

Proposed Reasons to Approve Expropriation of the Property

Pursuant to the *Expropriation Act*, City Council has considered the report of the inquiry officer, (Attachment 2 of the June 22, 2020, Office of the City Manager report CR_7900), and approves the expropriation of the Property for the following reasons:

OVERVIEW

1. The City has satisfied all the statutory requirements under the *Act*.
2. The construction of the Project and the design and engineering of the Project (including the requirement for the Property) are consistent with the City's strategic objectives as set out in the City's Municipal Development Plan, "The Way We Grow", and the City's Transportation Master Plan, "The Way We Move".
3. The City completed a Fort Road widening concept plan and report in 2015 (the "**Concept Plan**"). The Concept Plan looked at what was required from an engineering perspective for the Project in this area and the property impacts from various perspectives, including traffic analysis, area context, public utilities, and environmental impacts. Based on the Concept Plan, the Property was identified as being required in full for the Project because it would:
 - a. accommodate construction of new and upgraded roadways;
 - b. allow for back-sloping required by changes in elevation of Fort Road;
 - c. accommodate construction of general infrastructure associated with the new and upgraded roadways, such as sidewalks, public utilities, streetlights and storm sewers; and
 - d. accommodate the construction of additional drainage infrastructure to manage surface water runoff in the area of the Property.

The City does not anticipate any fundamental changes from the property requirements identified in the Concept Plan for the Project.

4. The portion of the Property labelled as "Area A" in the diagram shown below (the "**Road Lands**") is required for the construction of 125th Avenue, a sidewalk for pedestrians, and streetlights. The City's need for the Road Lands were undisputed in the inquiry officer's decision.

The portion of the Property labelled as "Area B" in the diagram shown below (the "**Back Sloping Lands**") are required for back-sloping as a

result of the upcoming changes in elevation to Fort Road near the Property. The inquiry officer's decision recognized that there is a need for such back-sloping. There may be narrow portions of Area B that are not needed for back-sloping, but these small parcels will remain unusable as there is no space for access.

The portion of the Property labelled as "Area C" in the diagram shown below (the "**Drainage Lands**") are required for the construction of drainage infrastructure to manage roadway stormwater and surface water runoff in the area of the Property (the "**Drainage Infrastructure**"). Although the Drainage Infrastructure is only one component of many different interrelated design considerations of the Project, which is a large roadway expansion and construction project, the City's need for the Drainage Infrastructure on the Drainage Lands was the main issue in the inquiry officer's decision.

NEED FOR THE DRAINAGE LANDS

The Project Objectives

5. The question of whether the proposed taking is fair, sound, and reasonably necessary must be considered in light of the entire Project, as a whole, and whether the proposed taking will allow the City to fulfill its objectives for the Project.
6. Based on the Project as a whole and the extensive experience of Administration and its engineering consultants, the proposed taking would allow the City to fulfil its objectives for the Project.
7. Further, the City requires the Property at this time so that all of the property required for construction of the Project can be assembled and any required preparatory work can be performed to allow the Project to be put to tender.
8. In addition, the City had extensive dealings with the registered owner in relation to the Property and the proposed taking, and provided ample notice that the entire Property would be required for the Project. A notice was sent by email letter on August 13, 2018 to the registered owner explaining the City's requirement for the full Property. The City also provided notice to the objecting parties relating to what is intended to be done with respect to the Property.

The Decision Of The Inquiry Officer

9. The inquiry officer's decision opines that the plans for the Drainage Infrastructure were not incidental or ancillary to road-related infrastructure and that the City does not have sufficient plans for the Drainage Infrastructure to justify the City's need for the entire Property.
10. The inquiry officer's decision relies heavily on the expertise of the landowner's consultant. The expertise of the landowner's consultant is limited to water resource engineering, not roadway engineering or construction. The landowner's consultant only performed analysis with respect to the drainage components of the Project, focused on regional drainage, and did not consider the other interrelated design considerations of the Project and how it would affect the local drainage in the area.
11. In contrast, the City's consultant has extensive experience in major roadway and infrastructure projects and has developed a large multi-disciplinary team that includes members with expertise in structural, geometric, environmental, civil, geotechnical engineering, and stormwater and runoff management to assist with these types of projects. The City's consultant, using a multi-disciplinary approach, opined that the entire Property is required for the Project based on the inter-related components associated with a large roadway expansion and construction project. The Drainage Infrastructure was a component of the consultant's opinion and this opinion was based on local drainage needs and the impacts on the existing regional system.
12. The opinions of the landowner's consultant regarding the Drainage Infrastructure were focused around existing limitations of the regional drainage system. The City considers how to mitigate impacts to the regional drainage system caused by road-related infrastructure projects, and makes decisions about Drainage Infrastructure required for the particular project based on this impact.
13. Notwithstanding that the Drainage Infrastructure is only one of the reasons that the City requires the Property in full, Administration and its engineering consultants, which have extensive experience in major roadway and infrastructure projects, are clearly of the opinion that the Drainage Infrastructure is required to accommodate increased stormwater run-off levels in the vicinity of the Property that will directly result from the road-related infrastructure that is to be constructed for the Project. The drainage requirements for the Project are explained in further detail by the City's consultant, WSP, in its Memo & Draft Stormwater Management Report included as Attachment 4 of the June 22, 2020, Office of the City Manager report CR_7900 ("**Attachment 4**").

Approval Based on the Concept Plan

14. There are some concerns that the expropriation should not proceed since there were no detailed design plans available at the time of the Notice of Intention to Expropriate. The construction of appropriate public utilities for the Project, which includes suitable drainage infrastructure (including but not limited to the Drainage Infrastructure), is important for road-related infrastructure and for this reason was explicitly listed in the Notice of Intention to Expropriate as one of the reasons why the Property was required. Although Administration did not have detailed design plans for the Drainage Infrastructure when it sought approval to commence expropriation from City Council on July 16, 2019 (CR_7209), it reasonably determined:
- a. the need for such infrastructure; and
 - b. that the Property is one of the best options available to contain such infrastructure,

based on extensive experience in major roadway and infrastructure projects.

City Council must now consider, as the Approving Authority, whether the expropriation can proceed.

The need for the Drainage Infrastructure is reasonably established by the City's consultants in Attachment 4:

“Stormwater management is required for the construction of Fort Road and 125 Avenue. The current Fort Road sag at the CN underpass is at risk of flooding during a 1 in 10 year storm event ... The flooding at the sag presents a risk to drivers using this roadway. Without storm drainage improvements, this condition will worsen with the construction of 125 Avenue, the addition of lanes on Fort Road and the lowering of the roadway at the CN underpass.

To address the existing flooding issues and to accommodate the additional drainage from the new roadways, a new stormwater management plan for this area must be developed.”¹

Based on the current engineering work, the legislative scheme of the *Expropriation Act*, and inquiry decisions that recognize that City Council,

¹ Page 3, Attachment 4, of the June 22, 2020, Office of the City Manager report CR_7900.

as an expropriating authority, has a degree of flexibility in expropriating lands, (including lands for future use or construction², or more land than might be necessary for a project³), it is reasonable to approve an expropriation based on the Concept Plan and the WSP Memo & Draft Stormwater Management Report included as Attachment 4.

In addition, inquiry decisions have held that simply because plans change, or because a final design has not been prepared or presented at the inquiry, that this is not a basis for finding an expropriation is not fair, sound and reasonably necessary.⁴

EPCOR

15. Acquiring the Drainage Lands has a secondary benefit to the City by facilitating the planned separation of the existing combined sewer line within the Project limits and a future sewer separation outside of the Project limits. By facilitating this future sewer separation, it meets the goal of the City and EPCOR to separate all combined sewers within the City's overall drainage network.⁵ It has been the City's practice that where project work is happening in an area with a combined sewer, the City in conjunction with EPCOR will separate the combined sewer within the project limits. The purpose behind this practice is to avoid having EPCOR, or its contractors, tearing up roadway infrastructure in the future to access these types of sewer lines, which avoids unnecessary future costs and traffic disruptions.
16. EPCOR has also submitted a letter providing support for locating the Drainage Infrastructure outside the road right-of-way, in order to minimize traffic-related safety concerns for EPCOR employees and the public as well as disturbances to the road when the Drainage Infrastructure is being worked on.⁶

² *Minister of Infrastructure v Johnson, Town of Westlock v Marks*. Copies of these inquiry decisions are included in Attachment 5 of the June 22, 2020, Office of the City Manager report CR_7900.

³ Section 14(5) of the *Municipal Government Act*, RSA 2000, c. M-26. An excerpt of section 14 of the *Municipal Government Act* is included in Attachment 5 of the June 22, 2020, Office of the City Manager report CR_7900.

⁴ *Town of Westlock v Marks, Minister of Infrastructure and Transportation v Madge*. Copies of these inquiry decisions are included in Attachment 5 of the June 22, 2020, Office of the City Manager report CR_7900.

⁵ Attachment 6 of the June 22, 2020, Office of the City Manager report CR_7900 contains a copy of the Executive Summary from the City's 2013-Combined Sewer Discharge Strategy Report

⁶ A copy of the EPCOR letter can be found in Attachment 6 of the June 22, 2020, Office of the City Manager report CR_7900

New Information & Analysis

17. The WSP Memo & Draft Stormwater Management Report, (Attachment 4), provides City Council with information that was not previously available to the inquiry officer. City Council, as approving authority, can use and rely on this new information to make its final decision on whether to proceed with the expropriation of the Property.

Administration confidently relies upon WSP's Memo and Draft Stormwater Management Report, which confirms that as a result of changes to Fort Road brought about by the Project, stormwater runoff will increase in the CN Underpass area of Fort Road near the Property, and drainage storage with a capacity of approximately 2,800m³ is required.⁷ Therefore, the entirety of the Property is required for the Project. Based on this same information, Council agrees that the expropriation should proceed despite the absence of detailed design plans.

REASONABLE ALTERNATIVES CONSIDERED

Evaluation of other Land Parcels

18. The City considered reasonable alternatives to the proposed design relating to the Property, and reasonably concluded that those alternatives were not acceptable from an engineering or cost perspective, or would have required the taking of other privately owned land. Alternative properties either required expensive contaminated soil remediation or were already being utilized for drainage and other aspects of the Project. Page 4 of Attachment 4 provides an overview of the evaluation of potential land parcels that were considered to accommodate the Drainage Infrastructure.

Full Versus Partial Taking

19. As outlined above, there is no dispute that a partial taking was acceptable to the inquiry officer. The question is whether Council should exercise a taking of the entire parcel. Section 14(5) of the *Municipal Government Act* expressly allows the City to expropriate more land than the City needs, if City Council is of the opinion that the municipality can obtain a more reasonable price or other advantage of acquiring more lands.⁸
20. The City can acquire the full Property at a lower cost than it would incur if only part of the Property were taken. Partial takings typically cost the City more money to acquire. When the City takes a portion of a property,

⁷ Page 23, Attachment 4, of the June 22, 2020, Office of the City Manager report CR_7900.

⁸ An excerpt of section 14 of the *Municipal Government Act* is included in Attachment 5 of the June 22, 2020, Office of the City Manager report CR_7900.

landowners can be entitled to damages for injurious affection, and this drives up the overall cost of acquisition. The City is likely to pay less in damages by taking the full Property instead of expropriating part of it.

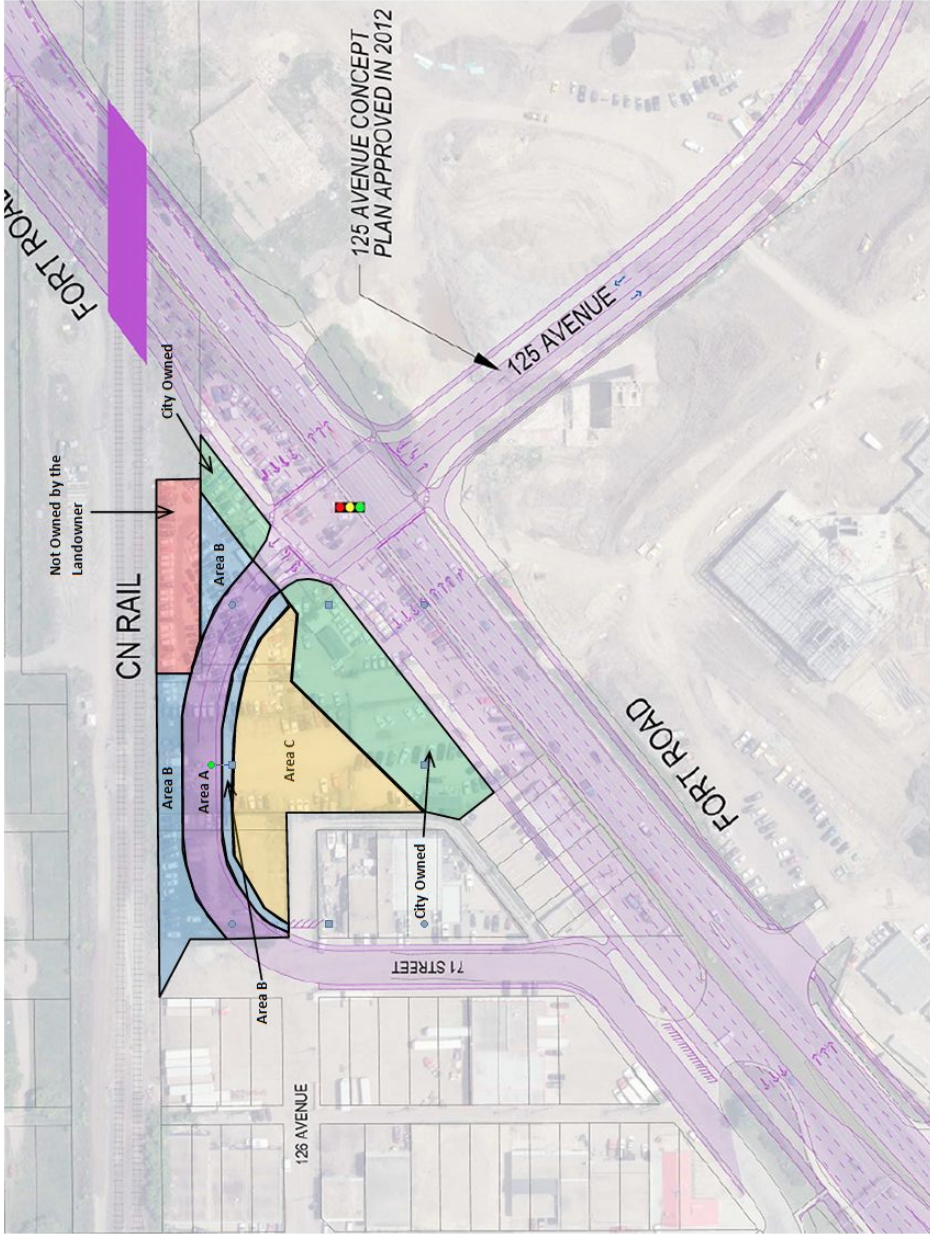
CONCLUSION

21. City Council is therefore of the opinion that acquiring the Property in full will result in the following advantages for the City:
 - a. It will allow the City to construct the Drainage Infrastructure required for this area on the Drainage Lands. The engineering work⁹ completed by Administration and City consultants to date demonstrates the need for Drainage Infrastructure in this area and that the Drainage Lands are the best option to locate such infrastructure.
 - b. It will allow the City to acquire the Property at a more reasonable price as:
 - i. the City will not have to pay injurious affection or severance damages to the landowner, which are only associated with partial takings. For example, if the City only acquired a portion of the Property for the Road Lands and the Back Sloping Lands, the City would have to pay severance damages to the landowner in addition to the market value of the lands taken. Also, the City may be forced to expropriate the Drainage Lands in the future and pay further costs associated with same;
 - ii. the City would not have to pay additional costs to reexamine and redesign the current land requirements for the Project in this area; and
 - iii. the City would not have to incur the additional costs that would be associated with the City acquiring another property in this area to facilitate the construction of the necessary Drainage Infrastructure, which may include expropriation costs if the City is forced to expropriate the land of another private landowner.
 - c. It will allow the City to avoid leaving the remaining portion of the Property with limited options for access as a result of the proximity of Fort Road and the curved alignment geometry on 125 Avenue pursuant to the constraints set out in the City's Access Management Guidelines and Chapter 9 ("Intersections") of the TAC

⁹ Attachment 4 of the June 22, 2020, Office of the City Manager report CR_7900.

Geometric Design Guide for Canadian Roads.¹⁰ These limited options for access would result in safety concerns and sight line issues.

Diagram Showing the Property:*



***All areas and locations shown in this diagram are approximate and must be verified by a legal survey.**

¹⁰ Attachment 7 of the June 22, 2020, Office of the City Manager report CR_7900 contains Chapter 9 of the TAC Geometric Design Guide for Canadian Roads and copies of the relevant pages from the City’s Access Management Guidelines.