
TO: GENERAL COMMITTEE

SUBJECT: INDEMNITY AGREEMENT SUNCOR AND THE CITY OF BARRIE
ROAD ALLOWANCE MATTERS

WARD: ALL

PREPARED BY AND KEY CONTACT: P. KRYSIAK, LEGAL COUNSEL EXT. 4410

SUBMITTED BY: I. PETERS, DIRECTOR OF LEGAL SERVICES

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

RECOMMENDED MOTION

1. That the Mayor and City Clerk be authorized to execute an Indemnity Agreement with Suncor Energy Inc. on terms satisfactory to the Director of Legal Services.

PURPOSE & BACKGROUND

2. The purpose of this report is to seek Council's approval to enter into an Indemnity Agreement with Suncor Energy Inc. ("Suncor") with respect to a property located at 309, 311 and 315 Bayfield Street, Barrie, Ontario ("Suncor Property").
3. Suncor owned and operated a retail service station with petroleum equipment on the Property. The Suncor Property has shown to exhibit petroleum hydrocarbon impact that exceeds levels permitted by environmental legislation. Suncor recently agreed to sell the Suncor Property to Belgue Realty Corporation ("Purchaser").
4. The Purchaser intends to redevelop the Suncor Property. At this time, the Purchaser has submitted an application for a building permit and a site plan approval to build a 2,000 square foot Starbucks at 309 Bayfield Street. The Purchaser has also agreed to transfer a road widening to the City at the time of site plan registration.
5. In order to obtain financing to complete the purchase, the Purchaser requires that Suncor enter into an Indemnity Agreement with the City that makes Suncor responsible for any contamination that has or may migrate from the Suncor Property onto the adjacent road allowance ("City Property"). Suncor actively monitors the contamination on the Suncor Property.
6. Suncor, in consultation with City staff, has drafted an Indemnity Agreement; its significant terms are discussed below.

ANALYSIS

7. The Indemnity Agreement covers the relevant subject matter of remediation, liability, indemnity and City expropriation or acquisition of the Suncor Property.

Remediation

8. Suncor is obliged to remediate soil and groundwater petroleum hydrocarbon contamination present in excess of legislated environmental standards that has migrated from the Suncor Property onto City Property. Suncor will undertake the remediation according to a work plan approved by the City.

9. Suncor will remain responsible for the costs of the remediation of City Property until it can provide the City with a report from an environmental consultant that confirms the remediation has been completed, and the City accepts the contents of that report.

Liability

10. Suncor is liable for soil and groundwater petroleum hydrocarbon contamination present in excess of legislated environmental standards that has migrated from the Suncor Property onto City Property.
11. If and when the City carries out any work on City Property, Suncor will be prepared to undertake the remediation. Alternatively, if the City wants to undertake the remediation, it may make use of Suncor's contractor. Further, the City may also hire a third party contractor to undertake the remediation and Suncor will reimburse the costs incurred by the City in hiring the contractor.

Indemnity

12. Suncor will reimburse or indemnify the City for all of the following:
- a) Costs incurred as a result of the contamination and remediation;
 - b) External consulting or legal costs incurred as a result of the contamination or remediation;
 - c) Claims from government, utilities or other agencies relating to the contamination or remediation; and
 - d) Property damage and personal injury claims resulting from the contamination or remediation.

Expropriation or Acquisition

13. If the City expropriates or acquires any additional Suncor Property, Suncor will pay for the costs of the necessary risk management measures to address the contamination present at the time of such expropriation or acquisition.
14. The City's only obligations under the Indemnity Agreement will be to cooperate with Suncor in its remediation efforts and to make reasonable commercial efforts to avoid any contaminated areas when installing services or infrastructure related to Suncor's Property. City staff found these obligations to be reasonable.

ENVIRONMENTAL MATTERS

15. There are no environmental matters related to the recommendation.

ALTERNATIVES

16. The following alternative is available for consideration by General Committee:

Alternative #1 General Committee could choose to not authorize the Mayor and City Clerk to execute an Indemnity Agreement with Suncor.

This alternative is not recommended because it is beneficial to the City to have the Indemnity Agreement in place. The Agreement would protect the City from potential liability related to contamination, provide a remediation plan subject to City approval, and reimburse the City for all costs it may incur as a result of the contamination and remediation. Further, the redevelopment of the Suncor Property also results in the City obtaining a road widening.



FINANCIAL

17. There are no financial matters related to the recommendation.

LINKAGE TO 2014-2018 STRATEGIC PLAN

18. The recommendation included in this Staff Report support the following goals identified in the 2014-2018 Strategic Plan:
- ☒ Vibrant Business Environment
19. The execution of the Indemnity Agreement will allow for the Purchaser to redevelop a vacant property along Bayfield Street for commercial purposes.