting all new purpose-built rental units (e.g., a building or structure with four or more dwelling units all of which are intended for use as rented residential premises). The developer is required to enter into an agreement with the County which requires that the units remain as rentals for at least 25 years from the time of the building permit.

2. Exempting all non-profit housing developments as defined as well as development projects supported through funding provided by the County Housing Department or the National Housing Strategy. Agreements are not required for non-profit housing developments.

3. Exempt detached additional dwelling units as defined which aligns with the Development Charges Act (the DC Act).
4. Development Charge Deferral Policy – establishing criteria for deferring development charges until time of occupancy (e.g., housing units that meet the Accessibility for Ontarian Disabilities Act standards, other rental developments that would not be eligible for a conditional exemption, any new condominium apartment developments or life lease/land lease developments).
5. Redevelopment credits – applying a credit for the conversion of non-residential space to residential units.
6. Conditionally exempting development charges for approved community improvement plan projects.

Since the inception of the DC Deferral and Conditional Exemption Policy, there have been a total of 8 Deferral and Conditional Exemption Agreements signed resulting in the creation of 331 new purpose-built rental units with another 4 pending agreements which could add an additional 400 plus rental units. Prior to the inception of this program the County was experiencing very little purpose-built rental housing developments.

Issues identified by CMHC

Recently County staff were made aware that CMHC was not willing to provide financing for development projects with the deferred DC conditional exemptions requirements remaining outstanding. Exemption requirements generally remain outstanding for 20-25 years – projects must be completed for occupancy within five years, and then residential units must remain as primary rental housing (e.g. not converted to condominium units, not used for short-term accommodations) for 20 years after occupancy begins. CMHC has identified that they are unwilling to provide funds for development loans where they become aware that there is a possibility that development charges may be payable in the future.

Under the Development Charges (DC) Deferral and Conditional Exemption Policy, once a Deferral and Conditional Exemption Agreements is signed, County staff register a notice of the agreement on title to a property. This notice is registered to ensure that future owners, mortgagees, and other interested parties are aware that there are outstanding DC conditional exemption requirements for the property.

As a general practice, providing this information via a notice on title is important, because if the development fails to satisfy its exemption requirements (e.g. the units cease to be residential rentals), the development charges for the property will then become payable. Where development charges go unpaid, they are then charged to the property tax roll for the property and are collectable as property taxes. As unpaid tax amounts, unpaid DCs stand in priority to other legal encumbrances (e.g. mortgage), including unpaid mortgage amounts. Registration of the notice works to ensure there are no surprises in the future about possible future DC payments.

The issue identified by CMHC comes from registration of the title notice early in the development process. Staff have been advised that registration of the title notice prior to a loan being made may prevent CMHC from providing loan funds in the first place. It has been communicated that if notice was not registered prior to the loan, CMHC would be better able to provide funding for the developer's loan.

Possible Options

The County has a couple of options to address these challenges should they arise:

- Accept payment of the development charges so that they are no longer outstanding and therefore would no longer stand in priority of any mortgage. This will allow the developer to secure the financing if their lender perceives the possibility of development charges as a risk. If the development is proposing purpose-built rental housing units, then the Development Charges Act would mandate the payment of the DCs on a "payment plan" where it would pay the outstanding development charges over 5 years (6 equal installments) with first payment becoming due at time of occupancy of the first rental unit. It should be noted that the required "payment plans" as per the DC Act essentially defers DC's until time of occupancy and therefore the lender's risk is actually the same as the perceived risk for the conditional exemptions up until time of occupancy. The development charges would be based on the applicable DC's at time of the issuance of the building permit or otherwise as specified in the DC Act. Based on the current DC Interest Rate policy, there would be no interest charged to the developer. The potential risk with this option is that we could see a decline in developers wanting to proceed with rental housing developments if their pro forma assumed the development charges would be conditionally exempted. Given the costs of construction and rising interest rates, the pro forma for their developments may no longer be financially viable when you combine all of these increases.

- Use discretion regarding the timing of the registration of the notice of the deferral and conditional agreement on title to the property being no later than time of occupancy and subject to the approval of the CAO or delegate, and Director of Legal Services. With respect to this option, the development charges exemption obligations still remain outstanding and legislatively any resulting charges that would become payable would continue to stand in priority ahead of any other encumbrance/mortgage, regardless of the timing of the registration of the agreement. However, if the lender feels that by not registering the agreement on title until time of occupancy makes a difference to their perceived risk then this could be an option to consider. Although this issue has only been raised by CMHC to date, staff could apply the same approach (as directed by Council) if a different financial institution/lender raised similar issues in the future. The risk of not registering the agreement on title until time of occupancy is quite minimal as the opportunity for the developer to default on the agreement during the construction phase is practically non-existent.

Addressing DC deferrals as a policy issue with CMHC

To date, this challenge has only arisen with mortgage financing through CMHC. Part of CMHC's mandate is to provide funding to support affordable and market rental housing projects throughout Canada and their main goal is to make housing affordable for everyone. This aligns with the programs and policies approved by County Council including the DC Deferral and Conditional Exemption policy which is intended to provide assistance to spur more rental housing developments as well as other priority area developments identified in the County's Community Improvement Plan including affordable/attainable housing.

Given that there is alignment with what the County and CMHC are trying to achieve, it is recommended that a letter be sent to CMHC from the Warden requesting that CMHC reconsider their approach regarding not providing financing when there are outstanding deferred development charges as the perceived risk is fairly low based on the opinion of County staff and that based on the changes to the Development Charges Act, the deferred payment of development charges associated with rental housing developments until time of occupancy is now a requirement and therefore there will be outstanding development charges associated with all rental housing projects throughout the Province.

Legal and Legislated Requirements

The Development Charges Act and the County's development charges by-laws govern what development charges are payable and when. Because section 106 of the Municipal Act, 2001 prevents the County from giving "a total or partial exemption from any levy, charge or fee" in general, all approaches to resolving issues with development charge payment and imposition issues must be in strict compliance with the provisions of the Development Charges Act.

Financial and Resource Implications

The County's Deferral and Conditional Exemption Policy and Development Charges By-laws provides opportunities to conditionally exempt development charges for purpose-built rental housing developments and Community Improvement Plan Incentivized developments. To date, the County has entered into a total of 8 DC Deferral and Conditional Exemption Agreements which has created a total of 331 new rental units in various communities throughout the County. This has conditionally exempted approximately $1.45 million in development charges. Although the conditional exemptions result in potentially reduced revenue for the County, this incentive has also assisted developers in moving forward with rental housing projects which prior to the inception of this program the County was experiencing very little purpose-built rental housing developments. The potential loss in DC revenue will also be partially offset by revenue gained through increased property assessment based on the new developments that we are seeing. There is a need to revisit this program, as well as the CIP Incentives associated with housing, in 2023 based on the current housing needs recently presented to the Affordable Housing Task Force and to potentially focus incentives on affordable housing developments for low to moderate income households.

Relevant Consultation

☒ Internal: CAO, Legal, Finance, Planning

☒ External: Canada Mortgage and Housing Corporation, Developers

Appendices and Attachments

DC Deferral and Conditional Exemption Policy

DC Interest Rate Policy

By-law 5127-22 – Development Charges By-law – County-wide Roads and Related Charges

By-law 5128-22 – Development Charges By-law – General Services

Development Charges Brochure - 2022