

Committee of the Whole (2) Report

DATE: Tuesday, June 18, 2024

WARD(S): 1

TITLE: KIRBY ROAD EXTENSION - MEMORANDUM OF UNDERSTANDING FOR BAT HABITAT COMPENSATION

FROM:

Vince Musacchio, Deputy City Manager, Infrastructure Development

ACTION: DECISION

Purpose

To seek Council authority to negotiate and execute agreements with the Toronto and Region Conservation Authority (“TRCA”) for services associated with Species At Risk (“SAR”) bat habitat compensation for the Kirby Road Project.

Report Highlights

- The Kirby Road Extension is scheduled for construction commencing Fall 2024 and completion in Spring/Summer 2026.
- The most critical dependency of the project construction commencement is the approval by the Ministry of Environment, Conservation and Parks (“MECP”) for an Overall Benefit (“OB”) Permit due to the project’s environmental impact to the existing SAR bat habitat, regulated under Ontario’s Endangered Species Act.
- Obtaining an MECP OB permit is a lengthy process with an average review timeline of 6-18 months. Any responses requiring additional communications, reviews, clarifications, etc., will extend the MECP review and approval timeline and put the project schedule in jeopardy.
- Under the MECP OB permit application, one of the MECP requirements is to restore and compensate 7 hectares of SAR bat habitat. TRCA has the only suitable property in size within the City of Vaughan’s boundaries.
- The MOU is requested by MECP to continue the review of the project permit application. The delay of providing the MOU will delay the MECP OB permit approval.

Report Highlights continued

- Staff are seeking authority to negotiate and execute a Memorandum of Understanding with the TRCA (property owner) to undertake the work of SAR bat habitat restoration and compensation. This is the fastest route to satisfy MECP's requirements and obtain an MECP OB permit for the reasons provided below.

Recommendations

1. THAT the Deputy City Manager, Infrastructure Development be authorized to negotiate and execute a Memorandum of Understanding (MOU) and any resulting agreements with the TRCA for the planning, design, implementation and maintenance of the SAR bat habitat restoration and compensation, all in a form satisfactory to Deputy City Manager, Legal and Administrative Services.

Background

The Design-Build project of Kirby Road Extension was awarded to KAPP Infrastructure in April 2023, with anticipated construction commencement in Fall 2024 and completion in Spring/Summer 2026. Currently, the project is at its critical stage of finalizing design and securing permits from external authorities. During the detail design consultation with MECP, it was identified that an OB permit is required for SAR bat habitat restoration and compensation due to the project's environmental impact to the existing SAR bat habitat, regulated under Ontario Endangered Species Act. As requested by MECP, 7 hectares of bat habitat restoration and compensation is one of the MECP permit requirements. Through a comprehensive investigation, it was found that only Nashville Conservation Reserve, owned by TRCA, is a suitable land parcel in size, within the City of Vaughan's boundaries, meeting the MECP's requirement.

As MECP is in the process of reviewing the project's OB permit application, MECP has accepted the proposal for the land parcel and the TRCA's scope of work for bat habitat restoration and compensation, in general, to satisfy their conditions. MECP requires proof of commitment for habitat compensation. An MOU with TRCA, for the provision of lands and the undertaking of works, would provide the proof of habitat compensation that MECP requires.

Staff are seeking authority to enter into a Memorandum of Understanding with the TRCA for the planning, design, implementation and maintenance of the SAR bat habitat restoration within the Nashville Conservation Reserve, owned by the TRCA. Negotiation with TRCA is ongoing as the final price is dependent on the MECP's permit approval.

Previous Reports/Authority

N/A

Analysis and Options

Securing an MECP permit is crucial to the project construction schedule. A critical construction activity in the initial construction phase is site clearing and grubbing, which is restricted to the tree removal timing window from November to April next year under environmental regulation. Missing the tree removal timing window will delay the project for a full year. Therefore, securing the MECP permit prior to November 2024 is critical to the project schedule.

Obtaining an MECP OB permit is a lengthy process with a normal review timeline of 6-18 months. Any responses requiring additional communications, reviews, clarifications, etc. will extend the MECP review and approval timeline and put the project schedule in jeopardy. For MECP to fast-track the permit application process, one of the requirements is to provide a copy of the MOU between Vaughan and the TRCA for the commitment on the proposed 7 hectares of SAR bat habitat restoration and compensation on TRCA-owned lands at the Nashville Conservation Reserve.

Staff are recommending an MOU between Vaughan and the TRCA for the planning, design, implementation, and maintenance of the SAR bat habitat restoration and compensation on TRCA-owned lands, at Nashville Conservation Reserve.

This approach will minimize impacts to the schedule and presents the fastest route to secure MECP OB permit due to the TRCA's partnership with MECP on other SAR habitat restoration work. MECP have accepted the TRCA's scope of work to be undertaken on TRCA's land parcel for bat habitat restoration and compensation in general.

Further, proceeding with an MOU with the TRCA provides the City with best value given the fair and reasonable cost estimates from TRCA considering the extensive scope and size of the work. Staff's evaluation of TRCA's proposal demonstrates a very fair cost comparable to typical costs associated with replacement and maintenance of habitats.

TRCA owned lands avoid the additional costs associated with acquisition. There is a sufficient project budget to complete the work.

Staff have contemplated seeking a competitive procurement for the design-build service of SAR bat habitat restoration on TRCA's land parcel and do not support this consideration.

A risk that presents itself immediately is either one or both of the TRCA and/or the MECP may not approve the City's service provider to undertake the bat restoration works and management. No clear qualifications have been provided.

Proceeding with a competitive procurement would significantly impact the schedule with an anticipated delay of 1-2 years. The timeline of proceeding RFP procurement for the service of bat habitat restoration and completing the design will take 6 months. The MECP OB permit application will be restarted/reset as the MECP's acceptance of the

TRCA's scope of work will have been invalidated. The City's service provider will have to re-submit the proposed scope of work and bat habitat restoration design to MECP for additional review and approval. MECP will hold on to the project permit review while the City completes RFP procurement and redesign of bat habitat restoration that will lower the City's project priority and extend the permit application beyond the normal review timeline.

By proceeding with a different third party, a complex agreement with TRCA will be required in addition to a TRCA permit for the City's service to be undertaken on TRCA lands. The responsibilities of TRCA's land use and maintenance are to be negotiated as part of the agreement with potential extra cost to the City.

Should the project be delays due to third party SAR works, the contractor would be able to submit a delay claim.

Staff have also contemplated seeking a competitive procurement for the design-build service of SAR bat habitat restoration specifically on third party lands, and do not support this consideration.

This proposed method would result in the highest schedule and budget impact with an approximate 2+ year delay. Similar to the previous contemplated option, MECP and/or TRCA may not accept the qualification of the service provider selected by the City.

Based on previous experiences, suitable land both in size and designation is scarcely abundant in Vaughan outside of TRCA owned lands. For this consideration, the service of the RFP will need to be extended to search and negotiate a suitable land parcel outside of Vaughan. Based on experiences with a recent project, a period of 4-6 months will be required. Once lands have been identified, the City will have to enter a property agreement with a third party at a market price which will further burden the financial and schedule impacts.

The timeline of proceeding RFP procurement for the service of bat habitat restoration and completing the design will take 6 months. MECP OB permit application will be restarted/reset as the MECP's acceptance of the TRCA's scope of work will have been invalidated. The City's service provider will have to re-submit the proposed scope of work and bat habitat restoration design to MECP for additional review and approval. MECP will hold on to the project permit review while the City completes RFP procurement and redesign of bat habitat restoration that will lower the City's project priority and extend the permit application beyond the normal review timeline.

Staff anticipate further that the City's contractor may claim extra costs should the project be delayed as a result of the SAR works. Further impacts on budget are unknown, given that the final price of any procurement is not yet known.

Staff recommend entering into an MOU with the TRCA for the SAR bat habitat restoration work for the following reasons:

To mitigate a construction schedule impact the recommendation is the fastest route to secure MECP OB permit. The alternative considerations will extend the MECP OB permit application beyond the project timelines. The current project completion of Spring/Summer 2026 will not be achievable.

The TRCA's quotation has been proven fair and reasonable considering there is no extra cost to the City for the use of 7 hectares of their property. It also avoids the Contractor's claim due to the delay caused by the City.

TRCA as a lower-tier authority partnering with MECP, has completed many SAR habitat restorations. Having TRCA as a pre-qualified service provider to undertake the work will fast-track the MECP review timeline of OB permit application and will mitigate the risk of qualification acceptance.

Financial Impact

There is sufficient funding in the project budget to award the service to TRCA. TRCA's scope of work and quotation are attached.

Operational Impact

N/A

Broader Regional Impacts/Considerations

N/A

Conclusion

Staff are recommending that they be directed to negotiate and execute a Memorandum of Agreement and any related agreements with the TRCA for the planning, design, implementation and maintenance of the SAR bat habitat restoration and compensation on lands owned by the TRCA, at the Nashville Conservation Reserve. Securing an MOU will not only result in the best value for the City, but also will benefit the City with a quicker turnaround time to secure the MECP OB permit protecting the project schedule. For more information, please contact: Roberto Sguassero, Director of Infrastructure Delivery. ext. 8749.

Attachments

N/A

Prepared by

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