



**COMMITTEE OF THE WHOLE  
AGENDA REPORT**

**TO:** Mayor Furniss and Members of Council

**MEETING DATE:** April 21, 2015

**SUBJECT:** Bala Falls Working Committee Report 2

<b><u>RECOMMENDATION:</u></b>	<p>That the attached Working Committee minutes from the March 26<sup>th</sup>, April 8<sup>th</sup> and April 13<sup>th</sup> meetings be received;</p> <p>That the attached Resolution be approved; and</p> <p>That the Committee of the Whole recommends to Council that the Township proceed with Option _____.</p>	
<b><u>APPROVALS:</u></b>	Date	Signature
Submitted By:	Clayton Harris, Interim CAO On behalf of the Working Committee	April 17/15 <u>Original signed by C.Harris</u>

**ORIGIN:** At the December 16, 2014 Committee of the Whole, the Township received a number of requests from various individuals and organizations with respect the proposed Bala Falls Hydro Project. One of the requests was from SREL to establish a Working Committee. A Working Committee was subsequently created and it reports to the Committee of the Whole.

**BACKGROUND:** This is the second report and resolution from the Working Committee. The report and the attached Resolution is the result of discussions that were held over three (3) meetings, March 26<sup>th</sup>, April 8<sup>th</sup> and April 13<sup>th</sup>. All Committee members were present for all meetings. A copy of the approved minutes from each of these meetings is attached for your information.

SREL has stated that they have all federal, provincial and municipal permits to commence construction, with the exception of final approval from the MNRF under the Lakes and Rivers Act (LRIA). SREL has also stated that they have sufficient space on Crown lands it currently has in order to complete the project; however SREL had approached the Township regarding the temporary leasing of three (3) parcels of land for construction staging.

### Considerations When Assessing the Offers

In considering the offer from SREL to lease three (3) parcels of Township lands the Working Committee was mindful of the impact on Margaret Burgess Park (Crown property), the impact on parking in the community during construction, that the Township lands are within the Heritage District, that Heritage Designations are in place on two (2) of the three (3) parcels, the historic use of Portage Landing by the Wahta, the need for the municipality to be indemnified and the restoration of any leased lands at the end of construction staging.

The Committee also considered the appropriateness of the lease amount for the temporary use of Township lands. Many of the considerations of leasing or not leasing Township lands are intangible and therefore very difficult to quantify. The Committee was also cognisant of SREL's stated position that they have sufficient space on Crown lands to undertake the project.

### Working Committee Process

On the assumption that the project proceeds, the Working Committee wanted to understand the implications and the benefits if the Township lands are utilized for construction staging and what amount of compensation for the use of Township lands would be appropriate.

The Committee recognized that the Township lands being requested were in a Heritage District. The designation of the Heritage District is currently under appeal to the OMB. In addition, two (2) of the parcels of land requested currently have a heritage Designation. The Committee invited the Township's Director of Planning to attend a Working Committee meeting to review the implications of using the lands for construction staging.

The Portage Landing on the Moon River site is designated as being of cultural heritage value or interest under Part IV of the Ontario Heritage Act, with By-law 2013-52 being passed in April 2013. It is also located in the proposed Bala Heritage Conservation District which is currently under appeal to the Ontario Municipal Board. Under the Heritage Act, alterations to designated property are not permitted if the alteration is likely to affect the property's heritage attributes, as set out in the designating By-law. In this case, these include a flat rock launching area into the water, flat areas and a beach covered in stone, presence of trees, grasses, wildflowers and other vegetation, natural geography and unobstructed shorelines, amongst other attributes. Alterations are only permitted where the owner applies to Council and consent in writing is received. Council can, after consultation with its municipal heritage committee, if one is established, either consent to the application, consent on terms and conditions, or refuse the application. As owners of the property, if Council were to enter into a lease or grant permission in writing to utilize and alter the site as agreed upon, it would appear to meet the criteria to address compliance with the Heritage Designation By-law.

The portion of the Shield Parking lot that is leased from the MNRF by the Township is not designated or subject to the provisions of the Heritage Act. The portion of the parking lot that is owned by the Township is a designated property and part of the Heritage District. The Committee was advised that the temporary use of the Township owned portion of the parking lot for construction staging

would not conflict with the heritage designation. However to ensure that there continues to be parking for the community during construction SREL was asked to exclude the Township portion of the Shield parking lot from its request. The Township portion is approximately 50% of the parking lot.

The Portage landing Parking lot is within the Heritage District, however it is not designated. To provide for parking during the tourist season SREL was requested to only lease the parking lot from late fall to early spring.

All lands within 25 feet of a navigable waterway in an Urban Centre designation of the Official Plan are subject to the Site Alteration (2008-56) and Tree Preservation (2008-55) By-laws. These By-laws prohibit site alteration and tree removal within these areas, but are subject to a number of exemptions. Exemptions include activities or matters undertaken by the Township or a local board, or with the permission of the Township on lands owned or controlled by it.

Concern has also been expressed by Council and the community with respect to damage that would be done to Margaret Burgess Park if it is used for construction staging. On March 13<sup>th</sup> Council passed a resolution, copy attached, requesting information from the Province concerning the leasing of Margaret Burgess Park. In response to the March 13<sup>th</sup> Resolution a letter was received from the MNRF on March 26<sup>th</sup>. A copy of the letter is attached. The letter refers to the types of uses that would be permitted in Margaret Burgess Park and the implications of using the Park for construction staging. Uses include “construction staging, storage of materials, clearing trees to accommodate for access and staging, constructing a temporary access road, temporary placement of settlement tanks, etc. The letter indicates that it is not known at this time to what degree the Park will be required as a construction staging area as MNRF is currently in the process of completing the review of the plans. As a follow-up to the letter, the MNRF confirmed that the Environmental Assessment (EA) identified Margaret Burgess Park as available to SREL throughout construction.

The MNRF states in the letter that they understand that some trees may need to be removed to allow for the movement of vehicles and the placement and removal of equipment and materials in order to reasonably utilize the location. The also indicate that some fill material may be needed for an access road to the bridge over the river. SREL will be required to ensure the ground/soil within the Park is not significantly disturbed.

As noted above, much of the benefits of leasing or not leasing Township lands for a two (2) year period are intangible and difficult to quantify. The following factors were taken into account when considering values:

1. Length of the lease;
2. Was there a cost to the Township of acquiring the property;
3. Is there lost revenue to the Township if the property is leased;
4. Are there opportunities to improve access and usage of the site;
5. Does leasing the lands for 2 years limit other opportunities;
6. Are there competing opportunities to lease the lands;
7. What have other municipalities received; and
8. Does the proponent have alternative locations for construction staging?

The Committee was advised that the Portage Landing parking lot was recently acquired for \$160,000. The other two (2) parcels were acquired at little or no cost to the Township. For this parcel a 5% rate of return equates to approximately \$4,500 per year for the period October to April.

A hydroelectric facility was proposed in Port Sydney. It was reported that the municipality would receive 1% of the project's annual electricity sales in return for a municipal support resolution. Although a useful reference point there are some differences from the proposed Bala project. The proposed Port Sydney project did not have provincial approval and would benefit from a municipal support resolution. We also understand the project is a smaller scale and the proponent is no longer proceeding with the project.

#### SREL's Original Offer

SREL first approached the Township concerning the use of Township lands through an email to the former CAO on October 3, 2013. The Township denied SREL's request for the closed meeting. SREL delegated at the council meeting on October 18th and again offered to discuss the details of the proposal, but council chose not to discuss the matters.

SREL advised that it had conducted a digital survey to gather input from the public on the design of the facility in January 2014. A question was added to this survey asking people if they would prefer SREL use the Park or the Township lands included in the offer. The results of that survey indicated that 79% of respondents preferred the use of the Township lands over the park lands.

SREL delegated at the April 17, 2014 council meeting. During this delegation SREL outlined which parcels of land would be included in the lease and that the lease would eliminate the need to use the Park for construction. At that time SREL presented the results of the survey referred to above. It was at this time that SREL first offered a fee of \$100,000 for use of the lands. On April 25, 2014, SREL formalized the April 17th offer in a letter to the Township's former CAO.

At the May 2, 2014 council meeting a staff report outlined the offer and recommended that the lease be subject to a "negotiated process" and should be "vetted through legal counsel".

#### SREL's Final Offer

At the December 16, 2014 Committee of the Whole meeting SREL requested that Council establish a Working Committee. Council agreed and at the first Working Committee meeting on February 26, 2015, SREL presented an updated offer outlining the lands and the proposed fee of \$100,000. Several committee meetings included presentations and discussions about the project and the updated offer. These discussions focused on the proposed use, impacts, rehabilitation options and the lease amount. During this period the Township representatives had met on their own to discuss all the information received and a proposed a counter offer. SREL was unable to match the Township's counter offer with respect to the amount of the lump sum fee (\$325,000 was requested) and an annual royalty payment (as an example, 1% of revenues / year of operation). After some discussion SREL presented its final offer of \$125,000. A

copy of the final offer is attached. SREL has indicated that they require approval in principle by the May 15, 2015 Council meeting.

The key changes to SREL's offer were an increase to the compensation, a reduction in the amount of land being requested, and an increased commitment to not just rehabilitate the lands, but "improve" them at SREL cost.

The key elements of the offer are as follows:

Price: \$125,000 - for payment of use of the lands for 24 months  
 Late Payments: \$5,200 / month payable if SREL is delayed past 24 months.

This will provide incentive to complete the project quickly

Additional Fee: \$5,000 for every year that SREL uses the Shield Parking Lot during the Cranberry Festival. This will allow the Township to provide compensation to those charities / community groups that have used the lot during the festival to raise funds.

Rehabilitation: SREL has committed to either return the site to its current condition or to re-grade it and improve it, based on the Township's preference. This will ensure that none of the compensation payment will be required to be used on the site and will be a benefit to the community. In addition, SREL has committed to leaving the Park as is i.e. maintaining public access and not removing any trees etc.

SREL has also stated that the powerhouse design will be more attractive and blend in more with the surroundings if an agreement is reached.

The following table summarizes these changes.

Original Offer	Final Offer	Difference
<b>Leased lands:</b>		
Parcel adjacent to the site	Parcel adjacent to the site	TML portion of Shield Parking Lot has been removed from the leased lands
TML portion of Portage Landing Parking Lot	TML portion of Portage Landing Parking Lot	
All of Shield Parking Lot (TML + MNRF)	MNRF portion of Shield Parking Lot only	
<b>Restriction on TML portion of Portage Landing Parking lot</b>		
October - May	From Cranberry Festival to April 30 <sup>th</sup> only	More specific.
<b>Use of lands</b>		
Site access, storage of construction materials and equipment	Site access, storage of construction materials and equipment	No change
<b>Impact to Lands</b>		
Tree removal and earthworks (Portage Landing only), fencing, all leased lands	Tree removal and earthworks (Portage landing only), fencing, all leased lands	No change

<b>Rehabilitation of lands</b>		
Re-grading of land beside project site and restoration. Restoration was not specific, considered to be basic restoration to address erosion issues.	Site will either be returned to current condition or re-graded into public parkette with walkway, stairs etc. Some larger more matures trees will be included in the design.	Site will be "improved" rather than just "restored", if TML desires.
<b>Payment</b>		
\$100,000 for duration of construction	\$125,000 for up to 24 months, \$5,200 / month if longer than 24 months.  \$5,000 / year for community groups / charities to compensate for loses from not having use of Shield Parking Lot during Cranberry Festival	\$25,000 more plus penalty payments if the construction is delayed past 24 months \$5,000 / year that SREL uses Shield Parking Lot during Cranberry Festival
<b>Term</b>		
Not defined but 24 months was discussed	Term = 24 months	Now has defined limits with associated late penalty costs.
<b>Powerhouse design commitments</b>		
Not included	<p>The building size will be minimized as much as possible, while maintaining operability of the facility;</p> <p>A lookout(s) would be incorporated into the building, accessible by the public from the TML's Parcel 1;</p> <p>Interpretive signage will be placed on or around the building;</p> <p>The landscaping between Parcel 1 and the Project site will be made to "blend together";</p> <p>The south wall will be finished to match the other walls;</p> <p>The building will be designed to "fit into" the community from an architectural design and heritage perspective."</p>	Commitments made for improved powerhouse design
<b>Margaret Burgess Park commitment</b>		
Will leave as is	Will leave as is	No change

Comparison - SREL Using TML and MNRF Lands vs. Only Using MNRF Lands

The following is a comparison of the benefits and impacts of SREL's two construction staging options. Note impacts to access are for construction period only:

<b>Benefit</b>	<b>Current Plan: Use only MNRF lands</b>	<b>Alternative Plan: Use TML and MNRF lands</b>
Margaret Burgess Park	Used for construction access, storage etc.  Public access restricted  Park fenced  Expected loss of several of the large mature 100+ year old trees  Restoration plan does not include replacement of trees	No impact
North Bala Falls	Temporary construction bridge installed across falls downstream of dam  Crane installed on south side of falls including installation of concrete pad	No impact
Roadside parking area beside Park and United Church (west side of Hwy 169).	Limited public use as trucks will enter park through this area	No impact
TML's portion of Portage Landing Parking Lot	No impact	<u>Period:</u> Between May 1 and after Cranberry Festival – No impact  After Cranberry Festival to April 30 <sup>th</sup> only – No public access, fenced and used for construction parking & storage
Shield Parking Lot	No impact	<u>TML (south) end of lot:</u>  No impact  <u>MNRF (north) end of lot:</u>  No public access, fenced and used for construction parking & storage
SREL's powerhouse	Less aesthetically pleasing building, in particular south end (due to access issues)	Publically accessed lookouts will be integrated into adjacent lands.  Improved aesthetics of building, in particular from south end

Financial	No impact	\$125,000 payment to TML \$5,200 / month payments to TML if needed more than 24 months \$5,000 / year that SREL uses Shield Parking Lot during Cranberry Festival
-----------	-----------	---

Next Steps

The Working Committees next steps will in part depend on the direction of Council. If Council determines that it is appropriate to lease Township lands to SREL for construction staging, a lease agreement is required. Through the development of the agreement there may be a need for the Working Committee to meet.

A key parcel of Township land that has been requested for construction staging is Portage Landing. As noted in the report above the property is owned by the Township and has a heritage designation on it. Council has the authority to consent to an application from SREL, consent with terms or refuse the application. A Council decision with respect to this matter will impact the ability to agree to SREL's request to use this parcel for construction staging.

The Site alteration By-law would apply to the use of Portage Landing. SREL has stated that tree removal and earthworks would be required. As noted above in the report the By-law provides for certain exemptions which include activities undertaken by the Township or a local board or permission of the Township on lands owned or controlled by it. Council would need to provide an exemption, with conditions, as appropriate in order for SREL to utilize Portage Landing.

**FINANCIAL:**

Assuming the project proceeds the financial implications to the Township are substantially the same if the project proceeds using MNRF lands or a combination of MNFR lands and Township lands with the exception that the Township would receive a lease payment(s) from SREL if the Township lands are utilized. The Township will incur legal costs associated with developing and executing an agreement. There may be additional costs for such items as a heritage consultant.



**COMMITTEE OF THE WHOLE**

**DATE:** \_\_\_\_\_ **RESOLUTION NUMBER: COW-** \_\_\_\_\_ **- 21/04/15**

**MOVED BY:** \_\_\_\_\_

**SECONDED BY:** \_\_\_\_\_

**BE IT RESOLVED THAT:**

Whereas SREL has stated that they have sufficient lands available from the MNRF, including Margaret Burgess Park, to construct and build the power house;

Whereas Council Resolution C-24-13/03/15 states that the Council of the Township of Muskoka Lakes remains an unwilling host;

Whereas the project has, or will soon have, all approvals necessary from other levels of government to commence construction and the Township has minimal permitting or approval authority over the project;

Whereas Council established a Working Committee to mitigate the impact of the project during construction;

Whereas SREL has indicated that they have a critical construction timeline within which to determine what lands will be available for construction staging and, if an agreement in principal is not reached by the May 15, 2015 Council meeting to use the Township lands, SREL will make arrangements to use other lands, including Margaret Burgess Park;

Whereas Margaret Burgess Park is a significant natural feature within the Bala community and the public has expressed concerns with respect to the use of it for construction staging;

Whereas the Council of the Township of Muskoka Lakes is concerned that the unique natural features of Margaret Burgess Park will be at risk, or permanently altered, if it is used for construction staging;

Whereas SREL has requested the temporary use of the following lands for construction staging and has agreed to restore these properties, post construction:

Parcel 1: The parcel of land immediately adjacent to the Project site that was transferred to the Township from the District in 2011 (PIN 48029-0638).

Parcel 2: The MNRF's portion of the Shield Parking Lot (north end) (PIN 48029-0634).

Parcel 3: The Township's portion of the Portage Landing Parking Lot (south end) (PIN 48154-1077) for the period from the week after the Cranberry Festival to April 30;

Whereas Portage Landing has a Heritage designation under the *Heritage Act* and is within the proposed Heritage District;

Whereas Council has the authority to consent to alterations to properties designated under Section 33 of the *Heritage Act*;

Whereas the proposed Heritage District currently includes all Township lands that SREL has asked to lease;



Whereas the Heritage District by-law is under appeal to the Ontario Municipal Board;

Whereas SREL has previously presented offers to Council with respect to the temporary use of the Township lands for construction staging;

Whereas SREL's initial offer to the Township was a starting point for discussions;

Whereas additional considerations were proposed by the Township during the Working Committee discussions; and

Whereas after much discussion and debate SREL has presented a final offer to the Working Committee that includes only some of the Townships requests.

Now therefore be it resolved that:

1. As jurisdiction to agree to the lease of the Township lands rests with Council, Council be presented with the following three options:
  - a. Endorse in principle the option of leasing the Township lands to SREL, based on its final offer;
  - b. Endorse in principle the option of leasing the Township lands to SREL, based on terms that are different than the terms in SREL's final offer; or
  - c. Refuse to lease the Township lands to SREL.
2. That should Council deem it appropriate in principle to lease the lands to SREL, the following should apply:
  - a. The restoration of the Township lands be done in a way that respects the historical use of the Township lands for access and recreation to the Moon River and the heritage designation aspects of the properties;
  - b. The agreement-in-principal to lease the Township lands be committed to a formal written agreement, which shall be subject to review and final approval by Council;
  - c. That the Township retain the necessary legal services to draft and finalize the agreement; and
  - d. That, among all other appropriate and necessary terms and requirements, the agreement provide for appropriate protection of the municipality, including security to guarantee completion.

**RECORDED VOTE:**

	<b><u>NAYS</u></b>	<b><u>YEAS</u></b>	
COUNCILLOR BARANIK (Deputy Mayor)	_____	_____	
COUNCILLOR BARRICK-SPEARN	_____	_____	
COUNCILLOR CURRIE	_____	_____	
COUNCILLOR EDWARDS	_____	_____	
COUNCILLOR HARDING	_____	_____	
COUNCILLOR KRUCKEL (Acting Deputy Mayor)	_____	_____	
COUNCILLOR LEDGER	_____	_____	
COUNCILLOR McTAGGART	_____	_____	
COUNCILLOR NISHIKAWA	_____	_____	MOTION DEFEATED [ ]
MAYOR FURNISS - CHAIR	_____	_____	MOTION CARRIED [ ]
TOTALS	_____	_____	

\_\_\_\_\_  
**CHAIR**

# Bala Falls Working Committee

## Minutes of Meeting

### March 26, 2015

The fourth meeting of the Bala Falls Working Committee was held on Thursday March 26, 2015 at 2:00 p.m. in the Board Room, Municipal Offices, Port Carling, Ontario.

Present:

Mike Fitton – Chair  
Jean- Ann Baranik – Member of Council  
Sandy Currie – Member of Council  
Linda Barrick-Spearn – Member of Council  
Karen McGhee – SREL  
Frank Belerique – SREL  
Clayton Harris – Interim CAO

Invited Guest : David Pink, Director of Planning  
Karl Stevens Architect  
Cheryl Hollows (recording secretary)

#### 1. Call to Order

Mike Fitton called the meeting to order at 2:10 p.m.

Prior to consideration of the Agenda, the Chair asked if Township Council gave any direction to change the manner of operation of the Committee. Mr. Harris indicated that there was no such direction given.

Mr. Fitton initiated a discussion of the placement of items on the agenda. Agenda items will be agreed upon at the previous meeting. If an item surfaces between meetings, Mr. Fitton proposed that if the majority of the Committee were in agreement, then the item would be added. Mr. Harris asked for all Committee members to be circulated when a request is made and should a member object, they do so quickly. Decisions will be made based on the wishes of a majority of Committee members. This process was approved by consensus.

Mr. Fitton initiated a discussion about inviting people to attend the Working Committee meetings as a resource. Every attempt is to be made to decide on the suitability of such attendees at a prior meeting and to minimize the use of email for such decisions. If between meetings it is deemed that the attendance of a resource person would be of use, then all members are to be emailed with the request and any objections are to be made quickly. Decisions will be made based on the wishes of a majority of Committee members. This process was approved by consensus.

#### 2. Adoption of the Agenda

The Working Committee adopted the Agenda by consensus.

Councillor Currie read the mandate of the Committee: "Identify and recommend ways to mitigate concerns raised by Council and the community." He is concerned that community input to the Committee is not being adequately received. Councillor Baranik stated that Council has heard many delegations from the public over a number of years. It was also noted that community members could provide their input to Councillors on the Committee. Council members hear delegations to COW and Council as well. This matter will be discussed further under Item 6 on the agenda.

3. Business Arising from the Minutes of March 3 and 4 2015. – Working Committee minutes – items ruled out of order.

Ms. McGhee was concerned that a Committee member could make a comment or raise an issue that the Chair could rule out of order. The item would show as such in the minutes. There would not be an opportunity to respond or comment. Readers of the minutes would be left with an incomplete impression and may deem the comment to be fact. The Chair proposed that the phrase “No further rebuttle or discussion allowed.” be added after such occurrences. The meeting group concurred with this approach.

4. Implication of Heritage District designation on Lease of Township Lands

Mr. Pink was invited to speak about the Hydro-electric project and the potential use of Township lands from a Heritage perspective. He reported that in 2011, the Township formed a Heritage Committee after several years without one. Based on their input, Council designated four properties in Bala under the Ontario Heritage Act. These properties are the Township Dock on Lake Muskoka, Portage Landing on the Moon River, the municipally owned portion of the Shield Parking Lot, and Bala’s Museum with Memories of Lucy Maud Montgomery. Two properties were added to the designation list to be considered in the future, The Bala Cenotaph and the Town Dock on the Moon River.

These designations were appealed to the Conservation Review Board(CRB), whose decisions are non-binding to Council. The CRB found that the designations had merit. Following the ruling, by-laws were passed putting the designations in place.

In the fall of 2014, Council designated a portion of Bala as a Heritage District and a Heritage District Plan for the area was approved. This designation and plan are under appeal to the OMB and therefore are not in effect at this time.

Two properties that SREL has approached the TML to lease have been designated by by-law; Portage Landing and the Shield Parking Lot. Should the TML lease these properties to SREL, they would not be able to alter the attributes noted in their respective designation by-law without approval by Township Council. SREL would be required to apply to Township Council with a detailed plan. Council within 90 days, after consulting with its municipal Heritage Committee, must decide to either consent, consent with conditions or refuse the application. Township decisions can be appealed to the Conservation Review Board by the applicant/owner when the Township refuses the application or consents with the conditions. The subsequent hearing would be open to the public. In this instance the Township is both the applicant and the owner.

It does not appear that the attributes of the Shield Parking lot would be affected if used for a construction staging area. However that is not the case for Portage Landing. It was commented that based on the Heritage District Plan under appeal, certain alterations may in fact be compatible with that guiding document

Mr. Pink left the meeting at 2:55 p.m.

Architect Karl Stevens addressed the committee. He displayed a number of sketches depicting options of what the plant could look like. As the power plant will be next to the proposed Heritage District, he utilized the Heritage District Study and as well, looked to find a way to tie Bala together with a stronger pedestrian route. In his opinion, the inclusion of the heritage attributes better can be achieved if the Portage Landing Property is utilized. Mr. Stevens indicated that the peak of the roof would be 6.2 m above the road surface. The building will not have a box like appearance as originally designed. By removing an internal crane, the roof height has been lowered as far as possible. If servicing is required the roof will be removed and a mobile crane brought in. Councillor Currie noted that originally the building would be no higher than the road. SREL indicated that without access to Township land they were forced to have a vertical design. Mr. Currie stated that the front yard setback would be 3.7 m. Ms. McGhee commented that water and turbine flows determined this setback. Mr. Belerique confirmed that there would no encroachment of the building onto Township lands.

Mr. Fitton noted that the top of the terraces were green roofed lookouts. Mr. Harris asked if any parts of the building will be open to the public? Ms. McGhee commented that the middle terrace will be accessible to the public, but the lower terrace would be needed for maintenance. Mr. Stevens is hopeful that the public could access a portion of the lower terrace. Mr. Currie asked if the building could be round as it may look smaller however, Mr. Stevens noted that round is not a heritage or Muskoka form.

Councillor Baranik asked if there was no access to TML land, how would that impact the design? Mr. Stevens said you would not be able to walk off of the building and have a smooth transition to Portage Landing.

Mr. Belerique said the building can still be built however it would impact the look of the south wall. Mr. Belerique was asked if the temporary bridge would be needed if SREL had access to the TML Lands. He responded that neither the bridge nor the park would be needed at all, and would confirm that in writing. The "Heritage Marker Tree" would be sacrificed. It apparently, may not live much longer. The purported portage route will not be available.

Mr. Harris informed the meeting that Mayor Furniss has communicated with Chief Franks of the Wahta Nation and has suggested that he may want to attend a Working Committee meeting.

Councillor Currie requested that the MNR and SREL have a final design committee public meeting to meet MOE requirements. Ms. McGhee responded that the MOE is satisfied with the Design Committee input as it exists at this time. Mr. Fitton commented that if the MOE is satisfied with the SREL process, then this Committee can do nothing to force SREL to have a final design public meeting.

Mr. Stevens left the meeting at approximately 3:55 p.m. He did indicate that Working Group comments would be helpful to him.

Ms. McGhee showed a visual presentation that will be distributed to Working Group Members. She said that top three concerns from the Community and the SREL responses are:

1. Impact of blasting on near-by structures - approved blasting specs will be used at all times
2. Traffic delays and Lane closures – the shoulder widening will mitigate much of this
3. Use of Margaret Burgess Park, loss of public use and loss of pine trees – lease of TML lands

Ms. McGhee relayed comments about Margaret Burgess Park to the Committee. Of note was the threat the use of the park would have on the area's tourist draw.

If only MNR lands are used, the construction site can be accessed in two ways. Firstly, over the falls and secondly, at the plant intake off the river bed. Water leakage is guaranteed to enter the excavation and dewatered areas. . The leaked water will be pumped to settling tanks in Margaret Burgess Park and the water will re-enter the system once sediment settles out. Rock will be trucked out. Should TML lands be available, trucking would be reduced as some stone can be used in the re-construction/design of Portage Landing and the sediment tanks will be housed on the Shield Parking lot.

Ms. McGhee clarified that the trees in Margaret Burgess Park are not protected by the MNR. Permission to remove them will come in the LRIA. Should they need to be removed prior to receiving the LRIA, SREL can apply for a tree cutting permit.

Mr. Fitton asked if the purported portage can be moved to another location. Ms. McGhee responded that the courts deemed the historical portage to be unsafe. The former portage off Portage and River Streets to the municipal dock has been accepted by Transport Canada. Councillor Currie pointed out that a strip of private land impedes a direct route to the Municipal dock. The landowner could restrict it's usage at any time, but this may also restrict access to the Township's public dock. It was suggested that it could be moved to the Portage Landing site.

Mr. Harris asked the question, if Margaret Burgess Park was saved today, would it be saved for tomorrow as SREL will have a long term lease? SREL replied that part of their agreement with the province included an obligation to

maintain the dam. Margaret Burgess Park would be the access for that maintenance. SREL will only operate the dam. It would be a matter for the MNRF if the dam needed to be replaced. If the Hydro Plant requires maintenance the access would be Margaret Burgess Park and Portage Landing as long as SREL has an agreement to use it. It was then asked if the roads on either lands built for construction would need to be retained to enable maintenance of the plant or dam. The answer was no. The agreement with the Township would need a provision that the roads could be reinstated in the event of a catastrophic failure.

Councillor Currie asked what would occur during such a failure if the road widening was not approved. Ms. McGhee answered that lane closures would be needed.

Mr. Harris noted that if the TML leases the lands requested, SREL would still have a long term lease on Margaret Burgess Park. It would be important to ensure long term public access to the park should the Township lease their lands to SREL to save the park. Councillor Currie asked SREL if they could guarantee that a fence would never be installed along the north shore. Ms. McGhee could not make that guarantee in part because other parties would be involved in those types of decisions. Further, she commented that SREL would be required to follow safety regulations, best practices and maintain industry standards.

Mr. Harris asked if SREL would require a long term lease on Portage Landing? Mr. Belerique said yes, but only if SREL is to guarantee it will not be able to use the Park in the future.

Mr. Harris asked if the decision to use the Park versus Portage Landing for major repairs in the future could be addressed through an agreement and the decisions be answered at that point-in time. SREL agreed.

Mr. Belerique commented that SREL is required to restore lands they disturb. This Committee could assist by providing input on what the final appearance should be. SREL is offering \$100K which could be paid in cash or applied to enhancing the leased lands beyond basic restoration. It would be more economical for SREL to do the upgrades than for the TML to undertake them. Also, it is hard to put a price on preserving Margaret Burgess Park. That is a value to the community that is challenging to define. SREL has spent approximately 1 million dollars in legal fees defending themselves and their project. He indicated that this money could have been used for the community. Since the construction budget was tight, Mr. Harris asked if SREL would consider allocating to the Township an annual royalty from their revenues. Mr. Belerique was not willing to compromise the return on their investment to do so. He indicated that the Township will receive funds from the province, the GRC in lieu of property tax. He did not rule the request out, but indicated that it would be difficult. The GRC is a percentage of gross revenues of the hydro-electric plant. SREL was asked to provide estimates of these revenues so that TML receipts could be approximated.

Councillor Barrick Spearn asked how the municipality could recover damage to its infrastructure resulting from additional usage during the construction phase. Mr. Belerique responded that building permit fees were intended to cover off these costs. Also, SREL agreed to repair damages as well as paid substantial fees to acquire entrance permits from the District. The Hydro plant will be the largest business in the Bala community and will generate economic benefits to the town.

Councillor Currie noted that the economic impact study indicated that the impact on Bala will be negative and that the impacts were unquantifiable. Ms. McGhee disagreed with this interpretation. The Councillor agreed to circulate the C4SE report and the Watson report to the committee.

Mr. Belerique indicated that there was room to negotiate and asked for a counter-offer from the Township.

Permits are in place for the sediment tanks to be located in Margaret Burgess Park. A variance will be needed to place them in the Shield Parking lot. An agreement with the District will be needed to run the hoses under the bridge to the tank sediment tanks. The water will be tested as it exits the tanks and will be further treated if it does not meet the requirements.

The Portage Landing Parking Lot will be needed only from after the Cranberry Festival to approximately May and would be available to the public during the summer. Ms. McGhee indicated that SREL may not need to be in Diver's

Point if they have the use of the Shield and Portage parking lots. Parking for the Kee to Bala was discussed. SREL agreed to have discussions with the owners and the OPP.

Councillor Currie asked if SREL has Portage Landing and a lengthened road widening but not the parking lots, will they need to use Margaret Burgess Park. Ms. McGhee responded that they have considered all sorts of scenarios including working off the water on barges. They agreed to contemplate this further.

It was agreed that the TML delegates would meet separately to discuss what they had heard. They have no mandate to negotiate a deal with SREL, but could make recommendations to the Committee of the Whole.

The next meeting is scheduled for April 8<sup>th</sup> from 9 a.m.-2 p.m. Lunch will be provided by SREL.

The Agenda item will be:

Continuation of discussions of the use of Township Lands.

The Chair adjourned the meeting at 5:55 p.m.

The visual presentation of March 26, 2015 will be linked on the Township of Muskoka Lakes web-site.

# Bala Falls Working Committee Minutes of Meeting April 8, 2015

The fifth meeting of the Bala Falls Working Committee was held on Wednesday April 8, 2015 at 10:00 a.m. in the Board Room, Municipal Offices, Port Carling, Ontario.

Present:

Mike Fitton – Chair  
Jean- Ann Baranik – Member of Council  
Sandy Currie – Member of Council  
Linda Barrick-Spearn – Member of Council  
Karen McGhee – SREL  
Frank Belerique – SREL  
Clayton Harris – Interim CAO

Cheryl Hollows (recording secretary)

## 1. Call to Order

Mike Fitton called the meeting to order at 10:10 a.m.

## 2. Adoption of the Agenda

The Working Committee adopted the Agenda by consensus.

## 3. Minutes of March 26, 2015

Upon motion duly made by Councillor Baranik, seconded by Councillor Barrick –Spearn and carried, it was resolved that the minutes of the March 26, 2015 Bala Falls Working Group Meeting, as amended, be approved.

## 4. Business Arising from the Minutes of March 26, 2015

Chair Fitton stated that this Working Group is tasked to make recommendations to the Township Committee of the Whole. The Working Group is not encumbered with the requirements of the Heritage Act or with the negotiating of a lease. Those are the responsibility of the Township Council.

Councillor Currie asked about the retention tanks. He wondered how the determination is made that the water is fully filtered if the tanks are closed in. Ms. McGhee stated that the water is put through a pre-engineered cycle, sized for the job at hand and gauges record the quality of the water through that cycle. The tanks are closed.

## 5. Continuation of discussions of the use of Township Lands

Mr. Harris reported that the TML representatives on the Working Committee met twice to review information received to date. The following are questions directed to SREL and their responses:

1. Would you put in place sufficient infrastructure to redirect the current to allow the safe use of the Township dock given the increased flows from the project?  
Studies have proven that there is no negative impact on the ability to use the Township dock.

Mr. Fitton noted that at the Bracebridge Hydro Plant, a deflector has been installed in the water to direct the water. Ms. McGhee indicated that the water will exit straight out to the river to an area where the water is deep. This depth

will slow the water down. The flows have been modeled thoroughly, including in three dimensions. Transport Canada has confirmed to the MOE that they do not have any outstanding concerns with regard to impacts on navigation or on the municipal docks from the modified Hydro Project. Councillor Currie disagreed with the SREL evaluation. He indicated that he took SREL data and drawings, data from the top 5 swimmers at the most recent Olympic Games and then consulted with a contact at the Royal Lifesaving Society. He has concluded that even the Olympic Champion would be pulled downstream if trying to swim against the current. Ms. McGhee indicated that this is the situation currently and requested that Committee Members refer to the Swift River website for more information on their studies, specifically the addendum to the EA, September 24, 2014 Ministry of the Environment Page 3 at the bottom. Mr. Belerique noted the concern as well.

2. Would you agree to limit the use of the Portage Landing Parking Lot to between November 1<sup>st</sup> to April 30<sup>th</sup>; Agreeable, but would you consider extending it to starting the week after the Cranberry Festival?
3. Would you agree to a voluntary site plan control agreement with respect to the exterior and roof of the generating station;  
No. TML has an opportunity to provide input now that SREL will consider in its decision making. The site plan was included as the last page in Karen's presentation material she sent Monday.

After further consideration, SREL did agree that an agreement of some nature could be made that would guarantee substantial conformity with an agreed upon design.

4. If Council was willing, would SREL be supportive of the MNRF having a long term lease of the Park from the Township rather than with SREL;  
Agreeable, provided SREL is not impacted in anyway in its ability to maintain and operate the dam and facility. To be clear, SREL would support the initiative but only if SREL maintains its unfettered access and use of the lands for purposes of maintaining, operating and reconstructing the dam or the facility if necessary. Of course, the TML lands could play a part in any future re-construction thus once again protecting the park. This would require the Township to indemnify and insure the Park lands with MNRF instead of SREL i.e. TML would take over SREL's liability associated with these lands.
5. Would SREL be responsible for maintaining the Portage Landing lands abutting the site;  
Agreeable but limited to garbage and litter handling.

SREL would need to know what the final look of the site would be before making any other kind of commitment.

Ms. McGhee said that the Council of two terms ago wanted to maintain Crown Lands to municipal standards of other parks. During the last term of Council Crown Lands were not maintained by the municipality and it showed. Councillor Currie asked if SREL would sub-contract the municipality to maintain Margaret Burgess Park and Portage Landing. Mr. Belerique indicated he would be interested if the costs were agreeable.

6. Would SREL be agreeable to utilize only the MNRF portion of the Shield Parking Lot;  
Yes
7. Provide the Township with your estimate of the cost differentials between construction staging using the MNRF lands and the cost of construction staging utilizing the Township lands that have been requested. We would appreciate the cost savings being provided by major category such as the construction of the temporary bridge, construction of the temporary road on the Park, etc.

Savings from not requiring the rental of the temporary bridge (the bridge is a pre-engineered stock component, readily available and used extensively by the construction industry and the military) have been allocated as follows;

Access road is required in either scenario. However, we anticipate the construction cost of the access road on the TML lands is higher because of the steeper grades.

SREL's offer of \$100,000 to TML

A nicer looking/architecturally pleasing power house

Mr. Belerique indicated that the savings from not using the spring bridge would be in the neighbourhood of \$400K. \$250K will be spent on upgrading the appearance of the powerhouse including \$100K for the services of Mr. Stevens. The final \$100K is the cash offer for the use of the lands.

Mr. Harris indicated that there was no appetite from the Township to use any of the \$100K cash to upgrade the Portage Landing Site. Ms. McGhee clarified that the Portage Landing lands would be rehabilitated. It will be regraded, topsoil placed down, seeded and nursery grade saplings would be planted. It would be brought back to its existing state except the trees would not be as large. Should the road widening be a permanent addition then a wall to support it would remain. The District would play a role in the requirements for this. Mr. Belerique stated that they will restore the lands any way the TML wished, but landscaping that goes beyond restoring to the existing state would have to be paid for from the \$100K

Councillor Baranik stated that the Portage Lands must retain their Heritage attributes unless Council amends the by-law. This will have to be reflected in any restoration contemplated. The Heritage Committee would most likely be involved.

Mr. Harris then stated that the TML representatives reviewed whether \$100K was the right number for the lease. The group realizes that the construction budget is tight and is proposing that SREL pay the TML an annual royalty from their revenues. This would provide an ongoing benefit to the Township for the use of their lands and not impact the construction budget.

The TML representative proposed that a lump sum payment of \$325K be paid at the signing of the lease and also an annual royalty be paid. A royalty of 1% was offered for the Port Sydney project for a municipal resolution of support only. The royalty offered was 8% if municipal lands were to be used to build the project. The Township realizes that SREL already has approved and does not require municipal support.

Ms. McGhee noted that only half of the Shield parking lot will be used now and also that the Port Sydney 8% royalty was for the use of municipal lands to build on, not to use on a short term basis.

Mr. Belerique asked how the \$325K was obtained. Mr. Harris responded that property values were investigated. Councillor Currie said he surveyed several Bala properties with similar frontages and lot sizes and found their current values. By extrapolation he estimated that The Portage Parking Lot is valued at \$160K, the Shield Parking lot at \$435K and Portage Landing at \$300K. At a return of 8% the amount would be \$122K. \$200K was added to further compensate the community and its businesses. Mr. Belerique indicated that he could not philosophically support a fund to reimburse business that they do not feel will be impacted. He can agree to the \$125K. He rejected a royalty payment. Finding more money is an issue. Mr. Belerique also pledged to contribute \$5K per Cranberry Festival that SREL is using the Shield Parking Lot to be directed to those organizations that would have used it for fundraising purposes.

Mr. Harris pointed out that the 1% royalty offered in the Port Sydney plant was for Council support. Ms. McGhee said it is a much smaller project. The royalty was to recognize a tight construction budget and spreads out the costs to ease cash flow concerns.

Mr. Belerique said that any moneys that could have been used to benefit the community were used to fight legal challenges from this Township. Mr. Currie commented that these were from the previous Council. Mr. Fitton said that these challenges may have emerged from a previous Council but it is still the Township of Muskoka Lakes that was involved. Councils may change but the Township does not.

Mr. Fitton added that the province gives a 10 year holiday on transfers to the Province from SREL. He wondered if the Township would consider offering a similar holiday. Mr. Harris indicated that the Township would be open to discuss the timing of payments.

After a brief recess, Mr. Belerique indicated that payments from provincial royalties to the Township would be a financial hardship to SREL so he will not entertain such payments. He increased the one time offer from \$100K to \$125K and will do increased improvements to the Portage Landing site beyond those previously discussed, such as paths, larger trees, landscaping, a lookout, interpretive signage etc. without using any of the \$125K payment.

This is SREL's final offer. Mr. Harris asked for the offer in writing.

The holding of a public meeting in Bala, prior to Council's decision was discussed. Ms. McGhee and Mr. Belerique were reticent to participate given the reception they have received in the past. Councillor Currie believes it is absolutely necessary for Council to learn the thoughts of the community on the matter prior to making any decisions.

Councillor Baranik feels the Community has expressed its views on several occasions and can express its views at the TML Committee of the Whole meetings.

Mr. Harris recommended that a report on these discussions and offers would be appropriate and he will also prepare a draft resolution for the Working Committee to review and discuss.

Mr. Currie moved that the Bala Falls Working Committee recommends that a public meeting be held in Bala prior to presenting its next series of recommendation to the COW. The motion was not seconded.

Mr. Fitton does not believe that this Committee should make the holding of a public meeting a condition in the recommendation. That would be beyond the mandate of this committee.

Mr. Currie stated that Mr. Fitton was now offering advice and as such was no longer an impartial chair. He requested that Mr. Fitton resign or discontinue offering this advice.

Mr. Fitton stated that his comments were only related to the procedural responsibility of the committee on the mandate and terms of reference. He indicated he would resign at any time if the majority should vote that he do so.

Mr. Currie moved that Mr. Fitton resign as chair of the Bala Falls Working Committee. The motion was not seconded.

Councillor Baranik concurred with Mr. Fitton. Council will evaluate and may or may not consider a public meeting in Bala appropriate. It is not the business of this Committee to do this.

Mr. Harris asked Committee Members to forward to him anything they may feel is appropriate for this resolution. It is important to be thorough and not miss anything. He will draft a report from the Working Committee based on the information and discussions that lead to the resolution. He will need the offer in writing from SREL in order to proceed.

The next meeting is scheduled for April 13<sup>th</sup> from 4 p.m.-6 p.m.

The Agenda item will be:

Resolution and Report Re: SREL offer

The Chair adjourned the meeting at 2:13 p.m.

# Bala Falls Working Committee

## Minutes of Meeting

### April 13, 2015

The sixth meeting of the Bala Falls Working Committee was held on Monday April 13, 2015 at 4:00 p.m. in the Board Room, Municipal Offices, Port Carling, Ontario.

Present:

Mike Fitton – Chair  
Jean- Ann Baranik – Member of Council  
Sandy Currie – Member of Council  
Linda Barrick-Spearn – Member of Council  
Karen McGhee – SREL  
Frank Belerique – SREL  
Clayton Harris – Interim CAO

Cheryl Hollows (recording secretary)

#### 1. Call to Order

Mike Fitton called the meeting to order at 4:05 p.m.

#### 2. Adoption of the Agenda

The Working Committee adopted the Agenda by consensus.

#### 3. Minutes of April 8, 2015

Upon motion duly made by Ms. McGhee, seconded by Councillor Barrick –Spearn and carried, it was resolved that the minutes of the April 8, 2015 Bala Falls Working Group Meeting, as amended, be approved.

#### 4. Business Arising from the Minutes of April 8, 2015

There was no business arising for the April 8, 2015 minutes.

#### 5. Discussion of the following:

##### a. Draft Resolution

Mr. Harris presented a draft of a resolution to the Committee. He indicated that legal counsel for the Township had reviewed it. The committee reviewed the resolution clause by clause and amendments were made.

Councillor Currie raised his concern about the Chair giving advice to the committee and thereby not maintaining impartiality.

Mr. Fitton did not agree, he offered clarity to the committee to improve the wording of the final document.

Councillor Currie made a motion requiring that Mr. Fitton resign as Chair of the Bala Falls Working Committee. The motion failed for want of a seconder.

During the review of the resolution, Ms. McGhee asked if a clause indicating that there were no discussions held after SREL made their original offer was appropriate. It was decided to note that in the report rather than in the resolution.

Councillor Currie indicated that he thought there was a risk to the community for the use of Portage Landing and requested that a "liquid" fund to guarantee complete restoration of the lands be included. He also was concerned about the possibility of hazardous waste contamination. It was noted that there is a clause in the resolution with respect to municipal protection. A clause was included in the resolution to address security to guarantee completion. The details will be left to those creating the formal written agreement.

Mr. Belerique asked if the Committee mandate to mitigate community and Council concerns to save Margaret Burgess Park was adequately reflected in the resolution. The meeting group was satisfied with the wording as presented.

Councillor Currie asked if his resolution had been circulated to the Committee members. Mr. Harris advised the Councillor that it had only been sent to him. His resolution was sent to the Township representatives on the Committee and the Township's legal counsel as part of their review of the Resolution drafted for the Committee. Mr. Fitton noted that the minutes indicate that Mr. Harris was to draft the resolution.

The Chair asked if Councillor Currie had anything in his resolution he would like added to the Resolution before the Committee. Councillor Currie declined.

Upon motion duly made by Councillor Baranik, seconded by Councillor Barrick-Spearn, it was resolved that the Resolution as discussed and amended be approved.

Councillor Currie asked for a recorded vote.

Those in favour of the motion: Councillor Baranik, Councillor Barrick-Spearn, Mr. Belerique, Ms. McGhee, Mr. Harris  
Those opposing the motion: Councillor Currie  
Those not voting; Mr. Fitton

The motion carried.

Councillor Currie requested that his resolution be included with the minutes. Mr. Fitton indicated that as previously discussed, items would not be attached to the minutes. Councillor Currie stated that he would read his motion to the meeting. Mr. Fitton stated that it would not appear in the minutes. Councillor Currie stated that the chair would regret this. Councillor Currie restated his assertion that the chair is not acting in a neutral fashion. Mr. Fitton asked Councillor Currie if there was anything in his resolution that he would like included in the one endorsed by the Committee.

Ms. McGhee noted that the discussions at this meeting around the lease would be minuted. She asked if that was prudent as it may be a closed session matter at the Committee of the Whole meeting. Mr. Fitton responded that it is at the discretion of the Council as to what items are discussed in closed session and Council is accountable for those decisions. Mr. Harris stated that a portion of the item may be in closed session to hear legal advice.

#### b. SREL Final Offer

Ms. McGhee stated that the SREL final offer, a letter from Mr. Belerique, was sent to the Committee on April 10, 2015. Ms. McGhee followed with an email elaborating on the letter. A discussion of both documents ensued. The Township representatives conveyed to SREL that their offer would be better received if the payment was received at the commencement of occupation rather than as a monthly rental amount. Mr. Belerique stated that typically, rent is paid monthly. Councillor Currie stated that the fee was not rent, but compensation for the inconvenience the Town will experience. Earlier SREL agreed that should construction take longer than 24 months a penalty will be paid. The offer will include a clause stating that the penalty will be \$5208.33 per month. Mr. Belerique stated that this penalty is subject to force majeure, a common element of such clauses. Councillor Currie disagreed. Mr. Harris indicated that

Council could ask for a legal opinion on that question. Ms. McGhee told the meeting that construction will be considered ended when the COD is issued, the IESO (formally the OPA) gives consent to commence commercial operation.

Ms. McGhee read the portion of the agreement detailing improvements to lands. Council will make the final determination of how the property is to look after construction subject to the provisions in Section 33 of the Ontario Heritage Act.

Ms. McGhee requested that they have access to the lands prior to construction should they need to conduct tests necessary to prepare of the drawings. No tree cutting would be involved. The Committee did not have an issue with this. SREL confirmed again that Margaret Burgess Park would only be used to maintain or operate the dam and power plant (after construction).

The Township will need to be indemnified and appropriate securities determined and received.

If the Township wished to lease Margaret Burgess Park from the MNRF, SREL would not object provided they would have access to the dam and power plant as previously discussed.

Ms. McGhee will finalize the offer so that it can be attached to the report to be presented to COW.

c. Report Structure

Mr. Harris sent a draft report structure to the Committee. The Committee agreed with the draft structure. The report will capture what has transpired and options for Council to consider.

SREL will provide 2-3 paragraphs to describe their offer as well as a final version. Further, they will provide a table showing the differences between the original and the revised offer.

6. Future Meetings

A conference call is scheduled for Thursday April 16 at 2 p.m. for the purposes of approving minutes.

The Chair adjourned the meeting at 5:48 p.m.



**COUNCIL**

**DATE:** March 13, 2015 **RESOLUTION NUMBER:** C- 24 -13/03/15

**MOVED BY: Original signed by Councillor Harding**

**SECONDED BY: Original signed by Councillor Baranik**

**Whereas** the Township of Muskoka Lakes has set up a working committee to work with Swift River Energy Limited to mitigate the impacts to the construction process of the proposed hydro plant in Bala;

**And Whereas**, from time to time, the working committee is evaluating staging, construction and other development issues proposed by Swift River Energy Limited;

**And Whereas**, the community has requested that impacts to Margaret Burgess Park be minimized during construction of the proposed hydro plant;

**And Whereas**, Swift River Energy Limited has suggested alternative lands within the Township of Muskoka Lakes for staging and construction of the proposed hydro plant;

**And Whereas**, currently the specific details of any leases of Crown Lands provided to Swift River Energy Limited are unknown by the Township of Muskoka Lakes;

**And Whereas**, the Council of the Township of Muskoka Lakes remains an unwilling host;

**Now Therefore Be It Resolved That** the Council of the Township of Muskoka Lakes requests written confirmation from the various Ministries, regarding the lease and occupation terms associated with Crown Lands provided to Swift River Energy Limited in conjunction with the proposed Bala Falls Hydro Plant.

**And further that** specific details of tree cutting, length of occupation, and any additional limitations expressed or implied associated with the respective leases are also required. This request for specific lease information excludes any financial arrangements associated.

**RECORDED VOTE:**

	<b><u>NAYS</u></b>	<b><u>YEAS</u></b>	
COUNCILLOR BARANIK (Deputy Mayor)	_____	_____	
COUNCILLOR BARRICK-SPEARN	_____	_____	
COUNCILLOR CURRIE	_____	_____	
COUNCILLOR EDWARDS	_____	_____	
COUNCILLOR HARDING	_____	_____	
COUNCILLOR KRUCKEL (Acting Deputy Mayor)	_____	_____	
COUNCILLOR LEDGER	_____	_____	
COUNCILLOR McTAGGART	_____	_____	
COUNCILLOR NISHIKAWA	_____	_____	MOTION DEFEATED [ ]
MAYOR FURNISS	_____	_____	MOTION CARRIED [X]
TOTALS	_____	_____	

**Original signed by Mayor Furniss**  
MAYOR

---

March 26, 2015

Jean-Ann Baranik  
Deputy Mayor, Township of Muskoka Lakes  
P.O. Box 129, 1 Bailey Street  
Port Carling, Ontario  
P0B 1J0

Dear Ms. Baranik,

Thank you for your March 16, 2015 letter with attached copy of the March 13, 2015 Resolution passed by Council. I understand that Council is considering options for mitigating the potential negative impacts of construction on the Crown land locally known as Margaret Burgess Park and wish to have a better understanding of how the Park will be utilized during construction as the project proceeds. In addition, I understand that Council is requesting information with respect to the current Land Use Permit (LUP) associated with this parcel of Crown land.

As Council is aware, the Crown land location locally known as Margaret Burgess Park is one of a number of Crown land parcels associated with the Ministry of Natural Resources and Forestry (MNRF) Bala North and Bala South dams and which have been identified for inclusion in a Land Use Permit or Crown land Lease to Swift River Energy Ltd (SREL) for use as staging and storage areas for the construction of the waterpower project.

On November 14, 2014 MNRF provided occupational authority in the form of a Land Use Permit under the *Public Lands Act* (PLA) for SREL to begin fencing and installing signage on the Crown properties required for the project, which includes occupational authority for Crown land locally known as Margaret Burgess Park.

Under the Terms and Conditions of the LUP issued to SREL the Permittee has the right to use the Crown lands for the purpose of erecting fencing and signage, and for the staging of construction materials required in connection with the (future) construction of the proposed waterpower facility. The Permittee is not permitted to cut or remove any trees or conduct any physical alterations to the Crown lands without the written consent of the MNRF. In addition, under the terms of this LUP the Permittee shall not erect signage, fencing or conduct any work on the Crown land parcel locally known as Margaret Burgess Park without obtaining the prior written consent of the Ministry.

Although the current LUP remains in effect until October 31, 2015 it is anticipated that following *Lakes and Rivers Improvement Act* (LRIA) approval of SREL plans and specifications it may be updated to extend its effective period at which time the Terms and Conditions may be amended or it may be replaced with a Construction Lease. Once the facility is built and operational a Water Power Lease Agreement (WPLA) will be issued to provide long-term occupational authority with Terms and Conditions applicable to the built facility and associated Crown lands under Lease.

....2

---

This office does not provide access to direct services.  
To meet with our staff please be sure to call ahead and make an appointment.  
Visit us at our website: [www.ontario.ca](http://www.ontario.ca)

SREL has obtained approval under the Class Environmental Assessment (EA) for the development of a water power facility. The Crown land locally referred to as Margaret Burgess Park is included in the approved project area. This approval allows for the use and development of the subject Crown land parcels as necessary for the construction and operation of a water power facility, and could include the ability for the proponent to utilize the site for staging, storage of materials, clearing trees to accommodate for access or staging, constructing a temporary access road, temporary placement of settling/weir tanks to process pumped sediment laden water, as well as installing signage and fencing and restricting access during construction.

SREL is required to obtain authorization under the LRIA for the construction of the facility. The construction details subject to LRIA approvals are currently being reviewed by MNRF in phases and activity specific conditions will be applied to the permit. SRELs development will be limited to the works and the construction details approved on the LRIA permit.

At this time it is not known if, or to what degree Margaret Burgess Park will be required as a construction staging area as the MNRF is currently in the process of completing the review of the plans and specifications of the facility and proposed construction details for LRIA approval. Should the final plans include the use of this parcel as a staging and storage location, it is anticipated that the boundary of this location will be fenced and signed as a construction site to prevent unauthorized access. It is our understanding that some trees may need to be removed to allow for the movement of vehicles and placement and removal of equipment and materials in order to reasonably utilize this location as a staging and storage area. It is also our understanding that some fill material may need to be placed in order to create access for vehicles, however as identified in the Class EA documentation, SREL will be required to ensure the ground/soil within Margaret Burgess Park is not significantly disturbed. Please note that the fencing of the area would be temporary for the purposes of construction and following construction, the parcel will once again be accessible to the public.

I hope this information is helpful. Please do not hesitate to contact me should you require any clarification. I can be reached at (705) 773-4236 or by email at [dan.duggan@ontario.ca](mailto:dan.duggan@ontario.ca)

Sincerely,



Dan Duggan  
District Manager  
Parry Sound District  
Ministry of Natural Resources and Forestry



April 14, 2015

Township of Muskoka Lakes  
P.O. Box 129  
1 Bailey Street  
Port Carling, ON  
P0B 1J0

**Attn: Bala Working Committee c/o Clayton Harris, CAO**

**Re: North Bala Falls Small Hydro Project – Revised Offer to Lease**

SREL is thankful for the opportunity to work with the committee to discuss the possible alternative options for construction in more detail. The committee's input into our original proposal/offer was enlightening for us. In response to these discussions, SREL has amended its offer of February 26, 2015 (that was similar to that issued to the Township in October 2013 and April 2014) as outlined in this letter, to reflect the Committee's discussions. It is our hope that the Committee will provide this revised offer to the Council for consideration.

**Offer to Lease Township Lands:**

***Requested Lands:***

SREL requests that the Township of Muskoka Lakes lease/sub-lease the following parcels of land to SREL for purposes of constructing the North Bala Small Hydro Project, herein referred to as the "Project";

- Parcel 1. TML's parcel of land immediately adjacent to and south of the Project site that was transferred to the Township from the District in 2011 (PIN 48029-0638);
- Parcel 2. The MNRF's portion of the Shield Parking Lot (north end) (PIN 48029-0634) currently leased by TML from MNRF; and
- Parcel 3. The Township's portion of the Portage Landing Parking Lot (south end) (PIN 48154-1077). *Due to high volume use of this lot during tourist season, we would request the use of this lot for the period from the week after the Cranberry Festival to April 30 only.*

---

2300 Yonge Street  
Suite 801, P.O. Box 2300  
Toronto, ON M4P 1E4  
Phone: 1-416-864-9977

***Proposed Use of these Lands and Subsequent Restoration:***

***Parcel 1 – TML land adjacent and south of Project Site:***

The following is a list of the proposed uses for this parcel:

- Project site access including construction of a new temporary road and driveway entrance off DR-169 at approximately the south end of Parcel 1 down to the Project Site;
- Storage of construction materials and/or equipment; and
- Installation of a tower crane likely at north end of Parcel 1.

These activities would require tree removal and earthworks throughout Parcel 1 but would be mainly concentrated away from the water's edge.

At the end of SREL's use of the land, Parcel 1 would be restored and rehabilitated as follows based on TML's preference:

1. It will be restored to a condition similar to the existing condition i.e. the temporary access road and all fill material will be removed. The main difference in condition would be that the new trees will be shorter and there will be a view of the new retaining wall for the proposed DR-169 shoulder widening at the east end;

OR

2. The land will be re-graded to improve public access creating a public parkette including walking paths and/or stairs down to the water's edge i.e. tiered landscaping. This will allow a better camouflaging of the new retaining wall for the proposed DR-169 shoulder widening at the east end.

***NOTE:** A decision regarding which of the above two options are to be implemented will need to be received by SREL prior to the execution of the lease agreement to allow SREL to complete the associated planning and design prior to the start of construction.*

In addition to the above, it is proposed that SREL would restore Parcel 1 in adherence with the following guidelines:

- New plantings would include native, landscape quality trees, grasses and shrubbery;
- The restoration / improvements will be designed so as to meet the historical attributes site as outlined in the designation document;
- The restoration / improvements will be reviewed and approved by the committee and/or council prior to finalizing, or as determined by TML council;
- The restoration / improvements will be **completed within 12 months** of the termination of the lease; and
- The restoration / improvements will respect the requirements of the Project's environmental assessment with respect to erosion protection.

***Parcels 2 and 3 – TML land adjacent and south of Project Site:***

The following is a list of the proposed uses for this parcel:

- Storage and staging of construction trailers, equipment (including any equipment typically found on a construction site) and construction materials.
- Storage of sedimentation tanks will be located on Parcel 2 only. These tanks will hold water pumped from the excavation site(s) to allow sediment to settle out before the water is returned to the river.

These activities will require security fencing of the areas to be used. Any disturbances, including fencing, holes from fence posts, potholes in the gravel surface etc. would be removed and/or repaired to meet current conditions at the end of construction. This may include re-grading of the gravel surface, if deemed required.

In addition to the above, SREL's use of Parcels 2 and 3 will adhere to the following guidelines:

- SREL's use will not block or impede the adjacent parking areas from public use;
- The use of Parcel 3 (Portage Landing parking lot) will be restricted to the following period(s): **from the week after Cranberry Festival in October to April 30<sup>th</sup> only.**

***Proposed Compensation for Use of Lands:***

1. SREL will pay the Township a lump sum of **\$125,000**, payable prior to the start of construction to cover the cost of the use of Parcels 1, 2 and 3 for the term of the lease. Should SREL require an extension of the lease, SREL will pay the Township **Late Payments of \$5,200** for each month beyond the initial term, subject to Force Majeure.
2. SREL will provide **\$5,000** to the Township on October 1 of every year that SREL intends to use the Shield Parking Lot during the Bala Cranberry Festival, to distribute to Community groups / charities as they see fit. This payment is considered to be compensation for the expected impact to these groups who have used this lot to raise funds during the Cranberry Festival in the past.
3. SREL will pay for **all the rehabilitation, restoration, and improvements** as described above, including the design, materials and construction.

***Term of Lease:***

Construction of the Project is estimated to take 16-18 months. It is proposed that the "Start" of the lease would coincide with the "Start" of construction. The "End" of the lease would coincide with the plant reaching commercial operation, i.e. the plant is on-line and officially begins to generate electricity. This date is a defined and published date referred to as "COD" (Commercial Operation Date) with the Independent Electricity System Operator (IESO) (formerly Ontario Power Authority).

It is therefore proposed that **the term of the lease would be 24 months**, to allow for commissioning of the plant after construction is complete and to account for any unforeseen delays.

Should SREL be delayed past 24 months, the lease would automatically extend on a monthly basis until COD is reached subject to Force Majeure. Note that SREL is incentivized to reach COD as quickly as possible as this is the date by which SREL begins to collect revenues from the facility.

Restoration and rehabilitation work of Parcels 1, 2 and 3, as described above, may be completed after the initial 24 month term without triggering any Late Payments.

SREL may terminate the lease at any time. In this situation, there would be no discount on the compensation payable, and all rehabilitation / restoration would need to be completed within 12 months of the termination date.

Investigations including surveys and geotechnical investigations required in the production of the engineering drawings may be completed prior to the start of the lease as they are not considered to be "construction" activities. These initial investigations would not include any removal of trees.

For example:

1. If SREL were to conduct initial surveys and some geotechnical investigations in May 2015 but the contractor does not mobilize on site or commence construction until July 2015. The Start of the lease would be July 2015.
2. If SREL starts construction on June 1, 2015 but does not reach COD until July 31, 2017, the lease would be renewed for 2 months at the end of the initial term, and SREL would be required to pay 2 months in Late Payments to the Township for the delay.
3. SREL starts construction June 1, 2015 and completes construction on May 1, 2017 and reaches COD on July 1, 2017. However, SREL determines that it no longer needs the use of Parcels 1, 2 and 3 and terminates the lease effective May 31, 2017, prior to COD. In this situation, SREL would not be charged any Late Payment for the period between June 1, 2017 and July 1, 2017.
4. If SREL starts construction November 1, 2015 and reaches COD on October 1, 2017, however, some or all of the rehabilitation work may need to be completed in June 2018 due to weather considerations. No Late Payments would be required for this lease extension.

***Other Conditions of Lease:***

- SREL will commit that the powerhouse design will include the following design attributes:
  - The building size will be minimized as much as possible, while maintaining operability of the facility;
  - A lookout(s) would be incorporated into the building, accessible by the public from the TML's Parcel 1;
  - Interpretive signage will be placed on or around the building;

Township of Muskoka Lakes c/o Bala Working Committee  
Proposed Lease of Township Lands  
April 14, 2015

- The landscaping between Parcel 1 and the Project site will be made to “blend together”;
  - The south wall will be finished to match the other walls;
  - The building will be designed to “fit into” the community from an architectural design and heritage perspective.”
- During the initial term or any extension of the lease, SREL agrees to:
    - not use **Margaret Burgess Park** for construction purposes or alter it in any way;
    - maintain the current public access, to **Margaret Burgess Park**; and
    - **insure and indemnify the Township** for the work conducted on these lands by SREL and/or its agents.
  - Margaret Burgess Park will continue to be used by MNRF and or SREL for access to the Bala North Dam for the purposes of operations and maintenance throughout the construction period.
  - The Township will cooperate and allow SREL and / or its agents on the lands prior to commencement of construction for purposes of carrying out investigations including geotechnical investigations required for the production of engineering drawings, surveys, construction documents, reports etc. SREL agrees that none of these “pre-construction” activities will require tree removal.

We look forward to the council’s review of the above revised offer and any comments it may have.

Respectfully,  
**Swift River Energy Limited**



Frank Belerique  
Vice-President

FB:km