



STAFF REPORT ACTION REQUIRED

Land Transfer Tax and Property Tax related to the Green Lane Landfill

Date:	October 24, 2008
To:	Executive Committee
From:	General Manager, Solid Waste Management Services Acting Deputy City Manager and Chief Financial Officer
Wards:	All
Reference Number:	p:/2008/swms/Nov./016EC

SUMMARY

The purpose of this report is to seek authority to draw from the Waste Management Reserve Fund to pay the assessed provincial land transfer tax on the Green Lane Landfill, object to and appeal the Ministry of Revenue assessment, object to and appeal a proposed new property tax assessment, if necessary, and take whatever actions are necessary to challenge or seek revisions to these tax assessments, including the retention of outside counsel to represent and technical experts to advise the City with respect to these matters.

RECOMMENDATIONS

The General Manager, Solid Waste Management Services and the Acting Deputy City Manager and Chief Financial Officer recommends that:

1. City Council ratify the payment to the Province of Ontario in the amount of \$3,660,365.65, in accordance with a Notice of Assessment issued by the Ministry of Revenue under the Land Transfer Tax Act (the “Notice of Assessment”) and authorize the Acting Deputy City Manager and Chief Financial Officer to withdraw this amount as well as an amount up to \$0.350 million for associated legal expenses from the Waste Management Reserve Fund;
2. the City Solicitor, in consultation with the General Manager, Solid Waste Management Services, be authorized, on behalf of the City, to object to the Notice of Assessment under the Land Transfer Tax Act, to take any other actions, and to commence any related legal proceedings, including any claims, actions,

- applications or appeals, as warranted, and to discontinue or settle any such objection or legal proceeding where the City Solicitor, in consultation with the General Manager, Solid Waste Management Services, and the Acting Deputy City Manager and Chief Financial Officer, concludes that it is reasonable to do so and to execute any documents in furtherance thereof;
3. the City Solicitor, in consultation with the General Manager, Solid Waste Management Services, be authorized, on behalf of the City, to object to any reassessment under the Assessment Act, to take any other actions or commence any related legal proceedings, including any claims, actions, applications or appeals, as warranted, and to discontinue or settle any such objection or legal proceeding where the City Solicitor, in consultation with the General Manager, Solid Waste Management Services, and the Acting Deputy City Manager and Chief Financial Officer, concludes that it is reasonable to do so and to execute any documents in furtherance thereof;
 4. subject to the adoption of Recommendation 2, the City Solicitor be authorized to retain, on a sole source basis, Stikeman Elliott LLP for up to a maximum of \$250,000.00 net of all taxes for the provision of legal services outlined in Recommendation 2;
 5. subject to the adoption of Recommendation 3, the City Solicitor be authorized to retain such legal or technical expertise, for up to a maximum of \$100,000.00 net of all taxes, as is necessary to represent and/or advise the City with respect to any reassessment proposed by the Municipal Property Assessment Corporation; and,
 6. the 2008 Solid Waste Management Services Capital Budget for Capital Account CSW007-01-01 (Landfill Purchase Price) be increased by \$4,010,365.65 gross, funded from the Waste Management Reserve Fund, for provincial land transfer tax on the Green Lane Landfill and the cost of retaining outside legal counsel with respect to land transfer tax and legal and/or technical expertise related to property tax assessment.

Financial Impact

Funds in the amount of \$3,660,365.50 as a result of the Notice of Assessment under the Land Transfer Tax Act have been charged to Capital Account CSW007-01-01 (Landfill Purchase Price) and remitted to the Ministry of Revenue. This report seeks authority to fund this payment from the Waste Management Reserve Fund. Should the City be successful in the objection or appeal of the assessment, the above amount will be remitted back to the City from the Province and deposited into the reserve fund.

In the event the City is not successful, the additional land transfer tax and penalties and interest will be expenditures funded by the Waste Management Reserve Fund. This impact would be considered as part of the 2009 or future budget processes for Solid Waste Management Services.

The cost of outside legal and expert services is currently valued at \$0.350 million based on the amount of the sole source retainer agreement with Stikeman Elliott LLP and an estimate of legal and expert costs with respect to property tax and will be funded from the Green Lane Capital Account.

ISSUE BACKGROUND

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>

COMMENTS

Land Transfer Tax

The City purchased the Green Lane Landfill on April 2, 2007 and the purchase price included allocations for the lands, authorizations, contracts and goodwill as defined in the purchase agreement. On April 3, 2007, Land Transfer Tax affidavits were filed and land transfer tax in the amount of \$181,820.65 was paid in accordance with the value of \$12,223,043.00 that was attributed to the lands.

On July 21, 2008 the Tax Compliance Branch of the Ontario Ministry of Revenue issued a notice of assessment to the City for the purchase of the Green Lane Landfill. The Ministry is taking the position that the authorizations (valued at \$206,657,792.00) are subject to land transfer tax. Authorizations in this transaction would include certificates of approval for the operation of the site including waste disposal, operation of the landfill gas flare system, and on-site storm water management systems.

As a result of its interpretation of the Land Transfer Tax Act provisions, the Ministry has assessed the declared value of consideration for the Green Lane purchase at \$218,880,835.00. This assessment has resulted in additional land transfer tax payable in the amount of \$3,099,867.00. A 5% penalty and interest to July 25, 2008 were added to the outstanding balance resulting in \$3,660,366.00 being owed. To avoid further interest at an annual rate of 8% compounded daily, the City has remitted the full amount to the Ministry. The funds have been charged to the Green Lane Capital Account.

Solid Waste Management Services, in consultation with the outside counsel involved in the purchase of the landfill and City Legal Services, believe that the assessment should be appealed on the basis, among others, that the Ministry of Revenue is taking an unduly broad view of what is taxable. An appeal, in the form of a Notice of Objection, must be filed within 180 days of the date of the July 21, 2008 notice of assessment. If this is unsuccessful, further steps, including an appeal to the Superior Court of Justice, may be taken.

In order to appeal the assessment, staff are requesting authorization to retain the services of Stikeman Elliott LLP. The firm acted as the City's outside counsel for the purchase of the landfill and post-closing matters, is familiar with the details of the transaction, and has expertise on land transfer tax issues. Stikeman's lawyers will draft and file the Notice of Objection, assist with any submissions to the provincial government, and represent the City in any necessary court appeal.

Based on the work required for the appeal, authority to enter into a sole source retainer agreement with Stikeman Elliott LLP in the amount of \$250,000.00 is requested. This amount includes \$150,000.00 for the Notice of Objection, any Court application, and any other submissions and representations. As time is critical with this appeal, a sole source request has been submitted to the Director of Purchasing in the amount of \$50,000.00 to develop the legal strategy and draft the Notice of Assessment and required submissions. As this is an interpretation/policy issue, staff cannot predict the outcome of the response by the Province and such outcome may result in further submissions and arguments. As such, an additional \$100,000.00 has been included as contingency for such required work.

Property Tax Assessment

The Municipal Property Assessment Corporation (MPAC) has approached City staff and suggested that, given the price paid for the Green Lane landfill, a reassessment is necessary. Discussions have commenced with respect to the basis for such a reassessment. No firm approach or amount of assessment has yet been reached or communicated to the City, but indications are that there may be a reassessment amounting to more than ten times the current assessed value.

Discussions are continuing, but MPAC will soon make a determination for the purposes of the 2009 assessment. Staff will need to act quickly and may need the assistance of outside counsel and assessment experts. It is therefore recommended that \$100,000.00 be added to the budget for any legal or technical expertise that may be necessary.

Legal Services staff has been consulted in the preparation of this report.

CONTACT

Steven Whitter, Director, New Infrastructure Development and Contracted Services,
Solid Waste Management Services, Telephone: 416-396-4771, Fax: 416-396-4156
E-mail: swhitter@toronto.ca

Grace Patterson, Solicitor, Legal Services, Telephone: 416-392-8368, Fax: 416-397-5624
E-mail: gpatter@toronto.ca

SIGNATURE

Geoff Rathbone
General Manager
Solid Waste Management Services

Cam Weldon
Acting Deputy City Manager and
Chief Financial Officer