**Report to/Rapport au :**

**Finance and Economic Development Committee**
**Comité des finances et du développement économique**

**and Council / et au Conseil**

**January 29, 2013**
**29 janvier 2013**


**Submitted by/Soumis par : Nancy Schepers, Deputy City Manager/directrice municipale adjointe, Planning and Infrastructure / Urbanisme et Infrastructure**

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| RIDEAU-VANIER (12) | Ref N°: ACS2013-PAI-REP-0006 |
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**SUBJECT:** **SALE OF LAND – 187 BOTELER STREET**

**OBJET :** **VENTE DE TERRAIN – 187, RUE BOTELER**

## REPORT RECOMMENDATIONS

**That the Finance and Economic Development Committee recommend Council:**

1. **Declare the property known municipally as part of 187 Boteler Street and described as Lot 3, and Part of Lot 7, Registered Compiled Plan No. 611769 designed as Parts 3, 4, 5 and 6, Plan 4R-26468 now in the City of Ottawa being part of PIN 042180175, containing an area of .808 ha (1.99 acres) and identified as Parts 3, 4, 5 and 6 on Document “1” attached, as surplus to the City’s needs;**

2. **Waive the requirement in Section 4 of the City’s Real Property Disposal By-law requiring notifying the public of the pending sale of a City property;**

3. **Approve a land exchange between the City of Ottawa for Part 3 on Plan 4R-26468 with the United Arab Emirates in exchange for Part 2 on Plan 4R-26468 for no monetary payment other than the usual adjustments on closing (plus HST to be paid by each purchaser, if applicable), pursuant to an Agreement of Purchase and Sale that has been received;**

4. **Approve the sale of Parts 2, 4, 5 and 6, on Plan 4R-26468 to State of Qatar for $6,585,240 plus HST, if applicable, less costs of approximately $1,025,000 expended pursuant to an Agreement of Purchase and Sale that has been received; and**

5. **Provide delegated authority to the Deputy City Manager of Planning and Infrastructure to adjust the purchase price in Recommendation 4 up to an amount of $500,000 to account for Risk Management measures, required at the time of development, to address soil conditions at 187 Boteler Street.**

<u>**RECOMMANDATIONS DU RAPPORT**</u>

**Que le Comité des finances et du développement économique recommande au Conseil :**

1. **déclare comme excédentaire par rapport aux besoins de la Ville la propriété d'une superficie totale d'environ 0,808 ha (1,99 acre) connue par la municipalité comme étant une partie du 187, rue Boteler, le lot 3 et une partie du lot 7 dans le plan dérivé nº 611769 du registraire et représentée par les parties 3, 4, 5 et 6 du plan 4R-26468 et du document « 1 » ci-joint, faisant partie de PIN 042180175, maintenant dans la Ville d'Ottawa;**

2. **renonce à la disposition de l'article 4 du Règlement de la Ville d'Ottawa sur l'aliénation des biens immobiliers, laquelle exige la transmission d'un avis au public concernant les propriétés de la Ville présentement à vendre;**

3. **approuve un échange de terrains entre la Ville d'Ottawa et les Émirats arabes unis (partie 3 du plan 4R-26468 en échange de la partie 2) avec pour seul paiement les ajustements habituels à la conclusion de la vente (plus la TVH à verser par chacun des acheteurs, le cas échéant), en conformité avec une convention d'achat-vente déjà reçue;**

4. **approuve la vente des parties 2, 4, 5 et 6 du plan 4R-26468 à Qatar pour 6 585 240 $ plus TVH (le cas échéant), moins le coût approximatif de 1,025,000 $ dépensé en conformité avec une convention d'achat-vente déjà reçue; et**

5. **délègue à la directrice municipale adjointe, Urbanisme et Infrastructure, l'autorité requise pour ajuster le prix d'achat décrit à la recommandation nº 4 jusqu'à un montant de 500 000 $ afin de tenir compte des mesures de gestion des risques nécessaires au moment du développement, en fonction des conditions du sol au 187, rue Boteler.**

<u>BACKGROUND</u>

The lands known municipally as 187 Boteler Street and described by PIN 04218-0175 were transferred from the Province to the former Regional Municipality of Ottawa Carleton by an Order-in-Council in 1971 for the widening and reconstruction of King Edward Avenue. The City recently completed the relocation and realignment of the approaches to the MacDonald Cartier Bridge from King Edward Avenue. As a result of the realignment, the subject portions of King Edward Avenue became surplus to roadway requirements.

The United Arab Emirates (UAE) acquired the adjacent lands to the west from the National Capital Commission (NCC) in 2004. The UAE built an embassy and diplomatic residence on the somewhat irregular shaped site in 2006. During the final construction of the bridge approach in 2009, the UAE expressed an interest to Infrastructure Services Department (ISD) staff working on the project to acquire a portion of the surplus road allowance. Infrastructure Services relayed the information to Real Estate Partnerships and Development Office (REPDO). After conferring with the City Office of Protocol, REPDO staff officially approached the UAE with a modest variation to their proposal. The discussions centered on a land exchange between the UAE (Part 2) and the City (Part 3). The intent of the exchange was to provide the UAE with a more functional site while enabling the City to assemble a more regular shaped parcel of land for development purposes.

The land exchange proposal was to be equitable and result in a “no land cost” for either party. The City would exchange “rear lands” (Part 3) for approximately half the amount of lands with street frontage owned by the UAE (Part 2). The UAE was in agreement with the City’s proposal but expressed concerns over what type of development would be located on the assembled City property adjacent to the embassy. The current zoning for the property is GM – General Mixed Use, which allows for a diplomatic mission. A condition of the land exchange was that the newly assembled City-owned site be developed in a compatible use for a diplomatic mission. The UAE recommended that the City enter into negotiations with the State of Qatar as they were in the midst of opening an embassy in Canada and were looking for a suitable embassy site in Ottawa. Discussions with the NCC and Department of Foreign Affairs and International Trade (DFAIT) were undertaken to support a sale to a foreign government. City planning staff were also consulted in the process to confirm zoning and other land use issues.

As a result of the strong interest in a land exchange expressed by UAE and their desire for an embassy site on the adjacent property, specifically Qatar, staff met with Qatar officials to assess their interest in the property based on the proposed configuration. After a series of meeting, Qatar expressed interest and began the process with DFAIT of obtaining permission to purchase the assembled site.

Owing to the unique circumstances surrounding the land exchange and subsequent sale, staff are seeking permission in this report to waive the requirement in Section 4 of the City’s Real Property Disposal By-law wherein it establishes notification to be used to notify the public (other potential purchasers) of the pending sale of a City property.

All other policies and procedures with regard to a disposal of a City asset have been followed. An internal circulation was completed to identify any corporate issues pursuant to a declaration of these lands being surplus. A legal requirement to close the road allowance, a requirement to establish an easement to protect existing City infrastructure and address hydro related issues were identified as the main corporate concerns. In addition, it was brought to staff’s attention that the berm located on the property was a stockpile of excess road material excavated during the King Edward Avenue rehabilitation project. This material would need to be removed from the property or the purchase price adjusted accordingly.

In anticipation of a sale, REPDO staff submitted a Road Closing Application to Planning and Growth Management to stop up and close Parts 3, 4, 5 and 6, Plan 4R-26468. The application cost of $9,800 for the road closing application was paid by REPDO from the Surplus Lands Account. Information related to the road closing process is outlined in Document ‘2’.

The City internal circulation had identified a major sewer line crossing the property, several collector sewers and the presence of hydro utilities. The area of the major sewer line (Part 4) will be protected in the event of a sale with an easement prohibiting development of structures. The realignment of the King Edward Avenue included the installation of new storm sewers. The old storm sewers crossing the property were capped but remain on-site. In negotiations with Qatar it was agreed that the market value of the property would be determined considering the impact of the easement and presence of the redundant sewers.

To facilitate a sale and maximize value staff engaged Ottawa Hydro to relocate the hydro utilities from within the old right-of-way into the realigned roadway thereby freeing up the site for development. The cost to the City for this was $115,000 and funded using the surplus land sales account.

The stockpile of excavation material on the site from the King Edward Avenue construction had been capped with top soil, grassed and landscaped.  This material represented a significant mass being 7 meters high and containing approximately 30,000 cubic meters. This stockpile created an impediment to developing the site thus requiring its removal as part of a sales marketing plan.

The underlying material was sampled and tested and found to have low level concentrations of metals and polycylic aromatic hydrocarbons (PAHs).  Based on these concentrations the Ministry of Environment (MOE) regulations require that should this material be moved from the site and deposited in a licensed landfill. This represented a significant cost estimated at $3.4M.  Rather than sell the property “as is” REPDO determined that the City, as the property owner, would be the best party to address the environmental issues in the most cost effective manner and thereby maximize value.

After further testing it was determined that some of the material could be reused as fill for other road works subject to MOE approval. To limit the cost of soil removal, REPDO staff developed a soil management plan working with ISD and the MOE. A review of City infrastructure projects determined that the Hunt Club Road extension project could accommodate using most of this material with minimal quantities requiring disposal in a landfill.  A Soil Management Plan was developed and submitted to the MOE to reuse the material within the Hunt Club project. The Soil Management Plan was also discussed with the Ministry of Transportation (MTO) given their involvement with the Hunt Club Road interchange. Part of the MOE approval required fulltime oversight of the excavation at the Boteler Street site, oversight in the soil placement at Hunt Club, and additional testing and screening.

The excavation schedule will be completed over a 6-8 week period in December 2012 and February 2013 and created some minor disruptions to the neighbourhood. REPDO staff met with the Ward Councillor, his staff and community representatives to work on a communication plan for the surrounding residents to mitigate noise and disruption during periods of excavation and to address any health and safety concerns over the movement of the impacted soils.

The trucking and mobilization costs to use the Boteler Street material were incurred outside of the scope of the Hunt Club project. The implementation of the Soil Management Plan together with the additional testing and landscaping is estimated to be $900,000. The Soil Management Plan saved valuable landfill capacity and $2.5M in disposal fees. Incurring costs associated to remove the road material in order to create a viable development site was considered a reasonable investment and environmentally responsible. The $900,000 expense is funded from the surplus land sales account into which the proceeds of this property sale would be deposited.

Should Council not approve Recommendation No. 4 of this Report, staff would move forward to dispose of this property following typical business practise and recoup the expenses related to the road closing application, relocating the hydro infrastructure and the costs of the Soil Management Plan in the process.

## DISCUSSION

### Negotiations with UAE

The land exchange with the UAE is predicated on the City exchanging part of the former right-of-way at the rear (northeast boundary) of the UAE embassy property. This parcel is identified as Part 3 on the attached Reference Plan and is approximately 1,174.5 sq. m. (0.28 acres). In exchange for the rear parcel the City would acquire from the UAE Part 2. This parcel is 586.3 sq. m. (0.14 acres) and represents surplus frontage along Boteler Street. The UAE parcel is encumbered with a restrictive covenant placed on the property by the former owner, the NCC.

The NCC notified the City of the restrictive covenant on the lands to be conveyed to the City. The restrictive covenant limits development to a Diplomatic Mission and or Diplomatic Residence and provides that no development, construction of any building or facility, alteration or change to any exterior of building/appurtenances shall occur without the permission from the NCC. In meetings with the NCC it was confirmed that they were not willing to remove the restrictive covenant. The covenant and NCC position was reported to Qatar. The covenant is not considered to have a negative impact on the lands given Qatar's planned use of the property.

The size of the parcels to be exchanged was determined by the City under the notion of an "exchange at no cost". The City parcel is rear land that is unviable. The UAE land is also unviable owing to configuration; however it has street frontage and is considered more valuable. The parcels were surveyed such that the exchange would be based on a two for one with the City parcel being twice the size of the UAE parcel. Despite the difference in size, the market value of both parcels is consider to be equal which is consistent with the City practise of valuing rear lands at lower values than land with street frontage. Based on a reconciliation of internal and external professional appraisal advice the market value of the exchange parcels is estimated at $575,000.

After a series of negotiations and meetings over a 30 month period, UAE notified the City on 29 November 2012 that they were no longer interested in proceeding with a land exchange. Qatar expressed an interest in acquiring the lands that the UAE declined to acquire in order to expedite the purchase of lands for its embassy and residence.

**Negotiations with Qatar**

In parallel negotiations over this 30 month period, Qatar made arrangements for Canada to acquire land in Qatar, and had completed all internal documentation including the transfer of funds to Canada for the Ottawa site acquisition. To honour these commitments, the City and the State of Qatar entered into a Purchase and Sale Agreement (PSA) 6 December 2012 to acquire all the City lands including Part 3 Plan 4R-26468 that had been reserved for the UAE. To maintain the option of a Land Exchange, Qatar agreed in separate correspondence to exchange Part 3 for Part 2 with the UAE should the opportunity arise within twelve (12) months of purchasing the City lands.

The purchase price for the City lands is based on appraisal estimates of market value applying the notion of highest and best use. Both internal and external appraisals were completed with special consideration for the easement over Part 5, and assuming that there were no adverse soil conditions that would impact on development costs and therefore the market value. The appraisals were completed in Q2, 2011 and an estimated market value price was negotiated shortly thereafter in Q3, 2011 of $6,585,240.

Completing a purchase agreement was delayed by a sudden change in position of DFAIT to only permit a lease of the property and not a sale. Canada leases its embassy site in Doha the capital of Qatar. DFAIT was interested in acquiring an embassy site and sought reciprocity should Qatar acquire land in Ottawa. After assurances were given to DFAIT by the Qatar government that Canada would be given consideration to acquire land in Doha, DFAIT reversed its position and consented to a sale of land in Ottawa and notified the City of Ottawa 10 August 2012 of its decision.

Further delaying the Purchase Sale Agreement (PSA) was the City requirement to develop the Soil Management Plan with the MOE and MTO. These discussions, together with the required soil testing, excavation and monitoring, delayed the final PSA another 8-9 months. The delays in completing an agreement were not the fault of Qatar. The delays also require Planning and Infrastructure Approvals Branch to extend the road closing approval. The 6 December 2012, PSA with Qatar for Parts 3, 4, 5 and 6, Plan 4R-26468 remains at a purchase price of $6,585,240 as per the appraised market value effective in Q3 2011. The sale price is considered fair and reasonable given the circumstances and is recommended for acceptance.

The purchase price reflects the impact of the City retaining a sanitary sewer easement over Part 5, Plan 4R-26468 and the presence of redundant sewer infrastructure. After the costs to close the road allowance, relocate hydro utilities and remove the impact stockpile of road material, the net benefit to the City for the sale of the surplus land is estimated at $5.56M.

On 24 January 2013 the UAE notified the City that it has reversed its position and is interested in completing a land exchange under the previously agreed to terms and conditions. Subsequently, Qatar consented to amend the PSA agreement to reflect a revised site area to account for a land exchange between the City and the UAE. An amendment to the PSA was added 29 January 2013 to consider the impact of the UAE land exchange. A land exchange agreement between the City and the UAE will be a condition precedent for the sale to Qatar. Given the exchange parcels are of equal value the Qatar purchase price remains the same at $6,585,240.

## RURAL IMPLICATIONS

There are no rural implications associated with this report.

## CONSULTATION

In accordance with the Disposal of Real Property Policy and Procedures approved by City Council on 28 March 2012, the availability of the property was circulated to all City Departments, including the Housing Branch, Planning and Infrastructure and City Operations as well as the Ward Councillor to determine if the property was required for a City mandated program. Critical concerns over existing City infrastructure were addressed by way of retaining easements.

The Land Use and Natural Systems unit of the Planning and Infrastructure Portfolio was consulted with respect to the City's natural heritage system and related policies in the Official Plan. There were no objections or concerns expressed by any other City Department at the time of the circulation.

The utility companies were also circulated and no interest was expressed in the retention of an easement. However, Hydro Ottawa did advise that it had an electrical distribution plant located over Parts 3, 4, 5 and 6, Plan 4R-26468 and that the existing infrastructure would need to be relocated at the owner's expense. The City made arrangements to have the infrastructure relocated onto the road allowance at a cost of approximately $115,000.

The potential sale of the property was also circulated to external agencies including Public Works Government Services Canada (PWGSC), Department of Foreign Affairs and International Trade (DFAIT), National Capital Commission (NCC), Ministry of Transportation (MTO), Ministry of Housing (MOH) and the local school boards. DFAIT and NCC were the only external agencies that expressed interest to ensure that their policies were respected in the transactions.

The following Advisory Committees have been circulated in 2011:

- Ottawa Built Heritage Advisory Committee (OBHAC)
- Ottawa Forests and Greenspace Advisory Committee (OFGAC)
- Environmental Advisory Committee (EAC)
- Parks and Recreation Advisory Committee (PRAC)
- Roads and Cycling Advisory Committee (RCAC)
- Rural Issues Advisory Committee (RIAC)
- Pedestrian and Transit Advisory Committee (PTAC)

No concerns were expressed with respect to the sale of the subject property by any of the Advisory Committees.

## HOUSING FIRST POLICY

Section 2.5.2 of the Official plan directs the City to make land available for affordable housing and give priority for the sale or lease of surplus City-owned property for this purpose.

The Housing First Policy approved by Council on 13 July 2005, establishes priority consideration to the Housing Branch in the identification of potentially surplus City-owned property, to be used in achieving the City's affordable housing program targets. The policy also requires that the Official Plan target of 25% affordable housing, be met on any City owned property sold for residential development. Where residential properties are disposed of without a condition requiring a affordable housing component, 25% of the proceeds from the sale are to be credited to a housing fund to be used for the development of affordable housing elsewhere in the City.

The subject property is zoned GM, General Mixed Use, which permits residential use. Therefore, in accordance with the Housing First Policy 25% of the anticipated net proceeds estimated at $5.56M, or $1.39M will be deposited into the Housing Reserve Fund to be used to support the development of future affordable housing projects.

## COMMENTS BY THE WARD COUNCILLOR(S)

The Ward Councillor is aware of the report. REPDO staff met with the Councillor and his staff to work on an information plan for the surrounding neighbourhood covering the road closure, the excavation and relocation of the stockpiled material and to address any related environmental (health and safety) concerns.

## LEGAL IMPLICATIONS

There are no legal impediments to implementing the recommendations in this report.

## RISK MANAGEMENT IMPLICATIONS

The property under contract has cleared the circulation process and no mandated City program will be impact by the disposal.

The identification of impacted material on the property caused the City to develop a Soil Management Plan in order to remove soil from the property. The plan was reviewed by the MOE to ensure that public health and safety was given a priority. The execution of the plan is being monitored by an arm's length consulting firm to ensure the City complies with the terms and conditions laid out in the MOE approved plan.

A condition of the PSA is for the City to excavate the stockpile of material and grade the property with a 1.5 meter variance from the street lot line to the rear lot line. During the excavation of the existing berm portions of the former road bed were scraped away. As part of the soil testing protocol this material was sampled and tested and found to have low level concentrations of metals and polycylic aromatic hydrocarbons (PAHs) similar to the material within the stockpile.

Based on the concentrations found to date underneath the berm the MOE regulations would require that should this material be moved from site it must be deposited in a landfill. At the completion of the stockpile removal the City and Qatar are sharing in the cost of a Phase ll Environmental Site Assessment (Phase II ESA) which will take two to three months to conclude. Based on the results of the Phase II ESA a Risk Assessment including a Risk Management Plan may be required to address the soil conditions on the property.

The costs to comply with the Risk Management Plan will need to be separately negotiated as these additional development costs attributable to soil conditions were not anticipated in the land price negotiations. The appraised market value assumes that there were no extra ordinary costs to development. Recommendation No.5 of this report is to provide the Deputy City Manager of Planning and Infrastructure the delegated authority to review and assess the cost of the Risk Management Plan and adjust the purchase price up to a maximum of $500,000. Should the cost to address the soil conditions exceed this amount post closing of the transaction, and Qatar seeks further abatement of the price, REPDO staff will report back to Committee and Council for approval of the cost implications of any subsequent negotiations.

## FINANCIAL IMPLICATIONS

Revenue from the sale will be credited to City's Sale of Surplus Land Account with 25% of the proceeds to be credited to the Housing Reserve Fund as per the Housing First Policy, subject to any adjustments at closing.

## ACCESSIBILITY IMPACTS

There are no accessibility impacts resulting from the recommendations in this report.

## ENVIRONMENTAL IMPLICATIONS

The Land Use and Natural Systems unit does not object to the proposed sale.

Although identified as a contributing open space in the Greenspace Master Plan, the subject property is not shown as part of the City's Greenspace Network. Aerial photography and available natural heritage information sources do not suggest that the property contains any significant features of the natural heritage system or that it performs any significant ecological functions. The nearest known features of the City's natural heritage system are the Rideau River corridor, located just over 120 m east of the property on the other side of King Edward Avenue, and the Ottawa River corridor, located over 300 m to the west of the property on the far side of Sussex Drive.

The City's Forestry Services Department was consulted prior to commencing the removal of fill from the property as part of the berm landscaping plan had included the planting tree. Forestry Services conducted an inventory of the trees and it was determined that a number of small trees would need to be removed to facilitate the excavation. In accordance with the Municipal Trees and Natural Areas Protection By-law (By-Law No. 2006 – 279) REPDO included in the excavation cost, previously noted at $900,000, an allowance of $50,000 to provide for the replacement of the trees on a 2 for 1 basis. The property will become subject to the Urban Tree Conservation By-law once it leaves the City's ownership.

The environmental contamination implications are addressed in the Risk Management section of this report.

## TECHNOLOGY IMPLICATIONS

There are no technology implications associated with this report.

## TERM OF COUNCIL PRIORITIES

The sale of the land at 187 Boteler Street supports City Council's strategic priority of Financial Responsibility (FS) to practice prudent fiscal management of existing resources and its objective FS2 to maintain and enhance the City's financial position

## SUPPORTING DOCUMENTATION

Document 1 - Sketch to illustrate the subject property as Parts 2, 3, 4, and 5 and 6, Plan 4R-26468

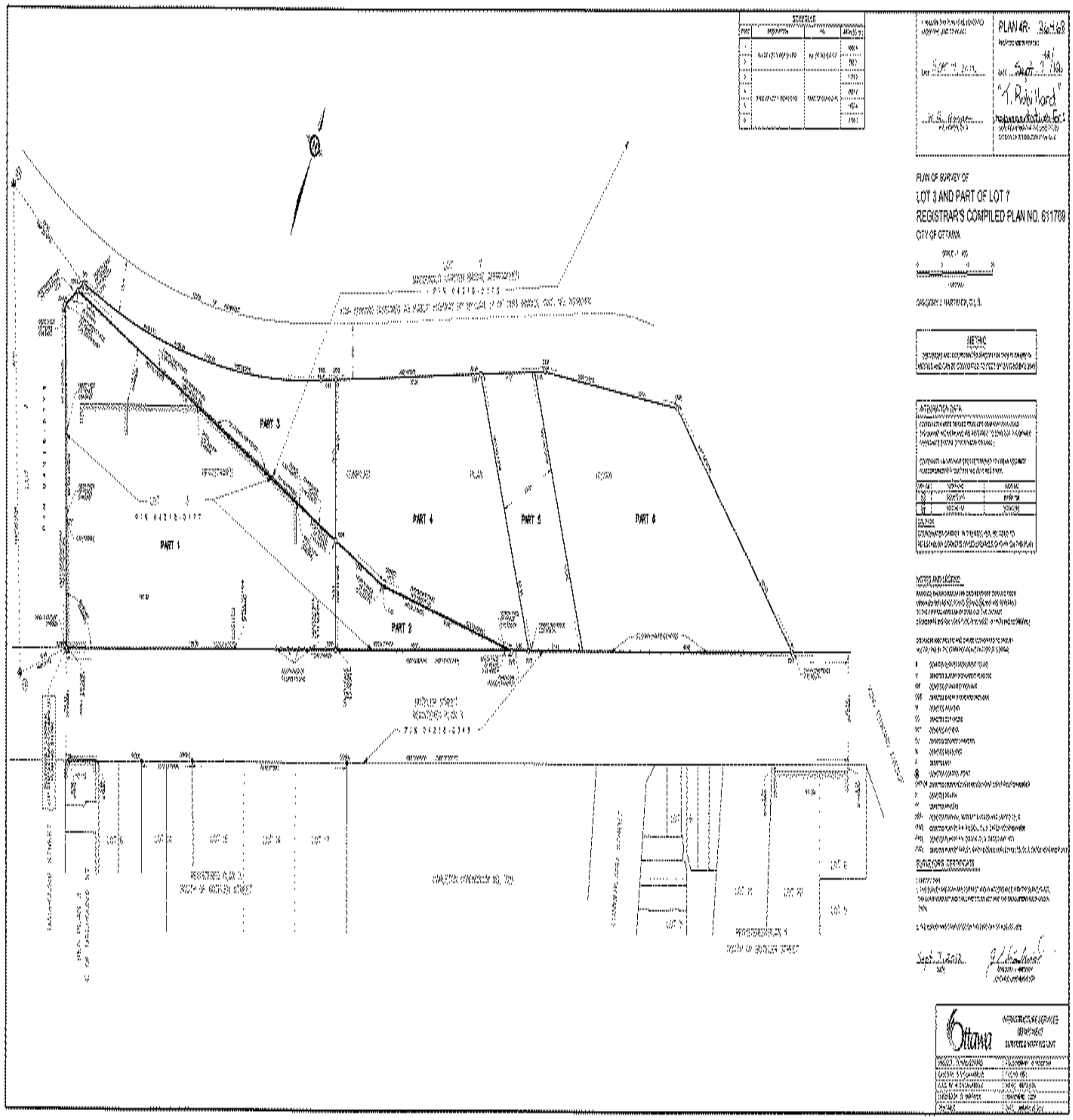
Document 2 – Road Closing Application Conditions

## DISPOSITION

1. Following approval, Realty Services Branch and Legal Services Branch will finalize the Land Exchange transaction with UAE in accordance with the Land Exchange Agreement;

2. Following approval, Realty Services Branch and Legal Services Branch will finalize the sale transaction with Qatar in accordance the Agreement of Purchase and Sale.

DOCUMENT ‘1’ - Sketch to illustrate the subject property



DOCUMENT '2' - Road Closing Application Conditions

Planning and Infrastructure Approvals Branch pursuant to the Delegation of Authority By-law 2001-12 as amended approved the closure subject to the following conditions:

1. Notice of the proposed closing shall be given in accordance with By-law No. 2002-522;

2. The street or lane closure shall be undertaken by enactment of a street or lane closure by-law;

3. A conveyance of a closed road shall be at current market value in accordance with By-law No. 2002-38;

4. The applicant/purchaser(s) will be responsible for all costs of the street or lane closure 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 GST (if applicable);

5. Prior to enactment of the by-law (if the City is selling the closed road):

   a) The applicant/purchaser(s) shall have provided to the City solicitor 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 Solicitor and the City Surveyor;

   b) the applicant/purchaser(s) of all closed portions of the road being sold shall have provided to the City Solicitor written confirmation that any zoning violation which may result from the closing will be the applicant/purchaser(s) responsibility to remedy; and

   c) a binding Agreement of Purchase and Sale shall have been entered into by the City and the applicant/purchaser(s) for the closed road.

6. Should the conditions of Paragraph 5 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; and

7. The Municipal Act provides that the 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 just prior to the conveyance of the closed road is completed pursuant to an Agreement of Purchase and Sale.