



City of
Peterborough

To: **Members of the General Committee**

From: **Patricia Lester**
Commissioner of Corporate and Legislative Services

Meeting Date: **September 17, 2018**

Subject: **Report CLSRE18-011**
1900 Technology Drive

Purpose

This report advises Council of a notice by Drain Bros. Excavating Limited ("Drain Bros.") triggering the City's right to exercise an option to reacquire 1900 Technology Drive.

Recommendation

That Council approve the recommendation, outlined in Report CLSRE18-011 dated September 17, 2018 of the Commissioner of Corporate and Legislative Services, as follows:

That staff be directed to notify Drain Bros. Excavating Limited that The Corporation of the City of Peterborough waives its right to exercise an option to reacquire the property known municipally as 1900 Technology Drive pursuant to section 5.01 of Option Agreement registered January 15, 2018 as instrument no. PE284095 but without prejudice to the parties' rights and obligations pursuant to the said Option Agreement and time remaining of the essence in respect of all such rights and obligations.

Budget and Financial Implications

There are no financial implications related to the recommendation to waive the City's right to exercise its option.

Background

On September 25, 2017, Council approved the recommendation in Report OCSRE17-025 and directed that “a by-law be passed to authorize the sale of approximately 9.92 acres of industrial lands at 1850 Technology Drive and approximately 13.19 acres of industrial lands at 1900 Technology Drive, more particularly described as Part 1, 2 and 4 on [reference plan] 45R-16440, [...] to Drain Bros. Excavating Limited for \$500,000.”

Prior to completion of the transactions and in consultation with staff, Drain Bros. deposited a new reference plan at its expense moving the lot line between the two properties so that 1850 Technology Drive would be described as Part 1, Plan 45R-16538 comprising approximately 7 acres and 1900 Technology Drive would be described as Part 2, Plan 45R-16538 comprising approximately 16.11 acres. Appendix A is a copy of Reference Plan 45R-16538.

On January 15, 2018, the City transferred 1900 Technology Drive (Part 2, Plan 45R-16538) to Drain Bros. for \$100,000. The City also transferred 1850 Technology Drive to Darrell Osgoode Drain for \$400,000 (Part 1, Plan 45R-16538).

On completion of the transactions, Drain Bros. granted to the City an option to reacquire 1900 Technology Drive. The Option Agreement was registered January 15, 2018 as Instrument number PE284095. The option can be exercised by the City in each of two circumstances:

- Section 1.01: “in the event that Drain has not commenced construction of a building on the Lands, having an area of not less than Four Thousand, Three Hundred and Six (4,306) square feet, on or before July 15, 2019 and does not proceed to diligently complete the construction of the said industrial building”
- Section 5.01: “In the event that Drain receives a bona fide offer to sell, or otherwise dispose of, all or any portion of the Lands, upon which it has not erected an industrial building”

On September 6, 2018, Drain Bros. notified the City that it had entered into an agreement of purchase and sale for the sale of part of 1900 Technology Drive. Appendix B is its counsel’s letter notice and two attachments to the letter. The notice triggers the City’s right under section 5.01 of the Option Agreement to reacquire the whole of 1900 Technology Drive because an industrial building has not yet been erected. Drain Bros. has requested that the City waive its right to reacquire 1900 Technology Drive. Its counsel’s letter sets out its reasons in support of its request. As noted in the request, Council approved a similar request respecting 1850 Technology Drive by adopting the recommendation contained in Report CLSRE18-006 dated July 9, 2018.

Staff advise that 1900 Technology Drive is not required for municipal purposes.

It is recommended that Council waive the City's right to reacquire 1900 Technology Drive in the form of motion in the "Recommendation" section of this report. It is proposed that the City otherwise preserve its rights under the Option Agreement. For example, Drain Bros. and its purchaser will continue to be bound to comply with the requirements of section 1.01 of the Option Agreement respecting the commencement of the construction of an industrial building by July 15, 2019.

Submitted by,

Patricia Lester
Commissioner of Corporate and Legislative Services

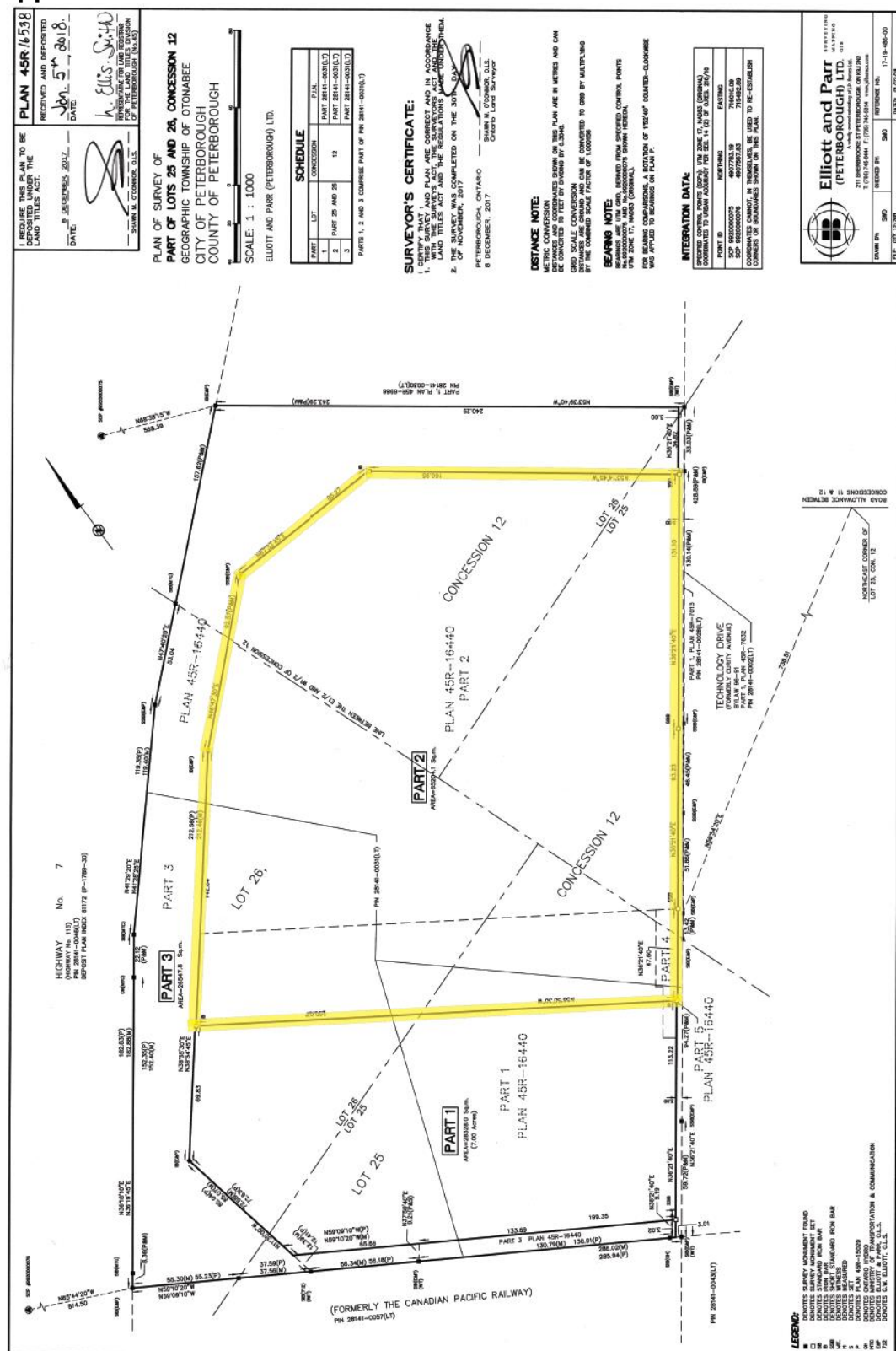
Contact Name:

David J. Potts, City Solicitor
Phone: 705-742-7777 Ext. 1603
Fax: 705-742-3947
E-Mail: dpotts@peterborough.ca

Attachments:

Appendix A: 45R-16538
Appendix B: Drain's counsel's letter dated September 6, 2018 and attachments

Appendix A – Reference Plan 45R-16538



Appendix B: Drain's counsel's letter dated September 6, 2018 and attachments

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BUSINESS LAW • REAL ESTATE • ESTATE PLANNING & ADMINISTRATION

BILL FOX • ROSS PRYDE • NICOLE TRUMAN

September 6, 2018

Sent by email to dpotts@peterborough.ca

City of Peterborough
City Hall
500 George Street North
Peterborough, Ontario
K9H 3R9

Attention: David J. Potts, City Solicitor

Dear Mr. Potts:

Re: Request for Waiver of Right of First Refusal Contained in Instrument No. PE284095 for sale of part of LOTS 25 & 26 CON 12 OTONABEE; CITY OF PETERBOROUGH, being part of PIN 28141-0060 and 1900 Technology Drive, Peterborough, Ontario (referred to herein as "1900 Technology Drive")

We act as solicitors for Drain Bros. Excavating Limited ("Drain Bros.").

Please accept this as written notice of the proposed sale of a portion of 1900 Technology Drive. We are seeking confirmation from the City of Peterborough that it will waive its right of first refusal as contained in Instrument No. PE284095.

To recap, Drain Bros. completed the purchase of 1900 Technology Drive from the City of Peterborough on January 15, 2018. This sixteen (16) acre property was purchased for \$100,000.00.

As part of the agreement to purchase 1900 Technology Drive, the City of Peterborough registered a Notice of Option to Purchase on January 15, 2018 as Instrument No. PE284095. Paragraph 5.01 of this Option Agreement notes:

"In the event that Drain Bros. receives a bona fide offer to sell, or otherwise dispose of, all or any portion of the Land, upon which it has not erected an industrial building, it shall not do so without first providing written notice to the City, which notice shall contain the terms and conditions of the proposed sale."

On September 5, 2018, Drain Bros. entered into a conditional agreement of purchase and sale for the sale of a seven (7) acre portion of 1900 Technology Drive. The proposed sale price is \$115,000.00 per acre. Enclosed is a copy of the draft reference plan noting Part 1 as the parcel to be sold.

September 6, 2018
Re: Request for Waiver of Right of First Refusal
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Our client submits that this price reflects the risk and burden of completing the extensive development and severance costs associated with this site. Drain Bros. has made significant progress in preparing the site for the proposed development due to the client's desired completion date. This preparation includes the clearing of the land, the stripping of topsoil, as well as over 28,000 cm³ of fill placed and compacted. Further costs include the realignment of the hydro poles along the front of the entire property.

Enclosed is a copy of a letter from the Otonabee Conversation dated July 2, 2010 noting the many challenges in developing the site.


We are seeking the same accommodation from Council regarding this conditional sale of part of 1900 Technology Drive that was granted to our client in July 2018 regarding the sale and development of 1850 Technology Drive.

If you require further information, we can be contacted by phone at 705-743-2300 or by email at ross@fox-law.ca.

We wish to thank council for its consideration of this request.

Yours very truly,

FOX LAW PROFESSIONAL CORPORATION
per:


Ross D. Pryde
ross@fox-law.ca
Enclosures

cc: Dwight Corcoran by email at dcorcoran@drainbros.ca



July 2, 2010

Brad Appleby
Planner, Subdivision Control & Special Projects
City of Peterborough
500 George Street North
Peterborough, Ontario
K9H 3R9

Dear Mr. Appleby:

RE: 15T-10505, 1850 and 1900 Technology Drive, City of Peterborough, ORCA file 2010-SD006

The Otonabee Region Conservation Authority (ORCA) has been circulated on the Application for Approval of Plan of Subdivision for the above noted property. The following documents were provided in support of this application and were reviewed by ORCA staff:

- Environmental Impact Study prepared by J & J Environmental, dated 2004 and received by ORCA May 14, 2010; and
- Technology Drive Development Plan, prepared by ORCA for the City of Peterborough in December 2003.

The proposal is to develop a plan of subdivision consisting of three blocks, each for future industrial use, a block for drainage/stormwater management and a block for potential future trail use. In addition, the proposal includes the creation of a cul-de-sac to provide access to each of the industrial blocks. The subject property is within the Meade Creek subwatershed and is adjacent to the Coldsprings & Yankee Bonnet Provincially Significant Wetland.

Natural Hazards

The purpose of the Technology Drive Development Plan, prepared by this office was to identify an optimum development layout for industrial uses on the property. Due to concerns over assumptions made regarding the hydrology in the vicinity, ORCA conducted additional field work and modelling in the spring of 2010. The general conclusion of this additional field work, is that the site is subject to flooding due to a back-water effect from the Highway #7 box culvert immediately east of the Old Keene Road intersection. It has been calculated that the flood elevation for the site is 197.5 metres geodetic.

The Provincial Policy Statement (PPS) prohibits development and site alteration within floodplains (S.3.1). It further prohibits development or site alteration on sites that would be rendered inaccessible to people and vehicles during times of flooding hazards unless it has been demonstrated that the site has safe access appropriate to the nature of the development and the hazard.

The Otonabee Region Conservation Authority
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The location of the proposed development, until recently, has been understood to be largely outside of any floodplains and therefore, subject to minimal flood risk. As a result, a substantial amount of fill, in consultation with this Authority, has been placed on the site in preparation for future development. Based on surveyed elevations, portions of the site are below 197.5 metres geodetic, while others are not. Areas that are within the floodplain versus those that are not, are somewhat randomly distributed throughout the site. Given that the preparation of the site for development has been ongoing for quite some time, ORCA staff do not object to the completion of the development.

While portions of the site are outside of the floodplain, portions of Technology Drive, particularly those adjacent to the site, are subject to flooding. Flooding depths in this area are such that safe access does not currently exist. In order for the development to proceed, Technology Drive will need to be raised to an elevation of 197.2 metres geodetic from Old Keene Road to the proposed cul-de-sac entrance.

Natural Heritage

The location of the proposed subdivision is adjacent to the Coldsprings and Yankee Bonnet Wetland, a Provincially Significant Wetland (PSW). The boundary for this wetland was revised following a re-evaluation in 2005; previously lands on the subject property were considered to be part of this wetland. A man-made drainage channel exists along the north and east property boundaries that conveys local drainage from upstream properties across the site, under Technology Drive to the wetland and into South Meade Creek.

Water quality should be enhanced via the retention of a minimum 20 m buffer of vegetation along the southern and western banks of the watercourse as it flows through the subject property. This buffer area is to be maintained at all times, with no tree clearing, mowing, or vegetation removal permitted within this natural area.

As recommended via the EIS, this buffer (to be located within the stormwater management Block 4) should be enhanced through the planting of native woody vegetation to stabilize soils, improve surface water filtration, and improve wildlife habitat. As a condition of approval for the development of the three industrial blocks, planting shall include both trees and shrubs, planted by hand to minimize impacts to existing natural vegetation in the buffer. Enhancement plans and species list shall be circulated to ORCA for approval prior to implementation.

All tree clearing and lot grading is to occur outside of the (minimum) 20 m watercourse buffer area. In addition, tree clearing and lot grading is also to occur outside of the breeding bird period between May 31st and July 31st per the Migratory Birds Convention Act.

Standard sediment and erosion control measures should be in place during lot grading and clearing to prevent sediment entry to the Coldsprings and Yankee Bonnet Wetland, and to the watercourse on site. Since no in-water work is proposed, no fish habitat impacts are expected.

Though not identified in the EIS, two provincial species at risk have been recorded within a 1km radius of the subject property: the Five-lined Skink, and a sensitive species (NHIC desktop search, June 24, 2010). The Five-lined Skink was last observed in 1934, and due to the anthropogenic changes on site, is not a likely inhabitant of the site as it currently exists. As mobile species, the skink would be expected to move to less disturbed areas during and following development, and due to the corridor created via the watercourse buffer which leads to a large, natural wetland area, no negative impacts to this species are anticipated.

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Stormwater Management

It is understood that the developer of each of the lots contained within the industrial subdivision will be required to complete and submit a Stormwater Management Plan under the Site Plan application process. However, given that the entire site will undergo preliminary grading site prior to the sale of individual lots, temporary stormwater management is appropriate.

DRAFT PLAN CONDITIONS

1. The portion of Technology Drive from Old Keene Road shall be raised to an elevation of at least 197.2 metres geodetic to ensure the presence of safe access to the site.
2. A 20 metre vegetated buffer shall be maintained and enhanced along the drainage feature that flows through the subject property. This buffer is to be maintained at all times; no tree clearing, mowing or vegetation removal is to be permitted within this naturalized area.
3. A detailed buffer vegetation enhancement plan for the buffer shall be designed and implemented to the satisfaction of the Otonabee Region Conservation Authority. The plan must include both tree and shrubs that are native and indigenous to the Peterborough area and should be hand planted to minimize impact to existing vegetation.
4. Clearing, site grading and grubbing of the site is to occur outside the main breeding bird season (May 1-August 1).
5. Each of the developers of each of the industrial blocks will be required through the Site Plan process to submit and have approved by the Otonabee Region Conservation Authority, stormwater management and site grading plans.
6. Prior to final registration of the plan of subdivision, and any on-site grading or construction, the Otonabee Region Conservation Authority must have reviewed and approved reports describing:
 - a) preliminary site grading plans;
 - b) the intended temporary means of conveying stormwater flow from the site, including the use of stormwater management water quality measures that are appropriate and in accordance with the Ministry of the Environment (MOE) "Stormwater Management Planning and Design Manual," March 2003;
 - c) the means whereby erosion and sedimentation and their effects will be minimized on the site during and after preliminary grading. These means should be in accordance with the provincial "Guidelines on Erosion and Sediment Control for Urban Construction". Supporting technical documentation should also be submitted which meets or exceeds standards in the Technical Guidelines - Erosion and Sediment Control, February 1989, published by the Ministry of Natural Resources and /or the "Erosion and Sediment Control Training Manual," MOE, 1997; and

Please note: Temporary ponds for sediment control should be capable of accommodating 125 cubic metres/hectare of contributing drainage area for a period of not less than 12 hours or removing particle sizes down to 40 microns.

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- d) site soil conditions, including grain size distribution profiles.
7. The Subdivision Agreement between the owner and the municipality shall contain the following provisions in wording acceptable to the Otonabee Region Conservation Authority:
- a) That the owner agrees to implement the works referred to in the above-noted conditions. The approved report(s) should be referenced in the subdivision agreement.
 - b) That the owner agrees to maintain all stormwater management, erosion and sedimentation control structures operating in good repair during the construction period in a manner satisfactory to the Otonabee Region Conservation Authority.
 - c) That the owner agrees to notify the Otonabee Region Conservation Authority at least 48 hours prior to the initiation of any on-site development.

In order to expedite the clearance of these conditions, a copy of the signed Subdivision Agreement should be sent to the Otonabee Region Conservation Authority. In addition, please be aware that the fill placement required for the development of the site will require a permit under Ontario Regulation 167/06 from this Authority.

If you have any questions, please do not hesitate to call.

Regards,



Jennifer Clinesmith
Manager, Planning & Regulations

copy: Terry Low, ORCA Chair
Jack Doris, ORCA Representative
Bob Hall, ORCA Representative
Clayton Wade, ORCA Representative

