

Acquisition of Portland Slip, Spadina Slip and Spadina Quay Marina

Date: February 6, 2018
To: Government Management Committee
From: Director, Real Estate Services
Wards: Ward 20 - Trinity-Spadina

SUMMARY

This report seeks Council approval for the acquisition of three water lots along Queens Quay West for nominal consideration.

RECOMMENDATIONS

The Director, Real Estate Services recommends that:

1. City Council direct the Director, Real Estate Services to submit an Offer to Purchase (the "Agreement") for nominal consideration, to Her Majesty the Queen in Right of Canada as represented by the Minister of Public Works (the "Federal Government"), or the registered owner of the lands, as the case may be, for the purchase of fee simple interests, of some or all of the properties known as Portland Slip, Spadina Slip and Spadina Quay Marina, shown in Appendix B (the "Properties"), substantially on the terms and conditions outlined in Appendix A and on such other or amended terms and conditions as may be acceptable to the Deputy City Manager, Internal Corporate Services and in a form satisfactory to the City Solicitor.
2. City Council direct that the Transfer of the Properties occur on a date or dates (if all of the Properties are not transferred at one time) determined by the Director of Real Estate Services in consultation with the City Solicitor, to ensure that the City is satisfied with title to the lands at the time of the transfers.
3. City Council direct the City Solicitor to complete the transaction(s) 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 waive the application of the City's "Policy on Donations to the City for Community Benefits", given that the transaction is not a typical donation of land transaction and the would-be donor is the Federal Government.

FINANCIAL IMPACT

The City currently leases portions of these Properties on a long-term basis from the Federal Government and will be acquiring the water lots for nominal consideration. Funds required for one-time nominal closing costs are available in the 2018 Budget Committee Recommended Operating Budget for Facilities, Real Estate, Environment and Energy under account #FA200-10. Under the terms of the lease, long-term maintenance and operation costs of the Properties also reside within the City. Funding for these costs are available in the 2018 Budget Committee Recommended Operating Budget of Facilities, Real Estate, Environment and Energy under account #FA0254 and FA0770.

The City also owns the dockwalls surrounding the Properties and as such, currently has responsibility for their maintenance and repair. Although portions of the properties are currently under the City's real estate portfolio, under a lease, the lease does not include the lake bed and the 1 foot reserve. If there are any future financial implications with regards the lake bed and the 1 foot reserve, as well as, maintenance and repair costs to the dockwalls, a subsequent report will be submitted to Council for approval.

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

DECISION HISTORY

Under the terms of an Implementation Agreement dated October 6, 1992, as amended, the City entered into an agreement with Queens Quay West Land Corporation ("QQWLC") on behalf of the Federal Government regarding the transfer of some harbourfront lands to the City. The agreement allowed for the lands to be transferred at various stages.

On October 11, 1994, City Council approved Executive Committee Report 23, Clause 61, which authorized the City to either purchase or lease from Toronto Harbour Commissioners and the Federal Government, certain lands. The Properties that are the subject of this report were included in this approval.

As per the October 11, 1994 Council approval, in 1995 the City took title to the remaining dockwalls around the Portland Slip, the dockwall surrounding the Spadina Slip, and the dockwall and breakwall surrounding the Spadina Quay Marina.

In May of 1997, the City entered into an Assignment of Lease with the Toronto Harbour Commissioner to take over a lease between Toronto Harbour Commissioner, the Federal Government and QQWLC. The lease included the Properties and was for a period of 99 years with the option to renew for 9 further periods of 100 years each. Additionally, the City assumed a lease between F&N Yacht Service Limited and QQWLC for the Spadina Quay Marina.

In 2012, the Federal Government provided the City with a Notification of Surplus Declaration respecting the Properties and solicited the City's interest in purchasing same for nominal consideration. The City considered the option, but took no further action at that time. In 2016, the City sought to construct a sidewalk widening that would partially encroach the Federally-owned Portland Slip. In exchange for permission to construct the proposed encroachment, the Federal Government requested that the City re-examine the original 2012 option to purchase the Properties. That recent request by the Federal Government is the subject of this report.

COMMENTS

A majority of the area encompassing the Properties is presently under a 99 year lease with the Federal Government. The leased premises do not include the lake bed and an area one foot in perpendicular distance immediately above the lake bed. The Properties are the only remaining water lots west of York Street for which the City does not yet possess fee simple title. Historically, approval requests by the City to perform capital works projects within the Properties (whether part of the City's leased or unleased areas) have triggered a time-consuming approvals process with the Federal Government. License and access agreements associated with the Portland Slip dockwall rehabilitation project (completed in 2010) and the Portland Slip sidewalk widening described above (completed in 2017) are two recent examples. As owners of the Properties, the City would be better positioned to undertake future capital works projects within the lands.

The Federal Government completed a Phase II ESA for all three water lots proposed for transfer. The report concluded that although there were higher concentrations of several contaminants exceeding the levels under the applicable Canadian Environmental Quality Guidelines and the Ministry of the Environment and Climate Change standards and guidelines, it was inferred that similar levels were present throughout the area and, as a result, the sites are not considered to be impacted more than the general conditions in the Toronto Harbour. As such, no additional remediation is required prior to, or as a result of, the proposed acquisition of the Properties. City staff have reviewed the Phase II ESA report and concur with the recommendations contained in the report.

Given that the proposed transaction involves the City's acceptance of real property for nominal consideration, ordinarily the City's policy on "Donations to the City for Community Benefits" would apply. Staff are asking for an exemption to this policy given the nature of the transaction and the fact that we are purchasing it from the Federal Government.

Ownership to part of the Spadina Quay Marina is in dispute. The lease between the City and the Federal Government for the Properties, includes the lands shown as Part D on Appendix B (the "Outer Marina Lands"). The Federal Government's request that the City purchase the Properties, included the Outer Marina Lands. However, registered title documents show that the Toronto Port Authority (now known as PortsToronto) patented certain portions of the waters abutting the Properties, including the Outer Marina Lands, in 2016, and now appears to hold title to the Outer Marina Lands. Recommendation 2 and Section 5 of Appendix A have been drafted by staff to ensure that the City is wholly satisfied with title to the Outer Marina Lands at the time of the transfer(s) if such a transfer is to occur. The City will not be obligated to acquire the Inner Marina Lands from the Federal Government if the Outer Marina Lands cannot also be acquired.

Western Channel Dockwall Rehabilitation (Portland Slip to Airport Ferry Slip)

A segment of the Western Channel Dockwall (beginning at the western edge of the Portland Slip and extending west to the airport ferry slip) is planned for rehabilitation in order to re-open the dockwall wall for public access. Though this segment of the dockwall is adjacent to the Portland Slip, its planned rehabilitation and ownership transfer is separate from the matter of the three proposed water lot transfers, including the transfer of the Portland Slip.

Toronto City Council on May 6, 2014 adopted a recommendation to establish a capital project for rehabilitation of the dockwall between the Portland Slip and the airport ferry slip. Further, City Council requested the Government of Canada and Province of Ontario provide a matching one third contribution (\$1.5-million each), towards a portion of the dockwall classified 'unpatented' land (i.e. where ownership is deemed either Federal or Provincial). To date, those matching funds have not been secured. City Council additionally requested that upon completion of repairs, the City of Toronto assume the 'unpatented' portion of the dockwall in order to consolidate ownership.

City staff are presently exploring options to secure the remaining funding for this project; and to coordinate dockwall rehabilitation with implementation of the Bathurst Quay Streetscape and Public Realm Plan, which will deliver public realm improvements on the adjacent Canada Malting lands. Information and recommendations for proceeding with the dockwall project will be included in a forthcoming update report to Executive Committee on the Bathurst Quay Streetscape and Public Realm Plan.

The transfer of the Properties is sought to simplify the process by which the City may undertake capital improvements and maintenance works within the three water lots currently under lease to the City. The proposed transfer of ownership would greatly reduce project approval risks and requirements associated with future planned improvements to the Properties. Absent municipal ownership, future capital improvement projects (i.e pedestrian bridges, dockwall rehabilitation, and other planned repairs and/or improvements) would require the City to seek additional license/access permissions from the Federal Government, with no guarantee of successful outcomes. The Waterfront Secretariat has been consulted in this report and is in concurrence with the recommendations.

CONTACT

Peter Cheng, Acting Manager, Policy & Appraisal Services, Real Estate Services
Tel: (416) 338-5105; [Email: peter.cheng@toronto.ca](mailto:peter.cheng@toronto.ca)

SIGNATURE

David Jollimore
Director, Real Estate Services

ATTACHMENTS

Appendix "A" - Terms and Conditions
Appendix "B" - Map