

CITY OF ORILLIA

TO: Council Committee – February 3, 2020
FROM: Waterfront Working Group
DATE: January 30, 2020
REPORT NO: WWG-20-01
SUBJECT: **70 Front Street North Legal Update**

Recommended Motion

THAT Report WWG-20-01 be received as information.

Purpose

The purpose of this report is to provide Council with an update on matters pertaining to the 70 Front Street North legal matter. In order to continue reporting to the public in an open and transparent way, the Waterfront Working Group recommends that Council consider releasing a redacted version of this report.

Background & Key Facts

- As previously reported to Council and the community there are a number of rights within the Metro lease which currently exist on the municipally owned lands, now referred to as the Waterfront Redevelopment lands, which would prevent and/or obstruct the redevelopment of the southern portion of the site.
- In order to achieve the City's vision through the sale of the waterfront lands, the City sought to remove certain restrictions from the site and receive certainty (through the courts) on a number of provisions within the Metro lease on which Metro and the City disagreed.
- The City is pursuing the expropriation of certain lease rights so that the southern portion of the site can be redeveloped and Coldwater Road can be extended to Centennial Drive.
- The City is not expropriating Metro's rights to operate a grocery store at 70 Front Street North.
- Metro had requested a Hearing of Necessity (HON) as it relates to the City's expropriation of Metro's lease rights, and a HON was subsequently scheduled for August 14, 2019.
- On August 12, 2019, Metro withdrew their request for the HON, however, they subsequently requested a Judicial Review of the expropriation process. Resolution of this legal process is required to allow for the redevelopment of the lands.
- The City's solicitor sought to achieve a hearing date at the end of January 2020.
- In December 2019, the City was advised that a date in January 2020 was not possible, and that the earliest possible date for a hearing in Oshawa (the jurisdiction

for City of Orillia judicial review cases) would be the last week of June or the first week of July.

- The City subsequently submitted an application (request) to transfer the judicial review to Toronto, where there are more court dates scheduled for this type of hearing, and therefore an opportunity to have the matter heard in an expedited manner.
- The application to transfer the application to the jurisdiction of Toronto has been approved and the Judicial Review hearing has been scheduled for May 26, 2020, in Toronto.
- At its meeting held on January 21, 2019, Council adopted the following resolution:
 - *“THAT as recommended in confidential Report WWG-19-01 dated January 10, 2019 from the Waterfront Development Team regarding the preparation and sale of 70 Front Street North, Option 1 be adopted as set out in the report;*
 - *AND THAT \$7,500 be approved for a reference plan, allocated from the Land Acquisition Reserve;*
 - *AND THAT \$390,000 be approved for legal and consultant(s) fees related to the disposal of 70 Front Street North, allocated from the Land Acquisition Reserve”.*
- The City sought to resolve the lease term matter through arbitration in order to reduce costs.
- Metro chose instead to litigate the matter through an action, and the City therefore responded with an application (which is less costly and expensive than an action).
- Metro submitted a counter-application seeking orders to have the City replace the roof and parking lot, and seeking an injunction against the City to prohibit the City from withholding Metro access to the triangle lands.
- The lease term hearing took place on December 5, 2019, and the results of that decision were received on December 20, 2019.
- Within the decision, the judge ruled in favour of Metro in regards to the lease term and interpreted the lease agreement to have a term of 2039.
- The judge ruled in favour of the City on Metro’s counter application resulting in a savings of approximately \$660,000 (for replacement of the roof) and a deferral of approximately \$400,000 (for replacement of the parking lot).

Options & Analysis

Staff presents the following option for consideration:

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Following release of the decision, members of the staff Waterfront Development Team and members of the Waterfront Working Group carefully reviewed the decision in collaboration with the City’s solicitor, Robert Wood of Borden Ladner Gervais (BLG). The Waterfront Working Group evaluated the impact of the decisions and potential next steps.

The WWG believes that an appeal of the lease term decision is warranted and consistent with the objectives of Real Property Policy 1.7.1.1. to “manage the Real Property interest of the Corporation of the City of Orillia in a timely, accountable and efficient manner while

achieving the maximum benefit to the City, financially or otherwise.” The Waterfront Working Group is supportive of staff’s pursuit of an appeal of the lease term decision. The Waterfront Working Group believes that this direction is consistent with Council’s direction in January 2019 to “proceed with final determination of the Metro lease term date through arbitration and/or civil litigation as required”. Therefore additional Council direction is not required at this time.

On January 28, 2020, Metro served notice that they are cross-appealing in response to the City’s appeal. Metro is appealing the decision as it relates to the roof and Triangle Land matters.

Financial Impact

An appeal of the lease term decision has an estimated financial impact of approximately \$24,000. Metro’s cost appeal is anticipated to increase these costs by approximately \$6,000 for an estimated total of \$30,000. It should be noted that legal fees may evolve depending on the actions taken by the other party. Staff will continue to update Council on a regular basis if/when there are changes which may impact the value of the legal fees. A comprehensive review of all legal fees associated with this file, and estimated future legal expenditures is currently being undertaken by staff and will be reported to Council in late February.

Currently the City has not yet exceeded the \$390,000 in consulting/legal fees that Council had previously approved for this project.

While the direct impact that a successful appeal could have on the overall purchase price is not yet known. It is estimated to far exceed the costs of the appeal.

Consultation

City staff and the Waterfront Working Group has consulted with the City’s solicitor on an as-needed basis.

Economic Development Impact

The Waterfront Redevelopment Project is a critical component of the Downtown Tomorrow Plan and has the potential to have a transformative impact on the downtown core. Economic Development staff are supportive of an appeal of the lease term decision. This would allow flexibility for the development proponents to consider an ongoing grocery presence on the site, while not being restricted to the current lease for an additional 10 years.

Communications Plan

The City will continue to have an open and transparent dialogue with all three development proponents with respect to all matters related to the Waterfront Redevelopment Project. Project updates will continue to be updated on the project webpage orillia.ca/waterfront.

