



Council Report

penticton.ca

Date: December 1, 2016
To: Mayor and Council
From: Mitch Morozziuk, Interim Chief Administrative Officer
Subject: **Skaha Lake Marina and Water Park Development**

File No:

Staff recommendation

THAT Council receive this report for information;

AND THAT after considering:

- The REVISED Settlement Agreement, Attachment "A" to this report;
- The REVISED Enhanced Marina Agreement, Attachment "B" to this report;
- The License to Use Agreement to December 31, 2018, Attachment "C" to this report;
- The Sub License of Occupation Agreement to December 31, 2018, Attachment "D" to this report;
- The material presented at the November 1, 2016 Council meeting on the Skaha Lake Marina and Water Park Development;
- The material presented at the November 23, 2016 Special Council meeting, Attachment "E" to this report;
- The questions and comments from the Public at the November 23, 2016 Council meeting; and
- The information contained in this Council Report.

THAT Council select one of the following alternatives:

Alternative 1

THAT Council accept the proposed REVISED Settlement Agreement and REVISED Enhanced Marina Agreement and authorize the Mayor and Corporate Officer to execute the:

- REVISED Settlement Agreement, Attachment "A" to this Council Report;
- REVISED Enhanced Marina Agreement, Attachment "B" to this Council Report;
- License to Use Agreement to December 31, 2018, as contained in Attachment "C" to this Council report, for the existing Marina; and
- Sub License of Occupation Agreement to December 31, 2018, as contained in Attachment "D" to this Council report, for the existing Marina.

OR

Alternative 2

THAT Council refuse to accept the proposed REVISED Settlement Agreement and REVISED Enhanced Marina Agreement.

OR

Alternative 3

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

OR

Alternative 4

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

Strategic priority objective

The enhancement of the Skaha Lake Marina area is supportive of the City of Penticton mission to be an adventurous waterfront city.

Background

On November 1, 2016 staff introduced a Council Report that spoke to four possible directions Council could take with respect to the Skaha Lake Marina and Water Park Agreements and provided information on a Settlement Agreement and Enhanced Marina Agreement. Information pertaining to these agreements was posted to the City web site on November 1 and hard copies were made available for viewing at City Hall and the Library.

Over the time period November 2 to November 18 City staff, Trio and legal counsel worked to create a REVISED Settlement Agreement and REVISED Enhanced Marina Agreement that would address the public concern that still existed with loss of green space due to the Park Amenity as contained in the Settlement Agreement.

The REVISED Settlement Agreement and REVISED Enhanced Marina Agreement were considered by Council on November 21 and released to the public thereafter. Information pertaining to the REVISED Settlement Agreement and REVISED Enhanced Marina Agreement, the press release that was issued and a presentation that explained the changes was posted to the City web site on November 21 and hard copies were made available for viewing at City Hall and the Library.

On November 23, 2016 a Special Council meeting was held where the Settlement Agreement, Enhanced Marina Agreement, REVISED Settlement Agreement and REVISED Enhanced Marina Agreement were presented and the public was provided the opportunity to ask questions and provide comments.

Over the ensuing week three additional changes were made to the agreements to address some of the concerns raised at the November 23, 2016 Council meeting. The changes are highlighted in yellow in the attached agreements and are as follows:

Revised Settlement Agreement

Schedule B – Boathouse Concession Amenity Area: The area where the boathouse concession amenity could be placed, Area F, was reoriented and reduced in size to improve sight lines and make the green space area within Area F more accurately reflect the size of the concession building.



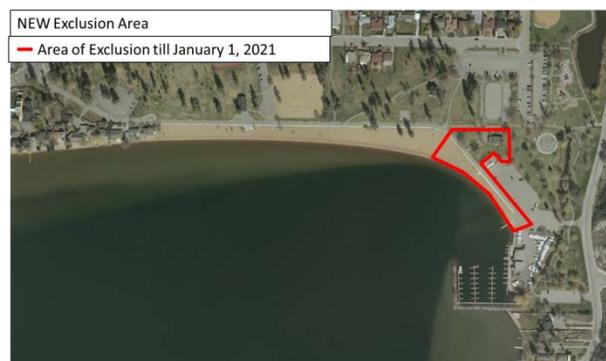
Section 5.13: The existing Section 5.13 was removed and replaced with the following in order to protect against any marine amenity being installed, due to the reduced size of the Exclusion Area in the Revised Enhanced Marina Agreement, prior to the completion of the Marine Amenity process.

5.13 Penticton will not endorse, sanction or agree to installation or operation of an aquatic play structure on the foreshore of Skaha Lake prior to April 15, 2028 unless and until:

- (1) Penticton and Trio fail to agree on the Marine Proposal and the Marine Amenity pursuant to Article 5.5;
- (2) the Marine Concept determined pursuant to article 5.6 does not include an aquatic play structure; or
- (3) Trio declines the Marine Agreement or fails to accept same within six months of the date it receives same from Penticton.

Revised Enhanced Marina Agreement

Schedule C – Exclusion Area: The size of the exclusion area was reduced.



Council is now in the position to consider the information that has been provided to them November 1, November 21, November 23 and December 1 and provide direction to staff on how they would like to advance on the Skaha Lake Marina and Water Park development.

Financial implications

Alternative 1

The Trio Marine Group Inc. will be making a capital investment of \$1,500,000 in a Marina, Retail and Restaurant.

Based on the pro-forma revenue and expense statements provided by Trio as part of their initial submission and assuming the restaurant will be operated by them the revenue from the venture to the City could be as follows:

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

The cost to the City would be a \$20,000 payment to Trio plus the cost of undertaking public engagement on the Marine Amenity and developing Boathouse Concession Amenity concepts and undertaking public engagement on them. These are estimated to cost \$ 100,000.

Alternative 2

Not entering into the proposed REVISED Settlement Agreement and REVISED Enhanced Marina Agreement will expose the City to up to three Notice of Civil Claim and would yield significant legal costs to defend against.

Alternative 3

Further negotiations with Trio could lead to another form of agreement that would have to be evaluated for financial impacts once it was created. In addition the City would most likely have to start spending money to defend against the two existing Notice of Civil Claim.

Alternative 4

The financial implications of this alternative are similar to Alternative 2.

Analysis

Alternative 1 – Considerable time and effort has been spent by staff and legal counsel negotiating and revising a proposed REVISED Settlement Agreement and REVISED Enhanced Marina Agreement. These agreements will for this development protect green space in Skaha Park as demanded by the Save Skaha

Park Society and some other community members and require full public consultations before any future for profit amenities in Skaha Lake or on the foreshore of Skaha Lake are considered.

The agreements represent the best deal that staff and legal counsel were able to negotiate with Trio at this point that: Preserve the enhancement of the marina on terms similar to the previous agreement and avoid paying Trio a negotiated amount of money to end all legal relationships between the parties, including the enhanced marina agreement to which very few have indicated their opposition.

Alternative 2 - If Council does not endorse the proposed form of REVISED Settlement Agreement and REVISED Enhanced Marina Agreement, which provide a way to bring both the previous Marina Agreement and Waterpark Agreement to a negotiated end and preserve, for this development, green space in the park, the City's dealings with Trio will not be at an end. There will still be, at the very least, a Waterpark Agreement that will continue to exist into 2017 until the conditions precedent are either discharged or not and a Marina Agreement of disputed status. This will remain the case unless and/or until the parties otherwise agree, there are further developments or the matter is resolved by a Court. In addition uncertainty as to the status of Skaha Park will remain in the community as will the two Notices of Civil Claim.

Alternative 3 – Council could instruct staff to continue to sort out matters with Trio. The outcome of this process is not clear and there is no certainty that agreements that are better for the City will emerge. In addition the uncertainty in the community with respect to Skaha Lake Park will continue as will the two Notices of Civil Claim.

Alternative 4 – Council could elect to wait and see what happens with respect to the Waterpark Agreement. But the uncertainty as to the status of Skaha Park will remain in the community as will the two Notices of Civil Claim and there would be a distinct possibility of a third Notice of Civil Claim from Trio.

Alternate recommendations

Four alternative recommendations are presented on page one of this Council Report for Council to select from.

Attachments

Attachment "A" – REVISED Settlement Agreement

Attachment "B" – REVISED Enhanced Marina Agreement

Attachment "C" – License to Use Agreement to December 31, 2018

Attachment "D" – Sub License of Occupation Agreement to December 31, 2018

Attachment "E" – November 23, 2016 Special Council Meeting Presentation

Respectfully submitted,

Mitch Moroziuk P.Eng. MBA
Acting Chief Administrative Officer

Attachment "A" – REVISED Settlement Agreement

[..\..\Request for Proposals\Skaha Lake Marina\POSSIBLE NEW AGREEMENT\Settlement Agreement Versions\REVISED SETTLEMENT AGREEMENT 2016 11 30\PDF\2016 11 30 REVISED Settlement Agreement.pdf](#)

Attachment "B" – REVISED Enhanced Marina Agreement

<..\Request for Proposals\Skaha Lake Marina\POSSIBLE NEW AGREEMENT\Enhanced Marina Agreement Versions\REVISED ENHANCED MARINA AGREEMENT 2016 11 30\PDF\2016 11 30 REVISED Enhanced Marina Agreement.pdf>

Attachment "C" – License to Use Agreement to December 31, 2018

[..\Request for Proposals\Skaha Lake Marina\POSSIBLE NEW AGREEMENT\License to Use and Sub License\PDF Versions\2016 10 30 License to Use.pdf](#)

Attachment "D" – Sub License of Occupation Agreement to December 31, 2018

[..\Request for Proposals\Skaha Lake Marina\POSSIBLE NEW AGREEMENT\License to Use and Sub License\PDF Versions\2016 10 30 Sub License.pdf](#)

Attachment "E" - November 23, 2016 Special Council Meeting Presentation

[..\Presentations\Council\2016\2016 11 23 Council Meeting\2016 11 23 Public Meeting Skaha Park Marina and Waterpark.pptx](#)