



**City of Kingston
Report to Council
Report Number 16-006**

To: Mayor and Members of Council
From: Cynthia Beach, Commissioner Corporate & Strategic Initiatives
Resource Staff: Paul MacLatchy, Director, Environment & Sustainable Initiatives
Date of Meeting: April 19, 2016
Subject: Proposal for the Purchase, Remediation and Redevelopment of Brownfield Failed Tax Sale Property: Former I. Cohen & Sons Properties and Authority to Permanently Close and Declare Surplus and Dispose of a Portion of Fraser Street and a Portion of Duff Street

Executive Summary:

This report provides an update on the results of the City's recent request for proposals to purchase and redevelop the failed tax sale brownfield properties known as the former I. Cohen & Sons lands on Montreal Street between Joseph and Railway Streets. The City received two responses to Request for Proposals F31-CSI-ESI-2013-06 and on April 1, 2014 pursuant to report 14-112, City Council authorized staff to negotiate with BPE Developments to refine their proposed approach and recommend the terms of an agreement back to City Council if appropriate.

Staff have negotiated the terms by which the proponent agrees to acquire title to the failed tax sale properties and unopened Duff Street and Fraser Street road allowances, remediate lands according to Ministry of Environment & Climate Change standards and construct 30,000 to 50,000 square feet of new commercial space for lease and use in a business incubator format. As of February 12, 2016 staff were advised that the proponent had been changed from BPE Developments Inc. to PNHD Developments Inc. PNHD Developments Inc. is a corporation formed by Ben Pilon of BPE and partner Jason Hurd that is proposed to own the subject properties and implement the remediation and redevelopment plans. Staff have confirmed that PNHD Developments Inc. was incorporated in Ontario on February 12, 2016.

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Staff believe that the proposed acquisition, remediation and redevelopment of the failed tax sale lands and unopened road allowances represents a valuable opportunity for the City to facilitate the remediation of a chronically under-used parcel of highly contaminated brownfield properties while returning property tax revenues, creating new economic activity through construction of new commercial buildings and revitalization of a visibly neglected property on a gateway route.

Consultation with other City departments indicated that the unopened Fraser Street road allowance could be valuable for future use to facilitate pedestrian access from residential areas of Patrick Street to Kingston Transit stops on Montreal Street. Preservation of a public right of way through the middle of the proposed development lands was not supported by the development proponent. Alternate, albeit less ideal alternatives are available for pedestrian access from Patrick Street to Montreal Street.

This report recommends acceptance of the updated proposal by PNHD Developments Inc., authorization to execute an agreement of purchase, sale and redevelopment and approval to close, declare surplus and sell a portion of Fraser and Duff Streets unopened to PNHD Developments as a part of the proposed agreement of purchase, sale and redevelopment.

If an agreement is executed staff expects that PNHD Developments Inc. will apply to the City's Brownfield Community Improvement Plan (CIP) Program for financial assistance in remediating the lands and also initiate planning applications required to enable their proposed development.

This report is time sensitive. In accordance with the provisions of the Municipal Act and the date that the most recent tax sale of the properties failed, the City has until June 24, 2016 to vest title in the failed tax properties for the purpose of transferring them to a developer identified through a request for proposals process. The properties may be transferred to the developer at any time following vesting by the City in accordance with a Council authorized agreement of purchase, sale and redevelopment.

Recommendation:

That pursuant to Request for Proposals F31-CSI-ESI-2013-06 and Reports 14-112 and 16-006, Council accept the proposal by PNHD Developments Inc. to purchase, remediate and redevelop the failed tax sale properties known as the former I. Cohen & Sons Lands as described within Report 16-006, and

That Council authorize the Mayor and Clerk to execute an Agreement of Purchase, Sale & Redevelopment with PNHD Developments Inc. for the former I. Cohen & Sons properties that is satisfactory to the Director of Legal Services and the Commissioner Corporate and Strategic Initiatives and is based on the terms described within Council Report Number 16-006; and

That upon execution of an Agreement of Purchase, Sale and Redevelopment, the City Treasurer be authorized to prepare and register a notice of vesting in the name of The Corporation of the City of Kingston pursuant to subsection 379(5) of the *Municipal Act, 2001* for the properties known municipally as (the former I. Cohen & Sons properties) comprised of the following roll numbers and civic addresses;

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10.11.040.100.01500 - 546 Montreal Street;

10.11.040.100.02400 - 576 Montreal Street;

10.11.040.100.02900 - 594-598 Montreal Street;

10.11.040.100.03100 - 600 - 602 Montreal Street;

10.11.040.100.03500 - 0 Montreal Street;

10.11.040.100.03800 - 0 Railway Street; and

That Council approve the write-off of uncollectible taxes for the above noted properties, which failed to sell under the tax sale provisions in the *Municipal Act, 2001*, in the amount of \$2,308,196.07 of which \$1,960,037.86 is the City's portion and \$348,158.21 will be charged back to the school boards; and

That ownership of the failed tax sale properties vested by the City be transferred from the City of Kingston to PNHD Developments Inc. for the sale price of \$5,000 upon completion of the Agreement of Purchase, Sale & Redevelopment, and

That a by-law be presented to Council to permanently close a portion of Fraser Street on Registered Plan C-22 more particularly described as Parts 16 to 28 on Plan 13R-21130; and

That a by-law be presented to Council to permanently close a portion of Duff Street on Registered Plan C-22 more particularly described as Parts 1 to 3 on Plan 13R-21130; and

That the closed road allowances described as portions of Fraser Street and Duff Street on Registered Plan C-22 more particularly described as Parts 1 to 3 and Parts 16 to 28 on Plan 13R-21130 be declared surplus to municipal need and sold to PNHD Developments Inc. for the sale price of \$10,000.00 to be included as part of the Agreement of Purchase, Sale & Redevelopment; and

That each road closure by-law receive its third reading only after the developer has received planning approvals from the City.

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Authorizing Signatures:

ORIGINAL SIGNED BY COMMISSIONER

**Cynthia Beach, Commissioner,
Corporate & Strategic Initiatives**

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

Gerard Hunt, Chief Administrative Officer

Consultation with the following Members of the Corporate Management Team:

Lanie Hurdle, Community Services

Denis Leger, Transportation, Facilities & Emergency Services

Jim Keech, President and CEO, Utilities Kingston

Not required

Desiree Kennedy, Chief Financial Officer & City Treasurer

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Options/Discussion:

On November 7, 2013 the City of Kingston issued a Request for Proposals (RFP F31-CSI-ESI-2013-06) for the purchase, remediation and redevelopment of the 7 acres of failed tax sale properties that comprise the brownfield property known as the former I. Cohen and Sons lands. Proposals were received from two respondents and on April 1, 2014 pursuant to Report 14-112 City Council authorized staff to continue with negotiations based upon the proposal submitted by BPE Developments Inc. as per the following recommendations:

***THAT** Council select the proposal for purchase and redevelopment of the former I. Cohen and Sons property received from BPE Development Inc. for further evaluation and negotiations in response to RFP F31-CSI-ESI-2013-06; and*

***THAT** staff be authorized to negotiate the general terms of an Agreement of Purchase, Sale and Redevelopment for the former I. Cohen and Sons property with BPE Development Inc. to be recommended to Council for approval at a later date.*

Staff have negotiated with representatives from BPE Developments Inc. and are recommending that an Agreement of Purchase, Sale and Redevelopment be executed based upon the following terms:

Land ownership:

The failed tax sale parcels will be vested by the City of Kingston and sold to the proponent for \$5,000. The City will also sell unopened road allowances for Fraser and Duff Streets to the proponent for \$10,000 so that the land consolidation can be completed.

Staff were advised that the proponent had been changed from BPE Developments Inc. to PNHD Developments Inc. PNHD Developments Inc. is the corporation formed by Ben Pilon of BPE and Jason Hurd and is proposed to own the subject properties and implement the remediation and redevelopment plans. Staff has confirmed that PNHD Developments Inc. was incorporated in Ontario on February 12, 2016. Staff are agreeable to the transfer of proponent from BPE Developments Inc. to PNHD Developments Inc. and will finalize the Agreement of Purchase, Sale and Redevelopment with PNHD Developments Inc.

Environmental Remediation:

The proponent will remediate the lands within the consolidated parcel to Ministry of the Environment & Climate Change standards using the following methods:

- a) Complete Phase One and Two Environmental Site Assessments (ESA);
- b) Management of contaminated soils and groundwater and Site Specific Risk Assessment (SSRA) as required
- c) Demolition of existing buildings, including abatement of hazardous building materials (asbestos, lead paint, etc.); and

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- d) Submission of a Record of Site Condition (RSC) or Engineers Report confirming successful remediation;

The proponent expects environmental remediation costs to be between \$500,000 and \$1,100,000 and the proponent may make application for financial assistance to the City's Brownfield Community Improvement Plan (CIP) Program. The proponent will have up to 36 months to complete the environmental site remediation program.

Redevelopment Model:

The proponent will redevelop the remediated property into 30,000 to 50,000 square feet of new light industrial, commercial and office space in Phase 1 of redevelopment with a potential for a total proposed area of 115,000 to 225,000 square feet of future development in later phases (Phases 2 and 3). Phase 1 will incorporate new building(s) ranging in size from 2,500 to 10,000 square feet. The proposed design includes appropriate accommodation of parking spaces and appropriate access lanes for larger vehicles. The proposed buildings will be leasable commercial/industrial spaces with office space and work/storage space. The focus of the spaces will look to attract entrepreneurs with new ideas and technologies to start-up and grow their businesses. All tenant companies will have the opportunity to access common shared services located on the property. Among the buildings will be a central hub space which will offer shared services that small companies may not be able to afford on their own such as reception, board rooms, printer and copier, loading and unloading docks and relaxation atrium. The building designs will incorporate Provincial accessibility requirements. The style and location of proposed new buildings on the property are not governed by the proposed agreement of purchase, sale and redevelopment as they will be determined through future planning approval processes.

The proponent has estimated the Phase 1 redevelopment costs at \$4 to \$7 million. The project as proposed will likely require the proponent to apply for and secure Official Plan and Zoning By-Law amendments and a Site Plan Control Agreement as part of a separate planning approvals process. The proponent will have up to 60 months, or 24 months from the completion of site remediation, to complete construction of Phase 1 of the proposed redevelopment.

Redevelopment Schedule:

- 2016 - Demolition, remediation, risk assessment RSC submission (2-3 year period), grant applications, zoning applications;
- 2018/2019 – Phase 1 construction of 30,000 – 50,000 square feet of new buildings;
- 2020 onward, future phases (Phases 2 and 3) and construction based on market demand.

Securities and Indemnifications:

The proponent will provide the City with \$20,000 in financial securities to secure the commitment to environmental remediation and Phase 1 redevelopment. The City will maintain an option to repurchase the unopened Fraser Street road allowance for \$1 in the event that the proponent does not complete the remediation and Phase 1 redevelopment as agreed. The

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proponent will indemnify the City of Kingston against any and all claims related to their ownership and the City's vesting of the subject lands.

Vesting of Title for the Purpose of Transfer:

If the proposed Agreement of Purchase, Sale and Redevelopment is executed the City will vest title in the failed tax sale properties, immediately cancel unpaid property taxes and transfer title to PNHD Developments Inc. The failed tax sale parcels of land that comprise the former I. Cohen and Sons Property and that are the subject of municipal vesting within the proposed Agreement of Purchase, Sale and redevelopment are:

Roll Numbers and Addresses

- 10.11.040.100.01500; 546 Montreal Street
- 10.11.040.100.02400; 576 Montreal Street
- 10.11.040.100.02900; 594 - 598 Montreal Street
- 10.11.040.100.03100; 600 - 602 Montreal Street
- 10.11.040.100.03500; 0 Montreal Street
- 10.11.040.100.03800; 0 Railway Street

Property locations are shown within Exhibits A and B of this report.

Sale of Unopened Road Allowance Lands:

The proponent's redevelopment plans are conditional on consolidation of the entire land parcel through the acquisition of two municipally-owned unopened road allowances. Fraser Street and Duff Street unopened road allowances cross through the Cohen properties from the terminus of their open portions west of the Cohen properties through to Montreal Street as illustrated on Exhibits A and B attached.

Internal city departments were consulted regarding the potential sale of the unopened road allowance lands. Transportation Services, Parks, Engineering, Planning and Housing indicated that the unopened Fraser Street road allowance could potentially be utilized for future municipal purposes in the form of a walking path for pedestrian access from residential areas of Patrick Street to Montreal Street for access to Kingston Transit near the intersection of Montreal and Joseph Streets. Staff within the consulted departments have identified that alternative pedestrian routes are available, albeit in a less ideal way, in lieu of using the unopened Fraser Street road allowance. Potential alternate pedestrian routes could be made along Joseph Street or through agreements with neighboring properties. It is also noted that the sale of the unopened Fraser Street road allowance would create a small parcel of unused municipal land at the termination of the eastern end of Fraser Street and that the future use or disposition of this land and other opportunities for pedestrian access could be reviewed within the Kings Town Secondary Planning process or through other municipal real property processes.

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The potential for maintaining a public right of way on the unopened Fraser Street road allowance through the middle of the developable lands was rejected by the proponent during the review and negotiation of their proposal to the City.

The proposed sale of the unopened Duff Street road allowance was of less concern to the internal City departments consulted.

This report recommends that the unopened road allowance lands be stopped up, closed, declared surplus and sold to PNHD Developments Inc. as part of the Agreement of Purchase, Sale and Redevelopment. The sale is supported by the ability of the City to provide for an alternative pedestrian access to the Fraser Street road allowance between Patrick and Montreal Streets, and by the realization of the following community benefits through facilitation of the proposed redevelopment project:

The lands are being proposed for a significant infill redevelopment project on one of Kingston's largest legacy, abandoned, brownfield sites, which through re-use of existing lands in an infill fashion avoids use of existing "greenfield" industrial park lands and the need for new servicing infrastructure;

The proposed redevelopment will provide new built infrastructure that removes an environmental risk and rejuvenates the neighborhood;

The proposed redevelopment will promote graduating college and university students and other entrepreneurs staying in Kingston to advance their entrepreneurial aspirations within an affordable and accessible business space; and

The proposed redevelopment will create employment opportunities, return property tax revenue to the City, and generate local economic activity.

Existing Easements and Services:

There are existing underground storm and sanitary sewer services within the unopened Fraser Street road allowance that will need to be retained in favour of the City. An underground sanitary service runs through the road allowance and joins up with an existing easement already in place on the subject lands. The proponent will convey additional easement lands to the City as a condition of the redevelopment agreement to correct the alignment of the existing easement and better accommodate the existing underground sanitary sewer.

An old Canadian Pacific Railway (CPR) siding easement is still registered on title and bisects the Cohen property and the City's unopened road allowances. CP has been contacted and is agreeable to releasing the easements. Release of these easements will be the responsibility of PNHD Developments Inc. upon their acquisition of the failed tax sale lands and the unopened road allowances.

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Road Allowance Sale Price:

The City's Policy on the Disposition of Real Property requires that the City sell lands at fair market value, however, this requirement does not apply to the sale of land within the Community Improvement Plan Areas for Brownfields as per Section 28 of the Planning Act. The sale of lands at less than market value is intended to be further incentive to redevelop these brownfield lands and hence the exemption. PNHD Developments Inc. has offered to pay the City \$10,000 for the two road allowances having a total area of approximately 4627 sq. meters (1.1 acres). This purchase price is in addition to the \$5,000 offered for the surrounding six (6) failed tax sale properties that make up the former I. Cohen & Sons property.

The market value of similar industrial lands in this neighbourhood would be in the range of \$50,000 to \$65,000 per acre with further discounts of up to 50% for the limitations posed by retention of the required municipal infrastructure easements within the road allowance. Staff recommend the sale of the road allowances for \$10,000 under the authority of Section 28 (6) of the Planning Act, permitting Council to sell for less than fair market value.

The former Cohen lands have been subject to multiple tax sales which have all failed, as well as two other requests for proposals under the failed tax sale provisions available to the City. PNHD Developments Inc. is prepared to pay \$10,000 to purchase the City's unopened road allowance in combination with the purchase of the former Cohen property and redevelop the entire land assembly with many positive benefits to the community as outlined in this report.

Estimate of Community Economic Impact:

The economic impact of Phase 1 of the proposed remediation and redevelopment is estimated at \$4 million to \$7 million in direct construction value. During the development of the site, direct and indirect economic benefits to the local economy will be experienced as a result of building demolition, site remediation and the construction period through payroll, purchased material supplies and services and equipment rentals.

Approximately \$5 million in new non-residential assessment would be added to the property tax assessment roll at completion of the first phase which staff estimates would provide between \$130,000 to \$200,000 per year in increased municipal and education property taxes at the completion of the project.

Timing: In accordance with the provisions of the Municipal Act and the date that the most recent tax sale of the properties failed, the City has until June 24, 2016 to vest title in the failed tax properties for the purpose of transferring them to developer identified through the request for proposals process. The properties may be transferred to the developer at any time following vesting by the City.

Existing Policy/By-Law:

In May 2004 Kingston City Council approved a process whereby properties, in serious tax arrears that have been unsuccessfully offered for sale in exchange for the outstanding tax

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amount, can have the outstanding tax amount cancelled and be offered to redevelopers through a "Failed Tax Sale" process that uses a request for proposals model. The City's Brownfield Community Improvement Plan incorporates the failed tax sale provisions of the Municipal Act as a strategy to cancel accumulated unpaid property taxes and return abandoned brownfields to private sector developers in exchange for commitments to remediate and redevelop.

The City's Public Notice Policy requires that notice of Council's consideration of the road closure be published two weeks in advance of the proposed meeting date to allow anyone who objects to the proposed road closure to be given an opportunity to be heard by Council prior to Council's consideration of the request. The advertisement for this proposed road closure was published on April 5, 2016 on the City's Website in accordance with the Public Notice Policy.

In addition to closing the road, the City's Policy on the Disposition of Real Property requires that prior to selling land; Council must declare the property surplus to its needs and give notice to the public of its intention to sell the land. The public notice regarding the road closure also stated the City's intention to declare the property surplus and dispose of it.

Notice Provisions:

Public notice of the date of Council's intention to pass a by-law to permanently close, declare surplus and dispose of portions of Duff and Fraser Streets was published on April 5, 2016 in accordance with the City's Notice Policy.

Other public notices with respect to the tax sale have been complied with in accordance with the *Municipal Act*.

Accessibility Considerations:

This report and related information is available in alternative formats upon request.

Financial Considerations:

As part of the failed tax sale process the City will cancel unpaid property taxes and associated costs in the amount of approximately \$2.3 million if a successful agreement of purchase, sale and redevelopment is approved by City Council and entered into between the City and the developer. The municipal portion of this write-off in the amount of \$ \$1.96 million has been expensed each year as part of the allowance for doubtful accounts review and will not affect current operating budgets. The provincial education share of \$348,000 will be recovered from school boards.

Revenue of \$15,000 (\$5,000 for tax sale property and \$10,000 for road allowances) will be forthcoming to the City as a result of completing agreements of purchase, sale and redevelopment.

No further tax arrears will accumulate and upon transfer annual property taxes of approximately \$7,000 will be paid. Once redeveloped, as per the recommended Agreement of Purchase, Sale

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and Redevelopment, these properties will provide additional municipal revenue stream of approximately \$130,000 to \$200,000 per year.

It is expected that the developer will make application to the City's Brownfield Community Improvement Plan for reimbursement of eligible environmental remediation costs.

Contacts:

Paul MacLatchy, Director, Environment & Sustainable Initiatives 613-546-4291 extension 1226

Peter Huigenbos, Manager, Real Estate & Land Development 613-546-4291 extension 3148

Other City of Kingston Staff Consulted:

Jeff Walker, Manager, Taxation and Revenue

Alan McLeod, Senior Legal Counsel

Desiree Kennedy, Chief Financial Officer & City Treasurer

Neal Unsworth, Manager, Parks Development

Ian Semple, Manager Transportation Services

Mark Van Buren, Director of Engineering Services

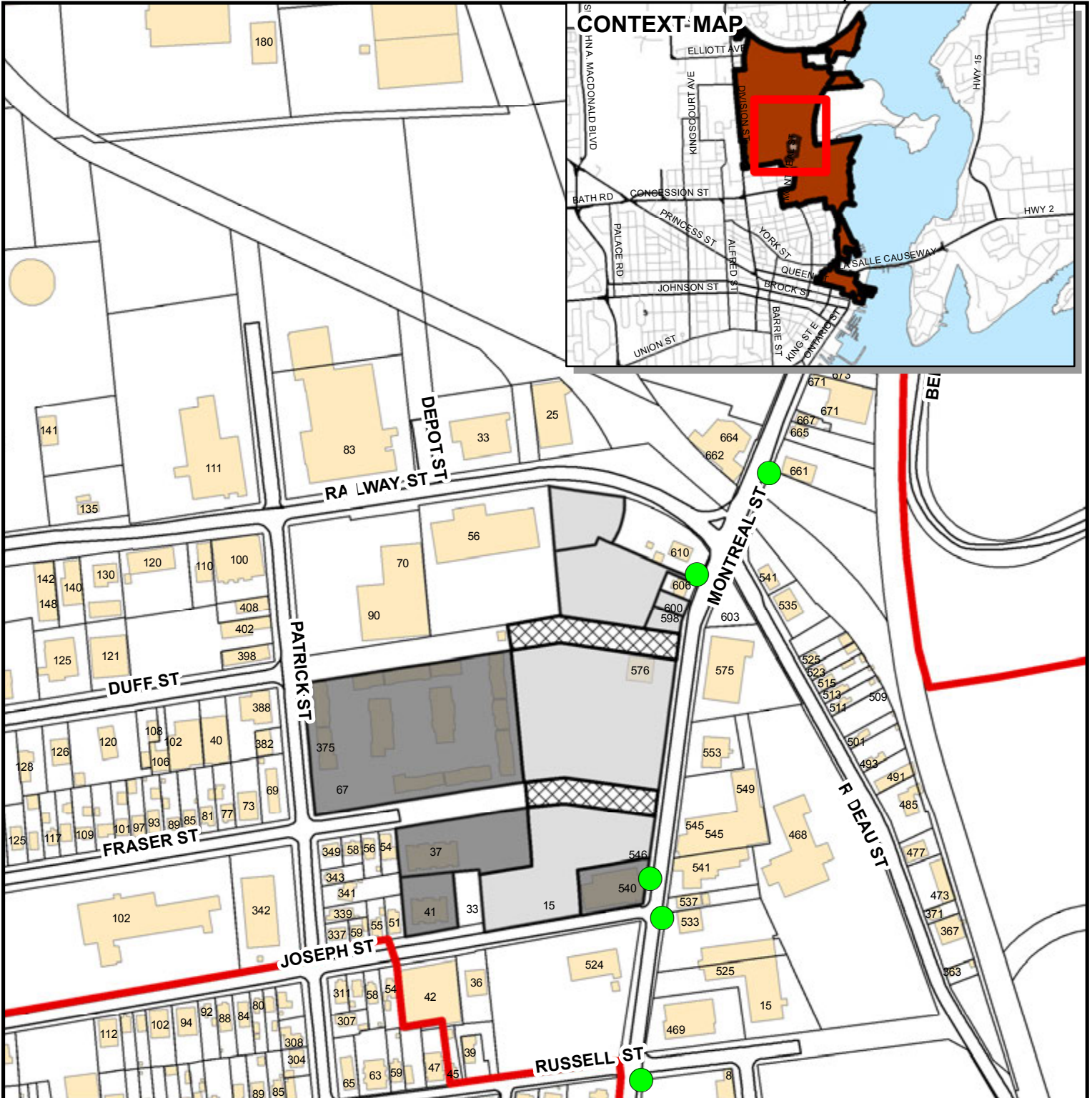
Exhibits Attached:

Exhibit A: Site Map of the Former Cohen Properties

Exhibit B: Plan of Unopened Road Allowances Proposed for Sale

Exhibit C: By-Law to Permanently Close a Portion of Fraser Street

Exhibit D: By-Law to Permanently Close a Portion of Duff Street

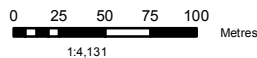


Planning, Building
& Licensing Services







a department of
Community
Services

THE CORPORATION OF THE CITY OF KINGSTON
Brownfield Project Areas

Address: Former Cohen Properties



LEGEND

-  Community Housing
-  Subject Property
-  Unopened Road Allowances
-  Project Area 1A
-  Brownfield Project Area
-  Transit Stop



Report 16-006 EXHIBIT B – UNOPENED ROAD ALLOWANCES

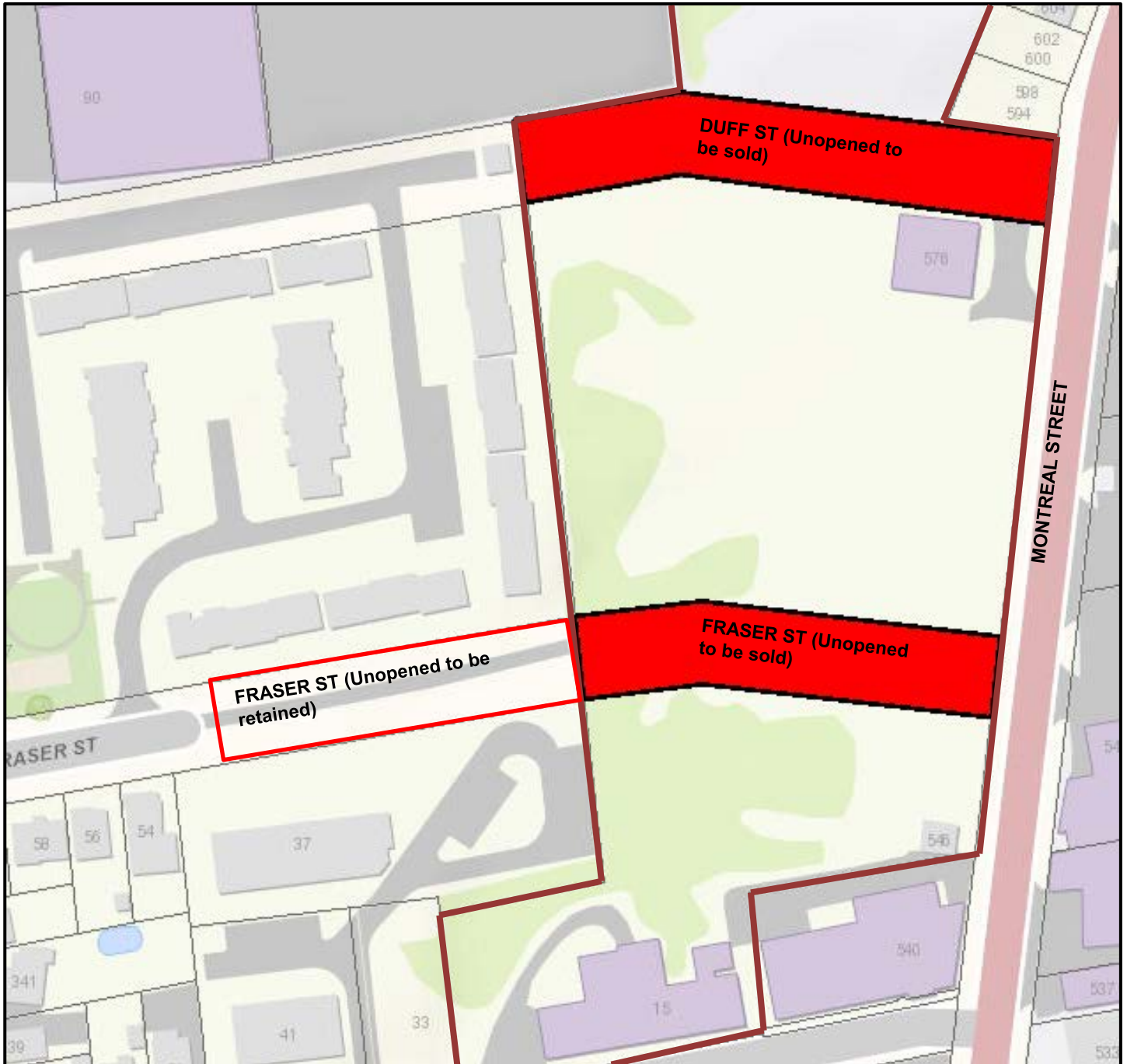


Exhibit “C” – Draft

By-law NO. 2016-

A BY-LAW TO PERMANENTLY CLOSE A PORTION OF THE HIGHWAY DESCRIBED AS FRASER STREET ON REGISTERED PLAN C-22, CITY OF KINGSTON, MORE PARTICULARLY DESCRIBED AS PARTS 16 to 28 ON REFERENCE PLAN 13R-21130

PASSED:

WHEREAS Section 9, 11, 27 and 34 of the *Municipal Act, 2001*, S.O. 2001, c. 25, permits municipalities to pass by-laws in respect of highways when the highway is under the jurisdiction of the Council;

AND WHEREAS the Council of the Corporation of the City of Kingston deems it necessary to pass a by-law to permanently close part of a highway;

AND WHEREAS public notice of Council’s intention to permanently close a portion of the highway described as Fraser Street on Registered Plan C-22, City of Kingston, more particularly described as Parts 16 to 28 on Reference Plan 13R-21130, was published on April 5, 2016 on the City’s Website in accordance with the City of Kingston’s Public Notice Policy;

NOW THEREFORE the Council of The Corporation of the City of Kingston enacts as follows:

1. The portion of highway described as Fraser Street on Registered Plan C-22, City of Kingston, more particularly described as Parts 16 to 28 on Reference Plan 13R-21130 shall be permanently closed.
2. This By-Law shall come into force and take effect on the date of its registration in the local Land Registry Office.

GIVEN FIRST AND SECOND READINGS

GIVEN THIRD READING AND FINALLY PASSED

CITY CLERK

MAYOR

Exhibit “D” – Draft

By-law NO. 2016-

A BY-LAW TO PERMANENTLY CLOSE A PORTION OF THE HIGHWAY DESCRIBED AS DUFF STREET ON REGISTERED PLAN C-22, CITY OF KINGSTON, MORE PARTICULARLY DESCRIBED AS PARTS 1 TO 3 ON REFERENCE PLAN 13R-21130

PASSED:

WHEREAS Section 9 and 11 of the *Municipal Act, 2001*, S.O. 2001, c. 25, permits municipalities to pass by-laws in respect of highways when the highway is under the jurisdiction of the Council;

AND WHEREAS the Council of the Corporation of the City of Kingston deems it necessary to pass a by-law to permanently close part of a highway;

AND WHEREAS public notice of Council’s intention to permanently close a portion of the highway described as Duff Street on Registered Plan C-22, City of Kingston, more particularly described as Parts 1 to 3 on Reference Plan 13R-21130, was published on April 5, 2016 on the City’s Website in accordance with the City of Kingston’s Public Notice Policy;

NOW THEREFORE the Council of The Corporation of the City of Kingston enacts as follows:

1. The portion of highway described as Duff Street on Registered Plan C-22, City of Kingston, more particularly described as Parts 1 to 3 on Reference Plan 13R-21130 shall be permanently closed.
2. This By-Law shall come into force and take effect on the date of its registration in the local Land Registry Office.

GIVEN FIRST AND SECOND READINGS

GIVEN THIRD READING AND FINALLY PASSED

CITY CLERK

MAYOR