

Agenda

Date: June 3, 2021

Time: 7:20 PM

Location: via Zoom Video Conference

Members Present:

Prior to the scheduled open Meeting of the Wellness Centre & Pool Committee, the Committee will move to a meeting closed to the public per the following:

Resolution:

That pursuant to Section 239(2) of the Municipal Act, R.S.O. 2001, Chapter 25, as amended, the Wellness Centre & Pool Committee will move to a meeting closed to the public in order to address matters pertaining to:

c) a proposed or pending acquisition or disposition of land for municipal or local board purposes; **(YMCA Property Negotiations Update)**

h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them **(ICIP funding application)**

1. Agenda:

1.1 Approve Minutes

That minutes of the April 8th, 2021 and May 10th, 2021 WCPC Meetings are hereby approved as circulated.

1.2 Additions to Agenda

1.3 Approval of Agenda

That the Agenda for the June 3rd, 2021 WCPC Meeting is hereby approved as circulated.

1.4 Declaration of Pecuniary Interest

2. New Business

2.1 Critical Next Steps

Recommendation:

- A. That the WCPC supports the need for a Construction Project Manager;
- B. That the Steering Committee finalize the job description and RFP document and report back to the WCPC/MSB prior to issuing the RFP;

- C. That the WCPC supports the Town providing secretariat, finance and administrative support to the WCPC/MSB on a cost recovery basis; and
- D. That the Steering Committee develop a plan for the partners to advance their respective share of the capital funding to the MSB for cashflow purposes.

2.2 Partnership Agreement Update

Recommendation

- A. That the partnership agreement be clarified to ensure that assets, including land and/or lease land can be owned by the Municipal Services Board (MSB);
- B. That an independent non-voting chair be added to the MSB to provide for continuity as the WCPC transitions to the MSB;
- C. That decisions with respect to the necessity, term and selection of the chair be made by consensus; and
- D. That an arbitration clause, like the clause included in the following report, subject to legal review be included in the partnership agreement.

Adjournment

Wellness Centre Pool Committee Report & Recommendation

Meeting Date: June 3, 2021

Open or Closed: Open

Report Title: Critical Next Steps

Submitted by: Steering Committee

Purpose of Report: To advise the Committee of the critical next steps in moving the project forward.

Recommendation:

1. That the WCPC supports the need for a Construction Project Manager;
2. That the Steering Committee finalize the job description and RFP document and report back to the WCPC/MSB prior to issuing the RFP;
3. That the WCPC supports the Town providing secretariat, finance and administrative support to the WCPC/MSB on a cost recovery basis; and
4. That the Steering Committee develop a plan for the partners to advance their respective share of the capital funding to the MSB for cashflow purposes.

Background: The Recreation and Culture project is a large project with a capital budget of approximately \$32m. At the April 8, 2021 WCPC meeting staff were directed to identify critical next steps to continue to move the project forward.

The more immediate steps are as follows:

1. Confirm partnership participation;
2. Finalize amendments to the partnership agreement;
3. Secure the recommended site;
4. Establish the Municipal Services Board (MSB), including board appointments;
5. Administrative, financial and secretariat resources to support the MSB;
6. Communications in anticipation of a positive grant announcement;
7. Retain Construction Project Manager; and
8. Construction financing.

The steps outlined above will begin the process of creating the corporate governance, reporting structure and oversight necessary for the construction and operation of the recreation and culture centre. The list is by no means exhaustive. Each of the steps are discussed in more detail in the following paragraphs.

1. Confirm Partnership Participation

On October 22, 2020, the WCPC made a series of recommendations, with the objective that the recommendations would be endorsed by the partner municipalities. To move the project forward, a critical next step is to obtain approval from those municipalities that have not endorsed the WCPC recommendations. It is anticipated that it will be necessary to revisit those

Wellness Centre Pool Committee Report & Recommendation

municipalities that have approved the recommendations, as some changes to the partnership agreement will be required.

2. Finalize Amendments to the Partnership Agreement

Changes to the partnership agreement are discussed in a separate report on this agenda.

3. Secure the Recommended Site

This is a property matter and is discussed in a separate report on the Closed agenda.

4. Establish the Municipal Services Board (MSB), including Board Appointments

The MSB is the corporate entity that will execute agreements with the funding agencies and have responsibility for the construction and operation of the facility. For the MSB to be created and operational the partner participation must be confirmed, the partnership agreement finalized, and appointments made to the MSB.

5. Secretariat, Financial and Administrative Resources to Support the MSB

It's not expected that the MSB will have employees. Like the WCPC, the MSB will be supported by the Steering Committee. The YMCA will also be providing support through the operating agreement, once the facility is open. The operating agreement is currently outstanding.

The recreation and culture centre is a large complex project that will be constructed over a 4-year period. Although it is recommended that a project manager be retained, there is also a need for support services related to administration, secretariat services and finance prior to opening. For continuity and coordination, it is recommended that support be provided, primarily by one municipality. The Steering Committee supports these services being provided by the Town on a cost recovery basis until the facility is open, at which time the need can be re-evaluated. These costs are not eligible project costs.

6. Communications in Anticipation of a Positive Grant Announcement

In anticipation of a public announcement, Chair Sanderson has had communications support from Jim Hanna. As the lead applicant, a quote from Mayor McGarvey has been prepared on behalf of all partners.

7. Retain a Construction Project Manager

Wellness Centre Pool Committee Report & Recommendation

The Steering Committee is recommending the development of a Facility Construction Project Manager Job description and the preparation of a request for proposals for this service. In anticipation of final design and construction, it is prudent to be prepared for these activities, so the project is ready to move to these next stages.

The Project Manager will report to the Steering Committee and provide updates and recommendations to the WCPC/Municipal Services Board, the Project Manager is being recommended to provide oversight on project execution from the current status of program design through to closure while managing the project benefits on behalf of the WCPC / Municipal Services Board. The Project Manager will ensure the project's objectives are met and actively manage various stakeholder groups while leading and developing the planning process, budgets, schedule and organizing the project from planning to successful delivery.

The Construction Project Manager will provide expert guidance and oversight on the scope, cost, schedule, quality, risk, and communications of the project through design, construction, commissioning, and validation including occupancy. One of the first tasks will be to support and advise on the appropriate approach to the construction of the facility, design/tender, or design/build. Each approach has its unique considerations.

The position will be accountable to the Steering Committee on day-to-day activities and will support the Steering Committee when providing updates and recommendations to the WCPC/Municipal Services Board.

8. Construction Financing

If the full amount of the grant is approved, 73.3% of the project funding will be provided through ICIP. The receipt of progress payments from ICIP may not always coincide with supplier due dates. The MSB has no internal financing capability and under the Partnership Agreement the MSB can not borrow funds externally. Therefore, the Steering Committee recommends that the partners develop a plan to advance their respective share of the capital funding to the MSB, with the objective that the MSB will use the funds for cash flow purposes.

Financial Impact:

There is no direct cost associated with approving the recommendations in this report.

Wellness Centre Pool Committee Report & Recommendation

Meeting Date: June 3, 2021

Open or Closed: Open

Report Title: Partnership Agreement Update

Submitted by: Steering Committee

Purpose of Report: To recommend changes to the partnership agreement resulting from Steering Committee discussions.

Recommendation:

1. That the partnership agreement be clarified to ensure that assets, including land and/or lease land can be owned by the Municipal Services Board (MSB);
2. That an independent non-voting chair be added to the MSB to provide for continuity as the WCPC transitions to the MSB;
3. That decisions with respect to the necessity, term and selection of the chair be made by consensus; and
4. That an arbitration clause, like the clause included in the following report, subject to legal review be included in the partnership agreement.

Background:

The above changes are recommended as a result of ongoing discussions by the Steering Committee. Factors behind the recommendations that were considered include:

1. The partners desire to own the lands and it is important that the agreement clearly allows for that possibility as well as the ownership of other assets such as the facility itself. The Transfer Payment Agreement that will be entered into with the Provincial and Federal governments must be with the organization that owns the assets;
2. A non-political, non-voting chair brings value in terms of continuity and stability. This is particularly important at such an early stage of this large project. It is recommended that decisions with respect to the chair be made on a consensus basis;
3. An arbitration clause provides some protection for partners. With respect to the arbitration clause please refer to Paragraphs 16 and 17 below, which is subject to a legal review and will be added to the Partnership Agreement, if approved.

Contributions

16. Any financial contributions for new projects of the Board not contemplated and not set out in this Agreement that may include but not limited to adding, expanding, or altering the Centre or changing, modifying and/or altering the services (collectively referred to as "**New Projects**") provided by the Board shall be subject to the written

Wellness Centre Pool Committee Report & Recommendation

approval of the Municipalities. A Municipality may choose to not participate in any New Projects of the Board if they exceed an aggregate cost of One Million Dollars (\$1,000,000.00).

Arbitration

19. In the event that the Board is unable to settle the dispute put forward by any one or more of the Municipalities under paragraph 16 of this agreement, the Municipalities agree that an arbitration governed by the *Arbitration Act*, S.O. 1991, c.17 and subject to the following:

- a. The Municipalities may jointly appoint a single arbitrator on or after the day the arbitration is commenced;
- b. If the Municipalities are entitled to appoint an arbitrator jointly but have not done so, the Ontario Superior Court of Justice may make the appointment on any Municipality's application under section 10 of the *Arbitration Act, 1991*, S.O. 1991, c. 17;
- c. The arbitrator shall make a final award that disposes of the issue within four (4) months after being appointed;
- d. The Municipalities agree not to seek an order from the court to extend the date by which the arbitrator shall make his award, despite section 39 of the *Arbitration Act, 1991*, S.O. 1991, c. 17. However, this date may be extended by mutual agreement between the Municipalities in writing;
- e. The final award may be effective with respect to a period before it is made and, in that case, shall provide for a monetary reconciliation among the Municipalities, if warranted in the circumstances;
- f. A Municipality may appeal the final award of the arbitrator to the Ontario Superior Court of Justice only on a question of law, with leave, which the court shall grant only if it is satisfied that the conditions in sections 45 (1) (a) and (b) of the *Arbitration Act, 1991*, S.O. 1991, c. 17 are met. No appeal lies on a question of fact or of mixed law and fact;
- g. At any time during the arbitration, the Municipalities may enter into an agreement that includes an agreement resolving the dispute in its entirety and apportioning any costs that form all or part of the subject matter of the arbitration among the Municipality, in which case the arbitration shall immediately terminate;

Wellness Centre Pool Committee Report & Recommendation

- h. The Municipalities may, at any time, amend the final award of the arbitration by an agreement or replace the award with an agreement with the consent of all of the Municipalities. Any such amendment shall be in writing;
- i. The Parties shall each bear their own costs in connection with this arbitration process.

Other Changes

Additional changes will be required as the level of participation of the partners is finalized.

Financial Impact

Legal costs associated with documentation, agreements, etc.