



## Staff Report

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<b>Report To:</b>	<b>General Government Committee</b>	
<b>Date of Meeting:</b>	November 29, 2021	<b>Report Number:</b> FSD-051-21
<b>Submitted By:</b>	Trevor Pinn, Director of Financial Services/Treasurer	
<b>Reviewed By:</b>	Andrew C. Allison, CAO	<b>Resolution#:</b>
<b>File Number:</b>	[If applicable, enter File Number]	<b>By-law Number:</b>
<b>Report Subject:</b>	Elexicon Promissory Note	

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### Recommendations:

1. That Report FSD-051-21 and any related communication items, be received;
2. That the Staff be directed to provide Elexicon Corporation with the appropriate documents to waive the right to demand payment of the on-demand promissory note until January 1, 2022;
3. That the Director of Financial Services/Treasurer and the Chief Administrative Officer, be directed to waive the right to demand payment of the on-demand promissory note annually until otherwise directed by Council; and
4. That all interested parties listed in Report FSD-051-21 and any delegations be advised of Council's decision.

## Report Overview

Elexicon Corporation annually requests the Director of Financial Services/Treasurer to confirm the balance of the outstanding promissory notes and provide a waiver that the Municipality will not call the amount due on demand in the following year.

Staff have historically provided the confirmation of outstanding balance and indicated that there was no intent demand payment; however, Staff have not had direction to “waive” the right to call the note. Elexicon is looking for a waiver for the 2022 fiscal year. This report seeks authority to do so.

## 1. Background

### Promissory Notes Receivable

- 1.1 The Municipality of Clarington currently holds two promissory notes from government business enterprises in which it owns shares. The Municipality uses the interest from these promissory notes to fund programs, services, and infrastructure.
- 1.2 The first promissory note, from Elexicon Corporation, is due upon demand, provides 4.13 per cent annual interest with a principal amount of \$2,355,000. Elexicon Corporation is the parent company of Elexicon Energy Inc. and Elexicon Group Inc.
- 1.3 Elexicon Energy Inc. is a subsidiary of Elexicon Corporation which provides electricity distribution to several municipalities in Ontario, including parts of Clarington. The Municipality has a promissory note from Elexicon Energy Incorporated that matures on November 1, 2039, providing 4.13 percent annual interest with a principal amount of \$5,966,000.

### On-Demand Notes – Waiving of Right to Call

- 1.4 For accounting purposes, if the holder of a promissory note that is due on demand waives the right to call that promissory note, it may be classified as long-term debt on the issuer’s financial statements. The auditors for Elexicon Corporation send debt confirmations annually to the Municipality and seek confirmation that the Municipality waives the right to call the debt for 12 months. Staff have confirmed the debt amount and have indicated that there are no plans to call the debt; however, the auditors are looking for a waiver of that right.
- 1.5 Council has not delegated authority to waive the right to call the on-demand note; therefore, this report has been drafted seeking Council guidance (as the shareholder) on how to proceed with regards to the on demand note.

- 1.6 The treatment of the on-demand note as long-term debt changes the financial ratios of the parent. Still, it does not in any way change the amount due to the Municipality or the economic benefit that the Municipality receives. It should be noted that providing the waiver is not legally binding and the Municipality retains the right to provide 60 days notice to demand payment of the promissory note. If the Municipality changes its mind it is treated for accounting purposes as a change in circumstances and is dealt with according to accounting principles.

## **2. Options for Delegation of Authority**

### **Delegate Authority to the CAO and Director of Financial Services/Treasurer**

- 2.1 Council may delegate the administrative function of confirming that the Municipality waives their right to call the on-demand note for 12 months. Council may revoke this authority, if it determines that it wishes to demand payment in the following year.
- 2.2 The advantage of this approach is that it does not require an annual report to Council, if the intent of Council remains unchanged. The disadvantage is that if Council wishes to exercise a particular course of action, they would have to let Staff know before they act for the year or revoke the delegation.
- 2.3 Regardless, the Municipality must provide 60 days notice when it wishes to call the promissory note.

### **Annual Report**

- 2.4 Council could choose not to delegate the authority to Staff. If this option is chosen, an annual report to Council would be prepared by Staff recommending a course of action for the following year.
- 2.5 The advantage with this option is that Council is being provided a report annually and there is no need for Council to “remember” to make the decision each year. The disadvantage is that this report would be required each year for a relatively low-value decision that is unlikely to change.

## **3. Direction for 2022**

- 3.1 Regardless of the option above for future years, Staff requires direction for the 2022 fiscal year
- 3.2 Council may direct Staff to communicate with Elexicon Corporation that they intend to provide a 12-month waiver of calling the promissory note. The waiver is not legally binding and Council may change its direction at any time.

- 3.3 At this time, the Director of Financial Services/Treasurer does not anticipate requiring the funds from the \$2.4 million promissory note to finance the 2023 operating or capital budgets; however, that the Director of Financial Services/Treasurer cannot guarantee that the funds won't be required. The likelihood of the funds being required within 2022 without any ability to get funds elsewhere temporarily are nominal.
- 3.4 The City of Pickering has announced their intention to sell its shares in Elexicon. The Municipality could use the funds from the promissory notes to finance a potential purchase of the City of Pickering's shares; however, it is unlikely that this funding would be sufficient to cover the costs on its own. There are other ways that the Municipality could fund a potential acquisition. Given that we are in the early stages of determining a possible price for Pickering's shares, it is unlikely that the Municipality would require the \$2.4 million until later in 2022.
- 3.5 Staff are recommending that Council provide a waiver of payment on the demand note until January 1, 2023.
- 3.6 Alternatively, Council could take a conservative financial approach and not provide the waiver. This could result in financial consequences for Elexicon depending on their financial ratios.

#### **4. Concurrence**

This report has been reviewed by the Director of Legislative Services/Municipal Solicitor, who concurs with the recommendations.

#### **5. Conclusion**

It is respectfully recommended that Council provide direction to Staff on whether or not a waiver of the right to call the promissory note until January 1, 2022 will be provided.

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Staff Contact: Trevor Pinn, CPA,CA, Director of Financial Services/Treasurer, 905-623-3379 ext 2602, tpinn@clarington.net

Attachments:

Not Applicable

Interested Parties:

The following interested parties will be notified of Council's decision:

Elexicon Corporation