

CITY OF ORILLIA

TO: Council Committee – March 25, 2019
FROM: Waterfront Development Team
DATE: March 20, 2019
REPORT NO: WWG-19-03
SUBJECT: **70 Front Street North Expropriation of Rights**

Recommended Motion

THAT Council authorize the commencement of expropriation proceedings for the acquisition of all right, title and interest in the City-owned lands described in Schedule “A” of the report, for the purposes of extending Coldwater Street East and preparing the lands for redevelopment and potential disposition in accordance with City land use planning policies and economic development objectives, and works ancillary thereto;

AND THAT Council authorize the necessary by-law, including the Application for Approval to Expropriate Land and the Notice of Application for Approval to Expropriate Land attached as Schedules “C” and “D” to the by-law, to be presented for enactment;

AND THAT following service and publication of the Notice of Application for Approval to Expropriate Land, the Application for Approval to Expropriate Land and recommendation of any inquiry be reported to Council for its consideration and decision as the approving authority under the *Expropriations Act*.

Purpose

The purpose of this report is to provide Council with an update on the expropriation of rights as it pertains to 70 Front Street North and the adjacent municipally owned lands (municipal waterfront lands) and to move forward with the commencement of the statutory expropriation process.

Background & Key Facts

- At the Special Council Meeting held on December 1, 2017, the Waterfront Working Group (WWG) brought forward report [WWG-17-03](#) regarding the Development Analysis of 70 Front Street North.
- A further report, [Report WWG-18-01](#) was brought forward on February 21, 2018, which outlined an Implementation Process.

- Per the Council report, staff recommended that further due diligence work be undertaken and that a legal opinion be sought on matters related to confidential tenant matters.
- On July 16, 2018, confidential reports WWG-18-02 and WWG-18-03 were brought forward to provide an update on the due diligence process and legal opinion respectively.
- On August 13, 2018, the Waterfront Development Team brought forward [Report WWG-18-04](#). This report included a comprehensive Waterfront Development Implementation Plan.
- Since that time, Deloitte has been retained to assist the City through a two-phase disposition process which includes a Request for Qualifications (RFQ) and Request for Proposals (RFP).
- On January 14, 2019, staff brought forward confidential Report WWG-19-01, which detailed next steps required to prepare the municipal waterfront lands for sale. Council subsequently authorized staff to proceed with the expropriation of lease rights as it pertains to the southern portion of the plaza on 70 Front Street North, and allocated consultant and legal fees related to this process.

Options & Analysis

Option 1 – Recommended

THAT Council authorize the commencement of expropriation proceedings for the acquisition of all right, title and interest in the City-owned lands described in Schedule “A” of the report, for the purposes of extending Coldwater Street East and preparing the lands for redevelopment and potential disposition in accordance with City land use planning policies and economic development objectives, and works ancillary thereto;

AND THAT Council authorize the necessary by-law, including the Application for Approval to Expropriate Land and the Notice of Application for Approval to Expropriate Land attached as Schedules “C” and “D” to the by-law, to be presented for enactment;

AND THAT following service and publication of the Notice of Application for Approval to Expropriate Land, the Application for Approval to Expropriate Land and recommendation of any inquiry be reported to Council for its consideration and decision as the approving authority under the *Expropriations Act*.

As outlined in Report WWG-19-01, there are a number of rights which currently exist on the municipally owned land which would prevent an extension of Coldwater Street to Centennial Drive, and which would prevent and/or obstruct the redevelopment of the southern portion of the site, and adjacent lands to the east and north of 70 Front Street North.

Therefore, Council authorized staff to proceed with an expropriation of these rights to prepare the lands for sale, de-risk the site by removing obstacles to development (lease rights and other encumbrances) and increase the overall value of the site which is highly dependent upon its ability to be developed.

Following Council's direction to proceed with the expropriation of these rights, staff retained Robert Wood, of Borden Ladner Gervais LLP, to lead the legal process related to the expropriation.

Mr. Wood began work with a title search for the municipal waterfront lands to identify any additional rights existing on the lands identified in Schedule "A". Through this search, it was determined that ten encumbrances (rights) in total would be removed from the property through expropriation. The following summarizes these rights:

- An easement which allows a private residence to exit the rear of their property.
 - The City's solicitor recommends that the City proceed to expropriate these rights while Deloitte, City staff and the City's solicitor explore options to provide alternative access.
- Two mortgages which the City's solicitor expects have been discharged.
- The Metro lease and an associated lease amendment.
 - The City is only expropriating Metro's lease rights on the southern portion of the 70 Front Street North site and on lands to the north and east of the main grocery store site. The Metro store can continue to operate at its existing store site for the duration of its lease.
- A restrictive covenant preventing the storage of petroleum products on the site which expires in 2019.
- A right of way adjacent to the parking lot on the southern portion of 70 Front Street North.
 - The City's solicitor recommends that the City proceed to expropriate these rights while Deloitte, City staff and the City's solicitor explore options to provide alternative access.
 - Staff may recommend at the later expropriation approval stage that the right of way be left in place.
- The Subway, Simcoe County District School Board and Hock Shop leases.
 - The City will proceed to expropriate Subway's leasehold interest but is in discussions with Subway to assist the franchisee in retaining a presence within the downtown core.
 - The latter two leases will expire/be terminated in the short term and therefore do not require expropriation.

These rights have been further detailed in Schedule "B" of this report. Detailed information regarding these encumbrances will remain confidential as this includes identifiable individuals and confidential legal matters.

The lands described in Paragraph 1 of Schedule "A" comprise a large area of City-owned lands north and east of 70 Front Street North, including portions of Centennial

Drive, the former CN rail corridor and the municipal parking lot east of French's Stand. This area is substantially larger than the area that is contemplated for redevelopment, however the City's solicitor has recommended expropriating the rights from this larger area because the City at this time does not have a single reference plan or precise legal descriptions of the smaller areas of those lands that will be offered in the RFP process, and a precise legal description is required to support an expropriation. The City elected to expropriate from the entire PIN in order to avoid delay in the expropriation process and provide flexibility with respect to the final delineation of the lands to be offered in the RFP process. The choice to expropriate from the entire PIN does not increase the number of registered encumbrances or property owners that will be impacted by the expropriation. Any unregistered property interests affecting areas of the PIN that are excluded from the RFP process can also be excluded from the expropriation.

To move forward with the expropriation process Mr. Wood has advised that Council must enact by-laws to formally commence the expropriation process in accordance with the *Expropriations Act*, and the City must then issue notices of expropriation in the statutorily-prescribed form. Statutory notices would then be served to the holders of the property rights identified in Schedule "B".

Schedule "C" provides a summary of the City's legal process as it pertains to the expropriation of lease rights. To protect the integrity of the legal process, this proposed legal timeline remains confidential. Mr. Wood will be available during the Closed Session meeting of Council Committee to answer any questions pertaining to the legal process.

If an applicant requests a hearing of necessity, and the matter does proceed to a hearing of necessity, an Inquiry Officer will be appointed by the Province to preside over the hearing. If this is the case, then the Inquiry Officer would be required to prepare a report for consideration by Council as noted in clause three of the recommended motion. This report would evaluate if the Inquiry Officer deems the expropriation to be fair, sound, and reasonably necessary in the achievement of the objectives of the expropriating authority.

Concurrent to the expropriation of rights process the City's Waterfront Development Team, which includes staff from seven municipal departments, will continue to work with Deloitte on the Request for Proposal (RFP) and Request for Qualification (RFQ) documents. The RFQ is anticipated to be released in April 2019.

Financial Impact

Council has previously approved fees related to legal and consultant matters.

Compensation can be claimed by each of the holders of identified property rights. The value of the compensation claims are not yet known and will be reported on in accordance with the legal process outlined in Schedule "C".

Consultation

Robert Wood and Deloitte have reviewed the report and are supportive of the recommended motion.

Staff have met, or will be meeting with several of the impacted parties to inform them of the process, answer any questions they may have, and discuss options to mitigate any potential impacts.

Economic Development Impact

The transformation of the City's waterfront lands would be catalytic and spur the redevelopment of not only 70 Front Street North, but also the surrounding lands, and lands in the downtown core.

The recommended motion allows staff to implement Council's previous direction to expropriate lease rights, and will allow the City to move forward with the redevelopment of the subject lands in a time and cost efficient manner.

Per the Waterfront Development Analysis presented to Council in Closed Session on December 1, 2017, if the Preferred Development Scenario were implemented, the City's waterfront lands could support over 100 townhomes, condominiums and approximately ten live work units. This scenario could support more than 225 new residents in the downtown core and between 50-100 new jobs.

Based on information achieved since the Preferred Development Concept was drafted, staff believe that there will be a higher volume of commercial space proposed through the RFP process, and therefore believe that the above figures are a conservative estimate.

Beyond the development of this site, the redevelopment of the municipal waterfront land is expected to be catalytic and spur new development on surrounding lands, increase investment attraction, and increase patronage of, and employment at, local businesses.

Communications Plan

Staff have developed a comprehensive Waterfront Redevelopment Project webpage which includes information such as reports, project timelines and flow charts, frequently asked questions, news and updates.

Staff will be preparing correspondence to accompany the Notice of Expropriation to provide further information about the expropriation of rights process, and information about the Waterfront Redevelopment Project.

Those seeking updates on the project are encouraged to sign up for the Waterfront Redevelopment Mailing List at www.orillia.ca/waterfront.

Relation to Formal Plans, City of Orillia Policy Manual and/or Guiding Legislation

The recommendation included in this report is related to the following formal plans, City policies and/or guiding legislation:

- The recommendation included in this report supports several initiatives within the Downtown Tomorrow Plan:
 - Initiative #1: Facilitate waterfront development
 - Initiative #17: Extend the retail experience to the waterfront
 - Initiative #21: Build new streets to the waterfront
 - Initiative #28: Develop small gathering spaces and neighbourhood parks

Conclusion

Council strategically acquired 70 Front Street North to enable transformational development of the waterfront area. To proceed with this transformation, the City must first address the rights which Metro, Subway and others currently have over the land.

In accordance with Council's previous direction, staff are pursuing expropriation to secure rights over the land identified in Schedule "A".

Schedules

- Schedule "A" – Subject Lands
- Schedule "B" – Detailed Description of Encumbrances (**CLOSED SESSION**)
- Schedule "C" – Tentative Expropriation Flow Chart (**CLOSED SESSION**)
- Schedule "D" – Draft By-law re Application for Approval to Expropriate

Prepared by: Laura Thompson, Ec.D., CEcD.
 Manager of Real Estate & Commercial Development

Approved by: Richard Bertolo
 Director of Business Development

On behalf of the Waterfront Development Team:

Gayle Jackson, CAO

Ian Sugden, Director of Development Services and Engineering

Kent Guphill, Director of Facilities and Special Projects

Richard Bertolo, Director of Business Development

Ray Merkley, Director of Parks, Recreation and Culture

Jim Lang, Treasurer

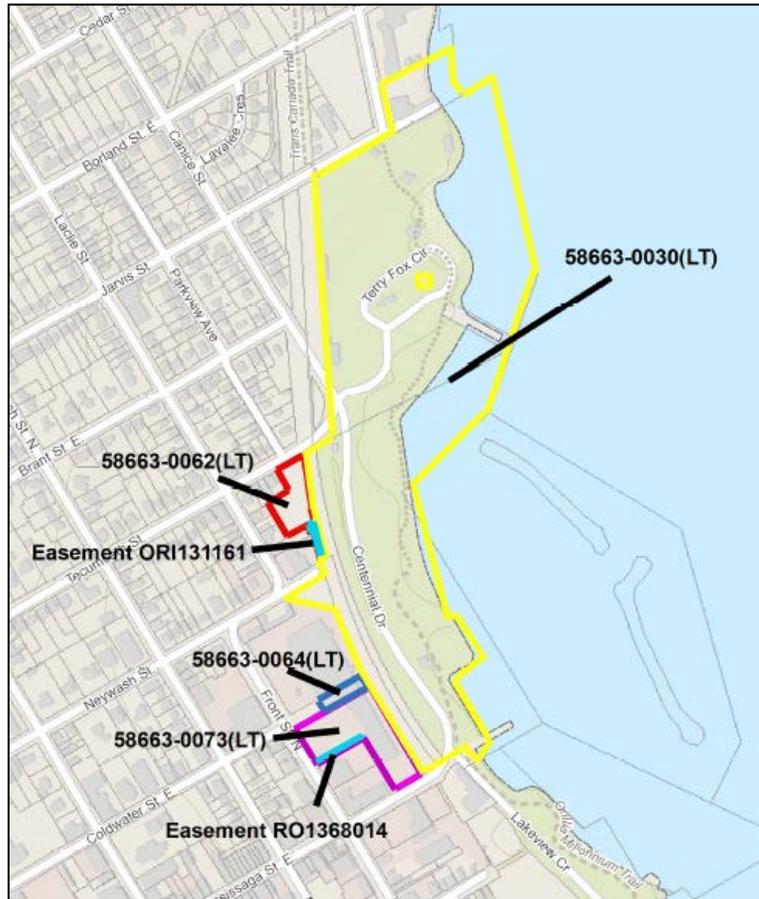
Laura Thompson, Manager of Real Estate and Commercial Development

Renee Recoskie, Manager of Environmental Compliance

Schedule "A" Subject Lands

All right, title and interest in the following lands:

1. All of PIN 58663-0062(LT) PCL 13-E Lacie-1 Sec 51-8; Part Lots 13 & 14 e/s Lacie Street, Plan 8; Water Lot abutting Lots 13 & 14 e/s of Lacie Street, Plan 8; Part Lots 16, 17, 18 & 19 s/s Tecumseth Street, Plan 8; Water Lot abutting Lots 17 & 18 s/s Tecumseth Street, Plan 8, designated as Parts 1 to 11 on Plan 51R-14205; City of Orillia;
2. All of PIN 58663-0030(LT) Water Lot 28 e/s Bay Street; Part Water Lot 29 e/s Bay Street; Water Lot in front of Lots 28 & 29 e/s Bay Street; Water Lots 23, 24, 25, 26 & 27 e/s Cowen Street; Lots 23, 24 & 25 s/s Jarvis Street; Lots 23,24 & 25 n/s Brant Street; Lots 22,23,24 & 25 s/s Brant Street; Lots 15,16,17,18,19,20,21 & 22 s/s Market Street; Part Lots 18 & 19 s/s Tecumseth Street; Water Lot in front of Lots 18 & 19 s/s Tecumseth Street; Part Lots 22 s/s Jarvis Street, 21 & 22 n/s Brant Street, 21 s/s Brant Street; Part Jarvis Street, Cowen Street, Brant Street, and Market Street, all on Plan 8, City of Orillia; Part Water Lots in front of Lots 7, 8 & 9, Concession 5, South Orillia;
3. All of PIN 58663-0073(LT) Part of Lots 1,2,4 & 5 & all of Lot 6, e/s Front Street Plan 8; Part Water Lot in front of Lot 8, Concession 5, South Orillia, designated as Parts 3,4,5,6 & 8 on Plan 51R-38130; City of Orillia;
4. All of PIN 58663-0064(LT) PCL Water Lot-1 Sec Location JAS 10; Part Bed of Lake Couchiching in front of Lot 8, Concession 5, designated as Part 2 on Plan 51R-38130; City of Orillia.



Key Map of Subject Lands

**Schedule “D”
Draft By-law re Application for Approval to Expropriate**

BY-LAW NUMBER 2019-XX OF THE CITY OF ORILLIA

A BY-LAW FOR THE MAKING OF AN APPLICATION FOR APPROVAL TO EXPROPRIATE PROPERTY IN THE CITY OF ORILLIA AS MORE PARTICULARLY DESCRIBED IN SCHEDULE “A” AND “B” TO THIS BY-LAW

WHEREAS the City of Orillia requires the property described in Schedules “A” and “B” attached hereto for purposes of extending Coldwater Street East and preparing the lands for redevelopment and potential disposition in accordance with City land use planning policies and economic development objectives, and works ancillary thereto;

AND WHEREAS pursuant to Section 6(1) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, the power of a municipality to acquire land under this or any other Act includes the power to expropriate land in accordance with the *Expropriations Act, R.S.O. 1990, c.E.26*, as amended (hereinafter referred to as the “*Expropriations Act*”);

AND WHEREAS pursuant to Section 4 of the *Expropriations Act*, an expropriating authority, in this case, the City of Orillia, shall not expropriate land without the approval of the approving authority, in this case, the Council of the City of Orillia;

AND WHEREAS the City of Orillia shall conduct the expropriation in accordance with the *Expropriations Act*;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF ORILLIA HEREBY ENACTS AS FOLLOWS:

1. THAT the Council of the City of Orillia hereby approves the making of an

application for approval to expropriate land by the City of Orillia, in respect of the property described in Schedule "A" and Schedule "B", appended hereto.

2. THAT the Mayor, the City Clerk, and the _____, or any one of them are hereby authorized to execute, on behalf of the City of Orillia, an Application for Approval to Expropriate the property described in Schedule "A" and Schedule "B" appended hereto.

3. THAT the Mayor, the City Clerk, and the _____, or any one of them are hereby authorized to execute, on behalf of the City of Orillia, Notices of Application for Approval to Expropriate Land for the property described in Schedule "A" and Schedule "B" appended hereto and that such Notices be served and published, as required by the *Expropriations Act*.

4. THAT in the event an owner or registered owner requests a hearing of necessity, and a report of the inquiry officer is issued, the report of the inquiry officer shall come before Council of the City of Orillia for consideration.

5. THAT the officers and authorized agents of the City of Orillia be and hereby are otherwise authorized and directed to do all things required arising from the authorizations provided for by this by-law.

6. THAT this By-law includes Schedules "A", "B", "C" and "D" attached hereto and these Schedules form part of this By-law.

7. THAT this by-law comes into force on the day it is passed.

BY-LAW read a first, second and third time and finally passed this ____day of _____,
A.D. 2019.

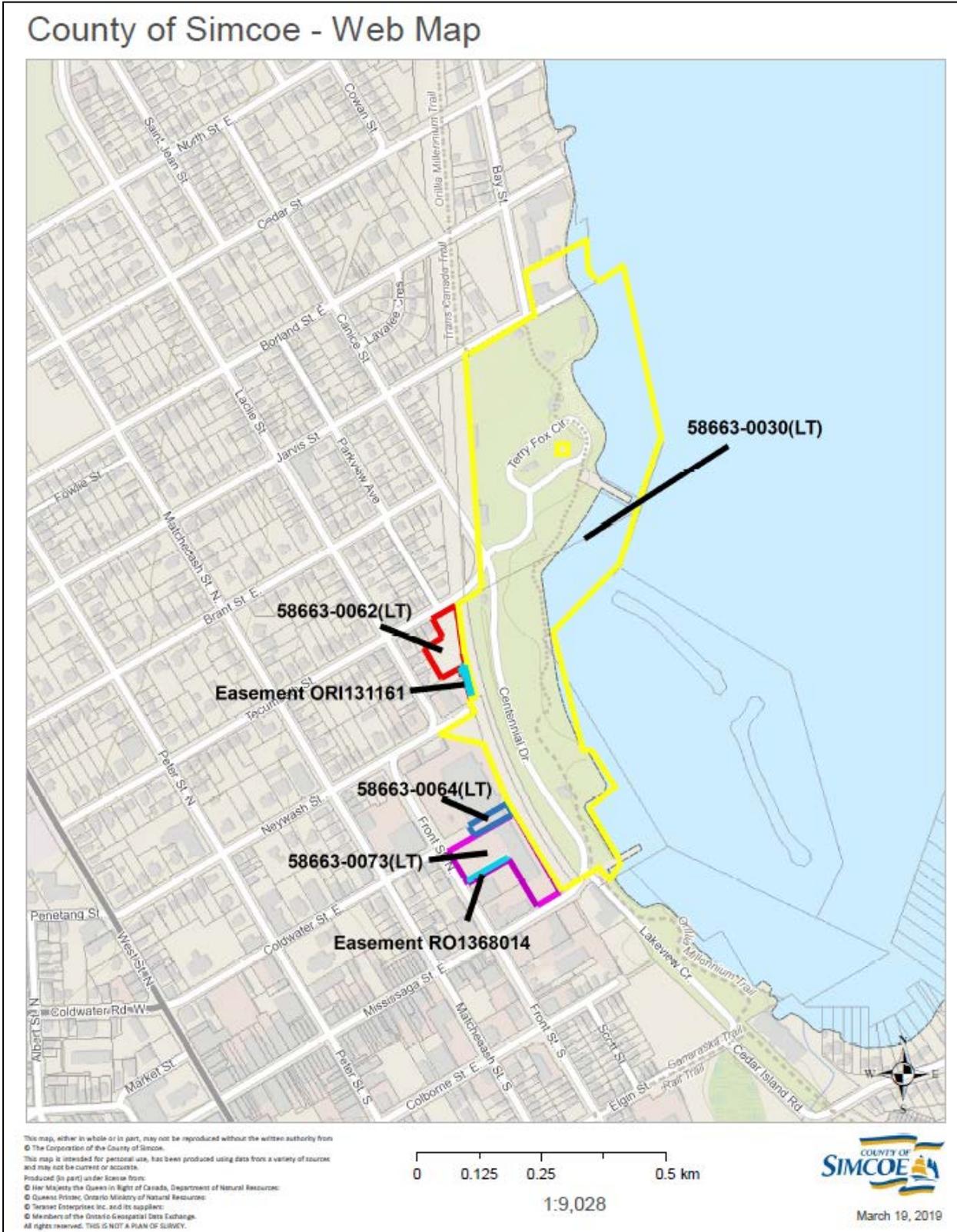
MAYOR

CAO/CITY CLERK

SCHEDULE "A"All right, title and interest in the following lands:

1. All of PIN 58663-0062(LT) PCL 13-E Laclie-1 Sec 51-8; Part Lots 13 & 14 e/s Laclie Street, Plan 8; Water Lot abutting Lots 13 & 14 e/s of Laclie Street, Plan 8; Part Lots 16, 17, 18 & 19 s/s Tecumseth Street, Plan 8; Water Lot abutting Lots 17 & 18 s/s Tecumseth Street, Plan 8, designated as Parts 1 to 11 on Plan 51R-14205; City of Orillia;
2. All of PIN 58663-0030(LT) Water Lot 28 e/s Bay Street; Part Water Lot 29 e/s Bay Street; Water Lot in front of Lots 28 & 29 e/s Bay Street; Water Lots 23, 24, 25, 26 & 27 e/s Cowen Street; Lots 23, 24 & 25 s/s Jarvis Street; Lots 23,24 & 25 n/s Brant Street; Lots 22,23,24 & 25 s/s Brant Street; Lots 15,16,17,18,19,20,21 & 22 s/s Market Street; Part Lots 18 & 19 s/s Tecumseth Street; Water Lot in front of Lots 18 & 19 s/s Tecumseth Street; Part Lots 22 s/s Jarvis Street, 21 & 22 n/s Brant Street, 21 s/s Brant Street; Part Jarvis Street, Cowen Street, Brant Street, and Market Street, all on Plan 8, City of Orillia; Part Water Lots in front of Lots 7, 8 & 9, Concession 5, South Orillia;
3. All of PIN 58663-0073(LT) Part of Lots 1,2,4 & 5 & all of Lot 6, e/s Front Street Plan 8; Part Water Lot in front of Lot 8, Concession 5, South Orillia, designated as Parts 3,4,5,6 & 8 on Plan 51R-38130; City of Orillia;
4. All of PIN 58663-0064(LT) PCL Water Lot-1 Sec Location JAS 10; Part Bed of Lake Couchiching in front of Lot 8, Concession 5, designated as Part 2 on Plan 51R-38130; City of Orillia.

SCHEDULE "B" – PROPERTY SKETCHES



SCHEDULE "C" – APPLICATION FOR APPROVAL TO EXPROPRIATE LAND

Expropriations Act, R.S.O. 1990, c. E.26

APPLICATION FOR APPROVAL TO EXPROPRIATE LAND

IN THE MATTER OF an application by **City of Orillia** for approval to expropriate property described in Schedule "A" attached hereto for purposes of extending Coldwater Street East and preparing the lands for redevelopment and potential disposition in accordance with City land use planning policies and economic development objectives, and works ancillary thereto.

APPLICATION IS HEREBY MADE to expropriate the land described in Schedule "A" Attached hereto.

Dated at Orillia this _____ day of _____, 2019.

Mayor Steve Clarke

Gayle Jackson, CAO/City Clerk

City of Orillia
(Expropriating Authority)

SCHEDULE "D"

NOTICE OF APPLICATION FOR APPROVAL TO EXPROPRIATE LAND

Expropriations Act, R.S.O. 1990, c. E.26.

NOTICE OF APPLICATION FOR APPROVAL TO EXPROPRIATE LAND

IN THE MATTER OF an application by the City of Orillia for approval to expropriate the lands described in Schedule "A" attached hereto for purposes of extending Coldwater Street East and preparing the lands for redevelopment and potential disposition in accordance with City land use planning policies and economic development objectives, and works ancillary thereto.

NOTICE IS HEREBY GIVEN that application has been made for approval to expropriate the lands described in Schedule "A" attached hereto.

Any owner of lands in respect of which notice is given who desires an inquiry into whether the taking of such land is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority shall so notify the approving authority in writing,

(a) in the case of a registered owner, served personally or by registered mail within thirty (30) days after the registered owner is served with the notice, or, when the registered owner is served by publication, within thirty (30) days after the first publication of the notice;

(b) in the case of an owner who is not a registered owner, within thirty (30) days after the first publication of the notice.

The approving authority is:

The Council of the City of Orillia
50 Andrew Street South, Suite 300
Orillia, Ontario L3V 7T5

The expropriating authority is:

City of Orillia
50 Andrew Street South, Suite 300
Orillia, Ontario L3V 7T5

Dated at Orillia this ____ day of _____, 2019.

CITY OF ORILLIA

Steve Clarke
Mayor

Gayle Jackson
CAO/City Clerk

Schedule "A"

All right, title and interest in the following lands:

1. All of PIN 58663-0062(LT) PCL 13-E Laclie-1 Sec 51-8; Part Lots 13 & 14 e/s Laclie Street, Plan 8; Water Lot abutting Lots 13 & 14 e/s of Laclie Street, Plan 8; Part Lots 16, 17, 18 & 19 s/s Tecumseth Street, Plan 8; Water Lot abutting Lots 17 & 18 s/s Tecumseth Street, Plan 8, designated as Parts 1 to 11 on Plan 51R-14205; City of Orillia
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3. All of PIN 58663-0073(LT) Part of Lots 1, 2, 4 & 5 & all of Lot 6, e/s Front Street Plan 8, & Pt Water Lot in front of Lot 8, Concession 5, South Orillia, designated as Parts 3,4,5,6 & 8 on Plan 51R-38130; City of Orillia;
4. All of PIN 58663-0064(LT) PCL Water Lot-1 Sec Location JAS 10; Part Bed of Lake Couchiching in front of Lot 8, Concession 5, designated as Part 2 on Plan 51R-38130; City of Orillia.