
MEMORANDUM

BRC-C 6-2019

Subject: Niagara Peninsula Conservation Authority (NPCA) Memorandum of Understanding Regarding Debt

Date: February 14, 2019

To: Budget Review Committee of the Whole

From: Helen Chamberlain, Director, Financial Management and Planning/Deputy Treasurer

On January 31, 2019 Budget Review Committee of the Whole received the budget presentation from the Niagara Peninsula Conservation Authority for the 2019 Budget. Council inquired of the item reported as Debt Charges of \$1.6 million in the NPCA presentation to which the presenter referenced a Memorandum of Understanding (MOU) between the NPCA and the Region dated December 31, 2012. The MOU is attached for Council reference.

The following is provided as additional background regarding the MOU.

- On July 25, 2011 Niagara Region's Audit committee received the NPCA 2010 audited financial statement and requested staff provide the committee with an update on the NPCA debt. The 2010 NPCA financial statement did not include any long term debt for the NPCA on the Statement of Financial Position.
- On September 12, 2011 the then CAO of the NPCA presented to Region's Audit committee information regarding the NPCA debt.
- Over the course of 2012 the Region's Finance staff engaged with the NPCA to resolve the financial reporting issue that the NPCA financial statements did not recognize the liability for the \$12.9 million in debentures issued by the Niagara Region on behalf of the NPCA to finance capital projects of the NPCA. The NPCA was making the debt repayments to the Niagara Region and planned to continue these repayments until the debt was extinguished in 2020. The repayments were included as an expense in NPCA's financial statements and in NPCA's yearly budget and were included in the Niagara Region's share of Special Levy of the NPCA levy.
- The outcome of these discussions resulted in the NPCA financial statement appropriately including the Long Term Debt Liability remaining at the time of \$7,512,783. The annual debt servicing cost at that time was \$1,628,852 for interest and principal payments.

The MOU was brought to the attention of the Region's finance staff by the then staff of the NPCA, Carmen D'Angelo and David Barrick in 2016. It would appear that in addition

to resolving the financial reporting process noted above for the liability, that discussions took place regarding the assessment of the debt charges to the Niagara Region, rather than to Hamilton and Haldimand. It is within the legislated ability of the NPCA to impose a Special Levy on any municipality for project/capital costs specifically benefitting a municipality as would appear to be the case with the debt charges as they related to facilities in Niagara. Therefore the necessity for a separate MOU is questionable other than perhaps as a means to ensure that the Niagara Region did not intend to appeal the apportionment of the Special Levy.

Section 5 of the MOU provides for the continuation of the use of the 2012 annual debt servicing cost of \$1,628,852 in the base budget submitted to Niagara Region. As practical matter, given that the debt charges continue to decline as the debenture is paid off, the \$1.6 million has been in excess of the debt charge for the last several years as follows:

	NPCA Budget	Actual Debt Charges *	Surplus
2020	1,628,852	221,355	1,407,497
2019	1,628,852	511,686	1,117,166
2018	1,628,852	824,120	804,732
2017	1,628,852	1,092,262	536,590
2016	1,628,852	1,342,388	286,464
2015	1,628,852	1,534,982	93,870
2014	<u>1,628,852</u>	<u>1,544,068</u>	<u>84,784</u>
Total	11,401,964	7,070,861	4,331,103

*actual debt expense reported for the year may vary due to the accrual basis of accounting.

The use of the surplus above is not readily apparent in the budget presentations of the NPCA and for the budget years 2017 and 2018. Regional staff, despite having identified the surplus, did not receive direction to pursue it or inform Regional Council of it. In addition, although the levy only continues until the debt expires (section 1 MOU), there is no term or expiry date for the MOU itself. Given that the MOU appears to only serve the purpose of confirming past practice, and the legislation can be relied upon to govern any future capital levies, Staff would suggest that it is not necessary for the MOU to continue beyond the expiry of the current debt.

In light of the foregoing Staff would recommend that Council request the NPCA Board to advise on the use of the surplus and that Staff be authorized to meet with the NPCA (in accordance with section 8 of the MOU) to confirm that the Levy shall only continue until the debt expires (in accordance with section 1 of the MOU), namely December 31, 2020, at which time the MOU will be at an end.

Respectfully submitted and signed by,

Helen Chamberlain, CPA, CA
Director, Financial Management and Planning/
Deputy Treasurer

Appendix 1 – Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

BETWEEN:

THE REGIONAL MUNICIPALITY OF NIAGARA ("Region")

and

NIAGARA PENINSULA CONSERVATION AUTHORITY ("NPCA")

WHEREAS the NPCA has levied the Region for Capital Works as one of the constituent Municipalities in its watershed;

AND WHEREAS the Region debentured the amount so levied, pursuant to the *Conservation Authorities Act*, R.S.O. 1990, c.C.27 (the "Act")

74-2003-10-CA

89-2004-10-CA

61-2005-10-CA

57-2006- 10-CA

72-2007-10-CA

61-2008-10-CA

67-2009-10-CA

73-2010-10-CA ("Past Capital Levy")

AND WHEREAS the Parties wish to provide for the proper accounting of the Past Capital Levy and the orderly payment of future obligations;

NOW THEREFORE THE PARTIES HERETO hereby agree as follows:

1. The Region acknowledges that the NPCA shall levy the Region as a special benefitting Municipality, an annual amount for the debenture interest and principal due for the current year on the Past Capital Levy. Such levy shall continue until the current debt is retired.
2. As of December 31, 2012, the remaining amount of the Past Capital Levy is \$7,512,782.90.
3. The NPCA shall pay to the Region the amount required by the Region to meet the annual payment for the portion of the Region's debenture obligations that are properly attributable to the debt undertaken to meet the Past Capital Levies of NPCA. Such portion to be referred to as the "NPCA Share"
4. The NPCA will record the NPCA Share as a debt on its annual Financial Statements. The Region will record the NPCA Share as a debt recoverable from NPCA on its annual Financial Statements.
5. Pursuant to the Act, the NPCA levies the Region a total levy for its requirements for operations which includes the annual payment on the Past Capital Levy (the "Total Levy"). The 2012 Total Levy was \$6,557,104.00 which included the Past Capital Levy payment of \$1,628,851.96. Both figures shall continue to be used in the base budget for subsequent Total Levies plus or minus the Budget guidance directed by Regional Council, which budget

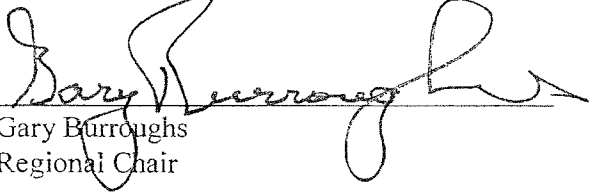
is submitted to Regional Council for approval.

6. The Parties agree that this Memorandum acknowledges the Past Capital Levies that have been funded by the Region for the benefit of NPCA to December 31, 2012 and which form part of the NPCA Total Levy to the Region. The Parties agree that this Memorandum is intended to record the arrangement that has been reached to deal with the past practices of the Parties in recording the Past Capital Levy. In the event that in subsequent years new debentures are issued by the Region for new NPCA Capital Levies the same accounting for the debentures on the books of the Parties shall be used, subject to the Parties adjusting the amount of the NPCA Share of the Region's debentures and annual payment on account of such amount.
7. It is acknowledged that NPCA is eligible from time to time to obtain funding from the Ontario Government which may entail further levies for Capital Projects. This Memorandum is not intended to prejudice the NPCA's ability to apply for or participate in such future opportunities.
8. The Parties agree to meet and discuss the annual payments to be made and/or future debenture issues upon either party requesting such an opportunity.

Dated at Thorold, this 31st day of December, 2012.

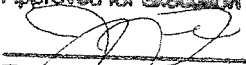
THE REGIONAL MUNICIPALITY OF NIAGARA

Per:


Name: Gary Burroughs
Title: Regional Chair


Name: Janet Pilon
Title: Regional Clerk

Approved for execution

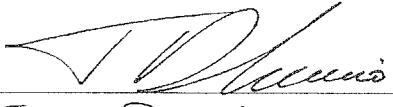

The Regional Municipality of Niagara
Legal Services

We have authority to bind the Corporation

Dated at Welland, this 31st day of December, 2012.

NIAGARA PENINSULA CONSERVATION AUTHORITY

Per:


Name: Tony Damario
Title: CAO/ Secretary Treasurer

I/We have authority to bind the Corporation