



**STAFF REPORT  
ACTION REQUIRED  
with Confidential Attachment**

**Purchase of Lands for Morningside Avenue/ Finch Avenue East / CPR Grade Separation Project**

<b>Date:</b>	October 19 <sup>th</sup> , 2007
<b>To:</b>	Government Management Committee
<b>From:</b>	Bruce Bowes, Chief Corporate Officer
<b>Wards:</b>	<b>Ward 42 – Scarborough - Rouge River</b>
<b>Reason for Confidential Information:</b>	This report is about a proposed land acquisition by the City
<b>Reference Number:</b>	P:\2007\Internal Services\F&re\Gm07109F&re – (AFS 6188)

**SUMMARY**

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Real Estate Services seeks authority for the City to acquire the lands legally described as Parts of Lots 9, 10, 11 and 12, Concession 3; Part of the Road Allowance between Lots 10 and 11, Concession 3; Part of Lot 12, Concession 4; all in the City of Toronto, Province of Ontario and more particularly shown as:

- Part 1 on “Morningside Avenue Plan 1” (Job No. 05-00391), dated 2007-01-04;
  - Parts 1 to 3 on “Morningside Avenue Plan 2” (Job No. 05-00391), dated 2007-01-15;
  - Parts 1 to 3 on “Morningside Avenue Plan 3” (Job No. 05-00391), dated 2007-01-22;
  - Part 1 on “Morningside Avenue Plan 4” (Job No. 05-00391), dated 2007-01-22;
  - Parts 1, 2, 11, 12, 13, 14 on “Finch/Morningside Plan 7” (Job No. 05-00333), dated 2007-05-22;
  - Parts 1 to 8 on “Finch / Morningside Plan 8” (Job No. 05-00333), dated 2007-05-18;
- (Collectively The “Lands”)**

All of the above plans were prepared by City of Toronto, Survey and Mapping and are attached as Appendix “B”.

The lands are required to expand and complete the Morningside Avenue/ Finch Avenue/ CPR Grade Separation Project, including the creation of a new public trail that will eventually be extended along Morningside Avenue down to Sheppard Avenue, providing a dedicated bicycle path for public use.

Negotiations with Canadian Pacific Railway Company (“CPR”), the owner of the lands, have been ongoing since January 2007. As a result of these negotiations, CPR has invited the City to submit an offer to purchase the Lands. Appendix “A” and Attachment 1 to this report describe the salient terms of this proposed acquisition, which are considered fair and reasonable.

## **RECOMMENDATIONS**

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### **The Chief Corporate Officer recommends that:**

- (1) City Council adopt the confidential instructions to staff in Attachment 1.
- (2) City Council authorize the public release of the confidential information in Attachment 1 pertaining solely to the purchase price and deposit, upon City Council’s adoption of the Recommendations in this report.
- (3) City Council authorize the City to submit an Offer to Purchase the Lands to CPR, substantially on the terms outlined in Appendix “A” and Attachment 1 to this report, and that each of the Chief Corporate Officer and the Director of Real Estate Services be authorized severally to execute the Offer on behalf of the City.
- (4) If during the due diligence period it is determined that the Lands do not meet the Ministry of Environment standard for “industrial use”, each of the Chief Corporate Officer and the Director of Real Estate Services be authorized severally to negotiate and accept an abatement of the purchase price from CPR in an amount sufficient to cover the City’s estimated cost of remediating the Lands to the “industrial use” standard.
- (5) the City Solicitor be authorized to complete the transaction on behalf of the City, including making payment of any necessary expenses and amending the closing date and other dates to such earlier or later date(s) and on such terms and conditions as she may from time to time consider reasonable.

### **Financial Impact**

The total cost of this acquisition is listed in Attachment 1 and will be funded from the 2008 Approved Capital Budget for Transportation Services, Morningside Avenue/Finch Avenue East/ CPR Grade Separation - Capital Account CTP804-20.

When CPR sells land, they will only environmentally remediate their lands to the “industrial use” standard. If the end use of the lands requires remediation to “parkland use”/“residential use” standards, the additional costs required to remediate the lands to that higher standard are the responsibility of the purchaser. Thus, in this case, the City may be responsible for any additional remediation costs associated with the 4,500 m<sup>2</sup> being used for road purposes. An estimate of the potential remediation costs the City could face if the Lands do not meet this higher standard, which would require the City to remediate the Lands following closing to bring them up from the “industrial use” standard to the “parkland use”/“residential use” standard, is contained in Attachment 1. If additional environmental remediation of the lands is required it will be funded from the 2008 Approved Capital Budget for Transportation Services, Morningside Avenue/Finch Avenue East/ CPR Grade Separations - Capital Account CTP804-20.

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

## **ISSUE BACKGROUND**

Morningside Avenue is a major north-south arterial road extending from Lake Ontario to Finch Avenue. South of Old Finch Avenue, Morningside Avenue is four lanes wide. North of Old Finch Avenue it narrows to one lane before crossing under the CPR Belleville Subdivision (mainline track). North of the CPR underpass, the road curves sharply to the west, changing to an east-west orientation prior to crossing another CPR track (the cross-connection track) at grade. At this point, the road becomes Finch Avenue and widens to a four-lane urban arterial road on the approach to Neilson Road. Traffic safety and operational concerns in the vicinity of the Finch Avenue/Morningside Avenue/CPR grade separation have been identified due to the restricted width and low vertical clearance of the existing Morningside Avenue/CPR grade separation structure and the tight curvature of the roadway alignment immediately to the north of the structure.

In February 1999, the Ontario Municipal Board approved Official Plan amendments that permitted the development of a new 2,500 to 2,700 unit residential community in the area, and the extension of Morningside Avenue north of Finch Avenue. In April 2000, a Class Environmental Assessment (EA) for the Finch Avenue/Morningside Avenue/CPR improvements commenced and at its meeting on February 13, 14, and 15, 2002, City Council adopted Clause No. 13, Report No. 2 of the Works Committee, recommending that the Environmental Study Report (ESR) be filed in accordance with the Municipal Class Environmental Assessment process. EA approval was subsequently granted. The ESR recommended that the existing Morningside/CPR grade separation be reconstructed, the Finch/CPR at-grade crossing be grade separated and that Morningside Avenue and Finch Avenue be widened on either side of the new grade separation structures.

A plan to construct the Morningside Avenue/ Finch Avenue/ CPR Grade separation was established to facilitate new development and easier traffic flows in that area. The grade separation is required to accommodate increased traffic generated in this area.

The construction schedule of the Morningside/Finch/CPR grade separation is proposed for 2008. The construction method requires that the grade separation be built under live rail traffic conditions. This means that work is broken into sections and completed during CPR allotted time periods when there will be no active rail traffic. The only time period of sufficient duration to place the temporary girders and permanent girders are the May and September 2008 long weekends respectively. Any delays beyond these dates will have significant cost implications to the project. Thus, it is important to have this transaction completed at this time.

An environmental assessment (the “ESR”) was completed in April of 2000, which addressed the alignment of the grade separation. The ESR was approved by the Ontario Municipal Board and adopted by City Council on February 15, 2002.

## **COMMENTS**

The Lands are required for the purpose of the Morningside Avenue / Finch Avenue grade separation. This involves the construction of a new grade separation at the Finch Avenue/ CPR crossing. A portion of the Lands is also required for a new public trail.

CPR will not permit the City to carry out environmental testing of the Lands until the City and CPR have entered into an agreement of purchase and sale. Once an agreement is signed, the City will have a 60 day due diligence period in which to carry out its testing, which will include both a Phase I and a Phase II environmental site assessment and geotechnical testing. If the environmental testing reveals that the Lands do not meet the Ministry of Environment standard for “industrial use”, the City will have the right, at its sole option, to give notice to CPR that it intends to terminate the agreement of purchase and sale. Upon receipt of such notice, CPR may, at its sole option, make a proposal to the City for the abatement or elimination of any contamination that does not meet the “industrial use” standard. The City must then decide if it wishes to proceed with the purchase on the basis of CPR’s proposal or if it instead wishes to terminate the agreement of purchase and sale. It is recommended that each of the Chief Corporate Officer and the Director of Real Estate Services be authorized to accept a proposal from CPR for an abatement of the purchase price if the abatement is deemed sufficient to cover the City’s estimated cost of remediating the Lands to the “industrial use” standard.

Pursuant to City policy, land to be used for road purposes must satisfy the Ministry of Environment standard for the most sensitive adjoining land use. In this case, this means that the portion of the Lands to be used for road purposes must satisfy the Ministry of Environment standard for “parkland use”/“residential use”. When CPR sells land, they will only remediate the lands to the “industrial use” standard. If the end use of the lands requires remediation to “parkland use”/“residential use” standard, the additional costs required to remediate the lands to that higher standard are the responsibility of the purchaser. Thus, in this case, the City may be responsible for any additional remediation costs associated with the 4,500 m<sup>2</sup> being used for road purposes. An estimate of the potential remediation costs the City could face if the Lands do not currently meet this higher standard, which would require the City to remediate the Lands following closing

to bring them up from the “industrial use” standard to the “parkland use”/“residential use” standard, is contained in Attachment 1.

No similar environmental requirements exist for a change in use from a railway line to a recreational trail. Therefore, there will be no potential additional costs associated with the portion of the Lands to be used as a recreational trail.

Negotiations with CPR have resulted in the City being invited to make an offer to purchase the Lands substantially on the terms and conditions outlined in Appendix “A” and Attachment 1 of this report. Staff considers this to be fair and reasonable and therefore, recommends, the approval of this transaction.

## **SIGNATURE**

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## **SIGNATURE**

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Bruce Bowes, P. Eng.  
Chief Corporate Officer

## **ATTACHMENTS**

Appendix “A” – Terms and Conditions of Proposed Purchase Transaction  
Appendix “B” – Draft Plans 1, 2, 3, 4, 5, 7 & 8  
Attachment 1- Confidential Information

## Appendix “A”

### Terms and Conditions – Proposed Purchase from CPR

Owner:	Canadian Pacific Railway Company
Location:	Finch Avenue East and Morningside Avenue, Toronto
Legal Description:	<p>Parts of Lots 9, 10, 11 and 12, Concession 3; Part of the Road Allowance between Lots 10 and 11, Concession 3; Part of Lot 12, Concession 4; all in the City of Toronto, Province of Ontario and more specifically shown on the Plans attached as Appendix “B”, as follows:</p> <p>Part 1 on “Morningside Avenue Plan 1” (Job No. 05-00391), dated 2007-01-04; Parts 1 to 3 on “Morningside Avenue Plan 2” (Job No. 05-00391), dated 2007-01-15; Parts 1 to 3 on “Morningside Avenue Plan 3” (Job No. 05-00391), dated 2007-01-22; Part 1 on “Morningside Avenue Plan 4” (Job No. 05-00391), dated 2007-01-22; Parts 1, 2, 11, 12, 13, 14 on “Finch/Morningside Plan 7” (Job No. 05-00333), dated 2007-05-22; Parts 1 to 8 on “Finch/Morningside Plan 8” (Job No. 05-00333), dated 2007-05-18;</p>
Approximate Area:	12.9474 Acres or 52398.3 Square Meters
Improvements:	Vacant Railway Spurs
Irrevocable Date:	10 business days following submission of Offer to Purchase by City to CPR
Due Diligence Period:	60 business days following acceptance by CPR of City’s Offer to Purchase
Environmental Condition:	If the environmental testing to be carried out by the City reveals that the Lands do not meet the Ministry of Environment standard for “industrial use”, the City will have the right, at its sole option, to give notice to CPR that it intends to terminate the agreement of purchase and sale. Upon receipt of such notice, CPR may, at its sole option, make a proposal to the City for the abatement or elimination of any contamination that exceeds the “industrial use” standard. The City must then decide if it

wishes to proceed with the purchase on the basis of CPR's proposal or if it instead wishes to terminate the agreement of purchase and sale.

- Closing Date: Date to be mutually determined by the parties
- Purchase Price: See confidential Attachment 1
- Deposit: See confidential Attachment 1
- Release and Indemnity: The City must release and indemnify CPR and companies affiliated with CPR from and against all losses, damages, costs, expenses, claims, liabilities, actions, causes of action and demands occurring or caused on or after the Closing Date for any cause, matter or thing in any way related to the Lands, including any environmental liability.
- Fencing: The City must, at its sole cost and expense, construct, repair and maintain as may be necessary from time to time fencing on all or any of the common boundaries of the Lands and any active rail lines of CPR, if required, in a form and as such locations as directed by the District General Manager of CPR