

DATE OF MEETING OCTOBER 1, 2018

AUTHORED BY BILL CORSAN, DEPUTY DIRECTOR, COMMUNITY DEVELOPMENT

SUBJECT 1 PORT DRIVE – SEASPAN RIGHT-OF-WAY FINAL DISPOSITION

## **OVERVIEW**

### **Purpose of Report**

To request Council's formal approval to discharge the Seaspan Right-of-Way at 1 Port Drive through a cash payment and transfer of fee-simple land at 1 Port Drive to an affiliate of Seaspan Ferries Corporation and Southern Railway of Vancouver Island Limited.

### **Recommendation**

That Council:

- a) approve the acquisition of the Seaspan Right-of-Way at 1 Port Drive for a purchase price of \$991,465;
- b) approve the disposition of 3.6 acres of water lot and 5.7 acres of upland with an estimated market value of \$3,050,500 from 1 Port Drive to an affiliate of Seaspan Ferries Corporation and Southern Railway of Vancouver Island Limited;
- c) delegate to the Chief Administrative Officer the power to approve the Transfer Agreement between the City of Nanaimo, Seaspan Ferries Corporation and Southern Railway of Vancouver Island Limited to formalize the commitments outlined in the Letter of Intent dated 2018-SEP-13 and any related commitments on such terms and conditions as the Chief Administrative Officer deems appropriate, in his sole discretion; and
- d) direct the Mayor and Corporate Officer to execute the necessary documents to affect the transaction.

## **BACKGROUND**

The City of Nanaimo acquired the lands at 1 Port Drive from CP Rail in March 2013 for \$3.4m. The lands are comprised of 10.8ha (26.7 acres) of land and water (Attachment A). The City acquired the lands with the goal of revitalizing this area of the downtown.

The site is located immediately south of the downtown core of Nanaimo. The parcel is bound by Front Street and Esplanade to the west, and the Port Drive trestle to the south. The Nanaimo harbour is the eastern boundary of the property. The Nanaimo Port Authority "Bowtie" property at 180 Front Street forms the northern boundary. The site is essentially flat and is a few meters above the elevation of the high-tide mark.

Seaspan Ferries Corporation (Seaspan) has a statutory right-of-way that occupies approximately 6.2ha (15.4 acres) of land and water at 1 Port Drive. The right-of-way provides a perpetual right to operate a roll-on/roll-off traffic truck terminal and rail transfer facility in this location as long as business does not cease for more than 180 days. Island Corridor Foundation (ICF) and Southern Railway of Vancouver Island Limited (SVI) occupy 1.02ha

(2.53 acres) of land for a rail right-of-way and an operations building (Attachment B). Seaspan and SVI are operating companies within the Washington Marine Group.

There has been considerable momentum within the South Downtown Waterfront in the past five years. Highlights include:

- Detailed Site Investigation and Detailed Risk Assessment work at 1 Port Drive to identify site contamination. This included the preparation of a Remediation Options report for the property.
- The relocation of Seaspan's main roll-on/roll-off truck operations to their new terminal at 850 Jackson Road, Duke Point. SRY continues to provide rail service to Vancouver Island using the rail barge berth located within the right-of-way.
- Completion of a secondary access study to identify an alternative entrance to the South Downtown Waterfront.
- Completion of the Waterfront Walkway Implementation Plan.
- Completion of the 1 Port Drive Master Plan to guide development on the property in the coming years.
- Functional design work completed for the interim waterfront walkway and Front Street Extension with construction scheduled for the fall of 2018.
- Announcement by the Nanaimo Port Authority that it has secured three new tenants for the Assembly Wharf property, including Western Marine Response Corporation, Western Stevedoring (Auto Terminal), and Island Ferry Services Limited. These new tenants will require a reliable access for cars, trucks, buses, and emergency services.

## **DISCUSSION**

While much work has been completed on the property, the redevelopment of the lands is limited to the areas of the property not encumbered by the Seaspan Right-of-Way. This includes the former Island Pallet property on Front Street/Esplanade (1.21ha [3 acres]) and the Gadd Marine site (0.36ha [0.9 acres] of upland and 0.53ha [1.3 acres] of water lot).

The City has been working with Seaspan for the past 3.5 years to negotiate the discharge of the right-of-way. At the 2015-APR-20 Special "In Camera" Council meeting, Council entered into a Memorandum of Understanding (MOU) with Seaspan and SRY to discharge a portion of the right-of-way.

Staff have continued to work diligently with Seaspan to resolve the right-of-way issue; numerous meetings have taken place, and appraisal work has been completed and updated. The latest appraisal from December 2017 values the Seaspan Right-of-Way at \$4,270,000.

Through the negotiation process, the arrangement set out in the original MOU has evolved. A Letter of Intent (LOI) was developed between the City, Seaspan, and SVI. The LOI documents the understanding of each party and sets out the process for the formal discharge of the right-of-way and the transfer of a portion of the City-owned lands at 1 Port Drive to a Seaspan/SVI affiliate. The LOI is contained in Attachment C.

The key terms to the LOI are as follows:

- Seaspan will discharge the 15.5 acre right-of-way in its entirety;

- The City will pay \$991,465 to discharge the right-of-way;
- The City will transfer three newly-subdivided fee simple parcels of land at 1 Port Drive to a Seaspan/SVI affiliate. These lands have a market value of \$3,050,500. The parcels will include a 1.45ha (3.6 acre) water lot with the existing barge facility, a 1.9ha (4.7 acre) upland industrial/rail parcel, and a 0.40ha (1 acre) upland parcel containing the SVI Maintenance Building;
- The City will transfer the lands to Seaspan with a Certificate of Compliance from the BC Ministry of Environment for each lot;
- The City will issue a Development Variance Permit (DVP) to enable the subdivision to take place without the requirement for works and services at this point in time;
- The City will update the rail-crossing infrastructure, ensure electrical service for Southern Rail of Vancouver Island, and provide fencing along the Front Street Extension;
- The closing date is anticipated to be 2019-APR-15; and
- Seaspan will allow the City access to the lands to tender and advance work on the Front Street Extension prior to the land transfer.

Council approved the LOI at the 2018-SEP-17 “In Camera” Council Meeting and is now in a position to formally approve the disposition of the City lands in an open Council meeting as required under Section 26 of the *Community Charter*.

## **OPTIONS**

1. That Council:
  - a) approve the acquisition of the Seaspan Right-of-Way at 1 Port Drive for a purchase price of \$991,465;
  - b) approve the disposition of 3.6 acres of water lot and 5.7 acres of upland with an estimated market value of \$3,050,500 from 1 Port Drive to an affiliate of Seaspan Ferries Corporation and Southern Railway of Vancouver Island Limited;
  - c) delegate to the Chief Administrative Officer the power to approve the Transfer Agreement between the City of Nanaimo, Seaspan Ferries Corporation and Southern Railway of Vancouver Island Limited to formalize the commitments outlined in the Letter of Intent dated September 13, 2018 and any related commitments on such terms and conditions as the Chief Administrative Officer deems appropriate, in his sole discretion; and
  - d) direct the Mayor and Corporate Officer to execute the necessary documents to affect the transaction.
    - **Budget Implication:** The 2018 Budget has \$3,020,000 allocated for the Seaspan Right-of-Way and Team Tracks Acquisition (Project Number P3104-01-01-019). The LOI has a purchase price of \$991,465. The land being transferred to Seaspan/SVI has a market value of \$3,050,500. The City is also responsible for the costs associated with the Certificate of Compliance from the BC Ministry of Environment at a cost of \$180,000. The survey costs associated with the subdivision are approximately \$10,000. Other costs associated with fencing and the rail crossing are covered as part of the Front Street Extension road/walkway project.
    - **Legal Implication:** The Notice of Disposition required under Sections 94 and 26 of the *Community Charter* was published for two consecutive weeks prior to the Council meeting. The City solicitor will oversee the formal transfer agreement.

- **Policy Implication:** The redevelopment of 1 Port Drive is supported in the Official Community Plan, Downtown Plan, South Downtown Waterfront Initiative, and the 1 Port Drive Master Plan.
  - **Engagement Implication:** Staff have met with representatives from Seaspán on numerous occasions regarding the right-of-way acquisition. The 1 Port Drive Master Plan concept plan is consistent with the land transfer.
  - **Strategic Priorities Implication:** The phased redevelopment of 1 Port Drive is one of Council's key projects in the 2016-2019 Strategic Plan. The purchase of the Seaspán Right-of-Way is a critical step in opening up the lands for redevelopment and the construction of the Front Street Extension.
  - **Political Implication:** The purchase of the Seaspán Right-of-Way will enable Council to move forward with the redevelopment of 1 Port Drive and demonstrate significant progress on this file.
2. That Council not proceed with the acquisition of the Seaspán Right-of-Way and the transfer of fee-simple land to an affiliate of Seaspán Ferries Corporation and Southern Railway of Vancouver Island Limited.
- **Budget Implication:** The need to replace the wooden trestle (\$6,000,000+) or to build the Front Street Extension will remain. The City would have limited options to improve access to the South Downtown Waterfront.
  - **Legal Implication:** Without a resolution to the Seaspán Right-of-Way issue, the lands will remain vacant and undevelopable. The Nanaimo Port Authority will require access to the Assembly Wharf Lands, and may take legal action against the City for not providing reasonable access.
  - **Policy Implication:** Not advancing the redevelopment of these lands would be inconsistent with a range of City policies.
  - **Strategic Priorities Implication:** The phased redevelopment of 1 Port Drive is one of Council's key projects in the 2016-2019 Strategic Plan. Not advancing the redevelopment of these lands would be inconsistent with this strategic priority.

### **SUMMARY POINTS**

- The City acquired 1 Port Drive from CP Rail in March of 2013 for \$3.4m. The property is 10.8ha (26.7 acres) in size but has limited development potential due to a perpetual right-of-way in favour of Seaspán Ferries Corporation.
- Considerable work has taken place on the property to ready it for redevelopment, including the relocation of Seaspán's roll-on/roll-off truck facility, contaminated site review, the development of the Master Plan to guide future development of the site, and detailed engineering associated with the waterfront walkway and Front Street Extension.
- The City and Seaspán/SVI have come to an arrangement to discharge the right-of-way in exchange for a payment of \$991,465.
- In addition, the City will dispose of three parcels of fee-simple land at 1 Port Drive to a Seaspán/SVI affiliate with a market value \$3,050,500.
- The discharge of the right-of-way will enable the City to move forward with the redevelopment of the lands in 2019.

- The details of the transaction have been captured in a Letter of Intent (LOI) between the City, Seaspán, and SVI. Council approved the LOI at the Special “In Camera” Council Meeting on 2018-SEP-17.
- Council approval is being sought to formally approve the arrangement. |

## **ATTACHMENTS**

ATTACHMENT A: 1 Port Drive

ATTACHMENT B: Seaspán Ferries Corporation and Island Corridor Foundation  
Right-of-Way Areas

ATTACHMENT C: Letter of Intent to Discharge Right-of-Way |

### **Submitted by:**

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### **Concurrence by:**

Dale Lindsay  
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