

Easement for Enwave Energy Corporation on Future Parkland at 55 Lake Shore Boulevard East

Date: October 22, 2019

To: General Government and Licensing Committee

From: General Manager, Parks, Forestry and Recreation and Executive Director,
Corporate Real Estate Management

Wards: Ward 10 - Spadina-Fork York

SUMMARY

This report seeks authority to accept future parkland located at 55 Lake Shore Boulevard East subject to an easement in favour of Enwave Energy Corporation and to enter into an easement agreement with respect to the same.

RECOMMENDATIONS

The General Manager, Parks, Forestry and Recreation, and the Executive Director, Corporate Real Estate Management recommend that:

1. City Council authorize the acceptance of the future parkland located at 55 Lake Shore Boulevard East encumbered by a permanent easement ("Easement") in favour of Enwave Energy Corporation ("Enwave") to accommodate below-grade district energy infrastructure, in accordance with Chapter 3.2.3 (Parks and Open Spaces), Policy 8.a) of the City of Toronto's Official Plan.
2. City Council authorize the Executive Director, Corporate Real Estate Management, to enter into an Easement Agreement with respect to the Easement (the "Agreement") referenced in Recommendation 1, substantially on the terms outlined in Appendix A and on such other additional or amended terms and conditions and such related documents as may be acceptable to the Executive Director, Corporate Real Estate Management, and in a form satisfactory to the City Solicitor.
3. City Council authorize the Executive Director, Corporate Real Estate Management, and/or the Director, Real Estate Services, to execute the Agreement referenced in Recommendation 2 on behalf of the City of Toronto.

4. City Council authorize the future Easement purchase price in the amount of \$1,609,881.40 from Enwave Energy Corporation as a result of the Easement Agreement referenced in Recommendation 2 to be deposited to a Parks, Forestry and Recreation deferred revenue account for future capital submissions to develop the park site.

FINANCIAL IMPACT

Enwave and the City of Toronto have agreed to an Easement purchase price of \$1,609,881.40. This compensation will be paid to the City of Toronto when title of the subject site is transferred to the City of Toronto by the current property owner, Menkes Developments Ltd, and will be paid over a 10-year period, subject to the agreed-upon interest rate of 3.1%.

Parks, Forestry and Recreation, through City Council's adoption of Item GM29.25, utilized Section 42 parkland acquisition reserve funding to purchase a portion of the future one-hectare park. As such, the funds generated through the Easement will be deposited to a Parks, Forestry and Recreation deferred revenue account for inclusion in future capital submissions to develop the park site.

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

DECISION HISTORY

At its meeting on June 7, 2016, City Council by its adoption of [TE16.4](#) approved the Lower Yonge Precinct City-Initiated Official Plan Amendment and Precinct Plan, which required a large, central, fee-simple park (approximately 1 hectare in size) within the future mixed-use community.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.TE16.4>

At its meeting on July 23, 2018, City Council by its adoption of [GM29.25](#) approved the acquisition of a portion of 55 Lake Shore Boulevard East for future parkland purposes. The purpose of this acquisition was to supplement parkland dedication from development within the Lower Yonge Precinct in order to secure the large central park contained within the Lower Yonge Precinct Plan. City Council amended the Parks, Forestry and Recreation's 2018 – 2027 Capital Budget and Plan to evenly fund the acquisition from the Parkland Acquisition South District Local Parkland Reserve Fund (XR2208) and Parkland Acquisition City-Wide Land Acquisition Reserve Fund (XR2210), which are to be recovered from future Section 42 cash-in-lieu of parkland dedication(s) from future development in the Lower Yonge Precinct.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.GM29.25>

COMMENTS

The future 1 hectare park at 55 Lake Shore Boulevard East will be assembled through two (2) sources:

1) Parkland dedication from development: the developer of the 55 Lake Shore Boulevard East property (Menkes Developments Ltd.) will be conveying a portion of the subject site as an on-site parkland dedication and the developer of the abutting properties at 1-7 Yonge Street (Pinnacle International) will be conveying a portion of the subject site as an off-site parkland dedication; and,

2) A portion of the site was purchased by the City of Toronto, by City Council adoption of [GM29.25](#), with the closing date contingent on the timing of the Menkes Development Ltd., and no later than December 31, 2028.

All three parts described above will form the City-owned public park and will be developed as one park parcel. The parkland dedications have been secured through a multiple party parkland agreement that was executed on January 28, 2019 and registered on title to the site on April 18, 2019. The Offer to Sell Agreement for the future City-owned portion of the site was executed on January 28, 2019.

In February 2019, Parks, Forestry and Recreation staff received a request from Enwave seeking permission to run chilled water supply/return pipes and hot water supply/return pipes through a tunnel approximately 25 metres below the future park site, diagonally bisecting the site. The proposed heating and cooling infrastructure fulfils thermal energy objectives in the TOcore Downtown Energy Strategy, which was endorsed by the Planning and Growth Management Committee in May 2018, in order to create a more efficient energy network. Enwave plans to install the infrastructure using open-trench construction before the park is built. After installation and completion of the future park, Enwave will not require any at grade access to its pipes through the park.

The City's Official Plan Policy 3.2.3 8(a) provides that parkland should be free of encumbrances unless approved by City Council. This report seeks authority to accept the property at 55 Lake Shore Boulevard East as encumbered parkland dedication and to enter into an easement agreement with Enwave.

The proposed easement agreement will be structured based on two parts: a temporary construction easement to construct the below-grade tunnel on the lands prior to parkland conveyance and development (while the lands are owned by Menkes Developments Ltd.), followed by a permanent operating easement on the City-owned park site.

Land acquired under section 42(5) of the *Planning Act* R.S.O. 1990, c. P.13 (the parkland dedication section) may be sold or otherwise disposed of. Where this occurs, section 42(15) of the Act requires that money received on the sale of land must be paid into a special account and spent only for the acquisition of land to be used for park or other public recreational purposes (Parks, Forestry and Recreation account). On this basis, the proceeds of the transfer of the easement to Enwave are to be placed in the special account.

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SIGNATURE

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Patrick Matozzo
Executive Director, Corporate Real Estate Management

ATTACHMENTS

Appendix A - Major Terms and Conditions
Appendix B - Draft Reference Plan

Appendix A
Major Terms and Conditions

Term	Summary
Parties	Menkes 55 Lakeshore Inc (the "Transferor"), Enwave Energy Corporation ("Enwave") and the City of Toronto ("City")
Easement Lands	Described as Parts 1 and 2 on the draft plan attached hereto as Appendix B, which will be located approximately 25 metres below grade.
Works	The works to be installed within the Easement Lands are a tunnel which will house risers, chambers, pipes, valves, drains, traps, pumps, conduits, utilitators, meters, lines, markers, transformers, braces, manholes, wires, cables, electrical transmission facilities, and all necessary, associated and related materials, fixtures, and equipment, for the transmission and supply of chilled water, hot water, and data and electricity. All works are to be owned by Enwave.
Grant of Easements	The easement agreement will grant a temporary construction easement and permanent operating easement.
Term of Easements	<p>The term of the temporary construction easement is from the date of execution of the Easement Agreement and expiring upon the later of December 31, 2025 or completion of the Works as determined by Enwave.</p> <p>The term of the permanent operating easement commences from the expiry of the temporary construction easement until a date which is the date on which Enwave executes and delivers a full and complete surrender and release of the permanent operating easement.</p>
Easement Purchase Price	Enwave and the City have agreed to an easement price of \$1,609,881.40. This compensation will be paid to the City when title of the subject site is transferred to the City by the Transferor and will be paid over a 10-year period, subject to the agreed-upon interest rate of 3.1%.
"As-Is"	Enwave is accepting the lands "As-Is" and releases and discharges the City with respect to the same.
Release and Indemnity	Enwave has agreed to release and indemnify the City from any and all claims relating to the Works and/or exercise of rights under the Agreement.

Term	Summary
Insurance	Enwave will obtain insurance in form and content as required by the City.

Appendix B Draft Reference Plan

