

Approval of Expropriation - Yellowhead Trail Freeway Conversion

Consideration of Inquiry Officer's Report for 14950 Yellowhead Trail

Recommendation

That Executive Committee recommend to City Council:

1. Having considered the report of the inquiry officer in Attachment 2 of the August 23, 2021, Office of the City Manager report OCM00728, that the expropriation of the land shown and legally described in Attachment 1 of the August 23, 2021, Office of the City Manager report OCM00728 (the "Subject Land"), including all interests therein, be approved, for the reasons contained in the August 23, 2021, Office of the City Manager report OCM00728, including Attachment 4.
2. That all steps under the *Expropriation Act*, RSA 2000, c E-13 (the "Act"), be taken to complete the expropriations, including but not limited to serving the decision of City Council, registering a certificate of approval, and service of the respective notices of expropriation, notices of proposed payment, and notices of possession.
3. That Attachment 7 of the August 23, 2021, Office of the City Manager report OCM00728, remain private pursuant to sections 24 (advice from officials), 25 (disclosure harmful to economic and other interests of a public body), and 27 (privileged information) of the *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25.

Executive Summary

The *Act* allows an owner to object to a proposed expropriation. If an owner objects, an inquiry hearing is held and the inquiry officer issues a written report. City Council must consider the report of the inquiry officer and approve the expropriation, disapprove the expropriation, or approve the expropriation with any modifications that it considers appropriate. The report of the inquiry officer is not binding on City Council.

Administration recommends that upon consideration of the inquiry officer's report, City Council approve the expropriation of the Subject Land for the reasons contained in Attachment 4.

Personal information has been redacted from Attachment 1 in accordance with section 17(1) of the *Freedom of Information and Protection of Privacy Act*.

Report Background

The Expropriation

On November 16, 2020, City Council approved the commencement of expropriation to acquire land or interests from a series of properties required to support construction of the Yellowhead Trail Freeway Conversion Program (the “Project”), including a **portion** of land (the “Subject Land”) from the property located at 14950 Yellowhead Trail, Edmonton, Alberta (the “Property”). Following City Council’s direction:

- A notice of intention to expropriate was registered on the Property, served on the registered owner and interested parties, and advertised in the Edmonton Journal.
- Yellowhead Motor Inn Ltd. (“Ramada Inn”), the owner of the Property, PetroJaffer116 Ltd. (“PetroJaffer116”), a related subtenant, and two tenants of the Property, Husky Oil Operations Limited (“Husky”) and DS Classic Grill Ltd. (“DS Classic”) (collectively, the “Objectors”) each objected to the proposed expropriation.
- Ramada Inn and PetroJaffer116 objected on the basis that an expropriation of the entire Property would better or equally serve the City’s objectives, that fairness warranted an expropriation of the entire Property, and that there would be a disproportionate impact from a partial expropriation rather than a full expropriation.
- The two tenants, Husky and DS Classic, objected on the basis that a partial rather than full expropriation was unfair, there was a lack of negotiations, and the impact of the proposed expropriation was disproportionately high on them.
- The City notified the Province of the objections and the Province appointed an inquiry officer to conduct a hearing to determine whether the proposed partial expropriation is fair, sound, and reasonably necessary.
- A hearing was held on June 16-18, 21-23, and 28-29, 2021.
- The inquiry officer issued an interim decision on June 21, 2021 permitting the Objectors to lead expert evidence on potential financial damages (the “Interim Decision”).
- The inquiry officer issued a written report on July 5, 2021, which was received by the City on July 6, 2021 (the “Inquiry Officer’s Report”).
- City Council must consider the Inquiry Officer’s Report. The Inquiry Officer’s Report, along with the Interim Decision, are included as Attachments 2 and 3, respectively.

Inquiry Officer’s Report

The *Act* requires the inquiry officer to determine whether the intended expropriation is “fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority” (the “Statutory Test”). The inquiry officer, in the Inquiry Officer’s

Report, found that the intended expropriation of the Subject Land is neither fair nor sound, but is reasonably necessary to achieve the City's objectives of constructing the Project.

At the inquiry hearing the inquiry officer received documentary evidence, heard witness testimony, including from expert witnesses, and heard oral arguments on behalf of the City and the Objectors.

In the Interim Decision of the Inquiry Officer, Attachment 3, the inquiry officer:

- allowed expert evidence related to estimated business losses anticipated to be sustained by the Objectors, and rejected the City's argument that the material be excluded because it relates to compensation which is outside of the purpose and jurisdiction of the inquiry; and
- found that the size of the parcel of land to be taken, the purpose and objective of an expropriation, and a comparison of a partial versus a full parcel expropriation in achieving the City's objectives could all be considered at the inquiry.

The main points in the Inquiry Officer's Report, Attachment 2, are:

- the impacts of the Project, as well as incidental infrastructure, were both relevant to the determination of whether the taking met the Statutory Test;
- the expert evidence on potential business losses was relevant to the inquiry officer's opinion of whether the intended expropriation was fair, sound and reasonably necessary;
- the intended expropriation is reasonably necessary to achieve the City's objectives, which include the construction of the Project;
- in substance the intended expropriation is not fair due to its potential impact upon the businesses of the objecting parties;
- that while the expropriation was not procedurally unfair, all governmental activity should aim to retain the confidence of its citizens and their respect for its fairness, and the inquiry officer invited City Council to be mindful of this when considering the recommendations in the report;
- that the intended expropriation is not sound due to its extended impact upon the businesses of the objecting parties, when compared to that of a full expropriation, in order to achieve the City's objectives;
- there appeared to be no "compelling or substantive reason" to explain the change from an intended full parcel taking to that of a partial taking (as the evidence showed that the City at one time considered expropriating the full parcel rather than just a portion of land).

The inquiry officer ordered that the reasonable costs of the inquiry hearing be paid by the City.

The following recommendations were made in the Inquiry Officer's Report:

1. That City Council approve the taking of the Subject Land, which is neither fair nor sound, but reasonably necessary, as well as in the public interest, in order to facilitate construction of the Project without delay; and
2. That a subsequent, or companion, process be started to expropriate or acquire the entire Property.

Section 15 *Municipal Government Act* Application

In addition to objecting to the partial expropriation, Ramada Inn also filed an application with the Land and Property Rights Tribunal (formerly the Land Compensation Board) (the "Tribunal") seeking an Order that the City be required to expropriate the whole of the Property pursuant to section 15 of the *Municipal Government Act*, RSA 2000, c M-26 (the "Section 15 MGA application"). The Tribunal may direct the City of Edmonton to expropriate the whole of the Property if, in the opinion of the Tribunal, the expropriation of part of the Property is "unfair" to the owner of the Property.

The Section 15 MGA application is scheduled for November 1-12, 2021.

Recommendations and Reasons

Administration recommends that upon considering the Inquiry Officer's Report, Attachment 2, City Council approve the expropriation of the Subject Land for the proposed reasons contained in Attachment 4.

Administration recommends that City Council take no steps in respect of a full expropriation for the entire Property in view of the upcoming Section 15 MGA application hearing.

Legal Implications

1. An owner may object to an expropriation within 21 days of being served with a notice of intention to expropriate.
2. If an objection is served within the objection period, the Province appoints an inquiry officer to conduct a hearing into whether the expropriation is fair, sound and reasonably necessary.
3. City Council must consider the Inquiry Officer's Report and shall approve or disapprove the proposed expropriation or approve the proposed expropriation with any modifications that it considers proper, but no approval shall be modified so as to affect the land of a person who was not a party to the inquiry.
4. The Inquiry Officer's Report must be considered but is not binding on City Council.

5. City Council must provide written reasons for its decision and serve its decision and written reasons on the parties to the inquiry by September 4, 2021.
6. Attachment 4 contains proposed reasons to support City Council’s decision, should it decide to approve the expropriation of the Subject Land. City Council may amend or modify the proposed reasons as it sees fit.
7. The certificate of approval must be registered within 180 days from the date that the notice of intention to expropriate was registered.
8. If City Council approves the expropriation, a certificate of approval will be registered and the City will become the owner of the Subject Land. If a certificate of approval is not registered, or not registered within the timeline in the *Act*, including applicable extensions, the proposed expropriation is deemed abandoned.
9. If an expropriation is abandoned, the City is responsible to pay any actual loss sustained by the owner and the reasonable legal, appraisal, and other costs incurred by the owner up to the abandonment.
10. After an interest is expropriated, the City must serve the owner with a notice of possession stating the date on which the City is entitled to possession.
11. Before the City gets possession of the Subject Land, the owner will receive compensation for market value in accordance with the *Act*.
12. The Tribunal will determine compensation if the parties cannot agree.
13. The reasonable legal, appraisal and other costs actually incurred by the owner in order to determine compensation are paid by the City. The reasonable costs of the inquiry hearing are also paid by the City.
14. Additional legal implications are included in the private Attachment 7.

Budget/Financial Implications

Funding for the acquisition of lands required for the Yellowhead Trail Freeway Conversion Program is provided from Capital Profile CM-99-0060. Expropriation costs currently identified are within the approved budget for the Yellowhead Trail Freeway Conversion Program. Sufficient funding exists within this budget for the land considered in this report.

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)

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	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
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Corporate Outcome(s): Edmonton is a safe city.

Outcome(s)	Measure(s)	Result(s)	Target(s)
Traffic disruptions at intersections are minimized through collision reduction	Rate of inner-ring road (75 St, Whitemud Drive, 170 St, Yellowhead Trail) intersection collisions per million vehicles	1.01 (2017)	0.99 (2018)
	Rate of inner-ring road (75 St, Whitemud Drive, 170 St, Yellowhead Trail) midblock collisions per million vehicles-km of travel	0.79 (2017)	0.99 (2018)

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	Edmontonians' Assessment: Access to Amenities and Services that Improve Quality of Life (% of survey respondents who agree/strongly agree)	68% (2017)	70% (2018)

Risk Assessment

Risk Element	Risk Description	Likelihood	Impact	Risk Score (with current mitigations)	Current Mitigations	Potential Future Mitigations
Project Management	Project goes over budget, has poor quality, or is delayed.	2 - Unlikely	2 - Moderate	4 - Low	Recommendation that City Council approve the proposed expropriation of the identified property and interests.	Complete the steps required under the <i>Expropriation Act</i> to finalize the expropriation, including registering a certificate of approval of expropriation.

Legal	If a certificate of approval of expropriation is not registered within the required timeline, the proposed expropriation is presumed to be abandoned.	2 - Unlikely	3 - Major	6 - Low	Recommendation that City Council approve the proposed expropriation of the identified property and interests.	Complete the steps required under the <i>Expropriation Act</i> to finalize the expropriation, including registering a certificate of approval of expropriation.
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Attachments

1. Map and Legal Description of the Subject Land
2. Report of the Inquiry Officer, Sharon Roberts, July 5, 2021
3. Interim Decision of the Inquiry Officer, Sharon Roberts, June 21, 2021
4. Rationale for Expropriation of the Subject Land
5. Copy of Section 18 of the *Expropriation Act*
6. Copy of Section 15 of the *Municipal Government Act*
7. Additional Legal Implications and Recommendations - In Private [Privileged and Confidential]

Others Reviewing this Report

- C. Hodgson, Acting Deputy City Manager, Financial and Corporate Services
- O. Zakoc, Acting Chief Financial Officer, Financial and Corporate Services
- C. Owen, Deputy City Manager, Communications and Engagement
- A. Laughlin, Deputy City Manager, Integrated Infrastructure Services
- S. McCabe, Deputy City Manager, Urban Planning and Economy