



STAFF REPORT ACTION REQUIRED

Streamlining Waterfront Revitalization in East Bayfront

Date:	June 11, 2007
To:	Executive Committee
From:	Richard Butts, Deputy City Manager
Wards:	All Wards
Reference Number:	P:\2007\ClusterB\wf\ec07003.doc

SUMMARY

The Board of Directors of Waterfront Toronto has requested that all lands owned by TEDCO in East Bayfront, other than the First Waterfront Place lands, (the TEDCO East Bayfront Lands), be transferred to Waterfront Toronto or to the City. This is a change from what was provided for in the 2006 Memorandum of Understanding between the City, TEDCO and Waterfront Toronto (the MOU) which makes Waterfront Toronto the lead in revitalizing the TEDCO East Bayfront Lands, other than the First Waterfront Place lands. The MOU does not call for TEDCO to transfer lands to Waterfront Toronto. It provides that TEDCO shall make the TEDCO Lands available incrementally for revitalization activities and for transfer directly to the City or to a third party.

TEDCO owns approximately 30 acres of East Bayfront land, including the two-acre First Waterfront Place site. Waterfront Toronto is of the view that reducing the number of public parties involved from three to two (the City and Waterfront Toronto) would streamline revitalization activities. Its position is that the overlapping involvement of Waterfront Toronto and TEDCO is causing project delays, duplicating resources, and creating confusion among members of the public and in the development community.

The 2006 TEDCO Shareholder Resolution, signed by the City as TEDCO's sole shareholder, authorized, approved and directed the incremental transfer (by sale or lease) of East Bayfront Lands to the City and to third parties as the Council may direct. The MOU contemplates that the TEDCO East Bayfront Lands would be transferred out of TEDCO by December 31, 2006. TEDCO is not being required to transfer these lands earlier than was contemplated in the MOU and will continue to receive the rent from its existing tenants in the TEDCO East Bayfront Lands until leases are terminated.

This report recommends that the TEDCO East Bayfront Lands be transferred to the City as soon as practical, subject to the City's due diligence and to Waterfront Toronto covenanting to satisfy certain conditions and assume certain responsibilities to minimize, and where possible eliminate, the City's and TEDCO's exposure to the potential liability (environmental and other) as an owner or previous owner of these lands.

RECOMMENDATIONS

The Deputy City Manager whose responsibilities include Waterfront Revitalization and the Waterfront Project Director recommend that Council:

1. Authorize and direct TEDCO to transfer to the City, and the City to acquire from TEDCO, the lands owned by TEDCO in East Bayfront, with the exception of those lands required for First Waterfront Place, (the TEDCO East Bayfront Lands) as is and for nominal consideration (\$2) following receipt of, and on a date or dates (if all of the TEDCO East Bayfront Lands are not transferred at one time) set out in written notice from the Deputy City Manager whose responsibilities include waterfront revitalization to TEDCO's President and Chief Executive Officer or the Chair of TEDCO's board of directors.
2. Require that the following matters be completed or provided for to the satisfaction of the Deputy City Manager whose responsibilities include Waterfront Revitalization, in consultation with the City Solicitor and other City officials as appropriate, in respect of the lands to be transferred to the City before the City gives written notice to TEDCO authorizing and directing it to transfer those lands:
 - a. Completion by Waterfront Toronto of soil and ground water testing, and development by Waterfront Toronto of a comprehensive remediation and risk management plan (the Remediation and Risk Management Plan) for the TEDCO East Bayfront Lands;
 - b. Receipt by the City of a written undertaking from Waterfront Toronto to implement the Remediation and Risk Management Plan to the satisfaction of the City and at no cost to the City, other than the City's proposed contribution for that purpose which is included in the Council-approved five year plan for Waterfront Revitalization;
 - c. Confirmation from Waterfront Toronto of a comprehensive package of risk mitigation tools relating to the TEDCO East Bayfront Lands, including insurance and indemnities in favour of the City;
 - d. Waterfront Toronto providing a legal title opinion in respect of the TEDCO East Bayfront Lands to be transferred;
 - e. Payment by Waterfront Toronto of (i) land transfer tax in connection with the transfer of TEDCO East Bayfront Lands to the City, or , if the Deputy City Manager whose responsibilities include Waterfront Revitalization agrees, provision of a letter of credit or alternative financial security acceptable to the Province, and (ii) Waterfront Toronto's covenant to pay all other costs associated with the land transfers including legal costs and disbursements;

- f. An agreement between the City and Waterfront Toronto or receipt by the City of an undertaking from Waterfront Toronto providing that: (i) \$15 million of the City's contribution to Waterfront Revitalization through the City's Waterfront Capital Account shall be held in reserve to cover any third party claims against TEDCO or the City and address any governmental orders against the City and/or TEDCO associated with ownership of the TEDCO East Bayfront Lands; (ii) Waterfront Toronto shall replace this reserve with revenues from the development of lands in East Bayfront by December 31, 2010; and (iii) no payments will be made out of the reserve without Council approval;
 - g. With respect to the TEDCO-owned lands on which there is a rail spur that services the Redpath Sugar Refinery, satisfaction following completion of a title search, review of any leases and other due diligence, that the condition of the rail spur property and the obligations related to ownership of this property are acceptable to the City;
 - h. Receipt by the City of Waterfront Toronto's undertaking in favour of the City to:
 - i. Develop and implement a comprehensive strategy for relocating the remaining tenants on TEDCO East Bayfront Lands, if needed, prior to the termination dates on such leases; and
 - ii. Update the parking strategy included in Waterfront Toronto's business plan for East Bayfront to address the needs of businesses, residents and visitors to the precinct and to reflect the "transit first" focus of the Waterfront Initiative; and
 - i. Receipt by the City of Waterfront Toronto's written confirmation to the City's Waterfront Project Director that Waterfront Toronto is on track to achieve the following deliverables:
 - i. Confirmation of an institutional tenant for the Queen Elizabeth Docks or, in absence of this, the issuance of a Request for Proposals for development of Phase One of the East Bayfront Precinct prior to September 30, 2007;
 - ii. An operational LRT from Union Station to Parliament Street, along Queen's Quay East by December 31, 2011;
 - iii. Completion of Sherbourne Park (south) and Phase One of the Water's Edge Promenade by May 31, 2010; and
 - iv. Installation of District Energy Infrastructure for East Bayfront by March 1, 2009;
3. Instruct the Waterfront Project Director to initiate discussions among City, Waterfront Toronto and TEDCO officials regarding whether or not TEDCO will carry out site investigations or site remediation, or both, for Waterfront Toronto

on the TEDCO East Bayfront Lands, and how to facilitate the completion of that work; and direct TEDCO to make all existing environmental and other information related to the TEDCO Lands available to Waterfront Toronto.

4. Instruct staff to establish a Task Force of senior City and Waterfront Toronto officials to facilitate satisfaction of all conditions and actions needed to complete the transfers of the TEDCO East Bayfront Lands (other than the rail spur property referred to in Recommendation 1(f) if the City elects not to accept a transfer of that property) by TEDCO to the City by December 31, 2007 or as soon as possible thereafter, such Task Force to be chaired by the Deputy City Manager whose responsibilities include Waterfront Revitalization, or his designate.
5. Instruct the City's Chief Corporate Officer, in consultation with the Waterfront Project Director, to assume responsibility for managing existing leases and tenants on the TEDCO East Bayfront Lands;
6. Direct TEDCO to provide the City's Chief Corporate Officer with originals or certified copies of all leases and other documents that he will need to effectively manage the leases and tenants on the TEDCO East Bayfront Lands, and otherwise act as the landlord with respect to these leases;
7. Authorize the City to supplement the City's existing unanimous shareholder declaration to TEDCO and the TEDCO shareholder resolution relating to the land transfers, and enhance the City's indemnity of the directors and officers of TEDCO, to make it clear that the indemnity applies with respect to the transfers recommended in this report;
8. The Waterfront Project Director and City Solicitor undertake a review of the MOU between the City, TEDCO and Waterfront Toronto to determine what amendments can be made to streamline project implementation in the Port Lands while addressing the objectives and requirements of the three parties, with all such amendments being subject to Council approval;
9. The appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Implementation Points

A number of important conditions must be met to the satisfaction of the Chief Financial Officer and Deputy City Manager, the Deputy City Manager whose responsibilities include Waterfront Revitalization and the City Solicitor before the TEDCO East Bayfront Lands are transferred to the City. The purpose of these conditions is to eliminate or minimize City exposure to liability associated with assuming ownership of the TEDCO East Bayfront Lands and to expedite achievement of the Waterfront vision. The critical path for Waterfront Revitalization requires that the TEDCO East Bayfront Lands be transferred to the City in 2007, or shortly thereafter, if the deliverables noted in

Recommendation 2h are to be achieved. To that end, it is recommended that a Task Force of senior City and Waterfront Toronto officials be established to facilitate satisfaction of the conditions and completion of the land transfers and that the Task Force be chaired by the Deputy City Manager whose responsibilities include Waterfront Revitalization, or his designate.

Financial Impact

Waterfront Toronto will pay all costs relating to the transfer of the TEDCO East Bayfront Lands to the City, including any land transfer tax or any expenses relating to any waiver or deferral of land transfer tax. In addition, Waterfront Toronto will establish a \$15 million fund to protect the City and TEDCO from any financial and environmental liabilities that may result from past and future ownership of this land. Initially, \$15 million from the City's Waterfront Capital Account will be earmarked for this purpose. This will be replaced by Waterfront Toronto by December 31, 2010 from revenue it generates from development in East Bayfront.

At present, TEDCO generates approximately \$0.6 million annually from rental revenues from four tenants occupying the TEDCO East Bayfront Lands (2005 figure). These revenues will continue to flow to TEDCO until tenants are relocated to make way for Waterfront Revitalization or until their leases expire. Should the relocation of one or more tenants be required prior to the expiration of their leases, any relocation costs and activities will be the financial and operational responsibility of Waterfront Toronto.

The actions recommended in this report should not have a negative financial impact on TEDCO in the short-term. The TEDCO East Bayfront Lands will be transferred to the City, but TEDCO will continue to receive the revenues from the existing leases until they are terminated. TEDCO control over its remaining Waterfront lands will continue to decline over time, however, as will its opportunity to generate revenues from these lands, as the Revitalization Initiative led by Waterfront Toronto continues to move through its implementation phase. TEDCO's long-term self-sustainability will necessitate a change in its business direction..

The transfer of the TEDCO East Bayfront Lands to the City exposes the City to possible claims such as civil suits and Ministry of the Environment orders. The MOU imposes strong obligations on Waterfront Toronto to address environmental problems and the environmental condition of the TEDCO East Bayfront lands do not appear to be serious. Further Waterfront Toronto has agreed to provide additional risk protection to the City and TEDCO as a condition of the City taking ownership of the lands.

Finally, the MOU outlines a protocol for TEDCO to prepare a financial impact statement that provides details of the impact of Waterfront Renewal on its operations. The Deputy City Manager and Chief Financial Officer will review the statement and recommend to Council measures to mitigate financial impacts as needed.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information

DECISION HISTORY

In September 2005, Council approved a refined governance structure for Waterfront Toronto, then called the Toronto Waterfront Revitalization Corporation. This structure reflected the conclusion of the three government partners that a single entity must be responsible for Waterfront Renewal to avoid piecemeal development, jurisdictional gridlock, duplication of resources and project delays. Waterfront Toronto was identified as the revitalization lead but existing waterfront agencies, boards, commissions and corporations were allowed to proceed with projects in advanced stages of planning.

<http://www.toronto.ca/legdocs/2005/agendas/council/cc050928/pof8rpt/cl002.pdf>

In January/February 2006 Council approved an MOU between the City, TEDCO and Waterfront Toronto that sets out their respective roles and responsibilities in revitalizing East Bayfront and the Port Lands. The MOU represented the final step in implementing the new governance structure. It assigned TEDCO responsibility for implementing First Waterfront Place and appointed Waterfront Toronto as lead in revitalizing the remainder of East Bayfront.

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060131/pof1rpt/cl027.pdf>

In May 2006, Council approved the lease and financing for TEDCO's development of First Waterfront Place. Council also approved a confidential report from the City Solicitor recommending zoning by-law amendments to accommodate this development. This report confirmed the footprint and location of the First Waterfront Place site, and thereby clarified exactly what East Bayfront lands remain to be revitalized by Waterfront Toronto. <http://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-05-23-cc08-dd.pdf>

ISSUE BACKGROUND

With the confirmation of land and infrastructure requirements of First Waterfront Place, Waterfront Toronto's Board of Directors at its meeting on April 28, 2007 requested that ownership of the remaining lands in East Bayfront be transferred from TEDCO to the City. The Board's objective in making this request was to simplify operational relationships by having Waterfront Toronto deal only with the City on the revitalization of East Bayfront.

Transferring land to the City, and thereby putting the City in the chain of title, exposes it to potential risk associated with brownfield ownership. This risk currently is isolated within TEDCO, an arms length corporation of which the City is the sole shareholder. The MOU places the onus on Waterfront Toronto to protect to the fullest extent possible both the City and TEDCO from this risk. Waterfront Toronto officials recognize this responsibility and have agreed to put in place a package of risk management tools to protect the City and TEDCO from such liability. These tools must be in place before the TEDCO East Bayfront Lands are transferred to the City.

Map 1 identifies TEDCO-owned lands proposed to be transferred to the City. Map 2 outlines the First Waterfront Place site to remain with TEDCO.

COMMENTS

In determining how to best achieve Waterfront Toronto's objective of streamlining the revitalization process, staff considered three options:

1. TEDCO transferring title of the TEDCO East Bayfront Lands to Waterfront Toronto;
2. TEDCO continuing to own the TEDCO East Bayfront Lands throughout the revitalization process, but having Waterfront Toronto deal with the City rather than TEDCO on matters relating to the TEDCO East Bayfront Lands; and
3. TEDCO transferring title to the TEDCO East Bayfront Lands to the City, and having Waterfront Toronto deal with the City on matters relating to revitalization of the TEDCO East Bayfront Lands.

Each of these options raises a number of administrative, policy and liability issues. Of particular concern to the City is ensuring that risks to the City and TEDCO of financial and environmental liability, as land owners or otherwise, is minimized.

Review of Options:

Option One, in which ownership of the TEDCO East Bayfront Lands is transferred to Waterfront Toronto, squarely places responsibility for addressing environmental issues on Waterfront Toronto. The MOU, however, does not anticipate transferring land to Waterfront Toronto. Waterfront Toronto is only one-third owned by the City. As a result, the City has less control over its performance and actions. In addition, Waterfront Toronto is a limited-life corporation. Disposition of its assets and liabilities, including any land holdings, must be addressed at wind-up and would likely be the subject of tri-government negotiations. Given that most of the public lands in the Designated Waterfront Area are owned by TEDCO or the City, it may not be in the City's best interest to have Waterfront Toronto making these decisions.

In Option Two, TEDCO continues to own the TEDCO East Bayfront Lands, but Waterfront Toronto deals with the City in revitalizing these lands. The City, in turn, deals with TEDCO, acting as a liaison between the two organizations. The provisions in the MOU and the City's unanimous shareholder's declaration to TEDCO made when the MOU was signed accommodate this approach, which offers a number of benefits. The City would not acquire public realm lands until environmental remediation is completed. Further, lands developed for residential and public realm purposes would require only one set of transfers, (from TEDCO to the City for public realm purposes, and from TEDCO to third parties for development purposes) and one set of land transfer tax payments.

Option Two, however, does not address Waterfront Toronto's objective of streamlining the implementation process by reducing the number of public parties involved to two (the City and Waterfront Toronto). The MOU includes provisions to facilitate dealings between TEDCO and Waterfront Toronto, but the overlapping mandates of the two organizations continue to cause project delays, duplicate resources and create confusion among the public and in the development community as to which organization is ultimately responsible for the Initiative. These problems will be greatest with commercial lands, which likely will be transferred by long-term lease rather than sale, which would make it necessary for both TEDCO and Waterfront Toronto to be involved on an ongoing basis.

The Preferred Option

The third option is to have TEDCO transfer the TEDCO East Bayfront Lands to the City. The City then would make land transfers (by sale or lease) after Waterfront Toronto negotiates the sales or leases, and Council endorses the proposed transactions.

Option Three is the preferred option for a number of reasons. It maintains Council's decision making authority with respect to land disposition processes, simplifies transactions by having Waterfront Toronto deal with one party (the City) rather than two, and keeps ownership of TEDCO-owned development lands in the "City family" until they are transferred to third parties. TEDCO lands that are to be used for public purposes (parks for example) are always under City control. Transferring the lands to the City (rather than to Waterfront Toronto) also means that lands that ultimately are to be owned by the City (parks and other public realm components) will only be transferred once rather than being transferred to Waterfront Toronto and then to the City, and provides the City with greater ability to hold Waterfront Toronto accountable for deliverables.

This option simplifies the revitalization of commercial land as the only public sector parties that need to be involved in these transactions are the City as land owner and approval authority and Waterfront Toronto as development lead.

As an added benefit, the City can receive and transfer lands without *Planning Act* consent. This could expedite the revitalization of the East Bayfront.

Option Three, however, puts the City in the chain of title, thereby exposing it to potential environmental liability and to risks associated with revitalization activities such as construction lien claims and accidents on site. These issues must be addressed if this option is to be implemented.

Clauses in the MOU that are Consistent With the Preferred Option:

The intent of the MOU is to transfer land incrementally, beginning with East Bayfront, from TEDCO to the City or to third parties as directed by the City and Waterfront Toronto and approved by Council. The incremental approach recognizes that Waterfront Revitalization is a long term initiative and provides TEDCO with time to enhance its

holdings and revenue generating capacity outside of the Designated Waterfront Area. It also ensures that lands in the waterfront are not sterilized while awaiting revitalization.

Clause s. 6.2(b) of the MOU states that it is anticipated that, subject to Council approval of the East Bayfront business plan (which happened in February 2006), TEDCO will be required to transfer its lands in East Bayfront (other than TEDCO project lands) to the City on or before July 1, 2006, or to one or more third parties on or before December 31, 2006. Therefore the transfer of the TEDCO East Bayfront Lands at this time is contemplated in the MOU. (The requested transfer in fact will be made later than was previously anticipated.)

The MOU imposes strong obligations on Waterfront Toronto to address the risks associated with TEDCO's ownership of lands in East Bayfront and the Port Lands. These obligations include requirements that Waterfront Toronto take steps to mitigate this risk to the fullest extent possible. These steps include insurance, indemnities, requirements to use acceptable consultants or contractors and obligations to address environmental issues. The purpose of these obligations is to require that Waterfront Toronto make all reasonable best efforts to minimize the risks to TEDCO as owner of these lands, and the risks to the City relating to public realm lands that it acquires. These obligations will continue under the preferred option.

Further, the City has been requested and Waterfront Toronto has agreed to establish a fund that would be available to address any environmental claims and problems that may arise in the future. The \$15 million fund is referred to in Recommendation 2e.

TEDCO and Site Investigations and Remediation Work

Staff notes that the MOU gives TEDCO the right to undertake site investigations and remediation work on lands which it owns if it wishes to do the work and if Waterfront Toronto and TEDCO agree on terms (s. 10.2). It is anticipated that going forward TEDCO's right to undertake this work will apply only if TEDCO and Waterfront Toronto agree that TEDCO will undertake this work. If TEDCO does not undertake the work, Waterfront Toronto must use "Acceptable Consultants" and "Acceptable Contractors", defined as consultants and contractors that are approved or pre-approved by Waterfront Toronto, the City and (prior to the transfer of the lands) TEDCO.

Potential Environmental Risk in East Bayfront

Under the terms of the MOU, the City generally would not take ownership of any TEDCO-owned lands that ultimately are to be transferred (by sale or ground lease) to third parties. Those lands would be transferred directly from TEDCO to the third party purchasers or ground lease tenants pursuant to transactions recommended by Waterfront Toronto, and approved by Council in consultation with TEDCO. For ground leases, TEDCO (not the City) would be the landlord. Proceeds from the sale and or lease of lands would go to Waterfront Toronto for reinvestment in waterfront revitalization.

In considering the Preferred Option, it is important that the City consider what risks it might be assuming in taking ownership of the TEDCO East Bayfront Lands, and what is proposed to be done to eliminate, where possible, and otherwise minimize the risks.

The two main risks are environmental liability and risks of accidents and damages occurring during site preparation work and construction. The possible sources of environmental liability are (i) lawsuits by third parties suffering damages due to environmental contamination on or coming from TEDCO East Bayfront Lands (civil claims), and (ii) government actions such as orders from the Ministry of Environment under the *Environmental Protection Act* and the *Ontario Water Resources Act* (for example, if contaminants from TEDCO-owned lands are migrating to the water table).

Waterfront Toronto has a risk management plan, and the MOU also imposes strong obligations on it to address health and safety issues, maintain insurance and provide indemnities to the City. Waterfront Toronto also has advised that it will obtain pollution insurance in certain situations. This is discussed in more detail below.

In terms of environmental risk, fortunately there do not appear to be serious environmental problems with the TEDCO East Bayfront Lands. Waterfront Toronto's consultants currently are carrying out Phase One soil and ground water investigations on the TEDCO East Bayfront Lands which, once completed, will provide detailed information as to soil and groundwater contamination. It is their understanding that the TEDCO East Bayfront Lands were created in the 1950's, primarily using excavated material from construction of the subway in Toronto and lake fill. This indicates that the lands, in the context of urban redevelopment in downtown Toronto, should be relatively unimpacted by environmental problems.

There are, however, some environmental issues that must be addressed. There are a number of soil and groundwater studies relating to these lands from the 1980's onwards, many of which were undertaken for TEDCO, which indicate that soil conditions generally do not meet Ministry of the Environment standards for parks, residential or commercial purposes. Based on historic land uses, it generally is expected that any soil contamination problems are due to either poor fill quality or contamination from underground storage tanks. It is Waterfront Toronto's understanding that these problems are localized and not unusual in the waterfront. It advises that although some remediation will be needed, the problems likely are not extraordinarily complex.

It is still important, however, to discuss the potential environmental risks to the City in taking ownership of these lands, and what will be done to minimize those risks. Most of these protections already are provided for in the MOU, which imposes strong obligations on Waterfront Toronto that protect TEDCO and the City.

Waterfront Toronto shall take measures including those listed below, to manage the environmental risks to the City:

- a. Environmental Risk Management Plan:

Waterfront Toronto shall carefully prepare and execute an environmental risk management plan. Typically environmental risk increases as site work is undertaken and lands are redeveloped, simply because there are more users on the site. A good environmental risk management plan is important in avoiding damage and injury, and Waterfront Toronto has agreed to develop such a plan to the City's satisfaction.

b. Risk Assessment and Remediation:

Waterfront Toronto is obliged under the MOU to carefully plan and execute remediation and management measures that will ensure that site conditions are appropriate for planned use. All work must meet standards under the *Environmental Protection Act*. A Record of Site Condition will be obtained, filed with the Ministry of the Environment and registered in the Environmental Site Registry to establish certain liability protection from regulatory enforcement for current and future owners and occupants.

The registration of a Record of Site Condition, however, does not eliminate risk to a current or former property owner. There are exceptions to the liability protection for future discharges of contaminants, contamination migrating to other properties after the record of site condition is filed, and emergency re-openers by Ministry of Environment if the Minister has reasonable grounds to believe that the residual contamination poses a danger to the health and safety of any person or to water supply. Also, registration of a Record of Site Condition does not protect an owner or former owner from civil claims. For these reasons Waterfront Toronto has agreed to establish the reserve fund discussed below.

c. Indemnities and Insurance:

Waterfront Toronto shall indemnify the City against claims that arise out of performance of site investigations or remediation activities, including any failure to properly characterize the environmental condition and perform remediation activities. Waterfront Toronto shall require consultants and contractors undertaking activities on the lands to provide the City with indemnities and insurance.

d. Reserve Fund:

Waterfront Toronto will establish and maintain a \$15 million reserve fund for East Bayfront to offset costs of proven claims against the City or TEDCO that are attributable to site investigations, remediation activities or the existing environmental condition of the lands, should they arise. Initially, the fund will be established by earmarking \$15 million of the City's \$500 million contribution to Waterfront Revitalization. By no later than December 31, 2010, Waterfront Toronto will replace this allocation with funds from revenues generated through revitalization in the East Bayfront precinct.

e. Pollution Liability Insurance:

Waterfront Toronto also will obtain pollution legal liability insurance, if it is determined to be appropriate and cost effective to do so following the soil testing now underway. This insurance provides coverage for loss arising from pollution conditions at or emanating from an insured location. It can provide a broad range of coverage, and there is sufficient flexibility to put together an insurance package to address City requirements.

Summary of Risks Associated with Land Ownership

For TEDCO-owned lands that are to become part of the public realm (parks, roads and waterfront promenade), the City in any event will own these lands after they are revitalized. Therefore, the main risks the City will take on if it acquires ownership of these lands now are risks arising from site investigation, remediation and other site preparation activities. Tools for addressing this risk are described earlier in this report.

As noted earlier, for TEDCO-owned land that is to be transferred to third parties for development purposes, until now the plan was that they would continue to be owned by TEDCO while environmental remediation and other site preparation work was done, and then be transferred to third parties. Therefore the City would not be exposed to claims or actions associated with remaining environmental problems.

However, given that there do not appear to be serious environmental problems with the TEDCO East Bayfront lands, the risk management tools referred to above should be sufficient to address the City risks associated with taking ownership of the lands now.

Particulars of Risk Mitigation Measures

Under the MOU, there are a number of other provisions that provide additional protection to TEDCO and will provide the same to the City. These include opportunities to be consulted on remediation and risk management plans and do peer reviews of remediation work at Waterfront Toronto's expense.

Staff note that particulars of the insurance, indemnities and other risk management measures the City should require cannot be finalized until soil testing is complete and the remediation strategy is developed for the TEDCO East Bayfront Lands. Therefore, staff recommends that Council delegate authority to the Deputy City Manager and Chief Financial Officer, the Deputy City Manager whose responsibilities include Waterfront Revitalization and the City Solicitor to determine which of these measures are needed and the particulars of the required indemnities and insurance. This determination will be made following completion of soil and groundwater testing and development of a risk management plan.

Financial Impact of Transferring Land

The transfer of land from a corporation (TEDCO) to its shareholder (the City) triggers the payment of land transfer tax by the City to the Province. However, no land transfer tax will be payable if a letter of credit in the amount of the tax is posted, the lands is held for

a period of three years by the City, and the City remains affiliated with TEDCO. Also, if the City sells the land to a non-affiliated person within three years of the transfer to the City and the transferee pays land transfer tax, the letter of credit will be returned to the City. City staff's position is that Waterfront Toronto should post the letters of credit on behalf of the City. This would require the consent of the three governments, and confirmation of that consent or other arrangements satisfactory to the Deputy City Manager whose responsibility for Waterfront Revitalization should be obtained prior to the lands being transferred.

TEDCO currently has three tenants on its lands in East Bayfront: two on Queen Elizabeth Docks (south of Queens Quay East) and one north of Queens Quay East. In addition, TEDCO has obligations to provide Redpath Sugar with access to its rail spur in East Bayfront and a location for employee and truck parking in proximity to its plant until 2016. In 2005, TEDCO generated approximately \$646,000 from these leases. In addition TEDCO owns lands, including an abandoned rail spur, in other areas of the precinct which are also to be transferred to the City, following the City's due diligence review of lease and other pertinent documents. These lands have no tenants and generate no revenues for TEDCO.

The leases of existing tenants will not be renewed to make way for Sherbourne Park and new communities. Both Queen Elizabeth Docks tenants have been notified that they must relocate within eighteen months, as is permitted under the terms of their leases. The third tenant is located north of Queens Quay East and is not expected to be impacted by the Revitalization Initiative for the duration of its lease. Responsibility rests with Waterfront Toronto to relocate tenants where appropriate.

The location of parking for Redpath Sugar can be moved as needed as long as it remains in proximity to the plant. There are a number of parking pressures in the precinct, however, and Waterfront Toronto must update the parking strategy included in the East Bayfront Business and Implementation Plan to ensure that it supports community, visitor and business needs in the area and that it respects the "transit first" objective of Waterfront Revitalization.

The MOU provides that TEDCO will retain rental revenues from waterfront lands until those lands are required for revitalization purposes. Therefore TEDCO will continue to receive revenues from the remaining tenants as long as these tenants remain in their current location. This report recommends that the City's Facilities and Real Estate Division assume responsibility for lease management. To this end, TEDCO is being directed to provide the City's Chief Corporate Officer with the leases and other documents so that he can carry out this role.

Other Conditions of Land Transfer:

The primary objective of Waterfront Toronto in requesting the transfer of the remaining East Bayfront Lands to the City is to expedite and streamline revitalization of these lands.

To this end, it is critical that Waterfront Toronto confirm in writing to the Waterfront Project Director its commitment to meeting the following deadlines:

1. Confirmation of an institutional tenant for the Queen Elizabeth Docks or, in absence of this, issuance of a Request for Proposals for development of Phase One of East Bayfront prior to September 30, 2007 (Map 3 illustrates Waterfront Toronto's phasing strategy for East Bayfront);
2. An operational LRT from Union Station to Parliament Street, along Queen's Quay by December 31, 2011;
3. Completion of Sherbourne Park (South) and Phase One of the Water's Edge Promenade by May 31, 2010; and
4. Installation of District Energy Infrastructure by March 1, 2009 in support of First Waterfront Place.

Finally, in addition to dealing with the TEDCO East Bayfront Lands, the MOU deals with renewal initiatives in the Port Lands. Given the magnitude of the Port Lands and the complex environmental issues with these lands, it is likely not feasible or advisable for these lands to be transferred to the City to streamline renewal activities. Therefore it is recommended that the Waterfront Project Director and City Solicitor undertake a review of the MOU to determine what amendments should be made or to otherwise streamline project implementation in the Port Lands without those lands being transferred to the City, with all such amendments being the subject to Council approval.

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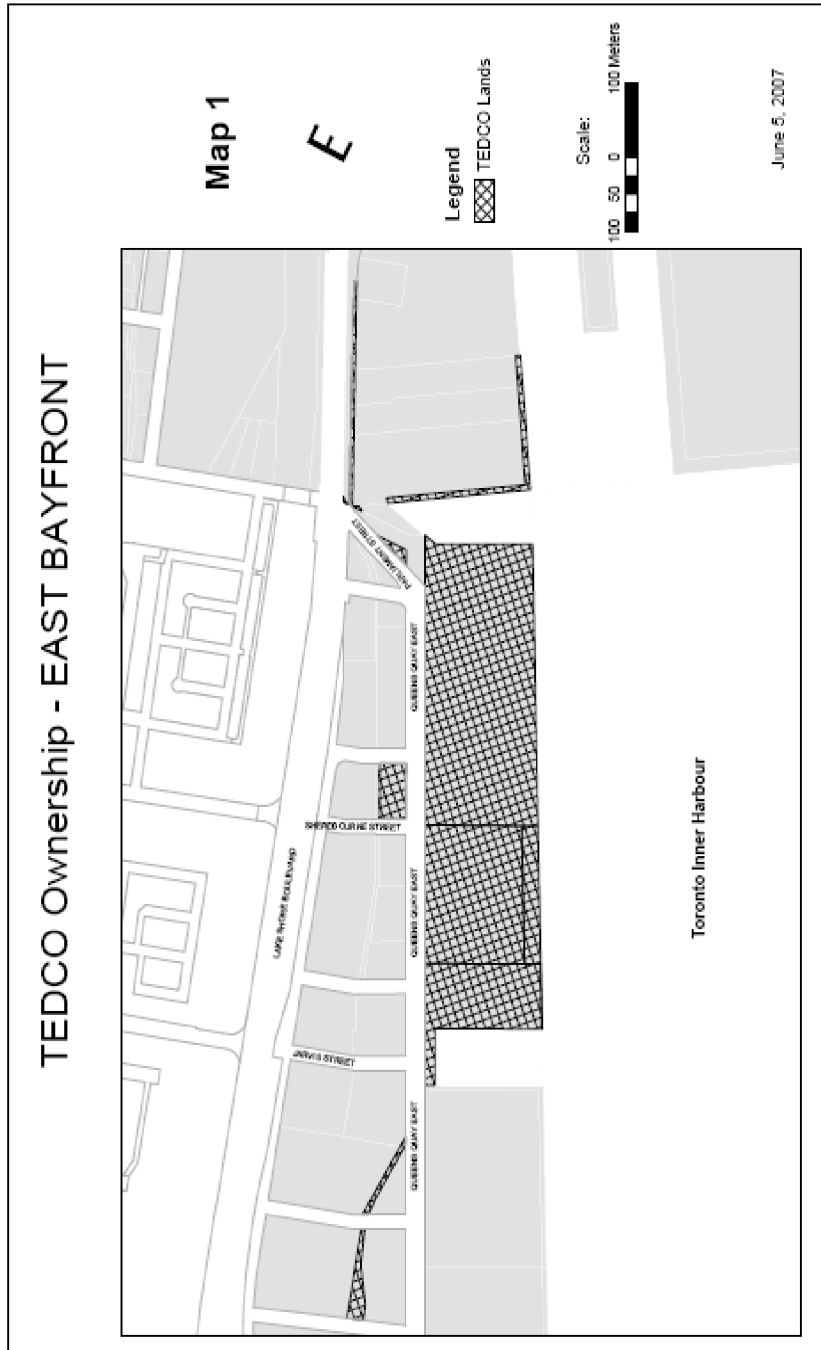
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Richard Butts
Deputy City Manager

ATTACHMENTS

Map One – Map of Lands to be Transferred to the City
Map Two – Map of First Waterfront Place Lands to reside with TEDCO
Map Three – Phasing Map for East Bayfront Revitalization

Map 1



REDPATH SUGAR SITE AND JARVIS SLIP SPECIAL USE SITE



Map 3

