

# Memo

2018 November 19

**To:** Mayor and Councillors

**From:** Rob Spackman  
Director, Water Resources

Debra Hamilton  
Director, Community Planning

Doug Cassidy  
Director, Real Estate and Development Services

Denise Jakal  
Manager, Planning & Environment  
Law & Legislative Services

**Re: Response to Administrative Inquiry  
2018 October 15 Council Meeting - Highland Park Golf Course Lands  
Submitted by Councillor Keating**

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## **Background**

In 2013, 1744228 Alberta Ltd. (the “Landowner”), a company of which Ajay Nehru is a Director, acquired the former Highland Park Golf Course lands (the “Lands”) from the owner who originally developed the Lands as a golf course for a purchase price of \$8.1 million. Several months prior to purchasing the Lands, Mr. Nehru had already participated in a pre-application enquiry regarding the Lands, at which point the challenges of developing the Lands were highlighted to him by The City.

In late 2014, after going through another pre-application process during which the Landowner and Water Resources had extensive discussions about the stormwater issues with the Lands, the Landowner submitted a land use and outline plan application. Through the application review, the Landowner indicated that they wanted to move forward quickly despite having incomplete information about the potential risks of developing this site. In electing to proceed, the Landowner assumed the risk of moving forward with a proposal that might prove to be unbuildable. This transfer of risk is reflected in the Outline Plan conditions of approval.

**This system of apportioning risk can only work if The City resists assuming such risks if, or when, these unknown risks become known. Otherwise, The City will effectively become**

**the guarantor of any and all developments across the city.** When the outline plan for this site was conditioned, the unknown risks that existed with respect to the impacts of the Regional Drainage Study became the Landowner's. Specifically, the conditions required a Staged Master Drainage Plan prior to tentative plan approval, and provided that any dry pond requirements identified therein must be accommodated on the Lands. Following a close vote, the land use amendment was approved. There was extensive debate in Council about whether or not to approve this land use amendment in the absence of the Regional Drainage Study, but it was noted that the outline plan conditions had been drafted to ensure that construction would not commence until the Regional Drainage Study was completed

When the Confederation Park Regional Drainage Study Draft Final Report was released on June 1, 2018, it became clear that drainage through the Lands is a major concern, and it recommended that the feasibility of stormwater storage solutions on the Lands be explored. The risks respecting the Regional Drainage Study had materialized, and it is now clear that the Landowner will be unable to develop the Lands as contemplated in the approved outline plan.

Throughout 2018, The City has repeatedly communicated to the Landowner that there are two realistic paths forward:

1. Proceed with its development application, preferably by meeting with The City to determine how the Landowner can maximize the site's development potential within the scope of the outline plan conditions and the limitations identified in the Regional Drainage Study; or
2. Present The City with a reasonable offer of sale for the Lands.

The City is not currently in a position where it needs to acquire the Lands. Right now, the Lands are functioning as a natural drainage solution and, based on the way the outline plan conditions have been drafted, no development will take place on the large portion of the Lands that sits west of Centre Street until "appropriate solutions for the entire catchment, including interim solutions to allow phased development to proceed, have been identified and implemented to the satisfaction of Water Resources."

It is possible that the ultimate solution may be a combination of options 1 and 2 above, but that will not be possible to assess until the Regional Drainage Study is finalized. The Final Report of the Regional Drainage Study is expected at the end of Q4, 2018. Once that report is complete, The City will have a better idea of how much of the Lands might be impacted by a proposed regional stormwater drainage solution. The City will also then be in a position to discuss with the Landowner which lands may be required to be dedicated to The City as Municipal Reserve (MR), Environmental Reserve (ER), and Public Utility Lot (PUL), which lands may assist in the accommodation of regional drainage, and whether any additional lands over and above these dedications would be necessary to accommodate stormwater flows.

### **Response to Administrative Inquiry**

With the above background in mind, please find below Administration's response to the Administrative Inquiry received October 15, 2018.

**1. What is the current status of the Confederation Park Regional Drainage Study, Draft Final Report, May 31, 2018?**

The Draft Final Report has been posted online and made available to the public. As noted above, the Final Report is underway and The City expects it to be issued by the end of Q4, 2018. Once complete, the Final Report will be made available to the public in early 2019.

**2. The draft report recommendation is to utilize the former Highland Park golf course essentially as a stormwater reservoir (in the one in one hundred year event). What is the estimated cost to purchase this private land?**

The Draft Final Report's recommendation touches on the need to further explore the feasibility of acquiring all or a portion of the Lands in order to accommodate storage and conveyance improvements in the Confederation Creek catchment area. At this time, we do not know how much of the Lands would be impacted or where on the site the proposed storage solutions would be. As such, we have not yet obtained a formal appraisal of the Lands.

In terms of the information available, we know that the last time a knowledgeable, willing and unpressured buyer purchased this property in an open market was in 2013 when the Lands were acquired by the Landowner for \$8.1 million. Any third party buyer would be looking at the obvious challenges (an extensive, existing network of utilities that cannot be moved, City-owned PUL running through the middle of the site, sloped topography, registrations on title, and any comments received from a pre-development application meeting with The City, if pursued), all of which were available to the Landowner at the time of its purchase.

As discussed in more detail above, since the Landowner purchased the Lands:

- a land use amendment application for the Lands was approved by Council;
- an outline plan was approved by Calgary Planning Commission subject to several conditions;
- the Draft Regional Drainage Study was released, highlighting the reality that the existing outline plan is not developable; and
- the real estate market in Calgary experienced a decline.

All of these factors would be taken into account when valuing the Lands. Given all of the above factors, it would be premature to speculate on the Lands' market value.

**3. Did Administration (Water Resources) consider whether it could utilize the City-owned lands upstream to address the stormwater issue, i.e. could it store water on the Confederation Golf Course, Confederation Park and/or Queen's Park Cemetery**

**lands? Has the cost of this option been addressed relative to the Highland Park development land purchase option?**

Yes, Water Resources did consider options to utilize upstream City-owned lands. The cost of upstream storage has not been addressed, as no viable options have been identified.

Queen's Park Cemetery is not a viable option because there is minimal storage space available in the cemetery that would not impact existing graves and urns. This proposed option would result in extensive flooding of existing grave sites which would have significant social, moral and operational implications.

Overland flows upstream of Queen's Park Cemetery are already fully retained and released in a controlled manner. The stormwater volumes entering the Lands come from the catchment areas downstream of Confederation Park Golf Course and Confederation Park as well as Queen's Park Cemetery. Water Resources has worked collaboratively with the Landowner's consultant, ISL Engineering, to explore additional open space storage options in the catchment area; however, after careful consideration by Water Resource's consultant (Associated Engineering), it was determined that these areas offered minimal storage opportunities and would have a marginal impact on the water volumes entering the Lands. Water Resources and ISL mutually agreed that there are no viable upstream storage alternatives on City-owned land to address the volume of stormwater entering the Lands.

Not only were these alternatives considered, but The City's analysis with respect to other potential solutions was peer-reviewed by an independent third-party, Computational Hydraulics International, who concurred with The City's analysis. There has been extensive and repeated communication between Water Resources and ISL on this issue.

For an illustration of the catchment area and the locations of alternative storage solutions considered by The City and ISL, please see the map enclosed as Attachment 1.

**4. If not analyzed, why were these existing City-owned lands with extensive open spaces, particularly for catastrophic stormwater events, not considered?**

Not applicable. Please see above.

**5. Is the recommended land purchase and some associated stormwater infrastructure included in the upcoming 2019-2022 budget discussions?**

No. As discussed above, the Regional Drainage Study is not yet finalized. Once the study is finalized and implementation options are determined, funding of those options would be considered within the Community Drainage Improvement Program.

**6. If not included in the upcoming proposed 4-year budget, what is the next step to resolve this situation working in cooperation with the landowner of the Highland Park lands?**

As noted previously, there are two realistic paths forward. The Landowner has the option of continuing to pursue its development application. The City has repeatedly offered to meet with the Landowner to review and discuss the existing outline plan conditions and how the Landowner might be able to redesign the site with those conditions in mind. The other option is for the Landowner to make The City a reasonable offer of sale based on the current state of the Lands and the known constraints on development. City Administration continues to be open to discussion on either of the two options.

**7. What is the process for the City to acquire private lands for a public purpose if there is an inability to reach an agreement between the City and the private landowner?**

As discussed above, The City is not required to acquire the Lands at this time. The condition of lands has not been altered since the mid-70's when The City and then-owner had significant and protracted negotiations around the drainage issues and stability of the Lands. While the Landowner's land use application accelerated the timing of the Confederation Park Regional Drainage Study, the development challenges presented by the site have existed for the past sixty years.

If the Landowner is not prepared to proceed with its development application or to offer the Lands for sale at a price The City considers reasonable, and if The City concludes that it requires some or all of the Lands for stormwater management, expropriation is a last-resort option. Administration recommends caution in pursuing this option.

In an expropriation, The City could be required to compensate the Landowner for all of the following, **in addition to** the market value of the lands, which it would not be required to pay in a negotiated purchase and sale:

- (a) injurious affection, in the case of a partial taking, if the expropriation would reduce the value of the Landowner's remaining lands;
- (b) disturbance damages, if the Landowner can establish that it has incurred business losses, moving costs or other such damages as a natural and reasonable consequence of the expropriation;
- (c) special economic advantage, if the Landowner can show that it will lose advantages peculiar to its use of the land that would not accrue to another owner of the same parcel;
- (d) interest on any shortfall between the compensation initially paid by The City to the Landowner and the compensation ultimately agreed upon by the parties or awarded by the Land Compensation Board, as well as the possibility of penalty interest; and
- (e) the Landowner's reasonable costs of negotiating compensation and, if negotiations fail, taking the matter to the Board – including the fees and

disbursements of lawyers, appraisers and other experts who might reasonably be retained to assist the landowner in making its case.

Expropriation costs can be significant, particularly if the case requires experts from a number of different fields. In Administration's view, expropriation is an option of last resort and is not recommended. Administration remains committed to working with the Landowner to further its development and maximize its development potential within the scope of the existing outline plan conditions.

Attachments: 1