



TO:	CHAIR AND MEMBERS INVESTMENT AND ECONOMIC PROSPERITY COMMITTEE MEETING ON JUNE 24, 2013
FROM:	HARVEY FILGER DIRECTOR, CORPORATE INVESTMENTS AND PARTNERSHIPS
SUBJECT:	PROSPERITY PROJECTS: 111 HORTON ST. REDEVELOPMENT OPPORTUNITY – NON-DISCLOSURE AGREEMENT

RECOMMENDATIONS

That, on the recommendation of the Director, Corporate Investments and Partnerships, the attached proposed By-law ('Appendix A') **BE INTRODUCED** at the Municipal Council meeting of June 25, 2013;

- a) **TO APPROVE** The Non-Disclosure Agreement between: The Corporation of the City of London and Kilmer Brownfield Management Limited and London Hydro Incorporated; and
- b) **TO AUTHORIZE** the Mayor and City Clerk to execute the agreement in (a) above.

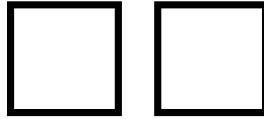
PREVIOUS REPORTS PERTINENT TO THIS MATTER
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1. Investment and Economic Prosperity Committee, January 23, 2012, *Developing a Strategic Investment and Economic Prosperity Plan*
2. Investment and Economic Prosperity Committee, December 18, 2012, *A Path to Prosperity: Community Business Ideas to Stimulate our Economy*
3. Investment and Economic Prosperity Committee, April 29, 2013, *Investment and Economic Prosperity Projects Update*
4. Investment and Economic Prosperity Committee, May 21, 2013, *Investment and Economic Prosperity Projects – Public Input*

BACKGROUND

January 23, 2012, Municipal Council was presented the *Developing a Strategic Investment and Economic Prosperity Plan*. This plan described a multi-step process by which investment and prosperity ideas would be solicited from the community, analyzed and shortlisted, and presented the path through which prosperity projects would move from conception to implementation.

December 18, 2012, the Corporate Investments and Partnerships team prepared a report for the Investment and Economic Prosperity Committee (IEPC) in which a shortlist, for the purpose of accelerating London's economy and fostering private sector investment in the city, was presented. This report discussed the Industrial Lands Development Strategy and analyzed 49 proposals/ideas previously presented to the IEPC. Identified in the report were five proposals best suited to the advancement of the goal and objectives of London's Prosperity Plan:



The Goal: The investment and Economic Prosperity Committee is developing a 10-year plan that will move London's Economy forward faster and ensure long term prosperity for our community.

The Objectives: Create Jobs; Leverage Investment; Stimulate spin-off benefits; Build beneficial partnerships; Benefit key sectors; Fuel transformational change in London's economy

The potential redevelopment of 111 Horton St. East by Kilmer Brownfield Equity Fund L.P. ("Kilmer") was one of the five proposals identified in the December 18, 2013, *A Path to Prosperity: Community Business Ideas to Stimulate our Economy*; the associated recommendation reads as follows: "The City of London enter into more formal discussions with Kilmer Brownfield Equity Fund L.P. and London Hydro regarding the potential sale and redevelopment of the land at 111 Horton St. East."

The proposal from Kilmer concerning the potential redevelopment of 111 Horton St. East, requests the City of London sell the land to Kilmer. Kilmer would then complete the remediation of the land, work with the City to have the land rezoned and seek a land development corporation. As a result of these efforts, additional value created would be shared with the City of London. It is expected that this project would participate in the City of London's Brownfield Community Improvement Program. Based on the primary analysis, this proposal is expected to create hundreds of short term and long term jobs and serves to generate wealth in our community through the creation of a desirable commercial and residential development fronting the Thames River. Additional background information on the proposal and the analysis is available in 'Appendix B'.

DISCUSSION

For the purpose of gaining a more comprehensive understanding of the redevelopment opportunity at 111 Horton St. East, an opportunity / constraint analysis and gap identification process have been undertaken. These investigations and the subsequent sharing of information among the involved parties, supports decision making and assists in the advancement of the project.

To continue these investigations and the sharing of information, a Non-Disclosure Agreement ('Schedule A') is proposed between The Corporation of the City of London and Kilmer Brownfield Management Limited and London Hydro Incorporated.

Subject to the restrictions of the Non-Disclosure Agreement identified in 'Schedule A', Harvey Filger, Director, Corporate Investments and Partnerships, will evaluate which records if any are relevant for potential disclosure outside of The Corporation of the City of London, with the final determination with respect to any disclosure to be made by the Clerk's office. No records belonging to The Corporation of The City of London will be released to a third party contrary to the *Municipal Freedom of Information and Protection of Privacy Act*. All information disclosed is subject to the restrictions of the Non-Disclosure Agreement ('Schedule A'); information provided to parties outside of The Corporation of the City of London, will be appropriately identified as confidential. The nature of the information to be conveyed outside of The Corporation of the City of London is expected to consist of historical reports concerning the property at 111 Horton St. East; including reports which address the environmental condition of the property. Any person who discloses information outside the corporation is responsible for such disclosure; should improper disclosure occur, The Corporation of the City of London or the Information and Privacy Commissioner will determine appropriate remedies.

Harvey Filger, Director, Corporate Investments and Partnerships, will conduct negotiations on behalf of The Corporation of the City of London. These negotiations serve to further investigate opportunities and constraints associated with redevelopment; identify gaps in information currently available; and determine how best to address these gaps to support project decision making.



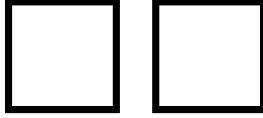
CONCLUSION

To facilitate further investigation of the development opportunity at 111 Horton St. East, it is recommended that the Non-Disclosure Agreement between The Corporation of the City of London and Kilmer Brownfield Management Limited and London Hydro Incorporated be approved.

PREPARED AND SUBMITTED BY:	PREPARED AND SUBMITTED BY:
CATHY DZIEDZIC SPECIALIST, CORPORATE INVESTMENTS AND PARTNERSHIPS	MAT DALEY SPECIALIST, CORPORATE INVESTMENTS AND PARTNERSHIPS
REVIEWED AND RECOMMENDED BY:	RECOMMENDED BY:
HARVEY FILGER DIRECTOR, CORPORATE INVESTMENTS AND PARTNERSHIPS	JAMES P. BARBER MANAGING DIRECTOR, CORPORATE SERVICES, CITY SOLICITOR

Acknowledgments:

Lynn Marshall, Solicitor II, City Solicitor's Office, prepared the associated By-law; Non-Disclosure Agreement and provided legal support in the drafting of this report to the Corporate Investments and Partnerships Team.



APPENDIX A: PROPOSED BY-LAW

Bill No.
2013

By-law No.

A By-law to authorize and approve a Non-Disclosure and Confidentiality Agreement with London Hydro Inc. and Kilmer Brownfield Management Limited.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS section 10 of the *Municipal Act, 2001* provides that the City may provide any service or thing that the City considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the City, and the health, safety and well-being of persons;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

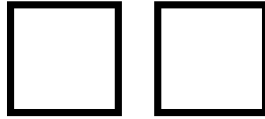
1. The Non-Disclosure and Confidentiality Agreement attached as Schedule "A" to this by-law between The Corporation of the City of London, London Hydro Inc., and Kilmer Brownfield Management Limited with respect to the proposal for the redevelopment of lands located at 111 Horton Street, London, Ontario, is hereby authorized and approved.
2. The Mayor and City Clerk are authorized to execute the Agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council , 2013

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading -
Second reading -
Third reading -



SCHEDULE A: PROPOSED NON-DISCLOSURE AGREEMENT
NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT
DATED June 12, 2013

BETWEEN:

The Corporation of the City of London (“the City”)

AND:

London Hydro Inc. (“LHI”)

(collectively “London Parties”)

AND:

Kilmer Brownfield Management Limited (“the Recipient”)

WHEREAS lands located at 111 Horton Street, London, Ontario (the “Lands”) appear to be owned by the City and the Public Utility Commission;

AND WHEREAS LHI offices are currently located on the Lands;

AND WHEREAS in January of 2012, the Recipient approached the City’s then Chief Administrative Officer with a proposal for the ultimate redevelopment of the Lands;

AND WHEREAS the City subsequently issued a public request for ideas calling for “Investment and Economic Prosperity Proposals” through its Investment and Economic Prosperity Committee;

AND WHEREAS the Recipient responded to the City’s public request, and appeared as a delegation before the June 9, 2012 Investment and Economic Prosperity Committee with respect to a proposal re Remediation and Rezoning to Facilitate the Redevelopment of the Lands (the “Proposal”);

AND WHEREAS the Recipient has requested that the London Parties provide it with various information with respect to the Lands, including but not limited to environmental assessments, environmental reports, and third-party confidential information;

AND WHEREAS the London Parties do not wish to provide any such information that is confidential, non-public, or proprietary in nature, unless the Recipient agrees to keep such information confidential;

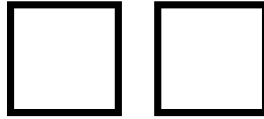
AND WHEREAS the Recipient and the London Parties wish to define their respective rights with respect to Confidential Information as hereinafter defined and to protect the rights of the London Parties to such Confidential Information;

AND WHEREAS the Recipient acknowledges that the *Municipal Freedom of Information and Protection of Privacy Act* applies to the London Parties’ Confidential Information;

IN CONSIDERATION of the covenants and agreements contained in this agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Commencement and Termination

This Agreement shall commence upon any of the London Parties providing Confidential Information to the Recipient.



The Agreement shall be at an end upon the earlier of the Recipient's decision not to pursue the Proposal, or the London Parties requesting the return of their Confidential Information.

2. Definitions

Confidential Information

"Confidential Information" means any information in any form in the custody, control or possession of one or more of the London Parties but does not include information that:

- (a) is now or subsequently becomes generally available to the public through no fault or breach on the part of the Recipient;
- (b) the Recipient can demonstrate to have had rightfully in its possession prior to disclosure to the Recipient by one or more of the London Parties; or
- (c) the Recipient rightfully obtains from a third party who has the right to transfer or disclose it.

Representatives

"Representatives" means the directors, officers, employees, councillors, agents, solicitors, accountants, consultants, financial or legal advisors and all other representatives of the party being referred to.

3. No Obligation on London Parties to provide Confidential Information

The Recipient acknowledges that the London Parties have no obligation to provide to the Recipient with any or all of the London Parties' Confidential Information.

4. Confidentiality Obligations

The Recipient shall:

- (a) keep confidential all Confidential Information;
- (b) not use any Confidential Information in any way detrimental to the London Parties;
- (c) not use the Confidential Information, directly or indirectly, for any purpose other than to evaluate, advise on, or further the Proposal;
- (d) keep confidential any negotiations with respect to the Proposal;
- (e) ensure that the Recipient's Representatives observe and perform all of the covenants the Recipient has agreed to observe and perform in this Agreement as if the Representatives had signed the Agreement.

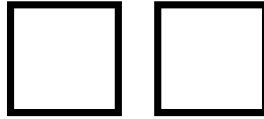
The Recipient agrees that any Confidential Information that was disclosed or provided to the Recipient prior to the execution of this Agreement shall be deemed to be included and covered by the terms of this Agreement.

If the Recipient is in doubt as to whether any information it receives or otherwise discovers is Confidential Information under this Agreement, the Recipient shall obtain written approval from the applicable London Parties before proceeding with disclosure.

Subject to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, and to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, other applicable law, and except as otherwise provided in this agreement, the London Parties agree to keep confidential all Confidential Information which may be shared amongst them, unless the disclosing party provides written approval to release such Confidential Information.

5. Limited Disclosures

The Recipient may disclose the Confidential Information to its Representatives, only on



the following conditions:

- (a) such Representatives need to know the Confidential Information for the purpose of evaluating or advising on the Proposal; and
- (b) such Representatives are informed by the Recipient of the confidential nature of the Confidential Information; and
- (c) the Recipient agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication or dissemination of Confidential Information.

Responsibility for Representatives

The Recipient shall be responsible for any breach of the provisions of this Agreement by any of its Representatives.

6. Compelled to Disclose

If a party becomes legally compelled to disclose the Confidential Information, that party shall promptly provide the applicable parties with particulars, so the parties may seek a protective order or other appropriate remedy. The parties shall consent to and assist in obtaining any protective order or other appropriate remedy that one or more of the parties may seek for the purpose of preventing disclosure of any of the Confidential Information.

7. Equitable Relief

The parties acknowledge that unauthorized disclosure or use of Confidential Information could cause irreparable harm and significant injury to the parties that may be difficult to ascertain. Accordingly, the parties agree that they shall have the right to seek and obtain immediate injunctive relief or specific performance, without proof of actual damage, to enforce obligations under this Agreement in addition to any other rights and remedies it may have. The parties agree not to plead sufficiency of damages as a defence in the proceeding for such injunctive relief brought by one or more of the parties.

8. Ownership of Confidential Information

The parties agree that no licence or other rights to Confidential Information is granted or implied in this Agreement.

9. Return of Confidential Information

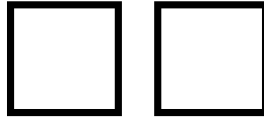
The receiving party shall return to the originating party the Confidential Information on or before any date as may be specified by the originating party in writing even though the receiving party shall not have completed the purpose for which the Confidential Information shall have been disclosed and delivered. Immediately upon receipt of a request to return the Confidential Information, the party who received such Confidential Information shall discontinue and cease all further evaluation and forthwith deliver to the originating party all the Confidential Information of every kind in its possession.

10. Obligations Continue

The obligations of the Recipient under this Agreement shall survive the termination of the Agreement and shall continue indefinitely.

11. Indemnification

The Recipient shall indemnify the London Parties and the London Parties' Representatives and save all of them fully harmless from and against any loss, cost, damage, expense or liability suffered or incurred by any of them arising as a result of or in connection with any breach by the Recipient or the Recipient's Representatives of any provision of this Agreement and which loss, cost, damage, expense or liability is proved to the satisfaction of the Recipient and the applicable London Parties, or determined by a court of law.



12. No Liability

The Recipient acknowledges that the London Parties and its Representatives:

- (1) do not guarantee that any Confidential Information the London Parties or their Representatives may provide to the Recipient is current, accurate, complete or free of errors;
- (2) assume no liability or responsibility for errors or omissions in any of the Confidential Information provided to the Recipient;
- (3) make no representations or warranties of any kind whatsoever with respect to the Confidential Information;
- (4) do not provide any Confidential Information for other than informational purposes;
- (5) do not provide specific advice or recommendations in any circumstances.

13. Entire Agreement

This Agreement sets out the entire agreement between the Recipient and the London Parties pertaining to the subject matter and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written.

14. Invalidity

If any provision of this Agreement is determined to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the validity, legality or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.

15. Notice

Any notice, demand or other communication (a “notice”) shall be made in writing and shall be sufficiently given or made if:

- (i) delivered in person (including a commercial courier) during normal business hours at the address set out below;
- (ii) sent by prepaid first class mail; or
- (iii) sent by facsimile transmission (including e-mail);

in the case of notice to the Recipient addressed to it at:

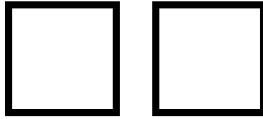
Kilmer Brownfield Management Limited
Suite 2700, Scotia Plaza
40 King Street West, Box 127
Toronto, ON M5H 3Y2
Attention: Pamela Kraft, Managing Director, Planning & Development
Facsimile: (416) 635-7697 E-mail: pkraft@kilmergroup.com

in the case of notice to the City addressed to it at:

City of London
300 Dufferin Avenue, P.O. Box 5035
London, ON N6A 4L9
Attention: Harvey Filger
Facsimile: (519) 661-0082 E-mail: hfilger@london.ca

in the case of notice to the LHI addressed to it at:

London Hydro Inc.
111 Horton Street
P.O. Box 2700
LONDON, ON N6A 4H6
Fax: (519) 661-5838



Notice shall be deemed to be received:

- if delivered in person: on the day of delivery;
- if mailed by prepaid first class mail: on the fifth business day after mailing (excluding each day during which there existed any interruption of postal services)
- if sent by facsimile transmission (including e-mail): on the same day it was sent if sent during normal business hours, or the following business day if sent outside of normal business hours,.

16. Governing Law

This Agreement shall be construed in accordance with the laws of the Province of Ontario.

SIGNED, SEALED AND DELIVERED

By the Recipient

Kilmer Brownfield Management Limited:

Signature

Print Name and Position (KBML)

I have the authority to bind the Corporation.

Signature

Print Name and Position (KBML)

I have the authority to bind the Corporation.

By The Corporation of the City of London

Signature

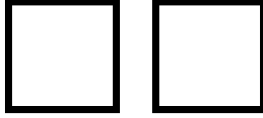
Print Name and Position (City)

I have the authority to bind the Corporation.

Signature

Print Name and Position (City)

I have the authority to bind the Corporation.



By London Hydro Inc.

Signature

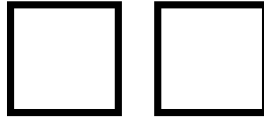
Print Name and Position (LHI)

I have the authority to bind the Corporation.

Signature

Print Name and Position (LHI)

I have the authority to bind the Corporation.



Appendix B: Additional Background Information

Kilmer Brownfield Equity Fund L.P. (“Kilmer”) is Canada’s first privately owned equity fund that is dedicated to the development of brownfields. The \$100 million fund has successfully completed significant brownfield redevelopments in: Toronto, Montreal, Guelph and Mississauga. The fund is managed by brownfield specialists with backgrounds in: environmental risk management, planning, development, real estate and finance. These skill sets allow Kilmer to invest in and remediate brownfields resulting in the realization of increased land value.

The proposal is requesting the City of London sell the land at 111 Horton St. East to Kilmer Brownfield Equity Fund L.P. Kilmer will complete the remediation of the land and work with the City to have the land rezoned while also seeking a land development corporation. As a result of these efforts, the value created would be shared with the City of London. It is expected that this project would participate in the City of London’s Brownfield Community Improvement Program. No cash investment from the City of London is requested. Based on the primary analysis, it has been determined that this proposal falls within the definition of Economic Development as it is expected to create hundreds of short term and long term jobs and serves to generate wealth in our community through the creation of commercial and residential development (Appendix E1).

Proposal Strengths and Advantages:

Through the redevelopment of downtown brownfield land into riverfront, mixed use residential and commercial space, the Kilmer proposal directly addresses key elements of The City of London’s strategic plan: A Strong Economy; Establish a focused strategy for downtown; A Green and Growing City, Promote a “green culture” and the fundamentals of sustainability. Through the application of the secondary analysis tool the Kilmer proposal scored highly on job creation, over 500 long term jobs and several hundred short term jobs are expected to be created. This advantage is strengthened as Kilmer is not requesting any financial support; thus, this job creation will have no direct cost to the City of London. A further advantage of the Kilmer proposal is that it serves to build a beneficial relationship with an experienced brownfield development organization.

Potential Limitations:

London Hydro currently resides on the land at 111 Horton St. East; should The City of London wish to move forward with this proposal, discussions must be entered into with London Hydro. The proximity of Labatt’s and the Thames River may cause potential zoning and development limitations based on industrial land use and the Thames River floodplain. Should the City of London wish to move forward with this proposal, Planning professionals from the City of London and the Upper Thames River Conservation Authority would play a key role in the process.

Previous Recommendation:

Based on the City of London Community Improvement Plan for Brownfield Incentives, adopted by council on February 20, 2006 and the Brownfield Administration Policy Project, most recently updated through a November 29, 2012 Audit Committee report, considerable support exists for the redevelopment London’s brownfields. In the December 2011 Thames Valley Corridor Plan and the 2012 City of Opportunity: A Vision for Downtown document, the site at 111 Horton St. East is specifically identified for potential redevelopment. Based on this support and the potential to create over 500 long term jobs at very little cost to The City of London, Civic Administration recommends the Kilmer proposal move forward in the process.