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**Subject:** Regional Road 71 (Sir Isaac Brock Way / St. David's Road) Multi-Use Path Transfer of Jurisdiction

**Report to:** Public Works Committee

**Report date:** Tuesday, August 9, 2022

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## Recommendations

1. That Regional Council **AUTHORIZE** the transfer of jurisdiction and responsibility for certain sections of the Multi-use Path along Regional Road 71 (Sir Isaac Brock Way / St. David's Road) from Niagara Region to the City of Thorold; and
2. That the Commissioner of Public Works **BE AUTHORIZED** to execute an agreement with the City of Thorold in a form acceptable to the Director of Legal and Court Services which provides for a complete transfer of jurisdiction and responsibility for certain sections of the Multi-Use Path and for continued maintenance and snow removal for other parts of the Multi-Use Path as described in this Report PW 30-2022.

## Key Facts

- The purpose of this report is to seek Council approval to transfer jurisdiction and responsibility for certain sections of the recently constructed multi-use path along Regional Road 71 (Sir Isaac Brock Way / St. David's Road) between Regional Road 50 (Merrittville Highway) and Regional Road 56 (Collier Road) to the City of Thorold (the "SIBW MUP").
- Often multi-use paths are located entirely within a highway right of way controlled by a single municipality, but the SIBW MUP is formed over parts of Niagara Region's headquarters property as well as over a Ministry of Transportation controlled overpass, which creates a need to treat different parts in different ways.
- Staff, utilizing delegated authority, previously entered into an agreement with the City of Thorold to assign maintenance and snow removal responsibilities to the City for all sections of the SIBW MUP along the Sir Isaac Brock Way and St. David's Road corridor.
- Recommendation #1 will, if approved, transfer jurisdiction and responsibility of those parts of the SIBW MUP located within the Sir Isaac Brock right of way, while providing for continued maintenance and snow removal with respect to other

sections of the MUP which either form part of Niagara Region headquarters lands and/or lands under the jurisdiction of the Ministry of Transportation.

- The primary difference between passing jurisdiction to a local municipality such as Thorold versus a simple contract of maintenance as now exists is the relative permanency of the arrangement and that the municipality paying to maintain and being responsible for the multi-use path will ultimately determine if and when it may need replacement or removal. The proposed agreement contemplates a guaranteed minimum period during which the City of Thorold would be obligated to maintain and if necessary replace the transferred portions of the SIBW MUP.
- The land underlying the MUP remains in the ownership of Niagara Region.

### **Financial Considerations**

Niagara Region successfully obtained funding through the Ministry of Transportation (MTO) Ontario Municipal Commuter Cycling Program (OMCC) to support construction of active transportation infrastructure along the Regional Road 71 (Sir Isaac Brock Way and St. David's Road) corridor. This funding directive was ratified through PW 41-2019, PW 8-2018 and By-law 2018-26. Staff have coordinated cost sharing agreements with the City of St. Catharines and the City of Thorold to further offset construction costs.

Transfer of the jurisdiction of this asset to the City of Thorold will result in the transfer of future financial responsibilities associated with this asset to the City of Thorold. This treatment is in alignment with current practice for these types of assets.

### **Analysis**

Sidewalks fall under the jurisdiction of the lower tier municipality as defined in the *Municipal Act, 2001*, c. 25, s. 55. Multi-use paths and other off-road active transportation infrastructure are not defined in the *Municipal Act* but have many similarities. Staff have identified benefits in having multi-use paths funded by Niagara Region or by a combination of Niagara Region and a local municipality; treated in the same fashion as sidewalks. A similar arrangement was previously approved by Council with respect to the multi-use path along Merrittville Highway which arrangement was also with the City of Thorold.

The approach recommended by staff relieves Niagara Region of long-term ongoing costs associated with asset ownership; including maintenance, repair, and snow removal which the municipality is more equipped to perform. This is keeping consistent

with sidewalks under the Municipal Act. The local area municipality will maintain, repair, replace and assume liability for any claims that may arise from the use of a path which it is maintaining. The City of Thorold gains a measure of control after ten years, which would potentially allow the City of Thorold to determine that the condition does not justify continued maintenance or replacement and that the improvement should be removed.

Staff, utilizing delegated authority, previously entered into an agreement with the City of Thorold to assign maintenance and snow removal responsibilities to the City for all sections of the SIBW MUP along the Sir Isaac Brock Way and St. David's Road corridor. The current agreement requires Thorold to undertake different levels of maintenance and repair depending on the part of the SIBW MUP involved. In the case of the MTO lands and the lands forming part of the International Plaza, the City of Thorold is restricted to winter maintenance. The term of the existing agreement is indefinite but may be terminated by either party on sixty days' notice.

The SIBW MUP, unlike the Merrittville Highway multi-use path is not contained entirely within the Niagara Region right of way but instead incorporates part of the lands upon which the Niagara Region headquarters building is located as well as a portion that crosses Highway 406 which is under the jurisdiction of the Ministry of Transportation ("MTO"). Niagara Region is unable to transfer jurisdiction of the lands under MTO jurisdiction and it is undesirable to do so with components that form part of the International Plaza. Those parts, which cannot be transferred, must still be maintained and staff recommend a maintenance and snow removal only arrangement for those parts of the SIBW MUP similar to what exists under the current agreement.

The various sections of the Sir Isaac Brock Way and St. David's Road MUP are outlined below. Refer to legend on Keyplan attached as Appendix 1.

- Jurisdiction of the following sections of MUP are recommended to be transferred to the City of Thorold:
  - Sir Isaac Brock Way Multi-use Path (3) - between Schmon Parkway and Highway 406 southbound ramps (west limit of MTO corridor)
  - St. David's Road Multi-use Path (5) - between Highway 406 northbound on-ramp (east limit of MTO corridor) and Regional Road 56 (Collier Road).
  
- The following sections of MUP are to remain under Niagara Region jurisdiction but be subject to a maintenance arrangement with the City of Thorold:

- Civic Park Multi-use Path (2) - Constructed as part of the Civic Park on Niagara Region Headquarters property.
- The following sections of MUP are to remain under Ministry of Transportation (MTO) jurisdiction but be subject to a maintenance arrangement with the City of Thorold:
  - Highway 406 Multi-use Path (4a) - between ~125m west of 406 southbound on-ramp and ~35m east of 406 northbound on-ramp (within limits of Highway 406 corridor).
  - MTO Bridge Structure Multi-use Path (4b) - Concrete portion of MUP integral with St. David's Road overpass structure owned by MTO.

A form of agreement has not been finalized; pending the opportunity for each Council (Niagara Region and the City of Thorold) to approve the arrangement in principle. Niagara Region staff recommend that it contain the following key features:

- The City of Thorold would be entitled to terminate, on sixty days' notice only its obligations respecting maintenance and repair as they relate to those parts of the SIBW MUP for which jurisdiction was not transferred;
- The City of Thorold for the first ten years of the term of the agreement would be obligated to replace those parts of the SIBW MUP for which jurisdiction has been transferred if maintenance and repair to specified standards is no longer possible due to the age or condition of the path.
- On and after the tenth anniversary, if the City of Thorold should determine that continued maintenance and repair is not feasible and replacement not desirable then in its discretion, those parts of the transferred SIBW MUP could be removed at the cost of the City of Thorold and City of Thorold's obligations with respect to the removed sections of the Sir Isaac Brock Way right of way would terminate.

These listed rights are intended to broadly reflect the rights the City of Thorold would have over a sidewalk on a Niagara Region right of way.

### **Alternatives Reviewed**

Retaining jurisdiction of the MUP will leave Niagara Region responsible for general maintenance which it currently is not set-up to do. Niagara Region currently does not own equipment or operate a program for the maintenance of snow removal of multi-use paths; similar to sidewalks.

## Relationship to Council Strategic Priorities

Active transportation improvements are a key strategy in the Region's Transportation Master Plan under Moving People and Goods. The Brock District Plan is a catalyst for future development of the Brock area and will transform the surrounding area into a best in class experience for visitors, students and those working/living in the area. This is in line with positioning Niagara globally with the experience when visiting this district. The proposed arrangement provides an opportunity for rationalizing services between the City of Thorold and Niagara Region respecting an asset considered desirable and beneficial to the community by both municipalities.

## Other Pertinent Reports

PW 41-2019	St. David's Road Interchange Reconstruction and Multi-Use Path Construction
PW 8-2018	Ontario Municipal Commuter Cycling Program – 2017 Grant
By-law 2018-26	Authorize Agreement Execution of Ontario Municipal Commuter Cycling Program (OMCC) 2017-2018

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## Appendices

Appendix 1	Key Plan
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