STAFF REPORT
ACTION REQUIRED

Underground Crossing Agreement associated with the development of lands at 1100 King Street West

Date: July 24, 2014
To: Toronto & East York Community Council
From: Helen Noehammer, P. Eng., Director, Engineering Review
Wards: Ward 14 Parkdale-High Park
Reference Number: P:\2014\Cluster B\TEC\TE14054 (AFS#20056)

SUMMARY

This report seeks authority for the Executive Director, Engineering & Construction Services, to negotiate and execute on behalf of the City of Toronto two agreements: (i) a crossing agreement with Metrolinx; and (ii) an additional agreement with the owners developing the lands at 1100 King Street West (the "Developer"), currently Kingsclub Development Inc., to permit the installation of a watermain under Metrolinx's rail corridor adjacent to the development site. As a condition of approval of the development, the Developer is required to relocate an existing watermain that crosses the easterly portion of the development site and the rail corridor. This obligation was secured in a May 15, 2006 Section 37 Agreement between the City and the Developer.

RECOMMENDATIONS

The Director of Engineering Review recommends that:

1. The Executive Director of Engineering & Construction Services be authorized to:
   
   (a) Negotiate, enter into and execute a crossing agreement, crossing permit, or related documents with Metrolinx, as well as all renewals and extensions, to permit the installation of a new watermain crossing within the Weston Subdivision rail corridor, between Sudbury Street on the north side of the rail corridor and Joe Shuster Way on the south side of the corridor, with terms and conditions satisfactory to the Executive Director, Engineering & Construction Services, and in a form acceptable to the City Solicitor;
(b) negotiate and execute an agreement with the Developer:

(i) to secure the Developer's payment of the cost of designing and constructing the new watermain; fees charged by Metrolinx for reviewing the watermain relocation plans; all costs necessary to terminate the existing 1968 crossing agreement; and any other costs associated with the watermain relocation deemed appropriate by the Executive Director, Engineering & Construction Services;
(ii) to have the Developer construct a new watermain from Sudbury Street, crossing the Metrolinx rail corridor, through the northwest corner of the Developer's land via a new easement and onto Joe Shuster Way; and
(iii) to complete all work associated with the termination of the 1968 crossing agreement as deemed appropriate by the Executive Director, Engineering & Construction Services.

(c) terminate the 1968 crossing agreement, as described in the report below for the existing watermain that currently traverses the rail corridor upon entering into the agreements noted in Recommendation Nos. 1(a) and 1(b).

2. City Council authorizes the appropriate City Officials to take the necessary actions to give effect thereto.

Financial Impact

To permit the relocation of the watermain under Metrolinx's tracks, a crossing agreement between the City of Toronto and Metrolinx is required. While the terms of the agreement are currently under negotiation, it is likely that they will include, but not be limited to, responsibility for construction costs, Metrolinx's review costs, license fees, and allocation of costs between the City and Metrolinx associated with a possible future relocation of the watermain to accommodate Metrolinx's operations.

The Section 37 Agreement between the City and the Developer obligates the Developer to relocate an existing watermain and pay for all costs associated with this relocation, to the satisfaction of the Executive Director, Engineering & Construction Services, to permit development on the easterly portion of their site. This Section 37 Agreement will be used as the basis to require the Developer to enter into a further agreement with the City to construct and pay for the costs associated with the relocation of the watermain, including the cost of designing and constructing the new watermain; fees charged by Metrolinx for reviewing the watermain relocation plans; and costs arising out of the termination of the 1968 crossing agreement.

With respect to the costs associated with a possible future relocation of the watermain, these potential costs are highly speculative and difficult to quantify given that the reasons for, or even the necessity of, a future relocation are currently unknown. Since the City
will be also terminating the existing 1968 crossing agreement, the inherent risk for the future relocation cost of the existing crossing will effectively be transferred to the new crossing. For these reasons, the City will not be seeking future relocation costs of the new watermain crossing from the Developer.

There are no financial implications resulting from the adoption of this report with the exception that future renewal fees of the agreement will be funded from a Toronto Water operating budget account typically used to pay for costs associated with easements and access agreements.

The Deputy City Manager and the Chief Financial Officer has reviewed this report and agrees with the financial impact information.

**ISSUE BACKGROUND**

City Council, at its meeting on September 28, 29, and 30, and on October 1, 2004, authorized the City Manager to enter into a Section 37 Agreement with the Developer to secure planning and engineering matters relating to the development of the 1100 King Street West site. The Council Decision Document can be found at:  

One matter secured in the agreement relates to the Developer's obligation to relocate an existing 400mm watermain within their site that also crosses Metrolinx's rail corridor. The clause in the Section 37 Agreement that secures this obligation is as follows:

*The Owner acknowledges that as a condition of the Development of the West Lot the Owner must ensure that the existing City watermain currently located within the East Lot is relocated to a location satisfactory to the Technical Services Director prior to the development of the East Lot and that the Owner and/or the owner(s) of the East Lot must provide all necessary easements and pay for all costs associated with the relocation of the said watermain.*

The Developer has submitted a site plan application seeking approval to develop the portion of the site that triggers the relocation of the existing watermain.

Permission to install the existing watermain across the rail corridor was provided in a 1968 crossing agreement with CN Rail, the owner of the railway lands at that date. The 1968 crossing agreement requires the City to pay fees and also holds the City responsible for the costs of relocating the City's pipe in the event relocation is necessary or expedient to accommodate the railway's operations.
The proposed relocated watermain crossing will free up the portion of the Developer's site to accommodate a new mixed-use condominium building. City staff, the Developer and Metrolinx have been in discussions over the past several months to review and agree on a new location for the watermain crossing the rail corridor. The parties have reached an agreement in principle for this new crossing location, and a new crossing agreement is required to permit the relocation of the watermain.

City Council at their February 20 and 21, 2013 meeting delegated authority to the Division Heads of Engineering & Construction Services, Toronto Water and Transportation Services to enter into crossing agreements: [http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PW20.4](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PW20.4). However, that authority is subject to the crossing work being part of an approved capital or operating budget, and where the municipal infrastructure cannot be entirely accommodated within City-owned lands. In this case, the watermain relocation is being triggered by a development and the costs to relocate the watermain will be incurred by the Developer as secured in the Section 37 Agreement. Accordingly, this proposed crossing does not meet the requirements of the delegated authority, and Council authority is required to enter into this particular crossing agreement with Metrolinx.

The crossing agreement is designed to grant permission for the installation of City infrastructure while protecting the interests of Metrolinx. The standard agreement includes provisions pertaining to license fees, relocation, insurance and indemnity clauses intended to protect Metrolinx and its property from any claims arising from the installation of the infrastructure or related works.

As indicated in the Financial Impact section of this report, the crossing agreement with Metrolinx will contain provisions relating to responsibility for construction costs, Metrolinx's review costs, license fees and allocation of costs between the City and Metrolinx associated with a possible future relocation of the watermain to accommodate Metrolinx's operations. The Developer, as a condition of approval of their site plan application, will be required to enter into a further agreement to ensure the Developer pays the City's costs relating to construction, review fees and licensing fees.

The City will not enter into the crossing agreement with Metrolinx until the City: i) has entered into an agreement with the Developer as set out in recommendation 1(b) above; ii) is in receipt of the required financial security from the Developer to guarantee the works, including security for any costs associated with terminating the 1968 crossing agreement; and iii) has received funds from the Developer to cover the fees required under the crossing agreement.
At this time, the City has commenced negotiations with Metrolinx for a new crossing agreement, and the City’s costs arising from this crossing agreement will be transferred to the Developer.

**CONTACT**

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**SIGNATURE**

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Helen Noehammer, M.A.Sc., P. Eng.
Director, Engineering Review

**ATTACHMENT**

Attachment 1: Map of the existing and proposed watermain crossing