



## **Administrative Report**

### **Office of the County Solicitor**

**To:** Warden McNamara and Members of Essex County Council

**From:** David Sundin, BA (Hons), LL.B.  
County Solicitor

**Date:** Wednesday, February 02, 2022

**Subject:** Road User Agreement with Cogeco Connexion Inc.

**Report #:** 2022-0202-CCS-R01-DS

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#### **Purpose**

The purpose of this report is to provide the necessary background information for Council to make decision regarding a proposed Road User Agreement with Cogeco Connexion Inc. ("Cogeco") for the installation and ongoing maintenance of certain cable lines for the provision of internet services in the County (the "Project").

#### **Background**

The County has adopted a policy of entering into formal Road User Agreements with any user of the County's road network and the associated rights-of-way. The purpose of this is to ensure that the rights and obligations of the County and any third-party user are as clear as possible during the term of what often are long running agreements. This is important, as the standard agreements for major infrastructure projects of third parties are frequently for terms of at least 20 years, with the strong possibility that the parties who approved of and oversaw the installation may no longer be employed by the County throughout the entire life of the installation.

#### **Discussion**

In October of 2020, Southwestern Integrated Fibre Technology ("SWIFT") awarded contracts to expand high speed fibre optic broadband internet

services ("High Speed Internet") to households and business across Essex County.

The Project is part of the initiative to deliver High Speed Internet with funding from SWIFT and is being completed by Cogeco along certain municipal roadways, which include along County Roads 8, 14, 18, 31, 33, 34, and 37 within the Municipality of Leamington, along County Roads 18, 23, 29, and 31 within the Town of Kingsville, and along County Roads 11, 12, 15, 18, 20, 23, and 50 within the Town of Essex.

Use of the right-of-ways for this purpose is supported, as the County has long advocated for the delivery of High Speed Internet to its residents, and as it is a purpose for which the federal Telecommunications Act requires that the County provide access to its rights-of-way for in any event.

The form of Road User Agreement that has been negotiated is as much as possible in the standard form that the County has developed over the past number of years. However, some modifications were required in areas that conflicted with the rights of Cogeco under the Telecommunications Act. The only major revisions that were required was with respect to which party bears the cost of relocation during the term of the agreement. The County's standard form provides that the third-party bear any and all relocation costs. However, the Telecommunications Act provides for cost splitting that in the early stages of the agreement puts the burden of relocation costs on to the County, and which over time results in the service provider, in this case Cogeco, becoming responsible for the costs.

## **Financial Implications**

The only financial implications to the County are the potential that the County is exposed to all or a portion of relocation costs should it require that Cogeco's installation be moved in the first 16 years of the agreement. It is not anticipated that the County will require relocation in the next 16 years, and, as such, the risk to any financial impact appears to be low.

## **Consultations**

In preparing the draft Road User Agreement, I consulted with Jerry Behl, Manager, Transportation Planning & Development, who has confirmed that the draft Road User Agreement is satisfactory for the purposes of Infrastructure Services.

## **Recommendation**

That Essex County Council adopt By-law 2022-02, authorizing the Clerk and the Warden to execute a copy of the Road User Agreement between Cogeco and the County substantially in the form appended to this report as Appendix "A".

## **Approvals**

Respectfully Submitted,

*David Sundin*

David Sundin, BA (Hons), LL.B., County Solicitor

Concurred With,

*Mary Birch*

Mary Birch, B.A., CMO, Director, Council & Community Services/Clerk

Concurred With,

*Mike Galloway*

Mike Galloway, Chief Administrative Officer

<b>Appendix Number</b>	<b>Title</b>
A	Draft Road User Agreement