



**COMMITTEE OF THE WHOLE  
AGENDA REPORT**

**TO:** Mayor Furniss and Members of Council  
**MEETING DATE:** April 21, 2015  
**SUBJECT:** Bala Falls Working Committee Report 2

<b><u>RECOMMENDATION:</u></b>	<p>That the attached Working Committee minutes from the March 26<sup>th</sup>, April 8<sup>th</sup> and April 13<sup>th</sup> meetings be received;</p> <p>That the attached Resolution be approved; and</p> <p>That the Committee of the Whole recommends to Council that the Township proceed with Option _____.</p>	
<b><u>APPROVALS:</u></b>	Date	Signature
Submitted By:	Clayton Harris, Interim CAO On behalf of the Working Committee	April 17/15 <u>Original signed by C.Harris</u>

**ORIGIN:** At the December 16, 2014 Committee of the Whole, the Township received a number of requests from various individuals and organizations with respect the proposed Bala Falls Hydro Project. One of the requests was from SREL to establish a Working Committee. A Working Committee was subsequently created and it reports to the Committee of the Whole.

**BACKGROUND:** This is the second report and resolution from the Working Committee. The report and the attached Resolution is the result of discussions that were held over three (3) meetings, March 26<sup>th</sup>, April 8<sup>th</sup> and April 13<sup>th</sup>. All Committee members were present for all meetings. A copy of the approved minutes from each of these meetings is attached for your information.

SREL has stated that they have all federal, provincial and municipal permits to commence construction, with the exception of final approval from the MNRF under the Lakes and Rivers Act (LRIA). SREL has also stated that they have sufficient space on Crown lands it currently has in order to complete the project; however SREL had approached the Township regarding the temporary leasing of three (3) parcels of land for construction staging.

### Considerations When Assessing the Offers

In considering the offer from SREL to lease three (3) parcels of Township lands the Working Committee was mindful of the impact on Margaret Burgess Park (Crown property), the impact on parking in the community during construction, that the Township lands are within the Heritage District, that Heritage Designations are in place on two (2) of the three (3) parcels, the historic use of Portage Landing by the Wahta, the need for the municipality to be indemnified and the restoration of any leased lands at the end of construction staging.

The Committee also considered the appropriateness of the lease amount for the temporary use of Township lands. Many of the considerations of leasing or not leasing Township lands are intangible and therefore very difficult to quantify. The Committee was also cognisant of SREL's stated position that they have sufficient space on Crown lands to undertake the project.

### Working Committee Process

On the assumption that the project proceeds, the Working Committee wanted to understand the implications and the benefits if the Township lands are utilized for construction staging and what amount of compensation for the use of Township lands would be appropriate.

The Committee recognized that the Township lands being requested were in a Heritage District. The designation of the Heritage District is currently under appeal to the OMB. In addition, two (2) of the parcels of land requested currently have a heritage Designation. The Committee invited the Township's Director of Planning to attend a Working Committee meeting to review the implications of using the lands for construction staging.

The Portage Landing on the Moon River site is designated as being of cultural heritage value or interest under Part IV of the Ontario Heritage Act, with By-law 2013-52 being passed in April 2013. It is also located in the proposed Bala Heritage Conservation District which is currently under appeal to the Ontario Municipal Board. Under the Heritage Act, alterations to designated property are not permitted if the alteration is likely to affect the property's heritage attributes, as set out in the designating By-law. In this case, these include a flat rock launching area into the water, flat areas and a beach covered in stone, presence of trees, grasses, wildflowers and other vegetation, natural geography and unobstructed shorelines, amongst other attributes. Alterations are only permitted where the owner applies to Council and consent in writing is received. Council can, after consultation with its municipal heritage committee, if one is established, either consent to the application, consent on terms and conditions, or refuse the application. As owners of the property, if Council were to enter into a lease or grant permission in writing to utilize and alter the site as agreed upon, it would appear to meet the criteria to address compliance with the Heritage Designation By-law.

The portion of the Shield Parking lot that is leased from the MNRF by the Township is not designated or subject to the provisions of the Heritage Act. The portion of the parking lot that is owned by the Township is a designated property and part of the Heritage District. The Committee was advised that the temporary use of the Township owned portion of the parking lot for construction staging

would not conflict with the heritage designation. However to ensure that there continues to be parking for the community during construction SREL was asked to exclude the Township portion of the Shield parking lot from its request. The Township portion is approximately 50% of the parking lot.

The Portage landing Parking lot is within the Heritage District, however it is not designated. To provide for parking during the tourist season SREL was requested to only lease the parking lot from late fall to early spring.

All lands within 25 feet of a navigable waterway in an Urban Centre designation of the Official Plan are subject to the Site Alteration (2008-56) and Tree Preservation (2008-55) By-laws. These By-laws prohibit site alteration and tree removal within these areas, but are subject to a number of exemptions. Exemptions include activities or matters undertaken by the Township or a local board, or with the permission of the Township on lands owned or controlled by it.

Concern has also been expressed by Council and the community with respect to damage that would be done to Margaret Burgess Park if it is used for construction staging. On March 13<sup>th</sup> Council passed a resolution, copy attached, requesting information from the Province concerning the leasing of Margaret Burgess Park. In response to the March 13<sup>th</sup> Resolution a letter was received from the MNRF on March 26<sup>th</sup>. A copy of the letter is attached. The letter refers to the types of uses that would be permitted in Margaret Burgess Park and the implications of using the Park for construction staging. Uses include “construction staging, storage of materials, clearing trees to accommodate for access and staging, constructing a temporary access road, temporary placement of settlement tanks, etc. The letter indicates that it is not known at this time to what degree the Park will be required as a construction staging area as MNRF is currently in the process of completing the review of the plans. As a follow-up to the letter, the MNRF confirmed that the Environmental Assessment (EA) identified Margaret Burgess Park as available to SREL throughout construction.

The MNRF states in the letter that they understand that some trees may need to be removed to allow for the movement of vehicles and the placement and removal of equipment and materials in order to reasonably utilize the location. The also indicate that some fill material may be needed for an access road to the bridge over the river. SREL will be required to ensure the ground/soil within the Park is not significantly disturbed.

As noted above, much of the benefits of leasing or not leasing Township lands for a two (2) year period are intangible and difficult to quantify. The following factors were taken into account when considering values:

1. Length of the lease;
2. Was there a cost to the Township of acquiring the property;
3. Is there lost revenue to the Township if the property is leased;
4. Are there opportunities to improve access and usage of the site;
5. Does leasing the lands for 2 years limit other opportunities;
6. Are there competing opportunities to lease the lands;
7. What have other municipalities received; and
8. Does the proponent have alternative locations for construction staging?

The Committee was advised that the Portage Landing parking lot was recently acquired for \$160,000. The other two (2) parcels were acquired at little or no cost to the Township. For this parcel a 5% rate of return equates to approximately \$4,500 per year for the period October to April.

A hydroelectric facility was proposed in Port Sydney. It was reported that the municipality would receive 1% of the project's annual electricity sales in return for a municipal support resolution. Although a useful reference point there are some differences from the proposed Bala project. The proposed Port Sydney project did not have provincial approval and would benefit from a municipal support resolution. We also understand the project is a smaller scale and the proponent is no longer proceeding with the project.

#### SREL's Original Offer

SREL first approached the Township concerning the use of Township lands through an email to the former CAO on October 3, 2013. The Township denied SREL's request for the closed meeting. SREL delegated at the council meeting on October 18th and again offered to discuss the details of the proposal, but council chose not to discuss the matters.

SREL advised that it had conducted a digital survey to gather input from the public on the design of the facility in January 2014. A question was added to this survey asking people if they would prefer SREL use the Park or the Township lands included in the offer. The results of that survey indicated that 79% of respondents preferred the use of the Township lands over the park lands.

SREL delegated at the April 17, 2014 council meeting. During this delegation SREL outlined which parcels of land would be included in the lease and that the lease would eliminate the need to use the Park for construction. At that time SREL presented the results of the survey referred to above. It was at this time that SREL first offered a fee of \$100,000 for use of the lands. On April 25, 2014, SREL formalized the April 17th offer in a letter to the Township's former CAO.

At the May 2, 2014 council meeting a staff report outlined the offer and recommended that the lease be subject to a "negotiated process" and should be "vetted through legal counsel".

#### SREL's Final Offer

At the December 16, 2014 Committee of the Whole meeting SREL requested that Council establish a Working Committee. Council agreed and at the first Working Committee meeting on February 26, 2015, SREL presented an updated offer outlining the lands and the proposed fee of \$100,000. Several committee meetings included presentations and discussions about the project and the updated offer. These discussions focused on the proposed use, impacts, rehabilitation options and the lease amount. During this period the Township representatives had met on their own to discuss all the information received and a proposed a counter offer. SREL was unable to match the Township's counter offer with respect to the amount of the lump sum fee (\$325,000 was requested) and an annual royalty payment (as an example, 1% of revenues / year of operation). After some discussion SREL presented its final offer of \$125,000. A

copy of the final offer is attached. SREL has indicated that they require approval in principle by the May 15, 2015 Council meeting.

The key changes to SREL's offer were an increase to the compensation, a reduction in the amount of land being requested, and an increased commitment to not just rehabilitate the lands, but "improve" them at SREL cost.

The key elements of the offer are as follows:

Price: \$125,000 - for payment of use of the lands for 24 months  
 Late Payments: \$5,200 / month payable if SREL is delayed past 24 months.

This will provide incentive to complete the project quickly

Additional Fee: \$5,000 for every year that SREL uses the Shield Parking Lot during the Cranberry Festival. This will allow the Township to provide compensation to those charities / community groups that have used the lot during the festival to raise funds.

Rehabilitation: SREL has committed to either return the site to its current condition or to re-grade it and improve it, based on the Township's preference. This will ensure that none of the compensation payment will be required to be used on the site and will be a benefit to the community. In addition, SREL has committed to leaving the Park as is i.e. maintaining public access and not removing any trees etc.

SREL has also stated that the powerhouse design will be more attractive and blend in more with the surroundings if an agreement is reached.

The following table summarizes these changes.

Original Offer	Final Offer	Difference
<b>Leased lands:</b>		
Parcel adjacent to the site	Parcel adjacent to the site	TML portion of Shield Parking Lot has been removed from the leased lands
TML portion of Portage Landing Parking Lot	TML portion of Portage Landing Parking Lot	
All of Shield Parking Lot (TML + MNRF)	MNRF portion of Shield Parking Lot only	
<b>Restriction on TML portion of Portage Landing Parking lot</b>		
October - May	From Cranberry Festival to April 30 <sup>th</sup> only	More specific.
<b>Use of lands</b>		
Site access, storage of construction materials and equipment	Site access, storage of construction materials and equipment	No change
<b>Impact to Lands</b>		
Tree removal and earthworks (Portage Landing only), fencing, all leased lands	Tree removal and earthworks (Portage landing only), fencing, all leased lands	No change

<b>Rehabilitation of lands</b>		
Re-grading of land beside project site and restoration. Restoration was not specific, considered to be basic restoration to address erosion issues.	Site will either be returned to current condition or re-graded into public parkette with walkway, stairs etc. Some larger more matures trees will be included in the design.	Site will be "improved" rather than just "restored", if TML desires.
<b>Payment</b>		
\$100,000 for duration of construction	\$125,000 for up to 24 months, \$5,200 / month if longer than 24 months.  \$5,000 / year for community groups / charities to compensate for loses from not having use of Shield Parking Lot during Cranberry Festival	\$25,000 more plus penalty payments if the construction is delayed past 24 months \$5,000 / year that SREL uses Shield Parking Lot during Cranberry Festival
<b>Term</b>		
Not defined but 24 months was discussed	Term = 24 months	Now has defined limits with associated late penalty costs.
<b>Powerhouse design commitments</b>		
Not included	The building size will be minimized as much as possible, while maintaining operability of the facility;  A lookout(s) would be incorporated into the building, accessible by the public from the TML's Parcel 1;  Interpretive signage will be placed on or around the building;  The landscaping between Parcel 1 and the Project site will be made to "blend together";  The south wall will be finished to match the other walls;  The building will be designed to "fit into" the community from an architectural design and heritage perspective."	Commitments made for improved powerhouse design
<b>Margaret Burgess Park commitment</b>		
Will leave as is	Will leave as is	No change

Comparison - SREL Using TML and MNRF Lands vs. Only Using MNRF Lands

The following is a comparison of the benefits and impacts of SREL's two construction staging options. Note impacts to access are for construction period only:

<b>Benefit</b>	<b>Current Plan: Use only MNRF lands</b>	<b>Alternative Plan: Use TML and MNRF lands</b>
Margaret Burgess Park	Used for construction access, storage etc.  Public access restricted  Park fenced  Expected loss of several of the large mature 100+ year old trees  Restoration plan does not include replacement of trees	No impact
North Bala Falls	Temporary construction bridge installed across falls downstream of dam  Crane installed on south side of falls including installation of concrete pad	No impact
Roadside parking area beside Park and United Church (west side of Hwy 169).	Limited public use as trucks will enter park through this area	No impact
TML's portion of Portage Landing Parking Lot	No impact	<u>Period:</u> Between May 1 and after Cranberry Festival – No impact  After Cranberry Festival to April 30 <sup>th</sup> only – No public access, fenced and used for construction parking & storage
Shield Parking Lot	No impact	<u>TML (south) end of lot:</u>  No impact  <u>MNRF (north) end of lot:</u>  No public access, fenced and used for construction parking & storage
SREL's powerhouse	Less aesthetically pleasing building, in particular south end (due to access issues)	Publically accessed lookouts will be integrated into adjacent lands.  Improved aesthetics of building, in particular from south end

Financial	No impact	\$125,000 payment to TML \$5,200 / month payments to TML if needed more than 24 months \$5,000 / year that SREL uses Shield Parking Lot during Cranberry Festival
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Next Steps

The Working Committees next steps will in part depend on the direction of Council. If Council determines that it is appropriate to lease Township lands to SREL for construction staging, a lease agreement is required. Through the development of the agreement there may be a need for the Working Committee to meet.

A key parcel of Township land that has been requested for construction staging is Portage Landing. As noted in the report above the property is owned by the Township and has a heritage designation on it. Council has the authority to consent to an application from SREL, consent with terms or refuse the application. A Council decision with respect to this matter will impact the ability to agree to SREL's request to use this parcel for construction staging.

The Site alteration By-law would apply to the use of Portage Landing. SREL has stated that tree removal and earthworks would be required. As noted above in the report the By-law provides for certain exemptions which include activities undertaken by the Township or a local board or permission of the Township on lands owned or controlled by it. Council would need to provide an exemption, with conditions, as appropriate in order for SREL to utilize Portage Landing.

**FINANCIAL:**

Assuming the project proceeds the financial implications to the Township are substantially the same if the project proceeds using MNRF lands or a combination of MNFR lands and Township lands with the exception that the Township would receive a lease payment(s) from SREL if the Township lands are utilized. The Township will incur legal costs associated with developing and executing an agreement. There may be additional costs for such items as a heritage consultant.





**COMMITTEE OF THE WHOLE**

**DATE:** \_\_\_\_\_ **RESOLUTION NUMBER: COW-** \_\_\_\_\_ **- 21/04/15**

**MOVED BY:** \_\_\_\_\_

**SECONDED BY:** \_\_\_\_\_

**BE IT RESOLVED THAT:**

Whereas SREL has stated that they have sufficient lands available from the MNRF, including Margaret Burgess Park, to construct and build the power house;

Whereas Council Resolution C-24-13/03/15 states that the Council of the Township of Muskoka Lakes remains an unwilling host;

Whereas the project has, or will soon have, all approvals necessary from other levels of government to commence construction and the Township has minimal permitting or approval authority over the project;

Whereas Council established a Working Committee to mitigate the impact of the project during construction;

Whereas SREL has indicated that they have a critical construction timeline within which to determine what lands will be available for construction staging and, if an agreement in principal is not reached by the May 15, 2015 Council meeting to use the Township lands, SREL will make arrangements to use other lands, including Margaret Burgess Park;

Whereas Margaret Burgess Park is a significant natural feature within the Bala community and the public has expressed concerns with respect to the use of it for construction staging;

Whereas the Council of the Township of Muskoka Lakes is concerned that the unique natural features of Margaret Burgess Park will be at risk, or permanently altered, if it is used for construction staging;

Whereas SREL has requested the temporary use of the following lands for construction staging and has agreed to restore these properties, post construction:

Parcel 1: The parcel of land immediately adjacent to the Project site that was transferred to the Township from the District in 2011 (PIN 48029-0638).

Parcel 2: The MNRF's portion of the Shield Parking Lot (north end) (PIN 48029-0634).

Parcel 3: The Township's portion of the Portage Landing Parking Lot (south end) (PIN 48154-1077) for the period from the week after the Cranberry Festival to April 30;

Whereas Portage Landing has a Heritage designation under the *Heritage Act* and is within the proposed Heritage District;

Whereas Council has the authority to consent to alterations to properties designated under Section 33 of the Heritage Act;

Whereas the proposed Heritage District currently includes all Township lands that SREL has asked to lease;



Whereas the Heritage District by-law is under appeal to the Ontario Municipal Board;

Whereas SREL has previously presented offers to Council with respect to the temporary use of the Township lands for construction staging;

Whereas SREL's initial offer to the Township was a starting point for discussions;

Whereas additional considerations were proposed by the Township during the Working Committee discussions; and

Whereas after much discussion and debate SREL has presented a final offer to the Working Committee that includes only some of the Townships requests.

Now therefore be it resolved that:

1. As jurisdiction to agree to the lease of the Township lands rests with Council, Council be presented with the following three options:
  - a. Endorse in principle the option of leasing the Township lands to SREL, based on its final offer;
  - b. Endorse in principle the option of leasing the Township lands to SREL, based on terms that are different than the terms in SREL's final offer; or
  - c. Refuse to lease the Township lands to SREL.
2. That should Council deem it appropriate in principle to lease the lands to SREL, the following should apply:
  - a. The restoration of the Township lands be done in a way that respects the historical use of the Township lands for access and recreation to the Moon River and the heritage designation aspects of the properties;
  - b. The agreement-in-principal to lease the Township lands be committed to a formal written agreement, which shall be subject to review and final approval by Council;
  - c. That the Township retain the necessary legal services to draft and finalize the agreement; and
  - d. That, among all other appropriate and necessary terms and requirements, the agreement provide for appropriate protection of the municipality, including security to guarantee completion.

**RECORDED VOTE:**

	<b><u>NAYS</u></b>	<b><u>YEAS</u></b>	
COUNCILLOR BARANIK (Deputy Mayor)	_____	_____	
COUNCILLOR BARRICK-SPEARN	_____	_____	
COUNCILLOR CURRIE	_____	_____	
COUNCILLOR EDWARDS	_____	_____	
COUNCILLOR HARDING	_____	_____	
COUNCILLOR KRUCKEL (Acting Deputy Mayor)	_____	_____	
COUNCILLOR LEDGER	_____	_____	
COUNCILLOR McTAGGART	_____	_____	
COUNCILLOR NISHIKAWA	_____	_____	MOTION DEFEATED [ ]
MAYOR FURNISS - CHAIR	_____	_____	MOTION CARRIED [ ]
TOTALS	_____	_____	

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CHAIR