REPORT
Community Services, Programs & Initiatives

TO: **Mayor & Members of Council**

FROM: **Todd Davis, Director of Community Services, Programs & Initiatives**

DATE: **January 11, 2022**

REPORT: **CSP-01-2022**

SUBJECT: Development Charge Credits - "Tip of the Bay" Property, Picton Harbour

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EXECUTIVE SUMMARY:

In 2011, The Corporation of the County of Prince Edward (The County) entered into an agreement with a development group that owned the former "Tip of the Bay" property regarding $250,000 in Development Charge (DC) credits in exchange for constructing a section of boardwalk along Picton Harbour. This re-development / boardwalk project was ultimately cancelled by the developer and the property changed hands in 2017 to the current ownership. In Summer 2021, the new owner (Tenacity Capital) began construction of the boardwalk and has requested that the municipality provide the benefit valued at $250,000 once the boardwalk project is completed as per the conditions of the Memorandum of Understanding (MOU) registered to the property.

The purpose of this report is to provide Council with background information and a revised MOU that accurately reflects today's situation, as direction supported by the municipality's solicitor. Staff recommends that The County act in good faith by honouring the intents of original MOU agreement with a revised version that acknowledges the current property owner, makes the benefit to them more straightforward and maintains the primary property rights and responsibilities of the original agreement.

RECOMMENDATION:

1. **THAT** Council receive report CSP-01-2022; and

2. **THAT** Council direct the Mayor and Clerk to sign the Memorandum of Understanding (Attachment 1) between the municipality and Tenacity Capital PEC Inc. regarding the Picton Harbour Boardwalk; and

3. **THAT** Council direct staff to issue a payment of up to $250,000 to Tenacity Capital upon completion of the Picton Harbour boardwalk, to the satisfaction of the municipality.

ANALYSIS

In 2011, the municipality passed By-Law 2890-2011 (Attachment 2) to enter into an agreement to create public access to Picton Harbour through an easement across the shoreline of the "Tip of the Bay" property owned by a development group that included Sandbanks Homes Inc. The group planned to re-develop the property with condominium townhomes, commercial buildings and a waterfront boardwalk that required some land use planning work to be completed to facilitate the development plans. To fulfill the conditions of the consent application that created the easement, the property owners and the municipality had to establish a Memorandum of Understanding (MOU) (Attachment 3) that outlined a "front-ending" agreement where the Developer planned to undertake a capital project required by the municipality (boardwalk) in exchange for $250,000 in Development Charge (DC) credits for use in future developments by the development group.

The re-development of the "Tip of the Bay" property as proposed did not occur nor did the reconstruction of the boardwalk as per the MOU. As a result, the benefit of DC credits to the development group was not realized and the outcome of the MOU was not fulfilled. In 2017 the property ownership changed hands to the current owner, Tenacity Capital PEC Inc. (Tenacity), and they began the process of reconstructing the boardwalk to facilitate their Marina operations and honour the pre-existing MOU registered on title to the property. The installation of a public boardwalk with finger docks began in summer 2021 and the construction of the boardwalk is expected to be complete and operational in early spring 2022.

As part of the work with the Community and Economic Development Commission (CEDC) and its Picton Harbour task team, staff met with Tenacity and discussed the 2011 MOU. In its current form, the benefit to the property owner as a municipal contribution to the reconstruction project was to be DC credits that could be applied to DC's related to the property's redevelopment or other developments in the municipality. Tenacity is not a land development organization and has no use for DC credits as the municipal contribution to the project. In discussions they have inquired about receiving a financial contribution in lieu of the credits.

To confirm that changing the currency of compensation was legally possible considering the current MOU, staff sought legal advice from the County's solicitor. It was confirmed that the currency could be changed from DC credits to cash and was suggested that since the reconstruction is now taking place 10 years after the original MOU, it should be revisited to reflect the current ownership situation.

As a result, a revised MOU (Attachment 1) that removes the complexity of the current compensation structure is being recommended by staff. The original MOU is reflective of its function as a condition of consent requiring that the easement be registered on title to the property, outlining compensation, determining current and future property liability and maintenance responsibilities. Staff revisions have simplified the document since the required registrations have been confirmed and the new compensation structure is more straightforward. From the original agreement legal liability and future maintenance agreements remain untouched.

Once the boardwalk is complete, the municipality will take legal liability for it as it would any public park in the system. Ongoing short and long-term maintenance of the boardwalk will remain the responsibility of the property owner with the original conditions related to upkeep and municipal rights maintained.

Finally, in the event that the "Tip of the Bay" property is redeveloped by Tenacity, or any future owner at some point, the MOU acknowledges that the easement granted to the municipality would serve as any potential park land contribution required to support a development application. The redevelopment would be subject to DC's whose amounts would be calculated in full at the time of development based on the current rates.

OTHER OPTIONS CONSIDERED:

Staff explored the possibility of withholding the benefit or refusing to change the currency since the MOU does not address turnover in property owners and legally, the obligation to provide these funds to the new property owner could be questioned. Further the municipality has already received the easement or access to the boardwalk on title.

However, while not providing the funds would result in upfront financial savings, it does not eliminate the municipality's liability for the property and would likely result in the municipality having to assume the ongoing repairs, maintenance and long-term capital replacement costs associated with the boardwalk. Most importantly it would result in immeasurable damage to the relationship between the municipality and the property owner, as well as other property owners that surround Picton Harbour and could result in subsequent and ongoing legal proceedings.

CONSULTATION TO DATE:

- Amanda Carter, Director of Finance
- Jennifer Savini, Partner, Templeman, LLP
- Darryl Mast, Associate, Templeman LLP

FINANCIAL CONSIDERATIONS:

The original MOU agreed to provide $250,000 in DC credits to the former owner of the property in exchange for an easement that would welcome the public across the former "Tip of the Bay" property. In purchasing the property Tenacity has worked towards completing the commitment of the former property owner to install a boardwalk to the municipality's satisfaction.

As DC credits are normally provided to developers in exchange for assets, there would be no DC credit to be funded. However, the Tip of the Bay Boardwalk Easement is listed as a viable project for funding in the current Development Charges Background Study.

Staff are recommending that the municipality honour the spirit of the 2011 MOU and provide the $250,000 to Tenacity in lieu of DC credits. As illustrated in the table below the DC draw will be $170,812, which will require funding from the tax levy in the amount of $79,188. Further, it is recommended that these funds be pre-approved for inclusion in the 2022 budget so that the municipality can honour the 2011 agreement and close out our financial liability in this matter.

Prj.No	Increased Service Needs Attributable to Anticipated Development 2018-2027	Timing (year)	Gross Capital Cost Estimate (2018$)	Post Period Benefit	Net Capital Cost	Less:		Subtotal	Less:	Potential DC Recoverable Cost		
						Benefit to Existing Development	Grants, Subsidies and Other Contributions Attributable to New Development		Other (e.g. 10% Statutory Deduction)	Total	Residential Share 87%	Non-Residential Share 13%
1	Tip of the Bay Boardwalk Easement (municipal cost share)	2018-2027	250,000	60,209	189,791	-		189,791	18,979	170,812	148,606	22,206

RISKS:

RISK DESCRIPTION	RISK TYPE	PROPOSED MITIGATION
The public may be concerned that fulfilling the terms of the original MOU after 10 years to a new property owner would be granting something that was already credited to the previous owners.	Public	The original MOU had a trigger for the benefit to the property owner only after the new boardwalk was constructed. A new MOU maintains the same controls and staff can attest that no benefits were received under the terms of the original MOU to the previous property owners. This report and the proposed communications strategy will help to ensure that the conclusion of this project and the benefit provided to the property owner is both transparent and to the community's benefit.

CORPORATE STRATEGIC PRIORITY ALIGNMENT:

Infrastructure Renewal - Create a sustainable plan focused on maintaining core existing infrastructure and services.

- This section of boardwalk provides the municipality with a key piece of infrastructure that has been identified as a need across numerous studies and plans over numerous decades. The property owner is responsible for maintenance and upkeep of the boardwalk relieving pressure on municipal resources.

Livable Community - Foster an affordable, healthy, livable community for all.

- The development of this section of the boardwalk is helping to build a key piece of infrastructure that will provide public access to Picton Harbour waterfront for use by the community to use and enjoy.

COMMUNICATIONS:

Following direction from Council, staff will work directly with the property owner (Tenacity Capital) regarding next steps and the successful completion of the boardwalk project to the municipality's satisfaction. Once the project is complete, the municipality will make a public announcement and incorporate it into the communications related to the development of the Picton Harbour Trail.

ATTACHMENTS:

1. Revised 2021 - Tip of the Bay Boardwalk MOU
2. By-law 2890-2011- Tip of the Bay Boardwalk MOU
3. Original 2012 Tip of the Bay MOU Agreement

Authorizing Signatures:

Prepared by:	Todd Davis Director of Community Services, Programs & Initiatives	December 29, 2021
CAO Approval:	Marcia Wallace Chief Administrative Officer	January 5, 2022