



City of
Peterborough

To: **Members of the General Committee**

From: **Cynthia Fletcher**
Commissioner of Infrastructure and Planning Services

Meeting Date: **June 10, 2019**

Subject: **Report IPSRE19-010**
Extension of Option on sale of 1850 Technology Drive

Purpose

This report is to recommend that Council extends an option date for 1850 Technology Drive.

Recommendation

That Council approve the recommendation, outlined in Report IPSRE19-010 dated June 10, 2019 of the Commissioner of Infrastructure and Planning Services, as follows:

That staff be directed to notify Darrell Osgoode Drain and Nortrax Canada Inc. that the Corporation of the City of Peterborough consents to an extension from July 15, 2019 to November 15, 2019 of the date by which construction of a building must be lawfully commenced pursuant to section 1.01 of an Option Agreement registered on January 15, 2018 as instrument no. PE284089 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 this report's recommendation.

Background

On January 15, 2018, the City completed the sale of 1850 Technology Drive to Darrell Osgoode Drain (Part 1, Plan 45R-16538). The City also completed the sale of 1900 Technology Drive (Part 2, Plan 45R-16538) to Drain Bros. Excavating Limited. Plan 45R-16538 is attached as Appendix A.

On completion of the transactions, Mr. Drain granted to the City an option to reacquire 1850 Technology Drive. The option could be exercised by the City in each of two circumstances:

- Section 1.01: “[...] in the event that Darrell Osgoode Drain has not commenced construction of a building on the Lands, having an area of not less than Four Thousand, Three Hundred and Five (4,305) 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 May 29, 2018, Mr. Drain’s counsel notified the City that Mr. Drain had entered into an agreement of purchase and sale for the sale of 1850 Technology Drive to Nortrax Canada Inc. and advised that Mr. Drain had not commenced the construction of the industrial building for the purposes of section 5.01 of the option agreement. Mr. Drain requested that Council waive its right under section 5.01 of the option agreement to reacquire 1850 Technology Drive. On July 16, 2018, Council adopted the recommendation contained in Report CLSRE18-006 dated July 9, 2018 to waive the City’s right to acquire 1850 Technology Drive pursuant to section 5.01 of the option agreement.

Nortrax Canada Inc. is now requesting an extension from July 15, 2019 to November 15, 2019 of the date by which construction of a building must be commenced pursuant to section 1.01 of the option agreement. A copy of the letter from Nortrax Canada Inc.’s solicitor requesting the extension is attached as Appendix B. Nortrax Canada Inc. is in the process of obtaining the relevant development approvals and will not be able to secure them and commence construction by July 15, 2019. It is recommended that Council consent to the extension request on the terms set out in the “Recommendation” section of this report.

Submitted by,

Cynthia Fletcher
Commissioner of Infrastructure and Planning Services

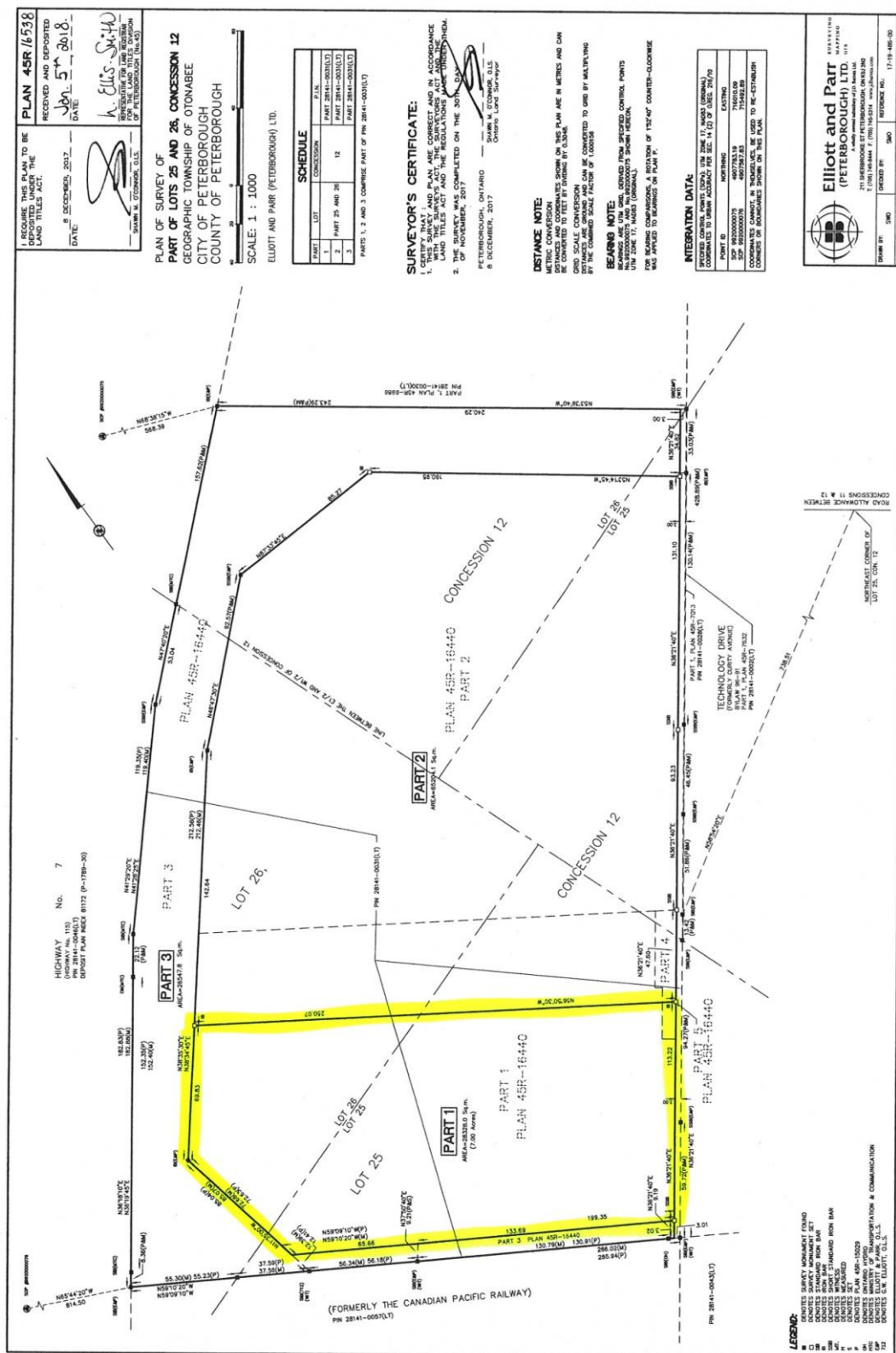
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Attachments:

Appendix a – 45R-16538
Appendix B – Nortrax Canada Inc. Counsel's letter dated May 8, 2019

Appendix A – Plan 45R-16538, Page 1 of 1



Appendix B – Nortrax Canada Inc. Counsel's letter dated May 8, 2019, Page 1 of 1

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Delivered via E-mail

May 8, 2019

City of Peterborough
500 George Street North
Peterborough, ON K9H 3R9

Attention: David J. Potts, City Solicitor

Dear Mr. Potts:

**Re: 1850 Technology Drive
Option to Repurchase in Favour of the City of Peterborough as in Instrument
No. PE284089
Request to Extend Option Date**

Our client, Nortrax Canada Inc. ("**Nortrax**"), has entered into an agreement to purchase property municipally known as 1850 Technology Drive (the "**Property**") from Darrell Osgoode Drain and Drain Bros. Excavating Limited.

The Property is subject to an Option in favour of the City of Peterborough ("**City**"), registered on January 15, 2018 as instrument No. PE284089 (the "**Option**") which provides that, in the event that construction of an industrial building having an area not less than Four Thousand, Three Hundred and Five (4,305) square feet has not commenced on the Property on or before July 15, 2019, the owner of the Property shall, on written notice from the City, reconvey the Property to the City.

Since June of 2018, Nortrax has been diligently pursuing site plan approval from the City with respect to a new facility which it intends to construct on the Property (the "**Nortrax Facility**"). The City has confirmed that the Nortrax Facility, once constructed, will satisfy the requirements of the Option and that, upon substantial completion of the Nortrax Facility, the City will release and abandon the Option.

Due to delays associated with the site plan approvals process, it now appears unlikely that Nortrax will be in a position to obtain a building permit and commence construction of the Nortrax Facility prior to July 15, 2019.

Lawyers | Patent & Trade-mark Agents

Appendix B – Nortrax Canada Inc. Counsel's letter dated May 8, 2019, Page 1 of 2



Nortrax is committed to commencing construction of the Nortrax Facility as soon as reasonably possible following receipt of site plan approval and building permits.

Accordingly, Nortrax is requesting an extension of the date upon which the City may exercise its Option from July 15, 2019 to **November 15, 2019**. While Nortrax remains optimistic that construction of the Nortrax Facility will commence well in advance of this proposed new date, it is seeking the extension in an abundance of caution and in order to provide Nortrax with the certainty that it requires in order to continue advancing the development of the Nortrax Facility in Peterborough.

We would appreciate receiving from the City confirmation that it is prepared to grant the requested extension at its earliest convenience.

Please do not hesitate to call should you wish to discuss this matter further.

Yours very truly,

A handwritten signature in black ink, appearing to read "EB", with a stylized flourish at the end.

Emma Blanchard
EB/ms

cc. Dwight Corcoran, Drain Bros. Excavating Limited
Michael Rugeroni, Nortrax Canada Inc.
Steve Jeffery, Nortrax Canada Inc.