



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**Acquisition of the First Parliament Site
271 Front Street East and 25 Berkeley Street**

Date:	July 11, 2012
To:	City Council
From:	Acting Chief Corporate Officer
Wards:	Toronto Centre Rosedale - 28
Reason for Confidential Information:	This report involves the proposed acquisition and disposition of land by the City or local board.
Reference Number:	P:\2012\Internal Services\RE\Cc12028re – (AFS#15986)

SUMMARY

At its meeting on May 8, 2012, City Council instructed staff report back to Council, on the possibility of a proposal that secures the First Parliament Site (being 271 Front Street E and 25 Berkeley Street further described in Attachment 1 attached hereto, the "Bresler Lands") under public ownership, at no net cost to the City. Due to the various issues surrounding the Bresler Lands it is not possible to achieve this no-cost directive.

City staff have been negotiating with the owner of the Bresler Lands, regarding a possible land exchange for a City-owned property located at 281 Front Street East and 43A Parliament Street and further described in Attachment 1 attached hereto ("City Lands"). Prior to negotiations, the owner had recently submitted a development application for the Bresler Lands and in order to ensure that the Bresler Lands are secured under public ownership, City staff's strategy is to recommend that the City initiate Expropriation proceedings and are seeking authority to do so and, in the alternative, to enter into a Section 30 Agreement pursuant to the *Expropriations Act* on the basic terms set out herein.

RECOMMENDATIONS

The Acting Chief Corporate Officer recommends that City Council:

1. grant authority to the Director of Real Estate Services to initiate the expropriation proceedings for the Property;
2. grant authority to serve and publish Notices of Application for Approval to Expropriate the Property, to forward to the Chief Inquiry Officer any requests for hearings that are received and to report the Inquiry Officer's recommendations to Council for its consideration;
3. grant authority for the City to enter into an agreement, possibly a Section 30 Agreement, with the then current owner of the Property, (and any such other related and required agreements), substantially on the terms in Attachment 1 and in Confidential Attachment 2, with such revisions thereto (if any), together with such other terms as may be deemed appropriate by the Chief Corporate Officer and in a form satisfactory to the City Solicitor;
4. authorize, despite the likely contamination on the Property, the extent of which is unknown and open-ended, that the City proceed with the acquisition of the Bresler Lands as herein described;
5. direct City staff to work with Waterfront Toronto and the Province of Ontario to satisfy the objectives of the West Donlands affordable housing agreement between Waterfront Toronto, the City and Province of Ontario as it relates to this site, in a manner acceptable to all three parties.;
6. City Council grant authority to amend the 2012 Approved Capital Budget and the 2013 to 2021 Capital Plan for Toronto Public Library to accelerate the relocation of the processing facility to be consolidated at the 1076 Ellesmere Library, through the City's Quarterly Variance Report once estimates are firm, funded from the Land Acquisition Reserve, and that the Toronto Public Library debt target be reduced by an equal value in 2022 and beyond.
7. grant authority to make any other appropriate budget adjustments to Programs' capital and/or operating budgets affected by this property acquisition and to transfer funding for the expenses outlined in Confidential Attachment 2 from the Land Acquisition Reserve Fund (LARF), through subsequent Quarterly Variance Reports.
8. authorize the City Solicitor to complete the transactions contemplated herein on behalf of the City, including paying any necessary expenses, amending the closing, due diligence and other conditional dates and any other dates, and amending and waiving terms and conditions, as she may consider reasonable; and

9. authorize the public release of the confidential information in Confidential Attachment 2, on the closing of the transactions contemplated herein.

Financial Impact

In order to secure the First Parliament site, a number of transactions are required, including relocating the current processing facility of the Toronto Public Library (TPL) and relocating the Toronto Parking Authority (TPA) parking spaces.

Toronto Public Library

The planned relocation of the processing facility from 281 Front Street to 1076 Ellesmere was included in the 2012 Approved Capital Budget and 2013 to 2021 Capital Plan for Toronto Public Library (TPL) beginning in the year 2020 in the amount of \$0.215 million, with construction to begin in 2022 and beyond. Due to the land acquisition at 271 Front Street, this relocation will have to be accelerated into 2012 (design) and 2013 and 2014 (construction). The cost of this project is estimated to be approximately \$9.333 million and is recommended to be funded from the Land Acquisition Reserve Fund (LARF), for a net \$0 debt impact. Further, it is recommended that the debt target for the Toronto Public Library's Capital Plan be reduced in 2022 and beyond by an equal amount to offset the cost of the consolidation of processing activities at 1076 Ellesmere.

In addition, the St. Lawrence Market Library, included in the 2012 Approved Budget and 2013 to 2020 Capital plan, originally to be located at 281 Front Street will be located at 271 Front Street as a result of this land transaction.

Other Expenses

Land Transfer taxes and fees will need to be paid on the transaction; the Toronto Parking Authority will need to have replacement parking for 84 spaces at 281 Front Street and funding is required for due diligence to determine the cost of remediation. These costs are detailed in Confidential Attachment 2. As the impact by program and year has not been finalized, it is recommended that, once known, the appropriate programs' capital and/or operating budgets be amended through a subsequent variance report and be funded from the LARF.

Environmental

There is tangible preliminary information regarding the likely existence of contamination on the Property. The extent and depth of this environmental contamination is unknown and could be extensive. While contamination is likely, the extent of the liability related to the contamination is unknown. This open-ended cost for environmental remediation is a liability to the City; however the City may have environmental liability for the existing City Lands.

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

DECISION HISTORY

The site of Canada's First Parliament buildings is located at the southwest corner of Front Street East and Parliament Street and is made up of three properties, 265 Front Street, 271 Front Street East and 25 Berkeley Street. City Council, at its meeting on May 21, 22 and 23, 2003, adopted Motion J(19), directing staff to work in tandem with the Province to develop a comprehensive package of real property transactions to bring the site at 265 Front Street East ("265 Front"), into public ownership and to report back to the June 24, 2003 Council meeting.

[http://www.toronto.ca/legdocs/2003/agendas/council/cc030521/nomj\(19\).pdf](http://www.toronto.ca/legdocs/2003/agendas/council/cc030521/nomj(19).pdf)

At its meeting on June 24, 25 and 26, 2003, City Council adopted Motion J(53), adopting the confidential report from the Commissioner of Economic Development, Culture and Tourism, directing staff to negotiate with the owner of 265 Front and with its tenant in order to bring the site into public ownership.

[http://www.toronto.ca/legdocs/2003/agendas/council/cc030624/nomj\(53\).pdf](http://www.toronto.ca/legdocs/2003/agendas/council/cc030624/nomj(53).pdf)

City Council, at its meeting on September 22, 23, 24 and 25, 2003, adopted Clause No. 45 of Report No. 9 of the Policy and Finance Committee, authorizing an overall transaction to secure 265 Front. This transaction brought a portion of the First Parliament site into Provincial ownership.

<http://www.toronto.ca/legdocs/2003/agendas/council/cc030922/pof9rpt/cl045.pdf>

By adoption of Motion No. 23.31 submitted by Councillor McConnell and seconded by Councillor Ainslie, Council on May 8, 2012, directed the Director of Real Estate Services to form an inter-divisional working group consisting, but not limited to, the City Planning Division, the Toronto Public Library, the Toronto Parking Authority, the Parks, Forestry and Recreation Division and the private landowner of the First Parliament site and report back to Council, through the appropriate committee, on the possibility of a proposal that secures the First Parliament Site under public ownership, at no net cost to the City. This dealt with the remainder of the First Parliament Site.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.MM23.31>

ISSUE BACKGROUND

The site of Canada's First Parliament buildings is located at the southwest corner of Front Street East and Parliament Street and is made up of three properties, 265 Front Street East, which is now owned by the Province, 271 Front Street East and 25 Berkeley Street.

271 Front Street East and 25 Berkeley Street are owned by 271 Front Inc. and BRL Realty Limited (collectively "Bresler"). The properties are currently occupied by a car wash and a rental car agency. The owner has recently submitted a development application for an as-of-right 5 storey, 15,893 square metre commercial building to house a Data Centre.

City staff have been negotiating with the owner regarding a possible land exchange for the City-owned property located at 281 Front Street East and 43A Parliament Street. 281 Front Street

East now houses a Toronto Public Library Board facility which processes new materials coming into the Library's inventory and houses the Facilities Management operation for the library branches in the south/west region of the City. 43A Parliament Street is a Toronto Parking Authority lot which has 84 parking spaces. Both these operations would have to be relocated. 281 Front Street was identified as the site of a relocated St. Lawrence branch to serve the existing and emerging residential communities in the eastern waterfront. This option will no longer be available to the Library Board. However the Bresler Lands were also considered as a suitable alternative location for the relocated St. Lawrence branch.

COMMENTS

Bresler and the City have been discussing basic terms of a Section 30 under the Expropriations Act.

If City Council chooses to continue with this transaction, there are various issues that it should be apprised of:

1. Toronto Public Library Board:

Bresler has agreed to enter into an 18 month lease with the Library, this would mean that the City would have 18 months to find, build or renovate and move the library to a different location. The building that could be constructed for the amount shown in the Confidential Attachment 2 would be substantially different from the existing facility. This estimation is for an industrial building with slab on grade construction. It would have to be built on existing City land. Although a possible location (the "Relocation Site") has been suggested, discussions with several Divisions using the Relocation Site would have to take place to work out the logistical issues with the Relocation Site and whether or not the various operational requirements could accommodate the extension to the existing Library facility.

If City staff are unsuccessful in moving the Library to a new City-owned facility in the 18 months, the Library Board will have to include (i) rental payments and (ii) potential leasehold improvement costs in its budget for 2014. There is no provision for rent, leasehold improvements or moving costs in the Toronto Public Library Board budget.

2. Toronto Parking Authority:

Toronto Parking Authority ("TPA") would be losing 84 parking spaces on the City Lands. It would therefore require a replacement parking lot in the area. Estimated costs for temporary replacement parking is set out in the Confidential Attachment 2. Permanent Parking spaces will have to be replaced in the future. A report will be submitted to the TPA Board at its meeting in August for approval in principal and delegation to TPA staff, for the location of the temporary parking spaces.

3. Environmental:

There is tangible preliminary information regarding the likely existence of contamination on both the City Lands and the Bresler Lands. The extent and depth of this environmental contamination is unknown and could be extensive. While contamination is likely, the extent of the liability related to the contamination is unknown. Although the open-ended cost for environmental remediation is a liability to the City, the liability is a factor for both properties.

If Council approves the transaction, in order to determine the cost and extent of remediation of both properties, the City would have to incur expenditures during the Due Diligence period of any transaction, which costs is set out in Confidential Attachment 2.

4. West Donlands Precinct Plan:

The City Lands are part of the West Donlands Precinct and Block Plans. As such removal of the site from Waterfront Toronto's ("WT") long-term West Donlands ("WDL") Plan would constrain options with respect to planning conceptual locations for affordable vs market housing across the precinct. A recommendation is included to allow City staff to work with Waterfront Toronto and the Province to satisfy the objectives of the West Donlands affordable housing agreement between Waterfront Toronto, the City and Province of Ontario as it relates to the City Lands.

WT would like to review any development applications of the City Lands in order to ensure that the proposal does not generate service or other infrastructure requirements that will eventually need to be satisfied by the developers of other WDL blocks. One of the conditions in the Section 30 Agreement is that Bresler is satisfied with any Development Agreement that it is required to enter into with Waterfront Toronto for the development of the North portion of the City Lands with a residential/commercial complex, in a matter consistent with the West Donlands Precinct Plan and the West Donlands Block Plan and Design Guidelines. See Attachment 1 – Term sheet.

5. Costs:

The City would be responsible for all their own costs associated with the acquisition. There is no budget for any costs associated with this transaction such as, Land Transfer Tax, Library relocation cost, Toronto Parking Authority relocation costs, environmental due diligence costs. Staff has suggested using the LARF if Council chooses to proceed with this transaction.

CONTACT

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SIGNATURE

Chuck Donohue
Acting Chief Corporate Officer

ATTACHMENTS

Attachment 1 – Term Sheet
Attachment 2 – Confidential Information
Attachment 3 – Site Sketch

Attachment 1 – Term Sheet

Term Sheet - General Terms for the First Parliament Site 271 Front Street East and 25 Berkeley Street

Date:	July 11, 2012
To:	City Council
From:	Chief Corporate Officer

- 1) **Parties:** City of Toronto ("City")
271 Front Inc. and 565910 Ontario Limited or the then-current owner
(hereinafter collectively referred to as "Bresler")

2) **Lands to be Exchanged:**

The City shall grant and transfer to Bresler the following lands:

Land on the south-east corner of Front Street East and Parliament Street, Toronto designated by property identifier number 21077-0025 (LT) shown as part 1 on the sketch attached as Attachment 3 hereto ("City Lands"); and

Bresler shall grant and transfer to the City the following lands:

Land on the south-west Front Street East and Parliament Street, Toronto, designated by property identifier numbers (i) 21092-0249 (LT) and (ii) 21092-0248(LT) and shown as part 2 on the sketch attached as Attachment 3 hereto (the "Property")

(the City Lands and the Bresler Lands are hereinafter collectively referred to as the "Lands")

3) **Representations and Warranties:**

- I. Each party acknowledges and agrees, and shall confirm and agree on the date of closing:
- (i) that each of the City Lands and the Bresler Lands are being sold "as is, where is", including their environmental condition, state of repair, deficiencies and encroachments;
 - (ii) that neither Party has made, any warranty or representation with respect to the physical or environmental condition of its respective Lands or of any

buildings or structures on its respective Lands, including the condition of the soil or groundwater, both surface and subsurface, the existence of any sub-surface installations or the existence of any hazardous substance or contaminate, in, on, under or in the vicinity of its respective Lands, or with respect to any deficiencies or encroachments affecting its respective Lands;

- (iii) neither Party shall have liabilities or obligations with respect to the value, state, or condition of its respective Lands or of any buildings or structures on its respective Lands, environmental or otherwise, whether or not the matter is within the knowledge or imputed knowledge of the City or Bresler, its officers, employees, agents, representatives, contractors or elected and appointed officials; and
- (iv) that the Parties shall rely entirely upon their own inspections and investigations and acknowledge that the Lands are being acquired on an "as is, where is" basis.

- II. The Agreement shall contain such covenants, representations and warranties as agreed to by the parties and having regard to the "as is, where is" nature of the transaction. Any representations and warranties shall survive closing for a period of 12 months. There is no condition, representation, or warranty, of the present use or any future intended use of each of the Lands.

4) **Conditions:**

I. Declare Surplus Condition:

The obligation of the Parties to complete the Land Exchange Agreement is conditional on City Council having satisfied all requirements of the *City of Toronto Act, 2006*, and the City's disposal policy (being Chapter 213 of the City of Toronto Municipal Code) necessary to enable the sale of the City Lands to Bresler, as contemplated herein. This condition is herein referred to as the "Declare Surplus Condition". If the Declare Surplus Condition is not satisfied prior to the Due Diligence Period, the Land Exchange Agreement shall be at an end.

II. Data Centre Approvals and Site Development Condition:

The obligation of Bresler to complete the Land Exchange Agreement is conditional on Bresler:

- (i) Obtaining, with any appeal rights having expired, the passage of the requisite approvals from the Committee of Adjustment for the construction of a proposed data centre similar to those plans submitted to the City for Site Plan Approval (Folder Number 12 170657 STE28SA) on May 10,

2012 (the “**Data Centre**”) on the City Lands on or before September 3, 2012;

- (ii) Obtaining, with further appeal rights having expired, the passage of the requisite By-Law removing the Holding (h) by-law on the City Lands on or before October 24, 2012;
- (iii) Obtaining a Notice of Approval Conditions (NOAC) identifying approved plans and conditions for final approval of the proposed Data Centre on the City Lands on or before October 4, 2012;
- (iv) Obtaining a final Statement of Approval for site plan of proposed Data Centre on the City Lands on or before October 24, 2012;
- (v) Obtaining a below grade building permits for Data Centre on the City Lands on or before October 4, 2012;
- (vi) Obtaining building permits for full construction permits for Data Centre on the City Lands on or before October 24, 2012;
- (vii) Obtaining, if eligible, the passage of a By-law and all other approvals required under the City-Wide Community Improvement Program (By-law No. 516-2008) and tax cancellation provisions in Section 333 of the City of Toronto Act, 2006, so as to provide Bresler with the maximum tax relief/assistance for brownfield remediation and development costs to be incurred on the City Lands on or before October 4, 2012; and
- (viii) Entering into a satisfactory Development Agreement with Waterfront Toronto for the development of the North portion of the City Lands with a residential/commercial complex, in a matter consistent with the West Donlands Precinct Plan and the West Donlands Block Plan and Design Guidelines.

The Data Centre Approvals and Site Development Condition are inserted for the sole benefit of Bresler, and may be waived by it at any time.

III. Due Diligence Condition:

The Parties shall have an agreed-upon time period (the "Due Diligence Period") to conduct their respective due diligence (the "Due Diligence Condition").

The Parties will cooperate in facilitating such due diligence investigations, including permitting the release of information and providing any and all documents in their possession and control relating to the lands within five (5) business days of execution of the Agreement. The City and Bresler and their consultants and representatives will be afforded reasonable access to the City Lands and the Bresler Lands to undertake surveys and such geotechnical and

environmental tests as the Parties may, in their discretion require, provided that the Party performing such investigations shall restore the relevant Lands to their original condition at its sole costs and expense.

The City's due diligence investigations may be based upon its satisfaction that it will obtain, prior to the Closing Date, all requisite approvals.

IV. Environmental Remediation Cost Condition

Each Party shall, prior to the expiry of the Due Diligence Period, hire a qualified person (the "QP") to conduct an assessment of the environmental condition of the lands that it will be acquiring. The QP shall determine the cost associated with remediation of the lands to be acquired by each Party to a standard agreed-upon by the Parties (the "Environmental Remediation Cost").

If the QP determines:

- (a) that the Environmental Remediation Cost for the Bresler Lands exceeds the Environmental Remediation Cost of the City Lands by twenty per-cent (20%) or more then, the City shall have the right to terminate the Agreement; or
- (b) that the Environmental Remediation Cost for the City Lands exceeds the Environmental Remediation Cost of the Bresler Lands by twenty per-cent (20%) or more then, Bresler shall have the right to terminate the Agreement.

V. Title:

Each of the City and Bresler shall be allowed until Fifteen (15) days from the expiry of Due Diligence Period (the "Requisition Period") to examine at its own expense the title to the City Lands and the Bresler Lands (as applicable), and to satisfy itself that:

- a) the title to the City Lands and the Bresler Lands (as the case may be) are good and marketable in fee simple, and without limitation, free from all charges, liens, registered restrictions, easements, rights-of-way and other encumbrances except as otherwise specifically provided in the Agreement; and
- b) there are no outstanding orders, deficiency notices or directives issued by any federal, provincial or municipal authority affecting the City Lands and the Bresler Lands (as the case may be).

5) Toronto Public Library Board Relocation

Bresler shall lease to the Toronto Public Library Board, subject to any prior approvals required by the City or by the Toronto Public Library Board, the building and lands at 281 Front Street East for a term of 18 months from the Closing Date, at no cost to the City,

save and except reasonable operating costs (which, for greater certainty, shall not include any capital costs or management fees).

The City would therefore have 18 months to find, build or renovate and move the library to a different location.

The building that could be constructed for the amount specified in the confidential attachment would be substantially different from the existing facility. It would have to be built on existing City land. Although a possible location (the "Relocation Site") has been suggested, discussions with several Departments using the Relocation Site would have to take place to work out the logistical issues with the Relocation Site and whether or not the various operational requirements could accommodate the Library expansion.

The Parties acknowledge that it will be difficult to relocate the Library facility in the 18 month term and if an extension is required, then both Parties will use their best efforts to negotiate an extension of the term of the lease. There is a risk that the facility cannot be completed in 18 months, which could result in further leasing costs. There is no provision for leasing costs in the Toronto Public Library Board's budget.

6) Costs

Each of the Parties hereto shall be responsible for and bear all of its own costs and expenses incurred in connection with the transaction contemplated herein.

7) West Donlands Precinct Plan

The City Lands are part of the West Donlands Precinct and Block Plans. As such removal of the site from Waterfront Toronto's ("WT") long-term West Donlands ("WDL") Plan would constrain options with respect to planning conceptual locations for affordable compared to market housing across the precinct.

WT has requested the right to review any development applications of the site in order to ensure that the proposal does not generate service or other infrastructure requirements that will eventually need to be satisfied by the developers of other WDL blocks.

8) Bresler Planning Report

During the expropriation proceedings and the negotiations of the transaction contemplated herein the City will continue to process Bresler's existing application for approval to construct and operate a data centre on the Bresler Lands in accordance with the city's standard practices and procedures for processing such applications.

9) Budget Rent-A-Car

Should a Section 30 Agreement be negotiated and settled, the city shall allow Budget Rent-A-Car to remain on the Bresler Lands until March 31, 2013 at no basic rent, save and except reasonable operating costs, on the City's standard form of Licence Agreement.

10) Site Trailer

Should a Section 30 Agreement be negotiated and settled, the City shall allow Bresler to occupy a portion of the Bresler Lands for a period of 18 months, at no basic rent, save and except reasonable operating costs, on the City's standard form of Licence Agreement.

Attachment 3 – Site Sketch



