



**CITY OF HAMILTON**  
**PUBLIC WORKS DEPARTMENT**  
**Engineering Services Division**

<b>TO:</b>	Chair and Members Public Works Committee
<b>COMMITTEE DATE:</b>	April 29, 2019
<b>SUBJECT/REPORT NO:</b>	Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 21 Colbourne Street, Hamilton (PW19032) (Ward 2)
<b>WARD(S) AFFECTED:</b>	Ward 2
<b>PREPARED BY:</b>	Gary Kirchknopf (905) 546-2424 Ext. 7217 Cetina Farruggia (905) 546-2424 Ext. 5803
<b>SUBMITTED BY:</b>  <b>SIGNATURE:</b>	Gord McGuire Director, Engineering Services Public Works

**RECOMMENDATION(S)**

That the application of the owner of 21 Colbourne Street, Hamilton, to permanently close and purchase a portion of the unassumed alleyway abutting the West side of 21 Colbourne Street, Hamilton, ("Subject Lands"), as shown on Appendix "A", attached to Report PW19032, be approved, subject to the following conditions:

- (a) That the applicant makes an application to the Ontario Superior Court of Justice, under Section 88 of the Registry Act, for an order to permanently close the Subject Lands, if required by the City, subject to:
  - (i) The General Manager of Public Works, or designate, signing the appropriate documentation to obtain any required court order; and
  - (ii) The documentation regarding any required application to the Ontario Superior Court of Justice being prepared by the applicant, to the satisfaction of the City Solicitor;
- (b) That the applicant be fully responsible for the deposit of a reference plan in the proper land registry office, and that said plan be prepared by an Ontario Land Surveyor, to the satisfaction of the Manager, Geomatics and Corridor Management Section, and

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that the applicant also deposit a reproducible copy of said plan with the Manager, Geomatics and Corridor Management Section;

- (c) That, subject to any required application to the Ontario Superior Court of Justice to permanently close the Subject Lands being approved:
  - (i) The City Solicitor be authorized and directed to prepare all necessary by-laws to permanently close and sell the alleyway, for enactment by Council;
  - (ii) The Real Estate Section of the Planning and Economic Development Department be authorized and directed to enter into any requisite easement agreements necessary to affect the orderly disposition of the Subject Lands and to proceed to sell the closed alleyway to the owners of 21 Colbourne Street, Hamilton, as described in Report PW19032, in accordance with the City of Hamilton Sale of Land Policy By-law 14-204;
  - (iii) The City Solicitor be authorized to complete the transfer of the Subject Lands to the owners of 21 Colbourne Street, Hamilton, pursuant to an Agreement of Purchase and Sale or Offer to Purchase as negotiated by the Real Estate Section of the Planning and Economic Development Department;
  - (iv) The City Solicitor be authorized and directed to register a certified copy of the by-laws permanently closing and selling the alleyway in the proper land registry office;
  - (v) The Public Works Department publish any required notice of the City's intention to pass the by-laws and/or permanently sell the closed alleyway pursuant to City of Hamilton Sale of Land Policy By-law 14-204;
- (d) That the applicant enters into agreements with any Public Utility requiring easement protection;
- (e) That the applicant enters into a private agreement with the owner of 218 MacNab Street North, Hamilton over the Northern portion of the Subject Lands, to allow this property owner unobstructed access to the rear of their property and that the applicant provide satisfactory evidence of the private agreement to the City Solicitor prior to the transfer of the Subject Lands.

## **EXECUTIVE SUMMARY**

On June 21, 2016, staff received an application from the owner of 21 Colbourne Street, Hamilton to close and purchase the portion of the alleyway that abuts the west portion of their property in order to extend the limits of their rear yard. The applicant advised staff

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that they were willing to provide a legal right of way over the northern portion of the alleyway to the owner of 218 MacNab Street North, Hamilton as this resident is the only other land owner who has historically been using the alleyway to access rear parking. There were no objections from any City Departments, Divisions, or Public Utilities. There were 2 objections received from land owners who do not directly abut the Subject Lands and are not negatively affected by this application. As the applicant is willing to enter in a private agreement with the owner of 218 MacNab Street North, Hamilton, and no other abutting land owners actively use the Subject Lands, staff are in support of the closure and sale to the owners of 21 Colbourne St, Hamilton.

**Alternatives for Consideration – See Page 5**

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

**Financial:** The applicant has paid the Council approved user fee of \$4,367.00. The Subject Lands will be sold to the owners of 21 Colbourne Street, Hamilton as determined by the Real Estate Section of the Planning and Economic Development Department, in accordance with the City of Hamilton Sale of Land Policy By-law 14-204.

**Staffing:** An agreement to purchase the Subject Lands will be negotiated by the Real Estate Section of the Planning and Economic Development Department.

**Legal:** Subject to any required application to the Ontario Superior Court of Justice to permanently close the Subject Lands being approved, the City Solicitor will prepare all necessary by-laws to permanently close and sell the Subject Lands and will register such by-laws in the Land Registry Office once Council has approved the by-law. The by-law does not take effect until the certified copy of the by-law is registered in the proper land registry office. The City Solicitor will complete the transfer of the Subject Lands to the owners of 21 Colbourne Street, Hamilton, pursuant to an agreement negotiated by the Real Estate Section of the Planning and Economic Development Department.

**HISTORICAL BACKGROUND**

The Subject Lands were created by Registered Plan 104. The alleyway is L-shaped with a North/South and East/West Leg. In 2017, Council approves report PW17040 authorizing the closure and sale of the Southern most portion of the North/South leg of the alleyway. This legally separates the North/South leg from the East/West Leg. On June 21, 2016, staff received an application from the owner of 21 Colbourne Street, Hamilton to close and purchase the portion of the alleyway that abuts the west portion of their property in order to extend the limits of their rear yard. The applicant advised staff that they were willing to provide a legal right of way over the northern portion of the

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alleyway to the owner of 218 MacNab Street North, Hamilton as this resident is the only other land owner who has historically been using the alleyway to access rear parking. There were no objections from any City Departments, Divisions, or Public Utilities. There were 2 objections received from land owners who do not directly abut the Subject Lands and are not negatively affected by this application. Staff are in support of the closure and sale to the owners of 21 Colbourne St, Hamilton.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

The closure of the Subject Lands will be subject to any application required by the City. In addition, a by-law must be passed to permanently close the Subject Lands in accordance with the *Municipal Act, 2001*.

## **RELEVANT CONSULTATION**

The following public utilities, City departments and divisions were provided with a copy of the application and were invited to provide comments:

- Planning and Economic Development Department: Development Engineering, Building, Economic Development, Real Estate, and Planning
- Public Works Department: Engineering Services, Hamilton Water, Operations, Environmental Services, and Transportation
- Hamilton Emergency Services
- Corporate Services Department: Budgets and Finance
- Mayor and Ward Councillor
- Bell, Horizon Utilities/Alectra Utilities, Hydro One, and Union Gas

There were no objections received from any public utilities, City departments and divisions.

Bell has advised that they will require easement protection.

Notice of the proposal was sent to all abutting property owners of the Subject Lands, as shown on Appendix "B", for comment. In this instance, there were 120 notices mailed, and the results are as follows:

In favour: 2

Opposed: 2

No comment:0

Neither of the opposed owners abut the subject lands. Their properties are not negatively affected by this application.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)**

As there were no objections received from any City Departments, Divisions, or Public Utilities, and no objections received from abutting land owners, staff support the closure and sale of the Subject Lands to the owners of 21 Colbourne Street, Hamilton.

## **ALTERNATIVES FOR CONSIDERATION**

The City could deny this application and the lands would remain public unassumed alleyway.

## **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

### **Built Environment and Infrastructure**

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

## **APPENDICES AND SCHEDULES ATTACHED**

Appendix A: Aerial Drawing

Appendix B: Location Plan