Meeting Date: October 22, 2019

Subject: Area Specific Development Charge Background Study and By-law for Simpson Road

Submitted By: Fuwing Wong, General Manager, Finance and Infrastructure Services

RECOMMENDATION

That staff be authorized to proceed with an Area Specific Development Charges (ASDC) Background Study for the purposes of a future ASDC by-law to recover costs related to Simpson Road infrastructure design, property acquisition, and construction costs;

That a 2019 new capital project be established in the amount of $45,000 for the Simpson Road ASDC Background Study be funded from benefiting Simpson Road landowners; and

That staff be authorized to negotiate development agreements with Licenza Park Construction Corp and the Simpson Road Landowners Group Inc. for the reimbursement of all Town costs related to the local service road, Simpson Road, the development/construction of Simpson Road, and recovery of up-fronted costs via ASDC’s applied to future development.

REPORT HIGHLIGHTS

- Two landowners wish to construct the remaining two segments of Simpson Road (North of George Bolton Parkway and North of Mayfield Road);
- In order to secure recovery of Town costs and any construction (and other) costs the landowners will have to up-front, an Area Specific Development Charge (ASDC) Background Study and By-law is recommended;
- An ASDC By-law will impose a charge to a defined benefitting area (e.g. the properties that will benefit from the new Simpson Road infrastructure) and the ASDC will be payable, in addition to Town-wide development charges, as the properties come forward to develop in the future;
- Once the mechanism for recovery is in place, i.e. the ASDC by-law, the landowners will have the assurances related to recovery of their up-fronted costs and will likely sign development agreements with the Town and Region for the reimbursement of costs the Town has incurred to-date and for the completion of the projects (e.g. construction and property acquisition, if required, costs).
DISCUSSION

Simpson Road is a local service road in Bolton that services the South Simpson Industrial Area. Local service roads are normally the responsibility for developers/landowners to cost share, build, and convey to the Town so that they have frontage onto a road and their developments may proceed. From anecdotal information, staff understand that remaining segments of Simpson Road (specifically immediately North of George Bolton Parkway, immediately South of George Bolton Parkway, and North of Mayfield Road, as shown in yellow highlighted sections of Diagram 1, below) were not completed as landowners in the area could not organize and agree on cost sharing to construct the road.

Diagram 1:

Council has directed staff to complete the remaining segments of Simpson Road. Accordingly, the Town engaged the services of AMEC Earth and Environmental in 2010 to undertake an Environmental Assessment (E.A.) for the completion of Simpson Road from just north of George Bolton Parkway, to Mayfield Road. The Notice of Study Commencement was first issued on July 27, 2010. The final report was posted in December 2012. As part of the E.A. the drainage course from the existing pond in the subdivision bounding Parr Boulevard to Mayfield Road was identified as a headwater feature needing protection and in addition a TRCA Permit would be required for any work in the regulated area.
In November of 2013 the Public Works Department (now Infrastructure Services) provided a report to Council, report PW 2013-040, recommending that AMEC be awarded the contract to complete all engineering works to fully service Simpson Road and that the Town front end all financing with full recovery mechanisms.

On 22-April-2014 the Administration Department (now Corporate Services) reported to Council, report ADM-2014-016, to obtain authorization for the Project Manager, Real Estate to execute the negotiated Purchase and Sale Agreements between the affected Property Owners and the Town as well as to proceed with the expropriation of the remaining lands as may be required for Simpson Road if negotiations are unsuccessful.

Starting in 2014, the Town met with the landowners to discuss the overall project and the need to enter the properties to undertake the necessary investigations to complete the design. It quickly became apparent that the sections of Simpson Road immediately north and south of George Bolton Parkway were more likely to proceed first with the section north of Mayfield Road at a later date due to the interest and cooperation of the landowners in the respective areas. Accordingly, the project was split into multiple phases:

1) Simpson Road – South of George Bolton Parkway;  
2) Simpson Road – North of George Bolton Parkway;  
3) Simpson Road – North of Mayfield

That is, rather than waiting for all landowners to agree on a cost sharing methodology and to convey lands required to construct the outstanding sections of Simpson Road, the Town first proceeded with the sections where there were willing landowners. The Town’s consultant was directed to continue with the designs in phases with the section of road south of George Bolton Parkway being the first phase.

The Town completed the construction of Simpson Road, South of George Bolton Parkway, in 2016. On 6-June-2017, staff provided Council a report with a status update on the Simpson Road project. The report noted that the southern segment, i.e. Simpson Road connection to Mayfield Road, had an estimated construction cost of $10 million+ and staff recommended that the project be turned back to the landowners to construct.

The Section of Simpson Road North of Mayfield Road is a significantly larger project involving seven distinct property owners. Two of the landowners have formed the Simpson Road Landowners Group Inc., and are represented by Brattys LLP (external legal counsel and trustee for the Group).

The remainder of this report will provide a status of each of the Simpson Road phases and next steps.
**Simpson Road – Phase 1 (South of George Bolton)**

This section of road was completed by the Town (including design, property acquisition, and construction) in 2016/2017 [***Ian to confirm***]. Following construction, there were disputes related to the repayment to the Town. As noted above, Simpson Road is a local service road and the responsibility of benefiting landowners/developers. One of the disputes resulted in litigation which was settled in 2018 with the landowner agreeing to pay for the infrastructure and make repairs to the unopened portion of the road. This segment of Simpson Road (immediately South of George Bolton) may be opened, via a resolution and by-law of Council, once the repairs are completed by the landowner to the Town’s satisfaction.

In general, once local service roads (built by developers/landowners) are assumed by the Town, future maintenance, repairs, rehabilitation and reconstruction become the Town’s responsibility and recovered from Caledon taxpayers via property taxes.

**Simpson Road – Phase 2 (North of George Bolton)**

The Environmental Assessment and detailed design has been completed. Also, with no requirements for permits from the Toronto and Region Conservation Authority (TRCA) nor an Environment Compliance Approval (ECA) from the Ministry of Environment, Conservation and Parks (MECP) [***Ian to confirm***], the Town proceeded with property acquisition.

The Town currently has legal ownership of the lands required for the Simpson Road infrastructure (North of George Bolton Parkway) and are finalizing costs and execution of agreements in accordance with the *Expropriations Act*.

The Town has been approached by a landowner, Licenza Park Construction Corp, in the area expressing an interest to construct this segment of Simpson Road. Staff recommend negotiating with Licenza Park Construction Corp for:

- Reimbursement of all Town costs incurred to-date/to the time in which the project is turned over to the landowner for construction;
- Licenza Park Construction Corp to up-front all costs of construction/completion of the Simpson Road infrastructure works; and
- A recovery mechanism for Licenza Park Construction Corp. to collect their up-fronted costs from benefiting landowners that come forward to develop their lands in the future.

As noted above, staff recommend that the recovery mechanism be an ASDC by-law and recommend moving forward with the background study required to enact such a by-law.
Simpson Road – Phase 3 (Simpson Road & Mayfield Road)
The Town has been working with the TRCA and Simpson Road Landowners Group Inc (SRLG) to:

1) Complete the design acceptable to the TRCA;
2) Obtain conditional permit approval from the TRCA – conditional upon ownership of the lands; and to
3) Execute a Development agreement with the SRLG

Following conditional approval from the TRCA, all designs and back-up for the project will be provided to the SRLG in order to:

1) Acquire property related to the Simpson Road infrastructure. The development agreement will include provisions for the Town to assist with expropriation if the SRLG’s reasonably commercially best efforts to acquire the lands is not successful;
2) Obtain a final TRCA permit and Environmental Compliance Approval from the Ministry of Environment, Conservation and Parks (once the properties are acquired by the SRLG). Permits and approvals are provided only to landowners;
3) Construct the Simpson Road infrastructure, including the road, storm water channel, storm water management pond, water and wastewater infrastructure.

A submission to the TRCA, addressing all concerns to-date, was sent to the TRCA on 5-October-2019. **Ian to confirm** Further, a draft Development agreement was sent to the SRLG, via their external legal counsel, Brattys LLP, on 27-September-2019.

As noted above, the recovery mechanism for Landowners up-fronting Simpson Road, local service road, costs is via an ASDC by-law. To this end, staff recommend the following:

1) a 2019 new capital project be established in the amount of $45,000 for the Simpson Road ASDC Background Study;
2) That the new capital project will be funded from benefiting Simpson Road landowners (both North of George Bolton Parkway and North of Mayfield Road);
3) That the Simpson Road ASDC Background Study be single source awarded to Watson and Associates to an upset limit of $45,000.

In accordance with the Town’s Purchasing By-law 2019-24, the General Manager of Finance and Infrastructure Services and the Manager, Purchasing & Risk Management have authorization to approve single source awards for amounts up to $50,000. Single source awards up to $50,000 are reported to Council through a biannual purchasing memo. Subject to Council approval of this report, staff will award the ASDC Background Study work to Watson and Associates. Watson and Associates recently completed the Town’s 2019 Town-wide Development Charges Background Study and is familiar with the Town’s current DC By-laws, planned growth, and growth-related infrastructure/local service policies. Accordingly, Watson and Associates will be able to complete the ASDC expeditiously. Further, the Town issued a tender (RFP 2018-41 Consulting Services for
Development Charges) for the 2018 Town-wide DC Background Study and by-law work and only received one bidder submission, from Watson and Associates.

FINANCIAL IMPLICATIONS

Financial implications related to the proposed new 2019 capital project is contained in other sections of this report. The ASDC Background Study will include costs for projects, identify benefitting landowners, and outline each benefitting landowner’s proportionate cost. The recovery of the ASDC Background Study from the northern and southern Simpson Road landowners will also be determined by the ASDC Background Study.

To-date the Town has spent $364,473 primarily on studies and design costs for this project for the Simpson Road Servicing South (Simpson/Mayfield Road) project. Costs for this phase of the project are being captured and tracked in capital Project #14-093.

Costs related to Simpson Road Servicing (North of George Bolton Parkway) are being tracked in capital project #17-179. To-date the Town has spent $574,493 primarily on study, design, and property acquisition costs.

As a local service road, the Town will be negotiating with landowners for the full reimbursement for costs the Town will incur related to the Simpson Road projects. That is, the Town/taxpayers must be reimbursed for the cost of the local road environmental assessment, design costs, land acquisition/expropriation costs, and other costs before the landowners are permitted to start construction. The landowners involved in this early process, in essence will up-front the costs of the two projects and have expressed some concern with their own ability to collect from future landowners/developers that come forward for development.

Due to issues the Town experienced in the recovery of costs experienced with the Simpson Road (South of George Bolton Parkway) project and changes in legislation, staff recommend proceeding with imposing an Area Specific Development Charge (ASDC) on the areas (e.g. properties) that will benefit from the infrastructure (e.g. an ASDC for Simpson Road, North of George Bolton Parkway and a separate ASDC for Simpson Road, North of Mayfield Road). An ASDC by-law is similar to a Town-wide Development Charges By-law as it follows all of the requirements and is imposed under the Development Charges Act. For property owners within the ASDC benefiting area, their proportionate share of ASDC’s are payable in addition to Town-wide DC’s. Since the Town will be reimbursed for all costs to-date, the ASDC will ensure that the landowner(s) that have up-fronted the Simpson Road infrastructure have a mechanism to recover the costs from benefitting future landowners/developers. The ASDC background study will determine the methodology and allocation of Simpson Road costs to the benefitting landowners resulting in an ASDC for each property.

As noted above, an ASDC by-law, like a Town-wide DC by-law, must follow the same process outlined in Ontario legislation, the Development Charges Act, before the by-law may be passed. This includes:

- preparing a background study;
- prescribed/mandatory posting/communication of the background study, public consultation notifications, review periods, and meetings;
Staff have initiated negotiations with landowners for each of the two Simpson Road projects, the Simpson Road Landowners Group Inc. for the Simpson Road, North of Mayfield Road project and the Licenza Group for the Simpson Road, North of George Bolton Parkway project. Given that a recovery mechanism for their up-front costs will be important to the two groups, it is likely that the negotiations will conclude, and agreements executed following the Town’s completion of an ASDC Background Study and passage of ASDC by-laws for each area.

COUNCIL WORK PLAN

Sustainable Growth: Advance proactive infrastructure development solutions for growth management

ATTACHMENTS

None.