



**CITY OF HAMILTON**  
**CORPORATE SERVICES DEPARTMENT**  
*Financial Planning, Administration and Policy Division*

<b>TO:</b>	Chair and Members Audit, Finance and Administration Committee
<b>COMMITTEE DATE:</b>	June 12, 2017
<b>SUBJECT/REPORT NO:</b>	Development Charge Deferral Agreement #148 – One Year Extension Request – 41 Bittern Street (FCS17062) (City Wide) (Outstanding Business List Item)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Samantha Blackley (905) 546-2424 Ext. 2132 Lindsay Gillies (905) 546-2424 Ext. 2790
<b>SUBMITTED BY:</b>	Brian McMullen Director of Financial Planning, Administration and Policy Corporate Services Department
<b>SIGNATURE:</b>	

**RECOMMENDATIONS**

- (a) That the General Manager of Finance and 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 #148 according to the terms outlined in Appendix “B” to Report FCS17062;
- (b) That “Development Charge (DC) Deferral Agreement #148 (Activation Laboratories Ltd. at 41 Bittern)” be considered complete and removed from the Audit, Finance and Administration Committee Outstanding Business List.

**EXECUTIVE SUMMARY**

At Council’s meeting on April 26, 2017, a letter was received as Item 5.7 from Michael Hoffman, VP, Finance and Operations of Activation Laboratories requesting a year extension to Development Charges for Deferral Agreement #148, located at 41 Bittern Street, Ancaster. In the letter, attached as Appendix “A” to Report FCS17062, Mr. Hoffman states that due to the 67% decrease in spending in the mining industry, price wars have occurred leading to a significant decrease in revenue and making the company unable to meet their agreement deadline.

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Mr. Hoffman has proposed a payment plan, which \$454,188.31 would be paid on June 25, 2017 with the remaining balance to be deferred for one year at the City's borrowing rate of 2.25%. Council directed staff to report back to the Audit, Finance and Administration Committee.

Development Charge (DC) Deferral Agreement #148 was entered into on June 12, 2012 by 2226776 Ontario Ltd. The interest was to be accrued and compounded semi-annually at the City's five-year serial debenture rate plus 0.25% (2.22%) for the five-year term. The entire amount plus interest was to be repaid within this term. On March 27, 2017 a notice of expiration was mailed detailing the final amount of \$908,376.62 that would be due, including all accrued interest on June 25, 2017.

There is precedent for extending a DC Deferral Agreement by one year with a significant amount of the balance paid up front, through Council's approval of Report FCS10028 on April 28, 2010 for DC Deferral Agreement #99. Since then, three other deferral agreements have been approved for an extension, Report FCS15038 on May 11, 2015 for Deferral Agreement #122 (900 Nebo Road), as well as Reports FCS15086 and FCS15087 on November 23, 2015 for Deferral Agreements #114 (1520 Stone Church Road) and #129 (44 Ditton Drive).

In order to balance the City's requirement for financial resources to support development related activity while understanding the financial challenges facing the DC Deferral Agreement holder, staff is recommending a one year extension with a payment of \$454,188.31 due by the original expiry of June 25, 2017. Monthly payments of \$39,000 will follow until the balance is paid as detailed in Appendix "B" to Report FCS17062. It is also recommended that the interest be compounded monthly and that the rate be set at the current five-year serial debenture rate plus 2.25%, which includes our 0.25% administration fee.

Estimating using the May 2017 five-year serial debenture rate of 1.73%, the total rate applied would be 3.98%. The June 2017 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 is recommending a one-year extension of the agreement with 50% of the balance due at the original expiry of June 25, 2017 followed by equal monthly payment of \$39,000 until the balance is paid. This is a similar extension structure given to deferral agreements in the past.

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The interest is recommended to be compounded monthly and be set at the five-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. The payment schedule has been estimated using the May 2017, five-year serial debenture rate of 1.73%, with the total rate applied being 3.98%. If staff's recommendation is approved, the June rate will be used.

This recommendation is illustrated with the May interest rate in Appendix "B" to Report FCS17062.

Activation Laboratories Ltd. 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 owners 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 was 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**

On June 12, 2012, 2226776 Ontario Ltd. entered into Deferral Agreement #148 to defer the assessed DCs of \$813,538.24 applicable to Activation Laboratories Ltd. at 41 Bittern Street.

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The Deferral Agreement required that interest accrue at the City's five-year serial debenture rate plus 0.25% (2.22%) compounded semi-annually, fixed for the five-year term. There was no requirement for annual or other frequent payments. The entire amount plus interest was to be repaid within five years.

The City's five-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 five-year term. In March 2017, a notice of expiration was mailed detailing the final amount of \$908,376.62 that would be due, including all accrued interest on June 25, 2017.

At Council's meeting on April 26, 2017, a letter was received as item 5.7 from Michael Hoffman, VP, Finance and Operations of Activation Laboratories requesting a year extension to Development Charges for Deferral Agreement #148 located at 41 Bittern Street, Ancaster.

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 five years. Therefore, any extension past the original five-year term requires Council approval.

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 on April 28, 2010 for DC Deferral Agreement #99. Since then, three other deferral agreements have been approved for an extension, Report FCS15038 on May 11, 2015 for Deferral Agreement #122 (900 Nebo Road), as well as Reports FCS15086 and FCS15087 on November 23, 2015 for Deferral Agreements #114 (1520 Stone Church Road) and #129 (44 Ditton Drive).

## **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 five years. Therefore, any extension past the five-year term would require Council approval. The five-year term on DC Deferral Agreement for Activation Laboratories Ltd. expires on June 25, 2017.

There are precedents for extending a DC Deferral Agreement with a significant amount of the balance paid up front which was set through Council's approval of Reports FCS10028, FCS15038, FCS15086 and FCS15087 in which an extension was provided for these DC Deferral Agreements.

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## **RELEVANT CONSULTATION**

None

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

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.

After reviewing the letter as well as the latest financial statements, staff was able to corroborate the financial struggles of the company. In order to balance the City's requirement for financial resources to support development related activity while understanding the financial challenges facing the DC Deferral Agreement holder, staff is recommending a one year extension with a payment of \$454,188.31 due by the original expiry of June 25, 2017. Monthly payments of \$39,000 will follow until the balance is paid as detailed in Appendix "B" to Report FCS17062.

Past precedent exists through Reports FCS10028, FCS15038, FCS15086 and FCS15087 for extending an agreement 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. The May 2017, five-year serial debenture rate of 1.73% was used for the repayment illustration with the total rate applied being 3.98%. The June 2017 rate will be used if staff's recommendation is approved.

Limiting the extension to a one-year term acknowledges the financial challenges facing Activation Laboratories Ltd. while ensuring that the City receives financial resources required to fund growth related projects. Appendix "B" to Report FCS17062 details the staff recommendation and includes a sample payment schedule.

Activation Laboratories Ltd. 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.

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## **ALTERNATIVES FOR CONSIDERATION**

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 25, 2017. The amount would then be collected in the same manner as property taxes in arrears.

### **Pros**

- Enforces original agreement terms
- May receive funding earlier than staff recommendation

### **Cons**

- Developer has demonstrated financial struggles and enforcement would only add to those struggles
- Penalties and interest would be charged as property taxes in arrears which would place more financial pressure on the developer

## **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

### **Community Engagement & Participation**

*Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.*

### **Economic Prosperity and Growth**

*Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.*

### **Built Environment and Infrastructure**

*Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.*

## **APPENDICES AND SCHEDULES ATTACHED**

Appendix “A” – Request of a New Payment Plan of the Development Charges Deferral Agreement #148 for Activation Laboratories Ltd. at 41 Bittern Street (April 26, 2017 Council)

Appendix “B” – Staff Recommendation: Provide a DC Deferral Agreement Extension for one year with 50% due on original due date and interest at the City’s five-year serial debenture rate plus 2.25%

SB/dt