

## **Issues Arising from the Purchase or Lease of Surplus School Board Properties**

<b>Date:</b>	November 27, 2009
<b>To:</b>	City Council
<b>From:</b>	City Manager
<b>Wards:</b>	All
<b>Reference Number:</b>	P:\2009\Internal Services\F&re\Cc09113F&re – (AFS 10976)

### **SUMMARY**

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This report responds to requests from each of the Government Management Committee and the Budget Committee for reports from the City Manager related to the process by which school boards dispose of surplus school property and the City's ability to respond to that process.

### **RECOMMENDATIONS**

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The City Manager recommends that:

1. City Council authorize the City Manager to initiate discussions with the Ministry of Education regarding *Ontario Regulation 444/98* of the *Education Act* with a view to implementing changes in accordance with Appendix "A".
2. City Council direct the City Manager to report back to the Executive Committee with a funding strategy to address both foreseeable and unforeseen pressures that may arise from the proposed sale of a number of surplus school board properties.
3. City Council direct the City Manager and the Deputy City Manager – Cluster A to report back to the Executive Committee on a strategy to acquire surplus school board properties to address the needs of local communities and neighbourhoods.

## **FINANCIAL IMPACT**

There is no financial impact as a result of this report.

## **DECISION HISTORY**

Government Management Committee at its meeting on November 9, 2009 recommended a report from the Deputy City Manager and Chief Financial Officer dated October 29, 2009 entitled Delegated Authority to Purchased or Lease Surplus School Board Properties. This report can be found at:

<http://www.toronto.ca/legdocs/mmis/2009/gm/bgrd/backgroundfile-25044.pdf>

The Government Management Committee made the following request Under Decision Advice and Other Information:

“The Government Management Committee requested the City Manager to submit a report directly to City Council respecting Ontario Regulation 444/98 under the Education Act, such report to include:

- a. A framework for dealing with the escalating costs of keeping publicly funded properties in the public domain
- b. The difficulties arising when multi sites are declared surplus.”

When considering the Budget Committee Recommended 2010 Capital Budget and 2011 – 2019 Capital Plan, the Budget Committee at its meeting of November 16, 2009 made the following motion to the Deputy City Manager, Cluster B, for consideration in any future discussions with Toronto School Boards with respect to surplus schools, and report to the Executive Committee as appropriate:

“That the City Manager, Deputy City Manager and Chief Financial Officer, and General Manager of Facilities and Real Estate be requested to report back on:

- a. a funding strategy to address both foreseeable and unforeseen pressures that may arise from the proposed sale of a number of the Toronto District School Board and Toronto District Catholic School Board surplus properties;
- b. a strategy to acquire surplus school properties to address the needs of local communities and neighbourhoods.”

Since the motions from the Budget and Government Management Committees are interrelated, they are being reported on directly to Council instead of reporting back to Executive Committee. If the report is approved by Council it will then be forwarded to the Executive Committee for information and further action.

## **ISSUE BACKGROUND**

Pursuant to the provisions of *Ontario Regulation 444/98* made under the *Education Act, R.S.O. 1990*, properties declared surplus by the Toronto District School Board (TDSB) or Toronto Catholic District School Board (TCDSB) are circulated to other school boards, educational and government institutions to see if there is any interest in purchasing and/or leasing the subject property before they can be listed on the open market. Under *Ontario Regulation 444/98* interested parties must present the school board with an offer, at fair market value, within 90 days of the property being circulated for disposal.

Under *Ontario Regulation 444/98* there is a “pecking order” of who has first right to make an offer for the property. Several educational institutions (TDSB, TCDSB, French School Board, French Separate School Board, Universities & Colleges and independent schools funded by the Ministry of Education) have priority over the City in relation to these properties if they submit an offer. Further, even if the City is the only party to submit an offer to the board that does not guarantee that the board will sell the property to the City. The board may elect not to continue with the sale of the property and therefore not to negotiate with the City. If the board does elect to negotiate the City’s offer, then the Education Act only provides that the school board and the City shall have an opportunity to negotiate price for a further period of thirty days and, if no agreement has been reached during that period, the City can either withdraw its offer, or request binding arbitration to determine the purchase price. The City cannot force a board to continue with a sale at the price that has been determined by the City.

Given the challenging structure of Reg. 444/98, it has been the prior practice of City staff, as well as other public agencies affected by the Education Act, to submit informal expressions of interest or conditional offers to a board within the ninety day period in response to a surplus declaration under the Education Act. The treatment such offers have received from school boards has varied from case to case. Some submissions have been rejected as not being offers that comply with the Education Act and others have formed the basis for a negotiated purchase or lease. However, in a letter dated August 5<sup>th</sup>, 2009 from the CEO of the Toronto Land Corporation (TLC) which is the real estate arm of the TDSB, the CEO states TDSB will no longer consider expressions of interest with regard to properties declared surplus (see Appendix “B”). Any interested parties must now present the TLC with a firm offer to purchase or lease within the 90 day circulation period prescribed by *Ontario Regulation 444/98* in order for it to be considered by the TDSB. This mirrors the practice that has more recently been applied by the TCDSB as well.

## COMMENTS

From the time the City receives notice of surplus properties circulated by the school boards, several steps must be taken before a firm offer to purchase or lease could be presented back to the board. Detailed steps and associated time lines are outlined in Appendix “C”. Typically the City has had to be reactive to the school board’s surplus property circulation process versus being proactive. Another report is being considered by Council which recommends providing delegated authority to the DCM/CFO to submit a binding offer to purchase or lease surplus school properties. If approved, this will allow the City to respond to surplus declarations in the specified manner now required by TDSB and TCDSB. However, the delegated authority report only deals with situations where funding is included in the current year’s Approved Capital Budget or is available in uncommitted reserve/reserve funds (i.e. where the acquisition satisfies the eligibility requirements of the reserve/reserve fund). The delegated authority report does not address various issues that have been identified surrounding the actual timing requirements specified in Ontario Regulation 444/98 or budgetary pressures experienced by the City when multiple properties of interest are declared surplus by the school boards.

The primary Divisions interested in acquiring or leasing surplus school board properties are found within Cluster A. Therefore, it is important for the Divisions within Cluster A to develop a strategy and list of priorities to acquire surplus school board properties to address the needs of local communities and neighbourhoods. Once that strategy is established it will assist in developing the associated funding strategy to address both foreseeable and unforeseen pressures that may arise from the proposed sale of a number of surplus school board properties.

In addition to development of the above noted strategies, it is being recommended that the Province be requested to implement modifications to the existing governing Regulations for the disposal of surplus school properties (see Appendix “A”). By doing so, this will help address some of the foreseeable and unforeseen budgetary pressures the City currently experiences from the proposed sale of surplus school board properties. This is especially evident when multiple properties the City is interested in acquiring are circulated as surplus at the same time.

Under the current framework, the time lines prescribed by Ontario Regulation 444/98 do not provide enough time for the City to respond to the school boards if funding is not already identified in the current Capital Budget. The City currently has a period of 90 days to respond to notices of surplus property circulated by a school board listed under Reg. 444/98 of the Education Act . By increasing this time period to 180 days, this will help to ensure that sufficient time is available for City staff to determine the value of the land and seek any authority that is required to submit an offer.

The surplus properties that are circulated by the school board currently do not include the asking price or rental rate proposed by the board, as well as other relevant terms and conditions that may impact on the value or use of the property. It would be desirable that the notice include this information as it would allow the City to assess its interest in the property and assist in addressing budget pressures, especially when multiple properties are being offered by the boards. Such information is typically provided in the normal course of sale or lease transactions in other contexts.

The value of the property for the purpose of any sale or lease transaction with the City under Reg. 444/98 should be determined with reference to the current institutional use of the site, rather than its value as developable land. This is a reasonable request given the City is not engaged in the business of land development, rather keeping land in public ownership. Hence it is unfair for the City to have to pay for the value as developable land (highest and best use).

In the event of a dispute between the school board and the City regarding the value of the surplus land, the parties should have a period of 60 days to resolve their dispute, rather than the 30 day period currently provided in the legislation. This will help to ensure that sufficient time is available for City staff to negotiate with the subject school board.

In the event that the dispute is not resolved within such 60 day period the City should be permitted to trigger binding arbitration, which arbitration should determine a value for the land which does not exceed the value by more than 10% that was identified in the surplus notice circulated by the school board so that the City can determine the financial risk associated with such arbitration.

The total value of all surplus properties for which notice has been circulated by a school board at any point in time should not exceed \$25 million, in recognition of the budgetary constraints of the City.

Where the City owns land adjoining the parcel that has been declared surplus, other than a public road, currently leases the subject parcel that has been declared surplus or has had a historical arrangement in place for use of the subject property (such as maintenance) with the school board, the City should rank first in priority to submit an offer to purchase or lease the surplus property from the school board.

With the City developing and implementing priority acquisition and funding strategies for school board properties that are to be declared surplus this will help address some of the foreseeable and unforeseen budgetary pressures the City currently experiences from the proposed sale of surplus school board properties. These foreseeable and unforeseen budgetary pressures will also be tempered by requesting the Province to implement modifications to the existing governing Regulations for the disposal of surplus school properties

## **CONTACT**

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## **SIGNATURE**

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Joseph P. Pennachetti  
City Manager

## **ATTACHMENTS**

Appendix "A" – Proposed Amendments to Regulation 444/98 of the Education Act  
Appendix "B" – Letter from CEO of Toronto Lands Corporation dated August 5, 2009  
Appendix "C" - Process to report to Council

Appendix “A”  
**Proposed Amendments to Reg. 444/98 of the Education Act**

1. Public entities listed under Reg. 444/98 of the Education Act should be provided with a period of 180 days to respond to notices of surplus property circulated by a school board, rather than the current 90 day period.
2. The notice provided by a school board under Reg. 444/98 should include the asking price or rental rate proposed by the board, as well as other relevant terms and conditions that may impact on the value or use of the property.
3. The value of the property for the purpose of any sale or lease transaction with a listed public entity under Reg. 444/98 should be determined with reference to the current institutional use of the site, rather than its potential value as developable land.
4. In the event of a dispute between the school board and a listed public entity regarding the value of the surplus land, the parties should have a period of 60 days to resolve their dispute, rather than the 30 day period currently provided in the legislation.
5. In the event that the dispute is not resolved within such 60 day period the listed public entity should be permitted to trigger binding arbitration, which arbitration would determine a value for the land which does not exceed the value identified in the surplus notice circulated by the school board plus 10%.
6. The total value of all surplus properties for which notice has been circulated by a school board at any point in time should not exceed Twenty Five Million Dollars.
7. Where a listed public entity owns land adjoining the parcel that has been declared surplus by the school board, other than a public road, leases the subject parcel that has been declared surplus or has had a historical arrangement for use of the subject parcel, such listed entity should be ranked first in priority to submit an offer to purchase or lease the surplus property from the school board.

## Appendix "B"



Shirley Hoy, Chief Executive Officer  
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A subsidiary corporation of the TDSB



### Memorandum

**To:** Recipients of Regulation 444/98 Proposals

**From:** Shirley Hoy, CEO

**Date:** August 5, 2009

**Re:** **Education Act R.S.O. 1990, as amended and Regulation 444/98, as amended, (the "Regulation") made pursuant thereto;**

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As you are aware, the requirements of Regulation 444/98 Part II-Other Disposition, Section 6 is as follows:

*"A body to which a board issued a proposal under Section 3 or 4 or to which a proposal was referred under Section 3 or 4 may make an offer to the board in response to the proposal".*

In practice, over the past few years, some public partners have only indicated Expressions of Interest, not firm Offers to Purchase or Offers to Lease. As a result, there have been significant delays in securing final agreements of Purchase & Sale.

Because revenues are urgently required for the Toronto District School Board ("TDSB") capital repairs program, please be advised that effective immediately that if you intend to acquire any TDSB property that has been declared surplus pursuant to the Regulation, you must submit a firm Offer to Purchase or Offer to Lease, as the case may be, to TDSB in accordance with Section 6 of the Regulation.

TDSB will no longer consider Expression of Interest with regard to properties declared surplus.

If you have any questions, please call Donna Jondreau, Manager, Real Estate at 416-393-0632 or me at 416-393-0575.

Thank you.

## Appendix “C”

- Surplus properties sent out by School Board, received by City and circulated to ABCD’s, by Real Estate Services **(10 days)**.
  - Interested Divisions advise Real Estate Services and identify Council authority for purchase or leasing and source of approved capital budget funding **(21 days)**. If no approved capital funding exists for the purchase or lease, then a funding source must be identified but will require approval by Budget Committee and Executive Committee.
  - Real Estate Services advises the School Board of interest in subject property.
  - Real Estate Services commissions an external appraisal to determine the market value of the property – this takes approximately 3-4 wks to complete **(21 days)**.
  - Once the appraisal is received then Real Estate Services can begin negotiations with the School Board **(10 days)**.
  - Once a negotiated price is agreed to by both parties along with all other terms and conditions, a staff report is prepared by Real Estate Services recommending the purchase or lease **(20 days)**.
  - The staff report is reviewed and provided input by the Client Division, Finance and Legal before being finalized for signature.
  - The staff report seeks Council authority to purchase or lease the subject property substantially on the terms outlined in the report. The CCO and Director of Real Estate are authorized to execute on behalf of the City the Agreement or Purchase and Sale or Lease.
  - The report goes to Government Management Committee (GMC) for consideration.
  - If approved capital funds already existed for the purchase or lease (which is usually the exception vs. the norm) the report goes directly from GMC to Council for consideration (14 days).
  - However, if no approved capital funding exists for the purchase or lease, then once the report has been considered by GMC, it goes to Budget Committee for consideration and then to Executive Committee prior to going to Council. Depending on scheduling of meetings, these extra two steps can add almost two months to the process **(40 days)**.
  - Once the report is approved by Council, the School Boards have generally accepted this as being a firm Offer to Purchase or Lease.
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- \* above estimates of required days based on calendar days
  - \* GMC directly to Council, approximately 96 days
  - \* GMC to Budget to Executive Committee to Council, approximately 142 days