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MEMORANDUM

To: Erica Arkell, Financial Analyst, City of Peterborough
From: Stefan Krzeczunowicz, Courtney King, and Bianca Whiffen
Date: May 9, 2024
Re: Policy Review: Development Charge Exemptions and Deferral Agreements

The City of Peterborough is currently in the process of updating its City-wide development charges (DC) by-laws. Part of the process involves reviewing current DC by-law policies and practices in alignment with the City's new Official Plan, which came into effect on April 11, 2023, as well as current DC legislation.

This memorandum specifically evaluates two key policies:

1. DC exemptions provided to specific types of development within the City's Central Area, as defined in Schedule B: Land Use Plan of the Official Plan; and
2. Deferrals of DC payments provided to all residential development in the City, pursuant to an agreement struck in 2005 between the City and the Peterborough and District Home Builders Association under section 27 of the *Development Charges Act*.

The review discusses the rationale for these policies and assesses their relevance in light of the new Official Plan. Financial impacts and similar policies in other Ontario municipalities are also examined. Finally, recommendations on policy changes for Council's consideration as part of the new DC by-laws are made.

A. CENTRAL AREA DEVELOPMENT CHARGE EXEMPTIONS

This section discusses the DC exemptions that are provided by the City to certain types of development within the Central Area under section 20 of the current DC by-laws.

i. Policy Background and *Development Charges Act*

Geographic exemptions of DCs are effective ways for municipalities to encourage development in particular locations. This can help achieve targets set out in Official Plans,

Community Improvement Plans, and other municipal strategic priorities. The *Development Charges Act* is permissive in regard to the provision of exemptions relating to location:

2. (7) A development charge by-law may apply to the entire municipality or only part of it.

ii. Current Central Area DC Exemptions

Peterborough's Central Area has been defined in its official plans for decades and a Central Area Master Plan has been in effect since 1991.

The City's DC exemptions for the Central Area were first introduced in 2009 through DC by-laws 09-166 and 09-167. The exemptions focussed on commercial redevelopment within specific sub-areas of the Central Area as well as, more broadly, the redevelopment of building that were older than 2005:

20. Notwithstanding the provisions of this By-law, development charges shall not be imposed with respect to:

(e) lands, buildings or structures ligated within the Commercial Core Sub-Area and the Waterfront Commercial Sub-Area of the Central Area, as depicted on Schedule J of the Official Plan of the City;

(f) the redevelopment of any building or structure, which is located within the Central Area, as depicted on Schedule J of the Official Plan of the City, and which exists as of January 1, 2005;

These exemptions were maintained in DC by-laws that were passed in 2014 and 2019. However, the new DC by-laws passed in 2019 expanded the scope of the exemptions to include a range of higher density apartment forms and associated commercial uses in mixed use developments across the entire Central Area:

20. Notwithstanding the provisions of this By-law, development charges shall not be imposed with respect to:

(g) creating a minimum of fifteen apartment dwelling units, which are located within the Central Area as depicted in the Official Plan of the City;

(h) mixed-use development within the Central Area, as depicted in the Official Plan of the City, that contains a minimum of 15 apartment units and a minimum of 1,000 square metres of commercial gross floor area will be exempt from the payment of development charges based on the following rules:

i. The first 15 apartment units and the first 1,000 square metres of commercial gross floor area will be exempt;

ii. Each additional apartment unit, beyond the first 15 units will be eligible for exemption; and

iii. Each additional 67 square metres of commercial gross floor area beyond the initial 1,000 square metres must be matched with a residential unit to be eligible for exemption.

iii. Alignment of DC Exemptions with Current Official Plan

The current Official Plan identifies the Central Area as the heart of the community and the focus for a wide range of uses that serve both regional and local residents. It notes that “The success and health of the Central Area are contingent upon a concentration of residents, workers and visitors, with supporting amenities to encourage a vibrant living and visiting experience that radiates outwards.” The Official Plan also:

- promotes substantial growth in the Central Area, particularly in high density residential and mixed-use development, major offices, and institutions (especially post-secondary facilities); and
- prioritizes the following types of development: small-scale retail, offices, service commercial uses and community facilities, cultural, arts and entertainment facilities, post-secondary institutions, hospitality and tourism facilities, conference/convention facilities, a mix of higher density housing, including affordable housing, and retail commercial uses that support local residential uses.

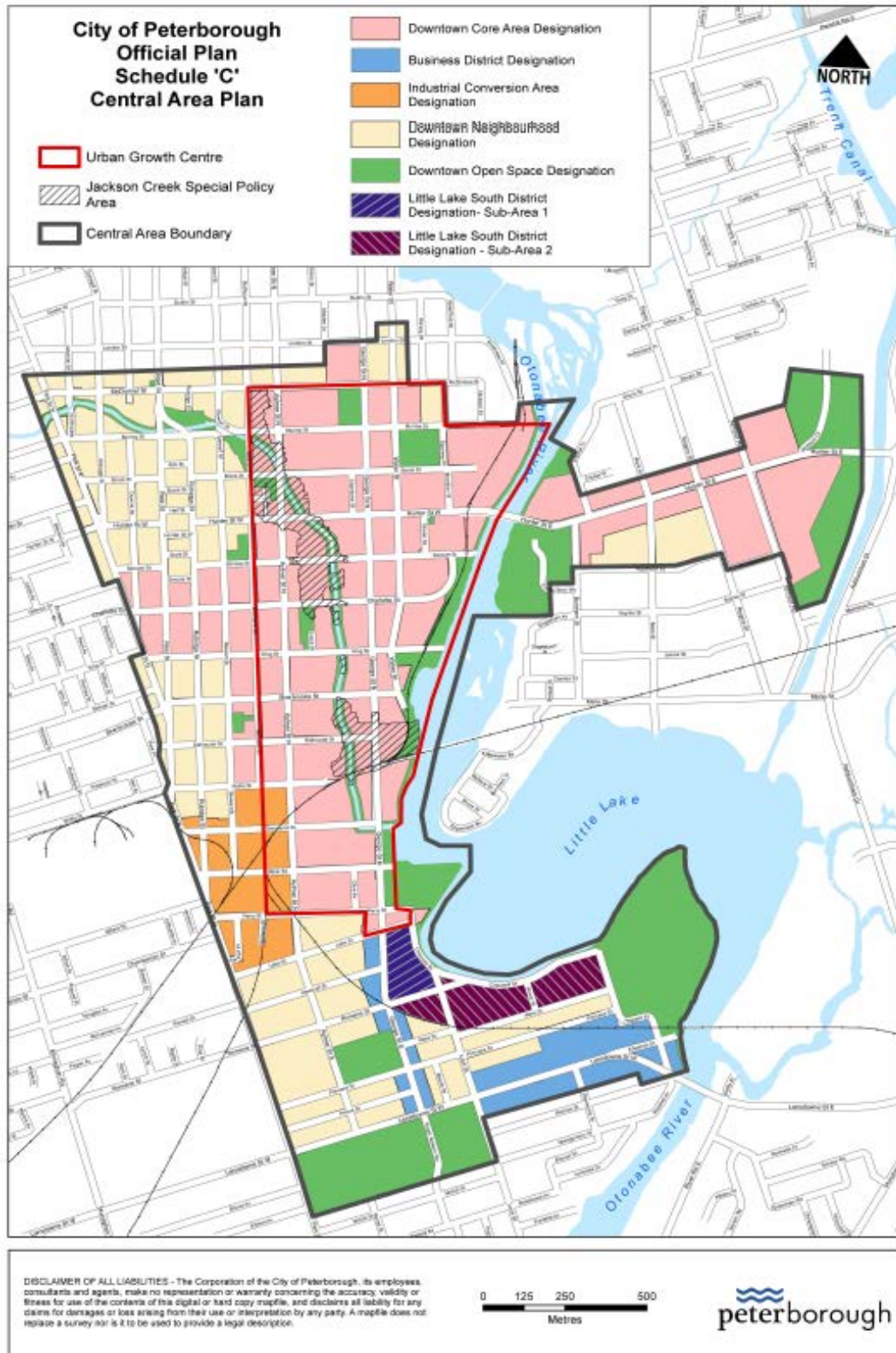
The Official Plan authorizes the City to exempt some or all of the DCs “as a means to promote specific development, redevelopment or revitalization objectives in accordance with this Plan” (Policy 7.15 c). The main vehicle for providing DC exemptions is through a Community Improvement Plan, or CIP (see Policies 7.16 b and d). The type of development eligible for exemptions, and the form of DC relief, includes:

- reduced or deferred DCs in key strategic development and investment areas “to facilitate intensification and redevelopment” (Policy 3.3.2 e (iii))
- “financial relief” from DCs for projects that provide permanent affordable or accessible housing (Policy 5.2.4 (ix))
- general financial incentives through a CIP to encourage development applications in Strategic Growth Areas (Policy 3.3.7 e (v));

- CIP incentives to encourage mid-rise and high-rise residential development within Industrial Conversion Area designations (Policy 4.3.4 e);
- CIP incentives “to assist the private sector in improving properties and encourage the intensification of the [designated] corridors” (Policy 4.4.2 o);

Of particular note is the new Official Plan’s goal to concentrate retail, office, and entertainment space in the City within a designated Downtown Core Area. This area, as shown in pink in Figure 1, covers most of the Central Area. All new building height restrictions in the Downtown Core Area have been repealed in the new Official Plan.

Figure 1 - Central Plan Area



iv. New Provincial DC Exemption Framework

The *Development Charges Act* and its associated Regulation have undergone significant revision since the City introduced its DC exemptions for the Central Area in 2009.

In its previous term of office, the Provincial Government introduced a Housing Supply Action Plan and several pieces of legislation intended to limit DCs, including the *More Homes, More Choice Act, 2019* (Bill 108) and *COVID-19 Economic Recovery Act* (Bill 197). In 2021 it struck a Housing Affordability Taskforce, whose recommendations in February 2022 became a key part of its June 2022 election mandate to improve housing affordability and build 1.5 million homes in Ontario in 10 years.

One of the key Government aims is to reduce housing costs by reducing municipal fees and charges, including DCs. To that end, it introduced further legislation in 2022 (through Bill 23) that implemented significant DC exemptions, discounts, and phase-ins for specific types of development:

- **Exemptions** for affordable and attainable housing, additional units in existing rental housing, residential intensification of existing units, non-profit housing, and housing in inclusionary zoning areas. The exemptions for affordable and attainable housing are not yet in force. However, the Government's recent Bill 185, if passed, would implement the affordable housing exemption by June 1, 2024.
- **Discounts** for rental housing development (with 4 or more units) based on the number of bedrooms in the unit.
- A prescribed **Phase-in** of all DCs in new by-laws over the first 5 years of the by-law term. If passed in its current form, Bill 185 would repeal the phase-in altogether.

Given the objectives of the City's Official Plan set out above, it may be expected that a portion of the development anticipated for the Central Area (e.g. affordable and purpose built rental housing) will qualify for these new statutory exemptions and discounts regardless of whether the current Central Area exemptions are maintained.

v. Jurisdictional Scan of Other Municipal Geographic DC Exemptions

Table 1 below summarizes DC exemptions that are provided in specific areas in other municipal DC by-laws in Ontario.

Table 1 - Jurisdictional Scan of DC Exemptions in Other Central Areas

Municipality	DC Policy
Brantford Population (2021): 104,700	<p><i>261.5.1 This Chapter shall not apply to development on lands located within the boundary of the “Development Charges Exemption Area” as shown on Schedule A to this Chapter, until such time that an alternative mechanism or by-law is introduced by the City that addresses a development charges exemption, reduction, or other incentive at this location.</i></p>
Woodstock Population (2021): 46,700	<p><i>6.1 Notwithstanding any other provision of this By-law, development charges shall not be imposed with respect to (b) all development within the boundaries of the “Downtown Community Improvement Area” as shown on Schedule “C” of this By-law.</i></p>
Kingston Population (2021): 132,500	<p><i>6.2 The Municipality may exempt lands from this By-law where the lands are designated in the City of Kingston as part of the Community Improvement Area and the Municipality implements a Community Improvement Plan by By-law which includes said lands.</i></p>
Windsor Population (2021): 229,700	<p><i>14.1 Despite section 6, any infill development occurring within an area designated under Schedule “C” will be subject to a full exemption of development charges payable.</i></p>
Hamilton Population (2021): 569,400	<p><i>28. Notwithstanding any other provision of this By-law, the Development Charges payable under this By-law respecting Class A Office Development within the boundaries of the Downtown CIPA shall be reduced by 70% after all credits are applied under this By-law, for only the portion of the Class A Office Development that is within the height restrictions as shown in Schedule F – Figure 1 of City Zoning By-law 05-200, as amended.</i></p> <p><i>29. Notwithstanding any other provision of this By-law, all Non-Industrial Development, Industrial Development and the Non-residential component of Mixed Use Development within the boundaries of the Downtown CIPA as shown in By-law 21- 163, as amended, is exempt from 40% of Development Charges payable under this By-law.</i></p>

	<i>The development charges payable under this By-law respecting Non-Industrial Development, Industrial Development and the Non-residential component of Mixed Use Development, other than Class A Office Development, within the boundaries of the Downtown CIPA shall be reduced after all other credits are applied, under this By-law for only the portion of the Building that is within the height restrictions as shown in Schedule F – Figure 1 of City Zoning By-law 05-200, as amended. Any Development in excess of the height restrictions as shown in Schedule F – Figure 1 of City Zoning By-law 05-200, as amended shall be subject to the full calculated Development Charge.</i>
Quinte West Population (2021): 46,600	<i>3.11 Notwithstanding the provision of this by-law, development charges shall not be imposed with respect to: (c) A grant equal to the calculated charge for residential and non-residential development within the commercial core areas as defined by Schedules “C” and “D” may be provided subject to the development complying with the guidelines and other requirements included in Community Improvement Plan(s) approved under Section 28 of the Planning Act, R.S.O. c.P. 13. 1990, as amended.</i>
Oshawa Population (2021): 175,400	<i>2.5 No Development Charge shall be imposed with respect to any Development: (c) on lands wholly within that part of Oshawa partially known as the Urban Growth Centre and as depicted in Schedule “D” to this By-law.</i>
Clarington Population (2021): 101,400	<i>23. Building that are or will be located either in Clarington Science Park or the Clarington Energy Park (as shown in Schedule 2) are exempt from development charges if the owner can provide evidence satisfactory to the Director of Finance that the building will be used for research purposes including laboratories, offices, amenity areas and service areas for staff who conduct research.</i>
Whitby Population (2021): 104,700	<i>12(1) Notwithstanding the provisions of this by-law, development charges shall not be imposed under this by-law respecting: (h) a parking structure/garage that is primarily for the use of the public within the Town’s Downtown Whitby Community Improvement Plan area or Downtown Brooklin Community Improvement Plan area.</i>
York Region	<i>3.7 Notwithstanding subsection 3.6(a), (a) a development charge with respect to regional water services shall not be imposed against lands identified on the legend shown on Schedule C;</i>

Population (2021): 1,173,300	<p><i>(b) a development charge with respect to regional wastewater services shall not be imposed against lands identified on the legend shown on Schedule D;</i></p> <p><i>(c) a development charge with respect to regional wastewater services shall not be imposed against the lands shown on Schedule E.</i></p>
Durham Region Population (2021): 697,000	<p><i>2.4 Development charges imposed under this by-law in regard to water supply and sanitary sewerage services do not apply to the development of lands located within the Seaton Community. For greater certainty, the balance of the development charges imposed under this by-law apply to the development of lands located within the Seaton Community.</i></p>

vi. Financial Impact of DC Exemptions

With significantly higher development being planned for the Central Area, maintaining the current exemption framework will almost certainly result in a higher DC revenue shortfall arising from the exemptions. In this respect, it is noted that:

- The City's Land Needs Assessment, prepared in June 2021, includes a housing forecast of 8,850 new apartment units between 2016 and 2021. Based on discussions with City Planning staff in 2022 as part of a DC Background Study update, it was assumed, based on current zoning and units within existing development proposals, that about 30% of these apartments (2,655 units) would be constructed within the Central Area. Moreover, of this 2,655 unit total, it was assumed that about 90% would be in apartment buildings of 5 storeys or more.
- It is likely that most if not all of the forecast high density apartments in the Central Area would qualify for the current DC exemption. Assuming uniform growth of 68 units per year between 2016 and 2051, the DC revenue shortfall arising from the exemption would be \$46.0 million, or \$1.8 million per year, under current DC rates.
- Note that this calculation does not factor in the actual number of high density apartments that were constructed in the Central Area between 2016 and 2024. Nor does it account for additional DC revenue losses arising from commercial redevelopment of the Commercial Core and Waterfront Area or eligible commercial development in mixed use development in the Central Area.

vii. Conclusions

In light of the above analysis the following conclusions can be made:

- **Alignment with Official Plan** – The new Official Plan plans for substantial growth and redevelopment within the Central Area and provides for a range of financial incentive programs in order to achieve that objective. The current DC exemptions for the Central Area are narrowly focussed on three types of development: commercial redevelopment in smaller Commercial Core and Waterfront Commercial areas; medium and high density apartment buildings; and commercial uses in mixed use development that support residents living in medium and high density apartments. However, the exemptions do not apply to other forms of development promoted for the Central Area by the Official Plan, notably office buildings and a range of institutional facilities.

- **Alignment with DC Legislation** – the recent changes to the DC Act will mean that some of the new statutory exemptions and discounts—particularly for affordable and purpose built rental housing—will overlap with the existing Central Area exemption framework.
- **Alignment with Other Municipal Practices** – while geographic exemptions from DCs are not uncommon in Ontario, there is no “one size fits all” best practice. The broad range of terms and conditions offered by different municipalities reflect different local priorities and varying levels of commitment to provide financial assistance for private development.
- **Financial Impact** – The amount of growth being planned for the Central Area is much higher than what was anticipated when the current DC exemption framework was implemented in 2009. A preliminary estimate of the DC revenue shortfall arising from the current exemptions \$46.0 million, or \$1.8 million per year, under current DC rates.
- **Balancing Costs and Benefits** – The foregone DC revenues resulting from the DC exemptions must be evaluated against the longer-term benefits of encouraging development in the Central Area. Factors for consideration include:
 - Support provided to achieve density targets and the “complete community” vision set out in the Official Plan;
 - Support for Central Area employment activities, particularly major offices and institutions (including post-secondary institutions).

These financial benefits could outweigh the initial losses in DC revenue as a result of the exemptions.

- **Fairness** – The City is committed to making significant public investments in the Central Area that will substantially enhance the appeal of the area. It has also removed any limits on building height within the Downtown Core Area, which covers most of the Central Area. These represent tangible new benefits to development in the Central Area. Given this, there is no obvious policy basis for providing a general “blanket” exemption to development in the Central Area. While a case might be made for an incentive in order to attract development over and above what otherwise would occur, it is not practical to limit the exemptions to the “extra” units. As a result, DC revenues from units that would be building without the exemption

would also be foregone. As a consequence, the effective cost of an exemption for each extra unit would be much higher than just the direct exemption for those units.

- **Complexity** – The current Central Area exemptions are overly complex compared to similar geographic exemptions for core areas in other DC by-laws. If they are maintained, they will need to be updated to align with policy and schedule references in the new Official Plan.
- **Discontinuing Exemptions** – The City is entitled to impose DCs on all development and it could consider removing the current exemptions in order to reduce the funding burden for the exemptions from taxes. This would benefit all City taxpayers. As previously mentioned, the intent of geographic DC exemptions is to encourage development in particular locations; under the current policy, in the Central Area. If this is no longer a priority, or if the City is of the view that development is likely to occur in the Central Area irrespective of the exemption, discontinuation of the exemption would have limited consequences. However, the extent to which the amount of development is affected by the exemption is not clear.

B. DEVELOPMENT CHARGE DEFERRAL AGREEMENTS

Under section 27 of the *Development Charges Act* a municipality can enter into an agreement with a person or developer who is required to pay a DC. The agreement may provide for the DC to be paid before or after the prescribed dates set out in the DC by-laws (and DC Act). Additionally, section 27 permits the municipality to charge interest on any delayed DC payments.

27 (1) A municipality may enter into an agreement with a person who is required to pay a development charge providing for all or any part of a development charge to be paid before or after it would otherwise be payable.

(2) The total amount of a development charge payable under an agreement under this section is the amount of the development charge that would be determined under the by-law on the day specified in the agreement or, if no such day is specified, at the earlier of,

(a) the time the development charge or any part of it is payable under the agreement;

(b) the time the development charge would have been payable in the absence of the agreement.

(3) An agreement under this section may allow the municipality to charge interest, at a rate stipulated in the agreement, on that part of the development charge paid after it would otherwise be payable.

The City's DC by-laws authorize it to enter into section 27 agreements.

From 1999 to 2004, the City authorized agreements to allow DC payments for low density housing (Residential A buildings) to be deferred from the time of building permit issuance until the first unit at the address has passed an occupancy inspection. The purpose was twofold: to allow developers to pay their DCs at a time when more of units in their development had been sold; and to advertise Peterborough as "business friendly". In 2005, the scope of the DC deferrals was expanded to cover medium and high density units (Residential B and C buildings):

"Residential A building" means a building, or portion thereof containing one or two dwelling units;

"Residential B building" means a building, or portion thereof containing more than two dwelling units, other than a Residential C building;

"Residential C building" means a building, or portion thereof containing more than two dwelling units, each of which has access to the common corridor and entrance(s); and a multi-suite residence.

The 2005 agreement was struck with the Peterborough and District Home Builders Association (PDHBA), although it allowed individual developers who are not members of the PDHBA to avail of the deferral. The agreement requires that the DC payable upon the first unit passing an occupancy inspection be the current DC rate in effect at the time of the occupancy inspection, including any indexing or phase-in increases that have occurred from the date at which the building permit was issued.

In reviewing the merits of the DC deferral agreement, the following conclusions can be made:

- There is no DC discount or exemption provided to developers through the agreement. The only revenue loss to the City is interest earned on DC funds that would have otherwise been collected earlier in the development process. Although it is not possible to quantify this revenue loss, it is likely to be relatively minor given the time between permit issuance and first unit occupancy for most new home

construction. That said, in the current high interest rate environment, revenue losses will likely be higher than in prior years.

- Other than the “business friendly” optics of the agreement, it is not possible to assess the benefits to the City generated by the agreement as there is no way of knowing how or whether the rate or amount of development would have been any different in the absence of the agreement.
- Although there is an administrative cost to the City in tracking deferred DC payments, the tracking process is by now well-established.
- The agreement provides for periodic review of its terms and conditions; however, it does not appear that such a review has been undertaken since 2005.
- Although section 27 agreements are not uncommon, we are not aware of an agreement that alters the timing of payment of DCs for all development in a municipality. Moreover, most agreements have set expiry dates, which the City’s agreement does not seem to have.