

# Town of Whitby

## Staff Report

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**Report Title: Land Exchange between the Town of Whitby and the Canadian Pacific Railway Company for future work to Des Newman Boulevard**

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**Report to:** Committee of the Whole

**Date of meeting:** March 4, 2024

**Report Number:** FS 05-24

**Department(s) Responsible:**

Financial Services Department  
Legal and Enforcement Services

**Submitted by:**

Fuwing Wong, Commissioner Financial Services and Treasurer

**Acknowledged by M. Gaskell,  
Chief Administrative Officer**

**For additional information, contact:**

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Francesco Santaguida, Commissioner of Legal and Enforcement Services/Town Solicitor, 905.430.4314  
Laura Scott, Real Estate Law Clerk, 905.430.2843

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### 1. Recommendation:

1. That Part of the Road Allowance of Coronation Road between Lots 32 and 33, Concession 3, designated as Parts 8, 9 and 10 on Plan 40R-29953 (being a portion of PIN 26548-3682 (LT)) (“Property #1”), and Part of the Road Allowance of Ash Street, East of Brock Street, Plan H50029, designated as Part 1 on Plan 40R-32017 (being a portion of PIN 26532-0111 (LT)) (“Property #2), (collectively the “Town’s Parcels”) be declared surplus and conveyed to the Canadian Pacific Railway Company (“CPR”), and that Part of Lot 34, Concession 3, designated as Part 1 on Plan 40R-31999 (being a portion of PIN 26548-0437 (LT)) (“Property #3”), (the “CPR Parcel”) be acquired from CPR, subject to the conditions set forth in Financial Services Report 05-24;
2. That the Clerk be authorized to bring forward by-laws authorizing the disposition of the Town’s Parcels and the acquisition of the CPR Parcel;

3. That the Clerk be authorized to bring forward a by-law to stop up and close Property #1 and Property #2 as a public highway;
4. That the requirement to obtain an appraisal and give public notice in accordance with Town of Whitby Policy F-190 regarding the Acquisition, Sale or other Disposition of Land Policy be waived for the acquisition and disposition of the lands described herein;
5. That the requirement to provide notice to permanently close a highway in accordance with Town of Whitby Public Notice Policy CA-150 be waived for the lands described herein; and
6. That Council hereby delegate authority to the Commissioner, Planning and Development and the Commissioner, Financial Services and Treasurer to undertake the necessary actions and execute a land exchange agreement and all other necessary documents to give effect thereto, with such actions and agreements being in a form satisfactory to the Commissioner, Legal and Enforcement Services/Town Solicitor, or designate.

## 2. Highlights:

- The Town has approached CPR with a request that it convey Property #3 (shown in Attachment 4 outlined in orange) to the Town for the purpose of the Des Newman Blvd. / CP Rail Grade Separation project to construct a partial-height embankment with a gravel access road, and in exchange, CPR has requested to acquire ownership of Property #1 (shown in Attachment 2 outlined in pink) and Property #2 (shown in Attachment 3 outlined in green) to allow the contiguous ownership of its railway corridor.
- Town staff will continue negotiating and finalize a land exchange agreement with CPR for the disposition of the Town's Parcels and the acquisition of the CPR Parcel;
- Town staff recommend the disposition of the Town's Parcels to CPR for nominal consideration in exchange for the acquisition of the CPR Parcel for nominal consideration.
- Subject to Council direction related to this report, the Commissioner, Planning & Development and the Commissioner, Financial Services & Treasurer will execute a land exchange agreement and all other required documents to complete the disposition of the Town's Parcels and acquisition of the CPR Parcel.

## 3. Background:

The West Whitby Landowners Group ("**WWLG**") has already constructed much of Des Newman Boulevard ("**DNB**"), however there is a section of DNB that remains to be built by the Town which is located roughly between Rossland Road and Twin Stream Road

and includes a grade separated crossing of the CPR railway tracks (refer to Attachment #1).

It is necessary that the Town acquire ownership of Property #3 in order to re-tender for Project #40130201 Des Newman / CP Rail Grade Separation – Phase 1 (Embankments) and commence construction of the partial-height embankment with a gravel access road.

#### **4. Discussion:**

Due to the planned municipal infrastructure construction of DNB the Town has requested the conveyance of Property #3 from CPR. The area of Property #3 is approximately 0.156ha and a location map of the area is provided in Attachment 1 of this report.

In exchange, and to clean up title to two small parcels of land which are owned by the Town and located within the CPR railway corridor, the Town has agreed to convey Property #1 and Property #2 to CPR. The area of both Property #1 and Property #2 combined is approximately 0.15616ha and a location map of both parcels is provided in Attachment 1 of this report.

As noted on the maps in Attachment 1, CPR already owns the parcels of land along the railway corridor which are adjacent to the Town's Parcels. The proposed transfer of Property #1 and Property #2 will clean-up ownership and provide CPR with contiguous ownership of the parcels along the railway corridor.

Property #1 and Property #2 form part of the current CPR railway corridor and are not required by the Town of Whitby and are not useable lands due to the railway track structure. In addition, Property #1 and Property #2 have no access and can be described as 'landlocked parcels'. Staff have determined that these parcels are non-viable and, in accordance with the Town's Acquisition, Sale or Other Disposition of Land Policy F-190, notice following the declaration of surplus (which notice requirements normally include the posting of a sign, advertisement in the newspaper, and posting on the Town's website) will not be provided.

In addition to declaring Property #1 and Property #2 as surplus, a by-law is required to stop up and close each road allowance parcel prior to the disposition to CPR. As staff have determined that these parcels are non-viable and, in accordance with the Town's Public Notice Policy CA-150, notice prior to passing the stop up and close by-law (which notice requirement normally includes publishing in the newspaper and a direct mailing to property owners abutting the highway) will not be provided. Subject to approval of this report, the required by-laws will be brought forward to the March 18, 2024 Council meeting.

#### **5. Financial Considerations:**

The proposed land exchange to and from CPR will be at nominal cost to the Town with the exception of staff time and land conveyance costs. Per discussion with CPR, it has been agreed that no appraisal will be obtained or is required for the Town's Parcels or the CPR Parcel. The exchange of the properties is of equal value to the parties with no

monetary consideration paid by either CPR or the Town. Each party will be responsible for its own costs, fees (including legal fees), and disbursements, as well as responsible for payment of its own taxes (including applicable HST and Land Transfer Tax).

**6. Communication and Public Engagement:**

In accordance with Town Policy F-190 regarding the Acquisition, Sale or Other Disposition of Land Policy, public notice of the Town's intention to declare lands surplus is to be advertised in a newspaper having general circulation within the Town, notice is to be posted on the Town's website, and a sign is to be posted on the property for not less than ten days. In addition, in accordance with Town Public Notice Policy CA-150, public notice of the Town's intention to permanently close a highway with a stop up and close by-law is to be published in a newspaper once, posted on the Town's website, and by direct mail to the property owners abutting the highway.

However, as Property #1 and Property #2 are deemed non-viable and are required for municipal infrastructure, staff recommend that these notice requirements be waived.

**7. Input from Departments/Sources:**

The Financial Services Department has consulted with Engineering staff who have reviewed this report.

Legal Services has reviewed this report and provided advice regarding the completion of this matter and will be negotiating and facilitating the completion of the transaction if approved by Council.

**8. Strategic Priorities:**

The disposition of the Town's Parcels creates goodwill with CPR and the acquisition of the CPR Parcel for virtually no cost is consistent with Strategic Pillar 4.4: Ensure fiscal accountability and responsibly plan for growth, and in particular Action 4.4.1: Deliver services that respond to community needs while balancing the impact to taxpayers.

**9. Attachments:**

Attachment 1 – Location Map of CPR Parcel & Town's Parcels

Attachment 2 – Plan 40R-29953 outlining Property #1 as Parts 8, 9, 10

Attachment 3 – Plan 40R-32017 outlining Property #2 as Part 1

Attachment 4 – Plan 40R-31999 outlining Property #3 as Part 1

Attachment 5 – Land Acquisition By-Law # XXXX-24 (Draft)

Attachment 6 – Land Disposition By-Law # XXXX-24 (Draft)

Attachment 7 – Stop Up & Close By-Law # XXXX-24 (Draft)