



TO: GENERAL COMMITTEE

SUBJECT: TEMPORARY DELEGATION OF AUTHORITY TO THE CHIEF ADMINISTRATIVE OFFICER

WARD: ALL

PREPARED BY AND KEY CONTACT: W. COOKE, CITY CLERK/DIRECTOR OF LEGISLATIVE AND COURT SERVICES, EXT. 4421

SUBMITTED BY: W. COOKE, CITY CLERK/DIRECTOR OF LEGISLATIVE AND COURT SERVICES

GENERAL MANAGER APPROVAL: D. MCALPINE., GENERAL MANAGER OF COMMUNITY AND CORPORATE SERVICES

CHIEF ADMINISTRATIVE OFFICER APPROVAL: M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDED MOTION

1. That in accordance with the City of Barrie Delegation of Powers and Duties Policy, the Chief Administrative Officer be delegated temporary authority during the period of June 26, 2018 to December 31, 2018, to undertake the following actions:
 - a) To award or accept (proceed with the purchase of goods, services, or construction from one or more selected suppliers/contractors) contracts where Section 15 of the Procurement By-law would normally apply, subject to:
 - i) The ability to manage through total budget management as appropriate; and
 - ii) The award and availability of sufficient funds is to the satisfaction of the Director of Finance/Treasurer.
 - b) To adjust capital project funding including draws from reserves when bid prices exceed the lesser of 10% or \$500,000, under the following circumstances:
 - i) The adjustment is in the best interest of the Corporation as delays would result in significant financial loss to the Corporation or the adjustment is required to fulfil an existing obligation of the City; and
 - ii) Such adjustment is to the satisfaction of the Director of Finance/Treasurer.
 - c) To authorize extensions in the period to start construction for a maximum of two years, said extension to be deemed satisfactory in consultation with the Director of Business Development and Director of Legal Services and subject to the following:
 - i) The provision of a written undertaking to commence construction within one year, and to complete construction within two years;
 - ii) That all undertakings be received within 30 days of the notification from the City of the extension, and if not received within the 30 days, the City may exercise its option to repurchase;

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- iii) If construction is not commenced or completed as granted by the extension, the owner immediately deed back the lands unencumbered to the City;
 - iv) The purchaser has demonstrated commitment and made an investment in the property to facilitate the proposed development; and
 - v) That the owner reimburses the City for administration and legal costs in the amount of \$1,400.00 per the current Fees By-law.
- d) To waive a right of repurchase for a property and remove any restrictive covenants registered on title, under the following circumstances:
- i) The purchaser has an offer to purchase the property from a business that would generate employment in the community and/or would result in the development of lands that would otherwise be vacant for an extended period of time;
 - ii) The proposed use for the property conforms to the general purpose and intent of the City's Official Plan and Zoning By-law;
 - iii) The purchaser is deemed to not be 'flipping' the property for the purpose of generating 10% profit beyond the original land sale price; and
 - iv) The terms of any agreements required are to the satisfaction of the Director of Legal Services and Director of Business Development.
- e) To provide direction in regard to the conduct of litigation or potential litigation, including, without limiting the foregoing, the settlement of litigation or potential litigation where the settlement is deemed fair and reasonable and in the best interest of the Corporation by the CAO in consultation with the appropriate General Manager and the Director of Legal Services; and
- f) To approve of negotiated agreements of purchase and sale or expropriation settlements in a form satisfactory to the Director of Legal Services resulting from previous Council direction that:
- i) Declared the property to be surplus to the City's needs; or,
 - ii) Directed staff to acquire the property.
2. That the Mayor and City Clerk be authorized to execute any documents that may be requisite to give effect to the actions identified above.
3. That a memorandum be submitted by the Chief Administrative Officer advising of the exercise of the delegated authority in the first quarter of 2019.

PURPOSE & BACKGROUND

4. The purpose of this staff report is to obtain delegated authority for the Chief Administrative Officer (CAO) to undertake specific actions during the period of June 26, 2018 to December 31, 2018.

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5. If a council of a municipality is in a “lame duck” position, it may not engage in the following actions:
 - a) the appointment or removal from office of any officer of the municipality;
 - b) the hiring or dismissal of any employee of the municipality;
 - c) the disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal; and
 - d) making any expenditures or incurring any other liability which exceeds \$50,000.
 6. The restrictions on the actions identified in 8 c) and d) do not apply if the disposition or liability was included in the most recent budget adopted by City Council before Nomination Day. The municipality is also not prevented from taking any action in the event of an emergency.
 7. It should be noted that nothing in section 275 of the *Municipal Act* prevents any person or body from exercising any authority that was delegated to that person or body by Council prior to Nomination Day.
 8. Barrie City Council is composed of 11 members, therefore provisions will take effect when it becomes mathematically impossible for nine members of the outgoing Council to be re-elected. Examples of when the “lame duck” provisions would apply are as follows:
 - a) If fewer than 9 current members run for re-election; or
 - b) If 9 members run for re-election, but more than 1 of the members is running for the same office.

ANALYSIS

9. In 2018, the “lame duck” period could extend from July 27, 2018 until the new Term of Office begins (December 1). The inaugural meeting scheduled for December 1, 2018 for the Council-elect is a ceremonial event, and no business is transacted. As a result, a potential “lame duck” period of four months would exist.
10. Staff have been reviewing areas of potential delegation or pre-authorization for any anticipated business which may arise after July 27, 2018. Delegating authority to a person or body to make decisions would reduce delays in projects, and support Barrie’s positioning as an investment ready community for economic development initiatives.
11. It is recommended that authority to undertake a number of actions be delegated to the CAO for a temporary period that would start immediately following the last meeting of Council prior to Nomination Day, and extend until December 31, 2018. The following paragraphs outline the proposed delegated authority:

Awarding/Accepting Contracts

12. Currently Section 15 of the Procurement By-law indicates that the contract awards identified in Appendix “A” to Staff Report LCS010-18 are subject to Council approval. While these specific circumstances would occur rarely, if ever, the flexibility to award during the “lame duck” period would eliminate any delays in these types of operating matters.

Adjusting Capital Projects

13. Currently, the CAO, General Managers, Executive Directors, and Department Heads are authorized to award contracts administratively, if the award is within the approved budget. If there are insufficient funds for capital projects that are the equivalent to the lesser of 10% or \$500,000, the project may be funded from a holding account. Council approval is required for capital projects where the insufficient funds are equal to more than 10% or more than \$500,000. The timing of several projects within the 2018 Capital Plan is such that should submissions in response to Requests for Proposals (RFPs) or tenders exceed the total budgeted amount by greater than 10% or \$500,000, based on current approval levels, they may not be able to be awarded during the "lame duck" period. While staff continue to feel that the budget estimates for RFPs and tenders are reasonable, in order to avoid the work identified in various RFPs and tenders being placed on hold until the term of the new Council begins, staff are requesting the delegated authority to avoid unnecessary delay in the project(s).
14. Although staff makes its best efforts to anticipate budget requirements within the 2018 Business Plan and Capital Plan, there may be a requirement to adjust a funding source or to provide interim funding for a project (including funding from reserves) where other funding sources are anticipated to become available at a future date. These budget adjustments would typically be presented to Council for approval. An adjustment would only be undertaken if it was deemed to be in the best interest of the Corporation (as delays would result in significant financial loss to the Corporation) or the adjustment is required to fulfil an existing obligation of the City. If a matter has the potential to be resolved in December, it will be presented to the 2018-2022 Council for consideration.

Agreements of Purchase and Sale

15. A number of Agreements of Purchase and Sale have been authorized by City Council over the past several years. A standard development covenant requires the purchaser to obtain a building permit within one year and to complete construction within two years of the purchase date. Another standard covenant in Barrie's industrial land sales, is a first right of refusal to repurchase lands based upon an agreed upon price, if the development timelines have not been met.
16. Some purchasers of City-owned industrial lands may require an extension related to the timelines to develop their property. Delegating authority to provide such extensions where the purchaser has demonstrated commitment and made an investment in the property to facilitate the development could be granted subject to the purchaser providing a written undertaking to commence and complete construction, and the owner reimbursing the City for administration and legal fees, as per the current Fees By-law.
17. If a purchaser has received an offer for a parcel of land that has not been developed in accordance with the covenants, the existing Agreements of Purchase and Sale generally provide a limited amount of time for the City to respond to a right to repurchase. Delegated authority is recommended for circumstances where the purchaser has received an offer to purchase the property from a business that would generate employment in the community, and/or would result in the development of lands that would otherwise be vacant for an extended period of time. Further, the proposed use would be required to conform to the general purpose and intent of the City's Official Plan and the Zoning By-Law.

Settlements associated with Litigation

18. As a relatively large public sector corporation, the City of Barrie is the subject of litigation. Offers of settlement are almost always time limited, and may require a decision of Council that it would not be able to provide during the "lame duck" period. To facilitate the resolution of litigation impacting the municipality, it is recommended that the authority to settle litigation, or potential

litigation, be delegated to the CAO, where the offer of settlement is deemed to be fair and reasonable, and in the best interest of the Corporation by the CAO in consultation with the appropriate General Manager/Executive Director, and the Director of Legal Services.

Next Steps

19. In exercising the delegated authority, the CAO shall ensure that any documentation associated with the delegation is to the satisfaction of the Director of Legal Services, and any financial matters are to the satisfaction of the Director of Finance/Treasurer.
20. To ensure Council is informed, a memorandum would be submitted by the CAO advising of the exercise of the delegated authority.

ENVIRONMENTAL MATTERS

21. There are no environmental matters related to the recommendations.

ALTERNATIVES

22. The following alternatives are available for consideration by General Committee:

Alternative #1

General Committee could recommend that any or all of the proposed actions not be delegated on a temporary basis to the Chief Administrative Officer.

Delegating authority for the actions identified in the recommended motion will allow for the efficient management of the Corporation's time sensitive business during the "lame duck" period.

Alternative #2

General Committee could amend any conditions associated with the delegated authority recommended.

The conditions associated with the delegated authority have been reviewed with the potentially impacted departments, and are deemed to provide clear direction and/or limits to the delegated authority that are reasonable.

FINANCIAL

23. There are no direct financial implications resulting from the recommended motion. Indirectly, the recommended motion creates the potential for the CAO to expend funds, execute agreements or adjusting funding sources, including funding from reserves that bind the Corporation. To ensure Council is informed, a memorandum would be submitted by the CAO advising of the exercise of the delegated authority.

LINKAGE TO 2014-2018 COUNCIL STRATEGIC PLAN

24. The recommendations included in this Staff Report are not specifically related to the goals contained in 2014-2018 Strategic Plan.

Appendix "A"

Section 15 of the Procurement By-law – Prescribed Council Approval

15. PRESCRIBED COUNCIL APPROVAL

- 15.1 The following contracts require Council approval, unless approved in accordance with Section 15.2:
- a) any contract requiring approval from the Ontario Municipal Board;
 - b) any contract prescribed by statute to be made by Council;
 - c) where the Procurement By-law being waived;
 - d) where there is an irregularity or unresolved challenge in connection with the procurement process and, in the opinion of the CAO, in consultation with the City Solicitor, the award of the contract is likely to expose the City to legal, financial or reputational risk.
- 15.2. Where necessary, the CAO is authorized to approve the contracts normally subject to Council approval, as set out in Section 15.1, during the time that regular Council meetings are suspended, provided that a report is submitted to Council, as soon as reasonably possible, setting out the details of any contract approved pursuant to this authority.