



Special Council Meeting

Skaha Lake Marina and Water Park
Development Agreement
November 23, 2016



Agenda

1. Introduction of the parties – Mayor Jakubeit
2. Opening remarks – Mayor Jakubeit
3. Summary presentation – Mitch Moroziuk
4. Review of alternatives – Mitch Moroziuk
5. Moderator process rules – John Singleton
6. Questions and comments from the community



Introduction of the parties

1. **City Council:** Mayor Jakubeit; Councillors: Konanz, Martin, Picton, Sayeed, Sentes and Watt
2. **City Staff:** Mitch Moroziuk (General Manager of Infrastructure); Blake Laven (Manager of Planning); and Tyrone Duerr (City Legal Counsel)
3. **Trio Marine Group:** Tom Dyas (Owner); Tom Hedquist (Owner); and Jeffrey Robinson (Trio Legal Counsel)



Introduction of the parties

4. Moderator – John Singleton
 - The question and comment session tonight will be moderated by John Singleton of Singleton Consulting Corporation
 - John has lived in Penticton for nearly 25 years
 - John works with municipal governments and First Nations across Canada
 - John helps communities and organizations discover collaborative solutions



Opening remarks

Opening Remarks Mayor Jakubeit



Summary Presentation

- Background
- Key dates
- Summary of proposal
 - Settlement Agreement
 - Enhanced Marina Agreement
 - Possible Revenue
- **NEW INFORMATION**

- City and Trio entered into a Marina and Waterpark contract (August 2015)
- Public opposition to loss of green space and waterpark
- Two civil claims filed
- New proposal developed to better meet community expectations
- Council has four options to consider





Key Dates

Sept. 28, 2015

Notice of Civil Claim filed by Save Skaha Park Society

Oct. 11, 2016

Meikle Notice of Civil Claim amended

Nov. 21, 2016

REVISED Settlement and Enhanced Marina Agreement released

Dec. 1, 2016

Options considered at open council meeting



Aug. 4, 2015

Skaha Park Marina & Waterpark Agreement executed

July 23, 2016

Notice of Civil Claim filed by Nelson Meikle

Nov. 1, 2016

City introduces four options including revised proposal

Nov. 23, 2016

Special Council meeting to discuss options



Summary of November 1 Proposal

- No water slide
- Marina enhancements in 2018
- Trio operates concession 2018
- Marine amenity public process 2018
 - If supported by the public and Trio accepts the agreement, project would proceed
- Restaurant and retail enhancements 2019
- Park amenity public process 2019
 - If supported by the public and Trio submits a proposal then an agreement would be finalized in late 2019 followed by construction
- Copies of Agreements posted online Nov.1

Existing agreements terminated and replaced with:

- Settlement Agreement
- Enhanced Marina Agreement
- Termination Agreement
- License to Use
- Sub License of Occupation



Settlement Agreement

1. Termination and Release

- All rights under existing Marina and Waterpark Agreements terminated
- Replaced with Settlement Agreement, Enhanced Marina Agreement, Termination Agreement, Two-year License-to-Use, Two-year Sub-License of Occupation

2. Unique History

- Waive purchasing policy for seasonal concession, marine amenity and park amenity
- Trio has the exclusive right to the concession, the first right to bid on the marine amenity until 2028 and the first right to bid on the park amenity



Settlement Agreement

3. Compensation

- City pays Trio \$20K for claims related to the existing agreements and \$20K for safety repairs to the existing docks for the future
- City forgoes rent and property tax for 2016 (\$39K)
- Trio forgoes reimbursement for dock repairs (\$8K) and undetermined claims for delay and loss of anticipated waterpark revenue

4. Seasonal Concession

- Trio seasonal license to concession begins in January 2018
- Same terms and conditions as existing



Settlement Agreement

5. Marine Proposal

- City and Trio will develop a proposal for an in-lake play structure (same terms as the water play structure in Okanagan Lake, 29-year term)
- Community consulted on proposal and if supported, Trio will have the first opportunity to bid until 2028
- City under no obligation to offer anything if the City and Trio cannot agree on the play structure or after public consultation there is no aquatic play structure

6. Park Amenity

- City will work with community to develop a plan to revitalize Skaha Lake Park
- Trio will have first opportunity to bid on any revenue-generating park amenity proposed on lands covered under the original agreement, Area A





Settlement Agreement

7. Termination

- City has right to terminate under certain conditions
- City will pay \$200K to Trio

8. Revenue Reinvestment

- City to invest all revenue sharing monies to upgrade Skaha Park



Enhanced Marina Agreement

1. Term

- 29-year beginning Jan. 1, 2018
- Possibility of two, 5-year extensions

2. Amenities

- Trio to design, build and operate:
 - Expanded marina of 100 slips
 - Retail / restaurant 85-156 seat
 - Parking cars and boat trailers
- Investment of \$1.5M (May 2019)





Enhanced Marina Agreement

3. Compensation – Lease

- Annual Joint Lease Fee City Trio Province of BC, estimated to be \$15,000
- Lease rate on the Leased Land of \$4.45 /m²
- Lease rate on the Parking Lands of \$2.00 /m²
- Lease rate will remain constant to 2023 after which it will be adjusted for catch up inflation and for annual inflation thereafter
- Starting in 2020 and every 5 years thereafter lease rate determined by appraisal



Enhanced Marina Agreement

4. Compensation – Revenue Sharing Commences 2023

- On all but the restaurant based on an inclining stepped % of gross revenue
- Restaurant (Trio operates) based on an inclining stepped % of gross revenue
- Restaurant (leased) based on a % of the difference between compensation Trio receives for subletting and the amount they pay the City for the lease fee for the restaurant footprint



Enhanced Marina Agreement

5. Compensation –Property Taxes

6. Reinvestment

- 100% of the revenue sharing dollars deposited in an interest bearing account to purchase additional park land and/or park and waterfront amenities in Skaha Park



Enhanced Marina Agreement

7. Protection of the City

- Conditions precedent in favor of the City with respect to:
 - Marketing and Operating plan;
 - Detailed Financing plan;
 - Lender’s Loan Commitment Letter; and
 - Entering into a Joint Lease with Trio and the Province of BC for the Provincial Marina Lands.
- Notice of Interest on Title to prevent registration of enforceable liens
- Irrevocable letter of credit
- Trio to provide insurance

Enhanced Marina Agreement

8. Exclusivity

- Exclusivity for commercial water and lake activities on Skaha Beach until January 2021
- RFP to be used January 2021 to January 2026





Enhanced Marina Agreement

9. End of Term and Dispute

- City to inspect the lands and then determine if we would like all items all constructed items to remain or if they are to be removed
- Dispute process is negotiate, mediate and arbitrate

10. License to Use and Sub License of Occupation

- Trio will operate the existing marina under a Licence to Use and Sub License of Occupation until such time as the Enhanced Marina Agreement becomes live



Potential Revenue

Revenue Item	Average 2018 - 2022	Mid Point Year 2023 - 2047
Land Lease	\$ 16,558	\$ 21,012
Parking Lease	\$ 14,984	\$ 19,014
Revenue Share	N/A	\$ 222,743
Taxes	\$ 27,334	\$ 43,673
Total	\$ 58,877	\$ 306,443



NEW INFORMATION November 21, 2016

- The City and Trio recognized that the Park Amenity provisions of the Settlement Agreement is still a cause for public concern
- The Park Amenity process includes provisions for full public consultation on a proposal developed by the City
- The City would identify a concept that best balances the interests of Penticton in revitalization the Skaha Lake waterfront and the expressed desires and concerns of the citizens of Penticton
- This does not provide 100% certainty that green space will not be lost this will not be known until the process is complete



NEW INFORMATION November 21, 2016

- The City and Trio worked to make alterations to the Settlement Agreement to address this concern
- Changes were reviewed with Council on Nov. 21 and published on the web immediately after
- The REVISED Settlement Agreement, REVISED Enhanced Marina Agreement, A PowerPoint Presentation explaining the changes were posted to web site
- Hard copies were made available at the Library and City Hall
- Handout with a summary of the changes provided at the start of the Special Council Meeting



CHANGES TO SETTLEMENT AGREEMENT

- Park Amenity Section removed
- Schedule B showing the area where the Park Amenity would go removed.
- Added a Boathouse Concession Amenity Section
- The City would work with the community commencing in 2019 to develop an amenity that would renew or replace the existing concession and boathouse



CHANGES TO SETTLEMENT AGREEMENT

- The agreement specifically states that:
 - The boathouse concession amenity will not include a waterpark;
 - Will not result in any net loss of green space (The existing concession could be demolished, the area returned to green space and the same amount of greenspace as was created used on the west of the dragon boat storage building);
 - Will not result in any loss of boat trailer parking and if boat trailer parking must be constructed elsewhere it must be done without the loss of green space; and
 - Any revenue generating amenities would be first offered to Trio in the form of a Request for Proposal.
- Added a new Schedule B showing the area where the boathouse concession amenity could be located
- Language clean up

CHANGES TO SETTLEMENT AGREEMENT

Park Amenity Area
OLD Schedule B



Boathouse Concession Amenity Area
NEW Schedule B





CHANGES TO ENHANCED MARINA AGREEMENT

- Reference to Cold Beer and Wine store removed
- Changed dates on four of the conditions precedent for Penticton from January 2017 to March 15, 2017 and from March 15, 2017 to May 15, 2017. This was done in two locations.
- Changed dates on two of the conditions precedent for Trio from March 15, 2017 to May 15, 2017. This was done in two locations.
- Language clean up



Review alternatives

#1

**REVISED
Proposal**

**"Find middle
ground"**

#2

**"Refuse to
accept"
REVISED
Proposal**

#3

**Instruct staff
to "go back to
the
negotiating
table"**

#4

**"Wait and
see"**



Review alternatives

#1

**REVISED
Proposal**

**“Find middle
ground”**

- Council accepts the proposed REVISED Settlement Agreement and REVISED Enhanced Marina Agreement

What does that mean?

- No waterslide, protects green space, requires full consultation before commercial activity considered
- Best deal staff and legal could negotiate
- Enhances marina (which few oppose) and avoids large penalties

#2

**“Refuse to
accept
REVISED
Proposal”**

- Council refuses to accept the REVISED Settlement and Enhanced Marina Agreements

What does it mean?

- Marina Agreement remains in disputed status
- Waterpark Agreement remains live until acted on; or the parties reach a settlement; or the matter is resolved by a Court
- Uncertainty around Skaha Park remains as will the two Notices of Civil Claim
- Possibility of a third Notice of Civil Claim

#3

Instruct staff
to “go back to
the
negotiating
table”

- Council instruct staff to try and sort matters out with Trio in some other mutually acceptable way

What does it mean?

- Staff continues to sort out matters with Trio
- Outcome is unclear
- Uncertainty around Skaha Lake Park remains as will the two Notices of Civil Claim

#4

“Wait and
see”

- Council simply wait and see what occurs with respect to the Waterpark Agreement

What does it mean?

- Council could elect to wait and see what happens with respect to the Waterpark Agreement
- The items note in Alternative 2 and 3 would also be relevant to this alternative



Moderator Process Rules

Expected Outcomes

- An opportunity to listen to, and hear, the community
- Build a better understanding of the situation
- Refocus everyone's energy and build a collaborative solution

- Notes:
- No decisions will be made tonight
- Council will take this information and consider it when taking the next step



Moderator Process Rules

- Use a respectful tone and demeanour
- This is not a debate;
 - this is about sharing information and learning from each other
- If you do not agree with the response you may take another turn to ask follow-up questions
- Everyone will be heard in turn via 3 roving microphones
- There will be no personal or corporate attacks accepted
- Refrain from repeating previously asked questions
- This meeting will provide an Audio Recording for posting on to the City Website for those who were not able to attend.



Moderator Process Rules

- One person speaking at a time and that person will:
 - Identify themselves and their street address
 - Be provided with up to 3 minutes to make their point or ask a question
- At the end of 3 minutes the microphone will be turned off at the moderators request



Community Feedback

Questions and Comments from the Community