



**STAFF REPORT  
ACTION REQUIRED**

**Memorandum of Understanding for Kipling  
Improvements to Implement the Kipling / Islington  
Redevelopment Initiative**

<b>Date:</b>	November 19, 2007
<b>To:</b>	Government Management Committee
<b>From:</b>	Chief Corporate Officer
<b>Wards:</b>	5 – Etobicoke-Lakeshore
<b>Reference Number:</b>	P:\2007\Internal Services\F&re\Gm07131F&re – (AFS-6446)

**SUMMARY**

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The terms of a Memorandum of Understanding (MOU) providing for the construction of the improvements for the Kipling portion (the Kipling Improvements) of the Kipling/Islington Redevelopment Initiative (K/I Initiative) are being negotiated between staff of the City, Toronto Transit Commission (TTC), GO Transit (GO) and Mississauga Transit (MT). While the MOU has not yet been finalized, the parties have agreed that GO will assume the design and construction of the majority of the Kipling Improvements from the TTC as of November 15, 2007 in order to meet scheduled construction dates. This report seeks authority for the Chief Corporate Officer to execute the MOU substantially on the terms set out in Attachment 1 when negotiations are finalized.

As required by the MOU, this report also seeks authority to take the required steps under the Municipal Class Environmental Assessment to stop up and close the eastern portion of Subway Crescent. Authority is also sought to declare surplus the City-owned lands required for the construction by GO of the new inter-regional terminal, with the proposed method of disposal to be a transfer to GO at fair market value.

## **RECOMMENDATIONS**

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

1. the Chief Corporate Officer be authorized to execute an MOU regarding the Kipling Improvements substantially on the terms set out in Attachment 1 and on such other or amended terms as are acceptable terms to the Chief Corporate Officer.
2. the City take appropriate steps under the Municipal Class Environmental Assessment to stop up and close the eastern portion of Subway Crescent to facilitate the Kipling Improvements project.
3. notice be given to the public of a proposed by-law to permanently close the eastern portion of Subway Crescent, in accordance with the requirements of Chapter 162 of the City of Toronto Municipal Code and the Etobicoke York Community Council hear any member of the public who wishes to speak to this matter.
4. following the closure of the eastern portion of Subway Crescent, easements be granted to any affected utility companies for any existing utilities plant located in the road allowance or with the consent of the said utility companies, the utilities plant be relocated, adjusted or abandoned, at the sole cost of the purchaser of Subway Crescent, with such costs to be determined by the appropriate utility companies.
5. the eastern portion of Subway Crescent property shown as Part 1 on Sketch PS-2007-281, (the Sketch) together with the lands to the south required for the Kipling inter-regional bus terminal, shown as Part 2 on the Sketch, be declared surplus, subject to required easements acceptable to the Chief Corporate Officer, for the purpose of transfer to GO Transit at fair market value.
6. the City provide access and construction rights to GO to undertake the Kipling Improvements on lands owned by the City and/or leased by the City on terms satisfactory to the Chief Corporate Officer.
7. The appropriate City officials be authorized and directed to take the necessary actions to give effect thereto.

### **Financial Impact**

The Province has committed to capital funding in the order of \$30,000,000 for the Kipling portion of the K/I Initiative. Mississauga Transit has committed to \$5,500,000 in capital funding to the project. GO will manage these funds in the design and construction of the Kipling Improvements and will be responsible for any budget overruns. Consequently, the Kipling Improvements should have no financial implications for the City. These budget estimates are based on design work that had advanced to the 10% stage; as design work continues these estimates may be revised. It is intended that the

TTC will be reimbursed for its costs up to and including the achievement of the 60% design milestone for the Kipling Improvements.

The proposed transfer of City-owned property to GO for the inter-regional terminal construction would be at fair market value and would result in a revenue of approximately \$360,000 - \$400,000 for the Land Acquisition Reserve Fund (LARF) to be applied to the City's costs for the improvements to be constructed at Islington as part of the K/I Initiative.

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

## **DECISION HISTORY**

On September 25, 26, 27 and 28, 2006, City Council adopted recommendations in a September 26, 2006 confidential report from the Deputy City Manager and Chief Financial Officer regarding the Kipling/Islington Redevelopment Initiative and the status of negotiations with SNC Lavalin Group Inc.

On February 5, 6, and 7, 2007, City Council adopted the recommendations in Clause 2:10 of the Executive Committee that the K/I Initiative be approved and that a capital funding allocation of \$17,500,000 from the LARF be made as the City's contribution to the total \$58,400,000 budget, subject to the confirmation of cost-sharing commitments from other government and transportation stakeholders in this project. City Council directed that proceeds from the sale of the Bloor/Islington lands (Phase 1 sale to SNC and any future sale of the Phase II lands) and the Westwood lands be used to reimburse LARF.

On September 26 and 27, 2007, City Council approved Executive Committee Clause Ex11.4 and directed that capital funding of \$5,400,000 be allocated for the K/I Initiative from the Golden Horseshoe Transit Initiatives Program (GTIP) funds which were received in 2007 to augment LARF funding and that the City continue to seek funds from the Building Canada Fund or any other appropriate Federal infrastructure programs.

On November 14, 2007, the TTC adopted a staff report and recommendations to hand over the design and construction responsibilities for the inter-regional terminal, the realigned facilities, and the parking lots at Kipling to GO Transit as of November 15, 2007, on terms satisfactory to the Chief General Manager of the TTC. The Commission released the portion of the City-owned property on which the inter-regional terminal will be constructed from its operational requirements, in order that it might be declared surplus by the City and transferred to GO. The Commission also authorized staff to execute a Memorandum of Understanding relating to the design, construction and funding of the Kipling Improvements on terms and conditions acceptable to the Chief General Manager of the TTC.

## COMMENTS

Staff of the City, TTC, GO and MT are negotiating the terms of an MOU that will set out the framework for agreements amongst the parties regarding the design and construction of the new Kipling inter-regional terminal and related facilities. Agreement has not yet been reached on all the terms of the MOU, but a sufficient number of issues have been resolved to permit the hand over of the management of the Kipling Improvements project to GO.

The Province has committed to capital funding in the order of \$30,000,000 for the Kipling “transit hub” to be provided through GO Transit. Initial indications from the Province were that its capital investment was to be exchanged for assets. GO was to take charge of the Kipling project, including design and construction, and be responsible for expenditures and any cost over-runs on the project. The budget estimate at the 30% design stage has increased to \$37,600,000 for the Kipling Improvements. The completion of the 60% design milestone was identified by TTC and GO staff as the logical transfer point of responsibility for the Kipling project from the TTC to GO.

Approximately half of the lands that will be redeveloped in the Kipling project are owned by the City and half are owned by Ontario Realty Corporation (ORC) within hydro corridors. The original \$35,500,000 budget for the Kipling project included \$2,000,000 for third party land acquisition and did not provide for the land cost of the properties on which the facilities would be located. GO now wishes to acquire the inter-regional terminal site as well as the third party properties contemplated in the original budget. GO will require access and construction rights for the portions of the project that will be located on lands that will continue to be owned by the City and ORC.

More than half of the Kipling budget relates to new entrances, Passenger Pick Up and Drop Off facilities (PPUDOs) and parking reconfiguration improvements around the Kipling station that are beyond the physical limits of the new inter-regional bus terminal to be constructed by GO. The TTC will continue to design and construct the East Entrance and the adjoining East PPUDO facility, and will invoice GO for these costs out of the overall Kipling budget.

On November 7, 2007, a community meeting was held to discuss the K/I Initiative and seek public comment. Representatives of the TTC, GO, MT, URS (the TTC’s design consultant) and City Planning, Facilities & Real Estate, and Transportation and Councillor Milcyn were in attendance to make a presentation of the K/I Initiative, answer questions, and seek public input.

On November 9, 2007, GO’s Board of Directors gave authority for GO to assume the Kipling Improvements project on the general terms of the MOU. The TTC gave authority on November 14, 2007 to hand over the design and construction of the majority of the Kipling project to GO. The agreed handover date was November 15, 2007.

The draft MOU identifies the requirement for the City to stop up and close the eastern portion of Subway Crescent to facilitate the development of the new inter-regional terminal. The eastern portion of Subway Crescent, shown as Part 1 on the Sketch, and the adjoining City-owned property, shown as Part 2 on the Sketch, are to be declared surplus and transferred at market value to GO by June 30, 2008 in order to meet the required construction start date. The proposed transfers were considered and approved at the Property Management Committee meeting of October 15, 2007.

## **CONTACT**

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## **SIGNATURE**

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Bruce Bowes, P. Eng.  
Chief Corporate Officer

## **ATTACHMENTS**

- Attachment 1 – General Terms of the MOU
- Attachment 2 - Sketch of City property to be transferred to GO ownership

## **GENERAL TERMS OF THE KIPLING STATION REDEVELOPMENT MOU**

The purpose of the MOU is to establish a framework for agreement amongst the City, TTC, GO and MT relative to the design and construction of the redevelopment proposed for the Kipling Subway Station and the conveyance of land to GO, including:

- A. a new inter-regional bus terminal
- B. the re-alignment of facilities in proximity to the terminal, including a west PPUDO, north and west entrances and the north, west and Subway Crescent parking lots (collectively the “Re-Aligned Facilities”);
- C. temporary parking lots located on Fieldway Crescent and the former Westwood Theatre lands (collectively the “Temporary Commuter Lots”)
- D. new parking lots at 915 Kipling Avenue and on the east and west sides of Auckland Avenue north of Dundas Street West, as more particularly shown on Schedules B1 and B2 attached (collectively, the “Parking Lots)
- E. a new east entrance and PPUDO (collectively, the “East Entrance”);

### **(1) Design Matters:**

- GO will assume control of the design process for the Kipling Improvements as of November 15, 2007 (the “Transition Date”) with the exception of the East Entrance.
- An interim design and the final design (100%) for the Facilities shall be submitted to the TTC and MT and shall be subject to review and approval by the TTC and MT.
- Prior to the execution of the MOU, the TTC will provide GO with an estimate for all TTC costs for the Kipling redevelopment up to and including the Transition Date. Subsequently, TTC will provide an invoice for all actual TTC costs and GO will reimburse the TTC.

### **(2) Construction Matters:**

- GO will proceed with and be responsible for the construction of the Facilities and the Parking Lots. GO agrees that all its construction activities will be coordinated with the TTC so that the impact on the TTC’s operations and services shall be minimized. TTC costs incurred will be recoverable from GO.
- Once the final design of the East Entrance is finalized, the TTC will proceed and be responsible for the construction of the East Entrance.

### **(3) Real Estate Matters:**

- The lands owned by the City and shown as Part 1 and 2 on the Sketch (approximately 1.4 acres) will be conveyed, subject to any necessary easements, by the City to GO by June 30, 2008. GO agrees to accept title to the City Terminal Lands on an “as is where is” basis, provided that GO has had an opportunity to perform its own due diligence and is satisfied with the results. GO agrees it will be responsible for all costs including, but not limited to, environmental, survey, legal, taxes (as apportioned to the date of conveyance), etc., and GO agrees it will reimburse the City for the fair market value of the City Terminal Lands upon conveyance
- GO agrees that it will enter into separate discussions with ORC to secure the interest GO requires in that portion of the ORC lands within the boundaries of which the Terminal will be located. The City and TTC will automatically terminate any interests in those lands upon GO securing its required interest.
- GO agrees it will be responsible for all acquisition costs for 915 Kipling Avenue and 5241 Dundas Street West, and GO agrees it will pay directly to the relevant third parties (or reimburse the City for) the acquisition costs of these properties.
- GO will lease back any parking areas developed on the lands it owns for a nominal rent for 99 years, with the City/TTC being responsible for all operating costs, taxes and insurance.
- the TTC shall have the right to utilize the Terminal driveways for the purpose of TTC buses and service vehicles accessing the TTC bus terminal, and GO and the TTC shall enter into an agreement to provide for the use of the Terminal by the TTC and to share costs and/or responsibilities with a term of ninety-nine (99) years together with mutually agreeable renewal options.
- MT shall have the right to utilize the Terminal for its transit purposes, and GO and MT shall enter into an agreement setting out the terms of such use by MT and sharing of costs.

**(4) Financial Matters:**

- The Province, through GO, shall be responsible for all costs and expenses associated with the Kipling Station redevelopment, save and except for the MT Funding contribution of \$5,500,000.
- GO acknowledges the TTC requirements to pay a penalty to a third party if the Kipling station works are not completed so as to allow the relocation of MT to Kipling and the demolition of the existing Islington terminal by June 30, 2011. MT agrees to vacate the Islington Subway no later than January 31, 2011 and further agrees that its licence with the TTC, dated May 24, 2002, as amended, for use of the Islington Subway Station shall terminate on the earlier of the MT relocation or January 31, 2011. GO agrees that if, due to any delay caused directly by GO’s assuming responsibility for the design and construction of the Facilities, the MT

relocation does not occur on or before January 31, 2011, GO will indemnify the City/TTC in respect of the penalty (or that portion of the penalty incurred as a result of GO's involvement), if the penalty becomes payable.

- In the event of any delay caused by any party to the MOU (other than GO), such as providing of comments on plans, the granting of approvals, the passing of by-laws, or the completion of conveyances, which delay or delays can reasonably be determined to have resulted in a delay of the MT relocation, the party or parties causing such delay shall be directly responsible for paying their pro-rated portion of the penalty. In the event that the MT relocation cannot occur by January 31, 2011, the parties agree to work together to devise a temporary location for MT bus operations until MT can be accommodated at the Terminal. The costs associated with any temporary location for MT bus operations shall be deemed to be a cost of the Kipling Station Redevelopment.
- For the purposes of the MOU, "TTC Costs" are defined in the MOU.

**(5) General Matters:**

- The parties agree that GO will be the lead organization in responding to issues raised by the local community respecting the Facilities, Temporary Commuter Lots and the Parking Lots and the City and the TTC will take the lead in responding to issues respecting the East Entrance. The parties agree they will work cooperatively to resolve any issue raised by the community.
- GO acknowledges that, in order to proceed with the construction of the Kipling Improvements, it is necessary for the City to stop up, close and convey a portion of Subway Crescent to GO. GO will cooperate with the City to facilitate the closing of a portion of Subway Crescent, and GO will prepare all necessary materials on behalf of the City relating to the environmental assessment at its sole cost. GO will reimburse the City for costs in this regard, including any environmental assessment and the requisite by-law. The City acknowledges that the closing up of a portion of Subway Crescent is required prior to GO being able to commence its work on the Kipling Improvements and, therefore, this shall be completed no later than June 30, 2008.
- GO agrees it will undertake a Class Environmental Assessment for the Kipling Improvements. The City and the TTC acknowledge and agree that, under the GO Class Environmental Assessment, the terminal, Facilities, Temporary Commuter Lots and Parking Lots are deemed approved.
- The City and the TTC acknowledge that GO is not subject to site plan approval and will not be submitting any application; however, GO agrees to submit its plans to the City for review and use reasonable efforts to ensure all reasonable City requirements are met. The TTC will be responsible for all permits required for the East Entrance.



- GO agrees that the portion of the Re-Aligned Facilities consisting of the north entrance and the west entrance, will comply with the TTC's current design standards relating to accessibility and the TTC's policy for art in public transportation facilities.
- GO acknowledges and agrees that the design for the facilities shall take into account the prospect of a future LRT connection to Kipling Subway Station, provided that material changes to the design and construction of the facilities are not required.
- the concepts outlined in this MOU are to be more specifically set out in one or more subsequent agreements between or among any or all of the parties

## **OUTSTANDING ISSUES**

There is disagreement on the following points:

- GO's position is that the Kipling project should only cover parking costs for the replacement of the 1,488 existing parking spaces at Kipling, and the temporary spaces, such as Westwood required during the construction project. The TTC does not agree with this position as the original budget provided for the development of a greater number of parking spaces in the Kipling area.
- GO requires the TTC to pay its share of operating and future capital costs for the driveway through the inter-regional terminal that will serve TTC buses accessing the TTC bus terminal. The TTC proposed to offset the costs for the TTC's use of the driveway with the TTC's maintenance of the tunnel serving GO and MT riders.
- Hydro One will require GO to indemnify Hydro One in respect to GO activities on and use of the hydro corridor lands, and GO has legislative restrictions on providing such indemnification as Section 28 of the Financial Administration Act prevents GO from contracting for an uncapped contingent liability without the Minister of Finance's approval.