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# HALDIMAND COUNTY

## Report CDS-03-2021 Deferral of Development Charges – Edge Real Estate For Consideration by Council on June 28, 2021

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### OBJECTIVE:

To consider a request from Edge Real Estate Investment Group Inc. for deferral of Development Charges relating to the construction of a 77 unit residential condominium project in Hagersville.

### RECOMMENDATIONS:

1. THAT Report CDS-03-2021 Deferral of Development Charges – Edge Real Estate be received;
2. AND THAT the deferral of Development Charges be approved on the basis of the criteria and principles outlined in Report CDS-03-2021 for Edge Real Estate Investment Group Inc. and be subject to the terms and parameters as set out in Report CDS-03-2021;
3. AND THAT the basis of the criteria and principles for deferral of Development Charges, as outlined in Report CDS-03-2021 for Edge Real Estate Investment Group Inc., be utilized for any future deferral requests for qualifying developments;
4. AND THAT the Mayor and Clerk be authorized to execute any agreement or legal documents associated with the deferral of development charges;
5. AND THAT a non-refundable Deferral of Fees administrative processing charge of \$500.00 be applicable to this and all future requests;
6. AND THAT the applicable interest rate for such deferrals, as outlined in Report CDS-03-2021 for Edge Real Estate Investment Group Inc., also be applicable for all eligible Development Charge payment deferrals required under sections 26.1 and 26.2 of the Development Charges Act;
7. AND THAT the applicable User Fees and Charges by-law be amended accordingly.

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### EXECUTIVE SUMMARY:

The subject report responds to Council's direction to staff to assess a request from Edge Real Estate Investment Group Inc. for deferral of development charges (DCs) for a set period of time. Staff is recommending deferral of 75% of the applicable DCs for a maximum period of two (2) years based upon:

- i. the type of housing that is proposed (high density condominium) which serves to address a need in the community;
- ii. the nature of condominium development and time required for the registration process; and,
- iii. the complexities surrounding the development of the subject lands.

The terms of the deferral include requirement for payment of all deferred amounts, including applicable accumulated interest, in full, the earlier of (i) registration of the condominium; or, (ii) expiry of the two (2) year term. An agreement that incorporates these terms will be completed and registered on title.

The subject report also introduces criteria and principles for deferral of Development Charges that can be utilized for future deferral requests for qualifying developments.

## **BACKGROUND:**

### *Legislative Background*

Under the Development Charges Act (Act) and as provided for in the County's Development Charges By-law, DCs are payable at the time a building permit is issued. There are certain provisions in the Act to provide for payments before or after this time, under specific circumstances.

Recent amendments to the Act, following the Province's housing affordability plan and More Homes, More Choices legislation, enacted mandatory deferrals for certain types of development, primarily to support affordable housing effective January 1, 2020 (sections 26.1 and 26.2 of the Act). The types of eligible developments included non-profit rental housing, institutional development, and non-profit housing developments.

For all other developments, if the developer wanted to pay DCs at a time other than building permit issuance, Council would have to enter into an agreement with the developer to pay the DCs at some other time, before or after it was otherwise payable. Such an agreement would need to lay out the terms and conditions of such a deferral considering such items as: timing/length of deferral, amount of deferral, security for the payments, and compensation for such an agreement.

In the case of both the statutory deferrals and deferrals by way of agreement, the Act provides for interest on deferred payments. The interest cannot exceed the prescribed limit set by the Province, however, as the Province has not established a limit to date, the municipality is free to set the rate as it sees fit.

Based on the foregoing, although the proposed development does not qualify for a statutory deferral, Council has the authority to enter into a deferral agreement under agreed to conditions and terms.

### *Existing DC Deferral Policy*

In 2009, County Council approved a deferral of fees policy which was applicable to medium to large scale residential developments. The policy was developed in order to provide a method of promoting development in Haldimand County without contravening current legislation. The deferral of payment of certain fees related to subdivision development was viewed as a method to help reduce 'up front' development costs, and by doing so, spur development and encourage some developers that are considering investing in Haldimand County to invest here. To avoid "bonusing" provisions under the *Municipal Act* and maintain equity for all developers, parameters were included in the required payment arrangements to eliminate the financial risk to the County and its taxpayers while ensuring all developers are treated fairly and equitably, whether they choose to use this program or not. The policy as it exists today, sets out very detailed eligibility criteria and principles which must be adhered to/met for any deferral consideration.

### *Current Request*

Council received a written request at its June 7, 2021 meeting from Edge Real Estate Investment Group Inc. ("Edge"). The letter put forward consisted a request for deferral of development charges as a means to assist in the construction of a 77 unit, 5 storey condominium project on Main Street North in Hagersville. The building will consist of small sized 1 and 2 bedroom units. The total development charge value is approximately \$1.36 million (\$17,683 per unit x 77 units). While the project does not fit

the project profile that is currently laid out in the deferral of fees policy (i.e. medium to large scale residential subdivisions that are developed in a number of phases over time), the nature of the use, uniqueness of this project in the Hagersville (and Haldimand) context, and complexities involved with the development merit consideration. As such, pursuant to the County's current Development Charges By-law and underlying Provincial legislation, Council approval is required for any deferral consideration/agreement. The subject report is a response to Council's direction to assess the suitability of the request and provide a set of recommendations of how a deferral should be structured for the Edge project.

## **ANALYSIS:**

The Edge project, which consists of 77 condominium dwelling units in a 5 storey building, has secured zoning and site plan approval, and is in the process of applying for a building permit. It is at the building permit stage that current applicable development charges would normally be paid. The scale and investment required for the project has lead the developer to make the request for deferral of development charges. To assist in assessing the suitability of the request, staff have examined three aspects as follows: i) site characteristics and conditions; ii) condominium structure and sales; and iii) housing type/need.

### **i. Site characteristics and conditions**

The site characteristics and current conditions have lead to some significant increases in the costs of development. The main drivers in this respect are as follows:

- The site is considered infill and is generally surrounded by low density development. This has added costs to the design stage as the complex nature of grading/drainage and stormwater management has to be addressed;
- The site was a brownfield property, being one where a previous industrial use existed and resulted in site clean-up costs; and,
- All of the above matters combined to extend the development approvals process thus resulting in delays to project start-up. Delayed start-up has resulted in increased construction and material costs.

### **ii. Condominium Structure and Sales**

Condominium ownership differs from that of low-rise, free-hold homes in several ways. One important difference involves occupancy and ownership. A purchaser can move into a low-rise, free-hold home only when it closes and they own it officially, but with a condominium, depending on when in the sales/construction process a person purchases, they will most likely receive occupancy long before they receive title to their unit. Prior to ownership, the purchaser enters into what is referred to as "interim occupancy" - this is the gap between the occupancy date (date that the unit is deemed suitable to move in to) and when the condominium is registered and a person receives title to their unit. An occupancy fee (which is similar to paying rent) is paid to the developer for the duration of the interim occupancy. But, until the formal transfer of title takes place, the unit is still owned by the developer and thus they continue to carry the various costs associated with the construction project. In other words, there is a delay in the developer receiving their money which can present a challenge in larger projects with long construction periods. This delay is described in more detail below.

As alluded to above, a "condominium" is technically not formed until the build is completed and passes the approval processes that enable it to be registered with the Land Registry Office (LRO). In order to register a new condominium, the developer must submit plans and paperwork to the requisite governmental authorities (i.e. County), once all of the units and common elements within the project have been substantially completed. The developer also submits a declaration and description of the

property to the LRO. The declaration describes how the condominium is organized and operated, such as the proportion in which owners are to contribute to the common expenses (e.g. roads/lanes, visitor parking, amenity area). The description includes information such as a survey plan of the boundaries of each unit and the common elements. Once the declaration and description are registered, individual unit titles are created for each unit and its corresponding interest in the common property. The condominium corporation is then formed, which is a legal entity that controls and manages the common elements on behalf of the owners. The entire process typically takes up to 6 months to complete following the interim occupancy described above. This represents the period of delay in the developer receiving their money which lends merit to the request for the DC deferral.

### iii. Housing type/need

The Edge project would provide 77 high density residential units, with an emphasis on seniors / empty-nesters, and smaller household units. This is a development typology that is not common in Hagersville, a community which has experienced predominantly low density residential projects over the last 2 decades. It has been acknowledged and expressed in the County's population and household forecasts (2020, Watson & Associates) that there is an increasing need for infill projects of this nature (high density) to allow the County to meet its Growth Plan obligations and to provide an alternative, more affordable housing type. In that, it is important for the County to encourage developers to pursue projects that would fulfill this housing need, and in the case of the subject application, to provide supports where appropriate to do so. This lends merit to the DC deferral request.

### Proposed DC Deferral Parameters

Based on the above, staff is of the opinion that for projects similar in nature to this, it is appropriate to develop principles and parameters to enact a DC deferral agreement. Staff feel that developing a DC deferral policy is appropriate to support a project that is positioned to address a growing housing need in the community of Hagersville and County as a whole. Staff have used the existing deferral of fees policy as the framework for this request. Given that this request is scoped to development charges only, a significant component of the deferral process has already been addressed (i.e. identifying which fees are appropriate to defer). Based on this, staff have developed a payment deferral program which is detailed as follows and which is to be laid out in an agreement that is required to be registered on title:

#### 1. Eligibility

As noted above, there are a number of very specific challenges in developing a large scale condominium development. The scale and type of development proposed typically requires both an extended period of time to construct as well as registration and transfer of title to the respective purchasers. In addition, given the scale of the proposed development, the required DCs are substantial (in this case, in excess of \$1 million) and will take longer to recover from the ultimate purchaser. Using a threshold of estimated DCs totaling in excess of \$1 million, the relevant number of units would be approximately 60 units. Similar to the existing DC deferral policy, a condominium development of this scale would meet the housing incentive objectives as well as the scale necessary to warrant a deferral agreement. As such, staff are recommending that all condominium developments with 60 or more units would qualify for a DC deferral agreement, if requested. Given the need to develop an agreement and register said agreement on title, similar to the existing DC deferral policy a one-time, non-refundable application fee of \$500 is also recommended.

#### 2. Amount of Deferral/Timing of Payments/Collection Methodologies/Securities

The intention of the developer is to defer fees until occupancy permits can be issued. Based on the analysis completed above in "ii. Condominium Structure & Sales", it is staff's opinion that a more appropriate deferral timeframe would be to the point of registration of the condominium. This period of time would likely run approximately 2 years (assuming a 1½ year build and ½ year registration process). Staff is proposing that repayment would take place by the end of 2 year period at the latest; thus, there

would not be any requirement for regularly timed payments (i.e. monthly/yearly). The intent of this is to provide some flexibility to the developer with respect to payment of the specific fee to encourage the development. In this regard, it is not appropriate to have regular repayment terms as the underlying principle is not to act in the place of a financial institution. The flexibility to pay the development charge fees relative to the cash flow of the development is considered the fundamental benefit of this project specific deferral agreement. However, since after the registration of the condominium the title will transfer to the respective purchasers, any and all amounts must be paid before registration can occur.

As such, based on available cash flows, the proponent will be required to pay all deferred amounts, including applicable accumulated interest, in full, the earlier of (i) registration of the condominium or (ii) expiry of the 2 year term, from execution of the deferral agreement.

It is also recommended that a portion of the DCs continue to be paid up front at the time of building permit issuance, similar to other smaller scale condominium developments. This will also limit the County's exposure related to deferred payments. Staff are recommending that 25% of the applicable DCs be paid at the time of full building permit issuance as provided for in the County's Development Charge by-law. This would be the equivalent to the DCs payable on a condominium development of approximately 14 units.

In addition, the proponent must remain current with all amounts owing to the County (i.e. property taxes, miscellaneous fees and charges, etc.) during the deferral period to remain eligible. This will assist staff in monitoring the credit worthiness of the developer during the deferral period. Any default in these provisions would deem the deferral agreement void and all amounts owing would become due and payable immediately. These financial security provisions are all requirements of the current deferral policy.

In addition, if there is any other default under the agreement or, the development no longer meets the eligibility requirements under this program (e.g. housing type is proposed to change), all deferred fees will be immediately due and payable. All fees remaining unpaid after they become due and payable, in addition to any other remedies available to the County under municipal law, will be added to the property tax roll(s) (or property tax rolls within which the property is comprised) and collected in a similar manner as property taxes (including, but not limited to, being recognized as a priority lien status). The County also reserves the right to add these unpaid fees to any other tax rolls to which the proponent may be a party.

It should be noted that there is the possibility in the event that these fees are recovered through property taxes that the purchasers of the applicable units will become liable for these amounts. However, significant precautions have been implemented to avoid this situation. In addition, as the agreement will be registered on title and the deferral of fees will be disclosed, it is assumed that a prudent purchaser, through their respective agent(s), will take the necessary provisions to protect their interest for these outstanding amounts.

### 3. Interest Applicable on Deferred Fees

Given the required fees, as approved by County by-laws, are being recommended to be paid at times other than when they are normally due and payable, to avoid "bonusing" provisions under the *Municipal Act* and maintain equity for all developers, interest must be applied on deferred fees. Development charges are deposited into interest bearing reserve funds that accumulate compounded monthly interest. As such, it is recommended that the interest be compounded monthly based on the original deferred fees as well as the accumulated interest.

As the County collects development charges for future capital projects, if the applicable fees are not received when normally required, the County would need to "borrow" these funds to finance the underlying costs. Additionally, if the collection of DCs is delayed, there is also the potential that the relevant charges would be subject to annual indexing as allowed under the Act and the County's related

DC by-law. As noted above, the Act does not set any legal limits with respect to interest applicable on deferral of payments.

As such, it is recommended that the County adopt an applicable interest rate equal to the greater of:

- (a) the annual percentage change during the preceding year for the Non-Residential Building Construction Price Index for the Toronto area; or
- (b) the County's short term (5 year) borrowing costs used to fund DC related debenture costs plus 0.5%.

The additional 0.5 percentage reflects the lower effective rates under public debenture issuances and to cover legal and administrative costs associated with a debenture loan.

It is recommended that the interest compound monthly at the above noted applicable rate in place at the time of execution of the deferral agreement when the DC would have been otherwise payable.

Based on the above noted parameters, the current applicable rates, based on the greater of the two, would be as follows:

- (a) Non-Residential Building Construction Price Index for the Toronto area = **3.1%**
- (b) County's short term borrowing costs used to fund DC related debenture costs plus 0.5%= **1.84%**

*The 5 year serial rate is readily available from Infrastructure Ontario and reflects the estimated short term DC borrowing cost to the County.*

Based on current rates, interest would therefore be calculated monthly, at the 3.1% rate at the beginning of the month and would be applied to the principal and outstanding interest at that time.

As noted above, the Province made recent amendments to the Act to provide for certain mandatory deferrals. Additionally, the Province provided the ability to charge interest on these deferrals as approved by Council. As staff have not yet brought forward a report to Council to approve an interest rate on these mandatory deferrals, staff are recommending using the above noted interest provisions for these mandatory deferrals under sections 26.1 and 26.2 of the Act. A recommendation has been added to this report to this effect.

#### 4. Specific Agreements to Be Registered on Title and Annual Reporting Requirements

As noted above, the provisions recommended will require a legal agreement to be executed between the applicant and the County. This agreement will be registered on title and the registration will indicate the deferred development charge fees at the time of registration. This will ensure any interested parties reviewing the title to the applicable property would be aware of the liens associated with this agreement. Similar development charge deferral agreements are very lengthy and as a result, will require a review by the County's solicitor.

It is recommended that, at any time during the agreement, if the applicant no longer meets the eligibility requirements under the deferral program (e.g. housing tenure proposed to change) that all deferred fees and accumulated interest thereon will be immediately due and payable. This will ensure that, in the event that there are financial concerns over the repayment of these deferred fees, staff can react in a timely manner to recover the funds outstanding to the County.

#### Next Steps

Should the recommendations be approved by Council, staff will develop a detailed agreement which incorporates the above details relative to payment schedule and interest. This agreement will be reviewed with the developer and County solicitor and upon execution (signing by all parties) will be registered on title. It should be noted that the completion of this process will take approximately 2 to 3 weeks which would impact Edge's target of construction commencement within the next week. To address this, and given the current status of the building permit review, staff will be advancing with

issuance of footings and foundation permit (conditional permit) while final details relating to review of the architectural (building) plans are finalized. This will allow for the project to start within the planned timeframe. The 25% DC payment will be required at the time of issuance of the full building permit (i.e. that which covers the building itself) and not the footings and foundation permit.

Beyond the subject project, this report establishes a set of principles that can be applied to any future requests that consist of the following attributes:

- Extraordinary development challenges,
- Size of the development,
- Amount of DC's payable,
- Condominium structure, and
- Housing type and need not well represented.

While future requests would be considered on their own merit, applying these principles will ensure a level of consistency.

## **FINANCIAL/LEGAL IMPLICATIONS:**

It is anticipated that the proposed administrative fee of \$500 would cover the costs to review/administer the underlying agreement related to the recommended fees deferral. This fee is slightly less than the fee required under the current deferral policy but the scale of the project is less complex.

Staff have reviewed the proposed development and have determined the applicable development charges required at this time to be approximately \$1.36 million at the current rates. The actual development charges to be deferred will be determined at the time of building permit issuance. As the interest recommended under the proposed deferral incorporates any potential borrowing costs of the County and associated administrative costs, there are no relevant financial "bonusing" provisions to this development over any other similar type of development.

The registration of the agreement on title and priority lien collection status on any defaulted payments should also protect any security/default payment issues that may arise (although not anticipated at this time).

## **STAKEHOLDER IMPACTS:**

Not applicable.

## **REPORT IMPACTS:**

Agreement: Yes

By-law: No

Budget Amendment: No

Policy: No

## **ATTACHMENTS:**

None.