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TRANSFER OF PROPERTY RIGHTS TO TTC TORONTO YORK SPADINA SUBWAY EXTENSION, PROJECT 90996

The Finance and Administration Committee recommends the adoption of the recommendation contained in the following report dated January 21, 2011, from the Commissioner of Corporate Services.

1. RECOMMENDATION

It is recommended that:

1. Regional Council authorize the Commissioner of Corporate Services, upon the recommendation of the Regional Solicitor, to authorize the conveyance of certain lands directly to the Toronto Transit Commission (TTC) required for the Toronto York Spadina Subway Extension ("TYSSE") in the following cases:
 - a) where the lands are required for tunnel construction and related easements and where tendering for construction is imminent;
 - b) where the interests available are of limited value (e.g. licences, temporary easements) and there is no compelling interest in the Region taking title; and
 - c) provided the Region's interest in the surface rights is not compromised.

2. PURPOSE

The purpose of this report is to obtain Regional Council's approval to permit the conveyance of certain interests in land required for the Toronto York Spadina Subway Extension project directly to TTC rather than being held by the Region for transfer to TTC following construction, as provided in the memorandum of understanding between the Region, TTC and the City of Toronto.

3. BACKGROUND

York Region, the City of Toronto and the TTC entered into two memoranda

York Region is party to two memoranda of understanding with respect to the TYSSE. On December 15, 2008 the Region and the City of Toronto entered into a Memorandum of Understanding to govern the capital cost allocation for the project (the "Capital Cost MOU"). This MOU also sets out the principles of ownership of the subway lands and infrastructure. A further MOU was executed between the Region, the City and TTC setting out the principles for operation and maintenance of the TYSSE.

The principles for the acquisition of property are outlined in the Capital Cost MOU

The Capital Cost MOU sets out the following terms with respect to the acquisition of lands for the project:

- a) The City of Toronto and the Region are each responsible for the acquisition of the property rights located within their respective geographic jurisdiction;
- b) Property acquisition costs are funded by the project through the \$100 million property acquisition fund;
- c) The Region is to retain title to lands acquired for the purpose of:
 - i. commuter parking lots to be constructed and used in conjunction with the subway stations
 - ii. Passenger pick-up and drop-offs
 - iii. Bus terminals owned and operated by the Region; and
- d) the lands required by TTC for the subway tunnels and related infrastructure are to be conveyed to the TTC by the Region within 120 days after the date the TTC declares the subway extension to be complete.

The Region's rationale for transferring title to the TTC at a later date was twofold: firstly, it was not anticipated that the subsurface strata plans would be completed in sufficient detail to enable the TTC lands to be transferred independently of the surface rights held by the Region; furthermore, it was considered desirable for the Region to maintain control of the property within its jurisdiction until construction was complete.

As between TTC and the City of Toronto, TTC will be acquiring all lands for the TYSSE in York Region.

TTC has requested early transfer of property

The TTC has requested the Region agree to allow TTC to enter into agreements directly with property owners where the interests are limited (e.g. licences, temporary easements) and where the MOU has determined the rights will go to TTC eventually (e.g. tunnel lands). Since strata plans have now been completed for all property requirements in York Region and construction of the subway is imminent, staff is seeking Council's authorization to convey these lands directly to TTC earlier than was originally anticipated.

The rights to be acquired for tunnel construction are in locations that will not compromise the Region's acquisition of surface rights. Staff will review each proposed conveyance to confirm that easements in favour of TTC do not restrict the surface rights.

The Region has acquired property required for tunnel construction

In December, 2010, the Region expropriated land from two owners and acquired land from another owner by agreement for the purpose of constructing the TYSSE project. These acquisitions will facilitate the awarding of the north tunnels contract. Under the terms of the MOU, the Region is holding title to the land pending transfer to TTC.

4. ANALYSIS AND OPTIONS

The Region is encountering practical challenges in holding interests in land for the TTC

By acquiring and holding lands for the project which are ultimately to be conveyed to the TTC, the Region is encountering some practical challenges.

In some cases, only limited property rights are available from third parties. For instance, at the 407 station, Ontario Realty Corporation is prepared in many cases to offer only licences for the required lands. In such cases, negotiating terms and conditions of multiple agreements where the Region has no inherent interest is cumbersome and inefficient. In these cases it is more practical for the TTC to negotiate directly with ORC.

The Region's risk management staff have also faced challenges in satisfying the owner's insurance requirements. The owners are looking for the Region to procure at its own expense, and maintain throughout the term of the Agreement, all necessary and appropriate insurance that a prudent contractor would secure for a subway extension project. In addition, the Region is required to assume all liability and obligation for any and all losses, damage or injury that may arise. Under normal circumstances, the Region would assume such liability and would purchase the necessary insurance for projects for which it is conducting. In this particular case however, the TTC is in charge of the project, and has already purchased all of the necessary insurance for the project and have added the various entities to their policies.

In some cases, it is not in the Region's interests to hold lands because of inherent liability. For instance, the support easement required to ensure the integrity of the tunnel structure requires onerous commitments in favour of the property owners that the Region should not be required to provide where it is not accountable for the tunnel construction.

A further consideration is the potential savings in land transfer tax costs. Land transfer tax is payable on both the initial conveyance to the Region and the ultimate conveyance

to TTC. The interim transfer of lands to the Region would cost the project an estimated additional \$50,000 in land transfer tax.

Transferring title directly to TTC is recommended where there is no detriment to the Region in waiving the right to hold the lands during the interim

The lands required ultimately by the TTC are primarily for tunnel construction and related easements. These lands are typically described in sufficient detail to permit conveyance to TTC earlier in the process and do not depend on final construction drawings. There seems to be limited value in the Region exercising its right to retain title to these lands because of the practical challenges and the attendant liability. It is recommended that TTC be permitted to acquire these lands directly in the following cases:

- a) where the lands are required for tunnel constructions and related easements and where tendering for construction is imminent; and
- b) where the interests available are of limited value (e.g. licences, temporary easements) and there is no compelling interest in the Region taking title.

5. FINANCIAL IMPLICATIONS

Expenditures incurred by the Region for land acquisitions will be initially fully reimbursed by the project fund. Ultimately, the Region will be billed its 13.35% share of total project expenditures.

By permitting title to certain lands to be conveyed directly to TTC, the project fund will realize up to \$50,000 in savings in land transfer tax, a portion of which will accrue to the Region.

6. LOCAL MUNICIPAL IMPACT

The Toronto York Spadina Subway Extension will provide subway service in York Region. The project will have significant implications for the City of Vaughan and is critical to the achievement of its vision for the corridor and its Vaughan Metropolitan Centre.

7. CONCLUSION

The Capital Cost MOU provides that the Region will acquire lands required for the TYSSE project within its geographic boundaries. Ultimately the lands required for the subway tunnel and related infrastructure are to be conveyed to TTC when construction is

complete. These provisions were intended to provide the Region with a measure of control pending construction, and to address the practical issue of delineating the subsurface interests.

It is recommended that the requirement for the Region to take title in the first instance be waived in cases where it is not in the Region's interests to hold title to such lands, and that TTC be permitted to acquire lands directly from the landowner.

For more information on this report, please contact Paul J. Roberts, Manager Realty Services, Property Services Branch at Ext. 1424.

The Senior Management Group has reviewed this report.