



MINUTES
Joint Council Meeting with
the City of Cambridge and
Township of North Dumfries

Monday, August 30, 2020
Virtual Meeting



The TOWNSHIP of
NORTH DUMFRIES

City of Cambridge Council Members in Attendance: Councillors Reid (Ward 1); Devine (Ward 2); Mann (Ward 3); Liggett (Ward 4); Adshade (Ward 6); and Hamilton (Ward 7) with Mayor McGarry as Co-Chair

Regrets: Councillors Wolf (Ward 5) and Ermeta (Ward 8)

Township of North Dumfries Council Members in Attendance: Councillors Ostner (Ward 2); McCreery (Ward 3); Gillespie (Ward 4) with Mayor Foxton as Co-Chair

Regrets: Councillor Rolleman (Ward 1)

City of Cambridge Staff Members in Attendance: David Calder - City Manager; Sheryl Ayres – Chief Financial Officer, Danielle Manton - City Clerk and Jennifer Shaw – Deputy City Clerk

Township of North Dumfries Staff Members in Attendance: Andrew McNeely - Chief Administrative Officer; Christina Brox - Treasurer/Director of Corporate Services and Ashley Sage - Clerk

Others in Attendance: John Rockx - KPMP, LLP and Ron Clark - Aird & Berlis LLP

Meeting Called to Order

The joint meeting of the Councils of the Corporations of the City of Cambridge and the Township of North Dumfries was held virtually. Mayor McGarry and Mayor Foxton welcomed everyone present and called the meeting to order at 6:20 p.m. and adjourned the meeting at 9:33 p.m.

Disclosure of Pecuniary Interest

There are no disclosures of pecuniary interest.

1. Motion to Move into Closed Session

Motion: 21-153
Moved By: Councillor Mann
Seconded By: Councillor Ostner

THAT in accordance with Section s.239 of the Municipal Act, 2001, this Joint Council convene in Closed Session at 6:20 p.m. to consider the following subject matters:

- i. Advice that is subject to solicitor-client privilege, including communications necessary for that purpose; (Shareholders of Energy Plus to Receive and Consider Information from Legal Counsel)
- ii. A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization; (Shareholders of Energy Plus to Receive and Consider Information from Legal Counsel)
- iii. A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.
(Shareholders of Energy Plus to Receive and Consider Information from Legal Counsel)

Councillor Devine left the meeting at this time.

CARRIED, on a recorded vote 10-0

Cambridge Vote

In Favour: Councillors Reid, Mann, Liggett, Adshade, Hamilton, and Mayor McGarry
Opposed: None
Absent: Councillors Devine, Wolf and Ermeta

North Dumfries Vote

In Favour: Councillors Ostner, McCreery, Gillespie, and Mayor Foxton
Opposed: None
Absent: Councillor Rolleman

Councillor Devine rejoined the meeting at this time.

2. Motion to Reconvene in Open Session

Motion: 21-154
Moved By: Councillor McCreery
Seconded By: Councillor Adshade

THAT this Closed Session adjourn at 8:22 p.m. and reconvene in Open Session.

CARRIED, on a recorded vote 11-0

Cambridge Vote

In Favour: Councillors Reid, Devine, Mann, Liggett, Adshade, Hamilton, and Mayor McGarry
Opposed: None
Absent: Councillors Wolf and Ermeta

North Dumfries Vote

In Favour: Councillors Ostner, McCreery, Gillespie, and Mayor Foxton
Opposed: None
Absent: Councillor Rolleman

3. City of Cambridge Resolution to Approve Merger

Motion: 21-155
Moved By: Councillor Mann
Seconded By: Councillor Liggett

WHEREAS The Corporation of the City of Cambridge (“Cambridge”) is, together with Township of North Dumfries (the “Municipality”), a shareholder of CNDE+;

AND WHEREAS CNDE+ is the sole shareholder of E+;

AND WHEREAS CNDE+ and BEC intend to amalgamate (the “Holdco Amalgamation”) pursuant to section 174 of the Business Corporations Act (Ontario) (the “OBCA”) to form an amalgamated entity (“Merged Holdco”);

AND WHEREAS subsequent to the Holdco Amalgamation, E+ and BPI intend to amalgamate pursuant to section 174 of the OBCA (the “LDC Amalgamation”, and together with the Holdco Amalgamation, the “Amalgamations”) to form an amalgamated entity (“LDC Mergeco”);

AND WHEREAS in order to facilitate the Amalgamations, CDNE+, BEC, E+, BPI, Cambridge, the Municipality, and The Corporation of the City of Brantford (“Brantford”) intend to enter into a merger participation agreement (the “Merger Participation Agreement”), substantially in the form of a draft merger participation agreement (the “Draft Merger Participation Agreement”) previously presented to the Council of Cambridge for review;

AND WHEREAS pursuant to section 2.1 of the Merger Participation Agreement, CNDE+ would be required to enter into an amalgamation agreement with BEC (the “Holdco Amalgamation Agreement”);

AND WHEREAS subsection 176(4) of the OBCA provides that an amalgamation agreement is adopted when the shareholders of each amalgamating corporation have approved of the amalgamation by a special resolution of the holders of the shares of each class or series entitled to vote thereon;

AND WHEREAS pursuant to section 185 of the OBCA, a holder of shares of any class or series entitled to vote on the resolution approving an amalgamation may dissent, in which case such shareholder, in addition to any other right the shareholder may have, is entitled to be paid by the corporation the fair value of the shares held by the shareholder subject to compliance with the dissent procedure contained in section 185 of the OBCA;

AND WHEREAS the Cambridge declares that it is not exercising such right of dissent in connection with the Amalgamations and waives its right to receive notice of a meeting of shareholders pursuant to subsection 176(2) of the OBCA in connection with the Amalgamations;

AND WHEREAS CNDE+ and E+ are subject to a Shareholders' Agreement among Cambridge, the Municipality and CNDE+ (as successor to Cambridge and North Dumfries Hydro Inc.) dated January 1, 2000 (the "CNDE+ USA") requiring shareholder approval of transactions such as the Amalgamations;

AND WHEREAS after the Amalgamations have taken place, Merged Holdco, LDC Mergeco, Cambridge, the Municipality and Brantford intend to enter into a unanimous shareholders' agreement governing the affairs of Merged Holdco and LDC Mergeco (the "Unanimous Shareholders' Agreement"), substantially in the form of a unanimous shareholders' agreement (the "Draft Unanimous Shareholders' Agreement") previously presented to Council for review;

AND WHEREAS after the Amalgamations have taken place Brantford intends to enter into an Amended and Restated Shared Services and Obligations Agreement with LDC Mergeco and Brantford Hydro Inc. (the "Shared Services Agreement"), substantially in the form of an amended and restated shared services and obligations agreement (the "Draft Shared Services Agreement") previously presented to Council for review the entry into which would require shareholder approval under the Unanimous Shareholder Agreement.

NOW THEREFORE BE IT RESOLVED THAT:

- (a) Cambridge approves the Amalgamations;

- (b) The terms and conditions of the Merger Participation Agreement, the Unanimous Shareholders' Agreement and the transactions contemplated thereby are reasonable and fair to Cambridge;
- (c) CNDE+ is authorized to enter into the Holdco Amalgamation Agreement and to approve the LDC Amalgamation;
- (d) E+ is authorized to carry out the LDC Amalgamation;
- (e) Cambridge is authorized to enter into the Merger Participation Agreement, substantially in the form of the Draft Merger Participation Agreement;
- (f) Cambridge is authorized to enter into the Unanimous Shareholders' Agreement, substantially in the form of the Draft Unanimous Shareholders' Agreement;
- (g) The entry by LDC Mergeco and Brantford Hydro Inc. into the Shared Services Agreement, substantially in the form of the Draft Shared Services Agreement is approved;
- (h) The execution and delivery by Cambridge of the Merger Participation Agreement and the Unanimous Shareholders' Agreement and the performance by it of its obligations thereunder, substantially in the form and on the terms set out in the Draft Merger Participation Agreement and Draft Unanimous Shareholders' Agreement, with such minor deletions, amendments or additions thereto as the Chief Administrative Officer, or other duly authorized representative, of Cambridge (the "Authorized Representative") may determine, is authorized and approved, the execution of such agreements in accordance with the provisions of the paragraph immediately below being conclusive evidence of such determination;
- (i) The Authorized Representative is authorized and directed, for and in the name of and on behalf of Cambridge, to execute and deliver the Merger Participation Agreement and the Unanimous Shareholders' Agreement, substantially in the form and on the terms set out in the Draft Merger Participation Agreement and the Draft Unanimous Shareholders' Agreement, with such minor deletions, amendments or

additions thereto as the Authorized Representative may in his or her absolute discretion determine, the execution of such agreement in accordance with the provisions of this paragraph being conclusive evidence of such determination; and

- (j) The Authorized Representative is authorized and directed, for and in the name of and on behalf of Cambridge, to execute and deliver all such other agreements, amendments, instruments, certificates, resolutions and other documents, including a resolution of the shareholders of CNDE+ approving the Amalgamations, and to do all such other acts and things as the Authorized Representative may determine to be necessary or advisable in connection with the Merger Participation Agreement, with the Unanimous Shareholders' Agreement, the Shared Services Agreement and/or the Holdco Amalgamation Agreement or to carry out the intention of the foregoing resolution, the execution and delivery of any such agreement, amendment, instrument, certificate, resolution or other document or the doing of any such other act or thing by the Authorized Representative being conclusive evidence of such determination.

CARRIED, on a recorded vote 7-0

In Favour: Councillors Reid, Devine, Mann, Liggett, Adshade, Hamilton, and Mayor McGarry

Opposed: None

Absent: Councillors Wolf and Ermeta

4. Township of North Dumfries Resolution to Approve Merger

Motion: 21-156

Moved By: Councillor McCreery

Seconded By: Councillor Gillespie

WHEREAS The Corporation of the Township of North Dumfries (the “Municipality”) is, together with The Corporation of the City Cambridge (“Cambridge”), a shareholder of CNDE+;

AND WHEREAS CNDE+ is the sole shareholder of E+;

AND WHEREAS CNDE+ and BEC intend to amalgamate (the “Holdco Amalgamation”) pursuant to section 174 of the Business Corporations Act (Ontario) (the “OBCA”) to form an amalgamated entity (“Merged Holdco”);

AND WHEREAS subsequent to the Holdco Amalgamation, E+ and BPI intend to amalgamate pursuant to section 174 of the OBCA (the “LDC Amalgamation”, and together with the Holdco Amalgamation, the “Amalgamations”) to form an amalgamated entity (“LDC Mergeco”);

AND WHEREAS in order to facilitate the Amalgamations, CDNE+, BEC, E+, BPI, the Municipality, Cambridge, and The Corporation of the City of Brantford (“Brantford”) intend to enter into a merger participation agreement (the “Merger Participation Agreement”), substantially in the form of a draft merger participation agreement (the “Draft Merger Participation Agreement”) previously presented to the Council of the Municipality for review;

AND WHEREAS pursuant to section 2.1 of the Merger Participation Agreement, CNDE+ would be required to enter into an amalgamation agreement with BEC (the “Holdco Amalgamation Agreement”);

AND WHEREAS subsection 176(4) of the OBCA provides that an amalgamation agreement is adopted when the shareholders of each amalgamating corporation have approved of the amalgamation by a special resolution of the holders of the shares of each class or series entitled to vote thereon;

AND WHEREAS pursuant to section 185 of the OBCA, a holder of shares of any class or series entitled to vote on the resolution approving an amalgamation may dissent, in which case such shareholder, in addition to any other right the shareholder may have, is entitled

to be paid by the corporation the fair value of the shares held by the shareholder subject to compliance with the dissent procedure contained in section 185 of the OBCA;

AND WHEREAS the Municipality declares that it is not exercising such right of dissent in connection with the Amalgamations and waives its right to receive notice of a meeting of shareholders pursuant to subsection 176(2) of the OBCA in connection with the Amalgamations;

AND WHEREAS CNDE+ and E+ are subject to a Shareholders' Agreement among the Municipality, Cambridge and CNDE+ (as successor to Cambridge and North Dumfries Hydro Inc.) dated January 1, 2000 (the "CNDE+ USA") requiring shareholder approval of transactions such as the Amalgamations;

AND WHEREAS after the Amalgamations have taken place, Merged Holdco, LDC Mergeco, the Municipality, Cambridge and Brantford intend to enter into a unanimous shareholders' agreement governing the affairs of Merged Holdco and LDC Mergeco (the "Unanimous Shareholders' Agreement"), substantially in the form of a unanimous shareholders' agreement (the "Draft Unanimous Shareholders' Agreement") previously presented to Council for review;

AND WHEREAS after the Amalgamations have taken place Brantford intends to enter into an Amended and Restated Shared Services and Obligations Agreement with LDC Mergeco and Brantford Hydro Inc. (the "Shared Services Agreement"), substantially in the form of an amended and restated shared services and obligations agreement (the "Draft Shared Services Agreement") previously presented to Council for review the entry into which would require shareholder approval under the Unanimous Shareholder Agreement.

NOW THEREFORE BE IT RESOLVED THAT:

- (a) The Municipality approves the Amalgamations;
- (b) The terms and conditions of the Merger Participation Agreement, the Unanimous Shareholders' Agreement and the transactions contemplated thereby are reasonable and fair to the Municipality;

- (c) CNDE+ is authorized to enter into the Holdco Amalgamation Agreement and to approve the LDC Amalgamation;
- (d) E+ is authorized to carry out the LDC Amalgamation;
- (e) The Municipality is authorized to enter into the Merger Participation Agreement, substantially in the form of the Draft Merger Participation Agreement;
- (f) The Municipality is authorized to enter into the Unanimous Shareholders' Agreement, substantially in the form of the Draft Unanimous Shareholders' Agreement;
- (g) The entry by LDC Mergeco and Brantford Hydro Inc. into the Shared Services Agreement, substantially in the form of the Draft Shared Services Agreement is approved;
- (h) The execution and delivery by the Municipality of the Merger Participation Agreement and the Unanimous Shareholders' Agreement and the performance by it of its obligations thereunder, substantially in the form and on the terms set out in the Draft Merger Participation Agreement and Draft Unanimous Shareholders' Agreement, with such minor deletions, amendments or additions thereto as the Chief Administrative Officer, or other duly authorized representative, of the Municipality (the "Authorized Representative") may determine, is authorized and approved, the execution of such agreements in accordance with the provisions of the paragraph immediately below being conclusive evidence of such determination;
- (i) The Authorized Representative is authorized and directed, for and in the name of and on behalf of the Municipality, to execute and deliver the Merger Participation Agreement and the Unanimous Shareholders' Agreement, substantially in the form and on the terms set out in the Draft Merger Participation Agreement and the Draft Unanimous Shareholders' Agreement, with such minor deletions, amendments or additions thereto as the Authorized Representative may in his or her absolute discretion determine, the execution of such agreement in accordance with the provisions of this paragraph being conclusive evidence of such determination; and

- (j) The Authorized Representative is authorized and directed, for and in the name of and on behalf of the Municipality, to execute and deliver all such other agreements, amendments, instruments, certificates, resolutions and other documents, including a resolution of the shareholders of CNDE+ approving the Amalgamations, and to do all such other acts and things as the Authorized Representative may determine to be necessary or advisable in connection with the Merger Participation Agreement, with the Unanimous Shareholders' Agreement, the Shared Services Agreement and/or the Holdco Amalgamation Agreement or to carry out the intention of the foregoing resolution, the execution and delivery of any such agreement, amendment, instrument, certificate, resolution or other document or the doing of any such other act or thing by the Authorized Representative being conclusive evidence of such determination.

CARRIED, on a recorded vote 4-0

In Favour: Councillors Ostner, McCreery, Gillespie, and Mayor Foxton

Opposed: None

Absent: Councillor Rolleman

5. City of Cambridge Confirmatory By-law

Motion: 21-157

Moved By: Councillor Hamilton

Seconded By: Councillor Reid

21-062 Being a by-law of the City of Cambridge and the Township of North Dumfries to confirm the proceedings of the Councils of the City of Cambridge and Township of North Dumfries at its joint meeting held in Cambridge on the 30th day of August, 2021.

CARRIED, on a recorded vote 7-0

In Favour: Councillors Reid, Devine, Mann, Liggett, Adshade, Hamilton, and Mayor McGarry

Opposed: None

Absent: Councillors Wolf and Ermeta

6. Township of North Dumfries Confirmatory By-law

Motion: 21-158

Moved By: Councillor Gillespie

Seconded By: Councillor McCreery

3272-21 Being a by-law of the City of Cambridge and the Township of North Dumfries to confirm the proceedings of the Councils of the City of Cambridge and Township of North Dumfries at its joint meeting held in Cambridge on the 30th day of August, 2021.

CARRIED, on a recorded vote 4-0

In Favour: Councillors Ostner, McCreery, Gillespie, and Mayor Foxton

Opposed: None

Absent: Councillor Rolleman

7. Adjournment

Motion: 21-159

Moved By: Councillor Devine

Seconded By: Councillor Ostner

THAT this Joint Council meeting does now adjourn at 9:33 p.m.

CARRIED, on a recorded vote 11-0

Cambridge Vote

In Favour: Councillors Reid, Devine, Mann, Liggett, Adshade, Hamilton, and Mayor McGarry

Opposed: None

Absent: Councillors Wolf and Ermeta

North Dumfries Vote

In Favour: Councillors Ostner, McCreery, Gillespie, and Mayor Foxton

Opposed: None

Absent: Councillor Rolleman

MAYOR

CLERK