



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### Acquisition of 126 Elmcrest Road for Parkland Purposes

**Date:** December 20, 2017

**To:** Government Management Committee

**From:** Director, Real Estate Services

**Wards:** 3 - Etobicoke Center

#### **REASON FOR CONFIDENTIAL INFORMATION**

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This report is about a proposed or pending land acquisition by the City or one of its agencies or corporations.

#### **SUMMARY**

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The purpose of this report is to obtain authority to acquire the 1.25 acre parcel of land municipally known as 126 Elmcrest Road, Etobicoke (the "Property"), located adjacent to Centennial Park, from Her Majesty The Queen in Right of Ontario as represented by the Minister of Infrastructure as represented by Infrastructure Ontario ("IO") for parkland purposes. The subject lands are shown on Appendix "B" attached hereto.

This report also addresses the environmental indemnity that IO (in this and future transactions) and other public agencies now require from purchasers when disposing of properties, which indemnity requires the purchaser to indemnify the subject provincial agency from any costs, claims, liabilities or damages they may arise as a result of the condition of the Property prior to or following the date of closing.

#### **RECOMMENDATIONS**

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**The Director, Real Estate Services recommends that:**

1. City Council authorize the purchase of the property known as 126 Elmcrest Road, Etobicoke from Her Majesty The Queen in Right of Ontario as represented by the Minister of Infrastructure at a purchase price of \$1,100,000, plus applicable taxes, registration fees, environmental assessments, appraisals and costs payable to the vendor substantially on the terms outlined in Appendix "A" to this report, and on such other terms and conditions as may be acceptable to the Director of Real Estate Services and in a form satisfactory to the City Solicitor.
2. City Council authorize the Director, Real Estate Services to execute the Agreement of Purchase and associated agreements and documents on behalf of the City.

3. City Council authorize the City Solicitor to complete the transaction contemplated in the Agreement of Purchase and Sale and associated agreements and documents on behalf of the City, including paying any necessary expenses, amending the closing, due diligence and other dates, and amending and waiving terms and conditions, on such terms as she considers reasonable.
4. City Council direct the Director, Real Estate Services to develop a strategy pertaining to the acquisition of properties from public agencies wherein an environmental indemnity is required and report to the Government Management Committee no later than April 2018.
5. City Council direct that the information in Confidential Attachment 1 be made public after the transaction in Recommendation 1 is complete, at the discretion of the City Solicitor.

## **FINANCIAL IMPACT**

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The 2018 Preliminary Capital Budget for Parks, Forestry and Recreation ("PF&R") includes previously approved funding in 2017 in the "Parkland Acquisition FY2017" sub-project in the Land Acquisition project, for the acquisition of the Property for parkland, with funding from the Parkland Acquisition City Wide Land Acquisition Reserve Fund (XR2210), to cover all costs for this transaction.

Parks, Forestry and Recreation will accommodate the cost of maintaining the Property annually within the existing 2017 Council Approved Operating Budget. No additional operating funds are required. The City already maintains the surrounding land as part of regular park maintenance.

The environmental indemnity required by IO is a contingent liability and as such poses a potential unquantifiable financial impact. However, the Phase One and Phase Two Environmental Site Assessments conducted at the Property revealed a history of low-risk uses and minimal environmental contamination, the remediation of which will be undertaken in due course.

The Acting Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

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There is no decision history associated with this item.

## **COMMENTS**

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Situated at the northwest corner of Rathburn Road and Elmcrest Road, the Property is a 1.25 acre lot owned by Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure which includes a single detached residential dwelling built in the 1950s. The Property abuts Centennial Park, a City-owned park under PF&R jurisdictional management, and is designated as Parks and Open Space in the Toronto

Official Plan. The Property is also located within a Toronto Region Conservation Authority regulation limit which restricts any development. PF&R is interested in acquiring the Property in order to expand Centennial Park, as it would add to the functionality of Centennial Park and give it a more regular shape.

Following the acquisition of the Property, the residential dwelling will ultimately be converted into an open green space area and incorporated into Centennial Park. Should future funding become available, the Property has the potential to be developed into a parkette with new amenities. As the City already maintains the surrounding land as part of regular park maintenance, the financial impact for operating and maintaining the park would be minimal.

The proposed acquisition is supported by the Toronto Official Plan, Section 3.2.3, Policy 1A which states "maintaining, enhancing and expanding the system [of parks and open spaces] requires the following actions: adding new parks and amenities, particularly in growth areas and maintaining, improving and expanding existing parks."

As noted above, the environmental indemnity required by IO is an unquantifiable contingent liability. Other provincial agencies have also adopted a similar form of this environmental indemnity. In each transaction where such an indemnity is required, the City must undertake environmental due diligence and a risk analysis to determine whether the potential financial liability posed by the indemnity is acceptable. In the present case, the Phase One and Phase Two Environmental Site Assessments conducted at the Property revealed a history of low-risk uses and minimal environmental contamination, the remediation of which will be undertaken in due course, and as such Real Estate Services recommends that the transaction proceed.

## **CONTACT**

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Tim Park, Manager of Acquisition and Expropriations, Tel.: (416) 392-5838  
Email: [tpark@toronto.ca](mailto:tpark@toronto.ca)

## **SIGNATURE**

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David Jollimore  
Director, Real Estate Services

## **ATTACHMENTS**

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Confidential Attachment #1  
Appendix "A" – Major Terms  
Appendix "B" – Location Map

## APPENDIX "A" - MAJOR TERMS

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### Owner:

Her Majesty The Queen in Right of Ontario as represented by the Minister of Infrastructure

### Location:

126 Elmcrest Road, Toronto, Etobicoke

### Legal Description of Property:

Lot 39, Plan 3387; Etobicoke, City of Toronto, being all of PIN 07425-0019 (LT) shown on Appendix "B".

### Transaction Costs:

Purchase Price:	\$1,100,000.00
Land Transfer Tax:	\$ 18,475
Registration Costs:	\$ 200.00
Reimbursement of Appraisal fee:	\$ 15,000.00
Demolition/ Base Park Condition	\$ 70,000.00
Total Purchase and Closing Costs	\$ 1,203,675.00

### Participation Agreement:

If the City at any time within twenty years of the closing date proposes to sell the Property, (i) the Owner has the right to repurchase the Property at the Purchase Price, plus the cumulative total of any capital improvements made by the Purchaser following the closing date, or (ii) one hundred percent of any profit from such sale must be paid to the Owner.

### Environmental Indemnity:

The City shall be responsible for, and agrees to indemnify, defend and save harmless the Owner and its employees, directors, officers, appointees and agents from, any and all costs (including legal, consultant and witness costs and fees), claims, demands, actions, prosecutions, administrative hearings, fines, losses, damages, penalties, judgments, awards (including awards of costs) and liabilities (including sums paid in settlement of claims), that may arise as a result of the condition of the Property, the presence of hazardous substances or contaminants in, on or under the lands, the buildings or any structure or paved surface, or in any environmental medium (including, but not limited to, the soil, groundwater, or soil vapour on or under, or emanating from

the Property), any order issued by any authority in connection with the condition of the Property, or any loss, damage, or injury caused either directly or indirectly as a result of the condition of the Property including, without limitation, non-compliance with environmental law or the existence of any hazardous substance or contaminant. Without limiting the generality of the foregoing, this indemnification shall specifically cover costs incurred in connection with any claim for personal injury and/or death, property damage, investigation of site conditions and/or any clean-up, remedial, removal, monitoring or restoration work required by any federal, provincial, or local government agency or political subdivision because of the presence of hazardous substances, in, on or under the lands, the buildings or any environmental medium, structure or paved surface or emanating therefrom.

# APPENDIX "B" – LOCATION MAP

