

## **Development Charge Transfer of Credits**

Presented To:	Planning Committee
Meeting Date:	September 26, 2022
Type:	Managers' Reports
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Recommended by:	General Manager of Growth and Infrastructure

## **Report Summary**

This report provides a recommendation to amend the current Front Ending / Development Charge Credit Agreement with 1721169 Ontario Inc. for the construction of Silver Hills Drive from the Kingsway to Marcus Drive to facilitate development charge credit transfers as requested by 1721169 Ontario Inc..

## **Resolution**

THAT the City of Greater Sudbury authorizes the General Manager of Growth and Infrastructure to amend the Front Ending /Development Charge Credit Agreement with 1721169 Ontario Inc. as outlined in the report entitled, "Development Charge Transfer of Credits" from the General Manager of Growth and Infrastructure, presented at the Planning Committee meeting on September 26, 2022.

## **Relationship to the Strategic Plan, Health Impact Assessment and Community Energy & Emissions Plan (CEEP)**

The recommendation is consistent with Council's Strategic Plan. Specifically, the goal of Business Attraction, Development and Retention which prioritizes the management of development fees to make Greater Sudbury a competitive place to establish or grow a business.

The recommended amendment provides flexibility to maximize the use of infrastructure investment by the City, which is consistent with achieving energy efficiency and emissions reductions by creating compact, complete communities.

## **Financial Implications**

The amendment to the 2012 Front Ending / Development Charge Credit Agreement will permit the transfer of remaining development charge credits of \$772,703 to third parties relating to land once owned by 1721169 Ontario Inc. or one of its related companies in addition to successors and companies related to 1721169 Ontario Inc. with whom the Agreement was executed. There will be no change in the overall amount of Development Charge Credit accumulated or used.

The transfer of DC credits to the third party would reduce the development charges collected for the road portion at the building permit issuance stage. It would reduce the DC's collected by the City for these future

building permits. Where 1721169 Ontario Inc. and a third party agrees to DC credit transfer, both parties would have separate agreement for compensation to 1721169 Ontario Inc. The City will not be paying 1721169 Ontario Inc. for the amount of DC credits transferred to a third party.

The only exception is for three properties within the Westhill Court Subdivision where a DC credit can be issued as a refund of approximately \$75,000 if both parties agree that a DC credit can be issued to 1721169 Ontario Inc. These refunds will be funded from the Development Charges Reserve Fund – Roads.

## **Background**

The *Development Charges Act*, provides that municipalities in which a development charge by-law is in force may enter into front-ending / development charge agreements that relate to the provision of service for which there will be an increased need as a result of development and will benefit an area of the municipality as defined in the agreement. On October 18, 2011, a report was presented to Planning Committee which authorized entering into such an agreement for work on Silver Hills Drive in Sudbury.

On May 25<sup>th</sup>, 2012, a Front Ending Agreement / Development Charge Credit Agreement was entered into between the City of Greater Sudbury and 1721169 Ontario Inc (the “Company”). The work described in the agreement consisted of the design, construction, and installation of a road from Kingsway to Marcus Drive and from Marcus Drive to the southerly limit of Lot 1, M-1373, the intersection improvements on the Kingsway and sidewalk on both sides of the road and storm sewer (in accordance with the Servicing Agreement and Schedule A of the Agreement). Those works are eligible for Development Charge Credits which can be given in exchange for work that relates to Services for which a Development Charge is imposed under the Development Charges By-law.

The work has been completed to the satisfaction of the City. However, because 1721169 Ontario Inc. is not the developer of the lots around Silver Hills there is no mechanism for this company to use the remaining DC credits of \$772,703 that it received for undertaking the works as contemplated in the current agreement.

The Company is now requesting that the 2012 agreement be amended to allow the credits to be transferred to other lands owned by the Company (Westhill Court subdivision in the Walden Industrial Park), and to current and future third parties who would purchase and develop these properties. It is also proposed that the amendment to the agreement would allow transfers to other developments should the developments within the Westhill Court Subdivision not be sufficient to re-coup the credits accumulated by 1721169 Ontario Inc. and also for the issuance of credits (in the form of refunds) for development charges that have already been paid in the Westhill Court Subdivision on three properties of approximately \$75,000. The transferring of credits is permitted under the Development Charges Act, but not under the current agreement. Without amending the agreement, 1721169 Ontario Inc. would not be able to recoup the credits that are owed for the construction of the Silver Hills Drive and Kingsway improvements.

The proposed amendments to allow the transfer of credits will not change the overall amount of credit accumulated or used.

## **Legislative and Policy Framework**

The Greater Sudbury Development Charges By-law, 2019-100, allows for the provision of Credit for Service against all or part of a development charge, provided that no such credit exceeds the total Development Charges otherwise payable.

In this case, the current Front Ending / Development Charge Credit Agreement restricts the ability to transfer credits to any entity other than a successor in title, a company related to 1721169 Ontario Inc. An amendment would be required to enable transfer of credit to third parties (e.g., purchasers of lots with the Westhill Court development or other lands that 1721169 Ontario Inc. develops).

Sections 38 through 41 of the Development Charges Act pertain to Credits for Works, transfer of Credit and Use of a Credit. An excerpt from Section 40 of the Development Charge Act is provided below:

- 40(1) A credit may not be transferred unless,
- a) the holder and person to whom the credit is to be transferred have agreed in writing to the transfer; and
  - b) The municipality has agreed to the transfer, either in the agreement under which the holder of the credit was given the credit or subsequently.
- (2) The transfer of a credit is not effective until the municipality transfers it.
- (3) A municipality shall transfer a credit upon being requested to do so by the holder, the person to whom the credit is to be transferred or the agent of either of them and being given proof that the conditions in subsection (1) are satisfied.

Therefore, the Development Charges Act would permit an amendment to the current Agreement to allow the transfer of Credits to a third party provided that the municipality has agreed to the transfer and that both the holder of the credit and the person to whom the credit is to be transferred have agreed in writing to the transfer.

The transferred DC credit for the roads portion would be used by the party receiving the DC credit from the Company to reduce development charges owing before a building permit is issued, where both parties have agreed to the transfer. It would be up to the Company to obtain compensation from the third party. The DC credit would not be paid directly to the Company from the City for buildings constructed by third parties on land once owned by the Company.

## Summary

1721169 Ontario Inc. has made a request to amend the current agreement in order to transfer Development Charge Credits. The DC Act allows for this, however the 2012 Front Ending Agreement / Development Charge Agreement does not. To facilitate the transfer of credits the agreement must be amended. This report seeks direction to permit staff to amend the agreement to allow transfers to third parties, remove the restriction of lands to which the credits can be transferred to and allow for transfer of credit to reduce development charges (for the roads portion) at time of building permit issuance provided that both the transferor and the transferee are in agreement. Also, this change will allow retroactive refunds of approximately \$75,000 to the Company for three buildings constructed on land once owned by the Company where both parties are in agreement.

## Resources Cited

1. Development Charges By-law 2019-100, <https://www.greatersudbury.ca/live/building-and-renovating/development-charges/development-charges-pdfs/by-law-2019-100/>
2. Development Charges Act, 1997, S.O. 1997, c.27 <https://www.ontario.ca/laws/statute/97d27>
3. Request for Front Ending Agreement respecting road, storm and sanitary sewer construction on part of Lot 1, Concession 4, McKim Township – 1721169 Ontario Inc, October 18, 2011 <https://pub-greatersudbury.escrimemeetings.com/FileStream.ashx?DocumentId=35623>