

Delegation of Authority in Certain Real Estate Matters

Date:	March 31, 2010
To:	Executive Committee
From:	Deputy City Manager and Chief Financial Officer
Wards:	All
Reference Number:	P:\2010\Internal Services\RE\Ec10024re – (AFS #7596)

SUMMARY

For the purposes of relieving Committee and Council Agendas of frequently routine real estate reports, facilitating situations involving critical deadlines, improving the stage on which the City conducts its real estate transactions, and avoiding delay in the implementation of approved transactions, staff is recommending that Council delegate authority to approve and sign certain real estate matters where funding has been made available in an approved budget. Such delegation will also co-ordinate, consolidate and harmonize various delegations previously approved by Council.

RECOMMENDATIONS

The Deputy City Manager and Chief Financial Officer recommend that:

1. City Council delegate the approving and signing authorities in real estate matters as set out in Appendix A.
2. In respect of the exercise of delegated authority to dispose of land, City Council, as the approving authority under the *Expropriations Act*, authorize staff to whom authority to dispose of land is being delegated, to dispose of lands acquired by expropriation without giving the owner from whom the land was expropriated the first chance to repurchase the land on the terms of the best offer received by the expropriating authority, if the expropriation has taken place ten years or more prior to the proposed disposal.

3. In respect of the acquisition of contaminated lands by means other than the development review process, City Council rescind the policy adopted by the former City of Toronto entitled “Environmental Issues – Real Property Acquisitions” as set out in Clause 46 of Report No. 11 of the Executive Committee at its meeting of June 21, and 22, 1993, and the former City of Etobicoke “Policy and Procedures for Dealing with Contaminated or Potentially Contaminated Sites”, adopted by the former Etobicoke Council meeting on September 15, 1997, together with any other subsisting policies from the legacy municipalities.
4. City Council rescind the delegated authorities in real estate matters referred to in Appendix B.
5. City Council authorize and direct the appropriate City Officials to introduce in Council any bills necessary to give effect to the foregoing.

Financial Impact

There is no financial impact as a result of this report. It is a pre-condition to the exercise of any delegated authority that all required funding be available in an approved budget.

DECISION HISTORY

City Council at its meeting on July 29, 30 and 31, 1998 adopted Clause No. 1 as amended of Report No. 11 of the Corporate Services Committee, authorizing the processes to be used for the acquisition and disposal of real property, including the delegation of approving authority in certain real property matters ("1998 Delegation"). In general, the 1998 Delegation authorizes certain real estate transactions up to \$500,000.

At its meeting on March 3, 4 and 5, 2008, City Council had before it Report EX17.1 entitled "Delegation of Certain Powers in Real Estate Matters". That report recommended that Council delegate increased approving and signing powers in certain real estate matters. Council referred the matter to the Executive Committee which subsequently referred the matter back for further consideration and report.

<http://www.toronto.ca/legdocs/mmis/2008/ex/decisions/2008-04-07-ex19-dd.pdf>

ISSUE BACKGROUND

Since the 1998 Delegation, Council has authorized further real estate delegations including those set out in Appendix B. As a result, in addition to the delegations authorized by the 1998 Delegation, Council has delegated various approving authorities including the acquisition of certain properties at the Green Lane Landfill site, the Coxwell Sanitary Trunk Sewer and School Board and Transit Properties up to \$10 Million.

COMMENTS

The underlying principal with respect to real estate delegations is that various types of real estate/property matters, not infrequently routine in nature and/or relatively minor in dollar amounts, can unduly and unnecessarily lengthen Committee and Council agendas. This also results in delays in implementing the necessary transactions and documentation, thereby placing the City at a disadvantage when competing in the real estate market, translating into missed opportunities for the City.

In addition, the City is frequently in the position of having to meet deadlines for various expenditures including government funding opportunities. Operating Divisions are often unable to proceed with capital projects or meet construction deadlines until appropriate authorizations have been obtained.

To address these types of situations, to improve the stage on which the City conducts its real estate transactions, to coordinate, consolidate and harmonize various delegations and general conditions, staff is proposing that Council delegate the approving and signing authorities in real estate matters as set out in Appendix A, as reflected by the placement of bullets on the chart in Appendix A.

This report also recommends rescission of the delegated real estate authorities referred to in Appendix B.

In order to increase efficiency, the proposed delegation is spread across four existing staff positions based on stepped financial ceilings. The result will be that Committee and Council Agendas will be freed up from routine transactional matters, and the City will be able to react more quickly in the real estate marketplace. Further, once a transaction is approved, staff will be in a position to process and execute all necessary documentation far more expeditiously.

Some of the basic concepts of the proposed delegations are:

- All financial commitments are subject to all amounts being available in an approved budget.
- The basic threshold premise is that Council should retain decision-making control over real estate transactions exceeding Ten Million Dollars.

- Staff should have decision-making authority, for the types of transactions referred to in Appendix A, within a series of “stepped” financial ceilings as follows: City Manager, \$10 Million; Deputy City Manager and Chief Financial Officer, \$5 Million; Chief Corporate Officer, \$3 Million; and Director of Real Estate Services, \$1 Million.
- Any proposed exercise of delegation must meet the requirements of the set of General Conditions in Appendix A.
- Any transactions not within the types referred to in Appendix A or falling outside of the parameters of the General Conditions will continue to be reported through the appropriate Committee to Council. For example, acquisitions and dispositions that exceed \$10 million would continue to be reported through the appropriate Committee to Council. Another example would be a proposed parkland acquisition where the amount may be \$20,000, but where budget approval had not been received.
- In addition to the series of delegated “approving” authorities, a series of delegated “signing” authorities at Section B of Appendix A provides that the positions having approving authority will also have authority to execute documents on behalf of the City required to implement the approval. Also, the Manager of Acquisitions and Expropriations will have delegated signing authority to sign Expropriation Applications and Notices for Council-approved expropriations.
- If, in any particular circumstance, a matter otherwise having been delegated to staff for approval is of such special interest that same should receive the consideration of Committee and ultimately be decided by Council, a determination may be made by the Chief Corporate Officer, in consultation with the applicable Deputy City Manager or the City Manager, to return such item to the Committee/Council process for consideration and decision-making by Council.
- The proposed delegation does not affect sales, acquisitions and leases over which the Affordable Housing Committee has responsibility.
- Council may revoke any delegation to staff, at any time.

Some of the highlights of the proposed delegations are:

A. General Conditions

The “General Conditions” in Appendix A set out the parameters within which the proposed delegated authorities may be exercised, and will, in effect, constitute Rules of Interpretation applicable to all of the delegations. These include:

- the local Councillor (or local councillors if the subject property is located on a ward boundary or if the transaction involved an exchange of properties in more than one

ward) will be consulted prior to the exercise of delegated Approving Authority by staff for all acquisitions, disposals, land exchanges and leases;

- authority to approve financial commitments/expenditures is subject to all amounts being available in an approved budget;
- authority to approve transactions at less than market value is subject to statutory anti-bonusing provisions;
- values for property interests are to be based on appraised values; and
- documents are to be in a form satisfactory to the City Solicitor.

B. Highway (Laneways, Streets)

At present, Transportation Services submits a report to Community Council recommending the road closure, including giving notice of the proposed closure. The proposed delegation will allow the Chief Corporate Officer to initiate the road closure process and to authorize the General Manager of Transportation Services to give notice of proposed permanent highway closures, conditional upon confirmation by the General Manager of Transportation Services that it is feasible to close the highway. The road closure by-law will continue to be considered by Committee and enacted by Council.

C. Exchange of Lands Within Green Space in the OP

The City's Official Plan provides that no City-owned land within the Green Space System and Parks and Open Space Areas of the Official Plan may be sold or disposed of except in the case of a land exchange where the land being exchanged is (i) nearby land of equivalent or larger area; and (ii) of comparable or superior green space utility.

The proposal is for the Chief Corporate Officer to approve such exchanges, conditional upon confirmation by the Chief Planner and Executive Director, and the General Manager of Parks, Forestry and Recreation that the land being exchanged is (i) nearby land of equivalent or larger area, and (ii) of comparable or superior greenspace utility.]

D. Designated Waterfront Area

In September 2005, Council approved a governance structure for Waterfront Toronto ("WT") in which WT was identified as the revitalization lead responsible for waterfront renewal in the Designated Waterfront Area ("DWA") which extends between Dowling and Coxwell Avenues.

Toronto Waterfront Secretariat, a City Division, leads and facilitates all City activities related to the revitalization of Toronto's waterfront. The Waterfront Secretariat provides a co-ordinating body on waterfront matters for City ABCDs and WT, as well as other government bodies.

The proposed delegation provides that approving authority with respect to land located in the Designated Waterfront Area is conditional upon the approval of the Director, Waterfront Secretariat.

E. Parking Authority

Toronto Municipal Code Chapter 179, Parking Authority, provides that land and buildings where vehicles may be parked shall be acquired and owned by the City and shall be used by the Parking Authority only where designated by by-law of Council for that purpose.

The proposed delegation provides that authority to use land acquired by the City for parking purposes by the Toronto Parking Authority is conditional on Council enacting a by-law designating such use.

F. Acquisition of Contaminated Property

Since amalgamation, relying on best practices from the legacy municipalities (some of which were embodied in Council policies, others of which were standing staff policies), the practice which has been followed is that the acquisition of any environmental contaminated land required special exemption from Council, on a case-by-case basis (except land acquired through the development process which is the subject of a different series of Council policies).

However, in order to keep current with the reality of the environmental state of real property in many locations throughout the City, it is now being proposed (for lands being acquired other than through the development process) that staff have authority to determine the suitability of potential sites for acquisition, and to exercise their delegated authority to approve the acquisition of same where the total cost (including clean-up) falls within the financial parameters set out in Appendix A, and on the condition that provision is made to bring the property into compliance with applicable MOE or other requirements, such that it will be fit for its intended municipal purpose.

Accordingly, the historical policies of the legacy municipalities should be rescinded, and staff is recommending same in Recommendation No. (3) of this report.

G. Land Acquired by Expropriation

There is no proposed delegation of the authority to expropriate land as such decisions should remain with Council. It is only with respect to the compensation within specified financial limits in expropriation matters where delegation is recommended.

Some of the lands which may be sold pursuant to the delegation of authority to approve disposals of lands recommended in this Report may have originally been acquired by expropriation. The *Expropriations Act* provides that when a municipality intends to sell lands which were acquired by expropriation, the former owner is to be given the chance to purchase the land on the terms of the best offer received unless the approving authority authorizes the disposal of such land without giving the former owner such first chance to purchase.

It is recommended that Council, as the approving authority, authorize staff to whom authority to dispose of land is being delegated, to dispose of lands acquired by expropriation without giving the owner from whom the land was expropriated the first chance to repurchase the land on the terms of the best offer received by the expropriating authority, if the expropriation has taken place ten years or more prior to the proposed disposal.

H. Revisions to Council Decisions in Real Estate Matters

In order to relieve Committee/Council agendas of the burden of numerous reports relating to minor changes/revisions to decisions, it is proposed that authority be delegated to staff to revise Council decisions (including prior decisions) with respect to those types of matters described in Column A of the chart in Appendix A. Amendments may be financial matters or non-financial matters such as changing a date, revising a site's configuration, changing a party's name, or other terms and conditions. Such revisions must not be materially inconsistent with the original decision, must meet all of the General Conditions in Appendix A, and are subject to the financial limits in A.13 of Appendix A.

I. Encroachments

A variety of delegated authorities exist relating to encroachments on City property (roads, parks, other), the most recent of which delegated to Community Councils the authority to make decisions related to those types of encroachments not already delegated to staff. It is intended that a harmonized approach to the delegation of decision-making relating to encroachments will be the subject of a future report. Accordingly, no delegated authority relating to encroachments is being proposed in this report.

J. Transparency and Accountability

In order to maintain accountability to the public and transparency of process in relation to the exercise of the proposed delegated authorities in real estate matters, in addition to the various notices to the public to be given in certain transactions, both an Office (paper) and Web Register for Delegated Approval Forms (DAFs) will be established and maintained.

A summary of acquisitions and disposals will be included in the semi-annual report, submitted in normal course to Committee and Council.

CONTACT

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SIGNATURE

Cam Weldon
Deputy City Manager & Chief Financial Officer

ATTACHMENTS

Appendix A – General Conditions
Appendix B – Delegations to be Rescinded

Appendix A

DELEGATION OF AUTHORITY IN CERTAIN REAL ESTATE MATTERS

GENERAL CONDITIONS (“GC”):

- (a) The local Councillor (or local Councillors if the subject property is located on a ward boundary or if the transaction involves an exchange of properties in more than one ward), will be consulted prior to the exercise of delegated Approving Authority by staff for all Acquisitions, Disposals, Land Exchanges and Leases.
- (b) Where approving power has been delegated to staff, the Chief Corporate Officer, in consultation with the applicable Deputy City Manager or the City Manager, may determine that such matter is of such special interest that same should be returned to the relevant Committee and Council for consideration and determination.
- (c) Exercise of delegated authority is subject to all applicable Council policies, statutes or other applicable law.
- (d) Authority to approve financial commitments/expenditures is subject to all amounts being available in an approved budget.
- (e) Property interests are to be based on appraised value, and no interest shall be granted at less than market value unless otherwise specifically authorized.
- (f) Authority to approve transactions at less than market value is subject to statutory anti-bonusing provisions.
- (g) Total compensation means the aggregate of all types of payments, including land value, estimated clean-up costs, potential arbitration awards, loss claims, etc, but exclusive of any applicable taxes and registration costs.
- (h) Authority to acquire property is conditional upon provision being made to bring the property into compliance with applicable MOE or other requirements such that it will be fit for its intended municipal purpose.
- (i) Authority to initiate the permanent road closure process in **A.4(3)** is conditional upon confirmation by the GM of Transportation Services that it is feasible to permanently close the highway.
- (j) Disposal authorities in **A.7** are subject to the property having been declared surplus, and the disposal policy complied with.
- (k) Land exchanges, except for those in **A.8**, may be authorized based on the delegated Approving Authority for Disposals in **A.7**.

- (l) Approving Authority with respect to land located in the Designated Waterfront Area is conditional upon the approval of the Director, Waterfront Secretariat.
- (m) Authority to approve an exchange of land in **A.8(3)** is conditional upon confirmation by the Chief Planner and Executive Director, and the GM of Parks, Forestry & Recreation, that the land being exchanged is (i) nearby land of equivalent or larger area, and (ii) of comparable or superior green space utility.
- (n) Approving Authority in leasing matters (**A.9 and A.10**) is limited to periods (including options/renewals) of less than twenty-one (21) years.
- (o) Total compensation in leasing matters where the City is landlord (**A.9**) includes the value of tenant improvements if factored into tenant's rental payments.
- (p) Total compensation in leasing matters where the City is the tenant (**A.10**) includes the value of any tenant improvements to be paid by the City.
- (q) Where options/renewals are included in leases, if the renewal rent is to be determined at a date later than the original approval date, total compensation is to be calculated as though all options are exercised, estimating the renewal rent based on the highest rent payable in the first term of the lease.
- (r) Total compensation in leasing matters where the City is landlord (**A.9**) or tenant (**A.10**) is to be calculated from the date of approval pursuant to this delegation (ie. first allowing for the expiry of any prior approvals, whether by Council or a delegated authority).
- (s) Approving Authority in leasing matters includes authority to approve renewals/extensions within the parameters of the delegated Approving Authority.
- (t) Approving Authority includes authority for amendments within the parameters of the delegated Approving Authority, the cumulative total of which may not exceed the delegated financial limit.
- (u) Where proposed additional amounts in **A.13** exceed 10 per cent of the original decision, even if otherwise in compliance with all other conditions, then approving authority is transferred upwards to the next more senior level of approving authority having the relevant overall financial limit.
- (v) Approving Authority includes authority for all documents necessary to implement the authority, on terms and conditions satisfactory to the Approving Authority, in consultation with the relevant operating Division(s).
- (w) Staff positions referred to in this delegation include successors from time to time.
- (x) Documents are to be in a form satisfactory to the City Solicitor (including indemnity and insurance provisions).
- (y) Delegated signing authorities in **B** are conditional upon the documents having received the City Solicitor's prior "Approval as to Form".

(z) This delegation does not affect sales, acquisitions and leases over which the Affordable Housing Committee has responsibility.

(aa) Authority to use land acquired by the City for parking purposes by the Toronto Parking Authority is conditional upon Council enacting a by-law designating such use.

Note: The delegation of authorities in real estate matters is reflected by the placement of bullets (●) on the chart in this **Appendix A**.

A. Approving Authority	(1) City Manager	(2) Deputy City Manager and Chief Financial Officer	(3) Chief Corporate Officer	(4) Director of Real Estate Services
1. Acquisitions	● Where total compensation does not exceed \$10 Million	● Where total compensation does not exceed \$5 million	● Where total compensation does not exceed \$3 Million	● Where total compensation does not exceed \$1 Million
2. Expropriations	● Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$10 Million	● Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$5 Million	● Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$3 Million	● Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$1 Million
3. Issuance of RFPs/REOs			● Issuance of RFPs/REOs	
4. Permanent Highway Closures			● Initiate process and authorize GM of Transportation to give notice of proposed by-law	
5. Transfer of Operational Management to ABCDs			● Transfer of Operational Management to ABCDs	

A. Approving Authority	(1) City Manager	(2) Deputy City Manager and Chief Financial Officer	(3) Chief Corporate Officer	(4) Director of Real Estate Services
6. Limiting Distance Agreements	• Where total compensation does not exceed \$10 Million	• Where total compensation does not exceed \$5 Million	• Where total compensation does not exceed \$3 Million	• Where total compensation does not exceed \$1 Million
7. Disposals: (including Leases of 21 years or more)	• Where total compensation does not exceed \$10 Million	• Where total compensation does not exceed \$5 Million	• Where total compensation does not exceed \$3 Million	• Where total compensation does not exceed \$1 Million
8. Exchange of land in Green Space System and Parks and Open Space Areas of Official Plan			• Exchange of land in Green Space System and Parks and Open Space Areas of Official Plan	
9. Leases/ Licences (City as Landlord/ Licensor)	• Where total compensation (including options/renewals) does not exceed \$10 Million	• (a) Where total compensation (including options/renewals) does not exceed \$5 Million (b) Where compensation is less than market value, for periods not exceeding twelve (12) months including licences for environmental assessments and/or testing, etc.	• (a) Where total compensation (including options/renewals) does not exceed \$3 Million (b) Where compensation is less than market value, for periods not exceeding six (6) months including licences for environmental assessments and/or testing, etc	• (a) Where total compensation (including options/renewals) does not exceed \$1 Million (b) Where compensation is less than market value, for periods not exceeding three (3) months including licences for environmental assessments and/or testing, etc.
10. Leases/ Licences (City as Tenant/	• Where total compensation (including options/renewals) does not exceed \$10 Million	• Where total compensation (including options/renewals) does not exceed \$5	• Where total compensation (including options/renewals) does not exceed \$3	• Where total compensation (including options/renewals) does not exceed \$1

A. Approving Authority	(1) City Manager	(2) Deputy City Manager and Chief Financial Officer	(3) Chief Corporate Officer	(4) Director of Real Estate Services
Licensee)		Million	Million	Million
11. Easements (City as Grantor)	<ul style="list-style-type: none"> Where total compensation does not exceed \$10 Million 	<ul style="list-style-type: none"> Where total compensation does not exceed \$5 Million 	<ul style="list-style-type: none"> Where total compensation does not exceed \$3 Million 	<ul style="list-style-type: none"> (a) Where total compensation does not exceed \$1 Million (b) When closing roads, easements to pre-existing utilities for nominal consideration
12. Easements (City as Grantee)	<ul style="list-style-type: none"> Where total compensation does not exceed \$10 Million 	<ul style="list-style-type: none"> Where total compensation does not exceed \$5 Million 	<ul style="list-style-type: none"> Where total compensation does not exceed \$3 Million 	<ul style="list-style-type: none"> Where total compensation does not exceed \$1 Million
13. Revisions to Council Decisions in Real Estate Matters despite Municipal Code Chapter 27-67.	<ul style="list-style-type: none"> Amendment must not be materially inconsistent with original decision (and may include increase not to exceed the amount of the original decision by the lesser of 10 per cent and \$5 Million) 	<ul style="list-style-type: none"> Amendment must not be materially inconsistent with original decision (and may include increase not to exceed the amount of the original decision by the lesser of 10 per cent and \$3 Million) 	<ul style="list-style-type: none"> Amendment must not be materially inconsistent with original decision (and may include increase not to exceed the amount of the original decision by the lesser of 10 per cent and \$1 Million) 	<ul style="list-style-type: none"> Amendment must not be materially inconsistent with original decision (and may include increase not to exceed the amount of the original decision by the lesser of 10 per cent and \$500,000.00)

A. Approving Authority	(1) City Manager	(2) Deputy City Manager and Chief Financial Officer	(3) Chief Corporate Officer	(4) Director of Real Estate Services	
14. Miscellaneous			<ul style="list-style-type: none"> • (a) Approvals, Consents, Notices and Assignments under all Leases/Licenses • (b) Releases/Discharges (c) Surrenders/Abandonments (d) Enforcements/Terminations (e) Consents/Non-Disturbance Agreements/ Acknowledgements/ Estoppel/Certificates (f) Objections/Waivers/Cautions (g) Notices of Lease and Sublease (h) Consent to regulatory applications by City, as owner (i) Consent to assignment of Agreement of Purchase/Sale; Direction re Title (j) Documentation relating to Land Titles applications (k) Correcting/Quit Claim Transfer/Deeds 		
B. Signing Authority General Conditions - Documents are to be a form satisfactory to the City Solicitor (including indemnity and insurance provisions) - Documents must have received the City Solicitor’s prior “Approval as to Form”					
	(1) City Manager	(2) Deputy City Manager and Chief Financial Officer	(3) Chief Corporate Officer	(4) Director of Real Estate	(5) Manager of Acquisitions & Expropriations
1.			<ul style="list-style-type: none"> • For purchases, sales and land exchanges not delegated to staff for approval, in addition to corporate signing authorities, any one of the Chief Corporate Officer and Director of Real Estate Services may execute Agreements of Purchase and Sale and all implementing documentation, on behalf of the City. 		
2.			<ul style="list-style-type: none"> • For Council-approved expropriations, in addition to corporate signing authorities, any one of the Chief Corporate Officer, Director of Real Estate Services and Manager of Acquisitions and Expropriations may sign Applications and Notices. 		
3.	<ul style="list-style-type: none"> • In addition to corporate signing authorities, all staff positions having Approval Authority pursuant to this delegated authority also have signing authority on 				

A. Approving Authority	(1) City Manager	(2) Deputy City Manager and Chief Financial Officer	(3) Chief Corporate Officer	(4) Director of Real Estate Services
	behalf of the City for documents required to implement any such approval.			

APPENDIX B

DELEGATIONS TO BE RESCINDED

- 1 Delegation of Authority for Certain Acquisitions, Leases, etc.: CAC 11(1) - July 29, 30 and 31, 1998.
2. Delegation of Authority for Property Acquisitions for the Green Lane Landfill Site: EX20.2 – May 26 and 27, 2008.
3. Delegation of Authority to Acquire Property Interests for the Coxwell Sanitary Sewer: CC30.3 – January 27 and 28, 2009.
4. Delegation of Authority to Purchase or Lease Surplus School Board Properties: GM26.28 – November 30, December 1, 2, and 7, 2009.
5. Delegation of Authority to Acquire Land for Transit Purposes: GM26.14 – November 30, December 1, 2, 4 and 7, 2009.