



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

TO:	Chair and Members Audit, Finance and Administration Committee
COMMITTEE DATE:	March 26, 2018
SUBJECT/REPORT NO:	Request for Extension, Development Charge Deferral Agreement #149, 35 Upper Centennial Parkway (FCS18033) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Lindsay Gillies (905) 546-2424 Ext. 2790
SUBMITTED BY:	Brian McMullen Director, Financial Planning, Administration and Policy Corporate Services Department
SIGNATURE:	

RECOMMENDATIONS

- (a) That the General Manager of Finance and Corporate Services be authorized to enter into a Forbearance Agreement in a form satisfactory to the City Solicitor, which effectively extends Development Charge Deferral Agreement #149 according to the terms outlined in Appendix "B" to Report FCS18033;
- (b) That the interest accumulated on Development Charge Deferral Agreement #149 while the balance was held by Accounts Receivable be reversed and the interest to date, as calculated in Appendix "B" to Report FCS18033, be recorded and allocated to the Development Charge Reserves;
- (c) That "Request for Extension, Development Charge (DC) Deferral Agreement #149, 35 Upper Centennial Parkway" be considered complete and removed from the Audit, Finance and Administration Committee Outstanding Business List.

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EXECUTIVE SUMMARY

Council, at its meeting of December 8, 2017, received a letter as Item 5.7 from Fausto Carnicelli of 2266793 Ontario Ltd. requesting an extension for Development Charge (DC) Deferral Agreement #149, located at 35 Upper Centennial Parkway. This property is commonly known as the Southmount Healthcare Centre. The letter states that due to a change in how the Ontario Ministry of Health and Long-Term Care (MOHLTC) redefined the underserved area of Hamilton, the Southmount Healthcare Centre has been unable to achieve occupancy targets and therefore is unable to meet the agreement deadline.

Mr. Carnicelli has proposed a payment plan, which would see payments commencing March 22, 2018 with the final payment on October 22, 2018, interest to be calculated.

Council directed staff to report back to the Audit, Finance & Administration Committee.

DC Deferral Agreement #149, was entered into on July 24, 2012 by 2266793 Ontario Ltd. The interest was to be accrued and compounded semi-annually at the City's five-year serial debenture rate plus 0.25% (2.39%) for the five-year term. The entire amount plus interest was to be repaid within this term. On May 26, 2017, a notice of expiration was mailed detailing the final amount of \$1,357,599.36 that would be due, including all accrued interest, on August 13, 2017.

There is precedent for extending DC Deferral Agreements. Most recently, in June 2017, through the approval of Report FCS17062 which provided a one-year extension for 41 Bittern (Activation Laboratories). Historically, staff has recommended a large lump sum being required up front. The owner has communicated that a lump sum requirement would not be able to be met and would effectively put any agreement requiring a similar payment in default.

In order to balance the City's requirement for financial resources to support development related activity while recognizing the financial challenges facing the DC Deferral Agreement holder, staff is recommending a modified version of the owner's requested payment schedule as detailed in Appendix "B" to Report FCS18033. Included in the recommended repayment schedule is that interest be compounded monthly with the payment date and that the rate be set at the August 2017 five-year serial debenture rate plus 2.25%, which includes a 0.25% administration fee.

Alternatives for Consideration – See Page 5

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FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Staff is recommending the payment schedule requested by the owner in Appendix “A” to Report FCS18033 adjusted for interest. This structure is slightly different than previous extensions of DC Deferral Agreements recommended by staff in terms of length and the payment amount. Historically, a lump sum payment followed by equal monthly payments has been recommended over one year. In this case, the payments increase over throughout the 14 month period.

Note that the recommended schedule starts with the balance at expiry whereas the letter attached as Appendix “A” to Report FCS18033 uses a balance including interest accumulated while with the City’s Accounts Receivable Section of the Corporate Services Department. Staff recommend backdating the interest to the expiration date using the August 2017 five-year serial debenture rate plus 2.25% (including 0.25% administrative fee) which is consistent with previous extensions of DC Deferral Agreements.

The interest is recommended to be compounded monthly with the payment date and be set at the August 2017 five-year serial debenture rate plus 2.25% for an applicable rate of 4.34%. This rate is 2% higher than the rate charged for new DC Deferral Agreements at the August 2017 expiry.

This recommendation is illustrated in Appendix “B” to Report FCS18033.

Staffing: None.

Legal: Southmount Healthcare Centre has agreed to the payment terms as illustrated in Appendix “B” to Report FCS18033 via a drafted Forbearance Agreement in a form satisfactory to the City Solicitor and will be responsible for the costs outlined in the Agreement such as the cost of registering the Agreement as a mortgage on the property.

The Agreement will be registered as a mortgage on the property and contains provisions which, in the event of default, would transfer any balance outstanding to the property tax roll. By registering the Agreement on the property, the property could not be transferred without the Agreement balance being cleared.

HISTORICAL BACKGROUND

On July 24, 2012, 2266793 Ontario Ltd. entered into Deferral Agreement #149 to defer the assessed DCs of \$1,205,460.52 applicable to the Southmount Healthcare Centre at 35 Upper Centennial Parkway.

The Deferral Agreement required that interest accrue at the City's five-year serial debenture rate plus 0.25% (2.39%) 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 May 2017, a notice of expiration was mailed detailing the final amount of \$1,357,599.36 that would be due, including all accrued interest, on August 13, 2017. On August 2, 2017 the owner connected with City staff to advise that payment would be forthcoming shortly after the expiration. Staff advised that the transfer to tax roll would be delayed in anticipation of collection.

In September 2017, 2266793 Ontario Ltd advised that payment would arrive mid October. In October 2017, no payment had been received and staff advised that any extension is required to be authorized by Council or the balance is required to be transferred to the tax roll.

At Council's meeting on December 8, 2017, a letter was received as Item 5.7 from Fausto Carnicelli of 2266793 Ontario Ltd. requesting an extension for Development Charges (DC) Deferral Agreement # 149, located at 35 Upper Centennial Parkway.

In January 2018, Finance staff consulted with the City Legal Services Division and a Forbearance Agreement was recommended. A legal demand letter was mailed February 1, 2018 with the payment terms illustrated in Appendix B to Report FCS18033. Southmount Healthcare Centre has agreed to the terms and authority for staff to execute the Forbearance Agreement is being requested through recommendation (a) of this Report.

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 requires Council approval.

The Southmount Healthcare Centre's five-year term on the DC Deferral Agreement expired on August 13, 2017.

Council has previously approved extensions of DC Deferral Agreements, most recently in June 2017, through the approval of Report FCS17062 which provided a one-year extension for 41 Bittern (Activation Laboratories).

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RELEVANT CONSULTATION

The City Legal Services Division was consulted and advised on best practices to handle this request. Finance staff agreed with and followed the recommendations.

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, researching changes to the Ministry of Health and Long-Term Care and the some financial data, staff was able to corroborate the industry changes and financial struggles of the company. Staff is recommending an extension to October 22, 2018 as detailed in Appendix “B” to Report FCS18033.

Limiting the extension to a 14-month term acknowledges the financial challenges facing the Southmount Healthcare Centre while ensuring that the City receives financial resources required to fund growth-related projects.

Appendix “B” to Report FCS18033 details the staff recommendation and includes the proposed payment schedule.

ALTERNATIVE FOR CONSIDERATION

Enforce the original agreement terms.

Under this alternative, the Forbearance Agreement will not be executed by the City and the amount due plus interest accumulated with Accounts Receivable will be transferred to the property tax roll immediately. 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 even more financial pressure on 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.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” – Request for Extension, Development Charges Deferral Agreement #149, 35 Upper Centennial Parkway (December 8, 2017 Council)

Appendix “B” – Staff Recommendation: Provide a DC Deferral Agreement Extension to October 22, 2018 and interest at the City’s five-year serial debenture rate plus 2.25%

LG/dt