



Working together with our community

Council Meeting – November 17, 2020

Subject: Proposed Property Acquisition – Budget Amendment
Closed Session
Report Number: Corporate Services 20-38
Division: Corporate Services
Department: Corporate Support Services
Purpose: For Decision

Executive Summary:

The purpose of this report is to seek Council's direction on the possible acquisition of the provincially owned lands known as the Normandale Crown Access Point. Which lands are illustrated on the map attached.

Discussion:

In November 2017, Community and Emergency Services (formerly Community Services Department) transferred a file to Corporate Support Services that proposed the acquisition from the Ministry of Natural Resources and Forestry, of the provincially owned lands known as the Normandale Crown Access Point, for review and finalization.

Background

In May 2008, the Ministry of Natural Resources and Forestry (MNRF) Normandale Dam suffered a significant failure which resulted in downstream washouts to numerous properties in the village of Normandale.

As a result of this event MNRF staff and Norfolk County staff from various departments began working together to undertake the necessary repairs. To clarify property boundaries and responsibilities for maintaining the area, MNRF staff and County staff began discussions on how to best manage the area for public use in the future.

Discussions commenced with the MNRF in regards to the possible acquisition by the County of the Normandale Crown Access Point lands with the aim of securing the ownership of the property to ensure continued public access to the waterfront. Community Services at that time, and continues today, to provide summer maintenance to the area including grass cutting, litter disposal and portable washrooms on a portion of the property. The lands provide access to an adjacent walking trail and to the waterfront for beach goers, kayaking, canoeing, fishing and the pier area.

On November 1, 2011, Report CSD 11-35 Possible Land Acquisition – Normandale Crown Access Point was presented to Council in Committee in closed session with the following recommendations:

THAT Staff Report CSD 11 – 35, Possible Land Acquisition – Normandale Crown Access Point, be received as information;

AND THAT Council gives authority to the General Manager, Community Services Department in consultation with the County Solicitor to advise the Ontario Realty Corporation (ORC) of Norfolk County's interest in purchasing the approximately 1.788 acres of property from the MNR/ORC in Normandale;

AND FURTHER THAT the 2011 approved Capital budget be amended to include the purchase of the MNR lakefront property in Normandale in the amount of \$72,500 to be funded from the Lakefront Acquisition Fund;

AND FURTHER THAT future operating budgets identify the maintenance and repair costs of maintaining the waterfront access area.

Council directed staff to proceed with the Crown Plan of Survey for the property.

Following the direction given by Council, Community Services staff commenced the initial step towards acquisition, and in December 2011 secured the services of [REDACTED] to complete the plan of survey of the ministry property. At that time \$7,500 was advanced to [REDACTED] to complete the survey. The former General Manager of Community Services completed and submitted the MNRF Application for Crown Land (Purchase).

On review of the Community Services file, Corporate Support Services (CSS) staff found that there were continuous delays by [REDACTED] from 2011 to 2017 in completing the required survey of the property. This resulted in the significant delay in moving forward with the potential land acquisition.

In November 2017, when CSS received the file, staff reached out to [REDACTED] for an update on the status of the survey and requested that [REDACTED] complete and finalize the survey as quickly as possible so the file could move forward. [REDACTED] again made many promises to staff to complete the survey, but again delays by [REDACTED] persisted.

At the same time, CSS staff reached out to the Aylmer MNRF district office for a contact on the file and were referred to Mr. [REDACTED]. Mr. [REDACTED] was not familiar with the file and requested time to search the ministry records to see what he could find. In follow up, Mr. [REDACTED] informed CSS staff that all ministry staff that had been working on the file previously had either retired or moved on to other positions and the ministry's file had sat dormant for many years.

In February 2018, [REDACTED] informed CSS staff that he had a draft reference plan for review, however, he also stated that he still had questions around the PIN configurations and needed more time to consult with the Land Registry Office to ascertain if the PINs were accurate. Again, numerous delays were encountered with [REDACTED] throughout 2018 even though CSS staff pressed for the final plan of survey.

In July 2018, CSS staff, [REDACTED] and MNRF staff met to determine next steps in the property acquisition process. From this meeting it was also clear that the ministry had not taken any further action on the file. CSS staff was informed by the ministry that the lands in question were owned by the Ministry of Government and Consumer Services and would be processed for disposal through Infrastructure Ontario (IO) as the realty arm of the ministry. MNRF staff would initiate this process with IO. The estimated time for completion would be two (2) years while IO works through its due diligence for land disposals.

On March 19, 2019, CSS staff received an acknowledgment of Norfolk County's expression of interest to purchase the ministry lands on Mill Lane in Normandale from IO, which advised that IO could facilitate a direct transaction with Norfolk County, if:

1. The transaction is at fair market value;
2. The purpose of the purchase of the property is for public use.

Over the course of the next twelve (12) to eighteen (18) months IO would complete its due diligence related to the land disposition ie. legal/title opinion, survey, appraisal(s), environmental, planning, heritage and archaeological assessments. Survey, appraisal and legal costs to be recovered from the County as purchaser. The ministry would be proceeding to have the survey completed by a surveyor of their choosing. [REDACTED] involvement in the preparation of the survey ended at this point.

On October 21, 2020, CSS staff received the following documentation from the ministry:

Phase Two Environmental Site Assessment

This report was prepared by [REDACTED].

A Phase 1 Environmental Site Assessment (ESA) was conducted on the site which identified two Areas of Potential Environmental Concern (APEC). These include a northerly portion of the site where a fill pile was visible with no information available regarding the quality and origin of the fill material, and the location on the site of a previous blast furnace operation and the waste that could be associated with this operation such as foundry slag, although not visible the extent of the slag on the site is unknown.

The Phase 2 Environmental Site Assessment was to investigate the soil, sediment and groundwater quality in all APECs identified during the Phase 1 ESA. All soil analytical data were below the Ministry of Environment, Conservation and Parks (MECP) standards with the exception of mercury and fluoranthene detected at the southerly area of the site; sodium adsorption rate (SAR) in the central area of the site, and select polycyclic aromatic hydrocarbons (PAHs) in the northerly area of the site. All groundwater analytical data were below the applicable MECP standards with the

exception of benzo(a)pyrene detected in the mid and south areas of the site. All sediment analytical data were below the MECP sediment standards.

Stage 1 & 2 Archaeological Assessment

This report was prepared by [REDACTED]. The Stage 1 archaeological assessment determined that the property had potential for the discovery of archaeological resources and as such a Stage 2 assessment was recommended. The Stage 2 archaeological assessment concluded that the majority of the site should be considered free of archaeological concern. One outstanding archaeological concern remains for the property, being two large hewn timbers located on the eastern bank of the creek, they may relate to the blast furnace or mill that once stood in the vicinity. It is recommended that prior to any intrusive work being conducted in the future in the vicinity of the two hewn timbers, archaeological investigation be conducted to document the full extent of the timbers and determine their archaeological potential.

[REDACTED] entered into an agreement with the Mississaugas of the Credit, the Chippewas of the Thames, Caldwell First Nation and Oneida Nation of the Thames, with the exception of the Chippewas of the Thames, all communities had representatives on site for the Stage 2 fieldwork and no issues were identified.

Agreement of Purchase and Sale

This agreement was prepared and submitted by Infrastructure Ontario and includes the following terms and conditions:

- Purchase Price \$230,000 exclusive of HST
- Deposit 10% of the purchase price to be credited on closing
- Reference Plan \$19,872.55 plus HST to be paid by the County as an adjustment on closing
- Condition of Property to be taken on an "As Is, Where Is" condition
- Inspection Period thirty (30) days following the date the Vendor notifies the purchaser that the Sale Approval has been obtained
- Closing Date Fifteen (15) business days following the waiver of the Inspection Period and the fulfillment of the Vendor's condition(s)
- Participation Agreement To be entered in to and registered on title. A 20-year "no-flip clause", whereby the County cannot resell the property for 20 years. If the County wishes to sell the property within the 20 year period, the Province has a right to purchase the property back at the same transferred value or take 100% of the profit
- Environmental During the Inspection Period the County can arrange

for its own independent Environmental Site Assessment, or if it so chooses the County can waive its right to do

It is the mandate of Infrastructure Ontario to sell ministry lands at the current appraised fair market value. The valuation of \$230,000 was established by an appraisal conducted in 2019 by ministry appraisal staff.

In 2010/2011, CSD staff had preliminary discussions with staff from the Aylmer MNRF district office regarding options for management/acquisition of the Normandale Crown Lands.

At that time there appeared to be three (3) options that were under discussion

1. Disposition – the sale price was calculated somewhat differently, as follows:
 - **Sale Price** – to be calculated based on comparable valuation being the disposition of the Turkey Point Crown Park to Norfolk County the estimate was therefore calculated as follows:
 - Turkey Point Park – 3.55 acres, appraised value \$78,000 – Value/acre = \$21,971.83
 - **Normandale Park – 1.788 acres, Value based on above comparable = \$39,285.63 + HST**
2. Management
 - Management through a long term 'Beach Management Agreement'. No fee: could have a 25-50 year term – 25 year term was suggested
3. Management
 - Management through a Land Use Permit (LUP). No or minimal annual fee – minimum fee for LUP - \$100.00 annually = 10 year period. Shorter term; could be open to changes in system

In recent discussions with the representative of IO, CSS staff were informed that the lands that are the subject of this acquisition are not lands that were/are under the ownership/responsibility of the MNRF but were/are under the ownership/responsibility of the Ministry of Government and Consumer Services (MGCS) and fall under the responsibility of IO to dispose of. As stated previously IO's mandate is to sell at the appraised current fair market value and there is no movement on this requirement by the ministry. IO notes that even though the 2010/2011 discussions with MNRF were significantly different in regards to selling price, it is noted that even at that time the MNRF valuation would not have stood since it would have been IO's responsibility to dispose of the property at that time and the mandate to sell at fair market value was in place at that time too. The management proposals would not be applicable either as these are MNRF options and not applicable to these lands since they are owned by MGCS.

The IO representative did hold out a slim possibility of the MNRF valuation being upheld, however, this will require a request to MNRF to prepare a submission to the

Treasury Board of Cabinet to sell the property below the current fair market value, with MNRF being willing to make up the difference in the valuation. The IO representative has only seen one instance of this happening and it was not successful. This process will take a significant amount of time to complete with no guarantee of success, the end result being that the valuation of the property will likely increase and a future selling price to the County will be higher.

Currently the County has an exclusive opportunity to purchase the property. Should Council decide not to go forward with the purchase IO has advised that the property will be listed on the open market and the ministry will look to realize the highest possible selling price for the property. A sale through the open market will not be subject to the Participation Agreement, so no requirement to re-sell to the ministry by a new property owner. The County can also submit an offer through this process, but will likely need to submit a higher offer in order to be competitive with other bidders for the property. If the County is not successful through this process the County risks the possibility of the property falling into private ownership with access to the waterfront being severely restricted to the general public.

Securing the Normandale Crown Access Point property for long term use will provide continued public access to the waterfront in accordance with County's Lakeshore Special Policy Area Secondary Plan.

Financial Services Comments:

Currently, for six months of the year, Parks and Facilities provides staffing, grass cutting, garbage collection and a portable washroom for approximately \$5,000. Services will continue to be provided and staff do not anticipate any additional operating costs will be required as a result of purchasing the property.

The Approved 2011 Capital Budget included \$28,000 for legal and survey costs for the potential Normandale Crown Access Point land purchase with funding to be provided from the Waterfront Purchase and Development Reserve Fund.

Based on staff's proposal to proceed with the acquisition of this property, staff is recommending to amend the Approved Capital Budget and include \$265,000 (costs include sale price, legal, survey and land transfer taxes) for the purchase of the land.

Given there are no available sources of funding and insufficient funds remaining within the Waterfront Purchase and Development Reserve to finance the purchase of this property, staff is also recommending the entire acquisition be funded from debentures. Details of the utilization of any remaining balance in the Waterfront Purchase and Development Reserve Fund will be provided to Council in a subsequent report.

The *Municipal Act and Regulations* require that, prior to commencement of a capital purchase or project; Council is required to approve the issuance of long-term debentures. Further, the Treasurer is required to provide a Certificate of Treasurer, certifying that the issuance of the proposed debt will not exceed the financial obligation

limit of the municipality. Attached to this report is a Certificate of Treasurer – CT 20-14 required under Regulations in the *Municipal Act*.

Interdepartmental Implications:

Community and Emergency Services

CES staff presently maintain the passive park area and maintenance costs are included in the parks base budget. Responsibilities include grass cutting, litter removal and rental of a portable toilet for 6 months a year. . If Norfolk County were to purchase the property additional costs would be incurred in regards to the ownership of the pedestrian bridge. The Ontario bridge code requires that all pedestrian bridges need to be inspected every 24 months by a certified engineer. Approximate cost would be \$800 per inspection. There would also be the yearly bridge maintenance and capital replacement cost. Presently staff do little maintenance on the beach section itself. If under county ownership service levels would need to increase in order to reduce any future liability. If the County changed the use of this property in the future from a passive park setting to something else CES may need additional funds depending on the new use.

Consultation(s):

Chief Administrative Officer
Interim General Manager, Corporate Services
General Manager, Community and Emergency Services
Interim Treasurer and Manager, Financial Planning and Reporting

Strategic Plan Linkage:

This report aligns with the 2019-2022 Council Strategic Priority "Foster Vibrant, Creative Communities".

Explanation:

Healthy lifestyles are important to the residents of Norfolk County. Access to the waterfront from the Normandale Crown Access Point to the beach area to enjoy swimming, kayaking, canoeing and other water sport activities promotes opportunities for Norfolk County residents to participate in active living recreational activities.

Options:

The County has a number of options:

- 1) Today the County has an exclusive opportunity to proceed with this land acquisition. However this exclusive opportunity will have significant conditions attached to it specifically around use and ability to sell the property in the future. This being said the County can obtain the land at that price for continued use as is.

- 2) The County can stand down and see if the Province does move to an open sale process with no restrictions for public use or “no flip” clauses. If the sale process does proceed, there may be public resistance to the use changing that the Province would have to address. The County could provide an offer that if accepted would likely have a lower value and less restrictions. If a private sector party acquires the property the County would no longer have a financial commitment to the property.
- 3) It is very possible that if the County does not move forward there could be no change in the ownership of the property and the status quo would be maintained.

Conclusion:

Due to the length of time since this project started the change in the anticipated price and due to the changed financial conditions of the County it is staff's desire to reconfirm whether Council wants to continue to pursue the acquisition of the lands in order to ensure continued and uninterrupted waterfront access for the residents of Norfolk County in perpetuity or to take another approach.

Recommendation(s):

Staff have provided two options for Council:

Option 1:

THAT Report CS 20-38, Proposed Property Acquisition, be received as information;

AND THAT staff be directed to proceed with the acquisition from the Minister of Government and Consumer Services of the property known as the Normandale Crown Access Point at the purchase price of \$230,000 plus applicable HST, and the cost of the survey of the property at \$19,852.55 plus applicable HST;

AND THAT the Mayor and Clerk be directed to execute the Agreement of Purchase and Sale and all other applicable documents necessary to complete the transaction;

AND FURTHER THAT the Approved Capital Budget be amended from \$28,000 to \$265,000 in order to purchase the Normandale Crown Access Point land with funding to be provided debentures;

AND FURTHER THAT the purchase of the Normandale Crown Access Point land in the amount of \$265,000 be funded from the issuance of debentures not to exceed 5 years.

Option 2:

That Report CS 20-38, Proposed Property Acquisition, be received as information;

AND THAT staff be directed to abandon the acquisition process at this time and report back to Council if the Province begins an open disposition process;

AND THAT staff be directed to formalize an agreement with the Ministry to provide required services to maintain our public access at the property.

Attachment(s):

Map

Certificate of Treasurer – CT 20-14

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