



**STAFF REPORT
ACTION REQUIRED**

**Don Valley Brick Works – Ground Lease Amendments
and New Parking Lot Lease – Part of 550 Bayview
Avenue**

Date:	November 5, 2008
To:	Government Management Committee
From:	Cam Weldon, Acting Deputy City Manager & Chief Financial Officer Sue Corke, Deputy City Manager
Wards:	Ward 29 Toronto - Danforth
Reference Number:	

SUMMARY

To obtain authority to enter into an amending agreement with Toronto And Region Conservation Authority and Evergreen to amend the Ground Lease for the Project known as “Evergreen at the Brickworks”, 550 Bayview Avenue (the “Project”) to facilitate Project construction in Two Phases. In addition, authority is sought for a net lease with Evergreen and the City for nominal consideration of a portion of the City-owned road allowance adjacent to the north-easterly limit of the Canadian Pacific Railway Lands abutting the Project.

RECOMMENDATIONS

The Acting Deputy City Manager and Chief Financial Officer and the Deputy City Manager Sue Corke recommend that:

1. Authority be granted:
 - (A) to make the revisions listed below in (B)(i) to (vi) inclusive of Recommendation No. 1 to the existing ground lease (“Ground Lease”) with Evergreen and Toronto And Region Conservation Authority (“TRCA”) for the Project known as “Evergreen at the Brickworks” (“Leased Lands”), at 550 Bayview Avenue; and

- (B) to make similar revisions to such other Project-related agreements including the existing heritage easement agreement (“Heritage Easement”) for the Leased Lands between TRCA and Evergreen, which, in the opinion of the General Manager of Economic Development, Culture and Tourism (“General Manager”) in consultation with the Chief Corporate Officer and the Deputy City Manager and Acting Chief Financial Officer (“Acting DCM/CFO”) and TRCA, are also required to be so amended:
- (i) to allow during the period from approximately early December 2008 to March 31, 2009 or such extension thereof not to extend past July 31, 2009 (“Phase One Construction”) for preparatory site preparation and mobilization, building stabilization including drilling of micro-piles or foundation caissons, installation of below-grade site services and infrastructure to existing City infrastructure; grade alterations for storm water management, erosion and sediment control, base courses to support asphalt, concrete and brick paving, and for universal accessibility, on terms and conditions satisfactory to Evergreen, TRCA and the General Manager in consultation with the Chief Corporate Officer;
 - (ii) thereafter, to allow Evergreen to substantially complete the rest of its Project construction work as described in Evergreen’s June 9, 2008 Site Plan Application submission as approved by TRCA in final form and in accordance with the Heritage Easement and Ground Lease by no later than December 31, 2010 (“Phase Two Construction”) unless the same be further extended as set out in the Ground Lease;
 - (iii) to amend and confirm that the description of and any reference to the “Leased Lands’ in the Ground Lease and related Project documentation shall henceforth include those sub-surface strata and ground-water portions of the Leased Lands which Evergreen, TRCA and the General Manager in consultation with the Chief Corporate Officer, agree in writing are necessary or desirable to effectively implement, support, maintain, repair, replace or otherwise be used, for the work described in Recommendation No. 1(a) above, as well as all adjacent trench excavation areas disturbed or used in connection therewith;
 - (iv) by substituting a proposed maximum cost of Thirty Seven Million Eight Hundred Thousand (\$37,800,000.00) Dollars (Inclusive of GST and other applicable taxes) for any references to the previously approved Forty-Two Million (\$42,000,000.00) Dollars in any agreement(s) between the City, TRCA, Evergreen and Evergreen’s design build guaranteed price contractor;

- (v) by substituting a sum equal to Thirty One Million Five Hundred Thousand (\$31,500,000.00) Dollars (inclusive of GST and other applicable taxes) of Capital Improvement Construction Costs for the Project plus a 20% contingency thereof in the amount of Six Million and Three Hundred Thousand (\$6,300,000.00) Dollars (collectively, Thirty Seven Million Eight Hundred Thousand (\$37,800,000.00)) Dollars for any references to the previously proposed amounts of Thirty-Five Million (\$35,000,000.00) Dollars and Seven Million (\$7,000,000.00) Dollars respectively; and
 - (vi) by extending the relevant time periods for fulfilling the pre-conditions and other requirements in the Ground Lease and related Project documentation relating to the commencement of the Ground Lease and to Project construction (other than the Substantial Completion Date) to allow for Phase One and Phase Two Construction and such other revisions as described above, from the dates currently described in the Ground Lease to such date(s) not to exceed December 31, 2010 as are considered satisfactory to the Chief Corporate Officer in consultation with the Acting DCM/CFO and the General Manager.
2. Council confirm that its earlier authorizations for the City to enter into financing related agreements with Evergreen and its institutional or private Project lenders and TRCA to facilitate construction of the Project on the Leased Lands shall be deemed to have also been so amended to include the revisions listed in (B)(i) to (B)(vi) inclusive of Recommendation No.1.
 3. Authority be granted for the City to enter into:
 - (i) an amending agreement with TRCA and Evergreen, and Ontario Heritage Trust and The W. Garfield Weston Foundation, as required; and
 - (ii) the financing and other Project-related agreements with Evergreen and its lenders and TRCA,

which, in the opinion of the General Manager in consultation with the DCM/CFO and Chief Corporate Officer, are appropriate, to implement the revisions described in Recommendations Nos. 1 and 2, subject to such further revisions and other terms and conditions as may be satisfactory to the General Manager in consultation with the Acting DCM/CFO and the Chief Corporate Officer, all in form satisfactory to the City Solicitor.

4. Authority be granted to enter into a new lease with Evergreen (“Parking Lot Lease”) for a portion of the City-owned road allowance proximate to the Project shown as Part 1 on Sketch PS-2008-135 attached as Appendix 1 to this report, in

order to permit use thereof by Evergreen for parking and access purposes for the Project, based on terms of a net lease to the City for nominal consideration, having a term co-terminus with the Canadian Pacific Railway lease with Evergreen of adjacent lands but with an expiration date not later than the expiration of the Ground Lease and with a cross-default clause to the Ground Lease at the discretion of the Chief Corporate Officer, and subject to such other lease terms and conditions, as may be satisfactory to the Chief Corporate Officer and in a form satisfactory to the City Solicitor.

5. The Chief Corporate Officer be authorized to administer and manage the Parking Lot Lease, including the provision of any consents, approvals, notices and notices of termination provided that the Chief Corporate Officer may, at any time, refer consideration of such matters (Including their content) to City Council for its determination and direction.

Financial Impact

There are no requirements for additional funding associated with this report.

The total project cost as previously reported to Council in July 2007, was \$42 million, including a 20% construction contingency allowance.

As Evergreen's construction plans have progressed to a more detailed level, the current costs for the Project have been revised downward to \$37.8 million, including the aforementioned 20% construction contingency allowance.

Consequently, there is a reduced financial impact on the project as a result of the construction cost estimate reduction. Evergreen has advised the City that there has been no change in scope of the Project, nor to the required amounts of \$18.4 million of Interim Financing or the \$7.5 million (inclusive of all interest, costs and charges) City/TRCA Joint and Several Loan Guarantee, as previously adopted by Council and incorporated in the Lease.

DECISION HISTORY

Pursuant to the authority granted in Consolidated clause 2 of the Economic Development and Parks Committee adopted by City Council at its meeting held on Sept 28, 29, 30 and October 1, 2004, the City and TRCA entered into a Memorandum of Understanding with Evergreen in 2004 based on a proposal Evergreen made in response to a Site Development Proposals that the City had previously issued in 2003.

Council at its meeting held on July 25, 26, and 27, 2006 adopted Clause 23 of Report No. 5 of the Administration Committee which granted authority to enter into a Lease with Evergreen for the Leased Premises on the terms and conditions attached as "Schedule A" to such report.

Council at its meeting held on July 16, 17, 18 and 19, 2007 adopted Item GM 6.7 of the Government Management Committee which granted authority for the City to enter into a Lease with Evergreen and to issue a Joint and Several Loan Guarantee with TRCA for a maximum amount not to exceed \$7.5 Million, inclusive of all interest, costs and charges.

Evergreen, TRCA and the City subsequently entered into a Ground Lease dated October 5, 2007. Evergreen and TRCA have also entered into a Heritage Easement Agreement, dated October 5, 2007.

<http://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-07-16-cc11-dd.pdf>

<http://www.toronto.ca/legdocs/mmis/2007/gm/bgrd/backgroundfile-5359.pdf>

ISSUE BACKGROUND

An executed Lease and Heritage Easement Agreement gave Evergreen the pre-requisites to secure substantial Federal and Provincial funding. In order to make headway on completing the private sector fundraising effort it is important that Evergreen demonstrate that the project is progressing physically. By separating the site mobilization and building stabilization from what was previously deemed to be “an official Construction Start”, this allows Evergreen to put to productive use the intervening time it takes to finalize their project financing and line up their construction contracts before construction is allowed to commence in earnest. This gives Evergreen the ability to have a running start to construction once they have fulfilled all of the important preconditions.

Additional property road allowance land to be used for parking and access purposes will be required to meet the preferred parking configuration for their Site Plan approval and it is recommended that the City enter into a net lease with Evergreen for a nominal rent.

The project’s construction budget has been reduced because Evergreen has acquired more accurate pricing information over the past 10 months (following the execution of the Ground Lease). Evergreen has completed three cycles of costing, using two different approaches to estimating (trade pricing and quantity surveying). The project is now estimated to cost \$37,800,000 including contingencies.

The Lease contained a clause that required Evergreen to provide evidence to the City/TRCA that funding had been secured in the amount of the full project cost of \$42 million (being the \$35 million in construction costs plus a 20% contingency cost allowance of \$7 million).

With the cost reduction, Evergreen will now be required to provide evidence of funding in the current amount of \$37.8 million (being the revised \$31.5 million in construction costs plus a 20% contingency cost allowance of \$6.3 million). An amendment to the Lease is required to reflect the reduced project costs.

COMMENTS

Given today's global economic challenges it is a lot easier and effective to raise donations for a project where perspective donors can see that a project is progressing on the ground and thereby eliminates suspicion that the Project is at risk of not happening.

Amending the lease to facilitate a two-phased construction schedule, the provision of additional land to be incorporated into the lease and revised construction costs and corresponding evidence of funding for project costs, will ensure that the project proceeds in a timely manner.

All other terms previously adopted by Council and contained in the Lease remain unchanged.

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SIGNATURE

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ATTACHMENTS

Appendix 1 – Sketch Ps-2008-135