



Early Acquisition of Toronto Port Lands Company Lands for the Approved Port Lands Flood Protection Project

Date: June 19, 2020

To: General Government and Licensing Committee

From: Executive Director, Corporate Real Estate Management

Wards: Ward 14 - Toronto Danforth

SUMMARY

The purpose of this report is to seek City Council authority to acquire lands from the Toronto Economic Development Corporation, carrying on business as the Toronto Port Lands Company ("TPLC"), that will become River Park North and River Park South at the completion of the Port Lands Flood Protection Project ("PLFPP"). Staff are recommending early acquisition of the lands, for nominal consideration, and prior to the completion of environmental remediation, in order to facilitate environmental approvals from the Ontario Ministry of the Environment, Conservation and Parks ("MECP"). Transferring the subject lands at this time will simplify the environmental approvals process and is estimated to result in savings of approximately \$0.50M to \$0.75M.

RECOMMENDATIONS

The Executive Director, Corporate Real Estate Management, recommends that:

1. City Council authorize the City of Toronto (the "City") to acquire from Toronto Port Lands Company approximately 63,000 square metres of land within the future boundaries of River Park North and River Park South, to be constructed by Waterfront Toronto as part of the Port Lands Flood Protection Project, shown as Parts 1,2,5,6,8,9,10,13,14,15,16,17 and 18 on the sketch attached as Appendix A (the "TPLC Lands"), for nominal consideration, prior to environmental remediation of the Toronto Port Lands Company Lands and filing of Records of Site Condition ("RSCs"), and on other terms and conditions acceptable to the Director, Transaction Services, in consultation with the Director of Waterfront Secretariat, and in a form satisfactory to the City Solicitor.

2. City Council authorize the City to grant a licence to Waterfront Toronto for up to a five (5) year term, to enter onto the Toronto Port Lands Company Lands and the lands shown as Parts 3, 4, 7, 11 and 12 on the sketch attached as Appendix A (collectively, the "Park Lands"), once owned by the City, to conduct due diligence investigations, complete all environmental work necessary in connection with the filing of Records of Site Conditions, and construct River Park North and River Park South and other infrastructure required for the Port Lands Flood Protection Project, for nominal consideration and on other terms and conditions acceptable to the Director, Transaction Services, in consultation with the Director of Waterfront Secretariat, and in a form satisfactory to the City Solicitor.

3. City Council authorize the Executive Director, Corporate Real Estate Management, or their designate, solely in their capacity as land owner, to submit all brownfield redevelopment documents under the Environmental Protection Act, including Pre-Submission Forms and Records of Site Conditions, required to implement the Port Lands Flood Protection Project on the Park Lands once owned by the City, subject to the resolution of the City's peer review comments of associated environmental reports and any proposed conditions for the Certificate of Property Use being satisfactory to the Chief Engineer & Executive Director of Engineering and Construction Services, and General Manager of Parks, Forestry and Recreation.

4. City Council authorize the Executive Director, Corporate Real Estate Management, or their designate to consent, solely in their capacity as land owner, to the submission by Waterfront Toronto of applications and documents required in connection with any regulatory approvals in respect of the Park Lands once owned by the City.

5. City Council severally authorize each of the Executive Director, Corporate Real Estate Management and the Director, Transaction Services to execute the agreements necessary to implement the transactions contemplated in Recommendations 1 and 2, and any ancillary agreements and documents, and the documentation contemplated in Recommendations 3 and 4, on behalf of the City.

FINANCIAL IMPACT

The TPLC Lands, which will be part of the future River Park North and River Park South parks, are being conveyed to the City for nominal consideration. The City's internal appraisal services has determined the value of the portion of these lands which will form River Park North to be \$829,000.00, and the portion of these lands which will form River Park South to be \$913,000.00. The aggregate amount of \$1,742,000.00 represents a transfer of value from TPLC to the City, its sole shareholder, which will attract provincial Land Transfer Tax estimated at \$31,315.00.

The City of Toronto has committed funding of \$255.5 million towards the Port Lands Flood Protection Project, included in the 2020-2029 Council Approved Capital Budget and Plan for the Waterfront Revitalization Initiative. The Land Transfer Tax will be paid for by Waterfront Toronto through the PLFPP's tri-government funded budget of \$1.25 billion.

Waterfront Toronto will be responsible for environmental remediation during construction, and during a warranties and environmental monitoring period. The City will be responsible for the long-term operations and maintenance of the Park Lands once the capital improvements have been assumed, including the long-term environmental obligations. Early acquisition of the TPLC Lands does not affect or increase the City's environmental obligations as between the City and Waterfront Toronto. Although early acquisition of the lands could expose the City to environmental orders being issued directly against it, staff consider this risk to be remote given that Waterfront Toronto is developing an environmental management approach for the Port Lands in partnership with the MECP. In addition, TPLC is already responsible for the environmental condition of the TPLC Lands as owner, and the City is TPLC's sole shareholder. Parks, Forestry and Recreation staff will report back on the financial impacts of operating and maintaining the future parks in future Operating Budget submissions for Council consideration.

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

DECISION HISTORY

At its meeting on November 8, 2016, by adoption of EX18.3, City Council directed the Mayor, the City Manager and the Deputy City Manager, Cluster B, to request Government of Canada and Province of Ontario funding commitments for the PLFPP as part of a three-way cost sharing arrangement between the three orders of government. City Council directed staff to identify funding for the City's one-third share of the balance of the projected Project cost after receiving the findings of the Port Lands Flood Protection due diligence review.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX18.3>

As part of the 2018 Budget process, City Council adopted the report of December 5, 2017 from the Deputy City Manager, Cluster B and the Acting Chief Financial Officer, titled "Port Lands Flood Protection". The report authorized the Deputy City Manager Cluster B, or his delegate, in consultation with the Acting Chief Financial Officer, to execute a Contribution Agreement with the Federal and Provincial governments and Waterfront Toronto for Port Lands Flood Protection, based substantially on terms attached to the report.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.BU39.1>

COMMENTS

The PLFPP is being constructed by Waterfront Toronto through the authority granted in the Tri-Government Agreement dated May 1, 2018. As part of the PLFPP, Waterfront Toronto is creating a series of new public parks in the Port Lands. Two of these new parks, to be constructed on the Park Lands, are known as River Park North (Parts 1, 2, 3, 4, 5, 6, 7, 8, and 9) and River Park South (Parts 10, 11, 12, 13, 14, 15, 16, 17, and 18), respectively shown on the sketch attached as Appendix A to this report.

Most of the properties that comprise the Park Lands are currently owned by TPLC and are presently vacant to accommodate the PLFPP construction. It was always contemplated that the TPLC Lands would ultimately be transferred to the City for nominal consideration in connection with the PLFPP, although the timing of the transfer was anticipated in 2023. Parts 3, 4, 11 and 12, which currently form part of Cherry Street, are already owned by the City.

As part of the PLFPP construction, Waterfront Toronto is responsible for completing the environmental remediation and/or restoration and environmental protection of the Park Lands. The remedial plan requires Waterfront Toronto to obtain RSCs pursuant to the Records of Site Condition Regulation 153/04, made under the *Environmental Protection Act, R.S.O. 1990, c. E.19* (O. Reg. 153/04), as administered by the MECP. The cost of the remediation will be funded by Waterfront Toronto through the PLFPP budget.

A property owner who wants to change the land use of a property to a use that is more sensitive (e.g., converting an industrial property to a public park) must file a RSC in the Ontario Environmental Site Registry.

One of the requirements of O. Reg. 153/04 is that all of the land that is the subject of an application for an RSC must have a common owner. If there is no common owner, then separate RSC applications must be filed with the MECP for each property. This leads to increased application costs as well as increased administration costs since each RSC will impose separate (i.e. unique) requirements on its corresponding property.

The Park Lands are currently owned either by the City or by TPLC, except for one small privately owned parcel located at 39 Commissioners Street which is currently subject to expropriation proceedings by the City.

Rather than file separate RSC applications for each of the properties owned by the City and TPLC, Waterfront Toronto has approached TPLC and requested that all of the Park Lands parcels owned by TPLC be transferred to the City at this time. As the filing of a RSC offers a property owner some limited protection from regulatory liability (i.e. certain MECP orders) related to historic contamination on the RSC property, it would generally be preferable for the City to take title after RSCs are filed. However, Corporate Real Estate Management staff consider early acquisition justifiable in this case because it will permit the submission of a unified RSC application for each park to the MECP. The City will peer review all submissions before they are submitted to the MECP including the Pre-submission form, the Risk Assessment, the Record of Site Condition, and any associated environmental reports to ensure not only compliance with the intent of the policy, but that the Parks, Forestry and Recreation Division will accept any potential future maintenance requirements and expenses.

The benefits to this common ownership approach for the RSCs are threefold: first, it amalgamates the RSCs required; second, it simplifies the environmental measures to be built in the Park Lands, and third, it streamlines the ongoing maintenance of the Park Lands after turnover to the City. This common ownership approach would reduce the number of RSCs from seven to two.

With two RSCs, River Park North would have one set of soil quality requirements and River Park South would have its own set of soil quality requirements. Multiple RSCs for each park may result in multiple soil quality requirements. The benefits of having only one RSC per park means future management of the Park Lands will be streamlined and environmental annual/biannual inspections and annual reporting will be more efficient. Each park will have one set of soil quality standards, simplified soil tracking requirements, operational streamlining, and reductions in future cap inspections and annual reporting. Waterfront Toronto estimates savings of approximately \$0.5 to \$0.75M by reducing the number of RSCs from seven to two.

The transfer of the TPLC Lands to the City will be for nominal consideration. As contemplated in section 4.3 (d) of the March 31, 2006 Memorandum of Understanding between the City, Waterfront Toronto and TPLC, any land transfer of fee simple title in TPLC Lands to the City that are to become “Public Realm Lands” (e.g. parks) will be for nominal consideration. However, the City, as TPLC’s sole shareholder, will be required to pay Land Transfer Tax on the fair market value of the properties. Waterfront Toronto has committed to pay the Land Transfer Tax from the PLFPP's budget.

The Tri-Government Agreement also requires the development of a handover process through which the City will accept operational responsibility for land impacted by this arrangement. Waterfront Toronto maintains responsibility for such land until handover in accordance with the Tri-Government Agreement. Waterfront Toronto is developing an Operations and Maintenance Manual as well as a handover protocol for the Park Lands, with input and guidance from Parks, Forestry and Recreation staff. Staff of Parks, Forestry and Recreation, Financial Planning, the Toronto and Region Conservation Authority, Transportation Services, Toronto Water and the Waterfront Secretariat will undertake a comprehensive analysis of the operating impact of this significant capital project and the findings of this analysis will be reported to City Council in the 2021 Operating Budget and 2021-2030 Capital Plan.

Waterfront Toronto has a Master Licence with TPLC to allow them onto TPLC property within the boundaries of the PLFPP to undertake due diligence and construction activities. Once the conveyance of the TPLC Lands is complete, a licence will be required between the City and Waterfront Toronto in order to allow it to continue its due diligence and construction activities.

A report is scheduled to go to the June 29, 2020 City Council meeting to authorize the Executive Director of Corporate Real Estate Management to approve the granting of licences for nominal consideration in connection with the PLFPP for up to five years. A recommendation has been included in this report to authorize the grant of a licence of the Park Lands for up to five years to Waterfront Toronto for nominal consideration in the event that the other report is not adopted at June Council.

CONTACT

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SIGNATURE

Patrick Matozzo
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ATTACHMENTS

Appendix A - Area Sketch

APPENDIX A - AREA SKETCH

