

SPECIAL COUNCIL

CITY SOLICITOR – LEGAL DIVISION
OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER

REPORT LEG-2023-03
DECEMBER 12, 2023

SUBJECT: LEGAL OPINION – MOTION TO RESCIND

AUTHOR: CAITLIN F. WOODSFORD, CITY SOLICITOR

APPROVER: ROB AXIAK, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDATION:

THAT THE COUNCIL OF THE CITY OF WELLAND receive this Report for information purposes relating to the Legal Opinion re: North Welland Trails Strategy – Motion to Rescind.

RELATIONSHIP TO STRATEGIC PLAN:

The North Welland Trails Strategy, and corresponding agreements, by-laws etc. are linked to the City's Strategic Priorities of both Health & Well-Being, and Livability.

BACKGROUND:

During the Special Council Meeting which took place on January 25th, 2023, Council was informed through **Motion 2023–10** that Infrastructure Canada approved the City's applications for funding two (2) Community Trails projects, more specifically, the North Welland Trails Strategy. Council authorized **By-law No. 2023-5**, being a By-law to approve the funding strategy, and to enter into a Contribution Agreement (amongst other items).

To date, the following actions, and documents have occurred:

1. Review of all legal agreements to be executed;
2. Drafting of all necessary and relevant by-laws;
3. Approval of Financial Strategy in Report CS-2023-01; and
4. Pre-Approval of the 2023 Capital Project – Community Trail Strategy Implementation 10-410-23417.

To date, the following legal agreements have been executed with third parties:

1. Executed agreement w/ Federal Government (INFC);
2. Executed agreement w/ Consultant (WSP); and
3. Executed agreement for Site Plan Surveyor.

To date, the following change orders have been issued:

1. Change to Engagement Scope – additional project communications plan that was not included in the original scope;
2. Changes to Survey Quote Overage – fees for survey work came in higher than anticipated; and
3. Scoped Environmental Impact Study – Landcaster Woodlot and Greta Place.

A Motion from Councillor Green on September 19th, 2023 requested a Legal Opinion from the City Solicitor on the rules, and guidelines, of bringing a Motion to Rescind.

THAT THE COUNCIL OF THE CITY OF WELLAND directs staff to provide an update with legal present regarding the North Welland Trails Strategy.

DISCUSSION:

WHAT IS A MOTION TO RESCIND?

Article 18 of the City's Procedural By-law provides details on rescinding a resolution or by-law, which has passed.

18.1 No resolution or by-law of Council previously voted upon, and passed, shall, during the subsequent twelve (12) month period, be re-introduced, debated, or re-voted upon:

- i. where by statute, an appeal or other remedy of the same is available, or*
- ii. after two (2) subsequent regular meetings of Council have been held, and unless a motion to rescind same has been approved by a two-thirds majority vote of those Members present at either of such Council meetings.*

18.2 A motion to rescind must be brought forward by a Member who voted in favour of the resolution or by-law.

DOES THE CITY'S PROCEDURAL BY-LAW ALLOW FOR A MOTION TO RESCIND AT THIS POINT IN TIME?

NO, REASON 1: PROCEDURAL BY-LAW.

The Motion was carried January 25th, 2023 (Special Council), and Councillors would have up to the two (2) subsequent regular meetings of Council to bring forward, and to receive approval by a two-thirds majority vote of those Members present.

The first subsequent meeting was January 31, 2023 (Special Council); second subsequent meeting was February 7, 2023 (Regular Council); and thereafter, February 15, 2023 (Special Council), and February 21, 2023 (Regular Council).

Since all Councillors voted in favour of the Motion for the North Welland Trails Strategy, any of the Councillors could bring forward a motion to rescind, if within the parameters of 18.1. With that said, no Councillors brought forward a motion to rescind within the parameters of the City's Procedural By-law.

DO ANY OTHER GUIDANCE DOCUMENTS ALLOW FOR A MOTION TO RESCIND AT THIS POINT IN TIME?

NO, REASON 2: LEGAL BEST PRACTICES.

Generally, it is not in a municipality's best interest to rescind previously approved motions, with recorded votes, in open session, involving other entities, especially public entities, and to break the continuity of government funding and works.

The City's Procedural By-law does not provide additional guidance, beyond Article 18, however, The Regional Municipality of Niagara (the "Region") has guidelines on a "Motion to Reconsider", namely section 9.16(b), which states, "*Actions of Council that cannot be reversed or suspended cannot be reconsidered.*"

As referenced above, various legal agreements have already been prepared and/or executed.

1. Executed agreement w/ Federal Government (INFC);
2. Executed agreement w/ Consultant (WSP) total value of \$144,162.00; and
3. Executed agreement for Site Plan Surveyor.

Rescinding the Motion would mean terminating these agreements, which could have negative impacts on future funding applications with the Federal Government, the Consultant, and the Site Plan Surveyor.

Rescinding the Motion may mean various legal courses of action against the City (including for monetary damages, etc.) for failure to fulfill the obligations in the various executed agreements. Each executed agreement will contain different obligations, and corresponding consequences upon failure to fulfill, and/or early termination.

NO, REASON 3: OPERATIONAL.

Agreements have been executed, work is underway, and should the process cease now, the potential negative consequences on City-wide operations is substantial. Rescinding the Motion would mean both reputational and cost implications for future tenders on other projects, future funding opportunities, and future collaborations.

FINANCIAL:

Legal opinion only – please refer to any additional reports quoting financials.

CONCLUSION:

The City's Procedural By-law requirements for rescinding a previously approved resolution or by-law have not been met.

The potential of losing any good faith with the third parties involved, should Council rescind our previously approved motion and Community Trails Strategy, could lead to legal, reputational, and financial consequences for the City.

ATTACHMENTS:

N/A