

Clause embodied in Report No. 11 of the Administration Committee, as adopted by the Council of the City of Toronto at its Special Meeting held on July 30, 31 and August 1, 2002.

1

**Request for Proposals No. 9155-01-7571
to Restore, Develop and Operate Union Station
(Ward 28 - Toronto Centre-Rosedale)**

(City Council at its Special Meeting held on July 30, 31 and August 1, 2002, amended this Clause by adding thereto the following:

“It is further recommended that:

- (1) discussions with the proponent include:*
 - (a) the development of an ambitious plan for cycling facilities, cycling rentals and service, modelled on best practices from Europe, and further, that there be consultation with the City’s Cycling Committee and staff of the Works and Emergency Services Department; and*
 - (b) the pursuit of district heating and cooling options, plus the state-of-the-art Energy Efficiency and Renewable Energy Program, in consultation with the City’s Energy Efficiency Office;*
- (2) the Commissioner of Corporate Services be requested to:*
 - (a) ensure that the sculpture to multiculturalism donated by Toronto’s Italian Community retains a place of pride at Union Station, and further, that a status update in this regard be included in the next report to be considered by Council on this matter; and*
 - (b) include in the report to be submitted to the Administration Committee for its meeting to be held on October 8, 2002, a status update on GO Transit, Toronto Transit Commission and VIA Rail projects underway at Union Station;*
- (3) the Chief Financial Officer and Treasurer be requested to submit a report to the Administration Committee on the feasibility of establishing a policy to allow proponents to give a presentation to a Committee of Council at the time an award of a proposal is before a Committee of Council; and*

- (4) *Council extend its appreciation to the Members of the Selection Committee for their hard work in this regard.”*

City Council, at its in-camera session, also issued confidential instructions to staff, such instructions to remain confidential, in accordance with the provisions of the Municipal Act, having regard that they relate to the security of the property of the Municipality.)

The Administration Committee recommends:

- (I) the adoption of the joint report (June 20, 2002) from the Commissioner of Corporate Services and the Chief Financial Officer and Treasurer, subject to:**
- (i) amending Recommendation No. (2) by adding to the end thereof the words “and report back to the meeting of the Administration Committee scheduled to be held on October 15, 2002, with the agreement, if reached, for the approval of Committee and Council”; and**
 - (ii) amending Recommendation No. (3) to read as follows:**
 - “(3) in the event an agreement cannot be reached with Union Pearson Group Inc., staff be required to report back to the meeting of the Administration Committee scheduled to be held on October 15, 2002, recommending that negotiations of the appropriate legal agreements with LP Heritage + Union Station Consortium be undertaken;”;**

so that the Recommendations embodied in the aforementioned report now read as follows:

- “(1) Union Pearson Group Inc., the top scoring proponent, be selected as the preferred proponent;**
- (2) City staff be authorized to negotiate the appropriate legal agreements with Union Pearson Group Inc., in respect of the restoration, development and operation of Union Station in accordance with the terms set out in the Request for Proposal, to the satisfaction of the Commissioner of Corporate Services and report back to the meeting of the Administration Committee scheduled to be held on October 15, 2002, with the agreement, if reached, for the approval of Committee and Council;**
- (3) in the event an agreement cannot be reached with Union Person Group Inc., staff be required to report back to the meeting of the Administration Committee scheduled to be held on October 15, 2002, recommending that negotiations of the appropriate legal agreements with LP Heritage + Union Station Consortium be undertaken;**

- (4) Union Pearson Group Inc. and LP Heritage + Union Station Consortium both be prohibited from lobbying in accordance with Council's policy until the legal agreement has been negotiated with one of the proponents and a staff recommendation made;**
 - (5) the Commissioner of Corporate Services report back to Administration Committee in October, 2002 on the results of the negotiations;**
 - (6) the retainer of Davies Ward Phillips and Vineberg be continued to assist in the preparation and negotiation of the required legal documentation at a cost not to exceed \$150,000; and**
 - (7) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto;**
- (II) that Union Station be declared surplus to municipal requirements to allow negotiation of a long term lease or similar legal arrangement with either Union Pearson Group Inc., or LP Heritage + Union Station Consortium to restore, develop and operate Union Station and all steps necessary to comply with Chapter 213 of the City of Toronto Municipal Code be taken only for the consideration of Proposal No. 9155-01-7571; and in the event that negotiations are not successfully concluded under Proposal No. 9155-01-7571 with either Union Pearson Group Inc. or LP Heritage + Union Station Consortium, the foregoing declaration as surplus is rescinded;**
- (III) that the Commissioner of Corporate Services be instructed to ensure that the remainder of this process is conducted in public, save and except for financial, legal and related details of the negotiations that are required to be confidential to protect the City's financial interest and the legal rights of the proponents; and**
- (IV) that the Commissioner of Corporate Services be requested to submit a further report to the Administration Committee on a process for public input respecting this matter.**

The Administration Committee reports, for the information of Council, having:

- (i) requested the City Solicitor to release a public version of the in-camera report previously tabled at Council respecting this matter; and report directly to Council for its meeting scheduled to be held on July 30, 2002, responding to Mr. McIlwain's deputation and written material submitted by him to the Administration Committee respecting this matter; and
- (ii) issued confidential instructions to staff pertaining to the aforementioned matter such instructions to remain confidential in accordance with the provisions of the Municipal Act given that the subject matter relates to the security of the property of the municipality.

The Administration Committee submits the following joint report (June 20, 2002) from the Commissioner of Corporate Services and the Chief Financial Officer and Treasurer:

Purpose:

The purpose of this report is to recommend a preferred proponent from the RFP process and to obtain approval to negotiate a lease and any other required legal documentation with the preferred proponent in respect of the restoration, development and operation of Union Station.

Financial Implications and Impact Statement:

As part of the business case for the acquisition of Union Station, it was determined that this asset was underperforming financially and was in need of basic capital repairs and refurbishment, identified by Cole Sherman at approximately \$4 million. To completely revitalize the station would require an infusion of significant capital funds. By enlisting the private sector to restore, develop and operate Union Station, the City can avoid the upfront capital costs and utilize the development expertise of the private sector to rejuvenate the Station. The preferred proponent will be making significant capital investments in the Station and the long term revenue projections to the City are favourable.

Recommendations:

It is recommended that:

- (1) Union Pearson Group Inc. the top scoring proponent, be selected as the preferred proponent;
- (2) City staff be authorized to negotiate the appropriate legal agreements with Union Pearson Group Inc. in respect of the restoration, development and operation of Union Station in accordance with the terms set out in the Request for Proposal, to the satisfaction of the Commissioner of Corporate Services;
- (3) in the event an agreement cannot be reached with Union Pearson Group Inc., staff be further authorized to negotiate the appropriate legal agreements with LP Heritage + Union Station Consortium;
- (4) Union Pearson Group Inc. and LP Heritage + Union Station Consortium both be prohibited from lobbying in accordance with Council's policy until the legal agreement has been negotiated with one of the proponents and a staff recommendation made;
- (5) the Commissioner of Corporate Services report back to Administration Committee in October 2002 on the results of the negotiations;
- (6) the retainer of Davies Ward Phillips and Vineberg be continued to assist in the preparation and negotiation of the required legal documentation at a cost not to exceed \$150,000; and

- (7) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

Union Station is the largest operating railway station in Canada, serving GO Transit, VIA Rail and other inter-city passengers and TTC commuters. The federal government has designated it as a National Historic Site and it has been identified as a gateway to the waterfront. The City purchased Union Station in August 2000, and in doing so identified three public policy objectives:

- (a) promotion of Union Station as a multi-modal transportation hub;
- (b) preservation of Union Station as a heritage building; and
- (c) revitalization of Union Station as a destination in order to ensure its financial stability.

Shortly after purchasing the station, City Council authorized the Commissioner of Corporate Services to issue an international Request for Expressions of Interest (REOI) to determine the extent of private sector interest to restore, develop and operate Union Station. The intention of the REOI was to pre-qualify firms or teams with the skills, resources and experience necessary to undertake such a project for a subsequent Request for Proposals (RFP). Eight responses were received and six of those provided expressions of interest. Three respondents scored sufficiently high marks in all categories of the evaluation, as provided in the REOI, to satisfy the evaluators that they possessed the necessary skills, resources and experience required for this project.

At its meeting held March 6, 7 and 8, 2001, City Council pre-qualified Landau and Heyman (now LP Heritage + Union Station Consortium), Union Pearson Group Inc. and Union Place Development Corporation to participate in the RFP process. Terms for the RFP were approved by City Council at its meeting held June 26, 27 and 28, 2001, and the RFP was issued to these three teams in August 2001. Two proposals were received by the closing date of December 14, 2001, from LP Heritage + Union Station Consortium ("LP Heritage") and Union Pearson Group Inc. ("Union Pearson").

Comments:

The RFP identified the following objectives for redevelopment of the Station:

- (1) enhance the transportation attributes of the station;
- (2) develop the station as a tourist or destination retail attraction; and
- (3) ensure that certain capital improvements, including heritage preservation and restoration investments, are undertaken by the Preferred Proponent/operator.

It required the proponents to submit a “Base Proposal” responding directly to a fixed set of requirements. The Base Proposal was to address the restoration, development and operation of the Union Station building as it currently exists for a fixed term of 35 years plus a 15 year renewal. Proponents were required to provide the following:

- (i) a development concept plan;
- (ii) defined capital investment obligations;
- (iii) heritage restoration strategy;
- (iv) operations plans;
- (v) organization structure;
- (vi) environmental and insurance indemnities; and
- (vii) a financial offer.

Within the base proposal the proponent had the option of proposing to create additional development space by excavating beneath the building. If proposed, the proponent could then also propose a longer term.

- (i) Union Pearson submitted a base proposal which included this option.

In addition to the Base Proposal, proponents could propose one “Alternate Approach” to the business and/or legal structure of the Base Proposal.

- (ii) LP Heritage submitted an alternate approach.

Finally, the proponents were allowed to indicate their interest in one “Additional Density” concept and to submit a financial formula regarding this concept. However, the RFP provided that, among other things acceptance by the City of a Preferred Proposal which includes an Additional Density concept would in no way constitute approval of the concept and as there can be no assurance that the Additional Density can be created and built out, it was expected to be given little or no weight in the evaluation.

- (iii) Both proponents submitted an Additional Density concept.

The two submissions were reviewed on their technical merits by six review teams covering the following areas:

- (a) Development Concept;
- (b) Heritage Restoration;
- (c) Project Management;
- (d) Business Plan;
- (e) Operations and Management; and
- (f) Overall Quality and Cohesiveness.

These teams included staff from Finance, Heritage Preservation Services, Urban Development Services and Facilities and Real Estate Division. These teams also consulted with Parks Canada, Transport Canada, GO Transit, VIA Rail and TTC. Davies Ward Phillips and Vineberg provided legal advice and Marshall Macklin Monaghan acted as the process managers in conjunction with

staff in the Purchasing and Materials Management Division and provided technical support as required to the review teams. These six teams reported to a selection committee comprised of the Commissioners of Corporate Services, Urban Development Services, the Chief Financial Officer and Treasurer, two representatives of Transport Canada and an independent heritage architect.

The following evaluation criteria were utilized by the technical review teams and the selection committee to review and evaluate the two responses:

- (a) Development Concept:
 - (i) Approach to Transportation Objectives;
 - (ii) Planning and Design Merits; and
 - (iii) Overall Public Benefits.

- (b) Heritage:
 - (i) Approach to Heritage Issues; and
 - (ii) Experience and Expertise of the Heritage Team.

- (c) Project Management:
 - (i) Project Management/Construction Co-ordination;
 - (ii) Approach to Quality Assurance and Quality Control; and
 - (iii) Organization and Experience of the Team.

- (d) Business Plan:
 - (i) Financial Offer;
 - (ii) Investment Program; and
 - (iii) Financial Plan/Covenant Strength.

- (e) Operations and Management:
 - (i) Commercial Facilities Plan; and
 - (ii) Leasing Plan.

- (f) Overall Quality and Cohesiveness:
 - (i) Responsiveness to the RFP; and
 - (ii) Integration and Co-ordination of Components.

- (g) Additional Density Proposal:
 - (i) Financial Benefits; and
 - (ii) Other benefits.

Presentations were made by both proponents at the end of February and both proponents were also engaged in a series of follow-up correspondence to clarify aspects of their proposals in order for the review teams and selection committee to fully understand their proposals.

(A) LP Heritage:

LP Heritage is a partnership of Landau and Heyman and Prime Group Realty Trust, both operating out of Chicago. The principals of Landau and Heyman, along with other members of their team, have worked previously on restorations of Grand Central Station, New York and Washington's Union Station and were recently chosen to develop additional density at Chicago's Union Station. Their base proposal creates approximately 170,600 square feet of retail/restaurant space including the Great Hall level and by merchandizing the GO concourses, the teamways and the moats, which are to be enclosed. It includes a boutique hotel in the west wing. LP Heritage did propose an alternate approach to the business case and in that connection they proposed a 50 year term and 49 year renewal or longer if possible. This proposal has a very strong heritage component.

(B) Union Pearson:

Union Pearson is a newly created corporation established for this project. The founding shareholders are O and Y Properties, Kilmer Van Nostrand Co. Limited, Jones Lang LaSalle, OMERS Realty Corp, PCL Constructors Canada Inc. and SNC Lavalin Engineers and Constructors. Jones Lang LaSalle also worked on the restoration of Grand Central Station in New York, Washington Union Station and are part of a team recently chosen to redevelop Denver's Union Station. Their proposal creates approximately 130,000 square feet of retail/restaurant space including the Great Hall level, at the south end of the GO concourses and in the teamways and moats, which are to be weather protected. It also includes a boutique hotel in the West Wing and incorporates a food court below the VIA concourse. Because Union Pearson has created this additional space below the building, they proposed a 50-year term and a 50-year renewal. This proposal develops very strong north south circulation routes and appeals to the transportation tenants for its open character and separation of uses.

Both proponents are highly capable and experienced to successfully complete and deliver a project of this magnitude and complexity. Both have submitted competent proposals and credible commercial development strategies. They have both met the financial requirements articulated in the RFP and included significant public benefits in their proposals.

Both proponents also submitted additional density proposals. As these proposals were highly conceptual and so conditional in nature, including a requirement for significant participation and funding from other sources, very little weight could be given to this element of the proposals in the evaluation. Selection of the preferred proponent does not constitute approval of the additional density concept submitted with the proposal. It is intended to proceed solely with the base proposal at this point in time. Any consideration of additional density development will require initial approval of any development concept by the City as owner of the property and then submission of the appropriate applications for the usual regulatory approvals.

As a result of the review of the proposals, the clarifications received and the interviews held, Union Pearson was the higher scoring proposal and is recommended by the selection committee as the Preferred Proponent. However, it should be noted that while Union Pearson's proposal is the preferred proposal, there are aspects of their proposal, which do not meet the City's expectations for Union Station. Therefore, it must be made clear that recommendation of Union Pearson as the preferred proponent does not constitute acceptance of their proposal in total and certain elements of the proposal must be re-addressed and an agreement reached on all aspects of the proposal before they can be recommended as the successful proponent. This report requests authority for the Commissioner of Corporate Services to commence these negotiations leading to the execution of an Agreement to implement the restoration, development and operation of Union Station by Union Pearson.

As previously approved by Council by its adoption of Administration Committee Report 3(1) on March 6, 7 and 8, 2001, the City will retain reversionary title to Union Station and lease the Station to a single purpose corporation, of which the City will be the sole member. Pursuant to the Memorandum of Understanding executed with the Minister of Transport, the Corporation will have a six-member board of directors, four appointed by the City and two by the federal government. The lease from the City to the Corporation (the "Project Lease") will be for at least 50 years less one day with renewal rights for up to the same length of term. The Project Lease is intended to be net/net - i.e., all building risks would be transferred to the Corporation, which will have long term control of the Project. The Project Lease will provide for a base rent to the City plus participation. Unfortunately, there have been delays in the creation of that Corporation. In the meantime, it is suggested that the Commissioner of Corporate Services, in consultation with staff from Transport Canada, commence negotiation of the necessary legal arrangements and documentation to implement this transaction until such time as the Corporation is operational. The Commissioner of Corporate Services will continue to consult with the interdepartmental staff team from Finance, Urban Development Services and Heritage Preservation Services that has assisted with this project throughout, as well as Parks Canada and GO Transit, VIA Rail and TTC as the transportation operators affected by the proposals to ensure that City and federal objectives are met with this proposal.

The Preferred Proponent will likely receive a lease of the Project for a term of 50 years less a day with a right of renewal for up to 50 years less a day. This lease is intended to be absolutely net. The Preferred Proponent will have day-to-day management and control of the Station but will be "overseen" by the Corporation. Expenditure obligations will include ongoing contributions to capital reserves to be held in accounts established by the Corporation. The lease will contain all such other provisions as are appropriate to a lease of this nature, including terms pertaining to subleasing, financing, insurance, dispositions, events of default and remedies. It will also contain terms governing the operating requirements and responsibilities of Union Pearson in the day to day operations of the station. There will also likely be a development agreement incorporating the proponents' restoration and redevelopment obligations. Once negotiations are underway with the preferred proponent it may turn out that a legal structure other than a lease and development agreement will be more effective or cost efficient. Other legal documents may also be required to properly secure the transaction. Therefore, we suggest there be flexibility in the Council direction which would allow the Commissioner of Corporate Services to explore other legal structures as may be appropriate in the opinion of the City Solicitor to implement this transaction.

In order to proceed with these negotiations it is recommended that the retainer of Davies Ward Phillips and Vineberg be continued to assist in the negotiation and drafting of the required legal documentation. Funds are available in the Legal Division budget.

Both proponents submitted high quality proposals. This report recommends that Union Pearson be selected as the preferred proponent. However, in the event a satisfactory agreement cannot be reached with Union Pearson, it would be appropriate to immediately commence negotiations with LP Heritage. It is recommended that the Commissioner of Corporate Services report back to the October 2002 Administration Committee meeting on the results of the negotiations to that date and, if successful, on the terms and conditions of the agreements.

The content of the two proposals, and particularly the financial components, is highly confidential information, which if disclosed could seriously impact on the business interests of the City and the proponents. Therefore, in order to maintain the integrity of this process and to assure the confidentiality of the two proposals while these negotiations are underway, it is recommended that the two proponents both be prohibited from lobbying councillors and staff in accordance with the City's policy until an agreement has been reached with one of the proponents and a staff recommendation comes forward.

Conclusions:

Both proponents submitted high quality proposals. Union Pearson was determined by the Selection Committee to be the proponent recommended as the Preferred Proponent. If authorized by Council to proceed, the Commissioner of Corporate Services will now commence negotiation of the appropriate lease and other legal documentation required to have Union Pearson Group Inc. proceed to restore, develop and operate Union Station. To assure a continued fair process and to protect both the City's and the proponents' business interests a lobbying prohibition should be imposed until a legal agreement is negotiated and a staff recommendation made.

Contact:

Name: Patricia Simpson
Position: Project Co-ordinator
Telephone: 392-8057
Fax: 392-3848
E-Mail: psimpson@ city.toronto.on.ca

Name: Lou Pagano
Position: Director, Purchasing and
Materials Management
Telephone: 392-7311
Fax: 392-0801
E-Mail: lpagano@city.toronto.on.ca

The Administration Committee also submits the following report (June 19, 2002) from the City Solicitor:

Purpose:

This report responds to a request by City Council that the City Solicitor provide a public report to Administration Committee on allegations of irregularities in the RFP process.

Financial Implications and Impact Statement:

There are no financial implications arising from this report.

Recommendation:

It is recommended that this report be received for information.

Background:

At its meeting held March 26, 2002, during consideration of a report on the status of the Union Station Request for Proposals, the Administration Committee requested the City Solicitor to report directly to Council on allegations of irregularities in the RFP process raised by Urquhart Consortium Inc., one of the unsuccessful respondents to the Request for Expressions of Interest. This report responds to that request.

Comments:

The City purchased Union Station in August 2000 and authorized the Commissioner of Corporate Services to issue an international Request for Expressions of Interest (REOI) to determine the extent of private sector interest to restore, develop and operate Union Station. The intention of the REOI was to pre-qualify firms or teams with the skills, resources and experience necessary to undertake such a project for a subsequent Request for Proposals. Eight responses were received and six of those provided expressions of interest. Three respondents scored sufficiently high marks in all categories of the evaluation to satisfy the evaluators that they possessed the necessary skills, resources and experience required for this project.

In a deputation to Administration Committee and a written communication to City Council, Art McIlwain the principal of Urquhart Consortium Inc. (Urquhart), one of the unsuccessful respondents, took issue with the evaluation team's recommendation and requested City Council to pre-qualify all the respondents, regardless of their score.

Administration Committee and City Council adopted the Staff recommendation and pre-qualified three respondents to participate in the subsequent RFP process. Urquhart was not one of the three. Terms for the RFP were approved by City Council at its meeting held June 26, 27 and 28, 2001, and the RFP was issued in August 2001. Mr. McIlwain has written numerous letters to City staff and individual Councillors claiming that the REOI/RFP process was not fair nor in the public interest.

City staff have carefully reviewed the allegations raised by Urquhart with regard to the REOI process. The REOI was clear that the intent was to pre-qualify only those teams with the skills, resources and experience necessary to redevelop Union Station. It was within the discretion of the City to determine whether the qualifications of the respondents met the City's requirements based on a fair and equitable evaluation process. We are satisfied that the REOI/RFP process was appropriate, fair and equitable.

Conclusions:

Based on a review of the REOI and RFP process to date, the allegations of irregularities by Urquhart are unfounded and no further action is warranted.

Contact:

Patricia H. Simpson
Project Co-ordinator Union Station
Legal Services
Telephone: (416) 392-8057
Fax: (416) 392-3848
E-mail: psimpson@city.toronto.on.ca

Darrel Smith
Solicitor, Legal Services
Telephone: (416) 392-8052
Fax: (416) 392-3848
E-mail: dsmith5@city.toronto.on.ca

The following persons appeared before the Administration Committee in connection with the foregoing matter:

- Mr. Art McIlwain, Urquhart Consortium Inc., and filed written submissions in regard thereto;
- Mr. Patrick O'Leary, L. P. Heritage and Union Station Consortium;
- Mr. John Levitt, O & Y Properties Corporation;
- Mr. James Harbell, Stikeman Elliott, and filed a written submission in regard thereto; and
- Mr. John Beck, Aecon Group Inc.

Ms. Patricia Simpson, Mr. Bob Wright and Mr. Hans vanPoorten provided an in-camera briefing and presentation to the Administration Committee with respect to the foregoing matter.

(City Council on July 30, 31 and August 1, 2002, had before it, during consideration of the foregoing Clause, the following report (July 25, 2002) from the City Solicitor:

Purpose:

This report responds to a request by the Administration Committee that the City Solicitor provide a report directly to this Council responding publicly to deputations and written material submitted to the Administration Committee by Mr. Art McIlwain regarding the RFP process.

Financial Implications and Impact Statement:

There are no financial implications arising from this report.

Recommendations:

It is recommended that this report be received for information.

Background:

The City purchased Union Station in August 2000 and authorized the Commissioner of Corporate Services to issue an international Request for Expressions of Interest (REOI) to determine the extent of private sector interest to restore, develop and operate Union Station. The stated intention of the REOI was to pre-qualify firms or teams with the skills, resources and experience necessary to undertake such a project for a subsequent Request for Proposals (RFP). Only those pre-qualified firms would then be invited to participate in the RFP. Eight responses were received and six of those provided expressions of interest. Three respondents scored sufficiently high marks in all categories of the evaluation to satisfy the evaluators that they possessed the necessary skills, resources and experience required for this project.

In a deputation made to Administration Committee during its consideration of the results of the REOI and a written communication to City Council, Art McIlwain the principal of Urquhart Consortium Inc (Urquhart), one of the unsuccessful respondents, took issue with the evaluation team's recommendation and requested City Council to pre-qualify all the respondents, regardless of their score.

Administration Committee and City Council adopted the Staff recommendation and pre-qualified three respondents to participate in the subsequent RFP process. Urquhart was not one of the three. Terms for the RFP were approved by City Council at its meeting held June 26,27 and 28, 2001 and the RFP was issued in August 2001. Throughout this time frame, Mr. McIlwain has written numerous letters to City staff and individual Councillors claiming that the REOI/RFP process was not fair nor in the public interest.

More recently, Mr. McIlwain appeared before the Administration Committee on June 25, 2002 during its consideration of the results of the RFP and again at the Special meeting held July 16, 2002. He has submitted further written communications again alleging that the REOI process was rushed and that the City's requirements changed from the REOI to the RFP with regard to the issue of additional density. This is not the case.

Comments:

The REOI was issued to the market place on January 5, 2001 and closed February 5, 2001. A pre-release notice of the upcoming REOI was published in late December 2000. No requests for extension were received during that stage of the process. The first indication that Urquhart had a concern with the timelines for the REOI came in a letter from Mr. McIlwain dated November 2, 2001, months after City Council had made its decision on the three pre-qualified respondents. No other complaints have been received in this regard.

In earlier correspondence, Mr. McIlwain has also written “Council promised in its REOI to deal in good faith by allowing all qualified respondents whose submissions it accepted to participate in the subsequent RFP.” In fact, it was up to the City, in its sole discretion, to determine if the respondents were qualified and whether to accept their expressions of interest. Contrary to what Mr. McIlwain suggests, in a REOI process, receiving a submission for evaluation does not constitute an automatic approval of a respondent’s qualifications or proposal. In this case, the evaluators determined that only three of the six submissions scored sufficiently high marks in all categories to be pre-qualified to proceed to the RFP.

In his submissions to Administration Committee Mr. McIlwain states “the Union Station process is not a public tender” and as such the process is “fatally flawed”. He states that “the City Solicitor confirms it is not a public tender and says that none was called for”. This sentence has been taken out of context from a response by the City Solicitor to a communication from Urquhart arguing that the REOI was a public tender and therefore Urquhart, by responding to it, must be pre-qualified. There is a whole body of case law related to “public tender”, REI’s and RFP’s. How a document is characterised depends very much on the terms of the specific document in question. The key points with respect to the Union Station process are that the REOI was issued to the general public for response and the document made it very clear that the responses would be evaluated on certain criteria, identified in the REOI, and scored. There was no suggestion all respondents would automatically be pre-qualified. To the contrary, it was clear that the City’s evaluation of the responses would lead to a list of qualified respondents to compete in an RFP process.

More recently, Mr. McIlwain has alleged that the City’s requirements did not remain consistent between the REOI and the RFP stage of the process with regard to the development of additional density at Union Station. A review of the wording of the two documents shows that this is not correct.

Under the heading “Project Overview” the REOI states:

“There may also be an opportunity for additional development density to be created above appropriate portions of the existing site. Any such development must be approached with sensitivity and would require the resolution of a range of issues, not the least of which is the heritage status of Union Station and the requirement that the transportation operations in and around the Station not be negatively impacted. The likelihood and timing of approvals for this type of additional development density are therefore uncertain. Consequently, although this opportunity is not part of the current project scope, proponents should be aware that the City may permit this type of additional development in the future, subject to the usual public planning process.” p.1-3

And later as part of the section titled “Possible Additional Development Opportunity (Long Term)” the REOI reads:

“Additional development density is currently not permitted by the Station’s zoning designation and respondents should not assume that such additional development density will be created over the term of this agreement. However,

this opportunity may become available at some time in the future through the efforts of the successful proponent and subject to the City's usual planning process." P. 3-4 (emphasis added)

The RFP deals with the issue of additional density at Union Station in a number of passages. However, the key passages state:

"Proponents should be aware that there is currently no "as of right" additional density permitted by either the Official Plan or Zoning By-law governing the Station.....The City cannot guarantee that an application by the Successful Proponent to create such Additional Density will be successful. It is the Proponent's risk and the Proponents may not predicate the Proposal on the achievement of such Additional Density."p.1-4

"However, if a Proponent wishes to propose the possibility of pursuing this right through the normal planning and approval process, it is free to do so, as long as achieving or building out this Additional Density is not a precondition to proceeding with the balance of the Proposal."p.5-24

"Should Proponents elect to incorporate a concept for the creation and development of Additional Density as a later phase of development, this concept and its integration with the Station would be taken into consideration as part of the review.... However, as there can be no assurance that the Additional Density can be created and built out, it is expected to be given little or no weight in the evaluation. In addition, a submission may be judged non-compliant if proceeding with the restoration and redevelopment of the Station is conditional upon or would be delayed or compromised pending the creation and development of Additional Density."p.6-5

As evidence of the inconsistency between the REOI and the RFP, Mr. McIlwain relies on the fact that a response to a question at the REOI stage stated that additional density over the tracks was "off the table". The response to the question was confirmed as a written Addendum to the REOI and stated "Air rights are off the table at this stage as discussed in the REI document". By reference to the passages already highlighted from the REOI this response clearly indicates that the City was not seeking expressions of interest at this time for an actual development over and above the site's current zoning as part of this process. That position has not changed. Those air rights do not exist at this time and so cannot be included as part of a development proposal. However, it was equally clear that the successful proponent would have the opportunity to propose the creation of additional density in the future and, if acceptable the right to pursue an application through the appropriate public planning process. The RFP allowed, but did not require respondents to provide a conceptual approach to the creation of such additional density as part of their proposal but made it clear this aspect was expected to be given little or no weight in the evaluation process. This is consistent with the terms of the REOI.

Conclusions:

Based on a review of the REOI and RFP process to date, the allegations of irregularities by Urquhart are unfounded and no further action is warranted.

Contact:

*Patricia H. Simpson
Project Co-ordinator Union Station
Legal Services
Telephone: (416) 392-8057
Fax: (416) 392-3848
E-mail: psimpson@city.toronto.on.ca)*

*Darrel Smith
Solicitor, Legal Services
Tel: (416) 392-8052
Fax: (416) 392-3848
E-mail: dsmith5@city.toronto.on.ca*

(City Council also had before it, during consideration of the foregoing Clause, a confidential report dated July 30, 2002, from the Commissioner of Corporate Services, such report to remain confidential, in its entirety, in accordance with the provisions of the Municipal Act, having regard that it concerns matters related to the security of property of the municipality.)

(City Council also had before it, during consideration of the foregoing Clause, the following communications regarding the RFP process for the restoration, development and operation of Union Station:

- (i) (July 29, 2002) from Patrick B. O’Leary, Managing Partner and Chief Executive Officer, Landau & Heyman, LP Heritage & Union Station Consortium;*
- (ii) (July 26, 2002) from Art McIlwain, Chief Executive Officer, Urquhart Consortium Inc.;*
- (iii) Plans, entitled “L P Heritage + Union Station Consortium” and “Union Pearson Group Inc.”;*
- (iv) (July 30, 2002) Lobbying Disclosure Form from Paul Pellegrini, LP Heritage & Union Station Consortium;*
- (v) (July 29, 2002) from Peter Van Loan, Fraser Milner Casgrain LLP, submitting a Lobbying Disclosure Form dated July 29, 2002 from Union Pearson Group Inc.; and*
- (vi) Press release, circulated at the request of Councillor Rob Ford, advising that Dale H. Lastman will serve as representative of Kilmer Sports on the Boards of Directors of Maple Leaf Sports & Entertainment Ltd. and MLG Holdings Limited.)*