



TO: GENERAL COMMITTEE

SUBJECT: CLEARANCE OF DUE DILIGENCE CONDITIONS FOR THE CITY AND HIP PROPERTY TRANSACTIONS

WARD: 2

PREPARED BY AND KEY CONTACT: A. MILLS, MANAGER OF LEGAL SERVICES, EXTENSION #5051

SUBMITTED BY: I. PETERS, DIRECTOR OF LEGAL SERVICES

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

RECOMMENDED MOTION

1. That the conditions identified on Appendix "A" to Staff Report LGL012-18 and contained in the Agreement of Purchase and Sale (the "APS") between HIP Barrie Central Inc. ("HIP") and the Corporation of the City of Barrie (the "City") related to the City's acquisition of the Fisher Auditorium property (the "Fisher Property") be removed.
2. That should HIP remove its conditions contained in the agreements it entered into with the City to purchase 34-40 Bradford Street, 44 Bradford Street and Red Storey Field, staff in the Legal Services Department be directed to close on those transactions and the Fisher Property transaction in accordance with the terms of the agreements approved pursuant to motion 18-G-107, subject to any amendment(s) approved by the Chief Administrative Officer.
3. That the Mayor and City Clerk be authorized to execute all associated and required documents in a form approved by the Director of Legal Services necessary to remove the City's conditions on purchasing the Fisher Property and complete the transactions identified in paragraphs 2 and 3.
4. That staff be directed to:
 - a) Continue working with the YMCA regarding an integrated site plan for the Fisher Auditorium and Events Centre re-use and the proposed YMCA building on the Fisher Property should the YMCA select this location;
 - b) Continue negotiations with the YMCA concerning possible use by the YMCA of property surplus to the City's needs; and
 - c) Report back to General Committee with a staff report seeking further direction related to the potential inclusion of the YMCA in the development of the Fisher Property site or other potential alternatives should the YMCA choose to locate elsewhere.

PURPOSE & BACKGROUND

Report Overview

5. Staff are providing an update on:

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- a) The results of investigations completed so far by City Departments in order to satisfy the City's due diligence conditions contained in the APS entered into between the City and HIP for the acquisition of the Fisher Property and seeking authority to remove those conditions;
 - b) The status and recommended next steps to be taken with the YMCA and the Fisher Property site.
6. On May 14, 2018, City Council adopted motion 18-G-107 regarding PROPERTY TRANSACTIONS TO ALTER HIP DEVELOPMENTS AND CITY PROPERTY OWNERSHIP (WARD 2) as follows:
1. That notwithstanding the provisions of By-law 95-104, the Corporation of the City of Barrie (the "City") sell the properties shown on Appendices "A" and "B" to Staff Report LGL008-18 to HIP Barrie Central Inc. ("HIP") or an affiliated company in accordance with the terms of agreements of purchase and sale substantially in the form of the attached Appendices "C" and "D" to Staff Report LGL008-18.
 2. That the City purchase the property shown on Appendix "E" to Staff Report LGL008-18 in accordance with the terms of an agreement of purchase and sale substantially in the form of the attached Appendix "F" to Staff Report LGL008-18.
 3. That the Director of Legal Services be authorized to commence expropriation proceedings to acquire the property shown on Appendix "G" to Staff Report LGL008-18 in order that it may be subsequently transferred to HIP for redevelopment purposes in accordance with the terms of an agreement of purchase and sale substantially in accordance with the terms described in paragraph 17 of Staff Report LGL008-18.
 4. That the Chief Administrative Officer be authorized to approve the final terms of the agreements of purchase and sale referred to in paragraphs 1, 2 and 3 in a form satisfactory to the Director of Legal Services.
 5. That the City make an application to City Council, as approving authority, for approval to expropriate the property and that the City Clerk be authorized to execute the necessary forms of application.
 6. That the "Notice of Application for Approval to Expropriate" be served and published and that any requests for inquiries received, pursuant to the "Notice of Application for Approval to Expropriate" be forwarded to the Chief Inquiry Officer and that the Chief Inquiry Officer be requested to report to City Council with respect to any such request.
 7. That the Director of Legal Services be delegated authority to settle the expropriation or any negotiated agreement.
 8. That all conditions related to Council Approval of the agreements of purchase and sale referred to in paragraphs 1, 2 and 3 (the "Agreements") be removed in accordance with paragraph 11 of Staff Report LGL008-18.
 9. That all conditions related to the Due Diligence Period contained in the Agreements be removed subject to the satisfaction of the Director of Corporate Facilities and the Chief Administrative Officer.
 10. That notwithstanding the provisions of By-law 95-104, the property shown on Appendix "G" to Staff Report LGL008-18 be declared surplus to the needs of the of the City immediately following the City taking title and possession to it and transferred to HIP or an affiliated company.

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11. That the Mayor and City Clerk be authorized to execute all associated and required documents in a form approved by the Director of Legal Services necessary to:
- a) Remove any conditions or change any term contained in the Agreements;
 - b) Completing the transfer of properties identified in the Agreements; and
 - c) Completing the expropriation and subsequent transfer of the property to HIP.
12. That staff be directed to take the following steps, in the order identified below, related to the potential inclusion of the YMCA on the property shown on Appendix "E" to Staff Report LGL008-18:
- a)
 - i) Prepare a preliminary site plan for the Fisher Auditorium and Events Centre re-use and the proposed new YMCA building on the property to be acquired from HIP;
 - ii) The staff in the Creative Economy Department undertake stakeholder consultation concerning the requirement for the size and scope of a convention centre, ancillary facilities and services, including breakout spaces and report back to General Committee for approval of the final design and that a maximum of \$15,000 for the stakeholder consultation be funded from the Strategic Priorities Account;
 - b) Provide a detailed plan for the overland watercourse at this location in order to be able to scope available or remaining property for potential YMCA use; and
 - c) Undertake negotiations with the YMCA concerning possible use by the YMCA of property surplus to the City's needs.
- and subsequently report back to General Committee with a staff report seeking further direction.
13. That the budget of Capital Project #000633 (Fisher Auditorium Redevelopment) be increased by \$200,000 to address costs associated with completing the transactions, to be funded from the Council Strategic Priority Reserve (1304-0410) and any funds not required be returned to the Reserve.
14. That a portion of the allocated funds previously approved by Council for Capital Project #000633 (Fisher Auditorium Redevelopment) be used to conduct property due diligence activities such as survey, geotechnical, environmental and archaeological investigations. (LGL008-18) (File: L07-1070)
7. Motion 18-G-107 approved the removal of the conditions of Council approval, for the agreements reached between the City and HIP for the following property transactions summarized previously in staff report LGL008-18 as follows:
- Red Storey Field - 1.465 Hectares
- The agreement has a purchase price of \$5,259,000 (HIP purchase from City);
 - The property was appraised by an external appraiser which estimated value to be in the range of \$4,835,000 to \$5,054,000;

- The purchase price exceeds the midpoint of the appraised value by \$315,000;
- The agreement is conditional upon Council approval, due diligence investigations of soil conditions and the simultaneous completion of all the Agreements.

34- 40 Bradford Street- 0.215 Hectares

- The agreement has a purchase price of \$955,000 (HIP purchase from City);
- The property was appraised by an external appraiser which estimated value to be in the range of \$920,000 to \$990,000;
- The purchase price equals the midpoint of the appraised value;
- The agreement is conditional upon Council approval, due diligence investigations of soil conditions and the simultaneous completion of all the Agreements.

Fisher Auditorium - 1.784 Hectares

- The agreement has a purchase price of \$6,214,000 (City purchase from HIP);
- The property was appraised by an external appraiser which estimated value for property outside of the floodplain to be \$2,906,000 per Hectare and property within the floodplain to be \$1,453,000 per Hectare;
- The area of the property to be purchased consists of approximately 0.935 Hectares outside of the floodplain and 0.849 Hectares within the floodplain and equates to an appraised value of \$3,951,000;
- In addition to the appraised value of the property, staff have attributed a value to Fisher Auditorium of \$1,234,000;
- The purchase price exceeds the appraisal value by \$1,029,000;
- The agreement is conditional upon Council approval, due diligence investigations of soil conditions and the simultaneous completion of all the Agreements.

44 Bradford Street - 0.107 Hectares

- The City will agree to expropriate 44 Bradford Street in accordance with this Staff Report, subject to HIP's commitment to indemnify the City for:
 - all external costs associated with the expropriation; and
 - Compensation payable to the owners of 44 Bradford Street as may be negotiated, settled or ordered as part of the expropriation.
- HIP will provide the City with a letter of credit satisfactory to the City to secure the costs associated with the expropriation and payment of compensation to the owners of 44 Bradford Street pursuant to the expropriation;

- HIP will also provide the City with an initial payment of fifty-thousand dollars to cover the costs of internal staff time and resources associated with initiating the expropriation;
 - The agreement is conditional upon Council approval and the simultaneous completion of all the Agreements.
8. Staff have arranged for the preparation of a draft reference plan to delineate the parcel boundaries for the Fisher Property and Red Storey Field as identified in the agreements. In doing so, it was realized that a portion of the adjacent Fire Station's parking lot was included in the Red Storey Field parcel boundary. The draft reference plan was subsequently amended to exclude the Fire Station's parking lot and HIP has verbally accepted the revised parcel boundary.
 9. The City's expropriation of 44 Bradford Street is no longer required as HIP has entered into a private agreement with the current owner to acquire it.
 10. Both the City's due diligence conditions for the acquisition of the Fisher Property and HIP's due diligence conditions for the acquisition of 34-40 Bradford Street, 44 Bradford Street and Red Storey Field were extended to November 5, 2018 in order to accommodate a longer than anticipated time frame for completion of demolition activities onsite which prevented the City from commencing its investigations as originally anticipated.
 11. HIP has verbally advised they are now prepared to remove their due diligence conditions with respect to all agreements between the City and HIP. If both the City and HIP remove their conditions in all of the agreements the transactions will close within 30 days thereafter.

ANALYSIS

12. Staff have obtained the services of consultants to undertake investigations and analysis and report on matters related to soil conditions, archaeological assessment and engineering for servicing of the site, as well as the daylighting of the Kidd's Creek watercourse through the Fisher Property.
13. The results of the investigations necessary to satisfying the due diligence conditions for the Fisher Property are as follows:

Species at Risk

14. Chimney Swifts have nested on this site for many years and are classified as an Endangered Species. HIP has completed studies and has prepared a Mitigation and Restoration Plan that has been accepted by the Ministry of Natural Resources and Forestry. Vegetation has been removed from the Fisher Property by HIP in accordance with the City Tree Policy. No other Species at Risk issues have been identified.

Zoning Compliance

Proposed Uses

15. The Fisher Property is zoned Central Area Commercial C1-2 (SP-481) (H-125) in accordance with the City's Comprehensive Zoning Bylaw 2009-141. The SP-special provisions allow for a school use and restrict certain uses from locating on site. The H-holding provision requires the registration of a site plan agreement.
16. The City's proposed uses, Theatre and Events Centre are permitted uses within a C1-2 zone. The siting and height of buildings and setback requirements have and will be considered in the design

of the preliminary site plan. City requirements for road widening dedications on Dunlop and Bradford Streets have also been taken into consideration.

Parking

17. In accordance with Section 6.3.6.1 of Zoning Bylaw 2009-141, parking on-site, is not required for commercial uses and places of worship in a C1 zone. The Theatre and Events Centre are considered commercial uses. Other potential uses on the site may require on-site parking.
18. Notwithstanding that zoning does not require it, some uses, including the Events Centre may benefit from some onsite parking due to the logistics associated with programming. This has been accounted for in the preliminary integrated site plan.

Access

19. The existing road network surrounding the site includes Dunlop Street to the north, Bradford Street to the east and a proposed delivery laneway to the west between Fisher Auditorium and the Fire Station.
20. A term of the APS between the City and HIP for the Fisher Property acquisition is that both parties are required to grant each other an access easement over a portion of their retained property so as to provide both parties with an access point at the signalized intersection at Simcoe Street and Bradford Street.
21. Utilization of the signalized intersection at Simcoe Street and Bradford Street:
 - i) Improves the level of services for vehicles accessing the proposed site and reduces the overall delay for the intersection;
 - ii) Reduces the demand at the intersections of Dunlop Street and Bradford Street and Dunlop Street and Eccles Street.
22. Allowance for access at this location has been accounted for in the preliminary integrated site plan.

Approval and Permits - Proposed Development

23. A site specific zoning amendment is not required for the Theater and Event Centre. Depending on the ultimate use of the balance of the Fisher Property, site specific zoning standards may be appropriate. This can only be confirmed once users and a site plan are established.
24. The Fisher Property is within the City's Site Plan Control Area and as such, development is subject to site plan control. The City is not subject to Site Plan Control for City facilities; however, prior to redevelopment of the site, staff are recommending that the site plan and architectural design of the buildings be reviewed through the site plan review process.
25. A permit for regrading of the site is required from the LSRCA.
26. A building permit would subsequently need to be issued prior to construction.

Sub-Surface Soil Conditions

Environmental/Geotechnical

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27. HIP retained Terraprobe Inc. who had previously undertaken borehole sampling, including soil testing and environmental investigations (geotechnical and hydrological), Phase 1 and 2. Those reports were provided to the City for information purposes.
 28. The City retained WSP consultants and drilled an additional 18 boreholes in mid-July. Soil testing was completed to determine ground water level, soil composition, bearing capacity, compaction and phosphorus filtration capability, any contaminants and provide preliminary foundation system options for consideration of future development. A final report has not yet been received, however, the consultant has identified that the soils are generally conducive to allowing the construction of lightly loaded structures consistent with the current site zoning. Geotechnical constraints exist related to the depth of existing fill material on site and the potential need for localized sub-excavation in certain areas since constructing structures on fill material is not advisable. In order to install building foundations the fill is required to be removed and re-engineered prior to construction.
 29. Staff note that, with the exception of a transitional housing element associated with the YMCA program, the proposed redevelopment of the site including a conference centre, auditorium/theater and YMCA will not change the use of the land to a more sensitive use. As a result, a Record of Site Condition is not required under Ontario Regulation 153/04. However, housing is a more sensitive use of the site and a Record of Site Condition process will be triggered by the inclusion of a transitional housing element on the site. All costs associated with an RSC due to the inclusion of a transitional housing program should be borne solely by the YMCA.
 30. A Record of Site Condition (RSC) summarizes the environmental condition of a property, based on the completion of environmental site assessments, which is described as follows; Once environmental assessments are completed, and extent of contamination is known, it is the property owners responsibility to remediate the property to meet the Ministry of Environment, Conservation and Parks (MECP) standards. In some cases, it may not be cost-effective to meet the Standards. The MECP allows owners to develop site-specific standards through the preparation of a 'risk assessment.' This method permits the development of alternate standards to address contamination. This can result in no clean-up activities or reduced clean-up activities at the site. Once either of the options is completed, the property owner is able to submit a Record of Site Condition to the MECP for approval.
 31. Given that the site does have known chemical parameters in the soil and groundwater with concentrations that exceed generic soil and groundwater standards the City may consider a future due diligence Risk Assessment as a best practice to describe and quantify the nature and likelihood of potential adverse health effects to human and ecological receptors (Kidd's Creek) resulting from any potential exposure to environmental contaminants that may be encountered during the re-development of the property. A due diligence Risk Assessment is not submitted to the MECP and can be completed in a shorter period of time than an enhanced Risk Assessment.

Archaeological Study

32. Aecom was retained to complete a Stage 1 and 2 archaeological study. Field work began on July 30, 2018 and continued into mid-August. A final report has not yet been received by the consultant, however, it has been verbally communicated to staff that there is no requirement to proceed with Stage 3 or 4 investigations as nothing was discovered on site or through research to warrant further study.
33. The Director of Corporate Facilities has reviewed the results of the soil condition investigations and is satisfied that conditions related to these matters be removed.

Feasibility and Business Case to Develop, Operate and Fund the Project

34. Staff Report CEO001-18 concerning the Fisher Auditorium and Event Centre presented the business case to develop, operate and fund the Theatre and Event Centre. Motion 18-G-058 approved the recommendations in the Staff Report (as amended).

Ground Lease with the YMCA

35. Senior staff met with representatives from the YMCA to discuss potential land use options. The YMCA's preference is to own the land their facility would sit on. Ownership of property allows for the YMCA to submit to grant funding programs and achieve more favourable borrowing rates. Staff believe that property ownership is a viable option should the YMCA select this location.

Approval and Permits – Kidd's Creek

Kidd's Creek Channel Design/Daylighting

36. The City has worked with the Lake Simcoe Regional Conservation Authority ("LSRCA") to develop initial concepts for the realignment of Kidd's Creek and its channel design. This collaboration will continue as the detailed design progresses. During initial discussions, all parties did conclude that through the proposed realignment of Kidd's Creek, the Fisher Property's current floodplain constraints could be reduced depending on the proposed future grading of the site.
37. Staff met with LSRCA staff on June 1, 2018 to discuss the potential for daylighting/naturalizing and moving the Kidd's Creek easterly towards the intersection of Dunlop and Bradford Streets thereby providing additional tableland for the development of the Fisher Property site. Flood control and stormwater management would be contained within the proposed channel.
38. LSRCA staff are supportive of daylighting, naturalizing and moving the creek, as well, would support the cantilever of buildings over the creek as well as a pedestrian bridge crossing. However, the approval and issuance of permits would be required prior to commencement of works. Application for Permit requirements include modelling information, detailed drawings, channel design and limits and technical analysis. The City has retained R.J. Burnside consultants to provide the stormwater analysis and design for the creek channel and flood control works. The stormwater modeling component is currently underway and is anticipated to be completed by end of September 2018. The detailed design for improvements to Dunlop Street (Eccles Street to Toronto Street) and Kidd's Creek realignment are scheduled for completion by the end of the year. Upon completion of this work, the formal permit application can be made. Through discussions, LSRCA have provided staff with a high level of confidence that permits will be supported for the naturalization of Kidd's Creek including flood and stormwater control.
39. Grant/funding opportunities are being investigated through LSRCA for Urban Restoration Programs and Low Impact Design (LID) drainage works.

YMCA Status

40. Staff have held several meetings with YMCA representatives to coordinate site plan design for a shared site, and determine/confirm uses, size and space requirements, built form (building heights/number of storeys), site circulation and design criteria. From this information and that of the Creative Economy department related to requirements associated with Fisher Auditorium and the proposed Events Centre, block building plans and site layout design have been conceptually prepared. An integrated preliminary site plan has been completed. Staff are confident that the site is of sufficient size and the design of the site can facilitate City and YMCA proposed uses and needs.

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41. Staff understand that the YMCA has entered into discussions to explore alternative site locations within the City Centre for the relocation of the YMCA facility. Prior to staff presenting the integrated site plan to General Committee, YMCA needs to complete discussions and finalize a site location.
42. Staff will continue to work with the YMCA on an integrated site plan concept should the YMCA decide to locate on the Fisher Property.
Next Steps
43. The next steps should Council approve of the Recommend Motion include:
- a) City removing conditions contained in the Fisher Property APS;
 - b) HIP removing their conditions of purchase in the agreements to acquire 34-40 Bradford Street, 44 Bradford Street and Red Storey Field;
 - c) Closing on all City & HIP property transactions;
 - d) YMCA confirmation of their proposed location;
 - e) If the City and YMCA come to the decision to co-locate on the Fisher Property, staff will present the integrated preliminary site plan to General Committee for approval and seek direction to finalize the site plan and enter into related agreements;
 - f) Completion of a site plan which would include servicing, grading, traffic analysis and other considerations;
 - g) Commencement of fund raising for the Fisher Auditorium and Events Centre project;
 - h) Securing of permits from the LSRCA for the naturalization of Kidd's Creek;
 - i) Completion of Kidd's Creek construction project;
 - j) Construction of the Fisher Auditorium and Events Centre project.

If the YMCA selects another site, staff will report back to General Committee with further recommendations on continuing to implement the vision of a community and cultural hub at this location.

ENVIRONMENTAL MATTERS

44. There are no additional environmental considerations at this time beyond what has been reported on in this staff report.

ALTERNATIVES

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



Alternative #1

General Committee could choose not to remove the City's conditions in the Fisher Property APS which would have the effect of ending all of the property agreements entered into between HIP and the City.

Although this alternative is available, it would result in the City not acquiring Fisher Auditorium which has been identified as being of significant importance to the City.

FINANCIAL

46. There are no new financial implications for the City resulting from the proposed recommendation. Costs associated with closing the transactions between the City and HIP have been funded pursuant to motion 18-G-107.

LINKAGE TO 2014-2018 STRATEGIC PLAN

47. The recommendation(s) included in this Staff Report support the following goal identified in the 2014-2018 Strategic Plan:
- ☒ Inclusive Community
48. The City's acquisition of the Fisher Property will ensure the preservation of Fisher Auditorium and enable the redevelopment of a great public space that will promote and facilitate community connections.

APPENDIX "A"

Conditions

- 1) The Buyer determining at its own expense, that the Property does not contain a habitat or critical habitat as defined in the Species at Risk Act, SC 2002, C29, nor a habitat as defined in the Endangered Species Act, 2007 S.O. 2007, C6 which could unreasonably restrict the development of the Property.
- 2) The Buyer satisfying itself that the zoning for the Property will permit the proposed redevelopment of the Fisher Auditorium (the "Proposed Development").
- 3) The Buyer satisfying itself that there is sufficient access from and onto the Property in order to permit the Proposed Development.
- 4) The Buyer satisfying itself of the suitability of the sub-surface soil conditions and environmental and archaeological assessments of the Property. The Seller acknowledges that once the Buyer has completed all of their soils testing and has disclosed any possible soils issues to the Seller then notwithstanding that it may be possible for the soils issue to be remediated, the Buyer in their sole and unfettered discretion shall have the right to decide whether or not to waive this condition and the cost of remediation shall not necessarily be a factor that must be considered by the Buyer in deciding whether or not to waive this condition.
- 5) The Buyer satisfying itself that any approval or permit required for the Proposed Development and all servicing can be acquired without unreasonable cost.
- 6) The Buyer satisfying itself of the feasibility and business case to develop, operate and fund the Proposed Development.
- 7) The Buyer entering into a binding ground lease with the YMCA for a portion of the Property.
- 8) The Buyer satisfying itself that all necessary permits and approvals for the proposed realignment of Kidd's Creek traversing the Property will be granted by the Lake Simcoe Region Conversation Authority and other regulatory agencies.