



## ADMINISTRATIVE REPORT

Report Date: June 29, 2017  
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Meeting Date: July 12, 2017

TO: Standing Committee on City Finance and Services  
FROM: General Manager of Real Estate and Facilities Management  
SUBJECT: Framework Process for Resolution of Leasehold Strata End-of-Lease Issues

### **RECOMMENDATION**

THAT Council receive for information this report back on the framework process for negotiating a resolution to issues arising from the approaching end of the 60 year False Creek South leasehold strata leases, the matters to be negotiated, and the role of \*RePlan in the framework.

### **REPORT SUMMARY**

This report describes the proposed framework process for negotiating a resolution to issues arising from the approaching end of the 60-year leasehold strata leases in False Creek South. This process was developed in consultation with False Creek South strata leaseholders and allows the City to directly engage with the community and the 717 False Creek South strata leaseholders in a manner that will improve the likelihood of resolving end of lease issues in a way that is satisfactory to the City, as landlord, and its 717 strata leasehold tenants.

### **COUNCIL AUTHORITY/PREVIOUS DECISIONS**

There have been numerous Council policies and previous decisions made concerning the False Creek South neighbourhood since its inception in the early 1970s. Most relevant to this report is the January 25, 2017 Council Report (RTS11506) wherein Council resolved that staff advance various work components that are collectively required in order to move forward with addressing issues concerning the future of False Creek South. Specifically, Council resolved:

*“THAT Council instruct the General Manager of Real Estate and Facilities Management, in consultation with other departments as appropriate, to engage with False Creek South strata leaseholders to develop a framework process for negotiating a resolution to issues arising from the approaching end of the 60 year leasehold strata lot leases, as further described in this report, and report back to Council on the framework, the matters to be negotiated, and the role of RePlan in this framework, by end Q2-2017.”*

This report addresses the aforementioned resolution.

Recently, *RTS 11872 False Creek South Planning: Terms of Reference* was also brought before Council on May 29, 2017. That report advanced the Planning work stream identified in the January 25, 2017 Council report.

### ***CITY MANAGER'S/GENERAL MANAGER'S COMMENTS***

The City is in a challenging position where it has no simple method, within the construct of the current lease agreements and the B.C. *Strata Property Act*, to embark on a negotiation process with over 700 strata leaseholders, who have acquired a leasehold interest in strata lots constructed on leased land in False Creek South. Some strata leaseholders have indicated that they are experiencing challenges in securing mortgage financing as their leases are approaching end of term, as well as experiencing other challenges related to the uncertainty over their future tenure. As such, they have approached the City to address these issues now, notwithstanding the terms of the leases which govern how and when the City is to act to address the future of the strata leases.

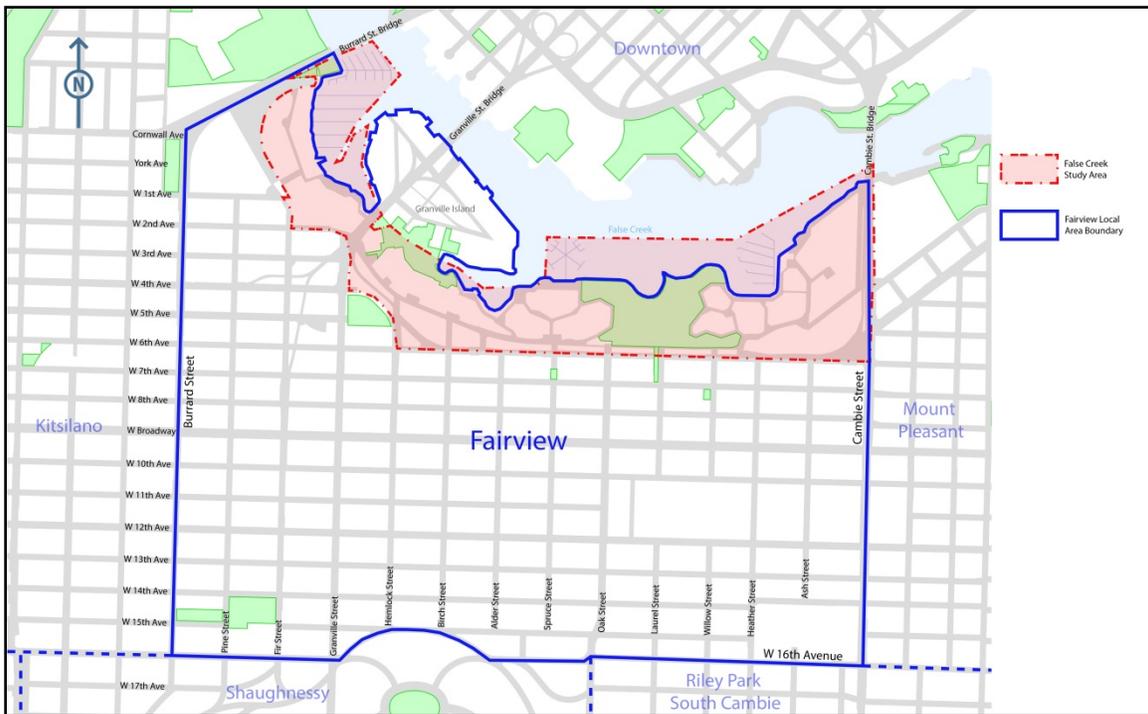
A framework process has been created that will advance engagement with the strata leaseholders to better understand the issues facing them and assist in developing potential solutions that address these issues while protecting the City's financial interests. In order for the City to try and address the issues faced by the strata leaseholders under the current leases, City staff will proceed with "non-binding, without prejudice" discussions which are inclusive, collaborative and transparent. The goal of this process is to improve the likelihood of resolving the end-of-lease issues in a way that is satisfactory to the City, as landlord, and its 717 strata leasehold tenants.

### ***REPORT***

#### ***Background/Context***

One of Vancouver's pioneering waterfront communities for multi-family, city centre development, False Creek South (FCS) is situated between the Burrard Bridge and the Cambie Bridge, and between the Fairview Slopes neighbourhood and False Creek, in the Fairview Local Area. It was one of Vancouver's first purpose built, city neighbourhoods with an intentional mix of land uses, housing types, transportation options, urban character and amenities, including three kilometres of seawall and a major destination waterfront park. In total, the area represents approximately 55 hectares of land (136 acres) and currently has a resident population of approximately 5,400 people (2011).

**FIGURE 1: FALSE CREEK SOUTH NEIGHBOURHOOD IN CONTEXT OF LOCAL AREAS**



80% of the land in FCS is owned by the City, through its Property Endowment Fund (PEF), with the remainder owned by the private sector or other levels of government. Approximately 60% of the residential units in FCS are on City-owned land. Those residential units are constructed on land that is either leased to non-profit or for-profit housing operators (who then, in turn lease units to residents), or directly to individual strata lot lessees. The majority of the 1,172 non-market housing units in this neighbourhood are on City-owned land. The FCS land is a unique City asset in an exceptional location that has the ability to continue to deliver affordable housing and amenities for the benefit of residents, as well as all citizens of Vancouver.

The PEF is a real estate portfolio that belongs to all Vancouverites and is managed for the benefit of both current and future generations in such a way as to preserve the Endowment’s real value, generate a reasonable economic return and, where possible, support the City’s broad public objectives in a financially sustainable way. Between 1976 and 1986, much of the land in FCS was leased to tenants via long-term (typically 60 year) ground leases. The majority of these leases are due to expire between 2036 and 2046, with two Co-op leases due to expire sooner.

**FIGURE 2: FALSE CREEK SOUTH NEIGHBOURHOOD, MARKET AND NON-MARKET HOUSING**

	CITY-OWNED LAND	THIRD PARTY-OWNED LAND	TOTAL
MARKET HOUSING	825 units	1,158 units	1,983 units
NON-MARKET HOUSING	976 units	196 units	1,172 units
<b>TOTAL</b>	<b>1,801 units</b>	<b>1,354 units</b>	<b>3,155 units</b>

Of the 825 market housing units constructed on City owned land, 669 of them are residential leasehold strata units; the balance are market rental units. In addition, there are 48 commercial strata units in the community, for a total of 717 leasehold strata units. The leasehold strata units are organized into 12 residential stratas, three commercial stratas and one residential/commercial strata. These 16 stratas are located within 12 different sites, which are referred to by the FCS community as “enclaves”. Some enclaves contain both a residential and a commercial strata. See Appendix A for details on the locations and stratas.

### Overview of End-of-Lease Issues

At present, the two main issues concerning the False Creek South strata leases are:

1. Whether the City is going to renew any of the leases past the original 60 year-term; and
2. What will be the purchase price for the lessee’s interest in the strata lot upon lease end?

The mechanism to renew the leases is similar across all the strata lot leases as they reflect the requirements of the provincial legislation that was in effect at the time the leases were drafted, now the B.C. *Strata Property Act*. A strata lot lease may be renewed for a term of at least 5 years at the sole option of the City. There is no option for the leasehold tenant to renew on their own. At least one year before the expiry of the strata lot lease, the City must give notice as to whether it wants to renew or not renew a strata lot lease. In the unlikely event that no notice is given at all, then the lease automatically renews for a term of 5 years. If the City does renew, then the renewal must be on the same provisions as the current lease, except that the term of the lease and the rent may be changed. The rent must be the then current market rental value of the lands, excluding all buildings and improvements, apportioned to the strata lot.

If the City elects not to renew a strata lot lease (either at the end of the current lease term, or at the end of some extended/renewed term), then pursuant to the requirements of the *Strata Property Act* and the terms of the lease, the City must purchase the lessee’s interest in the strata lot on the termination of the strata lot lease. The purchase price must be arrived at as of the date the strata lot lease is ended and must be:

- (a) If a basis for calculating the purchase price was set out in the strata lot lease or in a schedule filed with the leasehold strata plan, the price calculated on that basis, or
- (b) If a basis for calculating the purchase price was not set out in the strata lot lease or a schedule, the fair market value of the leasehold tenant’s interest in the strata lot evaluated, in accordance with the regulations, as if the strata lot lease did not expire.

If the purchase price cannot be agreed upon between the parties, it must be determined by arbitration, but this arbitration clause cannot be triggered until the termination or expiry of the lease.

A key issue facing the City and its tenants is that a specific basis for calculating the purchase price for the lessee’s interest in the strata lot was not set out in the model strata lot leases nor in a schedule filed with the leasehold strata plan. This means that the purchase price

must therefore be the fair market value of the lessee's interest in the strata lot evaluated, in accordance with the regulations, as if the strata lot lease did not expire.

The Province has not enacted any regulations under the *Strata Property Act* that set out the methodology for evaluating the leasehold tenant's interest in the strata lot, and the Province has not announced that any regulations are forthcoming.

While the *Strata Property Act* does not prescribe a methodology, similar legislation in other jurisdictions, specifically in New South Wales, Australia, does prescribe a methodology which could serve as a template for a schedule that could be added to the City's leases. However, unless the Province enacts a regulation to provide clarity, a common understanding needs to be negotiated between the City and the strata leaseholders. Hence, the framework process described hereinafter will create the best means to address this issue with the strata lot lessees.

### **False Creek South Community, the Neighbourhood Association and Resident Advocacy**

The False Creek South Neighbourhood Association (FCSNA) has been engaging City staff and Council in advancing the community's interests. FCSNA was established when FCS was first being developed for the purposes of representing the interests of the neighbourhood. It is a unique stakeholder in the FCS community. It has representatives from all housing tenures on the leased land, as well as from strata housing on freehold properties.

In recent years, the FCSNA has created a sub-committee called \*RePlan whose mission is "... to create a dialogue with the City of Vancouver to establish a process to preserve and enhance the False Creek South community beyond lease end, enabling the community to evolve and diversify in a way that is sustainable for existing residents and the City of Vancouver" [[www.falsecreeksouth.org/replan](http://www.falsecreeksouth.org/replan)].

Between 2006 and 2011, a subcommittee of the FCSNA, the Strata Leaseholders Subcommittee (SLS), was regularly engaged with City staff regarding a contractual rent review for a large number of strata leasehold units. The rent review was settled in 2012 but the SLS has remained active. Subsequently, representatives of the FCSNA, through the SLS and \*RePlan, have continued to engage with City staff to discuss the community's desire for lease renewal and their support for an inclusive and holistic planning process to refresh the neighbourhood vision. City staff have been meeting regularly with \*RePlan for the purposes of consultation and work plan alignment. Staff note that through the course of these discussions, \*RePlan has emphasized their priority on achieving lease renewals as quickly as possible, but have acknowledged the need for City staff to develop recommendations for all the FCS work streams in a thorough way that incorporates city-wide perspectives.

### ***The Complex Nature of the Existing Strata lot Lease Arrangement***

The strata lot leases are organized into 16 strata corporations, on 12 original development sites (also referred to by the FCS community as "enclaves"). For each enclave, the City initially entered into a ground lease with a developer (between 1975 and 1986) who agreed to construct multi-unit buildings. Once the developer completed construction, it filed a leasehold strata plan with the Province and divided the ground lease into separate leases for each strata lot. Each strata lot in a specific leasehold strata plan has an identical Model Strata Lot Lease (MSLL) with the City. However, there are minor differences in the MSLLs between some of the strata corporations, depending upon when the ground lease commenced, mostly

to reflect the language in the governing provincial legislation which has changed three times since the leases were first drafted.

Figure 3 below summarizes the nature of relationships between the City, the strata lot lessees, and the False Creek South Neighbourhood Association.

FIGURE 3: THE CITY, \*REPLAN, STRATA LOT LESSEES, AND STRATA CORPORATIONS

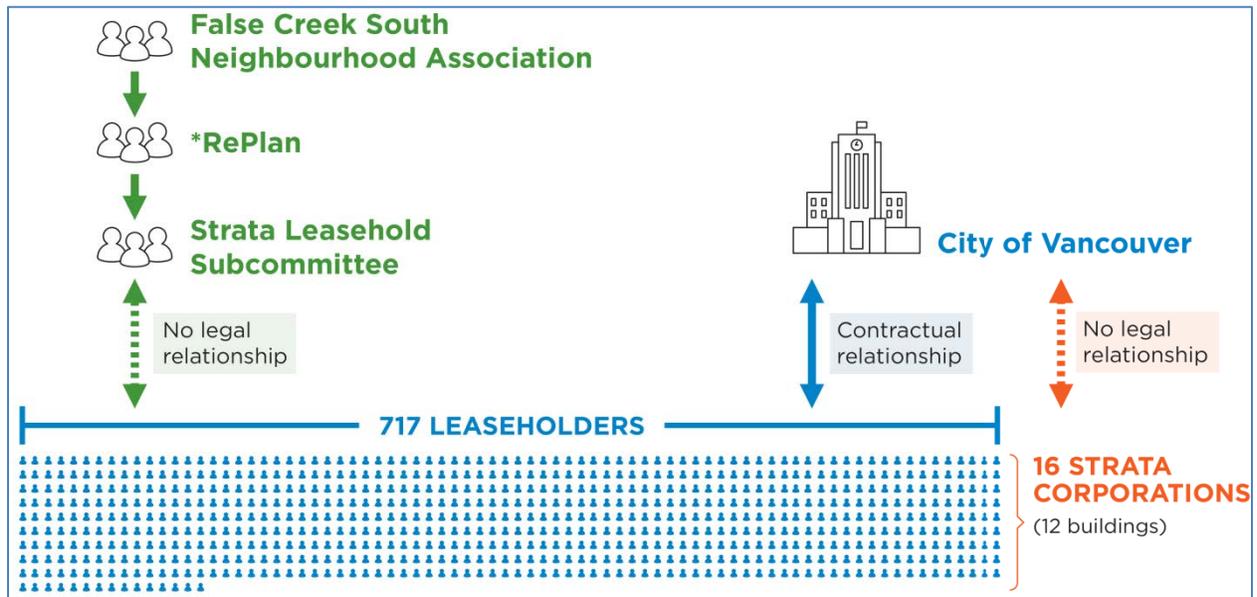


Figure 3: The complex relationship between community organizations, Lessees and the City

The MSLL defines the rights of the strata leaseholders to have exclusive use of the land for the duration of the lease, and that the City is to purchase the lessee’s interest in the(ir) strata lot at lease termination. The City continues to be the sole owner of the land, but has no ownership or financial interest in the buildings constructed upon the public land, until such time as the leases expire. The strata corporation is not a party to the MSLL, but it does have obligations in connection with the ongoing maintenance and repair of the common property held by strata leaseholders.

Practically, strata leaseholders have organized themselves, for the purposes of engaging with the City, through the SLS. Until recently, the constitution of this committee has been solely the purview of \*RePlan. The SLS provides a means for strata leaseholders to educate themselves on, and to discuss amongst themselves, issues that they face as a result of their ongoing tenancy on leased land. More recently, the SLS has taken a leading role in working with the City in developing a framework process for negotiations.

Staff have worked closely with the SLS and \*RePlan to develop the framework process for negotiations. \*RePlan and the SLS have also been gathering issues faced by the strata leaseholders due to the eventual end of these leases. The SLS has taken the position that lease renewal is the preferred remedy to resolving the issues they have brought forward to staff for consideration.

### ***Recent Public Engagement***

Staff have contacted each of the 717 strata leaseholders to inform them of the January 25, 2017 Council resolution, and notify them that work is underway with community groups to create a draft framework process.

Four community meetings with strata leaseholders were held in the latter half of May 2017 where 36% of the 717 strata lot lessees attended. During these meetings, City staff explained the draft framework process for negotiations and sought feedback on same. Individual strata leaseholders were also asked to identify any additional issues or concerns they may have. In addition, City staff received feedback from the strata leaseholders via an online survey which closed on June 30, 2017. All of the feedback received will be incorporated into the ongoing work and into the shaping of potential offers (to resolve the end of lease issues) to be presented to strata lot lessees in the future.

### ***Matters to be Discussed***

The community, through \*RePlan, has identified a number of key issues faced by strata leaseholders, including:

1. Affordability of loans for capital maintenance.
2. The impact of lease uncertainty on plans for capital maintenance and potential building upgrades.
3. Ability to pay for new leases/lease extensions.
4. Support for affordable home ownership.
5. Maintaining equity for the future.

Although the community has identified the key issues requiring resolution, the recent strata leaseholder engagement identified that there are additional issues specific to particular enclaves that are not fully captured in the key issues brought through \*RePlan. Additionally, some enclaves may be more concerned with addressing one or more of the key issues. As such, the framework process includes a specific stage for issues identification with strata lot lessees.

### ***Framework Process for Negotiations***

Given the complex nature of the legal arrangements between the City and the strata leaseholders, the framework process for negotiations should streamline, to the extent possible, the complexity of negotiating with all 717 strata leaseholders, whilst ensuring that all strata leaseholders are able to participate in the process. Furthermore, the process should make certain that City staff are appropriately engaging with strata leaseholders, strata buildings and community groups in an effective manner so as to improve the likelihood of successful negotiations. Mutually agreeable solutions are anticipated to be negotiated through comprehensive issue identification, informed discussion and thoughtful option development.

#### **A. Principles**

The framework process should address the following principles:

- **Fairness:** Ensure that all strata leaseholders are provided an opportunity to engage directly with the City to the extent they are able. Ensure that all

strata leaseholders have access to the same information that they can utilize to make decisions about their respective future.

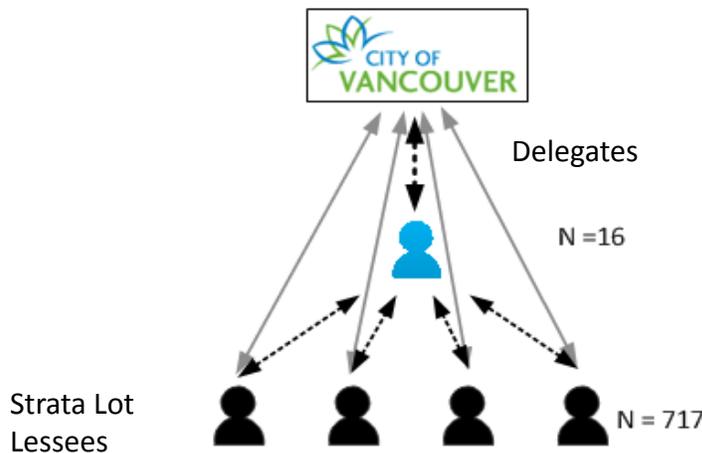
- **Transparency:** Ensure that potential options, offers and decisions generated from the framework process are developed with counterparties to the leases and supported by information that allows both strata leaseholders and other stakeholders to determine how and why a decision was made.
- **Productive environment:** Ensure that substantive conversations about difficult and technical topics are conducted in a manner that results in productive outcomes.
- **Efficiency:** Where possible, create a framework that enables timely, cost effective resolution for Lessees and the City.

**B. Creating a Representative Negotiation Framework**

Given the complex nature of the legal arrangements between the City and the strata leaseholders, the framework process for negotiations should seek to efficiently engage with as many strata leaseholders as early as possible. Each strata corporation lessee has been asked to appoint a delegate that will enter into non-binding discussions with the City regarding issues arising from the end of the 60 year leasehold strata lot leases. Practically, this requires a resolution of the Strata Corporation, rather than a Strata Council, so as to ensure that all strata leaseholders in a corporation had an opportunity to participate in the selection process. In most cases, the form of appointment of the delegate to the existing SLS is consistent with the City’s principle of fairness. However, in some select cases, strata corporations are being asked to reappoint a delegate via a resolution voted on by all members of the strata corporation. Such a representative group will increase the likelihood of a mutually agreeable solution to the issues being experienced by the Lessees and the City.

City staff are hopeful that the fully constituted delegate group will be in place by July 31, 2017.

**FIGURE 4: REDUCING THE QUANTITY OF CONVERSATIONS TO A MANAGEABLE AMOUNT THROUGH NON-BINDING DISCUSSIONS WITH DELEGATES OF STRATA CORPORATIONS**



The delegates from a strata corporation will then be the first point of contact between the City and the strata leaseholders within that strata corporation, and collectively will enter into detailed discussions with the City about the strata lot

leases and issues arising from the leases. They will be instrumental in identifying issues faced by strata lot lessees and developing, in conjunction with the City, options to resolve these issues. However, since some lease issues differ at the enclave level, more detailed discussions (also of a non-binding nature) will occur at that level. These discussions will aim to tailor potential solutions for those strata leaseholders in said enclave.

### C. Work Elements / Phases

The framework process envisions three distinct work elements to solving the issues arising from the leases:

1. **Issue Identification:** Identify issues arising from the existing lease terms (or specific articles within a lease) that may have contributed to the economic hardship faced by the lessees, including a clear understanding of the underlying reasons for such hardship. The community, through \*RePlan's ongoing advocacy work with staff, has identified most of the issues that strata lot lessees face; however, recent engagement directly with strata lot lessees has uncovered additional issues that require further study.
2. **Options Development:** Develop potential options to address the issues identified in Phase 1. Any options developed must be fair to both the strata leaseholders and the City. For example, these options may include, but are not limited to, specific changes to existing leases (with the changes being specific to an enclave), creation of new lease agreements, or allowing leases to expire at the end of the current term.
3. **Offers:** Once the potential options have been developed, subject to Council approval, the City can issue offers directly to strata lot lessees within an enclave. Those offers may allow for a strata lot lessee to make a choice amongst a number of equivalent offers.

### D. Communications

Since there are a number of community groups already organized and participating in this work, the City will be continuing to engage with those groups, namely \*RePlan and the SLS, to identify the consequences and impacts of identified issues and to seek to understand the implications of any options that are created. Generally, communications with the community groups will take the form of meetings and written communications made directly to the community groups or indirectly to their consultants.

At the strata corporation and enclave level, the primary communication conduit will be the delegate appointed by the strata corporation(s) within an enclave. When required, staff will meet directly with all strata leaseholders within a strata corporation (or with several strata corporations that collectively make up an enclave) to discuss issues and create options.

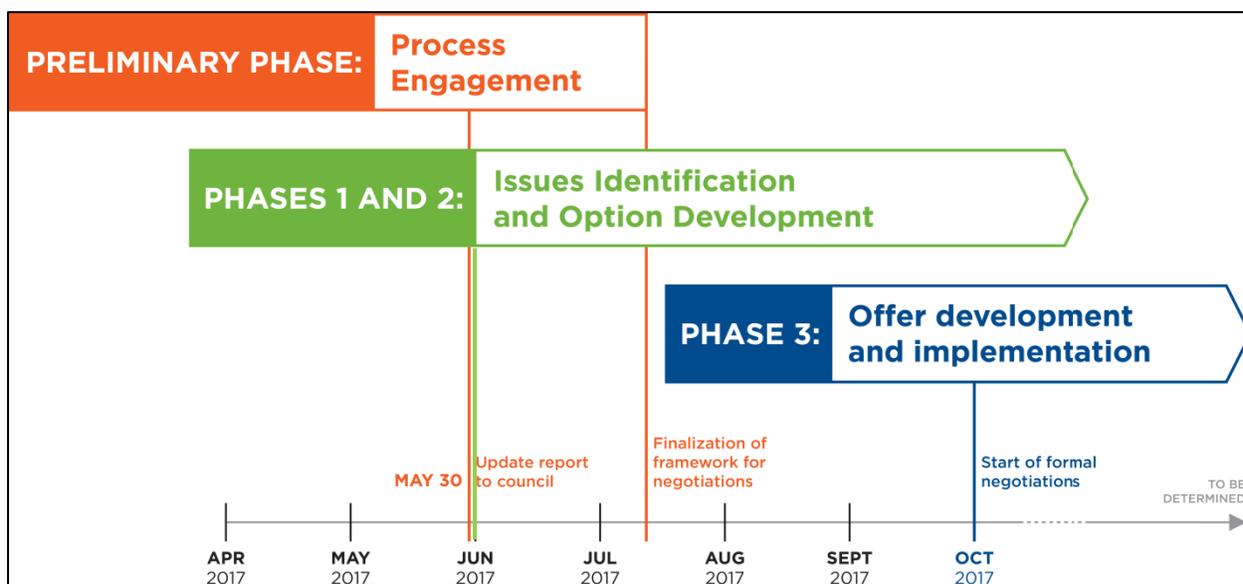
Once options have been created with the strata corporation delegates, the City will engage directly with strata leaseholders via direct mail.

### E. Timeline

Identifying a definitive timeline for this work is challenging, since the first two work phases of the framework process require active participation and non-binding agreement, prior to any offers being developed by the City. Notwithstanding that there is at least 18 years to go before the City is required to notify strata leaseholders of its intent regarding lease renewal, as the residual lease term gets shorter, it would be more challenging for strata leaseholders to arrange for mortgage financing for capital maintenance and building upgrades. However, the City cannot modify any existing lease terms (unless through lease renewal) without agreement of strata leaseholders. As such, advancing to Phase 3 of the framework process is contingent on the City achieving a mutually agreeable definition and valuation methodology for the lessee’s interest in the strata lot.

Other work streams will inform Phase 3 of the framework process, and so the success and timing of the framework process depends, in part, upon the outcomes of some of other work streams associated with this community.

FIGURE 5: PROPOSED TIMELINE



#### Other False Creek South Work Stream Updates

Further to the January 25, 2017 Council Report, staff are working on five distinct work streams concurrently. A number of the work streams involve staff, through Council direction, taking on a regulatory role rather than a corporate role. Staff were asked for updates on “regulatory” work streams; each of those updates are provided in Appendix B.

#### Update on work to evaluate land governance options

Land governance model evaluation is progressing. Staff are conducting extensive research on an array of industry accepted land governance models. In addition to internal research, and the material previously presented to the City by \*RePlan, guidance is being solicited from external advisors and industry professionals. Once the initial phase is completed, staff will report back to Council.

***Update on work to assess building conditions***

Building condition assessment work is currently underway, with eight of 28 inspection visits completed as of June 23, 2017. Work will continue over the summer months, with specific building reports being evaluated in the Fall of 2017. The information being gathered is consistent with the City's rights of inspection as landlord in the MSLL and leases with other tenure types. Such information will not be shared publicly due to privacy issues.

***Implications/Related Issues/Risk (if applicable)******Financial***

The Director of Finance will work with the General Manager of Real Estate and Facilities Management to incorporate financial considerations in formulating options and strategy to support the end-of-lease negotiation, and report back on a viable financial and implementation strategy for Council consideration.

***CONCLUSION***

A framework process has been created that will allow for better engagement to assist in understanding the issues facing strata leaseholders and to help create solutions which address these issues. In order to advance this work, City staff will proceed with non-binding without prejudice discussions which are inclusive, collaborative and transparent. The goal of this process is to improve the likelihood of resolving the end-of-lease issues in a way that is satisfactory to the City, as landlord, and its 717 strata leasehold tenants.

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APPENDIX A: False Creek South Stratas and Enclaves

TABLE A1: STRATA CORPORATIONS AND ENCLAVES

Enclave	Strata Condo Code	Name	Address	Expiry Date	Strata Lots
1	VR1343	Mariner Point	1530 Mariner Walk	2046	143
2	VR2096	The Lagoons	1590 Island Park Walk	2046	89
3	VR1112	Fountain Terrace	1477 Fountain Way	2040	55
4	VR1157	Harbour Terrace	1425 Lamey's Mill Road	2040	58
5	VR691	Alder Bay Place	1201 Lamey's Mill Road	2040	47
6	VR514	Spruce Village	1040 Ironwork Passage	2036	36
7	VR442	Marine Mews	1031 Scantlings	2036	50
8	VR419	Heather Pointe	800 Millbank	2036	48
9	VR588, VR896	Market Hill Terrace	698 Millbank	2036	52
10	VR466	Creek Village	700 Millyard	2036	56
11	VAS551, VAS552, VR916	658 Leg In Boot Square	658 Leg In Boot Square	2036	72
12	VR909, VR1831	609 Stamp's Landing	609 Stamp's Landing	2036	11

FIGURE A2: STRATA ENCLAVES IN FALSE CREEK SOUTH



## APPENDIX B: REGULATORY WORK STREAM UPDATES

### *Update on affordable housing options and non-market and co-op lease discussions*

In January 2017, Council directed the GM, Community Services to design a process for developing affordable housing options for all FCS residents to remain in the neighbourhood, informed by current and emerging housing policies and programs. In April 2017, the housing policy team in Community Services were re-organized, shifting lead responsibility for the affordable housing options development and housing strategy for the “community edge” to the GM, Planning, Urban Design and Sustainability in collaboration with the GM of Community Services, who retains responsibility for affordable housing

The General Manager, Community Services (CS), continues to be responsible for exploring with their non-market and co-op housing partners in FCS, the opportunities and options for increasing affordable housing delivery, as well as lease modifications and extensions. As per the recommendations in the February 2017 Council Report on Sustaining Affordable Co-op Housing on City Land, staff have started discussions and information gathering with Marina Co-op on the lease extension process.

Parallel to the work of the neighbourhood planning program, CS staff will explore the opt-in approach, considering scenarios and options with BC Non-Profit Housing Association (BCNPHA) and the Co-operative Housing Federation (CHF) of BC and FCS affordable housing partners. Staff will report back to Council later in 2017 on progress.

### *Update on Neighbourhood Planning Process and Residential Protection and Retention Plan*

In May 2017, Council approved a Terms of Reference for planning process in the False Creek South neighbourhood. To further this process, the GM, Planning, Urban Design and Sustainability was directed to report back to Council with nominations for a Planning Advisory Group in Fall 2017 and to begin engagement with the neighbourhood, community and city-wide stakeholders to develop a resident protection and retention plan for city-owned land.

The neighbourhood planning process was initiated with a launch event/open house held on June 22, which was well-attended by residents of the False Creek South community and adjacent areas. Staff will undertake a public call for nominations to the Planning Advisory Group imminently. This Advisory Group will be comprised of neighbourhood residents and businesses, representatives from adjacent areas, and inclusive of city-wide perspectives relevant to the scope of planning work. Staff have also begun planning discussions with the community and city-wide stakeholders to develop the residential protection and retention plan, building on the City’s existing policies and addressing policy gaps. Staff intend to report back with a draft plan in Fall 2017.