



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Arbitration Settlement - 2 Bloor Street West

Date:	November 14, 2008
To:	Government Management Committee
From:	Chief Corporate Officer
Wards:	Ward 27 Toronto Centre-Rosedale
Reason for Confidential Information:	The security of the property of the municipality
Reference Number:	P:\2008\Internal Services\F&re\Gm08097F&re – (AFS 8831)

SUMMARY

The City and OMERS Realty Management Corporation (“ORMC”) each own a portion of the lands comprising the complex known as 2 Bloor Street West and Cumberland Terrace. The City leased its lands within the complex to ORMC by a ground lease dated August 25, 1971. Through protracted rent arbitration proceedings under the long term ground lease pertaining to the rent for a renewal term, the City and ORMC have negotiated a settlement involving a series of realty transactions: firstly, a sale to an ORMC-related entity of the air space above the amended leased premises; secondly, a land exchange to improve the configuration of each party’s real estate holdings within the complex, whereby a strip of the City-owned lands on which a portion of the commercial office tower at 2 Bloor Street West was incorrectly built (part 28 on J.D. Barnes Limited draft reference plan 97-22-016-11, Appendix A) will be conveyed to ORMC, and in exchange the City will acquire from ORMC a strata interest in a parcel of land at the corner of Cumberland and Yonge (part 4 on Appendix A) which improves the configuration of the City’s land holdings within the complex; and thirdly, amendments to the ground lease and a related reserves lease to reflect the new terms and conditions including new rent, revised boundaries of the leased premises to reflect the revised land holdings and to add the Cumberland/Yonge strata interest, and a further renewal right of 37 years to the end of the term. For further reference and graphic explanation of the transactions refer to Appendix “B” – Site Sketch.

This report seeks authority to enter into the purchase and sale agreement, land exchange and settlement agreement, lease amending agreements, and all related documentation to give effect to the settlement.

The terms for completing these transactions, as set out herein, are considered to be fair, reasonable and reflective of market value.

RECOMMENDATIONS

The Chief Corporate Officer recommends that City Council:

1. Authorize the City to enter into a Purchase and Sale Agreement with OREC Cumberland Development GP Inc., an ORMC-related entity, for that portion of the City-owned land located at 2 Bloor Street West generally described as the air space above the second storey level of the City-owned lands comprising Cumberland Terrace, currently shown as parts Parts 19, 29, 30 and 31 on the draft reference plan attached as Appendix A (the “Air Space Lands”), substantially on the terms set out in Attachment 1, and such other terms and conditions as may be acceptable to the Chief Corporate Officer, in a form satisfactory to the City Solicitor.
2. Authorize the City to enter into an Exchange and Settlement Agreement with ORMC related to a land exchange of Parts 28 (of which the boundaries are subject to adjustment to accommodate TTC subway right of way set back requirements) and 4 on the draft reference plan attached as Appendix A, and other terms related to settlement of the arbitration proceedings, substantially on the terms and conditions outlined in Attachment 1, and such other terms and conditions as may be acceptable to the Chief Corporate Officer, in a form satisfactory to the City Solicitor.
3. Authorize the City to enter into Lease Amending Agreements to remove the Air Space Lands from the ground lease, add the Part 4 lands to the ground lease, provide for a new rent during the renewal term, grant an additional renewal term, and other related amendments to the ground lease and associated reserves lease, substantially on the terms and conditions outlined in Attachment 1, and such other terms and conditions as may be acceptable to the Chief Corporate Officer, in a form satisfactory to the City Solicitor.
4. City Council approve, as the approving authority under the provisions of the *Expropriations Act*, the sale of the Airspace Lands and Adjustment Lands without giving the original owners from whom the Property were expropriated the first chance to repurchase these lands.
5. Authorize the public release of the confidential information in Attachment 1 once the agreements have been executed and the sale and land exchange transactions have been completed.

6. Authorize the Chief Corporate Officer to administer and manage the 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.
7. Authorize the City Solicitor to complete the transactions on behalf of the City, including making payment of any necessary expenses and amending the closing 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.
8. Authorize the Chief Corporate Officer to direct a portion of the proceeds of closing to fund the outstanding expenses related to the property and arbitration proceedings and the completion of the purchase and sale transactions.

Financial Impact

Significant revenue is anticipated from the proposed sale.

The proposed annual rent in the ground lease will increase to a level considered to be the 2004 fair market value for the leased premises, with further increases every five years by the percentage change in CPI over the immediately preceding five years. Settlement of this matter would eliminate further costs of continued arbitration proceedings to set the rent for further renewal terms.

In the longer term, the City will also enjoy increased realty tax revenue arising from the intensification of the use of the site.

The Acting Deputy City Manager and Chief Financial Officer is on the OMERS Board of Directors and has a conflict of interest. Therefore, the Director of Financial Planning has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

The property at 2 Bloor Street West was acquired as three separate parcels on April 22, 1959, March 31, 1961 and November 19, 1963, by the former Metropolitan Toronto Corporation for the construction of the Bloor-Danforth Subway. By the adoption of Clause No. 32 of Report No. 34 of the Metropolitan Executive Committee, the former Metropolitan Council, on September 22, 1970 and Clause No. 39 of Report No. 8 of the Metropolitan Executive Committee, the former Metropolitan Council, on March 9, 1971 approved a long term land lease with CIBC for the portion of the lands known as Cumberland Terrace. City Council, at its meeting held on August 1, 2, 3, and 4, 2000 adopted the recommendations in Clause No. 16, Report No. 16 of the Administration Committee, thereby declaring the City-owned land located at 2 Bloor Street West surplus to the City's requirements. By Clause 27 of the Administration Committee Report Number 19 adopted by the Council of the City of Toronto at its regular meeting on

October 3rd, 4th and 5th, 2000, and its Special Meetings held on October 6, 2000, October 10 and 11, 2000 and October 12, 2000 authorized the sale of the site to the lessee. Although an agreement to sell was entered into at that time, certain conditions were not met and the sale fell through.

ISSUE BACKGROUND

The ground lease was for a term of 33 years commencing on September 1, 1971 at an annual rental of \$112,000.00 plus taxes, with the right to renew for two further terms of 33 years each, at rental rates to be agreed upon, or failing agreement, to be submitted to arbitration. By a series of assignments, the tenant under the lease is now OMERS Realty Management Corporation. The initial lease term expired on August 31, 2004.

ORMC exercised its right to renew the lease for another 33 years but the City and ORMC were not able to reach agreement on the annual rental rate for the renewal term. The parties subsequently proceeded to arbitration. ORMC and the City have negotiated a settlement of the disputed rent, the key elements of which include an offer to purchase the air rights over Cumberland Terrace, an exchange of land which will regularize a major encroachment of the CIBC building at 2 Bloor Street West onto the City's lands in return for a parcel of land at Cumberland and Yonge which improves the configuration of the City's land holdings, and a revised rent for the lands which will remain leased to ORMC.

Pending the completion of the agreements contemplated under the proposed settlement, ORMC has been paying rent at the previous rate.

COMMENTS

In an attempt to reach a mutually satisfactory settlement to the arbitration proceedings and to promote City building, consideration was given by both ORMC and the City to sell the air rights of 2 Bloor Street West for development. A balance was found between unlocking the development potential of the site and protecting the TTC's interests which include the Bloor-Danforth subway line. In order to accomplish this, the possibility of stratifying the City land interests was considered as a way for the City to meet its obligation of maximizing the utility and value of the property, yet retaining control of the area for use by the subway.

The site and the terms of the proposed settlement are complex. There are four major real estate components: a land exchange, the sale of air rights, lease amending agreements and a reciprocal agreement, as discussed below. Ultimately, the expectation is that ORMC will redevelop the site by creating a new retail component from the concourse to the second storey level, and a condominium complex with associated parking and amenities above. An application for this proposal has already been submitted to the City for approval under the Planning Act. The condominium redevelopment will be carried out by a separate corporate entity presently controlled by ORMC, and ORMC will continue to rent the retail portion of the site, with the City retaining ownership of that section subject to the ORMC lease. This will be accomplished through the following agreements/transactions:

Land exchange: The rectangular parcel at Yonge and Cumberland that was part of Cumberland Terrace but owned by ORMC (Part 4 on the draft reference plan) will be conveyed to the City. Consequently the City will have contiguous ownership of land from Bay Street to Yonge Street. In exchange, the City will convey a parcel that is currently defined as part of the area leased to ORMC but is encumbered by the CIBC building at the corner of Yonge and Bloor (Part 28 on the draft reference plan). The boundary of Part 28 is still being determined, but will include all of the building encroachment plus some additional lands to allow ORMC to have access around the perimeter of the building in order to be able to service it adequately.

Sale of air rights: The City will sell to an ORMC- related entity all of the air rights located above the second storey level over all of the lands owned by the City within the complex. The precise boundaries between the air space and the leased lands are still being determined.

Lease Amending Agreements: The leased premises will be amended to redefine the boundaries to reflect the foregoing changes in ownership. In addition, ORMC will be granted one further renewal term of 37 years, the mechanism for determining rent in future years is changed to a formula based on changes to the Consumer Price Index instead of relying on arbitration, and a new rent is established for the current term. A provision in the ground lease relating to the approval of the TTC required for any development plans has been amended, in consultation with the TTC, to remove the TTC's right to act arbitrarily. At the time of the initial development, a separate lease was also entered into for a small strip of land around portions of the leased lands, for nominal rent of \$1.00 per year, apparently for site control purposes, which the parties refer to as the "Reserves Lease". The proposed transaction requires related amendments to the Reserves Lease, e.g. in order to allow a sale of the air rights above, and add a renewal term of the same length so that both leases expire at the same time. The rent remains unchanged. Both leases will also be amended to reflect the obligation to create the necessary easements to accommodate the proposed development in the Air Space Lands.

Reciprocal Agreement: A detailed agreement will be necessary to integrate the various components of the site when it is redeveloped, so that the condominium development which is built starting above the second storey will have the necessary rights of support, access, and associated facilities in order to function. The developer of the air space, the City as owner of the lands below the air space, and ORMC as the tenant of those lands, will all have to enter into such an agreement, creating the rights and obligations to make the integration work. A form of agreement will be settled prior to closing, but will need to be refined once the development has been constructed and the exact location of all of the elements can be identified on as-built plans.

Part 4 is being declared surplus, conditional upon the City acquiring the parcel, in order to permit it to be added to the premises in the long term ground lease agreement at the same time as the remainder of the transactions described in this report. As of the writing of this report, not all of the steps necessary to comply with the City's real estate

declaration of surplus have been complied with, as notice of the proposed declaration has not been given. However, by the date of consideration of Council, the required public notice will have been given.

A Cost Centre has been put in place to charge costs directly related to the sale of City owned properties and includes such items as commission, surveying and registration of the sale. A recommendation is included in this report to direct a portion of the sale proceeds to fund the outstanding expenses related to this property.

CONTACT

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SIGNATURE

Bruce Bowes, P. Eng.
Chief Corporate Officer

ATTACHMENTS

Attachment 1 – Confidential Information
Appendix “A” – Draft Reference Plan
Appendix “B” – Site Sketch
Appendix “C” – Site Map