



**City of Kingston
Report to Council
Report Number 14-191**

To: Mayor and Members of Council
From: Cynthia Beach, Commissioner, Corporate and Strategic Initiatives
Resource Staff: Peter Huigenbos, Manager, Real Estate & Land Development
Date of Meeting: June 17, 2014
Subject: Ravensview Land Leases – LaSalle Boulevard

Executive Summary:

In 1960 the City purchased land on the south side of LaSalle Boulevard along the St. Lawrence River because of its location immediately adjacent to the Ravensview Sewage Treatment Plant lands. The City holds eight separate land leases for tenant-owned seasonal cottages. In 2004, Council approved the continuation of the cottage leases for an additional term of 10-years with each of the eight tenants. Each lease expires August 31, 2014.

The current lease provides for an option to renew, however it is at the sole discretion of the City, upon terms to be negotiated. A specific length of renewal is not referenced in the lease.

The original Ravensview Sewage Treatment Plant was built in 1957 and has been upgraded several times. The most recent plant upgrades were undertaken and completed in 2008-2009. The planning and design activity for the \$115 million project started in 2000-2002. Projects of this scale require long lead times to complete required backgrounds studies, obtain approvals, complete designs and construct.

During the recent plant upgrade project the existing cottage leases became problematic to providing the services of a sewage treatment plant because:

- they constrained the ability to situate and locate infrastructure at the plant site;
- the residential zoning of the cottages imposed additional setback requirements to the plant property, further hindering infrastructure expansion options; and
- the cottages became another land use to be managed relative to environmental approvals (air monitoring, noise, ground water etc.).

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These types of issues can add time and costs to a project of this nature. Although the project was able to work around these issues, the elimination of the land leases would have been preferable.

By 2025 Utilities Kingston will have begun the process of reviewing the Ravensview facility for more upgrades. It is during this phase that property constraints will impact the costs and design options. Therefore, there is a need to ensure that the cottages will not be situated on the City lands in advance of that process.

Recommendation:

THAT Council authorize the Mayor and Clerk to execute renewals of the land leases for tenants occupying City-owned property adjacent to the Ravensview sewer treatment plant, for a term of 5 years, commencing September 1, 2014, at current 2014 rental rates plus 2%, and subject to 2% increases annually on the same terms and conditions save and except there shall be no further rights of renewal or extension in a form of lease renewal to the satisfaction of the Director of Legal Services; and

THAT Council direct staff to take all steps as outlined in the existing leases to return the lots to vacant condition at the time of lease expiry and to also take steps to evict tenants by August 31, 2015 who are not prepared to sign the new form of lease as of September 1, 2014; and

THAT Council authorize the Mayor and Clerk to execute assignments of leases to immediate family members only if so requested by a tenant or estate of a tenant and such assignments be to the satisfaction of the Director of Legal Services.

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Authorizing Signatures:

ORIGINAL SIGNED BY COMMISSIONER

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

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

Gerard Hunt, Chief Administrative Officer

Consultation with the following Commissioners:

Lanie Hurdle, Community Services

Not required

Denis Leger, Transportation, Facilities & Emergency Services

Not required

Jim Keech, President and CEO, Utilities Kingston

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Options/Discussion:

In 1960 the City purchased land on the south side of LaSalle Boulevard along the St. Lawrence River because of its location immediately adjacent to the Ravensview Sewage Treatment Plant lands. Known as Lots 1-9, Plan 525, the City holds eight separate land leases for tenant-owned seasonal cottages. Most of the cottages existed at the time the City acquired the land and the City also permitted a handful of the cottages to be built shortly after acquisition.

In 2004, Council approved the continuation of the cottage leases for an additional term of 10-years with each of the eight tenants. Seven leases were executed and each lease expires August 31, 2014. The eighth tenant refused to sign a lease and remains as a month-to-month tenant.

In 2013, the land leases resulted in gross rent revenues of \$21,984.47 and generated a total of \$32,315.71 in property taxes. The tenants are required to pay rent and taxes under the conditions of the lease and maintain the structures on the land at their own expense and in keeping with municipal property standards.

All of the tenants have submitted requests to extend their land tenancies.

The original Ravensview sewage treatment plant was built in 1957. It was upgraded in 1974 and 1993. The most recent plant upgrades were undertaken and completed in 2008-2009. The planning and design activity for the \$115 million project started in 2000-2002. Projects of this scale require long lead times to complete required backgrounds studies, obtain approvals, complete designs and construct.

During the recent plant upgrade project the existing cottage leases became problematic to providing the services of a sewage treatment plant because:

- they constrained the ability to situate and locate infrastructure at the plant site;
- the residential zoning of the cottages imposed additional setback requirements to the plant property, further hindering infrastructure expansion options; and
- the cottages became another land use to be managed relative to environmental approvals (air monitoring, noise, ground water etc.).

These types of issues can add time and costs to a project of this nature. Although the project was able to work around these issues, the elimination of the land leases would have been preferable. However, there was not enough lead time to accomplish that given the pressing need for the upgrades in 2008. Council approved an additional 10 year lease term in 2004.

Under normal, forecasted growth conditions facilities the size and nature of Ravensview are typically planned on a 20 year cycle. It can therefore be expected that by 2025 Utilities Kingston will have begun the process of reviewing the Ravensview facility by starting condition assessments, planning for expansion, Environmental Assessment, and other design studies where the site footprint and conditions must be known. It is during this phase that the constraints

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to the property will shape the costs and needs of the required work. Therefore, there is a need to ensure that the cottages be removed in advance of that process.

From the perspective of a tenant who is leasing land, it is desirable to have a definite end date in order to manage the property effectively during the remaining lease period. This includes decisions with respect to capital building repairs and options for early termination. With a clear end date for the lease, the tenants will be able to make decisions on how they will exit the lease and will not make capital investments in the property speculating that the lease will be renewed.

City staff and Utilities Kingston have no concerns with recommending a further 5 year extension of the land leases to 2019. However, there should not, under any conditions, be an extension beyond that. The existence of the cottages hinders development of the sewage treatment facility and represents an incompatible neighbouring land use to the plant operations.

Staff recommends that the leases be extended under the existing terms, most notably:

1. Removal of Buildings:

The buildings on the lands are the property of the tenants and responsibility for the cost of removal is to remain with the tenant.

Upon expiration or early termination of the lease the tenant is required to remove the buildings at its sole cost and expense and make good the lands. If the tenant elects, with the consent of the City, to not remove the buildings, they then become the property of the City and may be disposed of in any manner which the City determines.

2. Cancellation Option:

To ensure flexibility for both parties, the lease contains a cancellation option which allows either party, when not in default, the option to cancel the lease at any time upon giving to the other twelve months' prior written notice.

3. Acknowledgments:

The tenants are required to continue to acknowledge the close proximity of the lands to the sewage treatment plant and any resulting discomforts pertaining to odours, noise and other discomforts which may be associated therewith.

Staff also recommends that the leases be extended under the following new terms:

1. Renewal Option:

Unlike the existing lease, there will be no option for renewal. The lease will terminate in 2019.

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2. Assignment to Immediate Family Member(s):

Under existing terms, the tenant may not assign or sell the lease to a third party. Since 2004, Council has authorized three assignments of leases to immediate family members; one by choice, the other two, at the request of a tenant estate to settle matters wherein the cottage itself was bequeathed to a family member. The leases cannot be assigned through estate settlement without the consent of the City. Staff recommends that this practice be continued should the need arise through a request from the tenant or as part of a settlement of the estate of the tenant. Estates will be given reasonable time to provide the City with direction to either assign the lease to a family member or removal of the improvements. Otherwise, the lease will assume to be at end upon the passing of a tenant.

3. Rental Rates:

The most current rental rates range from \$1,742 to \$3,497 which is an average of \$36 per foot of waterfront frontage. The current lease conditions increase the rent annually by the previous year's CPI in the month following the renewal period. This has been awkward to administer and staff are recommending that the current practise of fixed rate increases for shorter term leases be applied to this situation. Therefore, staff recommends an annual rent increase of 2% from the current rate; 2% is the average rate of CPI increase over the past decade.

It is fair to say that the existing land rental rates are below market value for typical waterfront seasonal property. However, there are significant conditions that would not be present in a typical land lease that justifies continuing with a less than market rate for the balance of the term:

- The tenant is not being offered a long term lease period, such as 20 years
- The landlord reserves the right to terminate the land lease with 12 months' notice
- The properties are located immediately adjacent to a sewage treatment plant

Staff expects that most tenants will execute the five year renewal. However, should any tenants not wish to renew or not agree to the renewal terms, they will need to adhere to the current lease conditions and vacate the premises and remove all buildings. Staff recommends that those tenants be extended until August 31, 2015. This will provide a full year of transition for the tenant. Should the month-to-month tenant not sign a lease, staff will take the necessary steps to terminate the tenancy by August 31, 2015.

Upon removal of all the structures and final lease termination in 2019, Utilities Kingston will commence site investigations/condition assessment of the lands and will rezone the lands in order to remove setback issues.

Existing Policy/By Law:

Revenue Leasing and Licensing Policy

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Notice Provisions:

None

Accessibility Considerations:

None

Financial Considerations:

The City will receive approximately \$23,000 in gross rent annually for the next five years if all tenants renew. Each tenant will also pay municipal taxes, a total of approximately \$32,000 annually. The lease conditions require that the tenants who have enjoyed the use of the properties to remove all structures. The new form of lease has been prepared to reduce the City's future costs with the site, to minimize liability or disruption with the Sewage Treatment Plant operations and to ensure that tenants have a clear end date to vacate the properties.

Contacts:

Peter Huigenbos, Manager, Real Estate & Land Development

Other City of Kingston Staff Consulted:

Alan McLeod, Senior Legal Counsel, Legal Services
Jim Miller, Director, Utilities Engineering, Utilities Kingston

Exhibits Attached:

None