



**City of Kingston
Report to Council
Report Number 19-224**

To: Mayor and Members of Council
From: Peter Huigenbos, Acting Commissioner, Community Services
Resource Staff: Same
Date of Meeting: August 13, 2019
Subject: Mountain Bike Club of Kingston Land Lease Agreement

Executive Summary:

The Mountain Bike Club of Kingston is a not-for-profit organization dedicated to the promotion of mountain biking in the Kingston community with membership open to all ages. Their centre of operations is on a private property on McKendry Road north of the unopened section of Bur Brook Road with a trail network extending across other private lands through trail agreements. The development of trails onto City lands at the north end of the Kingston West Landfill site was undertaken many years ago but a formal trail agreement was never created. It is in the best interest of both parties to enter into a formal agreement which allows the club to continue to use the property for recreational purposes and to protect the City's obligations with respect to the landfill and assign liability as appropriate.

In recognition of the public recreational opportunity provided, it is also recommended that Council approve a by-law to authorize an agreement with the Club for the provision of a Municipal Capital Facility agreement to waive rents and property taxes for the duration of the lease.

Recommendation:

That Council authorize the Mayor and Clerk to execute a lease agreement for Part of Lots 27, 28 and 29 on Concession 4, Kingston, with The Mountain Bike Club of Kingston for a period of ten (10) years for an annual rent of \$1.00 with the option to extend for a second ten (10) year term on terms and conditions as outlined in Report Number 19-224 and in a form satisfactory to the Director of Legal Services; and

That as required by clause 6(1)(b) of Ontario Regulation 603/06, it be confirmed that the land leased to The Mountain Bike Club of Kingston, being Part of Lots 27, 28 and 29, Concession 4,

August 13, 2019

Page 2 of 5

Kingston, is a municipal capital facility to be entirely occupied for recreation purposes of the municipality and that it is operated for public use; and

That in accordance with Section 110(6) of the Municipal Act, 2001, the by-law attached as Exhibit B to Report Number 19-224, being a By-Law to Authorize an Agreement for the Provision of a Municipal Capital Facility on Part of Lots 27, 28 and 29, Concession 4, Kingston, Ontario, be presented, it being understood that this by-law will provide an exemption to the property to which the Municipal Capital Facility Agreement applies, from taxation for municipal and education purposes; and

That in accordance with Section 110(8) of the Municipal Act, 2001, the Clerk be directed to give written notice of the passing of the by-law to the local school boards having jurisdiction in the area in which the property is located and to the Municipal Property Assessment Corporation.

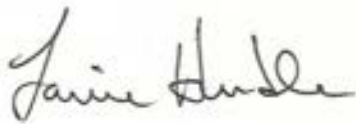
August 13, 2019

Page 3 of 5

Authorizing Signatures:



**Peter Huigenbos, Acting Commissioner,
Community Services**



**Lanie Hurdle, Interim Chief Administrative
Officer**

Consultation with the following Members of the Corporate Management Team:

Jim Keech, President & CEO, Utilities Kingston	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	Not required
Sheila Kidd, Commissioner, Transportation & Public Works	Not required
Deanne Roberge, Acting Commissioner, Corporate Enterprise Services	Not required

August 13, 2019

Page 4 of 5

Options/Discussion:

The Mountain Bike Club of Kingston (The Club) is a not-for-profit organization dedicated to the promotion of mountain biking in the Kingston community with membership open to all ages. The Club also offers skiing and snow shoeing in the winter. Their club facilities are on a private property on McKendry Road north of the unopened road allowance between Bur Brook Road and Maple Lawn Drive. The Club has established a trail network extending north and south of their main facility onto other private lands accessed by trail agreements and public road allowances. The Club is registered with International Mountain Bicycling Association Canada (IMBA) and strives to maintain the trails as a world-class trail network and to improve members' skills, knowledge and abilities through education and training in accordance with the IMBA's recommendations. The Club has developed trails on the City owned lands at the north end of the closed Kingston West Landfill site and another vacant City property east of the landfill many years ago, but a formal trail agreement was never created. It is in the best interest of both parties to enter into a formal agreement which allows the club to continue to use the property for recreational purposes, protects the City's obligations with respect to the closed landfill and assigns liability for use as appropriate.

Exhibit A identifies the two properties where the trails are located and recommended for lease to the Club. The parcel on the west side is approximately 85 acres located at the north end of the Kingston West Landfill property. There are no trails on the cap of the closed Kingston West Landfill; however, the City has a series of monitoring wells located throughout the proposed lease area. The City is required to monitor and maintain these wells in compliance with the Environmental Compliance Approval (ECA) issued by the Ministry of the Environment for the closed landfill. The current trail routes do not impact the location of any existing well caps. Under the terms of the lease, the Club would not be permitted any activities that would negatively impact the wells. The City will also be maintaining unfettered access to the property and to make changes as necessary. The lands containing the landfilled area itself have been excluded from the lease.

The parcel on the east side was acquired by the former Township of Kingston as a tax sale in the 1980's and is approximately 15 acres. Its southern boundary is a Hydro One corridor. There is no improved road frontage for access to either of the City's parcels. The trails created by the Club enter the City lands via trail heads which cross from the unopened road allowance between Bur Brook Road and Maple Lawn Drive, and either loop back through the City lands or continue onto abutting private lands where they are subject to separate trail agreements.

It is recommended that the land be leased to the Club in its entirety while reserving the right for the City to access as necessary. The Club will become the occupier of the site under the Occupiers' Liability Act and will provide the City with Commercial General Liability insurance, naming the City as an additional insured. Additionally, City staff have conferred with the City's insurer and will include obligations in the lease with regards to best practises and standards for trail construction, improvements, signage and maintenance to further promote safe access and use of the trails.

August 13, 2019

Page 5 of 5

The City's Revenue Leasing and Licensing policy supports the implementation of a Municipal Capital Facility Agreement under Section 110 of the Municipal Act to waive rent and property taxes where the purpose of the lease makes a significant contribution to strategic initiatives endorsed by Council. The Club is a well established volunteer organization that offers a desirable community partnership and a recreational opportunity which enhances the health, wellbeing and experience of the City's residents in a form not provided elsewhere in Kingston. The approval of the by-law (Exhibit B) is therefore recommended to support this initiative.

Existing Policy/By-Law:

The recommendations in this report comply with the City's Revenue Leasing and Licensing Policy with respect to the application of Municipal Capital Facilities.

Notice Provisions:

Not applicable

Accessibility Considerations:

Not applicable

Financial Considerations:

There are no operational or capital budget impacts to the City. The Club provides all maintenance and operating costs for the facility.

Contacts:

Peter Huigenbos, Acting Commissioner, Community Services 613-546-4291 extension 1231

Other City of Kingston Staff Consulted:

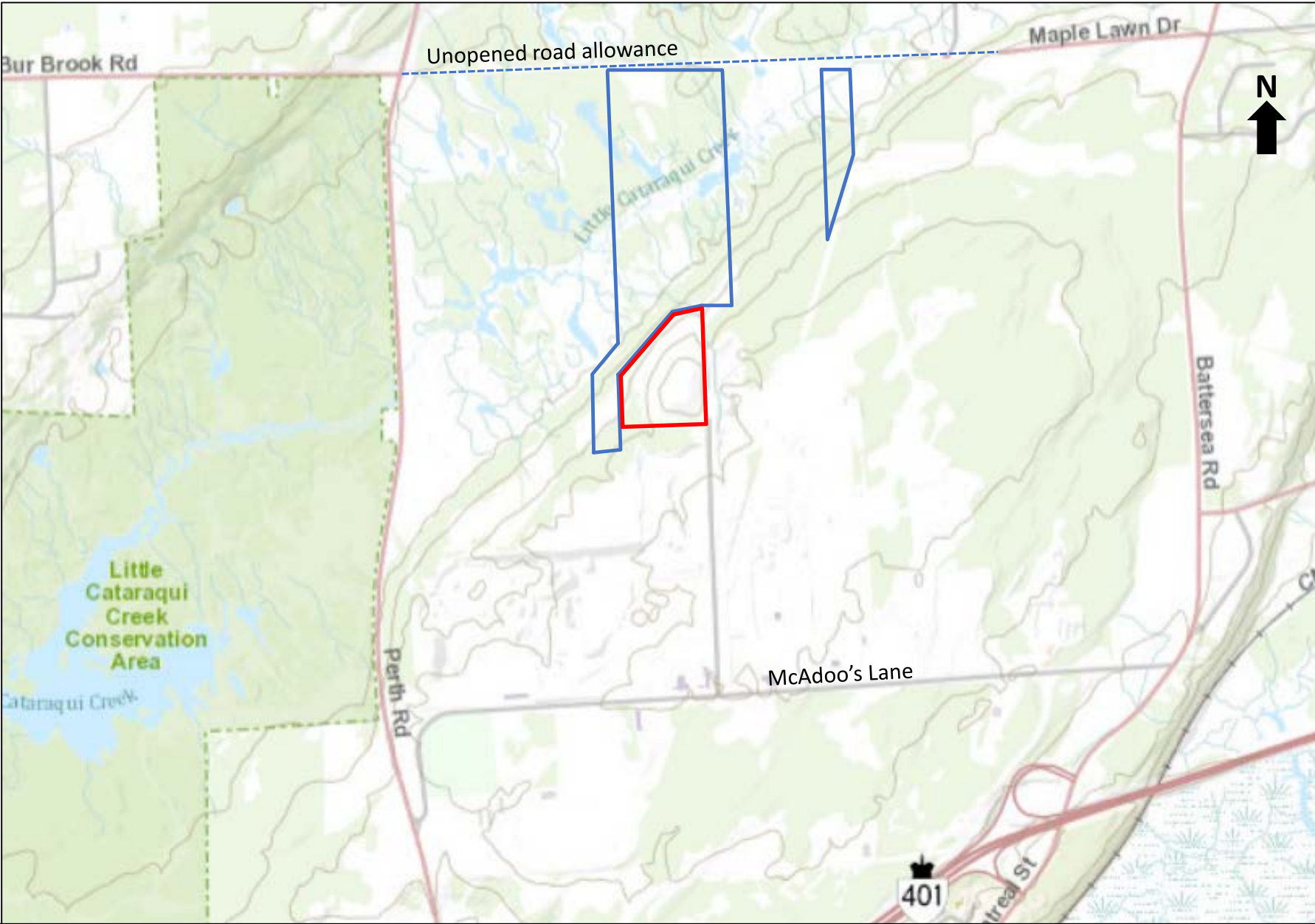
Luke Follwell, Director, Recreation & Leisure Services

Paul MacLatchy, Environment Director, Real Estate & Environmental Initiatives

Exhibits Attached:

Exhibit A Lands Proposed for Lease to The Mountain Bike Club of Kingston

Exhibit B A By-Law to Authorize an Agreement for the Provision of a Municipal Capital Facility on Part of Lots 27, 28 and 29, Concession 4, Kingston, Ontario



LEGEND



Parcels subject to Lease for trail use



Closed Kingston West Landfill Footprint

By-Law Number 2019-XXX

A By-law to Authorize an Agreement for the Provision of a Municipal Capital Facility on Part of Lots 27, 28 and 29, Concession 4, Kingston, Ontario

WHEREAS Section 110(1) of the *Municipal Act, 2001*, “hereinafter called the “Act”, provides that the council of a municipality may enter into agreements for the provision of a municipal facility for recreational purposes to operate for public use by any person and may pass by-laws to provided financial assistance or other assistance at below market rates or at no cost and exempt from property taxation for municipal and school purposes land, or a portion of it, on which municipal capital facilities are located; and

WHEREAS paragraph 16 of section 2 of Ontario Regulation 603/06 prescribe municipal facilities related to recreational facilities as eligible municipal capital facilities; and

WHEREAS the Council has approved that the City of Kingston (the “City”) enter into a lease (the “Lease”) with The Mountain Biking Club of Kingston (the “Club”) for the use of the premises particularly described in Schedule “A” and “B” hereto (the “Premises”) for the provision of a recreational municipal capital facility; and

WHEREAS Council is desirous of entering into an agreement with the Club for the provision of municipal facilities at the Premises;

The Council of the City of Kingston HEREBY ENACTS as follows:

1. The City of Kingston is authorized to enter into agreement under section 110 of the *Municipal Act, 2001* with the Club for the provision of a municipal facility used for recreational purposes and operated for public use at the Premises, in accordance with O.Reg. 603/06 (the “Agreement”).
2. The Premises occupied by the Club are exempt from taxation for municipal and school purposes.
3. The base rate of rent shall be One Dollar (\$1.00) per annum.
4. This by-law shall be deemed repealed:
 - (a) If the Owner ceases to own the Premises without having assigned the Agreement to the new owner of the Premises;
 - (b) If the Club or its successor in law ceases to use the Premises for recreational purposes;

- (c) When the Lease, or any renewal or extension of the Lease, expires;
 - (d) If the Lease, or any renewal or extension of the Lease, is terminated, for any reason whatsoever; or
 - (e) If the Agreement is terminated for any reason whatsoever.
5. (a) Sections 1, 2, 5 and 6 of this by-law shall come into force on the day that the by-law is enacted.
- (b) Sections 3 and 4 of this by-law shall come into force on the day that is the latter of:
- i. The day the Agreement is entered into by the City and the Club; and
 - ii. The day the new lease is entered into by the City and the Club.
6. This By-law shall come into force and take effect on the date its passing.

GIVEN FIRST AND SECOND READING this ___ day of ____, 2019

GIVEN THIRD READING this ___ day of ____, 2019

Schedule "A" to By-Law Number 2019-XXX

Parcel 1:

A portion of the closed Kingston West Landfill and associated lands located north of McAdoo Lane, legally described as Part Lot 27-28, Concession 4, Kingston, being Part 1 on Plan 13R-10745, Parts 1-4 on Plan 13R-10577, Parts 1 and 2 described in FR248859, as in FR258351; subject to FR630251 and FR91894, Being part of PIN 363240337 as shown in Schedule "B" excluding the Closed Landfill area identified on Schedule "B".

Part of Roll No. 10 11 080 260 19700 0000

Parcel 2:

Part Lot 29 Concession 4 Kingston as in FR359232 Lying north of FR231614; Together with FR231614; Subject to TKZ18728; Kingston Being all of PIN 363240226

Part of Roll No. 10 11 080 260 20300 0000

