



# Re: GL17.12

## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### Transaction Update of City-owned 50 Cumberland Street / 37 Yorkville Avenue (Municipal Car Park 15)

**Date:** October 14, 2020

**To:** Board of Directors, Toronto Parking Authority and General Government and Licensing Committee

**From:** Deputy City Manager, Corporate Services, Acting President, Toronto Parking Authority and City Solicitor

**Wards:** Ward 11 -- University-Rosedale

#### REASON FOR CONFIDENTIAL INFORMATION

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Confidential Attachment 1 contains information about the terms of a proposed commercial transaction and legal advice from the City Solicitor relating to the proposed transaction and potential litigation.

#### SUMMARY

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The sale of the upper strata portion of City-owned 50 Cumberland Street / 37 Yorkville Avenue by Toronto Parking Authority was completed on December 18, 2015. As part of the sale, the purchaser is required to construct at its sole cost and expense, a replacement public parking garage of approximately 800 spaces and not less than 790 spaces within the lower strata portion retained in City ownership, to be operated by Toronto Parking Authority. Construction commenced shortly after November 2018, to be completed within 30 months. In March 2020, Toronto Parking Authority was notified of insolvency proceedings, and by a Court Order dated March 30, 2020, PricewaterhouseCoopers LLP (the "Receiver") was appointed receiver and manager of the assets of 33 Yorkville Residences Inc. The Receiver has entered into an agreement of purchase and sale to sell the property and has requested Toronto Parking Authority / City consent for assignment of the agreements which secure the public parking garage construction obligation (the "TPA Agreements") to the successful proponent. The successful proponent has also requested amendments to the TPA Agreements, which fall outside the approval authority that has been delegated to City staff.

Confidential Attachment 1 contains information relating to legal advice from the City Solicitor regarding potential next steps.

#### RECOMMENDATIONS

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The Deputy City Manager, Corporate Services, Acting President, Toronto Parking Authority and the City Solicitor recommend that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1.
2. City Council direct that the information contained in Confidential Attachment 1 remain confidential in its entirety at the discretion of the City Solicitor, as it pertains to potential litigation involving the Toronto Parking Authority and the City of Toronto and contains advice that is subject to solicitor-client privilege.

## **FINANCIAL IMPACT**

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The financial implications are discussed in Confidential Attachment 1.

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

## **DECISION HISTORY**

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At its meeting of March 5, 6 and 7, 2012, City Council adopted Item GM11.13 - Sale of Stratified Portion of 50 Cumberland Street / 37 Yorkville Avenue, Municipal Car Park No. 15 (Ward 27), and authorized the sale transaction.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.GM11.13>

At its meeting of August 25, 26, 27 and 28, 2014, City Council approved applications to amend the Official Plan and Zoning By-Law to permit two linked mixed-use towers of 62 storeys on Yorkville Avenue and of 40 storeys on Cumberland Street with a 2, 7, and 10-storey base for the properties on 27-37 Yorkville Avenue, 26-32 and 50 Cumberland Street.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.TE34.32>

At its meeting on March 11, 2020, the Board of Directors, Toronto Parking Authority were provided with information regarding insolvency proceedings commenced by the construction lenders bclMC Construction Fund Corporation ("bclMC") and Otera Capital Inc. ("Otera") against 33 Yorkville Residences Inc.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.PA14.4>

At its meeting of July 8, 2020, the Board of Directors, Toronto Parking Authority were provided with further information and updates regarding the insolvency proceeding.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.PA16.2>

## COMMENTS

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In March of 2012, City Council approved the purchase agreement ("Purchase Agreement") between Toronto Parking Authority ("TPA") as vendor and MUC Properties Inc. as purchaser, for the sale of the upper stratified portion of City-owned 50 Cumberland Street / 37 Yorkville Avenue. The Purchase Agreement was assigned by MUC Properties Inc. to MK 37 Yorkville Inc. and Kingsett Real Estate Growth LP No. 4. On December 18, 2015, TPA completed the sale of the upper strata portion to MK 37 Yorkville Inc. ("Kingsett"). On December 20, 2017, MK 37 Yorkville Inc. completed the sale of the upper strata portion together with adjoining 27 Yorkville Avenue and 26 - 30 Cumberland Street (collectively the "Property") to 33 Yorkville Residences Inc. The TPA Agreements were assigned to 33 Yorkville Residences Inc. ("33 Yorkville") and Cresford Capital Corporation ("Cresford"). In November of 2018, 33 Yorkville delivered construction security, TPA's operation of Carpark 15 ceased effective November 18, 2018, construction began shortly thereafter, and the existing TPA parking garage was demolished by 33 Yorkville.

On March 2, 2020, TPA received correspondence that bclMC Construction Fund and Otera Capital Inc., the project construction lenders of 33 Yorkville had commenced insolvency proceedings. A Court Order was granted on March 30, 2020 and the assets of 33 Yorkville including the Property were placed under Court-supervised Receivership. On May 25, 2020, counsel for the Receiver brought a further motion to be heard on June 4, 2020, for Court approval of the sale and investor solicitation process ("SISP"), which would provide a framework to sell or re-finance the Property.

Lawyers for the Receiver consulted with lawyers for the City / TPA, and the Receiver added the following description regarding the role of the City / TPA in the SISP:

The City of Toronto (the "City") / Toronto Parking Authority (the "TPA") have, among other things, retained legal title of the sub-surface lands below the Real Property in which a public parking garage is to be constructed by the developer concurrently with the construction of the residential condominium above it, and has entered into agreements with the Companies to secure completion thereof (the "TPA Agreements"). ...Together, the Lenders ... the City and the TPA are referred to herein as the "Secured Creditors."

As one of the "Secured Creditors," the SISP gives the City / TPA certain consultation rights in relation to marketing materials and potential bidders interested in purchasing the Property are required to include specific statements on their proposed treatment of the City / TPA, the TPA Agreements, and letters of credit for construction of the public parking garage. The Receiver is also required to consult with the City / TPA with respect to a proposed bidder's ability to complete an acceptable sale proposal, and final bids will be evaluated based on submissions that includes full details of their proposed treatment of the City / TPA, the TPA Agreements, and letters of credit in relation to the construction of the public parking garage in the TPA Agreements.

The SISP contemplated that final bids would be received by August 6, 2020, that Court approval be sought the week of August 24, 2020 and the transaction be scheduled to "close" sometime in late September 2020. On June 4, 2020, the Court granted the Receiver's SISP motion.

A map showing the location of the Property is Attachment 1.

Further information about these matters is contained in the confidential attachment.

## **CONTACT**

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## **SIGNATURE**

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Josie Scioli  
Deputy City Manager, Corporate Services

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Robin Oliphant  
Acting President, Toronto Parking Authority

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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Attachment 1 - Map Showing Location of 50 Cumberland Street / 37 Yorkville Avenue

Confidential Attachment 1 - Transaction Update of 50 Cumberland Street / 37 Yorkville Avenue

Appendix 1 - Terms and Conditions