

**Transfer of Capital Funds to the Green Lane Capital Account and Delegated Authority for Required Acquisitions**

<b>Date</b>	April 23, 2008
<b>To:</b>	Executive Committee
<b>From:</b>	Geoff Rathbone, General Manager, Solid Waste Management Services
<b>Wards:</b>	All
<b>Reference Number:</b>	p:2008/swms/May/007PW-7347

**SUMMARY**

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This report requests authority to transfer approved capital funds from various Solid Waste Management Services capital accounts to the Green Lane capital account to ensure sufficient funds are available for potential acquisitions in 2008. In addition, this report requests delegated authority to purchase lands within two kilometres of the limits of the area approved for landfilling operations within the Green Lane Landfill Site.

**RECOMMENDATIONS**

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**The General Manager, Solid Waste Management Services recommends that:**

1. The Approved 5-Year Capital Plan for Solid Waste Management Services be amended as indicated in Appendix 1 and that total funding in the amount of \$7.150 million be re-allocated from the following projects: Transfer Station Modification (CSW004-14-01), Residual Waste Processing Facilities (CSW004-16-07), Reuse Centres (CSW004-18-01), Single Unit Home Replacement SSO Containers (CSW004-20-03) and Green Lane Landfill Development – Site Services (CSW007-02-03) to Green Lane Buffer Land Acquisition (CSW007-04-01) for the purchase of properties as buffer lands for the Green Lane Landfill;
2. City Council delegate approving power for the term of the Solid Waste Management Services five year capital plan to the City Manager for the purchase of properties located wholly or partially within two (2) kilometres of the limits of

the area approved for landfilling operations within the Green Lane Landfill Site subject to the following conditions:

- (a) the total compensation to be paid for a property does not exceed \$1,000,000;
  - (b) the terms of the purchase transaction are satisfactory to the Chief Corporate Officer and in a form satisfactory to the City Solicitor; and,
  - (c) funding is available in the annual Solid Waste approved capital budget.
3. City Council authorize each of the Chief Corporate Officer and the Director of Real Estate Services severally to execute agreements of purchase and sale on behalf of the City for the purchase of properties described in Recommendation 2.
4. City Council authorize the City Solicitor to retain the law firm of Miller Thomson LLP in London, Ontario on a sole source basis to provide legal assistance in the purchase of properties described in Recommendation 2 for agreements of purchase and sale entered into on or before June 30, 2011, and to execute a retainer agreement on terms and conditions and in a form satisfactory to the City Solicitor, to an overall maximum of \$75,000 funded from the Solid Waste Management Operating Budget.

## **Financial Impact**

This report recommends purchase of properties to be used as buffer lands adjacent to the Green Lane Landfill for up to \$7.150 million over 5 years. This 5-year additional funding for Green Lane Buffer Lands includes cash flows of \$2.650 million in 2008, \$2.000 million in 2009, \$1.000 million in 2010, \$1.000 million in 2011 and \$0.500 million in 2012. The approved Solid Waste Management Services 5-Year Capital Plan for Green Lane did not provide for buffer land purchases. Appendix 1 identifies the funds available to be re-allocated from other approved projects to fund the on-going purchase of properties as buffer lands as they come available.

The \$7.150 million required for Green Lane Buffer Land Acquisition is funded by deferring completion of the Residual Waste Processing Facilities project beyond the 5-Year Capital Plan to 2013. SWMS continues to review options for residual waste processing with planning and consulting work to begin 2009. Based on the achievable time lines, these new facilities will not be completed until 2013. Depending on the outcome of future Capital Plan reviews, the cash flows for the period 2013 to 2018 will be phased based on affordability targets.

The funding source for all identified projects is debt recoverable from user fees except for Reuse Centres (CSW004-18-01) which is 73% or \$0.581 million funded through

debentures in 2008. As the SWMS 2009 Capital Budget is fully funded from user fees the impact on the 5-Year Capital Plan by deferring this project to 2009 will be reported through the 2009 budget process.

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

## **DECISION HISTORY**

At its September 19, 2006 meeting, City Council issued instructions to staff, and in doing so, adopted, as amended, the confidential report (September 18, 2006) from the General Manager, Solid Waste Management Services, and the Deputy City Manager and Chief Financial Officer, entitled “Long Term Waste Disposal Capacity.” These instructions authorized the General Manager of Solid Waste Management Services to, in addition to other recommendations, negotiate and execute an agreement of purchase and sale for the purchase of the Green Lane Landfill Site based on the terms and conditions set out in the Term Sheet attached to the staff report. The following is the link to the September 19, 2006 decision document:

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060919sp/cofa.pdf>.

## **ISSUE BACKGROUND**

As part of the purchase of the Green Lane Landfill, the City acquired the existing Certificate of Approval (C of A) issued by the Ontario Ministry of Environment. The C of A includes the requirement to implement a Property Value Protection Plan (PVPP) to assure the eligible property owners around the landfill that no financial losses will result from any decrease in the value of their properties due to the operation and expansion of the Landfill. This requirement became part of the C of A as a result of the incorporation of all of the 2006 Environmental Assessment Act expansion approval requirements.

The PVPP extends to properties wholly or partially within one (1) kilometre of the Landfill Site as measured from the area approved for landfilling operations, and to properties wholly or partially within two (2) kilometers of the Site if there is an occupied residence on the property. Eligible property owners are those who purchased their property prior to the long term expansion of the Landfill Site approved in 1998 or who, after 1998, acquired their property through a non-arms length transaction (e.g., inheritance).

The PVPP does not require landowners to sell to the Landfill owner, but if an eligible landowner wants to participate, he or she can deliver to the Landfill owner a copy of an executed listing agreement with a real estate broker. At that point an agreement in a form specified in the Environmental Assessment approval must be entered into by the landowner and the Landfill owner. This agreement requires the Landfill owner to obtain an appraisal of the property to determine the market value of the property as if located remote from the influence of Landfill Site. Each of the parties may obtain an additional appraisal if they are not satisfied with the earlier appraisal(s), in which case the median

market value of the three appraisals shall be deemed to be the market value of the property. If within eighteen months after the market value of the property has been determined, the eligible landowner receives an offer to purchase the property for a price less than the market value determined by the appraisal(s), the City must be notified and has the option, exercisable within 5 business days of receipt of notice, of (a) paying to the landowner on the closing date of the sale transaction the difference between the sale price and the market value of the property determined by the appraisal(s); or (b) purchasing the property at the market value determined by the appraisal(s).

## **COMMENTS**

It is in the best interests of the City to purchase, as they become available, many of the lands in the 2 kilometre radius around the landfill area for use as a buffer between the landfill and surrounding private properties.

Currently there are 2 properties eligible under the PVPP that are available and SWMS, in conjunction with Facilities and Real Estate (F&RE) and Legal Services, has begun discussions with the current owners. Three issues have arisen as these properties have come available.

### **(a) Delegated Authority for Real Estate Transactions**

Staff expects that for the properties currently available, the appraised values will fall within the current delegated authority (City Manager up to \$500,000). However, there are some properties with significant acreages that may come available in the near future and, due to their size, may be valued at amounts greater than the current delegated authority. As SWMS has identified the need to purchase lands in the two kilometre radius as a priority, and given that property owners will expect the process to follow reasonable time frames, staff request the delegated authority to approve real estate transactions relative to the Green Lane Landfill be increased from \$500,000 to \$1,000,000 for the City Manager.

Many of the local landowners would prefer to sell their properties without incurring the cost of hiring a real estate agent and going through the process contemplated by the PVPP. The previous owner of the Landfill acquired all of its buffer land properties directly from landowners, rather than through the PVPP. Facilities and Real Estate staff is negotiating with landowners on that basis, and needs to be able to act quickly.

This delegation will allow SWMS and F&RE to deal with properties expeditiously as they come available. Should the City not act in a timely manner and property owners opt to sell to someone else, the City will (a) not acquire the necessary buffer lands and; (b) be liable for the payment of the difference in property value. For all purchases, SWMS will work in consultation with F&RE and Legal Services.

(b) Capital Budget Requirements

In the preparation of both the 2007 and 2008 SWMS Capital Budget Submissions, staff did not contemplate the need for funds to purchase or pay out deficiencies in property values for eligible properties pursuant to the PVPP. Based on both the current properties available for purchase and the additional properties that have been identified as potentially available in 2008, staff are requesting that existing approved capital funds in the amount of \$2,650,000.00 be transferred from various SWMS capital accounts to the Green Lane capital account for the purposes of purchasing property eligible under the PVPP. The funds being transferred have been provided for other capital initiatives but will not be spent on those initiatives in 2008. SWMS will be required to request these funds in future capital submissions to continue with the planned capital work. In addition, the 2009 and future SWMS Green Lane Capital Budget Submission will include funds for any land purchases that may become available.

(c) Acquisition of Local Legal Services

The use of a local legal firm to assist with the purchase of properties surrounding the Green Lane Landfill is advisable, as it will be both cost efficient and local expertise will be provided. As it happens, one of the lawyers who assisted with the City's purchase of the Landfill Site in 2007 when he was with the Toronto law firm the City retained for that transaction is now with the branch of Miller Thomson LLP located in London. He has extensive knowledge of the surrounding lands and the regulatory approvals related to the Landfill, the Certificate of Approval and the PVPP and, subject to the successful negotiation of the terms of the retainer to the satisfaction of the City Solicitor, will be able to provide the required legal services in a cost efficient way.

The provision of capital funding and delegated authority for the purchase of properties is in the best interests of the City as it provides buffer lands between the Green Lane Landfill and surrounding private properties.

## **CONTACTS**

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## **SIGNATURE**

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Geoff Rathbone  
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Solid Waste Management Services

## **ATTACHMENTS**

Appendix 1 – Funds to be Transferred in 2008 and 2009 to 2012 Impact (in \$000's)