

Greater Sudbury Event Centre Project Update

Presented To:	City Council
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Recommended by:	Chief Administrative Officer

Report Summary

This report provides an update on the work to wind down the current Event Centre project and describes the anticipated next steps in this process as well as some options for Council's future consideration.

Resolution

Recommendation 1:

That the City of Greater Sudbury authorizes the reconsideration of motion CC2021-227, passed at the City Council meeting of July 14, 2021.

Recommendation 2:

That the City of Greater Sudbury rescinds motion CC2021-227, titled "Greater Sudbury Event Centre Next Steps," from the meeting of City Council on July 14, 2021, and directs staff to prepare the appropriate by-law amendments.

Recommendation 3:

That staff be directed to cancel or terminate all contracts and obligations associated with the Greater Sudbury Event Centre Project in an efficient manner, except that cancellation of the following items be paused until July 31, 2023:

- a) The Progressive Design Build RFP for Event Centre construction, and
- b) The Venue Manager RFP.

Recommendation 4:

That staff be directed to produce a background report, by the end of Q2 2023, to update the building condition assessment and operational effectiveness analysis of the Sudbury Community Arena and provide a high-level summary of options for its replacement or renovation, including comparisons of facility size, amenities, and business approach with event centres in other Canadian Hockey League communities.

Relationship to the Strategic Plan, Health Impact Assessment and Community Energy & Emissions Plan (CEEP)

This report addresses the following strategic objectives outlined in the CGS Strategic Plan 2019-2027:

- Economic Capacity and Investment Readiness
- Asset Management and Service Excellence

From the perspective of the CEEP, the project respects the objective to minimize the production of greenhouse gases in the operation of new assets.

Financial Implications

Total project expenditures are anticipated to be \$5.2 million, of which \$3.76 million was identified in previously submitted reports and regularly available for public review on the city's website. As described in this report, the remaining \$1.44 million are costs required to close out this project, included in the total reported here, and will be funded from the Event Centre Project capital account, which contains sufficient funds to support the work.

With the premature end of the project, there are approximately \$84.8 million in unexpended funds. These funds can be redeployed to other Council-approved projects with a useful life equal to or exceeding the term of the debt, and subject to further City Council review and approval. In the interim, these funds will continue to be invested in short-term investment vehicles which are variable and at present are yielding returns greater than the cost of borrowing.

Background

At its July 14, 2021 meeting, City Council approved a direction regarding the next steps required for advancing the Event Centre project. This direction included specific decisions Council reserved for itself to assess the project's direction and, as work progressed, reaffirm that its intended outcomes would be met. On July 12, 2022, two of the decisions Council reserved were considered via recommended motions in a staff report. The motions were not approved.

Following the defeat of the July 12, 2022 motions, members of Council asked staff to explain the next steps regarding the Event Centre project. Staff indicated no new commitments to advance the project would be made, that the project would be treated as "paused" pending further direction from Council, and that staff would provide a report at the August 9, 2022 City Council meeting describing the actions taken to pause the work and recommending further direction.

Staff started the process of pausing the Event Centre project by closing off existing contracts and purchase orders with various contractors and consultants, and to remove any future obligations of the City to the Event Centre Project. Staff are not advancing any work or services on the Event Centre project.

As part of the work to wind up the current event centre project, staff recommend Council Resolution CC2021-227 from the July 14, 2021, Council meeting, as reproduced below, be reconsidered and rescinded.

"THAT staff proceed to advance the work required to develop the Event Centre without further delay in accordance with the existing, approved Cost Sharing Agreement, a project schedule that produces a facility which is ready for use in 2024, and regular progress reporting to City Council;

AND THAT the Executive Director of Communications, Strategic Initiatives and Citizen Service be delegated authority to negotiate, execute and subsequently amend or extend any agreements to produce the work required for delivering the Event Centre Project in 2024, subject to Council's approval of the following three decision points:

- a) Confirmation of the site preparation contract, including the commencement date established with the site development partners*
- b) Confirmation of the Venue Operator*
- c) Confirmation of final budget based on the result of the Design/Build Request for Proposals"*

During the deliberations in the July 12, 2022 meeting, a number of topics related to a future event centre were discussed. These included reassessing the current state of the Sudbury Community Arena and recognizing the potential for the next Council to consider a different event centre project. Based on these views, this report describes, wherever possible, no-cost, no-obligation options for Council's consideration. These should be considered in the context of additional Council directions in 2023 that would further refine/advance a particular option; otherwise, staff anticipate these options, at least as described here, would no longer be available.

Current Project Status and Related Windup Efforts

The following is an update on the status of the various activities that were ongoing prior to the July 12, 2022, Council meeting.

As noted below, the City has retained a number of professional services in support of the project and these firms have been notified of the intent to wind down the project. These firms are in the process of concluding their services for the City including providing a digital copy of all records, reports, and drawings. Some services must continue in the short term, such as assisting in the City's obligation for debriefing of proponents that were part of the recent procurement processes. Not all final invoices have been received. The costs for the project have been estimated and remain subject to adjustment based on final invoicing.

Storm Water Management and Intersection Improvements

The storm water management (SWM) design was being completed by J. L. Richards & Associates Limited (JLR) and was approximately 60% complete. JLR is no longer advancing the SWM design and JLR's services will be closed upon receipt of their final invoice.

The intersection improvements design was also being completed by JLR and the design was approximately 70% complete. JLR is no longer advancing the intersection improvement design and JLR's services will be closed upon receipt of their final invoice.

Both the services for the SWM and intersection improvements were part of the Comprehensive Cost Sharing agreement. As the cost for these services were shared, the Developer, and Gateway Casinos have rights to utilize this engineering work to continue the development.

Event Centre Procurement

Several aspects of the design and construction of the Event Centre were underway prior to July 12, 2022:

- A Compliance Team;
- A Procurement for a Progress Design-Build Request for Proposal; and
- A Fairness Monitor

The City retained Ian McKay Architect Inc (IMA) to provide a compliance team. IMA's services included subconsultants to support structural, mechanical, plumbing, electrical, security, audiovisual and acoustical aspects of the project. IMA, along with their subconsultants, assisted with the Progressive Design-Build (PDB) RFP. IMA participated in the RFP preparation, proposal submission evaluations and will assist with upcoming Proponent debriefs. IMA's services will conclude following the debriefing sessions.

As described in the Event Centre Update Report to Council on July 12, 2022, the PDB RFP closed on June 16, 2022. The City had completed the review of the two compliant Proposals with a preferred proponent being identified. The PDB RFP is a non-binding negotiated RFP. This means that the submission does not expire and there is no legal obligation for the City to award the Project.

Phase 2 of the PDB RFP was to negotiate an agreement with the preferred proponent and complete the

Design Development. If these negotiations do not produce an agreement that is satisfactory for the CGS the procurement can be cancelled, which represents another off-ramp. Given the time and cost to both the City and the proponents for the procurement to this point, staff recommend that the Event Centre PDB procurement remain open for a period of one year. Should Council decide within the next year to pursue the KED site, keeping the procurement open will save both time and money. Staff will not engage the preferred Proponent on any services unless directed by Council. There is no cost to the City if the Event Centre procurement remains open for a one-year period.

If there is no direction from Council, the procurement will be closed on July 31, 2023. No further action would be required from City Council.

The Fairness Monitor was retained by the City for the Event Centre procurement process. The Fairness Monitor indicated it is satisfied with the fairness of the process to date. It provided an initial report, which was shared with City Council on July 8 and is available on the City's website. A final report is expected following the conclusion of the procurement debriefs. Once the City is in receipt of the Fairness Monitor's final report, their services will no longer be required, and the purchase order will be closed.

Venue Operator

As directed by Council on May 10, 2022, the City started negotiations on a contract with a preferred Venue Operator proponent. These negotiations were in an early stage and are now stopped. The venue operator proposal submissions were non-binding, meaning that the submission does not expire and there is no legal obligation for the City to award the Project. Considering the time and cost to both the City and the proponents for the procurement, it is recommended that the Venue Operator procurement remain open. Should Council decide at a later date to pursue a similar event centre project, keeping the procurement open could save both time and money. The procurement will be closed by July 31, 2023, if there is no activity on the file. Staff will not engage the preferred Proponent on any services unless directed by Council and there is no cost to the City if the Venue Operator procurement remains open for a one-year period.

PricewaterhouseCoopers LLP (PwC) was retained by the City in an advisory role to assist with the Venue Management process. PwC's services will conclude following the proponent's debriefing.

Partnerships

The KED partners, which include Gateway, Genesis Hospitality, the Developer, and the City, were meeting on a weekly basis and were working on a number of items prior to July 12, 2022:

- the Project Completion Agreement (PCA);
- the Cost Sharing Agreements; and
- the Municipal Property Assessment Corporation (MPAC).

The KED partners had been meeting since January 2022 to work out the terms for the PCA and, as of July 12, 2022, were in the process of finalizing terms and conditions. The PCA was to be a decision point for Council and it would have been required before any other the other steps, such as site preparation, could have been finalized. The PCA negotiations have ended, as an agreement will not be required at this time.

There are three Cost Sharing Agreements between the partners for the Event Centre Project. One agreement addressed work that is complete, while another addresses work that will be complete subject to some final invoicing in July. The third agreement, the Comprehensive Cost Sharing Agreement, is ongoing as many of the costs identified above are still required to be invoiced to the partners. In addition, there are outstanding invoices to be issued from the partners to the City that have not yet been received for work previously completed. Upon issuing and receipt of outstanding invoices, the City will issue notice to terminate its involvement in the agreement.

The KED Partners had also been working with MPAC to obtain a preliminary assessment estimate for the KED development. This request has been cancelled, with no financial obligations accruing to any of the KED Partners.

Site Preparation

The site grading contract (ENG18-37) with Bot Construction & Engineering Ltd., (Bot) was terminated before the end of July. As reported to Council in the June 16, 2022, Event Centre Update, there was a negotiated settlement to compensate Bot for costs incurred, standby for labour and equipment, and other ongoing costs until such time that work could be secured, or the contract started. Since the contract no longer has a predicted start date, the contract was terminated. The total settlement is \$1,300,000, of which \$787,800 is the City's share. There are no future obligations for the City with the ENG18-37 Contract. Any future site preparation will require a new public tender.

The City retained JLR to provide contract administration and inspection services for the ENG18-37 contract. As part of their services, JLR completed a site survey and administered payments to Bot as part of the settlement. Cost for JLR's services for contract administration and inspection are part of the Comprehensive Cost Sharing Agreement. JLR is not proceeding with any services and the purchase order for JLR's services will be closed upon receipt of their final invoice.

Minnow Lake Restoration Group Lawsuit

The City was successful in the lawsuit filed by the Minnow Lake Restoration Group. The decision states:

"The application was entirely without merit. The impact was limited to more delay in a long-standing planning process and the cost to the City of Greater Sudbury in having to respond. If an argument is to be made that a process was flawed and the subject of bad faith, there should be some evidence that justifies the allegation. Costs are awarded to the City of Greater Sudbury in the amount \$37,000."

The court's award of costs totaling \$37,000 remains outstanding. Work to settle this outstanding obligation is underway.

City Land at the KED

On January 14, 2019, the City exercised an option for land at the Kingsway Entertainment District and was transferred ownership of the Event Centre land, the storm water management pond land, the road allowance, and an easement for parking, for a nominal fee. The land option agreement requires the City to transfer the land back to the Developer if the City does not commence development of the Event Centre within five years of exercising the option agreement.

As with the open RFP procurements, staff recommend that if there is no additional direction from Council, the City initiate a transfer of the land back to the Developer on July 31, 2023.

Costs to Date

The following table is a summary of costs to date as of June 30, 2022, for the Greater Sudbury Event Centre.

Expense	Total	City Share	Cost Shared By Others
Feasibility and business case, site evaluation	\$353,639	\$353,639	-
Integrated site design	\$595,988	\$258,680	\$337,308
Detailed site design, engineering, professional fees, external legal fees	\$4,173,429	\$2,942,266	\$1,231,163
Salaries	\$645,200	\$645,200	-
Basketball floor, related equipment	\$259,668	\$129,834	\$129,834
Total	\$6,027,923	\$4,329,618	\$1,698,305
Percentage of total \$100 million budget	-	4.33%	-

This summary includes invoices received as of June 30, 2022. There are some outstanding invoices for services as indicated in this report, and obligations to reimburse partners according to the cost sharing agreement. Staff that were assigned to the project will return to their home positions and their salary/benefit costs will no longer be charged to the project. Once all of these costs are accounted for, the estimated total costs to the CGS will be approximately \$5,200,000, which represents 5.2% of the original \$100 million budget.

Achievements of the Process to Date

Notwithstanding the project was stopped before its intended outcome was achieved, the Corporation's approach to this large project produced noteworthy, positive results that reflect innovation and effective risk management by Council and staff. Several initiatives and processes were introduced that should be recognized for their success and incorporated, as appropriate, into future project delivery and CGS. Here are a few high-level examples:

- Extensive public engagement, especially at the start of the project
- Innovative approaches to land acquisition and contract developments to ensure that the City's risks were minimized, and off-ramps developed to protect the public interest
- Dedicated project staff who could focus on advancing the work
- The development of cost sharing agreements which resulted in lower costs to all partners for a significant local development
- The collaboration with private partners, including a shared approach to legal proceedings and costs
- Our successful policies and project documentation, as demonstrated by results from several planning/legal challenges
- The level of Council engagement and ongoing public disclosure
- The development of an innovative Progressive Design Build process to construct the facility resulting in extensive knowledge and experience acquisition by CGS staff that can be applied in future projects

Considerations for a Future Event Centre

As stated earlier in this report, more than \$84 million, borrowed specifically to fund the construction of a new event centre, is expected to remain available for future investment in tangible capital assets. Prior to reassigning these funds, Council should further review options to address the documented need for a marquee spectator venue in Greater Sudbury.

The process which led to the current project at the KED, began with a discussion of the limitations of the Sudbury Community Arena, including concerns about the condition of the building, the fan experience, and the potential to renovate to meet current standards and business models for CHL facilities. From this point, previous Councils decided to focus on a new build facility and, eventually, on the specifications and location that staff have been pursuing over the past five years.

Over the past several weeks, public discussion has continued to put forward the same options that were identified previously, namely a newly built facility either downtown or in some other location, or some form of renovation of the current arena. The windup of the current project does not suggest the idea of an improved/replacement facility is being abandoned.

To this end, staff have made some no-cost, no-obligation recommendations regarding the RFPs related to the current project. These recommendations are not intended to perpetuate the current project but to keep some options open for Council's consideration in the future. At the same time, staff recommend that a background report be prepared to update the building condition assessment and analysis of the operational effectiveness of the Sudbury Community Arena and to consider general options and criteria for replacement or renovation. This work would be intentionally high-level in nature and any incidental costs for expert analysis will be covered through the regular operating budgets. A report on this effort will be presented to Council in Q2 2023.

Next Steps

Staff continue to wrap up the project in an efficient manner and will not advance any component of the Event Centre project unless further direction is provided by Council. Staff will report final project costs on the City's website by Q4 2022.

Should, as recommended, Council direct staff to undertake additional background work and reporting, this will be completed as described above.

Resources Cited

Council Report, "Event Centre Update" – July 12, 2022

- <https://pub-greatersudbury.escibemeetings.com/FileStream.ashx?DocumentId=47129>

Council Report, "Greater Sudbury Event Centre Next Steps" – July 14, 2021

- <https://pub-greatersudbury.escibemeetings.com/FileStream.ashx?DocumentId=40480>