

**Report to
Rapport au:**

**Council / Conseil
May 13, 2020 / 13 mai 2020**

**Submitted on April 24, 2020
Soumis le 24 avril 2020**

**Submitted by
Soumis par:
Derrick Moodie
Director / Directeur**

**Corporate Real Estate Office / Bureau des biens immobiliers municipal, Planning,
Infrastructure and Economic Development / Services de la planification, de
l'infrastructure et du développement économique**

Contact Person / Personne ressource:

**Robin Souchen, Manager, Realty Services Branch, Corporate Real Estate Office /
Gestionnaire, Initiatives et Mise en valeur en immobilier, Bureau des biens
immobiliers municipal
(613) 580-2424, 21549, robin.souchen@ottawa.ca**

Ward: RIDEAU-VANIER (12)

File Number: ACS2020-PIE-CRO-0010

SUBJECT: Sale of Subterranean Rights of the Waller Mall

OBJET: Vente des droits souterrains du mail de la rue Waller

REPORT RECOMMENDATIONS

That Council:

- 1. Approve the sale of a non-viable portion of the Waller Mall, described as part of the subterranean portion of Lot T (north Rideau Street), Registered Plan 42482 being part of PIN 04214-0132, containing a subterranean area of approximately 314.56 square metres (3,386 square feet), shown as Parcel 1 on Document 1 attached, subject to any easements that may be required, to 8887322 Canada Inc. for \$467,000.00 plus HST;**
- 2. Waive Section 1.4 of the Disposal of Real Property Policy that requires monies received from the sale of properties be deposited into the Sale of**

Surplus Land Account, and instead be directed to the reinstatement of the larger Waller Mall;

- 3. Waive Section 1.3 of the Affordable Housing Land and Funding Policy which would require that 25 per cent of the net proceeds from the sale of the non-viable residential property, identified in Recommendation 1 above, be directed to the Housing Reserve Fund, and instead direct this funding to the reinstatement of the larger Waller Mall; and**
- 4. Amend Clause 1 of By-law 275-80 that establishes the Waller Mall as a pedestrian only mall, to temporarily permit vehicles on the mall.**

RECOMMANDATIONS DU RAPPORT

Que le Conseil :

- 1. approuve la vente d'une partie non viable du mail de la rue Waller, décrite en tant que partie souterraine du lot T (au nord de la rue Rideau), plan enregistré 42482 et partie de la cote foncière 04214-0132, dont la surface souterraine approximative est de 314,56 m² (3 386 pieds carrés), indiquée en tant que parcelle 1 dans le document 1 ci-joint, sous réserve de toute servitude requise, à 8887322 Canada Inc., au prix de 467 000 \$, TVH en sus;**
- 2. renonce à la disposition de l'article 1.4 de la Politique sur l'aliénation des biens immobiliers exigeant que les sommes tirées de la vente de propriétés soient versées dans le compte de vente de terrain excédentaire, et qu'elles soient affectées plutôt au projet de réfection du mail de la rue Waller;**
- 3. renonce à la disposition 1.3 de la Politique sur les terrains et le financement pour les logements abordables, selon laquelle il faudrait verser 25 % du produit net de la vente de la propriété résidentielle non viable visée dans la recommandation n° 1 dans le fonds de réserve pour le logement, et de plutôt affecter cette somme au projet de réfection du mail de la rue Waller; et**
- 4. modifie la clause 1 du Règlement 275-80 qui définit que le mail de la rue Waller est une zone piétonnière, afin d'y autoriser temporairement l'accès aux véhicules.**

BACKGROUND

The Waller Mall located between George Street and Rideau Street is a pedestrian only mall located within the Byward Market neighbourhood.

The subject non-viable parcel of land consists of the subterranean portion of the south end of the Waller Mall, located adjacent to 201 Rideau Street owned by the purchaser.

The subterranean portion of Waller Mall to be conveyed to 8887322 Canada Inc contains an area of 314.56 metres squared (3,386 square feet) and is described as part of Lot T (north Rideau Street) Registered Plan 42482 and is shown as Parcel 1 on Document 1, attached.

A 24-storey hotel and residential building with underground parking, accessed off Rideau Street, is proposed on abutting lands municipally known as 201 Rideau Street. The proposed development consists of 208 hotel rooms and 95 residential units, with 101 parking spaces on four levels of underground parking.

In order to avoid construction of an additional level of parking, the purchaser explored the possibility of acquiring the subterranean portion of the Waller Mall, immediately adjacent to their proposed development. The acquisition would provide a larger area for parking and facilitate the elimination of one level of underground parking. This is similar to an earlier sale that was completed by the former City of Ottawa to the St. George Condominium, who acquired the subterranean north half of the Waller Mall to build a portion of their garage.

As a result of the purchaser's interest in the subterranean portions of the Waller Mall, a road closing application for this portion of the mall was submitted to Planning, Infrastructure and Economic Development Department, for approval.

On October 2, 2019, the Planning, Infrastructure and Economic Development Department conditionally approved the purchaser's application to close the subject subterranean portion of Waller Mall, shown as Parcel 1 on Document 1 attached, conditional upon the following:

1. This approval shall not be in effect until 'Notice' of the proposed closing is given in accordance with By-law 2011-122, as amended and any objections resulting thereof have been considered by the Planning Committee.
2. The street or lane closure shall be undertaken by enactment of a street or lane closure By-law;
3. When selling the closed road, the City is not legally obliged to offer all or a portion of the closed road for sale to an abutting owner;
4. A conveyance of the closed road shall be at current market value in accordance with the Disposal of Real Property Policy and Procedures approved by City Council on February 26, 2018;

5. The applicant/purchaser(s) will be responsible for all costs of the road closing and sale including the application fee (which includes the cost of advertising/giving notice), survey/reference plan, appraisal (if any), removal of encumbrances (if any), registration of documents, land transfer tax and HST (if applicable);
6. That prior to the enactment of the road closing By-law, the applicant shall provide the following material to the satisfaction of the City Solicitor:
 - (i) A plan of survey/reference plan, showing the road, or portion thereof, to be closed, the parcels of land therein to be conveyed to all parties, any existing or required utility easements and a registerable legal description of all such parcels of land, to the satisfaction of the City Surveyor;
 - (ii) Written confirmation that any zoning violation which may result from the closing will be the applicant/purchaser(s) responsibility to remedy, and;
 - (iii) A binding Agreement(s) of Purchase and Sale that has been entered into by the City and the applicant/purchaser(s) for the closed road.
7. Should the conditions of Paragraph 6 above not be fulfilled within one (1) year of the date of approval of the road closing application, the approval of the road closing application shall be null and void;
8. The *Municipal Act* provides that the road closing By-law enacted by City Council does not take effect until registered on title. If the City is selling the closed road, the By-law will not be registered on title until such time as the conveyance of the closed road is to be completed pursuant to an Agreement of Purchase and Sale.

The subject parcel is zoned MD S82 – Mixed Use Downtown Zone and is considered non-viable as it does not meet the legal requirements for development on its own. An internal appraisal completed to determine the market value of the property also confirmed that the subject property would not meet the legal requirements for standalone development.

The redevelopment of 201-213 Rideau Street and the draft Byward Market Public Realm Plan provide an opportunity to renew Waller Mall, a City-owned space currently deemed too unsafe for public use. Waller Mall was introduced as a public pedestrian link in the mid-1980s and was last renewed in 2002. The proposed plans for Waller Mall raise its design standard to be more responsive to the context and, more importantly, contribute to the safe re-opening of the pedestrian link to the public. Waller Mall is one of few pedestrian links east of Byward Market that can offer convenient and safe public access to George Street and the Market for visitors on-foot from Rideau Street and the

Retail, Theatre and Arts Precinct. The draft Byward Market Public Realm Plan envisions George Street east of Dalhousie as a green promenade designed to accommodate a variety of programming dedicated areas for families connected by a complete pedestrian network.

A single row of high-crown trees in interlocking paving and updated lighting will maintain good sight lines and accessibility throughout the future Waller Mall. Existing visual obstacles like gates are removed and the promenade feels wider to maximize natural surveillance of the space. The redevelopment of 2019-213 Rideau introduces a more transparent façade at the ground floor, a patio zone and eliminates the 'back of house' operations along Waller Mall previously associated with the former retail development. These context changes as well as a simple landscape concept will help bring more eyes onto the space. Ultimately, the continued success of Waller Mall will depend on further reconfiguration of adjacent buildings and spaces becoming more active; however, the proposed plan for Waller Mall is an important first step to safely restore the pedestrian network of Byward Market and set a precedent for the future redevelopment along the edges of this space. As the draft Byward Market Public Realm Plan notes, public-private partnerships such as the above will be key to implementing the plan priorities in an affordable, mutually beneficial fashion.

DISCUSSION

Recommendation 1 – Conveyance of Subterranean portion of Waller Mall to 8887322 Canada Inc.

An internal and utility circulation was undertaken in March 2019 to determine if the property was surplus to City requirements. As a result of the circulation there was no City identified need to retain the property and there was no requirement for an easement indicated by the utility companies.

The Director of the Corporate Real Estate Office has approved the surplus declaration of the subterranean portion of the Waller Mall through Report No. DEL2020-CREO-0029. An agreement has also been reached with a numbered company, 8887322 Canada Inc. to purchase the subject property for \$467,000.00, conditional on the terms of the road closing being fulfilled by the Purchaser.

The developer shall also enter into an agreement with the City to reconstruct the remainder of the mall (George Street portion) to the north according to the updated designs being refined by the Right-of-Way, Heritage and Urban Design group. The benefit of this approach is that the developer would have control over the timing of the mall construction project and be able to coordinate this with the final stage of the apartment/hotel construction, thereby ensuring the Waller Mall is operational when the

development project is complete. The City's contribution to this agreement will not exceed the funding from this sale.

In response to the Ward Councillor's comments requesting that security and maintenance on the mall be dealt with in the current agreement of purchase and sale, staff will work on separate agreements with 8887322 Canada Inc. to address these aspects of the project. Given that designs for the ultimate mall and additional security measures may take a few more months to be finalized, and in the interests of not delaying the delivery of this project, enhanced security and maintenance of the Waller Mall can be adequately accommodated in separate agreements.

The sale price, supported by an internal appraisal, is considered fair and reasonable and is recommended for acceptance.

Recommendations 2 and 3 – Waive Section 1.4 of the Disposal of Real Property Procedures and Section 1.3 of the Affordable Housing and Land Funding Policy.

The Disposal of Real Property Policy directs and specifically states that “all City-owned Real Property is a corporate asset and not an asset of any individual department. Monies received from the Disposal of any Real Property shall be deposited to the City's Sale of Surplus Land Account, unless otherwise directed by City Council or as stipulated by the Affordable Housing Land and Funding Policy”.

Typically, 25 per cent of the net revenues would be directed to the Housing Branch, as identified under the Affordable Housing Land and Funding Policy section of this report. In this case, this would equate to \$116,750.

However, as per Recommendations 2 and 3, in order to facilitate the reconstruction of the entire redesigned Waller Mall, staff is recommending that 100 per cent of the revenues from the sale of the subterranean rights be earmarked to fund the re-instatement. Given that the purchaser will be re-instating the southern portion of the Waller Mall in accordance with an updated design, this presents a unique opportunity to redevelop the entire mall to provide a consistent look and feel, and with design principals that are geared to a more animated and lively environment.

The agreement with the developer will require all of this funding in order to advance the project in a manner that takes advantage of economies of scale, coordinated timing with the reinstatement of the south half of the mall, the opening of the hotel and advances the improvements to the mall in order to achieve the goals of enhanced animation and vibrancy of this area of the Byward Market.

Recommendation 4 – Amend By-law 275-80 to Temporarily Allow Vehicles on the mall

In 1980, Council enacted By-law 275-80 establishing Waller Street as a pedestrian mall prohibiting the use of vehicles, excluding wheelchairs and vehicles used by the City of Ottawa and any public utility carrying out authorized services. As By-law 275-80 prohibits any vehicle to be driven, parked or stopped along the Mall at any time, a temporary exemption to this By-law will be needed for the duration of construction.

It is the purchaser's intent, once the excavation is completed and the garage structure built, to use the southern portion of the mall as a staging area for the construction of the purchaser's building. For this reason and given that the Waller Mall remains a public right-of-way, the owner will be required to enter into a temporary encroachment agreement in order to allow machinery to be located on the mall during construction. Post construction, the developer will be required to re-instate the portion of the mall where the underground garage is being constructed to its former condition and as per approved landscaped drawings for the mall through the Site Plan Approval process.

The City and applicant are aware of the potential weight restrictions over the St. George condominium parking garage to the north. The City has consequently requested engineering information from the condominium board that would allow an evaluation to be made as to restrictions, if any, that need to be imposed on the use of the mall for temporary vehicular traffic.

RURAL IMPLICATIONS

There are no rural implications associated with the recommendations in this report.

CONSULTATION

In accordance with policies approved by City Council on 26 February 2018, the availability of the property was circulated to all City Departments, utilities companies as well as the Ward Councillor.

No City department indicated a requirement to retain the property for their purpose and no requirement for an easement was received from any of the utility companies.

The Ward Councillor has also been consulted with respect to this report and his comments are indicated under the "Comments By The Ward Councillor" section below.

Affordable Housing Land and Funding Policy

The Affordable Housing Land and Funding Policy was approved by City Council on 26 April 2017. This policy requires 25 per cent of the net proceeds from the sale to be credited to Housing account 810125-507320 to be used for the development of affordable housing elsewhere in the City. Through Recommendation 2, staff are seeking a waiver to this policy in order to direct 100 per cent of the proceeds of this sale to the reconstruction of Waller Mall.

COMMENTS BY THE WARD COUNCILLOR

Staff received the following comment from Councillor Fleury:

“There are very few opportunities with developments to make a direct change to an unsafe area.

I am pleased that after more than two years of the Waller Mall being officially closed to the public because of crime, safety and security concerns, this new agreement allows not only for the re-opening of this Mall, but also the opportunity to improve it with design, landscaping, animation as well as continue to ensure reducing crime is top of mind.

I am pleased an added maintenance and security measure report will be in-place prior to occupancy so we can properly address any ongoing maintenance and safety concerns.

This corridor offers a direct link from Rideau Street businesses and Byward Market. It connects the new with the old – and offers a pathway into what will become an amazing public realm thanks to other progressing city projects such as the Byward Market Public Realm project.

Generally, we are supportive of the Real Estate branch policy surrounding the sale of City land, in this case underground rights, to go into general revenue and a small portion into affordable housing, however this is a unique opportunity to improve community safety and bring back this public connection. The revenue from the sale will be the City’s value in the remaining portions of Waller outside of the development area.

I am pleased that this agreement allows an opportunity to improve our City. This shows just what we can do if we work together for the better of our community.”

LEGAL IMPLICATIONS

There are no legal impediments to adopting the recommendations in this report. The agreement of purchase and sale provides for the reinstatement/landscaping of the South and North Waller Mall.

ASSET MANAGEMENT IMPLICATIONS

The recommendations documented in this report are consistent with the City's [Comprehensive Asset Management \(CAM\) Program](#) objectives. There is buried City infrastructure (sewer pipe) within the site, and it is being addressed through site plan, in a condition stating that the owner is responsible for maintenance of the pipe.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with the recommendation in this report.

FINANCIAL IMPLICATIONS

The financial implications are outlined in the report.

ACCESSIBILITY IMPACTS

There are no accessibility impacts associated with the recommendation in this report.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications resulting from the recommendation in this report.

TERM OF COUNCIL PRIORITIES

The recommendation in this report support the following City Council strategic policies:

- Economic Growth and Diversification, by supporting business development which will result in additional hotel and residential units.
- Thriving Communities, by redeveloping this portion of the Waller Mall, there will be more “eyes on the mall” thereby supporting community safety and well being.

SUPPORTING DOCUMENTATION

Document 1 Location Map

DISPOSITION

Following Council approval, staff from Corporate Real Estate Office and Legal Services Branch will complete the sale. Finance staff will direct 100 per cent of the sale revenues to be allocated to a Capital account to be created for the reconstruction of the Waller Mall.

Document 1 – Location Map

