TORONTO

STAFF REPORT
ACTION REQUIRED

Policy for the Disposition of City Lands Adjacent to New Development

Date:	July 12, 2010
To:	Executive Committee
From:	Deputy City Manager and Chief Financial Officer
Wards:	All
Reference Number:	P:\2010\Internal Services\Cf\Ec10028cf (AFS #10066)

SUMMARY

Staff was requested to comment on whether the City needed additional policies to deal with the proceeds from the disposal of ‘stranded’ City-owned properties. The City already has practices and processes in place determining (a) whether a property is surplus to the City’s requirements (b) the manner in which the sale will be undertaken (c) the process for the sale of surplus properties (d) the allocation of the net sale proceeds resulting from the disposition of surplus properties, (e) the incorporation of city-owned land into the planning and development application approval process, and (f) the need for additional community benefits as part of the planning and development approval process.

RECOMMENDATIONS

The Deputy City Manager and Chief Financial Officer recommends that:

1. This report be received for information.

Financial Impact

There are no financial implications for this report.

DECISION HISTORY

Council, at its meeting of April 29, and 30, 2009, adopted the motion (MM35.9) of Councillors Vaughan and Rae entitled 'Request for Policy With Respect to the Proceeds of Sale of Stranded Parcels of City-Owned Lands to be Incorporated into Development Sites' which requested that:

'City Council request the Deputy City Manager and Chief Financial Officer, in consultation with the Chief Planner and Executive Director, City Planning and the City Solicitor, to consider and report to the Government Management Committee on the appropriateness of a City-wide policy dealing with the use of funds received by the City from the disposal of stranded City-owned lands which are acquired by a developer for inclusion into its abutting or surrounding development site, with particular consideration being given to the use of those funds by the City and as a means of leveraging the land transaction to facilitate the achievement of social goals and purposes, participation by members of the community in cultural activities and the construction of facilities within the development for the benefit of the local community.'

(http://www.toronto.ca/legdocs/mmis/2009/mm/bgrd/backgroundfile-20872.pdf)

ISSUE BACKGROUND

While Motion MM35.9 requested a report to Government Management Committee, the question raised by the Motion has City-wide policy implications and it is appropriate that the matter be considered by Executive Committee.

At its meeting of June 18, 19, and 20, 2002, Council adopted the Policy and Finance Report 9.1 entitled 'A Policy Governing Land Transactions Among City Agencies, Boards, Commissions and Departments and Proceeds from Sale of Surplus City-Owned Real Property' which set out both the rules for the disposition of surplus City properties and the rules for the disposition of any net proceeds that resulted from a sale. Subsequently, Council adopted various real estate principles in dealing with the transfer of property to Build Toronto.
(http://www.toronto.ca/legdocs/mmis/2009/ex/bgrd/backgroundfile-20630.pdf)

COMMENTS

The Motion contemplates a new policy whereby, in cases where developers acquire City property adjacent to their developments, the funds received by the City would be used for certain services within the vicinity of the development. Since the request deals with the disposition of proceeds from the sale of property, it is important to outline the current policies in that regard.

Current City Policies on Application of Proceeds from Sale of Property

The existing city-wide policy governing the allocation of the proceeds resulting from the disposition of surplus City properties and the Principles of a Real Estate Strategy is as follows:

1. City real estate is a "corporate" asset;

2. if debenture debt was issued to acquire or improve City-owned land that is subsequently declared surplus and sold, the proceeds of sale shall be first applied against any outstanding debentures;

3. the proceeds shall then be allocated in accordance with any legal requirements established by statute, title, contract or otherwise;

4. in accordance with the reserve fund by-law, where a reserve or reserve fund is used to acquire an asset and the asset is subsequently sold, the net proceeds of sale shall be returned to the reserve or reserve fund from which the acquisition was funded; and

5. the remaining net proceeds shall be deposited in the Land Acquisition Reserve Fund ("LARF") to fund future capital requirements.

Principles Used in the Application of Proceeds from Sale of City Property

These policies are based on the premise that each property owned by the City has a value whether in its current use, or upon its disposal. Further, the City's capital budgeting processes are based on the premise that capital works should be justified on their merits from a service or financial standpoint and not solely on the basis of available funding. As such, City owned properties are not inherently orphan or stranded.

Therefore, the request would seem to be asking whether there is a need for additional guidance to staff when the City is in negotiations over changes in the current use of the private lands adjacent to City lands.

The current process provides for the direct transfer of property between services. The process is that a service declares a property surplus to its needs and approaches the Property Management Committee which has representation from all ABCDs using City-owned real property including Build Toronto. Should another service be interested in acquiring said property, it presents a business case to the Committee for approval of a transfer between services based on the soundness of the business case and availability of funding. These transfers are to be done on the basis of fair market value even if the transfer is between City divisions.

If no service, including Build Toronto, has an interest in the property, then the property is sold on the open market. Generally, when a City property is sold, the net proceeds are transferred to a Land Acquisition Reserve Fund (LARF), the purpose of which is to acquire land for a different project. The accounting principle here is that this is an asset to asset transaction – City owned land to cash to City owned land. There are no restrictions on how the City might spend these funds. In fact, despite the City's general adherence to this accounting principle, these funds are discretionary and can be and have been spent on other items besides land either of an operating or capital nature.

The current policies favour converting the City's property to cash in instances where the public good is advanced by selling the City's property or property rights. The advantage to the City of a transaction for cash is that it allows the City to use these funds for its other priorities. In general, development does not occur in the areas of the City which have the greatest public service enhancement needs. Converting land that in effect is surplus to the needs of the City into cash that can be spent either for land for a service of higher priority or in a location of higher priority, is one way in which the City can acquire the funds necessary to reposition the City's services to the types of service and the areas of service as priorities change. The City has a process for determining priorities through the capital budget. Once the cash has been placed in the LARF, it can only be used by an act of Council. So a capital budget project funded from the LARF allows Council to set priorities and direct funds to services and locations that it deems to be the highest priority.

When City property is traded for a public benefit other than cash, then there is no assurance that this benefit had been previously identified by Council as a priority. Currently, Council passes a ten year capital plan which sets out the priorities for work for the next ten years. The point of a plan is for Council to set out its capital funding priorities over a period of time to focus expenditures where Council feels the greatest need. It is possible to adjust the plan from year to year as part of the annual capital budget process, but generally this is to adjust the timing of projects, not to make a wholesale change in priorities. When Council makes a decision between Capital Budget approvals to fund a capital project not in the plan, it places this project ahead of all the priorities in the 10 year capital plan.

Councillor's Role

For the most part Councillors are aware of potential developments in their ward and are usually approached by developers at some point in the development process. Thus, Councillors are generally in a position, should they see the opportunity, to approach any ABCD, including Build Toronto, to provide input that could strengthen a business case and increase consideration for the given property to be transferred rather than sold. As well, Councillors are always in a position to make the case to Committee and Council that an exception to the existing City policy should be made based on the strength of the business case that can be made to their peers.

Principles Used for Determining Community Benefits Under Provincial Legislation Relating to City Building

On a related note, the *Planning Act* has provisions in place which allow the City to mitigate the local impact of development projects, particularly in the case of development which requires an official plan and/or re-zoning amendment.

If community benefits are needed to address issues brought about by new development, Section 37 of the *Planning Act* permits the City to authorize increases in permitted height and/or density through the zoning bylaw in return for such community benefits, provided that there are related Official Plan policies in place, (Section 5.1.1 of the City of Toronto Official Plan as well as certain area-specific policies). City Council has adopted Section 37 Implementation Guidelines which are intended to assist in the implementation of these Section 37 policies of the Official Plan. They are designed to be read in conjunction with the Official Plan policies, and address implementation principles, other implementation issues, and guidelines for securing specific types of community benefits. A Protocol for Negotiating Section 37 Community Benefits has also been adopted by City Council. It deals with the process by which community benefits are negotiated by City Planning staff, with the involvement of the Ward Councillor and with community consultation.

Community benefits in the form of parkland dedications or cash-in-lieu are also provided for through Section 42 of the *Planning Act.* In new developments or redevelopments, developers are required to either set aside a certain amount of land for parkland (parkland dedication) or alternatively pay cash-in-lieu of parkland dedication (the Parks Levy Fee).

Community benefits are also addressed through Development Charges, which are imposed by the City of Toronto on particular types of new development to fund growth-related capital costs such as Childcare, Fire Facilities, Shelters and Housing, Police, Emergency Medical Services, Roads, Parks and Recreation, Transit, Urban Development Services, Sanitary Sewers, Development Related Studies, Water, Library and Storm Water Management.

Each type of community benefit has its own legislative and Council adopted set of policies, procedures and parameters. The issue of the trade off between how the local neighbourhood should benefit from development versus the City as a whole is not new. The very same issue has arisen in the garnering of funds through the use of the Parks Levy. In that case, Council has established a policy that the local community and the City share the funds with 50% being used in the District of the development and with 50% available to be used anywhere in the City. But, regardless of the split, the funds are applied to projects within the context of the Capital Budget. This policy seems to be working very well.

Staff from the City Manager's Office, City Planning, Economic Development and Culture, Real Estate, and Financial Planning were consulted in the preparation of this report.

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SIGNATURE

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