



## **Administrative Report**

### **Office of the Director, Infrastructure & Planning Services**

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

**From:** Allan Botham, P.Eng.  
Director, Infrastructure & Planning Services

**Date:** Wednesday, September 07, 2022

**Subject:** County Road 42 and County Road 43 – Phase 1

**Report #:** 2022-0907-ISD-R21-AB

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#### **Purpose**

The purpose of the subject report is to provide County Council with an update on Phase 1 of the larger County Road 42 and County Road 43 ("CR 42/43") Roadway Expansion Project (the "Project") (please refer to Figure 1). This update includes information on the status of construction, and market conditions in the region.

This information is provided as background to support the probable action, and decision to exercise the CAO's delegated authority under By-law 2022-25 to 'authorize unbudgeted expenditures or liabilities of the County of Essex exceeding \$50,000' and to enter into a contract to complete Phase 1 of the Project.

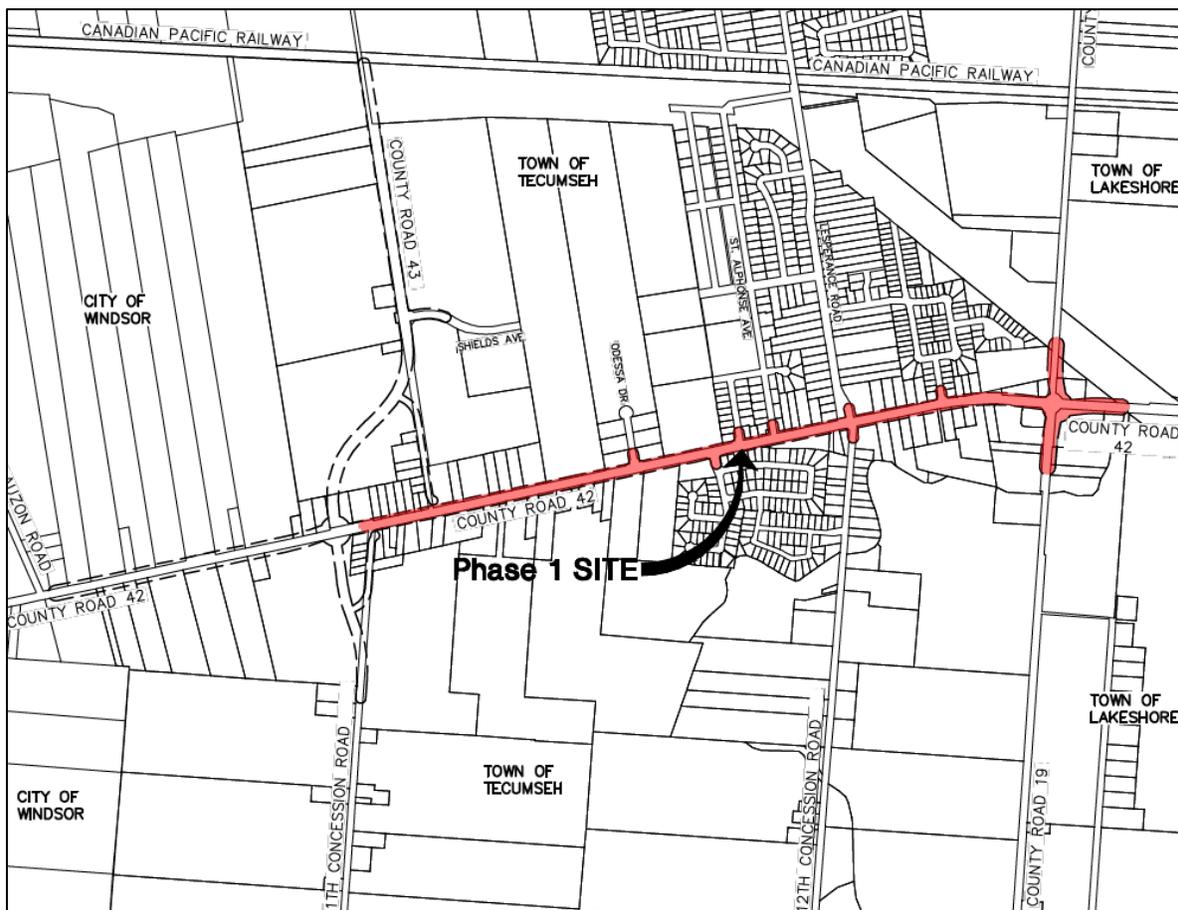
#### **Background**

The Project began a number of years ago with the completion of an Environmental Assessment ("EA") and continued through 2022 with necessary property acquisitions and utility relocations. Recommendations from the EA and recent growth projections support the need for the project, particularly the:

- (1) New Windsor/Essex Regional Acute Care Hospital to be constructed on land at the corner of County Road 42 and the 9<sup>th</sup> Concession, and the expected increase in traffic that will ensue during the hospital construction and following the hospital opening;

- (2) Historic commitments to the Town of Tecumseh by the County to improve that section of County Road 42 and realign County Road 43 (Banwell Road); and
- (3) Increases in traffic along that section of County Road 42 as Tecumseh and Lakeshore continue to grow and County Road 42 becomes even more important for commuter traffic.

**Figure 1**



A recent announcement regarding the battery plant to be located at the corner of Banwell Road and EC Row Expressway has made the Project even more pressing. County municipalities continue to grow, along with the number of daily commuters, and a new factory complex will only increase these pressures in this area of the County.

The Project is intended to take place over multiple phases, and is set to be, both financially and logistically, the largest single project ever undertaken by the County.

Detailed Design of Phase 1, underground works (storm sewers, sanitary sewers and watermain) to accommodate the widening of CR 42 from CR 19 to just west of CR43, and roundabouts at the intersections of CR42/43 and CR 19/42, were completed in December 2021.

A Request for Tenders (the "RFT") with respect to Phase 1 of the Project was posted on April 5, 2022. The closing of the RFT was then extended by the County to May 24, 2022, providing more time for potential bidders to submit the best and most reasonable pricing.

On May 18, 2022, 2 business days prior to the RFT closing, a "Contractor Contract Hardship Action Form" (the "Hardship Form") was provided by one of the potential bidders.

The Hardship Form sought to transfer the risk of any potential volatility in prices for fuel, materials, and excess soil to the County. The Hardship Form was received after the close of the advertised Q&A period. While a formal response was not posted on Bids & Tenders, Administration reviewed the hardship requests and determined the County had already provided public responses to 2 of the 3 concerns as part of the procurement process. A review of tendering practices of municipalities within Windsor Essex revealed the third hardship request, allowing for fuel escalation indexes, was not being entertained by any other municipality. The RFT continued to its advertised closing date.

Ultimately, the County did not receive any bids in response to the RFT. As no potential bidders submitted bids, the County was permitted, pursuant to the County's Procurement Policy, to directly approach contractors for the purpose of seeking to negotiate the costs for the Project directly with a contractor without needing to go back to tender. This process is called "limited tendering".

Administration had discussions with two potential contractors to gain an understanding of whether or not limited tendering is advisable in this situation. Only one of the contractors approached can actually commit to undertake the Project at this time should the County proceed with a limited tendering process and resulting contract. The estimate from the potential contractor for Phase 1 of the Project is \$29,000,000.

With respect to the budget and cost, Phase 1 of the Project is a joint project between the County of Essex and the Town of Tecumseh, with the Town of Tecumseh paying for watermain and sanitary sewer portions of the work,

and the County paying for the remainder of the works. The previous projection of cost for Phase 1 was \$18,500,000 (\$14,500,000 County share and \$4,000,000 Tecumseh share). Due to various reasons, including current market values, the most recent estimate of cost for Phase 1 from the County's consultant, and as of August, 2022, is in the range of \$25,000,000 to \$30,000,000. A breakdown of cost is provided in Table 1.

Commencement of the Phase 1 - Underground works in 2022 is critical to allow for the progression of subsequent phases of the Project, particularly Phase 2 – Construction of a multi-lane roundabout at CR 42 and CR 43 and realignment of CR 43, in 2023-2024.

## **Discussion**

Administration is concerned that any delay in the Project is problematic given the growth in that area, and the impending arrival of both a new regional hospital and battery plant, which will very likely increase traffic volumes even further. Also, of concern is the County's historic commitment to Tecumseh to improve the County Road 42/43 corridor.

As already mentioned above, the County's Procurement Policy governs what happens when no bids are received in response to a call for tenders. Section 9 of the Policy allows for what is known as "limited tendering", which allows the County to directly contract with a service provider without going through the formal and competitive tendering process.

Being respectful of normal procurement practices and public trust, all options are weighed against need, budget, current market conditions, risk and probability of success. Therefore, Administration considered options of, "do nothing" and putting the Project on hold, re-tendering, or proceeding with a limited tendering process.

For the reasons noted above regarding anticipated growth, and historic commitments, doing nothing and putting the Project on hold is neither responsible nor feasible and therefore the "do nothing" option is not recommended. "Do nothing" does not satisfy the pressing needs of the County road network in the CR42/43 corridor.

Re-tendering of Phase 1 is a potential option that warrants consideration. A public process of re-tendering provides an unlimited number of contractors an opportunity to reconsider the Project, their goals and workload. Typically, there are benefits with a large contract spanning 12-18 months such as a long backlog of work to keep employees, preferred pricing from suppliers of large quantity items, and regular payments. However, with volatile prices of construction materials and unstable supply chains, these

typical principles cannot be relied upon. Also, there are no guarantees any contractors will submit a bid, especially since the terms of the RFT would remain the same as the last time the RFT was posted. Additionally, there is no guarantee that the price will be any better than what the County may receive through the limited tendering process. Our consultant has confirmed that recent tenders closed by the City of Windsor for work of similar size and type are coming in 30-40% higher than estimated. In summary, there are risks of delay and contract pricing should the re-tendering option be exercised.

Proceeding with the limited tendering option with the interested contractor offers a high probability of an executed contract being in place in 2022, at a value that is reasonable in relation to the engineer's estimate and the comments received from another potential proponent.

In order to proceed with limited tendering option, a written justification is required and must be approved by the designated approval authority under the Policy. Given the dollar figure associated with the Project, County Council is the proper approval authority in this instance. However, given that County Council has delegated its authority until after the new Council is sworn in following the October election, it will be the CAO who makes the decision and this report is being provided to County Council to advise of the decision of the CAO in exercising the authority delegated to him.

This report serves as the written justification, should the CAO proceed with the limited tendering process, as required by the Policy.

## **Financial Implications**

Phase 1 of the Project, CR 42/43 corridor improvements, was included in the 2022 budget, with the County of Essex share of \$14,500,000. Should a contractor begin construction in 2022, it is expected that the value of work constructed in 2022 would not exceed \$3,000,000 given the time of year and remaining reasonable number of available working days.

The total cost of Phase 1 of the Project is projected to be \$29,000,000. Approximately \$6,000,000 of total cost is the responsibility of the Town of Tecumseh for the construction of new sanitary sewers and watermain. Therefore, the expected variance to the Phase 1 budget to the County of Essex is approximately \$8,500,000 (please refer to Table 1).

Administration from the Town of Tecumseh has confirmed support of both the limited tendering process and the additional costs attributable to their share of the project.

**Table 1**

| <b>Phase 1 Cost Shares</b> | <b>Budget</b>       | <b>Revised Estimate</b> | <b>Variance</b> |
|----------------------------|---------------------|-------------------------|-----------------|
| County of Essex            | \$14,500,000        | \$23,000,000            | (\$8,500,000)   |
| Town of Tecumseh           | \$4,000,000         | \$6,000,000             | (\$2,000,000)   |
| <b>Total</b>               | <b>\$18,500,000</b> | <b>\$29,000,000</b>     |                 |

Phase 1 of the Project was budgeted to be funded by the Corporation’s Expansion Reserve. The increase in cost will require additional draws from the Expansion Reserve. While the reserve can accommodate this project increase, Administration will need to assess the longer-term impact to the Expansion Reserve to ensure future projects are not negatively impacted. The 2023 Budget will include the balance of the Phase 1 project costs as well as an estimate for the commencement of Phase 2.

## **Consultations**

Infrastructure & Planning Services consulted with the County Solicitor, the Director of Financial Services/Treasurer and the office of Procurement. Administrative staff from the Town of Tecumseh were also consulted.

## **Recommendation**

That Essex County Council receive report 2022-0907-ISD-R21-AB, County Road 42 and County Road 43 – Phase 1, as information, and as background to support the probable action, and decision to exercise the CAO’s delegated authority under By-law 2022-25 to ‘authorize unbudgeted expenditures or liabilities of the County of Essex exceeding \$50,000’ and to proceed with limited tendering and to enter into a contract if favourable to do so, to complete Phase 1 of the County Road 42 and County Road 43 project.

## Approvals

Respectfully Submitted,

*Allan Botham*

Allan Botham, P.Eng., Director, Infrastructure and Planning Services

Concurred With,

*Mike Galloway*

Mike Galloway, MBA, CMO, Chief Administrative Officer

| <b>Appendix Number</b> | <b>Title</b> |
|------------------------|--------------|
| N/A                    | N/A          |