



CORPORATION OF THE TOWNSHIP OF ESQUIMALT

Municipal Hall
1229 Esquimalt Road
Esquimalt, B.C. V9A 3P1

Legislation Text

File #: 17-404, Version: 1

REQUEST FOR DECISION

DATE: September 27, 2017

Report No. DEV-17-056

TO: Laurie Hurst, Chief Administrative Officer

FROM: Bill Brown, Director of Development Services

SUBJECT:

Request from Hidden Harbour Marina for letter of support to Transport Canada re Captain Jacobson's Park

RECOMMENDATION:

That Council authorize the Chief Administrative Officer or her designate to send a letter to the Superintendent of Property Services for Transport Canada on behalf of the Corporation of the Township of Esquimalt (the Township) stating that Council consents to the impairment of the Township's riparian rights adjacent to Captain Jacobson's Park subject to:

- The Township retaining the right to repair, maintain, replace, and relocate the storm water pipe and outfall located in Captain Jacobson's Park;
- The Township retaining the right to repair, maintain, or otherwise modify the shore of Captain Jacobson's Park, subject to receiving all necessary approvals, to enhance safety or the ecological integrity of the shore line; and
- Nothing in the renewed lease preventing emergency responders from accessing the riparian area in emergency situations (e.g. to pump water for fire fighting or desalination).

RELEVANT POLICY:

West Bay Neighbourhood Design Guidelines

STRATEGIC RELEVANCE:

The proposed consent is not related to any of the Corporation's strategic priorities.

BACKGROUND:

The owners of the Hidden Harbour Marina are currently negotiating a renewal of their lease with Transport Canada. Transport Canada has requested that they obtain written consent from all upland landowners who own land adjacent to the proposed lease. As the owner of Captain Jacobson's Park, the Township is one such owner. Consent needs to be granted by Council via a Council resolution.

The map in Schedule “A” illustrates the situation. The proposed renewed lease would abut the east boundary of Captain Jacobson’s Park. While the Township owns the land associated with Captain Jacobson’s Park, the Crown in the name of the Government of Canada (administered by Transport Canada) retains ownership of lands below the natural boundary. This land-water interface creates a riparian area which includes certain riparian rights.

Riparian rights, which run with an upland property, include access to and from navigable water, protection of the property from erosion, and ownership of accretion once it takes on upland characteristics (Ministry of Agriculture and Lands, Crown Land Administration, Province of British Columbia, 2008).

Because the proposed lease renewal would potentially remove these rights, Transport Canada requires a letter from the Township stating that it “consents to the impairment of the Township’s riparian rights”.

The Parks and Recreation Department has reviewed the proposed location of the lease and, due to unfavourable topography (i.e. steep slopes), has indicated that it does not have any plans to develop the riparian area of Captain Jacobson’s Park.

The Engineering Department has indicated that there is a storm water pipe outfall at the south end of the riparian area (shown on Schedule “A”). Any consent to impair the Township’s riparian rights must include provisions allowing the Township to maintain, repair, replace, and relocate the storm water pipe and outfall.

It is noted that it is possible for the lease to be renewed in a slightly different configuration that would not impair the Township’s riparian rights; however, the lease holders would prefer to have the lease renewed as per its historical boundaries.

ISSUES:

1. Rationale for Selected Option

The proposed conditional consent to the impairment of the Township’s riparian rights allows the leaseholder to renew their lease and at the same time allows the Township to retain the ability to maintain, repair, replace, and relocate the storm water pipe and outfall as well as maintaining the shore line so that it remains safe for park users. In addition, the conditional consent would allow the Township to do ecological enhancements to the shoreline within the park.

2. Organizational Implications

There are no significant organizational implications.

3. Financial Implications

There are no significant financial implications.

4. Sustainability & Environmental Implications

There are no significant sustainability and environmental implications.

5. Communication & Engagement

There are no statutory requirements for community engagement.

ALTERNATIVES:

1. That Council authorize the Chief Administrative Officer or her designate to send a letter to the Superintendent of Property Services for Transport Canada on behalf of the Corporation of the Township of Esquimalt (the Township) stating that Council consents to the impairment of the Township's riparian rights adjacent to Captain Jacobson's Park subject to:
 - The Township retaining the right to repair, maintain, replace, and relocate the storm water pipe and outfall located in Captain Jacobson's Park;
 - The Township retaining the right to repair, maintain, or otherwise modify the shore of Captain Jacobson's Park, subject to receiving all necessary approvals, to enhance safety or the ecological integrity of the shore line; and
 - Nothing in the renewed lease preventing emergency responders from accessing the riparian area in emergency situations (e.g. to pump water for fire fighting or desalination).
2. That Council direct staff to provide more information on the various implications of the consent to impairment of its riparian rights.
3. That Council not consent to the impairment of its riparian rights.

Article I. **Bibliography**

Ministry of Agriculture and Lands, Crown Land Administration, Province of British Columbia. (2008). *Riparian Rights and Public foreshore Use in the Administration of Aquatic Crown Land Occasional Paper No. 5*. Victoria: Province of British Columbia.