



To: SPECIAL COUNCIL (STATUTORY PUBLIC MEETING)

Meeting Date: 12/13/2022

Subject: Update and Revised Information - Cambridge and North Dumfries Energy Plus Inc. (“Energy Plus”) and Brantford Power Inc. (“BPI”) Merger Participation Agreement – Closing Adjustment Documents and Share Redemption

Submitted By: David Calder, City Manager

Prepared By: David Calder, City Manager

Report No.: 22-034-OCM

File No.: C1101

Wards Affected: All Wards

RECOMMENDATION(S):

THAT Report No. 22-034-OCM Update and Revised Information - Cambridge and North Dumfries Energy Plus Inc. (“Energy Plus”) and Brantford Power Inc. (“BPI”) Merger Participation Agreement – Closing Adjustment Documents and Share Redemption be received;

AND THAT the Resolution as adopted by Council at their meeting of September 27th, 2022 be rescinded;

AND THAT the Mayor and Clerk be authorized to execute the Notice of Redemption (as those terms are defined in Section 2.6 of the duly executed Merger Participation Agreement – Attached as Appendix “C”) to redeem 921 Class A Special Shares from GrandBridge Corporation for the retraction price of \$203 per share for a total valuation of \$186,963;

AND FURTHER THAT upon receipt of the funds through the Notice of Redemption that the Chief Financial Officer be authorized to transfer the amount of \$186,963 to the Hydro Dividend Stabilization Reserve Fund.

EXECUTIVE SUMMARY:

Purpose

The Purpose of this Report is to update Council on matters pertaining to the close out of the former Cambridge and North Dumfries Energy Plus Inc. (“Energy Plus”) and Brantford Power Inc. (“BPI”) and to provide the appropriate direction to facilitate the Notice of Redemption Class A Special Shares from GrandBridge Corporation.

Key Findings

N/A

Financial Impact

The Notice of Redemption of the Class A Special Shares and the associated revenue did not form part of the 2022 Budget. As such, direction is required from Council to the Chief Financial Officer as to how to proceed forward in this regard.

It is Staff’s Recommendation that the funds received through the transfer of the Class A Special Shares be applied to the Hydro Dividend Stabilization Reserve Fund. Funds in this Reserve are applied to finance future Capital Projects contained within the 10 Year Capital Program.

STRATEGIC ALIGNMENT:

- Strategic Action; or
- Core Service

Objective(s): Not Applicable

Strategic Action: Not Applicable

Program: Not Applicable

Core Service: Not Applicable

BACKGROUND:

City Council at the September 27th, 2022 Regular Council Meeting received City Manager Report No. 22-031-OCM – attached as Appendix “B”. This Report provided information and recommendations pertaining to the year end and close out of operations pertaining to the former Cambridge and North Dumfries Energy Plus Inc. (“Energy Plus”) and Brantford Power Inc. (“BPI”). Arising from the consideration of the Staff Report, Council adopted the following Resolution:

THAT Report No 22-031-OCM Cambridge and North Dumfries Energy Plus inc. (“Energy Plus”) and Brantford Power Inc. (BPI) Merger Participation Agreement – Closing Adjustment Documents be received;

AND THAT no objection be given to the City of Brantford with respect to the Brantford Closing Financial Statements, the reports of the auditor thereon, and the Tallgrass Appraisal (as those terms are defined in the Merger Participation Agreement), prepared in accordance with Section 2.4(a) of the duly executed Merger Participation Agreement, resulting in the payment of a special dividend payable to the City of Brantford in the amount of approximately \$125,000 as a result of the applicable calculation of adjustments to closing valuations (the “Closing Valuations”) of Energy Plus and BPI pursuant to Section 2.5 of the Merger Participation Agreement (set out in a letter dated August 29, 2022 by GrandBridge Corporation to its shareholders, with attachments, as revised pursuant to a letter dated September 20, 2022), it being understood that the Brantford Closing Financial Statements, the reports of the auditor thereon, and the Tallgrass Appraisal shall be deemed to have been approved in the absence of such objection by City of Cambridge and the Township of North Dumfries;

AND THAT, in respect of the submission for consideration by GrandBridge Corporation of a further adjustment to the Closing Valuations with respect to certain write-offs of deferred financing costs related to BPI’s credit facility, City Council has received such submission and considers that no changes to the adjustment set out in paragraph 2 above result therefrom;

AND FURTHER THAT the Board of Directors of GrandBridge Corporation and the Council of the Township of North Dumfries, in their capacity as a shareholder in the former Energy Plus and now a shareholder of GrandBridge Corporation, be circulated a copy of this Resolution.

GrandBridge Corporation Management notified the City Manager of the City of Cambridge and the Township Chief Administrative Officer on November 28th, 2022 that as part of the review of the 2022 Final Tax Return for the former Brantford Power Inc. (“BPI”), GrandBridge Management had identified an error in the computation of the tax provision that was recorded in the stub period year-end financial statements.

The amount of the error was an understatement of the tax liability owing by BPI of \$265,509 related to the sale of lands, which resulted in an understatement or recorded tax liability recorded in the audited financial statements. The audited financial statements were also used in the preparation of the Closing Adjustments and the determination of the amount owing to the Shareholder(s) based on the equity value of the entities and the relative ownership percentages at the time of closing.

The error identified relates to the tax treatment of the gain on the sale of the 130 Savannah Oaks Property (defined as the “Excess Land” under the Merger Participation Agreement). For purposes of the tax provision, the gain on sale of land was treated as a taxable capital gain, whereas the 2022 Final Tax Return recognized the gain on sale of land as on account of income.

The net result is that the Motion 22-253 adopted by City Council on September 27th is no longer accurate or relevant in the present term. As such, the September Resolution needs to be rescinded.

Arising from the revised and Final Closing Adjustment Computation, which incorporates an adjustment to the BPI Net working capital computation, the former Energy Plus shareholders (Cambridge and North Dumfries) are now entitled to the redemption of shares as a one-time payout equivalent to \$203,000 in accordance with Section 2.5 of the Merger Participation Agreement.

Based upon the proportional ownership of the City, the Municipality is entitled to redeem 921 Class A Shares that would translate into a valuation of \$186,963 [based upon a valuation of \$203 per Share].

Appendix “A” to this Report is the Correspondence, dated November 30th, 2022, from GrandBridge Corporation that outlines the calculation of the redemption notice and the instrument to receive the funds.

ANALYSIS:

Options and Analysis

There is no analysis or options associated with this Report. The next steps are more procedural and administrative in nature.

During the preparation of the Merger Participation Agreement (MPA) as negotiated between the Shareholders, namely the City of Brantford, the Township of North Dumfries and the City, specific provisions were established to deal with the sale of “excess lands”.

Section 8.5 of the MPA was specifically intended to ensure that Brantford was responsible for all of the taxes related to the sale of the Excess Land. In addition, Section 8.5 states that “...for the avoidance of doubt, the foregoing indemnity obligation of Brantford shall not be subject to the limitations set out in the Section 8.4”. Section 8.4 provides for general limitations/thresholds on mutual indemnifications.

Based upon the re-statement of the revised and Final Closing Adjustment Computation applicable to BPI, the Township of North Dumfries and the City are eligible for the redemption of shares as a one-time payout equivalent to \$203,000 in accordance with Section 2.5 of the Merger Participation Agreement.

From a procedural perspective, the City needs to:

1. Rescind the prior Motion 22-253 as its contents are now replaced with new information;
2. Provide direction and authorization to the Mayor and Clerk to execute the Notice of Redemption to redeem 921 Class A Special Shares from GrandBridge Corporation for the redemption price of \$203 per share for a total valuation of \$186,963; and,
3. Provide direction to the City's Chief Financial Officer as to where the \$186,963 are to be applied as these revenues do not form part of the 2022 Budget.

EXISTING POLICY / BY-LAW(S):

N/A

FINANCIAL IMPACT:

The Notice of Redemption of the Class A Special Shares and the associated revenue did not form part of the 2022 Budget. As such, direction is required from Council to the Chief Financial Officer as to how to proceed forward in this regard.

It is Staff's Recommendation that the funds received through the transfer of the Class A Special Shares be applied to the Hydro Dividend Stabilization Reserve Fund. Funds in this Reserve are applied to finance future Capital Projects contained within the 10 Year Capital Program.

PUBLIC VALUE:

N/A

Sustainability:

N/A

Leadership:

N/A

Collaboration:

N/A

Transparency:

N/A

Engagement:

N/A

ADVISORY COMMITTEE INPUT:

N/A

PUBLIC INPUT:

N/A

INTERNAL / EXTERNAL CONSULTATION:

N/A

CONCLUSION:

N/A

REPORT IMPACTS:

Agreement: **Yes**

By-law: **No**

Budget Amendment: **No**

Policy: **No**

APPROVALS:

This report has gone through the appropriate workflow and has been reviewed and or approved by the following as required:

Director

Deputy City Manager

Chief Financial Officer

City Solicitor

City Manager

ATTACHMENTS:

1. 2022-034-OCM Appendix A - Correspondence, dated November 30/22, GrandBridge Energy
2. 2022-034-OCM Appendix B - Report 22-031-OCM
3. 2022-034-OCM Appendix C - Merger Participation Agreement