

The Corporation of the City of Kawartha Lakes

Committee of the Whole Report

Report Number PLAN2019-029

Date: May 7, 2019
Time: 1:00 p.m.
Place: Council Chambers

Ward Community Identifier: Ward 8 – Manvers

Title: Metrolinx Telecommunication Facility Agreement

Description: A request to enter into a revised Telecommunication Facility Agreement as a result of Council endorsement of the proposed 80.0 metre Self-supporting Telecommunication Facility by Metrolinx on the Ministry of Transportation of Ontario property at 3818 Boundary Road, Manvers

**Author and Title: Ian Walker, Planning Officer – Large Developments
Robyn Carlson, City Solicitor**

Recommendations:

That Report PLAN2019-029, **Metrolinx Telecommunication Facility Agreement – D44-17-001**, be received for information; and

That the Mayor and Clerk be authorized to execute any documents and agreements required by the endorsement of this application.

Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

Background:

At the Council Meeting of June 19, 2018, Council adopted the following resolution:

CR2018-392

Moved By Councillor James
Seconded By Councillor Veale

That Report PLAN2018-047, **Telecommunication Facility Application, Metrolinx – D44-17-001**, be received;

That the proposed 80.0 metre self-supporting telecommunication facility proposed by Metrolinx on behalf of the Ministry of Transportation of Ontario, to be sited on lands fronting at 3818 Boundary Road and as generally outlined in Appendices A to D to Report PLAN2018-047, be endorsed by Council, conditional upon the applicant entering into a telecommunication facility development agreement with the City;

That Industry Canada, the applicant, and all interested parties be advised of Council's decision; and

That the Mayor and Clerk be authorized to execute any documents and agreements required by the endorsement of this application.

Carried

This report addresses that direction.

Metrolinx previously submitted an application and received endorsement from Council to construct a new 80.0 metre (262 foot) tall self-supporting telecommunication facility on the rural property located at 3818 Boundary Road, near Pontypool. See Appendix 'A'. The total leased area includes 1,625.1 square metres of the 4.75 hectare property, and the site compound consists of an area of 225 square metres, enclosed by a 2.1 metre high chainlink fence with a locked gate, housing all electrical components. Access to the compound will utilize the existing paved driveway. See Appendix 'B'.

One of the conditions of Council's endorsement of a telecommunication facility is the requirement for the applicant and owner to enter into an agreement with the City. As Metrolinx is an agency of the Crown of the Province of Ontario, they have requested to remove and/or modify a number of clauses in the standard template agreement, based on the rationale provided below. See Appendix 'C'.

Owner:	Ministry of Transportation of Ontario
Agent:	Metrolinx
Legal Description:	Part of Lot 10 and Part of Road Allowance between Lots 10 and 11, Concession 1, geographic Township of Manvers
Official Plan:	Countryside Area in the City of Kawartha Lakes Official Plan (Oak Ridges Moraine Official Plan)
Zoning:	Oak Ridges Moraine Country Side Area (ORMCS) Zone in the Oak Ridges Moraine Zoning By-law 2005-133
Site Size:	1,625.1 square metres consisting of a 225 square metre compound and 1,400.1 square metre site access lane
Site Servicing:	A dedicated electrical connection and driveway extension are required to service the telecommunication facility
Existing Uses:	The property is used for an MTO works yard.
Adjacent Uses:	North: Rural Residential East: Aggregate Extraction South: Boundary Road, Agricultural West: Gas Station, Highway 35, Aggregate Extraction

Rationale:

The telecommunications industry is regulated by the federal government through the Radiocommunication Act, which is primarily administered by Industry Canada and Health Canada. Telecommunications systems are regulated by the federal government, and are therefore not subject to the requirements of Planning Act documents such as official plans or zoning by-laws. However, Industry Canada encourages the development of protocols by Local Land-Use Authorities (the municipality) to ensure that a clear process is established for the consideration of new telecommunications facilities within the community. Where a municipality has adopted a telecommunications policy, the applicant must receive confirmation from the municipality that the proposal complies with their policy, before Industry Canada will issue an approval for the facility. Council has endorsed this application based on the City's telecommunications policy (Telecommunications System Protocol), subject to the applicant entering into an agreement with the City.

Metrolinx has requested to remove a number of provisions from the agreement and provided the following reasons as rationale:

1. Overall, Metrolinx feels that the City's template standard telecommunications agreement template is more suited for private companies. A similar level of protection is not required in this case;
2. Metrolinx is a crown agency and is voluntarily entering into this agreement. Metrolinx is not bound by municipal jurisdiction. Metrolinx will endeavour to comply with municipal requirements where possible,

reasonable and applicable and requests that this be removed from the Agreement recitals;

3. Metrolinx will not be completing any work related to grading, drainage, asphalt paving, concrete curbs, lighting, sodding and landscaping, nor will any work be conducted on the roadway or public lands and requests that all relevant Sections on required works, site securities and their release be removed. Since Metrolinx won't be completing any site works, the Financial Security requested for this agreement is NIL;
4. Metrolinx has also requested the removal of Section 12, which requires a landowner to obtain an entrance permit from the appropriate approval authority;
5. Metrolinx is precluded from giving indemnities unless approval has been received from the Minister of Finance and requests that Section 25 be removed;
6. The removal of the equipment/tower is dealt with in the MTO lease. Metrolinx will provide the City with notice of termination of the lease and has requested that the requirement for tower removal in Section 24 be removed;
7. Metrolinx's understanding is that the consultation process appears to cover consultation with the municipality and local residents regarding the installation of the tower and its design and that the consultation process doesn't extend to encompass co-location.

While staff are supportive of some of Metrolinx's requests, Planning staff are not supportive of the removal of the clause in Section 24 (Final Removal) for the following reasons:

1. Section 24: The City should protect the right to ensure the tower is removed expeditiously in the event that the lease between the Facility Provider and the MTO is terminated;
2. Staff would recommend that if the lease is terminated with MTO, there remains a clause in the agreement which either commits to removing the tower if it has come to the end of its life cycle; or that either MTO or another tenant will enter into an agreement with the City to continue the use.

All other requested changes/omissions to the template agreement by Metrolinx have been considered and agreed to by Planning staff and the City Solicitor.

Other Alternatives Considered:

No other alternatives have been considered at this time.

Financial/Operation Impacts:

There are no financial considerations for the City at this time.

Relationship of Recommendations To The 2016-2019 Strategic Plan:

The Council Adopted Strategic Plan identifies these Strategic Goals:

- Goal 1 – A Vibrant and Growing Economy
- Goal 2 – An Exceptional Quality of Life
- Goal 3 – A Healthy Environment

This application aligns with the exceptional quality of life strategic goal in that it provides opportunity to improve the range of telecommunications infrastructure and services provided within the City.

Review of Accessibility Implications of Any Development or Policy:

There are no accessibility considerations for the City.

Servicing Implications:

There are no servicing considerations for the City.

Consultations:

The City Solicitor has reviewed the proposed changes to the agreement.

Development Services – Planning Division Comments:

From Staff's perspective, the proposed telecommunication facility fulfills the locational requirements of the City's Telecommunications System Protocol.

Tower Lighting

With regard to the lighting, this tower may require painted striping or lighting. Final details of the lighting requirement are not available at this time. Staff would advise that any night lighting should not include white flashing strobe lights.

Site Development Agreement

This agreement would typically secure an approved site plan, lot grading and drainage plan, securities for entrance works and landscaping, and landscaping details as required. The agreement would also include provisions for the removal of the telecommunication facility once it is no longer being used. Staff views this agreement as serving more of an administrative function and therefore would not recommend that this agreement be registered against title.

Attachments:

The following attached documents may include scanned images of appendices, maps, and photographs. If you require an alternative format, please call Ian Walker, Planning Officer – Large Developments, (705) 324-9411 extension 1368.

Appendix A – Location Map



PLAN2019-029
Appendix A.pdf

Appendix B – Proposed Site Plan



PLAN2019-029
Appendix B.pdf

Appendix C – Proposed Draft Agreement with Track Changes



PLAN2019-029
Appendix C.pdf

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Department Head: Chris Marshall, Director, Development Services

Department File: D44-17-001