



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Sale of Portion of the Westwood Lands with Provision of Infrastructure

Date:	August 19, 2010
To:	City Council
From:	Chief Corporate Officer
Wards:	5 – Etobicoke- Lakeshore
Reason for Confidential Information:	This report is about a proposed or pending land transaction by the City.
Reference Number:	P:\2010\Internal Services\RE\Cc10076re – (AFS 12800)

SUMMARY

On June 23 and 24, 2008, City Council adopted the recommendations in Item GM15.12 of the Government Management Committee and authorized the City to enter into a Memorandum of Understanding (MOU) with the Ontario Realty Corporation (ORC) regarding the negotiation of an agreement of purchase and sale and required ancillary agreements for a portion of the Westwood lands (the Property) and a development agreement for the provision of required services for the Westwood lands. ORC intends to develop the Property for a new Toronto West Courthouse (Courthouse) to serve the western portion of the City of Toronto.

Under the MOU, ORC has undertaken property investigation and consulting work in respect of the works required to service the Westwood lands for the proposed Courthouse to the design milestone of 60% completion. Negotiations with ORC have progressed and this report recommends the principle terms and conditions to be included in the APS, set out in Confidential Attachment 1.

RECOMMENDATIONS

The Chief Corporate Officer recommends that:

1. City Council exempt the agreement of purchase and sale for the Property and required ancillary agreements (APS) with the Ontario Realty Corporation (ORC) from the City's policy on unsolicited proposals and authorize the APS generally on the terms set out in Confidential Attachment 1 and on such other terms as are acceptable to the Chief Corporate Officer, in form satisfactory to the City Solicitor.
2. City Council authorize the public release of the confidential information and recommendations in Confidential Attachment 1, if the sale of the Property to ORC is completed.
3. City Council authorize the arrangements, to be set out in the APS, to engage ORC, on a sole-source basis, to provide the services (at no cost to the City) necessary to manage, in compliance with the City's procurement policies and requirements, the procurement processes necessary for the hiring of consultants and contractors to perform remediation and servicing work on the Property and surrounding City-owned lands.
4. City Council rescind Recommendation 3 of EX2.10 as approved on February 5, 6, 7, and 8, 2007, regarding the allocation of sale proceeds from the Westwood lands, so that the terms of the APS may be implemented.
5. City Council grant authority severally to each of the Chief Corporate Officer and the Director of Real Estate Services to execute the APS on behalf of the City.
6. City Council grant authority to fund the City's outstanding expenses related to closing of the sale of the Property to ORC from the Approved Operating Budget of Facilities & Real Estate in 2012, as necessary and, once these expenses are known, to transfer the funding for these expenses from the Land Acquisition Reserve Fund (LARF), with appropriate adjustments to F&RE's Approved Operating Budgets, as necessary, through subsequent Quarterly Variance Reports.
7. City Council authorize the City Solicitor to complete the transaction to be provided for in the APS on behalf of the City, including making payment of any necessary expenses, amending the closing and other dates to such earlier or later date(s), and amending or waiving the terms and conditions, as she may from time to time consider reasonable.

Financial Impact

This section is set out in Confidential Attachment 1 due to the requirement to keep the terms of the proposed transaction confidential at this time, on the basis that it involves the proposed disposition of land by the City.

DECISION HISTORY

On December 11, 12, and 13, 2007, City Council adopted the recommendations in Item PG11.2 of the Planning and Growth Management Committee approving the Six Points Interchange Reconfiguration Environmental Assessment Study and recommended an at-grade option for the intersection of three arterial roads with the routing of Dundas Street West through the Westwood lands.

Six Points Interchange Reconfiguration Class Environmental Assessment Study

(<http://www.toronto.ca/legdocs/mmis/2007/pg/bgrd/backgroundfile-8759.pdf>)

Six Points Interchange Reconfiguration Class - Attachments 1-4

(<http://www.toronto.ca/legdocs/mmis/2007/pg/bgrd/backgroundfile-8760.pdf>)

Six Point ESR - Executive Summary Nov 07

(<http://www.toronto.ca/legdocs/mmis/2007/pg/bgrd/backgroundfile-8912.pdf>)

On December 11, 12 and 13, 2007, City Council adopted the recommendations in Item PG11.3 of the Planning and Growth Management Committee regarding the vision of the West District Design Initiative for three properties including the Westwood lands. There was a confidential attachment to the report identifying the interest of a third party in purchasing a portion of the Westwood lands. The third party has subsequently been identified as ORC.

West District Study: Results of the West District Design Initiative

(<http://www.toronto.ca/legdocs/mmis/2007/pg/bgrd/backgroundfile-8765.pdf>)

On June 23 and 24, 2008, City Council adopted the recommendations in Item GM15.12 and authorized the City to enter into a MOU with the ORC regarding negotiating an APS for the Property and a development agreement for the provision of required services to the Westwood lands.

Report - Third Party Development Opportunity for a Portion of the Westwood Lands

(<http://www.toronto.ca/legdocs/mmis/2008/gm/bgrd/backgroundfile-13524.pdf>)

Confidential Attachment 1- Third Party Development Opportunity for a Portion of the Westwood Lands

Revised Attachment 2 - Westwood Development Concept Map

(<http://www.toronto.ca/legdocs/mmis/2008/cc/bgrd/backgroundfile-14456.pdf>)

On October 26 and 27, 2009, City Council adopted the recommendations in Item EY30.2 and authorized an amendment to the zoning of a portion of the Westwood lands, including the Property, to add to the permitted uses on these lands, a provincial courthouse and provincial administrative uses.

September 24, 2009 report

(<http://www.toronto.ca/legdocs/mmis/2009/ey/bgrd/backgroundfile-23698.pdf>)

By-law

(<http://www.toronto.ca/legdocs/mmis/2009/ey/bgrd/backgroundfile-24212.pdf>)

COMMENTS

The 7.0 ha (19.5 acre) Westwood lands are unserviced and constrained by the configuration and ramps of the Six Points Interchange. The Westwood lands are bounded by Bloor Street West and Dundas Street West on the north, Kipling Avenue on the west, the TTC Bloor subway line and Canadian Pacific rail line to the south and east, and incorporate the municipal addresses of 3699 – 3751 Bloor Street West and 925 Kipling Avenue. The Westwood lands are so named for the closed Westwood Theatre building on the western portion. The zoning of the Westwood lands is subject to a Holding symbol that requires the provision of services, including roads and hard services, before development can proceed.

Unsolicited Proposal to Purchase a Portion of the Westwood Lands

The development potential of the Westwood lands was considered and reported on through the West District Study, which was approved by City Council on December 11, 12, and 13, 2007. At that time, a confidential attachment to Item PG11.3 advised that a third party was interested in purchasing a portion of the Westwood lands. The identity of the interested party was kept confidential, at that time, at the request of the third party, since the Province had not yet made an announcement about the proposed Courthouse on the Westwood lands. The third party was subsequently identified as ORC.

ORC's proposal to purchase a portion of the Westwood lands was unsolicited, as the Property was not on the market nor declared surplus to municipal purposes at the time ORC indicated its interest in purchasing the Property. This proposal was reported on to City Council at its meeting of June 23 and 24, 2008 and City Council authorized an MOU with ORC providing for the negotiation of an APS and a development agreement for the provision of the works required to service the Westwood lands, in order to facilitate the Courthouse development. In order to advance the development of the portion of the Westwood lands south of the planned extension of Dundas Street West for the Courthouse, ORC has agreed to undertake the required investigations and engineering and design work. Acceptance of this APS will require that City Council make an exception to the City's policy on unsolicited proposals.

Since 2008, when the MOU was signed by the City and ORC, ORC has retained a consulting team, led by URS, and has undertaken a functional design of the required services for the Westwood lands to a 60% completion stage. The City has prepared for the development of the Westwood lands through the relocation of the snow storage use formerly on the lands to New Toronto Street, the termination of the lease on the Westwood theatre building, and undertaking the construction of the East Entrance to the Kipling Station and the Passenger Pick Up and Drop Off (PPUDO) facility at the southwest corner of the Westwood lands.

This report sets out in the Confidential Attachment the terms of the APS that staff is prepared to recommend to City Council. ORC has requested that the terms of this transaction be kept confidential until it is concluded, and because the transaction relates

to the proposed disposition of land by the City it is appropriate the terms of the APS remain confidential until completed.

In order for City Council to authorize the execution of the APS, it is necessary that a prior City Council direction, set out in Recommendation 3 of EX2.1 adopted February 5, 6, 7 and 8, 2007, regarding sale proceeds from the Westwood Lands being allocated to pay back the LARF account for costs of the new Islington bus terminal, be rescinded. A recommendation to this effect is included in the recommendations of this report.

Benefits of the ORC Sale to the Development of Westwood Lands

Six Points Interchange

The Six Points Interchange Reconfiguration Environmental Assessment, approved by City Council on December 11, 12, and 13, 2007, provides for bringing the interchange of Bloor Street West, Dundas Street West and Kipling Avenue to an at-grade condition and for releasing land occupied by the current configuration of the Six Points Interchange for future development. The reconstruction of the Six Points Interchange has been included in Transportation Services' 10 year Capital Budget, commencing in 2015 and extending over a four year period, at a projected cost of \$41.5 million.

The roads and services that URS has designed to service the Property and the portions of the Westwood lands to be retained by the City would constitute Phase 1 of the contemplated Six Points Interchange Reconfiguration (see Attachment 3). This work has taken into consideration the broader context of the future realigned Six Points Interchange, the need to match existing and future grades and the staging requirements of the future phases of the reconfiguration of the interchange and relocation of services.

With acceptance of the APS, the design work for the Westwood lands would continue, and it is proposed to be completed in 2011. The construction of the roads and services, including the Dundas Street Loop, is planned to commence in 2012 and take about two years to complete. ORC would tender and manage this work on behalf of the City and with the participation of the City. Consequently, ORC is acting as a sole-source provider of services to the City in the improvement of the City's lands and a recommendation for City Council to authorize this sole-source engagement (at no cost to the City) in compliance with the City's procurement policies is required.

Consequently, the completion of the transaction to be provided for in the APS could advance a component of the Six Points Interchange Reconfiguration for the City by approximately 3 years and would be funded substantially through the revenues received from the sale of the Property. Some of the Transportation Services capital budget funds for the Six Points Interchange Reconfiguration would have provided for the construction of the roads and services on the Westwood lands that would now be completed by ORC, if the APS provided for in this report is entered into.

West District Study

The urban design vision for the Westwood lands approved by City Council on December 11, 12, and 13, 2007, provided for the distribution of mixed use development over 6 proposed blocks to be established on the lands. The Courthouse proposal will be a catalyst to achieving the public roads and services required to open up the development of the Westwood lands. In addition to the Courthouse site, 3 other blocks would be serviced by this project: a 0.9 ha (2.2 acre) parcel at the southeast corner of the Dundas Street Loop and Kipling Avenue and two parcels to the north of the Dundas Street Loop of 0.5 ha (1.2 acres) and 0.2 ha (0.5 acres) in size. When the Six Points Interchange Reconfiguration is completed, approximately 1.3 ha (3.2 acres) of developable land would be added to the parcels north of the Dundas Street Loop. If the 22 Division of the Toronto Police Service (TPS) is relocated, an additional development block would become available.

The Courthouse proposal consolidates two planned blocks into a larger one to accommodate the substantial footprint of the courthouse building by eliminating two of the optional local roads in the Six Points Interchange Reconfiguration recommended design: one running south from the Dundas Street Loop and one along the southern limit of the Westwood lands; if the Courthouse is built as planned by the Province, these roads will not be required.

The proposed Courthouse is a 40,175 m² or 432,440 ft² building with 22 courtrooms that will employ approximately 465 people. The Courthouse would make a major contribution to the employment base planned for the Etobicoke Centre. It would be a complimentary use to a future civic centre, should the City select this location for a new Etobicoke York service centre.

Financial Assessment

The full financial implications of the investment required to be made by the City in the infrastructure required to make the APS and the Courthouse project possible are difficult to determine with any level of certainty at this time. Estimates of the cost of the roads and services are based on a 60% level of design detail. Until tendered bids for the construction work, based on 100% design, have been received actual costs will not be known. The projected remediation costs are based on estimates by environmental consultants. Until further testing and analysis has been completed and a detailed scope of work for the remediation of the Westwood lands is tendered to environmental contractors, there is no certainty as to the costs of the remediation program. There is a possibility that on-site work will uncover additional contamination locations or more extensive impacted areas than currently identified, and remediation costs may increase.

The market value to be derived from the sale of the development blocks made possible by the Courthouse project and the estimated costs of the required infrastructure investments in the Westwood lands are compared in a Table in the Confidential Attachment. The remediation and infrastructure costs for the Westwood lands are substantial and will have to be amortized over all of the resulting development blocks. It is normal in the development industry that the first phase of a subdivision or of a multiple building project

does not break even financially and that it takes a number of years, and the completion of later stages of the project, before the revenues derived exceed the initial investments in required infrastructure. The City's investment in the remediation and servicing work required to complete the APS and permit the Courthouse project will exceed the purchase price of the Property, but the benefits of the investment in the infrastructure will extend beyond the Property to the rest of the Westwood lands and to the achievement of the urbanization of a major component of the Etobicoke Center.

Timing of Removal of "H" Holding Symbol

The Property is designated Mixed Use Areas in the Official Plan and zoned Etobicoke Centre 2, (H)EC2, for mixed use development, subject to a Holding Symbol. The removal of the Holding Symbol normally requires the delivery of construction-ready plans and the execution of development agreements securing the provision of municipal works such as roads, watermains, sanitary sewers, storm water facilities, and walkways.

ORC has required as a condition of this transaction that the Holding Symbol be removed concurrently with the consideration of the terms of the proposed APS by City Council. The lifting of the Holding Symbol is perceived by ORC as necessary to minimize uncertainties and thereby contain costs under the Province's Request for Proposals (RFP) to secure a proponent for the construction of the Courthouse. On this basis, the APS requires the City's Technical Services Division's final approval of the engineering plans for the roads and services and ORC's execution of a Core Services Agreement to deliver the servicing in compliance with these plans, and tendering of this work, prior to the closing of the sale of the Property to ORC. ORC would retain contractors to undertake the remediation and servicing work, with the City's participation in the tenders and the selection of the contractors.

Etobicoke York Community Council adopted Item EY39.19 on August 17, 2010 recommending the removal of the Holding Symbol on this basis, this companion report is also before City Council.

Timelines and Deal Structure

ORC has required that the proposed transaction be reported on to City Council in the present term of City Council no later than August of this year, and close in early 2012, due to the proposed timing for the Province's RFP process to secure a proponent to design, build, finance and manage the Courthouse project, in order to have a construction start in 2012. ORC wishes to deliver a clean and serviced Property to the successful proponent. In order to provide sufficient time for the completion of design work, tendering of remediation and servicing work and the completion of the construction work for each component of the project, the proposed transaction is before City Council at its August 25 and 26, 2010 meeting.

A consequence of the timelines insisted on by ORC is that City Council is being asked to make a determination on this proposed transaction without knowledge of the full extent of the financial implications resulting from it. There will, of course, be conditions that allow both parties to terminate the transaction in the event that the tendered costs exceed predetermined thresholds. Nevertheless, the City will have to budget funds to cover overages, the remediation of the residual portions of the Westwood lands, and the costs incurred if the transaction does not close.

The development opportunity that will be made possible by the improvement of the Westwood lands that ORC is prepared to undertake will provide a significant benefit to the City's retained portions of the Westwood lands and enhance their value by helping to make them ready for development on an accelerated basis.

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SIGNATURE

Bruce Bowes, P.Eng.
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ATTACHMENTS

Attachment 1 - Confidential Terms and Conditions of Sale
Attachment 2- Draft Reference Plan
Attachment 3 -Six Points Interchange Reconfiguration Recommended Design