



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Planning & Policy Division

TO:	Chair and Members Audit, Finance and Administration Committee
COMMITTEE DATE:	May 11, 2015
SUBJECT/REPORT NO:	Request Regarding Development Charge Deferral Agreement #122 (Countrywide Recycling Inc. at 900 Nebo Road) (FCS15038) (Ward 11) (Outstanding Business List Item)
WARD(S) AFFECTED:	Ward 11 (with City Wide Implications)
PREPARED BY:	Lindsay Gillies 905-546-2424 Ext. 2790
SUBMITTED BY:	Mike Zegarac General Manager Finance & Corporate Services Department
SIGNATURE:	

RECOMMENDATION

- (a) That the General Manager of Finance & Corporate Services be authorized to enter into a Development Charge Deferral Agreement in a form satisfactory to the City Solicitor which effectively extends Development Charge Deferral Agreement #122 according to the terms outlined in Appendix “A” to Report FCS15038; and
- (b) That “Development Charge Deferral Agreement #122 (Countrywide Recycling Inc. at 900 Nebo Road)” be considered complete and removed from the Audit, Finance and Administration Committee Outstanding Business List.

EXECUTIVE SUMMARY

At Council’s meeting of April 8, 2015, a motion was presented requesting that staff be directed to report back to the Audit, Finance and Administration Committee with a new Agreement to replace Development Charge (DC) Deferral Agreement #122 with a 5 year term based on the City’s existing external loan guidelines.

Staff cannot enter into a new agreement to replace DC Deferral Agreement #122 without Council approval. Therefore, this report requests authority for the General Manager of Finance & Corporate Services to enter into a new agreement with terms to be approved by Council.

DC Deferral Agreement #122, entered into on June 8, 2010 by 1778235 Ontario Inc. (Countrywide Recycling), required that interest accrue at the City’s 5 year serial

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debenture rate plus 0.25% (3.44%) compounded semi-annually, fixed for the 5 year term. There was no requirement for annual or other frequent payments. The entire amount plus interest was to be repaid within 5 years. The agreement expires on June 8, 2015.

Deferral Agreement #122 was originally set up for \$470,720.13 for the DC's assessed on the 70,784.98 square foot industrial recycling facility development.

DC's are set through a By-Law based on an approved DC background study. The DC's collected by the City fund growth related projects which are analysed through the DC background study. The DC background study is broken into categories such as roads, water, storm & wastewater services, and soft services such as library, recreation, and transit. The industrial rate which the City charges has always received a significant discount from the full non-residential rate that Council could impose under the results of the DC background study. At the time Deferral Agreement #122 was executed, the amount collected for industrial developments was \$6.65 per square foot versus the full non-residential rate of \$19.37 per square foot.

There is precedent for extending a DC Deferral Agreement by one year with a significant amount of the balance paid up front, which was set through Council's approval of Report FCS10028 at its meeting of April 28, 2010 in which a one year extension was provided for DC Deferral Agreement #99 (Upper James – Courtyard by Marriott Hotel).

Staff have reviewed the City's existing external loan guidelines (last updated through Appendix "A" to Report FCS06078(a)) and are of the opinion that they are not relevant in this case. The external loan guidelines are applicable to not-for-profit organizations applying for loans for a specific project. While the same rate laid out in the external loan guidelines (the 5, 10, or 15 year serial debenture rate which corresponds with the term of the agreement plus 0.25%) is used when entering into new DC Deferral Agreements, it is staff's opinion that an extension of an expired agreement should not receive the same favourable terms. By providing such an attractive rate there would be precedent for all other DC Deferral Agreement holders to request the same extension and therefore, there would be little incentive for DC Deferral Agreement holders to meet the obligations of their original agreement. If the DC Deferral Agreement were extended 5 years, as proposed through the motion, precedent would be set to effectively defer the DC liability 10 years with Council approval.

In order to balance the City's requirement for financial resources support development related activity while showing an understanding of the financial challenges facing the DC Deferral Agreement holder, staff are recommending an additional one year deferral with 40% of the balance due on the original due date with 12 equal monthly payments thereafter; as detailed in Appendix "A" to Report FCS15038. Staff are recommending that the interest be compounded monthly and that the rate be set at the 5 year serial

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debenture rate plus 2.25%. This rate is 2% higher than the rate charged for new DC Deferral Agreements which will provide an incentive for DC Deferral Agreement holders to meet the original agreement obligations while still extending a fair borrowing rate on the one year extension. Estimating using the April 2015, 5 year serial debenture rate of 1.29% the total rate applied would be 3.54%. The June 2015 rate will be used if staff's recommendation is approved.

Alternatives for Consideration – See Page 6

FINANCIAL – STAFFING – LEGAL IMPLICATIONS (for recommendation(s) only)

Financial:

Staff are recommending a one year extension of the agreement with 40% of the balance due at the original due date of June 8, 2015 followed by 12 equal monthly payments. This is consistent with the extension provided for DC Deferral Agreement #99 approved in 2010 through FCS10028.

Staff are recommending that the interest be compounded monthly and that the rate be set at the 5 year serial debenture rate plus 2.25%. This rate is 2% higher than the rate charged for new DC Deferral Agreements which will provide an incentive for DC Deferral Agreement holders to meet the original agreement obligations while still extending a fair borrowing rate on the one year extension. Estimating using the April 2015, 5 year serial debenture rate of 1.29% the total rate applied would be 3.54%. The June 2015 rate will be used if staff's recommendation is approved.

This recommendation is illustrated with the April interest rate in Appendix "A" to Report FCS15038.

Countrywide Recycling would be required to apply for a new DC Deferral Agreement and pay a \$750 DC Deferral Agreement Application fee in order to cover the administrative costs associated with entering into a new agreement. They would also be required to enter into a new DC Deferral Agreement in a form satisfactory to the City Solicitor and be responsible for the costs outlined in the agreement such as the cost of registering the agreement as a mortgage on the property.

Staffing: N/A

Legal:

A new agreement for the DC Deferral Agreement will need to be executed, and it will be required to be registered as a mortgage on the property.

DC Deferral Agreements are made with the property owner and contain provisions which would transfer any balance outstanding after the agreement expiry to the property tax roll. There are also other provisions within Deferral Agreements which would trigger the amount to be transferred to the property tax roll earlier such as the applicant declaring bankruptcy or a mortgage becoming enforceable against the property. Deferral Agreements are required to be registered against the property to protect the City in the event that a Deferral Agreement holder were to sell the property. By registering the agreement on the property, the property could not be transferred without the Deferral Agreement balance being cleared.

HISTORICAL BACKGROUND (Chronology of events)

On June 8, 2010, 1778235 Ontario Inc. (Countrywide Recycling) entered into Deferral Agreement #122 to defer the assessed Development Charges (DC's) of \$470,720.13 applicable to Countrywide Recycling's Recycling Centre at 900 Nebo Road.

The Deferral Agreement required that interest accrue at the City's 5 year serial debenture rate plus 0.25% (3.44%) compounded semi-annually, fixed for the 5 year term. There was no requirement for annual or other frequent payments. The entire amount plus interest was to be repaid within 5 years.

The City's 5 year serial debenture rate is communicated by RBC Capital Markets at the beginning of every month. The rate in effect the month that the agreement was entered into is fixed for the 5 year term.

Annual reminder notices were mailed to the applicant detailing the balance as at December 31 of each year and reminding the applicant that interest would continue to accrue until the expiration of June 8, 2015.

In March 2015 a notice of expiration was mailed detailing the final amount of \$558,246.85 that would be due, including all accrued interest, on June 8, 2015.

At Council's meeting of April 8, 2015, a motion was presented requesting that staff be directed to report back to the Audit, Finance and Administration Committee with a new Agreement to replace DC Deferral Agreement #122 with a 5 year term based on the City's existing external loan guidelines.

DC By-Law 14-153 (previously 09-143) permits the General Manager of Finance and Corporate Services to enter into a DC Deferral Agreement for a term not to exceed 5 years. Therefore, any extension past the original 5 year term requires Council approval. Countrywide Recycling's 5 year term on DC Deferral Agreement #122 expires on June 8, 2015.

There is precedent for extending a DC Deferral Agreement by one year with a significant amount of the balance paid up front which was set through Council's approval of FCS10028 at its meeting of April 28, 2010 in which a one year extension was provided for DC Deferral Agreement #99.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

DC By-Law 14-153 (previously 09-143) permits the General Manager of Finance and Corporate Services to enter into a DC Deferral Agreement for a term not to exceed 5 years. Therefore, any extension past the 5 year term would require Council approval. Countrywide Recycling's 5 year term on DC Deferral Agreement expires on June 8, 2015.

There is precedent for extending a DC Deferral Agreement by one year with a significant amount of the balance paid up front which was set through Council's approval of FCS10028 at its meeting of April 28, 2010 in which a one year extension was provided for DC Deferral Agreement #99.

RELEVANT CONSULTATION

None

ANALYSIS AND RATIONALE FOR RECOMMENDATION (Include Performance Measurement/Benchmarking Data if applicable)

The primary rationale for the staff recommendation is the need to balance the requirement for financial resources to support development related activity while showing an understanding of the financial challenges facing the DC Deferral Agreement holder.

If a precedent of an extension were to be set with monthly payments over 5 years at the rate the rate included in the City's external loan guidelines (5, 10, or 15 year serial debenture rate which corresponds with the term of the agreement plus 0.25%), which is also the rate that a new DC Deferral Agreement could be entered into, there would be little incentive for any DC Deferral Agreement holder to pay off their DC Deferral Agreement within the original terms.

In addition, past precedent exists through FCS10028 for extending an agreement by one year with a sizable amount due up front in a case where a developer expressed inability to pay the entire balance due on the original due date. The interest rate suggested by the staff recommendation is 2% higher than the rate charged for new DC

Deferral Agreements which will provide an incentive for DC Deferral Agreement holders to meet the original agreement obligations while still extending a fair borrowing rate on the one year extension. Estimating using the April 2015, 5 year serial debenture rate of 1.29% the total rate applied would be 3.54%. The June 2015 rate will be used if staff's recommendation is approved.

Limiting the extension to a one year term acknowledges the financial challenges facing Countrywide Recycling while ensuring that the City receives financial resources required to fund growth related projects on a timelier basis than the 5 year extension requested.

Appendix "A" to Report FCS15038 details the staff recommendation and includes a sample payment schedule.

Countrywide Recycling would be required to apply for a new DC Deferral Agreement and pay a \$750 DC Deferral Agreement Application fee in order to cover the administrative costs associated with entering into a new agreement. They would also be required to enter into a new DC Deferral Agreement in a form satisfactory to the City Solicitor and be responsible for the costs outlined in the agreement such as the cost of registering the agreement as a mortgage on the property.

ALTERNATIVES FOR CONSIDERATION

(Include Financial, Staffing, Legal and Policy Implications and Pros and Cons for each alternative)

Alternative 1: Provide a DC Deferral Agreement Extension for 5 years at the rate stipulated in the City's external loan guidelines.

This is the alternative suggested in the motion presented to Council at its meeting of April 8, 2015. Appendix "B" to Report FCS15038 details the financial aspect of a five year extension at the rate imposed on external loans to not-for-profit organizations provided by the City.

Countrywide Recycling would be required to apply for a new DC Deferral Agreement and pay a \$750 DC Deferral Agreement Application fee in order to cover the administrative costs associated with entering into a new agreement. They would also be required to enter into a new DC Deferral Agreement in a form satisfactory to the City Solicitor and be responsible for the costs outlined in the agreement such as the cost of registering the agreement as a mortgage on the property.

This alternative is not recommended by staff as it sets precedent for all other DC Deferral Agreement holders to extend their agreements by 5 years under very desirable terms. As detailed in Appendix "B" to Report FCS15038, the interest rate would be

approximately 1.54% using the April 2015, 5 year serial debenture rate. This rate is potentially lower than what the City could earn if the funds were maintained within the DC reserves (2014 Investment Rate was 2.394%). Further, not having the funds within the DC reserves limits the City’s ability to cash fund the growth related portion of eligible projects.

Alternative 2: Enforce the original agreement terms.

Under this alternative the amount due will be transferred to the property tax roll if payment is not received in full by the expiration date of June 8, 2015. The amount would then be collected in the same manner as property taxes in arrears.

A summary of these alternatives can be found in Table 1.

Table 1: Summary of Alternatives

Alternative #	Extension Term	Interest Rate (accrued monthly)	Pros and Cons
1. Provide a DC Deferral Agreement Extension for 5 years at the rate stipulated in the City’s external loan guidelines.	5 years	5 year serial debenture rate plus 0.25% (April = 1.29% + 0.25% = 1.54%)	<p>Pros</p> <ul style="list-style-type: none"> Provides financial relief to a developer <p>Cons</p> <ul style="list-style-type: none"> City does not receive funding at original due date Sets a very attractive precedent for all developers to request the same Extends terms of a DC Deferral Agreement to a maximum of 10 years with Council approval Same interest rate as a first term DC Deferral (no penalty for not upholding original agreement)
2. Enforce the original agreement terms	None	N/A	<p>Pros</p> <ul style="list-style-type: none"> Enforces original agreement terms May receive funding earlier than staff recommendation or Alternative 1 <p>Cons</p> <ul style="list-style-type: none"> Developer not provided any relief Penalties and interest would be charged as property taxes in arrears which would place even more financial pressure on developer

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

- 1.2 Continue to prioritize capital infrastructure projects to support managed growth and optimize community benefit.
- 1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

Strategic Priority #2

Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

Strategic Objective

- 2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.
- 2.3 Enhance customer service satisfaction.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report FCS15038: Staff Recommendation: Provide a DC Deferral Agreement Extension for 1 year with 40% due on original due date and interest at the City’s 5 year serial debenture rate plus 2.25%.

Appendix “B” to Report FCS15038: Alternative 1: Provide a DC Deferral Agreement Extension for 5 years at the rate stipulated in the City’s external loan guidelines