

Approval to Commence Expropriation of Interests in Property

50 Street CP Rail Grade Separation

Recommendation

That Executive Committee recommend to City Council:

1. That the commencement of the expropriation process under the *Expropriation Act*, RSA 2000, c E-13 (the “Act”) be approved to acquire:
 - a. the lands and the interests in the lands shown and legally described in Attachment 2 of the May 27, 2021, Integrated Infrastructure Services report IIS00651 (the “Subject Property”).
2. That Administration be approved to enter into an agreement(s), pursuant to Section 30 of the *Act* (“Section 30 Agreement”), with an owner, as outlined in Attachment 2 of the May 27, 2021, Integrated Infrastructure Services report IIS00651, where the owner is willing to consent to the acquisition.
3. That Administration be approved, pursuant to Sections 15(10), 35 and 39 of the *Act* to pay:
 - a. the reasonable appraisal and other costs incurred by it; and
 - b. the reasonable legal, appraisal and other costs actually and reasonably incurred by an owner described in Attachment 2 of the May 27, 2021, Integrated Infrastructure Services report IIS00651.

Executive Summary

As expropriating authority under the *Expropriation Act*, City Council approval is required for Administration to commence the expropriation process to acquire the Subject Property and interest and, where an owner is willing to consent to an acquisition, enter into a Section 30 Agreement.

The acquisition of the Subject Property will facilitate the construction of 50 Street CP Rail Grade Separation between Sherwood Park Freeway and 90 Avenue.

Report

50 Street NW provides access to adjacent developing industrial areas and functions as a major north-south commuter and goods movement corridor. The at-grade CP Railway crossing along 50 Street NW, north of the Sherwood Park Freeway, ranks as the highest-priority location requiring grade separation in the city. This ranking is based on delay times, the number of vehicles impacted and the frequency of train crossings,

among other factors. As development continues along the 50 Street NW corridor, particularly along the industrial and residential areas south of the Sherwood Park Freeway, traffic volumes and congestion at this crossing are expected to increase.

In 2010, Administration completed a concept study for the railway grade separation and widening of 50 Street NW between Whitemud Drive and 90 Avenue NW. The concept study identified the configuration of 50 Street between Whitemud Drive and 90 Avenue NW, including the requirement for grade separation.

50 Street CP Rail Grade Separation project consists of numerous improvements, including constructing an overpass crossing the CP Rail line, various utility work and other associated road work. 50 Street CP Rail Grade Separation Project area is shown in Attachment 1.

Land Requirements

City Council, as Expropriating Authority, may expropriate land or an interest in land pursuant to the *Expropriation Act*. As shown and legally described in Attachment 2, the Subject Property is required to accommodate the construction of the railway grade separation and road widening. Construction for this project is anticipated to start in 2021. The Subject Property is required for a temporary construction working area to facilitate utility relocations and road work associated with the construction of the grade separation and the acquisition in fee simple of an area to be used as a turn around at the end of the access ramp into the Subject Property.

On August 31, 2020, City Council approved the commencement of the expropriation process to acquire a portion of land in fee simple from the Subject Property (Integrated Infrastructure Services report CR_8345). Discussions with the property owner and their representatives have been underway for several months. Through discussions with the land owner, additional land required for a turnaround on the site was identified to be acquired beyond the land originally anticipated to be needed for the project. Lands required for a Temporary Construction Working Area Easement have also been identified as being required. Discussions to date have not resulted in agreements being reached to voluntarily acquire these areas.

Commencement of the expropriation process will allow Administration to continue its efforts to negotiate the acquisition of the Subject Property through a voluntary acquisition, settlement, Section 30 Agreement or the expropriation process in the *Expropriation Act*. Approval to commence the expropriation process at this time will allow Administration to obtain ownership and possession of the Subject Property in order to facilitate the current project timelines.

Budget/Financial

Funding to acquire lands required for the 50 Street CP Rail Grade Separation project is available within the approved Capital Profile 18-66-6503.

Legal

1. Expropriation is a legal right given to expropriating authorities, such as municipalities, to acquire land from a party who may otherwise be unwilling to sell it.
2. Section 14(2) of the *Municipal Government Act* gives City Council the right to acquire interests in land by expropriation.
3. An expropriation must be carried out in accordance with the *Act*.
4. An expropriation is commenced by filing a Notice of Intention to Expropriate (the "Notice"), in the prescribed form, on the certificate of title to the property being expropriated.
5. Each interest registered on title, and each owner (as defined in the *Act*), which includes every person in possession or occupation, must be served with a copy of the Notice. The Notice is intended to show a potentially impacted party how the proposed expropriation may impact them. After being served with the Notice, an owner may object to the proposed expropriation.
6. If no objection is made within the prescribed period, City Council, as approving authority, will decide whether to approve the expropriation. If approved, the City will take title, or register its interest on title, and proceed to take possession following the timelines in the *Act*.
7. If an objection is filed, the Province will appoint an inquiry officer to conduct an inquiry into whether the intended expropriation is "fair, sound and reasonably necessary" to achieve the City's objectives. Within 30 days of being appointed (subject to any extension granted), the inquiry officer must make a written report to the approving authority. City Council must consider the inquiry officer's written report and then approve or disapprove the proposed expropriation. City Council is not required to follow the inquiry officer's report.
8. Section 30 of the *Act* allows an owner to consent to the acquisition by the expropriating authority, subject to the condition that compensation be determined by the Land Compensation Board if the parties cannot reach an agreement. A Section 30 Agreement must be in writing and enables the parties

to negotiate the date of transfer of interest and the date of possession, as opposed to being restricted to following the strict timelines in the *Act*.

9. The *Act* governs the payment of costs to an owner. The reasonable legal, appraisal and other costs actually incurred by the owner are used for the purpose of determining the compensation payable by the City.
10. The *Act* governs the payment of compensation to an owner. The Land Compensation Board will determine the amount of compensation payable if the owner and the City cannot reach an agreement.

Public Engagement

Public engagement for this project was completed during the concept planning process to identify business/resident concerns, business operations/future plans. Public engagement and communications plans for the project were developed in alignment with the City's Public Engagement Policy C593 to support upcoming planning and design work along 50 Street. The "What We Heard" report was posted on the project website and communicated to participants.

Further discussions were undertaken with impacted property owners and residents through the concept validation and preliminary design phases. A public information session was held at The King's University on June 26, 2018, and was attended by 175 people.

Following the completion of preliminary design for the grade separation, additional information sessions were held, including:

- April 15, 2021 - Meeting held with business owners and operators in the area surrounding the grade separation.
- April 19, 2021 - Meeting with adjacent residents to share information about the project and answer questions about impacts to those directly adjacent to the project.
- April 21, 2021 - A public information session to share information about the final design and answer questions from the public.
- May 10, 2021 - Meeting with Kenilworth Community League Executive.

Further communication activities are planned for the surrounding residents and businesses to share updates as the project advances.

Through land negotiations, engagement with the owner of the Subject Property has been undertaken related to the project and associated land requirements.

Corporate Outcomes and Performance Management

Corporate Outcome(s): Goods and services move efficiently			
Outcome(s)	Measure(s)	Result(s)	Target(s)
Goods and services move efficiently	Business Satisfaction: Goods and Services Transportation (% of survey respondents who are satisfied/very satisfied)	50.5% (2017)	53.0% (2018)
	Travel Time and Reliability for Goods and Services Movement (time in minutes: seconds to drive 10 km route)	10:09 (2017) - 50% of the time 13:35 (2017) - 85% of the time	12:30 (2018) 50% of the time 16:00 (2018) - 85% of the time

Corporate Outcome(s): The City of Edmonton has sustainable and accessible infrastructure			
Outcome(s)	Measure(s)	Result(s)	Target(s)
The City of Edmonton has sustainable and accessible infrastructure	Infrastructure Density (city's population divided by the total kilometres of infrastructure)	56.5 (2017)	Increase over the previous year

Risk Assessment

Risk Element	Risk Description	Likelihood	Impact	Risk Score (with current mitigations)	Current Mitigations	Potential Future Mitigations
Financial	Ability to fully finance the project depending on negotiations with CP Rail	3 - Possible	3 - Major	9 - Medium	There is potential for some existing approved City funding towards this project to be recovered through contributions from partners, including CP Rail, as well as through the sale of surplus land following project completion. Negotiations are underway with CP Rail. Design refinement will aid in reducing the overall project costs.	Reduce overall construction cost by adjusting design if costs are higher than funds available.

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Project Management	Project is delayed or over budget due to land acquisition delays	3 - Possible	3 - Major	9 - Medium	Follow Project Management Reference Guide practices, including early discussions with property owners, exploring design alternatives, and/or seeking approval to commence the expropriation process while continuing negotiations.	Develop proactive action plans to mitigate impacts to project schedule and budget.
Financial	Delays result in program completion to extend past the timeline set for federal and provincial funding	2 - Unlikely	4 - Severe	8 - Medium	The acquisition process starting early in the overall grade separation project and delays can be addressed with a revised project schedule.	Develop proactive action plans to mitigate impacts to project schedule and budget.
Financial	Property values increase	3 - Possible	2 - Moderate	6 - Low	Opportunity purchases of properties as they become available; early negotiation with landowners; work with owners to mitigate impacts to reduce cost where possible.	Proactive acquisition of required properties.
Environmental	Increased costs or delays to project due to unexpected contamination	2 - Unlikely	2 - Moderate	4 - Low	Review of available environmental information prior to acquisition; undertake additional environmental testing during the acquisition process if required.	Develop a plan to manage impacts to schedule or budget if contamination is found.

Attachments

1. 50 Street Grade Separation Study Area Map
2. Map and Legal Description of Subject Property

Others Reviewing this Report

- M. Persson, Chief Financial Officer and Deputy City Manager, Financial and Corporate Services
- C. Owen, Deputy City Manager, Communications and Engagement
- K. Fallis-Howell, Acting City Solicitor