
TO: GENERAL COMMITTEE

**SUBJECT: SALE OF SURPLUSED DOWNTOWN PARKING LOT 55 – 57
MCDONALD STREET/61 – 67 OWEN STREET**

WARD: 2

PREPARED BY AND KEY CONTACT: S.SCHLICHTER, DIRECTOR BUSINESS DEVELOPMENT, X5036

SUBMITTED BY: S.SCHLICHTER, DIRECTOR BUSINESS DEVELOPMENT

GENERAL MANAGER APPROVAL: Z. LIFSHIZ, EXECUTIVE DIRECTOR INVEST BARRIE

CHIEF ADMINISTRATIVE OFFICER APPROVAL: C. LADD, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDED MOTION

1. That the City Clerk be authorized to execute the Agreement of Purchase and Sale between the City and Forrest Group Acquisitions Ltd. (the Buyer) for the 0.52 acre parcel of City-owned land described as PIN's 588170026, 588170027, 588170174, 588170024, 588170025, City of Barrie, County of Simcoe, (the Property) on the south-east corner of McDonald Street and Owen Street, also known municipally as 55-57 McDonald and 61-67 Owen Street, for the purchase price of \$1,000,000, substantially in the form outlined in the Conditions of Purchase and Sale, attached as 'Appendix "A" to Staff Report BDD006-17;
2. That the City Clerk in consultation with the Director of Business Development and Director of Legal Services be authorized to execute any consent or authorization documents which would permit the Buyer, in lieu of the owner of the Property, to process any necessary Zoning By-Law amendment, Official Plan amendments, variances, pre-consult and site plan applications, solely at the Buyer's risk and expense;
3. That an amount, not to exceed \$30,000, be allocated from the Industrial Land Reserve (13-04-0430) to complete a Phase II Environmental Site Assessment for the Property and that the funds be returned to the Industrial Land Reserve upon sale of the Property;
4. That the City Clerk be authorized to execute all associated and required documents as necessary and amend the terms and conditions contained in the Agreement of Purchase and Sale on the recommendation of the Director of Business Development, in a form approved by the Director of Legal Services;
5. That proceeds from the sale of the Property, in the amount of \$106,424 be allocated to the Industrial Land Reserve (13-04-0430), with the remaining amount allocated to the Parking Reserve.

PURPOSE & BACKGROUND

Report Overview

6. The purpose of this staff report is to update Council concerning the proposed sale of the municipally-owned parking lot at McDonald & Owen Street (the Property) in the City's downtown core, and to seek approval for its sale to Forrest Group Acquisitions Ltd. (the Buyer) in the amount of \$1,000,000.
7. The previous staff report BDD003-17 reported on and recommended the sale of the Property to the Forrest Group Acquisitions Ltd. As per Motion 17-G-058 dated March 27th, 2017, the staff report was referred back to staff to allow for further discussions with the Buyer regarding the conditions of sale related to environmental investigation, continued operation of the parking lot and the overall development proposal, and subsequently report back to General Committee.
8. The Buyer has entered into a purchase agreement with owners of the abutting parcels of land inclusive of 55, 59 Owen Street & 70, 76, 78 Worsley Streets, in order to accommodate a larger site for their proposed development. Combining all of these lots including the City-owned lots will create an approximate 1-acre lot for development. (see Appendix "B")
9. On June 29, 2015, Council adopted Motion 15-G-160, which outlined the strategy to rationalize several City-owned parking lots in the downtown. The strategy determined that each downtown lot was suitable for specific types of development that would assist in realizing various key strategic objectives for the City. In the case of the McDonald / Owen property this was to increase density in the City's core and help to further critical mass.
10. As part of the disposition process, a property appraisal had been obtained, which indicated a current value between \$975,000 and \$1,125,000 assuming highest and best use under the current zoning and free and clear of any encumbrances.
11. On September 26th, 2016 the City issued a Property Information Package with the intent to attract potential developers to purchase the McDonald/Owen lot for the purpose of realizing the City's development goals in the downtown.
12. The closing date for receiving any expressions of interest via an Agreement of Purchase and Sale, was Friday, November 26th, 2016. The City received several inquiries and two executed Agreements of Purchase and Sale. One agreement was received from Forrest Group Acquisitions Ltd. The second agreement received through the market process was below the appraised market value and was not considered.
13. In accordance with By-Law 95-104, which establishes the procedure for the sale of municipal property, the Property was declared surplus through motion 16-G-037 and had been publicly advertised for sale through the City's website, via signage directly on the property and through its contacts in the ICI real estate marketplace.

ANALYSIS

14. On June 29, 2015, Council approved Motion 15-G-160, which outlined the strategy to rationalize several City-owned parking lots in the downtown. The McDonald / Owen property was identified as a parcel that advances critical mass in downtown. Both the City's parcel and the adjacent lands at the Owen & Worsley properties tentatively acquired by the Forrest Group are suitable for increased residential density;
 - a) The McDonald/Owen property has the following characteristics:
 - i) Zoning: C2, Transition Centre Commercial;

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- ii) Gross Floor Area (Max % of lot area) of 400%
 - iii) Permitted building height maximum of 15 metres (approximately 4 storeys).
 - b) The adjacent lots along Owen & Worsley have the following characteristics:
 - i) Zoning: C2-1 Transition Centre-1 Commercial;
 - ii) Gross Floor Area (Max % of lot area) of 400%
 - iii) Permitted building height of 30m (10 floors) with building set-back provisions.
 - 15. The Forrest Group's proposal will seek to rezone all the lands (both the City's and adjacent properties) in order to increase density. The description of uses as stipulated in the purchase agreement, are currently permitted uses, and include the following:
 - a) Residential apartment, retirement, long-term care, commercial uses and mixed residential/commercial uses, with a view to assuring future flexibility in the face of changing markets.
 - 16. At the time of the receipt of the offer to purchase, the Buyer indicated it planned to construct a 12 to 14 storey building across the balance of both properties consisting primarily of residential type uses with a gross floor area of just under 400,000 square feet. The greatest density/height was to be focused on the adjacent lots as they currently permit 30 metres in height, with lower density/height to be allocated toward the City's lands.
 - 17. While the Buyer has not completed a concept drawing for the site, the Buyer has indicated via letter, that they have refined their built-form concept to reflect the desire for two point-block towers of approximately 16 and 13 storeys, with a total gross floor area of approximately 185,000 square feet with the intent of providing a residential condominium tower and residential rental tower. This built form is in excess of the current zoning standards and the property would require a re-zoning to accommodate this proposed built form.
 - 18. The land sale transaction is independent of the Municipal planning process and the agreement of purchase and sale does not constitute any form of guarantee, representation or warranty that the Forrest Group (the Buyer) will be granted the required approvals. As such, the Buyer acknowledges that all government approvals are at its own risk and expense and that any planning applications will be evaluated independently and on their own merits.
 - 19. The rezoning of the property would be subject to the usual municipal process as well as Site Plan Control. By agreeing to the land sale, there is no requirement on behalf of the City to agree or accommodate the Buyer's proposal, even with the advance knowledge that the proposal may result in an application above the current zoning standards. The Agreement of Purchase and Sale has numerous stipulations that all municipal approvals are to be at the Buyer's own risk and expense.
 - 20. The Purchase Agreement with the Forrest Group (the Buyer) sets out two conditional periods during which certain objectives are to be realized, failing which the agreement will be terminated.
 - 21. Should Council approve the sale, the Buyer will have 90 days in which to:
 - a) Complete a Phase II Environmental Assessment for the property and to conduct any other investigations to determine soil conditions, environmental conditions and whether remediation will be required in order to develop the property for the Buyer's use;
 - b) The availability, capacity and cost of services required for the Buyer's use.

- c) Upon completion of the environmental investigation, the Buyer will provide written confirmation in a form satisfactory to the City (the Seller), that the Buyer will assume all costs related to the remediation of the Property required to develop the property for the Buyer's use.
22. As part of the Council approved disposition process, staff completed a Phase I Environmental Site Assessment (ESA) of the Property. Results from the Phase I ESA recommend the completion of a Phase II site assessment. The Agreement of Purchase and Sale requires that the City participate in the cost of the Phase II ESA to a maximum of \$30,000. The ESA will inform both the Buyer and Seller as to the environmental condition of the site, thereby enabling the Buyer to determine whether they are willing to assume all costs of remediation.
23. Should the Buyer choose not waive the condition and not assume the costs of remediation within the first 90-day diligence period, the agreement would terminate and the City would have the opportunity to utilize the findings from the Phase II ESA to inform the future disposition process for the Property. Having the Buyer assume all costs of remediation is in the City's best interests. It is also in the City's best interests to have a complete understanding of the environmental obligations of the site and thus it is reasonable for the City to participate in the cost of the completion of the Phase II ESA. The City will be named client to the Phase II ESA report in order to utilize the report as required.
24. The second conditional period of 480 days, beginning from the date of approval should Council approve the sale, requires the Buyer to obtain all governmental approvals (such as an OPA and rezoning) for the lands including the adjacent properties, and also obtain and accept the conditions of Site Plan approval as prescribed by Planning and Building Services, within the conditional period. An additional 150 day extension is permitted on request of the Buyer.
25. As owner of the property during the 480 government approval conditional period, the City has agreed to execute the documents reasonably necessary to allow the Buyer to apply for the associated government approvals (ie. OPA, if required, re-zoning, etc.). The cost of the applications, are at the Buyer's expense.
26. Should the governmental conditional period be waived, closing of the agreement is to take place 30 days after the Buyer has achieved all governmental approvals necessary for the Buyer's use of the property, and has accepted the conditions set out in the Site Plan Agreement issued by Planning and Building Services.
27. The City will continue to operate the parking lot until 30 days before the closing date and retain all revenues associated with the operation and will be permitted to salvage any and all parking lot equipment and material from the property, prior to closing.
28. The sale to the Forrest Group is being recommended as it aligns with the principles to select a proponent for the development of the site in the following ways:
- a) Increase the residential and/or employment density downtown;
 - b) Develop in a timely manner; The Purchaser has agreed to best efforts to start construction within twelve months following the date of registration of the transfer of the Property;
 - c) Fair market value; the \$1.0 Million offer falls within the appraisal range of value.

29. Staff report BDD002-15 specifies one of the objectives of selling the McDonald/Owen parking lot to advance the critical mass in the downtown via residential density. The sale of the parking lot achieves this, even at its existing densities, without the proposed rezoning. The intent of the Forrest Group (the Buyer) to assemble the City's lot with the abutting property fronting on Worsley Street, also satisfies the criteria of the rationalization of downtown parking lots by supporting larger developments via assembly of land parcels.
30. Staff recommend the property be sold to Forrest Group (the Buyer) as the organization has considerable experience in the development of small to mid-sized mixed use projects in urban settings similar to Barrie's downtown. Furthermore, the project is to combine the adjacent lands further increasing the density and revitalization of the core, which was one of the primary goals as set out in staff reports BDD002-15 and BDD002-16.

ENVIRONMENTAL MATTERS

31. As part of the Council approved disposition process, staff completed a Phase I Environmental Site Assessment (ESA) of the property. Results from the Phase I ESA recommend the completion of a Phase II site assessment. The Agreement of Purchase and Sale requires that the City participate in the cost of the Phase II ESA to a maximum of \$30,000. The ESA will inform both the Buyer and Seller as to the environmental condition of the site, enabling the Buyer to determine if they are willing to assume all costs of remediation.
32. The Purchaser will be required to obtain a Record of Site Condition for its proposed development. Costs associated with any potential remediation shall be at the Buyer's Cost.

ALTERNATIVES

33. The following alternatives are available for consideration by General Committee:

Alternative #1

General Committee could choose to not accept the sale of the property to the Forrest Group (the Buyer) in favour of seeking an alternative purchaser.

Staff do not recommend this option as the proposal from the Forrest Group (the Buyer) achieves the intent of the disposition of the downtown parking lot. Specifically, the sale of the parking lot for development will effectively increase residential and employment density in the downtown within its existing zoned densities, develop in a timely manner and the offer has been received at fair market value. The City did not receive any other expressions of interest on the 55-57 McDonald Street and 61-67 Owen Street lots that reflected fair market value. Furthermore, the Buyer's proposal to assemble the City lot with the abutting parcel fronting on Worsley Street for a 1-acre development, further advances the achievable density of the site, even within its existing zoning.

The Forrest Group is a successful developer of a variety of residential buildings and communities around Ontario. Staff are recommending that the Forrest Group be permitted to file a complete re-zoning application at their own risk and cost to determine the feasibility of the development. Should they be unsuccessful, under the terms of the Agreement, the Forrest Group would have the opportunity to terminate the Agreement of Purchase and Sale. Invest Barrie could then return the parcel to market for sale.

It is therefore recommended that General Committee approve the sale to Forrest Group.

FINANCIAL

34. The Agreement of Purchase and Sale requires that the City participate in the cost of the Phase II ESA to a maximum of \$30,000. The ESA will inform both the Buyer and Seller as to the environmental condition of the site, enabling the Buyer to determine their willingness to assume all costs of remediation. The cost to the City would be to a maximum of \$30,000 to be taken out of the Industrial Land Reserve (13-04-0430) and reimbursed from the proceeds of the sale.
35. As part of the disposition process for the downtown parking lots, Council Motions 15-G-160 and 16-G-037, stipulated that a combined maximum of \$35,000 be allocated from the Industrial Land Reserve for the purpose of obtaining appraisals, and a maximum of \$110,000 be allocated from the Industrial Land Reserve for the purpose of obtaining Phase I Environmental Site Assessments and for marketing purposes. Upon sale of the properties, the funds were to be reimbursed to the Industrial Land Reserve (13-04-0430).
36. To date, a total of \$76,424 (plus HST) has been expended for these services. These costs are to be returned to the Industrial Land Reserve (13-04-0430) out of the proceeds of disposition on the property. Remaining recoverable expenditures for appraisal, environmental assessments and marketing purposes are to be returned to the Land Sale Reserve upon future sales and are expected to remain within the existing allocation approved by Council.
37. The Purchaser also used a broker for the purchase of the land. The City stipulated as part of its disposition process to pay a commission of 2.5% (plus HST) on the total sale price of the Property. The commission amount totals \$25,440.

38. The remaining net amount of \$868,353 (sale price less commission, less Phase II ESA cost, less costs expended for Phase I ESA, marketing and appraisal work) is to be allocated to the Parking Reserve.

LINKAGE TO 2014-2018 STRATEGIC PLAN

39. The recommendations included in this Staff Report support the following goal identified in the 2014-2018 Strategic Plan:
- a) Support diverse and safe neighbourhoods
40. The sale of city-owned parking lots in the downtown core facilitates the multiple strategic objectives for the City's downtown. In brief, the sale and development aligns with the City's vision growth, economic development and social needs. The offer is also at fair market value and will generate tax and development revenue for the City.

APPENDIX "A"

CONDITIONS FOR PURCHASE AND SALE

This offer is conditional upon the following:

1. Approval by the Council of The Corporation of The City of Barrie of this Agreement of Purchase and Sale. Unless the Seller gives notice in writing delivered to the Buyer by June 30th, 2017, that this condition has been fulfilled, this Agreement shall become null and void and the deposit shall be returned to the Buyer without deduction;
2. Within ninety (90) days following the removal of the condition identified in subsection (a), the following environmental investigations shall be undertaken and completed:
3. A Phase II Environmental Site Assessment for the property shall be undertaken at the cost of the Seller, to a maximum of \$30,000.00 and upon terms mutually satisfactory to both the Buyer and Seller. Reports shall be addressed to both the Buyer and Seller.
4. The Buyer may conduct any further environmental and geotechnical investigations, and any remediation assessments it deems necessary in order to satisfy itself in its sole, absolute and unfettered opinion and discretion that the environmental matters relating to the Property are suitable for the development of the Buyer's Use.
5. Upon completion of the Buyer's investigations as set out in subsection (i) and (ii) (the "Environmental Investigation"), the Buyer shall immediately provide a copy of the results of the Buyer's Environmental Investigations to the Seller;
6. The Buyer may conduct any investigations required to confirm availability, capacity and potential cost of all services required for the development of Buyer's Use, including but not limited to storm water drains, sanitary drains, both domestic and fire protection water mains, electrical, natural gas, telephone and internet services.
 - a. Upon completion of the Environmental Investigation, the Buyer will provide written confirmation within ninety (90) days following the removal of the condition identified in subsection (a), in a form satisfactory to the Seller, that the Buyer will assume all costs related to the remediation of the Property required to develop the Property for the Buyer's Use.
 - b. The Buyer shall have the option to terminate this agreement within the ninety (90) day period set out in subsection (b), by written notice to the Seller.
 - c. Unless the conditions identified in subsections (b) through (d) have been satisfied within ninety (90) days following removal of the condition identified in subsection (a), this Agreement shall become null and void and the deposit shall be returned to the Buyer without deduction.
 - d. Within (480) days following the removal of the condition identified in subsection (a), the Buyer shall obtain for the Property, as well as for the abutting parcels of land, more specifically: 55, 59 Owen Street & 70, 76, 78 Worsley Street in the City of Barrie (the Abutting Parcels):

7. All municipal and other governmental approvals necessary for the intended Buyer's Use of the Property and Abutting Parcels (save and except for the Record of Site Condition (RSC), on terms and conditions satisfactory to the Buyer including but not limited to minor variances, Official Plan Amendment (OPA), if applicable, and Rezoning;
8. Issuance of Site Plan Conditions and Buyer's acceptance of Site Plan Conditions via formal execution of all documents required to effect same, in concert with Abutting Parcels.
 - a. Unless the conditions identified in subsection (f) have been satisfied within (480) days following removal of the condition identified in subsection (a), this Agreement shall become null and void and the deposit shall be returned to the Buyer without deduction.
 - b. The (480) day conditional period identified in subsections (f) and (g) can be extended for an additional (150) days by written notification from the Buyer to the Seller within the (480) day conditional period.
 - c. The Seller will continue to operate a parking lot on the Property until the Buyer has obtained for the Property and the Abutting Parcels those items identified in subsection (f).
 - d. The Buyer and Seller may mutually agree to extend any of the conditional periods outlined in subsections (a) through (h), by written agreement of both parties.
9. The Completion Date shall be no later than 30 days following the satisfaction of all conditions identified in paragraph 25, items (a) through (j). Failing which, the Seller may terminate this Agreement and the deposit shall be returned to the Buyer without deduction.
10. The Buyer acknowledges that all government approvals are at the Buyer's own risk and expense and that this Agreement does not constitute any form of guarantee, representation or warranty that the Buyer will be granted said approvals. Without limiting the generality of the foregoing, the Buyer further acknowledges that applications for OPA, if applicable, Re-zoning, Committee of Adjustment and Site Plan are at the Buyer's own risk and expense and will be evaluated independently on their own merits and subject to approval in accordance with the policies of the governing body.
11. The Buyer shall be entitled, at its own expense, to apply for all required development approvals. The Seller agrees at no additional cost above and beyond standard application fees for which the Buyer is solely responsible, to execute such documents as are reasonably necessary to assist the Buyer in connection with the foregoing.
12. The Seller hereby appoints the Buyer to be the Seller's agent for the purposes of execution and delivery of documentation and for the doing of such acts and things as the Buyer may reasonably require in connection therewith. The Buyer agrees to keep the Seller informed as to its progress by providing such information as the Seller may reasonably require.
13. The Seller hereby grants the Buyer and its agent's access to the Property for the purpose of completing all soil and environmental tests and investigations the Buyer deems necessary. The Buyer agrees to provide the Seller with a copy of all soil and environmental test results.
14. The Seller has completed a Phase I ESA on the property and provided the Buyer with a copy of the report. The Seller will make its best effort to obtain a reliance letter from the consultant to permit Terraprobe to use and rely upon the Phase 1 ESA report.

15. The Buyer acknowledges and agrees that it is purchasing the Property in its present condition, "as is" and it will be solely responsible and liable for all environmental remediation at its own cost. The Seller makes no representation or warranty concerning the soil and/or environmental condition of the Property.
16. The Buyer acknowledges and agrees that it will be responsible for any fees to connect laterals to sanitary sewers, water and hydro at the standard charges imposed by Barrie Engineering Department and any third party service providers, as well as any costs associated with the installation of laterals to connect to services within the municipal road allowance.
17. The Seller will be responsible for and continue to operate, maintain and collect fees associated with the operation of the parking lot on the Property, for its own account, until the conditions in paragraph 25 (a) through (j) have been satisfied.
18. The Seller will be permitted to salvage any and all parking lot equipment and material including fencing and vegetation from the site prior to the Completion Date.
19. The Buyer agrees to make best commercial efforts to:
 - a. Start construction of the first phase of the Buyer's Use, within twelve (12) months following the Completion Date. Construction shall be considered to have commenced upon the issuance of a permit for shoring and excavation work;
 - b. Complete construction of the first phase of Buyer's Use, within thirty (30) months of the start of construction provided that appropriate allowances shall be made for delays caused by strikes, acts of God and other events beyond the control of the Buyer. The Buyer covenants to deliver to the Seller, in writing, of any changes in the schedule and of any delay in construction times which occurs or might occur. Completion of construction shall be deemed to have occurred upon substantial completion or its equivalent, utilizing a Completion of Work process.
20. The Buyer may assign this Agreement to a Developco Corporation or Partnership and subsequently, a Buildco Corporation or Partnership, in which the Buyer undertakes to continue to be a participant, along with partners, yet to be resolved. Prior to closing, the assignee(s) shall enter into an agreement in a form acceptable to the Buyer and Seller both acting reasonably, with the assignee assuming the Buyer's obligations under this Agreement.
21. Taxes and Fees. The Buyer shall be responsible for all land transfer tax and registration fees payable in connection with registration of the deed or transfer of the Property. The Buyer shall also be responsible for and pay any and all federal and provincial sales and other taxes payable by a buyer upon or in connection with the conveyance or transfer of the Property, including harmonized sales tax ("HST") pursuant to the Excise Tax Act (Canada).
22. Without limiting the generality of the foregoing, the Buyer acknowledges that in the event any HST is eligible in connection with the transaction contemplated herein, such HST shall be in addition to the Purchase Price. The Buyer and Seller acknowledge and agree that the Buyer shall not be required to pay, or the Seller to collect and remit, any HST eligible in connection with this transaction provided that the Buyer, provides to the Seller on the Closing Date a certificate of an officer of the Buyer confirming that the Buyer is a registrant for HST, that the Buyer is acquiring both the legal and beneficial interest in the Property on its own account and not as trustee or nominee for any other entity and setting out the Buyer's HST registration number as at the Closing Date, as well as an undertaking by the Buyer to remit when due any eligible HST, and the indemnity provided for herein.

Notwithstanding the foregoing, if this transaction is not subject to HST, the Seller agrees to provide to the Buyer on or before closing a certificate in the form prescribed by the applicable legislation (if so prescribed, or otherwise in a form reasonably satisfactory to the Buyer's solicitor) certifying that the transaction is not subject to HST.

23. The Buyer shall indemnify and save harmless the Seller from all claims, actions, causes of action, proceedings, losses, damages, costs, liabilities and expenses incurred, suffered or sustained as a result of a failure by the Buyer:
- a. to pay any federal, provincial or other taxes, including provincial retail sales tax and HST, if applicable, payable by the Buyer in connection with the conveyance or transfer of the Property; and/or
 - b. to file any returns, certificates, filings, elections, notices or other documents required to be filed by the Buyer with any federal, provincial or other taxing authorities in connection with the conveyance or transfer of the Property;
 - c. the Buyer's failure to assume all costs of remediation required to develop the Property for the Buyer's proposed use and the Buyer's failure to remediate the Property as required to permit the Buyer's Use.

PT LT 124 S/S MACDONALD ST PL 2 BARRIE AS IN RO1420694; S/T & T/W RO1420694; S/T INTEREST IN RO1287454; BARRIE, PT LT 124 S/S MACDONALD ST PL 2 BARRIE AS IN RO1327580; T/W RO1327580; BARRIE, PT LT 124 S/S MACDONALD ST PL 2 BARRIE AS IN RO653238; BARRIE, PT LT 124 S/S MACDONALD ST PL 2 BARRIE AS IN RO1287119; BARRIE, PT JAMES ST PL 31 BARRIE PT 1, 51R32355; BARRIE ("the Property").



APPENDIX "B"



APPENDIX "C"

Combined Lands: Owen/McDonald & Worsley/Owen

