



REPORT

Community Services, Programs & Initiatives

TO: Mayor and Members of Committee of the Whole

FROM: Emily Cowan

DATE: September 3, 2020

REPORT: CSP-46/2020

SUBJECT: Picton Marina Sub-Lease with considerations for Wellington Marina

EXECUTIVE SUMMARY:

The purpose of this report is to provide Council with detailed considerations of the draft sub-lease between Tenacity Capital and the County of Prince Edward.

Tenacity Capital submitted the only RFP proposal to operate the Picton and Wellington Marinas, which Council subsequently approved staff to commence negotiations.

In order to be in a position to open the Picton Marina in the Spring 2021, Tenacity Capital will be making significant investments and require a signed lease before incurring expenses related to the project.

Picton Marina and Harbour currently operate under Open Space zoning, Tenacity Capital have requested that the property be re-zoned to Tourism Commercial. Staff agree that the Picton Marina usage better suits this new zoning and will bring forward the rezoning to Council at a later date in 2020.

During the process of drafting and negotiating the sub-lease, the operations of Wellington Beach boat launch, Wellington Belleville Street boat launch and the Wellington Marina were being discussed by Council and staff due to a high volume of vehicle and trailer traffic and the associated health and safety and logistical issues. Therefore, Tenacity Capital have requested that Wellington Marina be included in the sub-lease only in requesting the first right of first refusal should there be an opportunity to operate the marina provided until the expiration of this initial 5-year lease. The current changeable situation of the Wellington boat launches makes it difficult to predict the future viability of the Wellington Marina, staff agrees that it should not be included in the lease except to provide first refusal to Tenacity Capital.

Details of the draft Picton Marina sub-lease include:

- Annual rent of \$1 with the right to renegotiate at second renewal of sub-lease
 - This figure was deemed fair due to what the County will save in terms of services provided to the Picton Marina including maintenance such as grass cutting, staffing, equipment maintenance, utilities, and the inability to successfully generate revenue;
- Satisfactory maintenance of equipment and capital assets, including a Maintenance Schedule;
- Appropriate insurance coverage and documentation in place;
- Initial 5-year sub-lease with the opportunity to renew, subject to successful adherence to the terms of the sub-lease and the ability to negotiate rental rate;
- Right of first refusal to operate the Wellington Marina on such terms as are agreeable to both the municipality and the Tenant, valid for the term of the initial sub-lease;

Staff recommends that Council approve this draft sub-lease to allow Tenacity Capital to operate the Picton Marina which will greatly reduce the financial and operational burden on the municipality while offering a family-friendly community space with the intention of improving the economic development of the area.

RECOMMENDATION:

1. **THAT** Council receive report CSP 46/2020 for information; and
2. **THAT** Council approve the draft sub-lease allowing Tenacity Capital to operate the Picton Marina and including the right of first refusal to operate the Wellington Marina should it become available during the initial 5-year term of the sub-lease.

ANALYSIS:

At the November 26, 2019 Council meeting, Tenacity Capital Founder and CEO, CJ Thompson, made a deputation to Council with a proposal to operate the Picton Marina as a public private partnership (P3). Council accepted the deputation and directed staff to provide potential options for the operation of municipally-owned marinas.

Staff provided recommendations in a report to the March 12, 2020 Committee of the Whole which included preparing and releasing an Expression of Interest for the operation of the Wellington and/or Picton Marinas and Harbours for an initial 10-year period with the opportunity to extend. Amended to remove the phrase "an initial", Council approved the recommendations as amended at the April 15, 2020 Council meeting.

Staff publicly issued a request for Expressions of Interest for the operation of Wellington and/or Picton Marinas, with a deadline of May 15, 2020 for receipt of

proposals. One proposal was received, and at the May 26, 2020 Council meeting this proposal was brought forward by staff with a recommendation to negotiate a sub-lease for the operation of the Picton and Wellington Marinas. In their proposal, Tenacity Capital intend to:

- stabilize and normalize marina hours of operation with experienced full-time staff thus maintaining and improving services provided at Picton Marina;
- improve existing building infrastructure and amenities;
- upgrade to the necessary amperage of ALL outlets providing the proper accommodations for today's modern vessels;
- explore the provision of boat storage to provide winter storage options;
- explore additional channels for crane services including the addition of essential emergency crane services, booms and skimmers for emergency clean-up;
- increase marine supplies available to reflect consumers' needs and wants;
- provide complimentary Wifi to marina customers and boaters.

Council approved the recommendation to enter into negotiations with Tenacity Capital for the operation of the Picton and Wellington marinas for a 5-year lease as per the tenants of their proposal.

Prince Edward County's leases with MNR

The County is currently bound by a lease with the Ministry of Natural Resources (MNR) for the Picton Marina and Harbour until 2033 and Wellington Marina and Harbour until 2041. The County may sub-lease these properties as long as MNR is informed of the lease details, the lease does not extend beyond the MNR lease terms and any buildings erected by a tenant or sub-tenant are subject to removal at the expiry of the 25-year leases.

Tenacity Capital Sub-lease details

The following is an overview of the contents of the lease:

- Rent
 - Staff have recommended a rent amount of \$1 per year for the operation of the Picton Marina property based on the following factors:
 - Historically, the marina has not been profitable under municipal operation - by receiving \$1 per year the municipality will be saving approximately \$30,000 to \$70,000 annually
 - The County will not need to staff, operate or maintain the property, nor provide any services such as grass cutting or boat

launch services and can therefore direct these resources to other priorities within the municipality

- Tenacity Capital will pay all utilities including municipal water, Wifi, Hydro and the purchase of fuel and provision of fuel and sewage pump-outs
- The Tenant will be required to provide 10% of their annual revenue to the MNR as part of the County's 25-year lease agreement with MNR
- Term and Possession
 - 5-year lease with the right to renew subject to the satisfaction of the municipality under the terms set out in the sub-lease and the ability to renegotiate sub-lease rental rates
 - Should the sub-lease be extended, it shall be in 5-year increments until the expiration of the associated municipal lease with MNR
 - Sub-lease is subject to the terms of the municipal lease held with the MNR
- Use
 - Confined to use as a commercial tourism location and operating marina, unless expressly consented to by the municipality
- Repair and Maintenance
 - Municipality must be informed of defects and be aware of the condition of their equipment and capital assets
 - Capital assets and equipment must be inspected annually and at expiration or sub-lease term by municipal staff, tenant must adhere to maintenance and repair schedule provided as a schedule to the sub-lease
 - Capital assets remain the responsibility of the municipality
- Insurance
 - Insurance coverage as specified by the municipality's insurance provider for the marina operations, the housing of fuel tanks and \$5 million general liability.
 - Environmental Impairment Liability Insurance to be acquired by tenant
 - Covenants to keep the municipality indemnified against all claims and demands
 - Sufficient Premises coverage for Tenacity Capitals' contents, equipment and improvements made to the location

- Wellington Marina - see below
- Termination upon Notice at End of Term
 - 90 days termination upon written notice by either party, or within 90 days of the term of the agreement.
 - Sub-lease must be renewed prior to termination date in order to analyze the condition of equipment, property and capital assets before renewal.
- Rules and Regulations
 - To abide by such reasonable rules and regulations that form the sub-lease and as the municipality may make from time to time
- Notice
- Interpretation

Rezoning Picton Marina and Harbour

The Marina Site is currently zoned Open Space in the Comprehensive Zoning By-law and designated Park & Open Space in the Picton Urban Centre Secondary Plan.

Planning Staff have reviewed the marina proposal and confirmed that it meets the intent of the policies outlined for the Picton Harbour Policy Area in the Picton Urban Centre Secondary Plan. In order to proceed the Marina Site will need to be rezoned and re-designated to a zone and an official plan designation which aligns with the proposal and the policies of the Picton Harbour Policy Area.

A staff initiated rezoning and re-designation would be the most appropriate way to ensure that the Marina Site has the proper planning designations. The Rezoning and Official Plan Amendment will be brought forward to a Planning Committee Meeting in the fall of 2020 as part of an annual housekeeping amendment

Wellington Marina

Tenacity Capital, although originally proposing to operate only the Picton Marina, had agreed during negotiations to also include the Wellington Marina operations in the sub-lease. However, as negotiations continued, the future of the Wellington Beach and Wellington Belleville Street boat launch were being deliberated by Council. Due to the unpredictable situation of the Wellington Marina, Tenacity Capital have requested a sub-lease to operate the Picton Marina property which includes the right of first refusal to operate the Wellington Marina and when its future is decided by Council.

OTHER OPTIONS CONSIDERED:

An alternative approach would be that Council could request a change to one or more lease term and, if agreed by the Tenant, the sub-lease would therefore be approved by Council.

CONSULTATION TO DATE:

CJ Thompson - Tenacity Capital, CEO and founder

Jeremiah McKenzie - Tenacity Capital

Jody Johns - Client Service Manager, BFL Canada (Municipality's Insurance Providers)

Rolf Renz - Templeman LLP

Amanda Carter, Director of Finance

Tanya Delany, Environmental Services and Sustainability Supervisor

James Griffin, Planner

FINANCIAL CONSIDERATIONS:

Staff is recommending an annual rent of \$1 for the operation of the Picton Marina for the first 5 years of operation and first subsequent sub-lease renewal (10 years in total). This is due to the amount of savings the municipality will experience when operations are no longer the responsibility of the municipality.

	2016	2017	2018	2019
PICTON MARINA	-4,139	23,291	-65,621	-34,968
PICTON HARBOUR	-3,659	-9,858	-5,828	-5,490
TOTAL	-7,798	-33,149	-71,449	-40,458

Also, Tenacity Capital will be investing in and significantly developing the marina property and their adjacent property as a family friendly, community-centered marina with a view to increasing the economic development opportunities of the property and surrounding area. The Tenants will also be required to submit 10% of their revenue annually to the MNR as per the current Head Lease.

RISKS:

RISK DESCRIPTION	RISK TYPE	PROPOSED MITIGATION
Municipal Property operated by a third party - complaints by users/residents.	Public/Stakeholder	Monitor service levels and respond to complaints. Dealing with complaints is outlined in the lease as an important factor in the P3 relationship and in terms of possible sub-lease renewal.
Improper care of equipment and capital assets	Financial	The sub-lease allows for annual inspection of all equipment and capital assets and 24-hour notice for municipal staff to visit the site. The sub-lease also outlines training and third-party inspections on specific assets at the Picton Marina

CORPORATE STRATEGIC PRIORITY ALIGNMENT:

1. **Financial Sustainability** - Ensuring financial sustainability with a financial plan and reserves that all us to achieve our financial objectives;

By operating the Picton Marina and Harbour through a third party, the municipality can divert the funds used to operate it to other services.

ATTACHMENTS:

1. Draft Sub-lease and related schedules
2. MNR Beach Agreement Picton Marina and Harbour

Authorizing signatures:

Prepared by: Emily Cowan
Community Programs Supervisor

August 24, 2020

Reviewed by:



Todd Davis
Director of Community Services, Programs and Initiatives

August 24, 2020



CAO Approval: Marcia Wallace
Chief Administrative Officer

August 25 2020