REPORT

Community Services, Programs & Initiatives

TO: **Mayor and Members of Council**

FROM: **Emily Cowan**

DATE: **September 22, 2020**

REPORT: **CSP-50/2020**

SUBJECT: **Supplemental report to Council regarding updates to Picton Marina draft sublease with Tenacity Capital**

EXECUTIVE SUMMARY:

The purpose of this report is to provide Council with detailed considerations of the updated draft sublease in response to suggested changes discussed at Committee of the Whole.

The draft sublease approved by Committee of the Whole on September 4, 2020 now includes updates as proposed by Council. The following changes have been made to the sublease regarding the following:

Capital Assets

- Landlord responsibilities
- Tenant responsibilities
- Map of Capital assets

Public Access and Green Space

- Servicing travelling public and meaningful public access
- Green space provisions in consultation with Quinte Conservation Authority

Docks and slips

- Tenant's responsibility for obtaining the required permits or authorizations and compliance with Quinte Conservation Authority, Ministry of Natural Resources and Forestry and Municipal Bylaws

Location

- Legal descriptions of Picton Marina property and Ministry of Natural Resources and Forestry water lots included in the sublease
- Head lease map of designated Plan and Field Notes allocation of Picton Beach Management Agreement indicating Part 1 and Part 2 water lots as the only water lots included in the sublease

Wellington

- Reference to Wellington Marina property removed from sublease

RECOMMENDATION:

1. **THAT** Council receive report CSP 50/2020 for information; and

2. **THAT** Council approve the draft sub-lease allowing Tenacity Capital to operate the Picton Marina; and

3. **THAT** Council permit staff to enter into conversations with Tenacity Capital should Wellington Marina become available to sublet to a third party.

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.

Council subsequently approved recommendations from staff to issue an Expression of Interest for the operation of Picton Marina operations. Tenacity Capital submitted the only proposal, and at the May 26, 2020 Council meeting staff recommended entering into negotiations with Tenacity Capital. Council approved the recommendations to enter into negotiations for a 5-year lease as per the tenants of Tenacity Capital's original proposal.

On September 4, 2020 staff submitted the draft sublease to Committee of the Whole. Council brought forward several concerns related to details within the sublease and the recommendations of the report were passed provided that the issues raised were addressed by staff before the subsequent Council meeting.

The updated draft sublease is attached in "red-line format" to highlight changes, additions and omissions to the agreement. The changes made to the sublease are as follows:

Capital Assets

- Tenant maintains all capital assets at their own cost

- Landlord inspects equipment and capital assets annually (although, with notice, municipal staff may enter the property at mutually agreed upon times throughout the year)
- Any upgrade or modification of capital assets must be approved by the Landlord in writing
- Landlord is responsible for repair and replacement of age-related, general wear and tear of capital assets on the Premises

Public Access and Green Space

- Tenant to adhere to the spirit of the original Expression of Interest regarding public access
- Tenant to operate the property in consultation with Quinte Conservation Authority to ensure public access to the shoreline is optimized and enhanced with pedestrian amenities that reflect the vibrancy of the waterfront while respecting the natural habitat through lighting, seating, signage, and environmental preservation measures as guided and governed by Quinte Conservation Authority.

Docks and slips

- The Tenant acknowledges and agrees that the Landlord's execution of this Lease does not constitute a permit or authorization for any use, building, structure, or appurtenance pursuant to the Conservation Authority Act, the Public Lands Act, the Navigable Water Protection Act, Fisheries Act nor any other applicable legislation or regulations. *This includes any infrastructure temporary or permanent placed within the Picton Harbour water lots included in this lease*. The Tenant has the sole responsibility for obtaining the required permits or authorizations and for compliance with same.

Wellington

- Wellington Marina property removed entirely from sublease
- Recommendation added to enter into conversation with Tenacity Capital should the Wellington Marina become available for operation by a third party

Further changes to the sublease include replacing location details with municipally acceptable legal descriptions including the specific water lots.

Location

1. Picton Marina Property 1 Head Street, Picton, Ontario K0K 2T0. Legal Description: Plan 24 pt lots 1025 & 1076, RP 47R2099 Part of Part 1, RP 47R5921 Part 1

2. The part water lots as described in the Head Lease as it pertains to this sublease: **Part 1** and **Part 2 only** as designated on a Plan and Field Notes of Water Lot Location CL 2654, on record in the Ministry of Natural Resources at Peterborough, a copy of which plan and field notes is attached to and forms part of this agreement.

With these changes, staff recommends finalizing the sublease and entering into a sublease with Tenacity Capital for 5 years plus one renewal of 5 years at $1 per year. At renewal thereafter, rental rates will be negotiated between the Landlord and Tenant.

CONSULTATION TO DATE:

For the purposes of the supplemental report, the following were consulted:

CJ Thompson - Tenacity Capital, CEO and founder

Jeremiah McKenzie - Tenacity Capital

Elizabeth Lowe - Planning and Regulations Technician, Quinte Conservation Authority

FINANCIAL CONSIDERATIONS:

There is no financial impact related to the recommendations of this report, the financial considerations of the original report are below:

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. As per the head lease between the municipality and the MNR, the 10% of gross revenue is derived from the revenues less expenditures related to the operation of the property.

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. Attachment 1 - Draft Sublease updated using "redline formatting"
2. Attachment 2 - Capital Asset Map
3. Attachment 3 - Maps of Water Lots included in sublease
4. Attachment 4 - Picton Marina Parcel
5. Attachment 5 - Beach Management Agreement

Authorizing signatures:

Prepared by:	Emily Cowan Community Programs Supervisor	September 11, 2020
Reviewed by:	Todd Davis Director of Community Services, Programs and Initiatives	September 14, 2020
CAO Approval:	Marcia Wallace Chief Administrative Officer	September 14, 2020