

# Sale of Land - Further Negotiations - Public Information

## The Quarters/Downtown

### Recommendation:

That the February 14, 2017, Sustainable Development report CR\_4446, be received for information.

### Report Summary

This information report provides Executive Committee with a proposed Land Sale Agreement associated with a redevelopment proposal in the Quarters/Downtown.

### Previous Council/Committee Action

At the January 31, 2017, Executive Committee meeting, the following motion was passed:

That the January 31, 2017, Sustainable Development report CR\_4330, be referred back to Administration to provide a public report to Committee outlining information in the January 31, 2017, Sustainable Development report CR\_4330, that can be made public.

### Background

At the March 8, 2016, Executive Committee meeting (deferred from a February 2, 2016, Executive Committee meeting), Administration recommended that the Commencement of Expropriation proceed for the Buyer Lands (which are outlined in Attachment 1 of this report). The justification of the recommendation to expropriate was to enable the City to acquire these properties in order to facilitate the Urban Balcony component of the Council approved Quarters Area Redevelopment Plan, and continue the revitalization efforts of The Quarters Downtown. Instead, Executive Committee passed a motion which directed Administration to defer the decision on the Commencement of Expropriation until after Council had heard the rezoning application for the Buyer Lands and the City Lands.

1610227 Alberta Ltd. (the "Buyer"), requires adjacent City-owned lands (the City Lands), which are outlined in Attachment 2 of this report, for its proposed development. To align with Executive Committee's motion from March 8, 2016, the City therefore entered into negotiations for the conditional sale of the City Lands.

An update was provided to Executive Committee on the status of the negotiations of the sale of the City Lands on December 6, 2016. At that time, there were items related to the sale on which Administration had not yet reached agreement with the Buyer.

The land sale negotiations have continued since Administration last appeared before Committee in early December. The matter was scheduled to return to Committee on January 31, 2017, for an update on the progress of negotiations. While an update was planned, last minute discussions with the developer resulted in Administration having a proposed agreement to bring forward for Committee's consideration.

### **City Lands Information**

The City Lands consist of road closure areas and below top of bank land areas. Administration has an internal process in which a review of the land in question is conducted to determine whether a particular property is surplus to City needs and can be sold. If properties are identified as having a municipal purpose through this review process, they are not deemed surplus. In this case, the below top of bank land areas have been reviewed, and with their location in the river valley are not considered surplus to municipal requirements, and if sold, this would be for other considerations.

Administration has negotiated the potential sale of the below top of bank land areas to align with Council's decision on the potential rezoning of the City Lands. Should the sale proceed, it is viewed that it should not be considered as a precedent for other parties to seek to purchase and develop park and river valley lands in the future.

In addition to the below top of bank land area, the City Lands also include a road closure area consisting of a portion of 101 avenue and a lane that bisects the Buyer Lands. These road closure areas were reviewed by Administration as part of the road closure application and deemed to be surplus to City requirements subject to a number of conditions. These conditions would be addressed in the land sale agreement, the development permit, and ancillary agreements. In addition, a Traffic Impact Assessment was completed and provided by the Buyer for the development and was reviewed and approved by Administration. A more detailed Traffic Impact Assessment would be required at the time of Development Permit. In order to manage traffic within this area, the construction of a turnaround at the southern portion of 96 Street (east of 101 Avenue) would be required as a condition of the land sale, which would also serve as part of the planned downtown bicycle route.

### **City Land Sale Practice**

As a matter of practice, the City has historically offered independently developable lands for sale to the public through a public offering process (such as listing a property on Multiple Listing Service). The City, however, is not obligated to sell lands in this fashion and has previously, where justified, sold lands directly to third parties without a public offering. The City Lands have not been publicly offered, but given that the parcel is a part of a proposed consolidated development that would support the site specific

rezoning, it is being considered for sale accordingly.

### **Land Sale Agreement Information**

The details of the land sale framework that can be made public are found in Attachment 3. The land sale agreement reflects a market value transaction when all of the components are taken together. In order to conclude the land transaction at this time, the land sale agreement is conditional on a number of actions occurring. Due to the highly conditional nature of the land sale agreement, it is possible that if the land sale is approved, it may not move to a transfer.

Another important item of interest relates to the City's ability to restrict future resale of the lands to another developer, and to protect the lands should development not occur. Administration would typically protect this interest through a combination of a buyback option agreement, and clauses restricting the assignability of the land sale agreement. Administration has negotiated a limited buyback option for the lands should development not occur as anticipated. The Buyer, however, has indicated that the City's typical restriction on assignability is problematic and requires in the agreement for the land to be potentially assignable to a third party as it relates to financing. The result of this inclusion is that it is possible for third party participation in ownership.

In addition, given the significance of the development proposal, Administration will return for further approvals related to many of the ancillary agreements that would support the development. These include, but are not limited to, the Option to Purchase the Buyer's Land, and the Consolidated Option to Purchase.

### **Land Sale Process**

This is a very complex transaction. An overview of some of the key steps that should be followed through the process include:

1. Land Sale is considered by Executive Committee. If approved, proceed to step 2. If not approved, process ends.
2. Land Sale Agreement is executed by City.
3. Public Hearing for the rezoning occurs. If approved, the land sale proceeds. If rezoning fails, process ends.
4. Buyer to demolish buildings. Provide interim access to interim park space within 1 year.
5. Buyer/City to complete remainder of Conditions Precedent within the allotted period of time outlined in the Land Sale Agreement, including the interim public access easement.
6. If Conditions Precedent are not waived, process ends. If Conditions Precedent are waived, City Lands are transferred to the Buyer on the Closing Date.
7. Buyer has 10 years from the date of the rezoning to obtain a Development Permit for the development. The Buyer pays the Additional Purchase Price when Development Permit is issued.
8. Buyer will complete site preparation work including excavation and remediation.

9. If Buyer completes development, City pays the public access easement fee and protects access to the public amenity space.
10. If Buyer does not complete the development, City has the option to buy back the City lands and is attempting to obtain an Option to Purchase the Buyer's Lands. If the lands have been consolidated for development, the City will also be attempting to obtain an Option to Purchase the consolidated site.

### **Public versus Private Information**

The fundamental terms, shown in Attachment 3, provide a public summary of the items that have been negotiated with the Buyer. Additional information on the land sale agreement and land sale transaction will be provided to Executive Committee in a private report. Administration is taking this step to separate public and private information for the following reasons:

1. The City has a number of land holdings in the vicinity of the City Lands. Administration feels that some of the specific details in the land sale agreement have the potential to prejudice current and future land sale negotiations in the area, if these details were made public. This private information falls under the exemptions in sections 24 and 25 of the *Freedom of Information and Protection of Privacy Act* (Alberta).
2. Administration has provided legal advice in the private report, and this legal advice falls under the exemption in section 27 of the *Freedom of Information and Protection of Privacy Act* (Alberta).
3. The Buyer has requested that certain specific information remain confidential as the Buyer has advised that the release of this information would significantly harm the competitive position of the Buyer, result in similar information no longer being provided by the Buyer to the City, and also result in undue financial loss to the Buyer. This information falls under the exemption in section 16 of the *Freedom of Information and Protection of Privacy Act* (Alberta).

The transaction framework is brought forward for Executive Committee's consideration. Should Executive Committee find the terms to be acceptable, it would be within Committee's authority to provide approval for the land sale based on the fundamental terms provided within Sustainable Development report CR\_4330rev.

### **Policy**

City Policy C511 – Land Development Policy

City Policy C516B – Land Enterprise Dividend Policy

City Policy C542 – Development Setbacks From River Valley/Ravine Crests

*The Way We Grow* Policy 7.3.2.1 – Ensure that the North Saskatchewan River Valley and Ravine System remains primarily an area of unstructured, low-intensity and passive recreation, while accommodating appropriate balance of recreation activity within park nodes as described in the Urban Parks Management Plan and the Ribbon

of Green.

*The Way We Grow* Policy 7.3.2.3 – Ensure that the lands within the North Saskatchewan River Valley and Ravine System Area Redevelopment Plan boundary will be acquired for parks purposes and natural areas protection. As with zoning and the associated Area Redevelopment Plan, Council is required to vary or amend documents accordingly for the development to comply.

*The Way We Grow* Policy 3.4.1.4 Enhance Downtown livability by increasing amenities to support the emergence of a highly desirable urban community.

*The Way We Grow* Policy 4.3.1.4 Undertake park impact assessments in the Downtown to determine parkland needs and explore ways to increase parkland and access to parkland.

### Corporate Outcomes

*Edmonton is attractive and compact*

The proposed development would contribute to residential density in the downtown core.

*The City of Edmonton has a resilient financial position*

The conditional sale of City-owned lands is proposed to be concluded at market value. This could result in a net financial gain to the City with the eventual development contributing to the tax levy.

*The City of Edmonton has sustainable and accessible infrastructure.*

Private ownership of river valley land could reduce access to park and recreation infrastructure, unless safeguards were put into place to maintain public access.

### Risk Assessment

Risk Element	Risk Description	Likelihood	Impact	Risk Score	Current Mitigations	Potential Future Mitigations
Commercial	Developer purchases land and does not proceed with development or obtaining a development permit	3- Possible	5- Worst Case	15- High	N/A	Buyer would forfeit the performance fee.  The City has the discretion to exercise its

**Sale of Land – Further Negotiation – Public Information – The Quarters/Downtown**

						<p>Buyback Option to repurchase the City Lands.</p> <p>Note that if a development permit is never issued then the City never receives the Additional Purchase Price.</p>
	Developer purchases land and sells land for a profit without developing	3- Possible	3- Major	9- Medium	Buyer has to obtain City's consent to an assignment however the City's consent cannot be unreasonably withheld. What constitutes reasonable consent to an assignment is difficult to determine. This item has not been protected adequately through the agreement.	None
	Developer purchases land and does not deliver a project on the scale of what is being proposed	4-Likely	5- Worst Case	20-High	N/A	This will be partially protected through the City having a minimum Additional Purchase Price, potential forfeiture of Performance Fee.
	Developer purchases land, begins	3- Possible	5- Worst Case	15-High	N/A	A Performance Fee would be forfeited by the

	development, and can not complete development					Buyer. However, the City would not be able to buy the City Land back at this point.
	City may potentially not have park space for a period of up to 15 years.	3- Possible	2- Moderate	6- Low	Interim public access easement has been negotiated into the agreement.	N/A

### Public Engagement

Due to public interest in this potential Land Sale Agreement, this public report provides a forum for the public to provide feedback on the land sale. There has been and will be separate opportunities for public engagement in relation to the proposed rezoning of the lands. Past public engagement on the proposed rezoning was undertaken in alignment with typical practice for direct control zones; future public engagement will occur as part of the land use public hearing process.

### Metrics, Targets and Outcomes

Metrics	Targets	Outcomes
<ul style="list-style-type: none"> <li>Generation of Property Sales Revenues</li> </ul>	<ul style="list-style-type: none"> <li>Annual property sales target of \$49,277,000 for 2017</li> </ul>	<ul style="list-style-type: none"> <li>Revenue generation sustainably supports City operations</li> </ul>
<ul style="list-style-type: none"> <li>Tax Levy Increase - Estimate based on assessed value of \$250 million with a 60/40 residential to non-residential split is estimated to be \$3,240,120 (note: actual value and tax levy increase may be more or less)</li> </ul>	<ul style="list-style-type: none"> <li>No target for this metric</li> </ul>	<ul style="list-style-type: none"> <li>Edmonton has a growing residential tax base</li> <li>Edmonton has a growing non-residential tax base</li> </ul>

<ul style="list-style-type: none"><li>• Contribution to Downtown Public Park Space of 75,000-90,000 +/- square feet</li></ul>	<ul style="list-style-type: none"><li>• Establishment of a high quality park space in accordance with <i>The Quarters Downtown Area Redevelopment Plan</i></li></ul>	<ul style="list-style-type: none"><li>• Parks, green spaces, natural areas, river valley are available, accessible and used</li></ul>
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### **Attachments**

1. Buyer Lands
2. City Lands
3. Transaction Framework (Public Elements)

### **Others Reviewing this Report**

- T. Burge, Chief Financial Officer and Deputy City Manager, Financial and Corporate Services
- C. Campbell, Deputy City Manager, Communications and Engagement