

## Committee of the Whole Report

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**Report Number:** PLAN2022-040

**Meeting Date:** June 7, 2022

**Title:** **Xplornet Deputation Request – Entrance Requirements for 892 Cambray Road, Mariposa (D44-2021-008)**

**Description:** Response regarding a deputation request by Xplornet – Entrance requirements for a proposed new Xplornet tower on the property identified as 892 Cambray Road, Mariposa (Tamlin)

**Author and Title:** Ian Walker, Planning Officer – Large Developments

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### Recommendations:

**That** Report PLAN2022-040, **Xplornet Deputation Request – Entrance Requirements for 892 Cambray Road, Mariposa (D44-2021-008)**, be received;

**That** this recommendation be brought forward to Council for consideration at the next Regular Council Meeting.

**Department Head:** \_\_\_\_\_

**Financial/Legal/HR/Other:** \_\_\_\_\_

**Chief Administrative Officer:** \_\_\_\_\_

## **Background:**

In 2021, the Applicant (FB Connect) on behalf of the Proponent (Xplornet) submitted a Preconsultation Application (File D38-2021-062) to the City for a new proposed tower at the northwest corner of the property identified as 892 Cambray Road. See Appendix 'A'. Through review of the Preconsultation Application, the City's Engineering and Corporate Assets Department identified that the proposed entrance and access driveway was not in compliance with By-law 2017-151, the By-law to Regulate Access to Municipal Right of Ways in the City of Kawartha Lakes. See Appendix 'B'. Engineering and Corporate Assets requested that the access route for the tower be realigned to be located inside the property boundary. The zoning on this portion of the property is 'Extractive Industrial', and the site is licenced under the Aggregate Resources Act (ARA) through the Ministry of Northern Development, Mines, Natural Resources and Forestry (the 'Ministry').

In follow up to the Preconsultation Application, the Applicant submitted the formal Telecommunications Facility Concurrence Request (File D44-2021-008) to the City, without making the changes noted in the Final Preconsultation Report. As part of their submission, the Applicant did not indicate any rationale for not addressing the Engineering and Corporate Assets comments noted in the Preconsultation Report. Subsequently, the matter was scheduled on the November 2021 Land Management Team (LMT) agenda for discussion purposes. LMT suggested the Applicant and Proponent consider using the existing entrance and constructing a new access road inside the property boundaries, as advised by Engineering and Corporate Assets. The Applicant responded to the request by noting that the Ministry will permit the tower in the proposed location, but will not allow a new access road within the first 30 metres of the property boundary, as this area is considered part of the vegetated buffer to the licensed pit.

The matter was reconsidered on the March 2022 LMT agenda. Staff (through LMT) then provided direction to the Applicant to consider a perpendicular new access from Cambray Road (shown as an orange line on the air photo below – Option 2), in accordance with By-law 2017-151. The Applicant submitted an Entrance Permit Review request to the Public Works Department – Roads Division, which was reviewed and considered. Public Works has provided the Applicant with the requirements to construct a new entrance, in accordance with By-law 2017-151. Since the Applicant received that information, no further information has been provided to the Planning Division in regards to the tower proposal.

## **Rationale:**

Planning Staff were made aware that the Applicant and Proponent requested a deputation before Council to consider 'an application which was denied'. Staff are not aware of any application which has been denied to date. The concurrence request (D44-2021-008) is awaiting resolution of the entrance related issue, prior to being circulated to agencies and City Departments by the Planning Division for consideration. The Entrance Permit application was not refused by Public Works staff, and the Applicant was provided with the next steps should they wish to pursue the entrance approval.

## **Other Alternatives Considered:**

There are three entrance related options for Council's consideration contained in Appendix C (resulting in five alternative options):

- **Option 1 – Use existing pit entrance to access the current proposed location (Shown in Green).** This is the preferred staff option. This option would require the Applicant seek approval from the Ministry to construct an internal access through the licenced area (complying with the Ministry's requirement to stay outside of any areas of buffering for the pit – i.e. at least 30 metres from the property line). No further changes are required for the entrance. The Applicant can proceed with updating the plans, and Planning staff can proceed with circulation of the application for review and comment.
  - There is no additional liability for the City, and no changes or upgrades are required for the existing entrance to be used. The concurrence request to the City may still be handled as an 'uncontested' application, and thus require no further Council decisions.
  - The Applicant will need to update their drawings to reflect the change, and will need to seek additional approvals from the Ministry. The Applicant has previously identified that the Ministry is not supportive of an access within the mandatory pit buffer, which consists of a berm with vegetation; however, it has not been confirmed that the Ministry will not support an internal driveway elsewhere within the current (or future) extractive area.

## **Recommendation:**

**That** Council supports Option 1, and directs the Applicant to contact the Ministry of Northern Development, Mines, Natural Resources and Forestry to pursue an internal access driveway within the property.

- **Option 2 – Construct a new direct entrance to access the current proposed location (Shown in Orange).** This is the preferred staff alternative, should Option 1 not be possible. Council would direct the Applicant to proceed with obtaining an entrance permit for a direct access, in accordance with By-law 2017-151. The Applicant would need to prepare the appropriate entrance design drawings, update the plans, and Planning staff can proceed with circulation of the application for review and comment.
  - The proposed new entrance will be in compliance with By-law 2017-151. The concurrence request to the City may still be handled as an ‘uncontested’ application, and thus require no further Council decisions.
  - There may be some additional liability for the City (due to the new entrance). Due to the existing grades within the Right-of-way, the Proponent will require Engineered plans with some extensive grading and cost to construct the entrance.

**Recommendation:**

**That** Council supports Option 2, and directs the Applicant to contact the Public Works – Roads Division to pursue a new entrance in accordance with By-law 2017-151.

- **Option 3a – Construct a new parallel driveway and entrance to access the current proposed location, and enter into an agreement with the Proponent (Shown in Red).** This is the Applicant’s preferred option. Council would need to resolve to permit an entrance contrary to the intent of By-law 2017-151. The Applicant would need to reconstruct the renaturalized old road from the pit driveway to the tower site. This option is the least preferred for the City.
  - The Applicant may benefit from reduced construction costs for the entrance (compared to Option 2) depending on the scope of work to upgrade the access, however this has not been confirmed.
  - This option places a significant liability on the City, and there may be significant costs to upgrade this entrance and driveway in the City’s Right-of-way. The entrance/access would not comply with By-law 2017-151. In addition, a licencing agreement with the City would be required for this option. This may also negatively impact on the naturalizing area within the Right-of-way.

**Recommendation:**

**That** Council supports Option 3a, and directs staff (through the Land Management Team) to prepare a licencing agreement for the new access.

- **Option 3b – Construct a new parallel driveway and entrance to access the current proposed location, and sell a portion of the previous road right-of-way to the landowner, to be consolidated with the property (Shown in Red with Boundary Adjustment in Yellow).** This would also work with the Applicant's preferred option. Council would need to confirm that this portion of the existing road allowance is surplus to their requirements; would need to pass a by-law stopping up and closing this portion of the road allowance; and proceed with the sale (disposition) of the property to the abutting landowner at 892 Cambray Road. The Proponent would need to construct a driveway to whatever standard they require along the renaturalized old road from the pit driveway to the tower site (as it would now be an internal driveway). This option would be beneficial for the City, if this portion of the lands are no longer required for any purpose of the City. The City would also collect some revenue (unknown value) for the sale of the lands.
  - The Proponent may benefit from reduced construction costs for the driveway (compared to Option 2 or 3a) depending on the scope of work to construct the new internal driveway and the cost of the land acquisition. The existing entrance would continue to comply with By-law 2017-151, and reduces the liability for the City. In addition, this may allow for a larger future expansion to the licenced pit area within the existing 'Extractive Industrial' zoned area.
  - Easements may need to be provided to any utilities currently utilizing this portion of the road allowance (i.e. Hydro One) if such facilities exist. A survey, appraisal, and a by-law stopping up and closing that portion of the road allowance will be required.

**Recommendation:**

**That** Council supports Option 3b, deems this portion of the lands surplus to the City's needs, and directs staff (through the Land Management Team) to obtain a survey, an appraisal, and to prepare an agreement of purchase and sale with the landowner of 892 Cambray Road on behalf of the City.

- **Option 4 – Relocate the proposed tower to a different location within the host property.** This could work for both parties.
  - This option could favour both the City and the Applicant/Proponent, as the Applicant has indicated they do not wish to remove trees for the

proposed tower access, even though they have selected a site that is within a treed area on the property. It should be noted that this treed area has **not** been identified as a 'Significant Woodland' in accordance with the Ministry's 'Natural Heritage Reference Manual for Natural Heritage Policies of the Provincial Policy Statement'. In addition, this area is zoned 'Extractive Industrial', which would permit the future expansion of the licenced pit into this area.

- The Applicant would need to work with the Owner and Ministry to find an alternative site within the host property. They may also need to complete a revised public consultation, depending on the Innovation, Science, and Economic Development (ISED) Canada requirements for public consultation.

**Recommendation:**

**That** Council supports Option 4, and directs the Applicant to work with the Owner and the Ministry of Northern Development, Mines, Natural Resources and Forestry to pursue an alternative location within the host property.

## **Alignment to Strategic Priorities**

The Council Adopted Strategic Plan identifies these Strategic Priorities:

1. Healthy Environment
2. An Exceptional Quality of Life
3. A Vibrant and Growing Economy
4. Good Government

This proposal aligns with the 'Good Government' priority by increasing internet services available throughout Kawartha Lakes. It may also align with the 'Exceptional Quality of Life' priority by enhancing accessibility to a range of services provided within the City.

## **Financial/Operation Impacts:**

There are no direct financial considerations for the City for Options 1, 2 and 4. There may be costs associated with Option 3a, and the City may collect some revenue for Option 3b.

## **Servicing Implications:**

There are no servicing considerations for the City (water, wastewater or stormwater) however there may be access considerations, depending on the Option chosen.

## **Consultations:**

The Land Management Team (LMT) and Public Works Department have been consulted on this proposal.

## **Development Services – Planning Division Comments:**

To date, the application may be considered as an 'uncontested application', subject to resolution by Council on the existing entrance-related issue. Staff respectfully recommend that Council consider Options 1 or 2 as the preferred alternatives.

## **Attachments:**

The following attached documents may include scanned images of appendices, maps, and photographs. If you require an alternative format, please contact Ian Walker, Planning Officer – Large Developments, (705) 324-9411 extension 1368 or [iwalker@kawarthalakes.ca](mailto:iwalker@kawarthalakes.ca).

### Appendix A – Location Map



PLAN2022-040  
Appendix A.pdf

### Appendix B – Preconsultation Report



PLAN2022-040  
Appendix B.pdf

## Appendix C – Proposed Entrance Options



PLAN2022-040  
Appendix C.pdf

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**Department Head:** Richard Holy, Director of Development Services  
**Department File:** D44-2021-008