TO: Chair and Members  
Public Works Committee  

WARD(S) AFFECTED: WARD 13

COMMITTEE DATE: October 4, 2010

SUBJECT/REPORT NO:  
Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 50 Cayley Street, Dundas (PW10093) - (Ward 13)

SUBMITTED BY:  
Gerry Davis, CMA  
General Manager,  
Public Works Department

PREPARED BY:  
Marilyn Preston,  
(905) 546-2424, Extension 4298

SIGNATURE:

RECOMMENDATION:

(a) That a portion of the public unassumed alley abutting 50 Cayley Street, Dundas, be permanently closed and transferred to the owners of 50 Cayley Street, Dundas, 52 Cayley Street, Dundas and 97 Sydenham Road, Dundas, as shown on the Proposed Alley Closure map attached as Appendix “A” to Report PW10093, subject to the following conditions:

(i) That the applicant makes an application to a District Court Judge, under Section 88 of the Registry Act, R.S.O. 1990, for an order to permanently close and purchase the subject lands;

(ii) That the General Manager, Public Works or his designate sign the appropriate documentation confirming that no public funds have been expended on the lands to be closed;

(iii) That the documentation regarding the application to the District Court Judge be prepared by the applicant, to the satisfaction of the City Solicitor;

(iv) That the applicant register a reference plan under the Registry Act and that said plan be prepared by an Ontario Land Surveyor to the satisfaction of the Senior Project Manager, Survey/Technical Services and that the applicant deposit a reproducible copy of said plan with the Senior Project Manager, Survey/Technical Services;
(b) That provided the Judge’s Order to permanently close the lands is granted:

(i) That the City Solicitor be authorized and directed to prepare the by-law to permanently close the highway;

(ii) That the appropriate by-law be introduced and enacted by Council;

(iii) That the Economic Development and Real Estate Division, Planning and Economic Development Department, be authorized and directed to sell this closed highway in accordance with the Procedural By-law for the Sale of Land, By-law No. 04-299;

(iv) That the City Solicitor be authorized and directed to register a certified copy of the by-law permanently closing the highway in the proper Land Registry Office;

(v) That the by-law permanently closing the highway does not take effect until a certified copy of the by-law is registered in the proper Land Registry Office;

(vi) That the Public Works Department publish a notice pursuant to Section 34 of the Municipal Act 2001, S.O. 2001, c. 25, as amended, of the City’s intention to pass the by-law.

(c) That should the closure and sale to the owner of 52 Cayley Street Dundas of one half of the portion of alley abutting that property be approved, that the owner of 52 Cayley Street, Dundas, agree to provide an easement to the owner of 97 Sydenham Road, Dundas, allowing them to connect to the City’s sewer system in the future.

EXECUTIVE SUMMARY

The owner of 50 Cayley Street, Dundas submitted an application to permanently close and purchase a portion of public unassumed alley abutting the property. When notification of the proposal was sent to the neighbourhood, the owners of 52 Cayley Street and 97 Sydenham Road, also abutting the alley, advised that they were interested in purchasing half of the portion of alley abutting their property. The property at 97 Sydenham Road is not yet connected to the City’s sewer system and the only way to make that connection in the future would be to install the connection within the alley. The owner of 97 Sydenham Road would need to make private easement arrangements with the owner of 50 or 52 Cayley Street for this sewer connection. Therefore, Operations and Waste Management staff recommend that the alley be split equally between the applicant at 50 Cayley Street and the owners of 52 Cayley Street and 97 Sydenham Road.

Alternatives for Consideration – See Page 4
FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: The applicant has paid a user fee of $319.93. The lands will be transferred for one dollar, in accordance with the City’s policy regarding the sale of public unassumed alleys abutting residential properties.

Staffing: An agreement to purchase the subject lands will be negotiated by the Economic Development and Real Estate Division.

Legal: The City Solicitor will prepare the by-law to permanently close the subject lands and will register this by-law in the Registry Office once Council has approved it. The City Solicitor will complete the transfer of the subject lands to the applicant pursuant to an agreement of purchase and sale or Offer to Purchase as negotiated by the Economic Development and Real Estate Division.

HISTORICAL BACKGROUND

The owner of 50 Cayley Street, Dundas has applied to permanently close and purchase a portion of the public unassumed alley abutting the property. The intent of the closure is to acquire lands which the applicant has already fenced and incorporated into their backyard. When notice of the proposal was circulated to the neighbourhood the other abutting owners expressed an interest in purchasing half of the alley abutting their properties. Therefore, Operations and Waste Management Division staff support closing the alley and transferring half to the applicant and half to the owners of 97 Sydenham Road and 52 Cayley Street as shown on the Proposed Alley Closure map attached as Appendix “A” to Report PW10093.

POLICY IMPLICATIONS

A by-law must be passed to permanently close the lands, in accordance with the Municipal Act.

The process of closing the portions of alleys and transferring them to the applicant and the abutting neighbour fulfils the Public Works Business Plan goal of establishing “mutually beneficial charters with external customers.”

RELEVANT CONSULTATION

Thirty four (34) property owners within a 400 foot (121.9 metre) radius of 50 Cayley Street were notified of the proposal as shown on Report PW10093 as Appendix “B”. One response in opposition to the closure was received. This response was from the neighbour at 97 Sydenham Road, abutting the alley. However, if the respondent is able to purchase half of the abutting alley, the opposition to the proposal will be withdrawn.

The following City staff were consulted on this application:
Planning and Economic Development Department: Development Engineering, Building Services, Economic Development and Real Estate and Planning Divisions

Public Works Department: Environment and Sustainable Infrastructure, Transportation, Energy and Facilities and Operations and Waste Management Divisions

Hamilton Emergency Services

Corporate Services Department: Budgets and Finance Division

Ward Councillor

Development Engineering staff advise that although connections to City services are typically made from the front of the property, it is not possible in this instance due to the creek immediately south of 97 Sydenham Street. Therefore, the only way the owner of 97 Sydenham Road would be able to connect to the City’s sewer system in the future would be through the subject lands and by entering into a Special Sewer Service Agreement with the City Of Hamilton to permit a private sewer connection into the existing sewer. They would also require a private landowners agreement with the owner of the closed portion of alley. This would not involve the City.

Public utilities including Horizon Utilities, Bell and Union Gas were circulated for comments and no negative responses were received.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

As Developmental Engineering staff have confirmed that the only way to connect to the City’s sewer system would be through the alley, it is recommended that the condition of the transfer of the alley to 52 Cayley Street include a guarantee of easement protection to allow the owner of 97 Sydenham a future connection to the sewer.

**ALTERNATIVES FOR CONSIDERATION**

One option would be to leave the alley open. However, as the applicant has already fenced the alley and is enjoying the use of the lands, transferring the lands to private ownership would allow the owner to continue to use the lands while relieving the City of any responsibility for maintaining the alley.

Another option would be to sell the entire portion of alley to the applicant, as was the intent of the application. As selling the alley to the applicant would eliminate the only way for the owner of 97 Sydenham Road to connect to the City’s sewer system, this would not be the preferred option.
CORPORATE STRATEGIC PLAN


Healthy Community

- Plan and manage the built environment.

APPENDICES / SCHEDULES

Appendix “A” – Proposed Alley Closure Map
Appendix “B” - Location Plan
LOCATION PLAN

PROPOSED CLOSURE OF ALLEY AT

50-52 CAYLEY ST & 97 SYDENHAM ST

LEGEND

- To be transferred to 50 Cayley St
- To be transferred to 62 Cayley St
- To be transferred to 97 Sydenham St

DATE: SEPTEMBER 1, 2010

REFERENCE FILE NO: PW10__

CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT

Hamilton
Public Works Department
LOCATION PLAN

PROPOSED CLOSURE OF ALLEY AT

50-52 CAYLEY ST &
97 SYDENHAM ST

LEGEND

SUBJECT LANDS

DATE: SEPTEMBER 1, 2010

CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT

REFERENCE FILE NO: PW10_