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DEVELOPMENT CHARGE EXEMPTION/DEFERRAL REQUEST DONGARA PELLET PLANT

The Finance and Administration Committee recommends the deferral of the following report, September 29, 2008, from the Commissioner of Finance:

1. RECOMMENDATIONS

It is recommended that:

1. The request from Dongara Pellet Plant LP for exemption from payment of development charges as a municipal capital facility be denied.

2. A deferral of regional development charges be considered but be limited to the percentage of the plant capacity for which the Region has contracted and be subject to the conditions outlined in this report.

3. The Region enter into an agreement with Dongara Pellet Plant LP setting out the terms of the deferral, subject to approval of the Commissioner of Finance and Regional Solicitor.

4. The Regional Chair and Regional Clerk be authorized to execute the agreement.

2. PURPOSE

To consider a request from Dongara Pellet Plant LP for the exemption from development charges for the Dongara Pellet Plant under the municipal capital facilities provision of the Municipal Act.

3. BACKGROUND

The Dongara Pellet Plant LP has requested an exemption for all or part of the development fees that were collected for the development of the facility at 407ETR and Highway 27 in the City of Vaughan.

York Region has contracted with the Dongara plant to provide waste management services for 100,000 tonnes of residual waste annually. The plant is currently in service demonstration mode and should soon be providing the contracted service. The Region is contracting for approximately 50% of the capacity of the plant under a ten year contract.

The owner had applied for development charge relief at the time of construction on the basis of a miscalculation of the charge. This was reviewed by staff and the owner was advised that an error had not been made. Subsequently, the firm requested consideration for exemption as a municipal capital facility under the Municipal Act. A copy their request is attached (Council Attachment 1).

4. ANALYSIS AND OPTIONS

Section 110 of the Municipal Act allows for the creation of a municipal capital facility and this type of project is eligible under the definitions. The specific conditions that need to be met under the Act related to development charges are detailed in Section 110 (7) which states:

> *Despite the Development Charges Act, 1997, the council of a municipality may exempt from the payment of all or part of the development charges imposed by the municipality under that Act land or a portion of it on which municipal capital facilities are or will be located that,*
>
> *(a) is the subject of an agreement under subsection (1);*
>
> *(b) is owned or leased by a person who has entered an agreement to provide facilities under subsection (1); and*
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> *(c) is entirely occupied and used or intended for use for a service or function that may be provided by a municipality. 2006, c. 19, Sched. O, s. 3 (2).*

Regulation 603/06 Section 2 (1) defines the services that qualify for possible exemption and they include “7. Municipal facilities for the collection and management of waste and garbage”. The facility would meet the required definition as an eligible municipal service.

The City of Vaughan owns the land on which the facility is located and has leased it to Dongara for a period of 20 years with two optional five year extensions. Staff believe the land ownership differentiates this facility from others with whom the Region may have operating agreements in that it is a municipal facility on municipally owned land.

This application meets the definition of the legislation and would be eligible for consideration. Notwithstanding the fact it meets the definitional requirements, staff are not recommending a full exemption since the plant is not fully used for municipal purposes. However, given the unique nature of the purpose and ownership of the facility and land, Council may wish to consider entering into a deferral agreement for a portion of the Regional development charges for the facility.

The reason for such consideration is that the Region will utilize a portion of the facility and that the regional contract does not extend for the full life of the facility. Therefore, an exemption of this facility could potentially result in an exemption of Regional development charges for a facility that is fully private.

If a deferral of Regional development charges is considered, staff would suggest the following conditions be applied:

1. Deferral would be limited to the percentage of the plant capacity for which the Region has contracted;
2. The agreement be registered on title;
3. In accordance with the terms of the contract the deferral would be executed only after the Region is actively and successfully using the facility;
4. The deferred charges would become payable upon any change in use or ownership;
5. The deferred charges would become payable on the expiry or termination of the Region's contract with the facility for any reason;
6. Should the Region's capacity usage of the facility drop below it's existing percentage that portion of the deferred development charges would become payable immediately;
7. Confirmation by the City of Vaughan that the land and building ownership reverts to the City at the end of the lease;
8. At the time of reversion of ownership to the City of Vaughan if the deferral agreement is still in place it be removed from title;
9. The proponent pay for the costs of preparing and registering the necessary agreement(s).

5. FINANCIAL IMPLICATIONS

The regional development charges related to this facility are $436,444.83. In addition, local and school board development charges were also paid but are not part of any consideration for exemption or deferral as the municipality and school board would need to decide individually.

If a deferral is approved 50% or approximately $218,222.42 of the charges which have been paid would be refunded and set up as a deferral.

6. LOCAL MUNICIPAL IMPACT

There are no direct local implications as this report deals only with the regional development charge portion since the service is regional.

7. CONCLUSION

The Dongara Pellet Plant, which is constructed on land owned by the City of Vaughan, is intended to be used at least partially for the processing of regional residual waste. As such it provides a municipal service. The term of it providing municipal service, however, is not necessarily equal to the life of the facility. Accordingly, exemption of development charges is not recommended but consideration of a deferral of the portion related to the Region's use of the facility could be considered for deferral for as long as the facility is used by the Region.

For more information on this report, please contact Lloyd Russell, Commissioner of Finance Ext. 1600.

The Senior Management Group has reviewed this report.