TO: Bert Meunier, Chief Administrative Officer

FROM: Terry Willing, Acting Commissioner, Planning & Development Services

PREPARED BY: John Sawarna, Capital Works Engineer, Engineering Division

DATE OF MEETING: October 19, 2004

SUBJECT: Acquisition of Lands Owned by Hydro One Networks Inc. For Counter-Elliott Avenue Extension.

RECOMMENDATION TO COUNCIL:

That Council authorize the Mayor and Clerk to execute the Agreement of Purchase and Sale satisfactory to Legal Services on behalf of The Corporation of the City of Kingston under corporate seal with Hydro One Networks Inc., for the purchase of a parcel of land required for the Counter Street-Elliott Avenue Extension project at a purchase price of $34,350.00 plus G.S.T.

ORIGIN/PURPOSE:

By a resolution dated September 12, 1995 (Clause 3, Report 104) City Council resolved that all necessary steps be taken to acquire, in future, the safest route that would extend between Counter Street and Elliott Avenue, as outlined in the Planning Division report dated September 22, 1992.

As part of the Counter Street-Elliott Avenue Extension, Engineering Division staff initiated discussions with Hydro One Networks Inc., to purchase a parcel of land required to reconstruct the Division and Counter Street intersection.

On September 25, 2004, staff received an Agreement of Purchase and Sale from Hydro One Networks Inc. for the purchase of 1,602 square meters (0.396 acres) of land at the corner of the Division Street and Counter Street intersection as shown in Appendix “A”. This land is currently part of the Frontenac transformer station owned by Hydro One Networks.
OPTIONS/DISCUSSION:

The parcel of land is located in the south west corner of the Division Street and Counter Street intersection.

The land is designated as Part 1 on Plan 13R-17556. The area is 1,602 square meters (0.396 acres).

An appraisal report for the lands was completed on January 27, 2003 by D.A. McGugan & Associates. This report was acceptable to Hydro One Networks Inc. and was used to establish the purchase price contained in their Agreement of Purchase and Sale.

Based on the appraisal report, a fair market value of $34,350.00 was determined.

The offer is open for acceptance until November 21, 2004.

The value of the land is consistent with the value paid by the City for similar lands in the area required for Counter Street-Elliott Avenue Extension.

EXISTING POLICY/BY-LAW:

Resolution dated September 12, 1995 (Clause 3, Report #104)
Development Charges By-Law No. 99-328
Procedural By-Law No. 98-1

LINK TO STRATEGIC PLAN:

A long range infrastructure plan
Transportation Master Plan

FINANCIAL CONSIDERATIONS:

Funds were set aside in the 1999, 2002 and 2003 Capital Budgets for the purchase of property and construction of the Counter Street-Elliott Avenue realignment. Total costs to purchase these properties is $34,350.00 plus GST and will be financed 75% by municipal taxes and 25% by development charges as outlined in the Development Charges By-Law. Therefore, the distribution of costs is as follows:

Municipal Tax $25,762.50 plus GST
Development Charges $ 8,587.50 plus GST

As part of the purchase agreement, additional costs such as legal fees, surveys and other commitments as outlined in the Agreement will be distributed in the 75/25 ratio.
One additional parcel of land remains to be purchased for this project. A 3 meter by 3 meter day lighting triangle is required at the northeast corner of the Division Street and Elliott Avenue intersection. The cost to purchase this parcel is estimated to be $5,000.00.

CONTACTS:

Terry Willing, Acting Commissioner, Planning & Development Services – 384-1770 ext. 3181
Speros Kanellos, Manager of Engineering Division – 384-1770, ext. 3133

DEPARTMENTS/OTHERS CONSULTED AND AFFECTED:

Legal Services Division, Corporate Services
Finance Division, Corporate Services

NOTICE PROVISIONS:

N/A

APPENDICES:

Appendix “A” – Site Location Sketch
Appendix “B” – Agreement of Purchase and Sale from Hydro One Networks Inc.

Terry Willing, Acting Commissioner
Planning & Development Services

Bert Meunier
Chief Administrative Officer
AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made and entered into as of this ___ day of ______________, 2004,

BETWEEN:

HYDRO ONE NETWORKS INC.,

(of the "Vendor")

OF THE FIRST PART

AND:

CITY OF KINGSTON

(of the "Purchaser")

OF THE SECOND PART

WITNESSETH THAT in consideration of the mutual covenants, agreements and payments herein provided, the parties hereto covenant and agree as follows:

1.0 OFFER

1.1 The Purchaser hereby offers to buy from the Vendor certain lands and premises of the Vendor, all as more particularly described in Schedule "A" annexed hereto (the "Property"), upon and subject to the terms and conditions hereinafter set forth.

1.2 The Purchaser agrees that this Offer shall be irrevocable by it until 4:00 p.m. on the 21st day of November, 2004 after which time, if not accepted, this Offer shall be null and void and the Purchase Price shall be returned to the Purchaser without interest or deduction.

1.3 The Purchaser acknowledges having inspected the Property prior to submitting this Offer and understands that upon acceptance of this Offer by the Vendor there shall be a binding agreement of Purchase and Sale between the Purchaser and the Vendor.

2.0 PURCHASE PRICE

2.1 The purchase price to be paid by the Purchaser to the Vendor for the Property shall be the sum of Thirty-four Thousand, Three Hundred and Fifty Canadian Dollars ($34,350.00) (the "Purchase Price"), payable to the Vendor at the time of execution of this Agreement.

3.0 CLOSING

3.1 The closing of this transaction shall take place within ninety (90) days of execution of this Agreement (the "Closing").
3.2 On Closing:

(a) vacant possession of the Property shall be given to the Purchaser unless otherwise provided as follows:

**SEE SCHEDULE "B"**

(b) Rents, realty taxes, local improvement charges, water and unmetered utility charges and the cost of fuel as applicable shall be apportioned and allowed to the date of completion (the day itself to be apportioned to the Purchaser). With respect to realty taxes, the Vendor may, at its option, adjust same as if such taxes had been paid in full by the Vendor, notwithstanding that same may not, by closing, have been levied or paid, subject however to readjustment upon the actual amount of such taxes being ascertained;

(c) In addition to the Purchase Price, the Purchaser shall pay and the Vendor will collect Goods and Services Tax ("GST") in the amount of 7% of the Purchase Price (or the amount then applicable) together with the Purchase Price, unless the Purchaser provides at the time of Closing a satisfactory declaration and indemnity in favour of the Vendor stating that the Purchaser is a registrant for the purposes of GST under the Excise Tax Act, R.S.C. 1985, c. E-15, as amended, and covenants with the Vendor to pay all GST payable in connection with this transaction directly to Revenue Canada, indicating the Purchaser's registration number, that such registration is in good standing, that the Purchaser is acquiring the Property as principal, and that the Purchaser agrees to indemnify and save harmless the Vendor against all loss or costs incurred as a result of any claim, suit or liability whatever with respect to the payment of any GST arising out of the sale of the Property, including any penalties, interest or other charges.

4.0 REPRESENTATIONS AND WARRANTIES OF VENDOR

4.1 The Vendor makes no representations or warranties of any kind, either expressed or implied, as to the condition of the Property, the subsoil, environmental matters, condition of structures, if any, or any other matters respecting the Property whatsoever, including the use to which it may be put and its zoning. The Purchaser shall accept the Property and any improvements thereon on Closing on an "As Is, Where Is" condition. The term "As Is, Where Is" herein means in its condition or state at the date of execution by the Purchaser of this Agreement and without any agreement, representation, warranty or obligation to inform of any kind (except as required by law) including, more particularly, as to the suitability of the Property for development, the existence of latent defect (whether known or not) and the quality of the Property including any environmental conditions thereof and subject to all present, and future claims, liabilities, suits, actions, penalties and investigations in progress or which may in the future arise directly or indirectly with respect to the Property or the condition thereof.

4.2 The Purchaser shall be allowed thirty (30) days from the date of the notice as required in Section 9.1 herein (the "Inspection Period") to satisfy itself with respect to all matters respecting the Property including its present state of repair and condition and any structures thereon, all encumbrances and all regulations and by-laws governing the Property and the Vendor shall permit the Purchaser, its employees, engineers, surveyors, consultants and other agents access to the Property for the purposes of making soil, ground-water, environmental or other inspections, tests, measurements or surveys in, on or below the Property at the Purchaser's sole cost and expense provided that the Purchaser shall have first given the Vendor 48 hours notice of its need.
for such access and provided that the Purchaser takes all reasonable care in the conduct of such
inspections, surveys and tests and restores the Property to its prior condition following such
inspections and tests. The Purchaser shall indemnify and save harmless the Vendor from and
against all losses, claims, demands, costs, damages, expenses and liabilities whatsoever arising
out of its presence on the Property or of its activities on or in connection with the Property.

4.3 If for any reason the Purchaser, acting reasonably, is not satisfied with respect to such matters, it
may deliver a notice (the "Notice of Termination") to the Vendor prior to the expiry of the
Inspection Period indicating that it is not satisfied with respect to such matters and desires to
terminate this Agreement and release the Vendor from any further obligations. Upon delivery by
the Purchaser of a Notice of Termination to the Vendor, the Purchaser shall deliver to the Vendor
copies of all reports, records, test results and surveys in its possession or control, and this
Agreement shall be at an end and the Vendor shall return the Purchase Price to the Purchaser
without interest or deduction and neither Party shall have any further obligation to the other
respecting this Agreement. The Purchaser covenants and agrees that all environmental reports
including but not limited to all environmental assessments, field reports, soil sampling data and
groundwater sampling data and the information contained therein is strictly confidential and the
Purchaser represents and warrants that neither the Purchaser nor its employees, or agents will
release the reports or any of the information contained therein to any other individual or
corporation, or to any federal, provincial, or municipal agency or institution or to any other
government body, domestic or foreign unless compelled to do so by competent judicial or
administrative authority.

4.4 In the event the Purchaser does not deliver Notice of Termination within the Inspection Period,
subject only to Section 5.1 hereof the Purchaser shall be conclusively deemed to have waived all
requisitions concerning any matters relating to the Property and the Purchaser accepts full
responsibility for all conditions related to the Property, and the Purchaser shall comply with all
orders relating to the condition of the Property issued by any competent government authority,
court or administrative tribunal, including any order issued against the Vendor. The Purchaser
shall be responsible for and hereby indemnifies and saves harmless the Vendor from any costs,
including legal and witness costs, claims, demands, civil actions, prosecutions, or administrative
hearings, fines, judgements, awards, including awards of costs, that may arise as a result of the
condition of the Property, any order issued in connection with the condition of the Property, or
any loss, damage, or injury caused either directly or indirectly as a result of the condition of the
Property. The covenants and obligations of the Purchaser contained in Article 4 shall not merge
but shall survive the Closing or other termination of this Agreement for any reason whatsoever
and shall be a continuing obligation of the Purchaser.

4.5 The information comprising the information package provided by the Vendor, if any, or any
comments made by employees, contractors or agents of the Vendor and any plans or drawings
that may have been provided by the Vendor, is for the assistance of the Purchaser in allowing it
to make its own inquiries. The Vendor makes no representations or warranties about and takes
no responsibility for the accuracy or completeness of information it has provided, and it is
expressly agreed that the Vendor makes no representations or warranties, and there are no
collateral agreements affecting the purchase of the Property or this Agreement, except as may be
expressly set forth in this agreement.

4.6 In addition to Section 4.3 herein, both prior to the Closing Date and, if this Agreement is
terminated for any reason whatsoever, after the Closing Date, the Purchaser for itself, its
employees, engineers, surveyors, consultants and other agents agrees that they shall not, except
as required by law, disclose to anyone or use for any purpose other than the purpose
contemplated by this Agreement any information concerning the vendor and the Property whether such information was disclosed by the Vendor or obtained by the Purchaser, its employees, engineers, surveyors, consultants and other agents through its investigations and inquiries.

The Purchaser shall hold and shall cause all of its employees, engineers, surveyors, consultants and other agents to hold all such information in the strictest confidence, except as required by law and if this Agreement is terminated for any reason whatsoever, the Purchaser shall deliver and shall cause its employees, engineers, surveyors, consultants and other agents to deliver forthwith to the Vendor all documents, records, reports and all other information or data relating to the Property which the Purchaser obtained from the Vendor or otherwise through its investigations and inquiries. The Purchaser agrees to indemnify the Vendor for any loss or damage arising out of its breach of this paragraph.

5.0 TITLE SEARCH PERIOD

5.1 Purchaser shall be entitled until 30 days after the last day of the Inspection Period, to investigate title to the Property at its own expense (the "Title Search Period"), to satisfy itself that there are no outstanding encumbrances, liens or work orders, other than encumbrances permitted in accordance with Section 5.2.

5.2 The following shall be permitted encumbrances and shall not constitute a restriction, encumbrance or defect in title for the purpose of this Agreement:

(a) any registered restrictions or covenants that run with the Property including public or private rights-of-way, and all minor easements for the supply of utilities to the Property or adjacent properties;

(b) any registered agreements with municipalities and publicly or privately regulated utilities including, without limitation, water, electricity, sewage, gas, pipeline, railway, telephone or cablevision or other telecommunication service;

(c) any encroachments as may be revealed on an up-to-date survey or physical inspection of the Property;

(d) any registered or unregistered easements, licenses, leases or rights in favour of the Vendor including any easement(s) to be reserved to the Vendor as provided for in Section 6.4 of this Agreement and the lease to be granted to the Vendor as provided for in Section 6.7 of this Agreement; and

(e) the Permitted Encumbrances set out in Schedule "B" annexed hereto.

The Purchaser agrees to satisfy itself with respect to compliance with all such agreements, restrictions or covenants referred to herein or in Section 5.1 and agrees that the Vendor shall not be required to provide any evidence of compliance with same.

5.3 Provided that the title to the Property is good and free from all encumbrances except as aforesaid, if within the Title Search Period, any valid objection to title is made by the Purchaser in writing to the Vendor together with documentary verification thereof, and which the Vendor shall be unwilling or unable to remove and which the Purchaser will not waive, this Agreement, notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an
end and the Purchase Price shall be returned to the Purchaser, without interest or deduction, and
the Vendor shall not be liable for any costs or damages and the Vendor and the Purchaser shall
be released from all obligations hereunder, and the Vendor shall also be released from all
obligations under this Agreement, save and except those covenants of the Purchaser expressly
stated to survive Closing or other termination of this Agreement. Save as to any valid objection
to title made in accordance with this Agreement and within the Title Search Period, and except
for any objection going to the root of title, Purchaser shall be conclusively deemed to have
accepted Vendor's title to the Property.

5.4 The Vendor and Purchaser agree that there is no condition, express, or implied, representation or
warranty of any kind that the future intended use of the Property by the Purchaser is or will be
lawful except as may be specifically stipulated elsewhere in this Agreement.

5.5 The Purchaser shall not call for the production of any title deed, abstract, survey or other
evidence of title to the property except such as are in the possession or control of the Vendor.
The Vendor agrees that, if requested by the Purchaser, it will deliver any sketch or survey of the
Property in its possession or within its control to the Purchaser as soon as possible and prior to
the expiry of the Title Search Period.

6.0 REPRESENTATIONS AND WARRANTIES OF PURCHASER

6.1 The Purchaser covenants and agrees to execute and deliver to the Vendor on or before closing, a
release and indemnity in the Vendor’s standard form, from any and all claims, demands, actions
or causes of action, existing and future, caused by, arising from, or resulting from contamination
of the Property or adjacent lands.

6.2 The Purchaser is duly authorized and has the legal right and authority to enter into and carry out
the terms of this Agreement and to keep and perform the obligations of the Purchaser provided
herein.

6.3 The Purchaser shall, at its own cost, forthwith make such investigation as the Purchaser deems
appropriate of the Property and Vendor's title as provided for in this Agreement and shall notify
the Vendor of any objection to title, together with a complete copy of any documents and other
material information related thereto prior to the expiry of the Inspection Period and Title Search
Period, failing which the Purchaser shall be conclusively deemed to have accepted the Vendor’s
title to the Property.

6.4 The Purchaser covenants and agrees that the sale of the Property shall be subject to the
reservation of an easement in favour of the Vendor in, over, along, across, upon or under part of
the Property and, the Purchaser shall enter into an Agreement/Transfer therefor, in the Vendor’s
standard registerable form and such Agreement/Transfer to be registered on title. The Purchaser
shall execute the Transfer/Deed of Land acknowledging such reservation of easements, in
consideration of the completion of this transaction and at no cost or expense to the Vendor. The
legal description of the easement to be reserved and the Vendor’s standard form of such
Agreement/Transfer are set in Schedule “C” annexed hereto.

6.5 The Purchaser warrants to the Vendor that no one retained by the Purchaser is entitled to any fee
or commission payable by the Vendor in respect of this transaction by reason of having
introduced the Property to the Purchaser or otherwise acted as a broker, agent or salesman in
connection with this transaction and the Purchaser hereby indemnifies and saves harmless the
Vendor in respect of any claim by such a person for any fee, commission or reimbursement based
6.6 The Purchaser agrees to indemnify and save harmless the Vendor from and against any claims whatsoever for any commission or other remuneration payable or alleged to be payable to any finder, broker, agent or other intermediary who has acted for the Purchaser in connection with the transactions contemplated herein.

7.0 INSURANCE

7.1 Until the completion of the sale, all buildings on the property shall be and remain at the risk of the Vendor and the Vendor shall hold all insurance policies and the proceeds thereof in trust for the parties as their interests may appear. In the event of substantial damage, the Purchaser may either (a) terminate this Agreement on written notice to the Vendor, at the earlier of five (5) business days of receiving notification of such damage, or prior to Closing, and the Purchase Price shall be returned to the Purchaser without interest or deduction; or (b) take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on Closing.

8.0 RESTRICTIONS AND LIMITATIONS

8.1 This Agreement shall be effective to create an interest in the Property only if the applicable subdivision control provisions of the Planning Act, R.S.O. 1990, c. P.13, as amended, are complied with by the Purchaser prior to Closing. Purchaser shall forthwith make any application to the local Committee of Adjustment or Land Division Committee for any consent that may be required pursuant to the Planning Act, and the Vendor agrees to execute promptly, on request, any application or authorization required by the Purchaser in that regard. In the event that any such application for consent is denied, or any condition imposed by such body is unacceptable to the Vendor, this Agreement shall be terminated and the Purchase Price returned to the Purchaser without interest or deduction.

8.2 The Purchaser acknowledges that the Lands and/or parts thereof are or were formerly owned by the Vendor and/or companies affiliated with the Vendor. The Purchaser further acknowledges that the Lands have been used for the following purpose among others; a transformer station.

8.3 The Purchaser agrees to comply with any of the Vendor's requirements relating to environmental concerns that may have to be addressed and for which protective or environmental measures may have to be undertaken by reason of the proximity of the Property to other lands or operations of the Vendor on lands adjacent to, or within three hundred (300m) metres of the Property (the "Hydro Lands"), if the intended use of the Property by the Purchaser is for residential or any other environmentally sensitive development; provided that such requirements do no unduly impair the Purchaser's ability to develop the Property for its intended use.

8.4 The Vendor will not be responsible for any complaints or claims arising from the use of facilities and/or operations on, over or under the Hydro Lands. The Purchaser shall through restrictive covenants to be registered on title to the Property and all agreements of purchase and sale or leases provide notice to the public that the protective or environmental measures implemented are not to be tampered with or altered and further that the owner from time to time shall have the sole responsibility for and shall maintain these measures to the satisfaction of the Vendor.

8.5 The Purchaser shall not assign this Agreement without the consent of the Vendor, which consent
may be arbitrarily withheld. If the Vendor consents to any assignment, the Purchaser shall cause
the Assignee and the Purchaser, to covenant in writing in favour of the Vendor to be jointly and
severally bound by and to jointly and severally perform their respective obligations of this
Agreement. The Purchaser shall not be released from his liabilities and obligations hereunder in
the event of an assignment.

9.0 ADDITIONAL PROVISIONS

9.1 This Agreement is conditional upon the approval of the Vendor’s stakeholders/board, such
approval to be obtained 10 business days following the date of acceptance by the Vendor.
Unless the Vendor delivers notice in writing to the Purchaser within this time period, confirming
that the preceding condition has been satisfied or waived, this Agreement of purchase and sale
shall be null and void, and the Purchase Price shall be returned to the Purchaser, without interest
of deduction.

9.2 The Transfer/Deed of Land (the "Transfer"), save for Land Transfer Tax Affidavits, shall be
prepared in registerable form by the Vendor, and the Purchaser covenants at its cost to register
the Transfer on Closing. Provided that the Vendor and its solicitor shall not be required to
execute any of the Planning Act statements contained in the Transfer/Deed of Land, it being
understood and agreed that the Purchaser shall satisfy itself as to the compliance of this
transaction with all Planning Act provisions, and shall comply with all obligations of the
Purchaser as set out in Section 8.1 hereof.

9.3 Vendor shall be responsible for and agrees to pay any applicable commission, negotiated and
payable in accordance with a listing agreement with the Vendor's agent, upon successful Closing
of the transaction contemplated by this Agreement, which commission shall be paid out of the
proceeds of the Purchase Price.

9.4 Except as otherwise provided herein, each Party shall be responsible to pay its own taxes, legal
costs, and the cost of preparation and registration of its own documents.

9.5 Time shall in all respects be of the essence hereof provided that the time for doing or completing
of any matter provided for herein may be extended or abridged by an agreement in writing signed
by the Parties or by their respective solicitors who are specifically authorized in that regard.

9.6 Any tender of documents or money hereunder may be made upon the Parties or their respective
solicitors on the Closing day. Money may be tendered by bank draft or cheque certified by a
Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse
Populaire.

9.7 For the purpose of this Agreement, the term "date of acceptance" shall be deemed to mean the
date of acceptance by the Vendor or, in the alternative, if this agreement is subject to offers and
counter-offers, then that date upon which the final acceptance of any counter-offer is indicated
by ultimate acceptance by the counter-offeree.

9.8 Where this Agreement requires notice to be delivered by one party to the other, such notice shall
be given in writing and delivered either personally, or by pre-paid registered post or by
telecopier, by the party wishing to give such notice, or by the solicitor acting for such party, to
the other party or to the solicitor acting for the other party at the addresses noted below: in the
case of notice to the Vendor, to it in care of
may be arbitrarily withheld. If the Vendor consents to any assignment, the Purchaser shall cause the Assignee and the Purchaser, to covenant in writing in favour of the Vendor to be jointly and severally bound by and to jointly and severally perform their respective obligations of this Agreement. The Purchaser shall not be released from his liabilities and obligations hereunder in the event of an assignment.

9.0 ADDITIONAL PROVISIONS

9.1 This Agreement is conditional upon the approval of the Vendor’s stakeholders/board, such approval to be obtained 10 business days following the date of acceptance by the Vendor. Unless the Vendor delivers notice in writing to the Purchaser within this time period, confirming that the preceding condition has been satisfied or waived, this Agreement of purchase and sale shall be null and void, and the Purchase Price shall be returned to the Purchaser, without interest of deduction.

9.2 The Transfer/Deed of Land (the "Transfer"), save for Land Transfer Tax Affidavits, shall be prepared in registerable form by the Vendor, and the Purchaser covenants at its cost to register the Transfer on Closing. Provided that the Vendor and its solicitor shall not be required to execute any of the *Planning Act* statements contained in the Transfer/Deed of Land, it being understood and agreed that the Purchaser shall satisfy itself as to the compliance of this transaction with all *Planning Act* provisions, and shall comply with all obligations of the Purchaser as set out in Section 8.1 hereof.

9.3 Vendor shall be responsible for and agrees to pay any applicable commission, negotiated and payable in accordance with a listing agreement with the Vendor's agent, upon successful Closing of the transaction contemplated by this Agreement, which commission shall be paid out of the proceeds of the Purchase Price.

9.4 Except as otherwise provided herein, each Party shall be responsible to pay its own taxes, legal costs, and the cost of preparation and registration of its own documents.

9.5 Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by the Parties or by their respective solicitors who are specifically authorized in that regard.

9.6 Any tender of documents or money hereunder may be made upon the Parties or their respective solicitors on the Closing day. Money may be tendered by bank draft or cheque certified by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse Populaire.

9.7 For the purpose of this Agreement, the term "date of acceptance" shall be deemed to mean the date of acceptance by the Vendor or, in the alternative, if this agreement is subject to offers and counter-offers, then that date upon which the final acceptance of any counter-offer is indicated by ultimate acceptance by the counter-offeree.

9.8 Where this Agreement requires notice to be delivered by one party to the other, such notice shall be given in writing and delivered either personally, or by pre-paid registered post or by teletypewriter, by the party wishing to give such notice, or by the solicitor acting for such party, to the other party or to the solicitor acting for the other party at the addresses noted below: in the case of notice to the Vendor, to it in care of:
Mr. David F. Ellis  
Real Estate Services  
P.O. Box 4300  
Markham, Ontario  
L3R 5Z5  
Telecopier: (905) 946-6231

and, in the case of notice to the Purchaser, to it in care of:

Mr. Speros Kanellos  
Manager of Engineering  
City of Kingston  
216 Ontario Street  
Kingston, Ontario  
K7L 2Z3  
Telecopier: (613) 384-7105

Such notice shall be deemed to have been given, in the case of personal delivery, on the date of delivery, and, where given by registered post, on the third business day following the posting thereof, and if sent by telecopier, the date of delivery shall be deemed to be the date of transmission if transmission occurs prior to 4:00 p.m. (Toronto time) on a business day and on the business day next following the date of transmission in any other case. It is understood that in the event of a threatened or actual postal disruption in the postal service in the postal area through which such notice must be sent, notice must be given personally as aforesaid or by telecopier, in which case notice shall be deemed to have been given as set out above.

9.9 The Parties acknowledge that there are no covenants, representations, warranties, agreements or conditions, express or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Agreement save as expressly set out in this Agreement and that this agreement and all Schedules hereto constitute the entire Agreement between the parties and may not be modified except as expressly agreed between the Vendor and Purchaser in writing.

9.10 Should any provision or provisions of this Agreement be declared illegal or unenforceable, it or they shall be considered separate and severable from the Agreement and its remaining provisions shall remain in force and be binding upon the parties hereto as though the said provision or provisions had never been included.

9.11 No act or omission or delay in exercising any right or enforcing any term, covenant or agreement to be performed under this Agreement shall impair such right or be construed as to be a waiver of any default or acquiescence in such failure to perform, unless such waiver shall be given or acknowledged in writing.

9.12 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

9.13 This Agreement and any right or interest transferred hereby shall not be registered on title to the Property.

9.14 The provisions of the attached Schedules "A", "B", and "C" shall form part of this Agreement as if set out herein.
9.15 Notwithstanding any terms or conditions outlined in the printed portion herein, any provisions written or typed into this Offer shall be the true terms and shall supersede the printed portion in respect to the parts affected thereby. This Agreement shall constitute the entire agreement between the Purchaser and Vendor and there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Property or supported hereby other than as expressed herein in writing. This Agreement shall be read with all changes of gender or number required by the context.

9.16 This Agreement and everything herein contained shall operate to the benefit of, and be binding upon, the respective successors, permitted assigns and other legal representatives, as the case may be, of each of the Parties hereto.

9.17 THE PURCHASER ACKNOWLEDGES THAT A CONSUMER REPORT CONTAINING CREDIT AND/OR PERSONAL INFORMATION MAY BE EITHER REFERRED TO OR PREPARED IN CONNECTION WITH THIS TRANSACTION.

IN WITNESS WHEREOF the Parties hereto have executed this agreement by their duly authorized signing officers.

DATED this ________ day of ____________, 2004.

CITY OF KINGSTON

Per: _______________________________
Name: ____________________________
Title: _____________________________

Per: _______________________________
Name: ____________________________
Title: _____________________________

I/We have authority to bind the Corporation.

ACCEPTED this ____________ day of ____________, 2004.

HYDRO ONE NETWORKS INC.

Per: _______________________________
Name: David F. Ellis
Title: Sr. Real Estate Coordinator

I have authority to bind the Corporation.
SCHEDULE "A"

Part of Lot 24, Concessions 2 and 3, City of Kingston, County of Frontenac, designated as Part 1 on Plan 13R-17556.
SCHEDULE "B"

Not Applicable
SCHEDULE "C"

(7) INTEREST/ESTATE TRANSFERRED

RESERVING thereout and therefrom to the Transferor, its successors and assigns until such time as the said Parts have been dedicated as a Public Highway, the right, privilege and easement from time to time and at any time for its servants, agents and contractors to enter on said Parts with all necessary vehicles, supplies and equipment to erect, maintain, operate, inspect, repair, replace, rebuild and remove any works of the Transferor now existing or hereafter constructed on the said Parts and to clear and keep clear the said Parts of all trees, brush, buildings or other structures which in the opinion of the Transferor may interfere with the efficient operation of its said works.

SUBJECT to the condition that the lands herein described are opened and kept open as a Public Highway.
TO: Bert Meunier, Chief Administrative Officer
FROM: Denis Leger, Commissioner of Corporate Services
PREPARED BY: Pat Carrol, Manager of Taxation & Revenue
DATE OF MEETING: 2004-10-19
SUBJECT: New Landowner's Relief from Interest Charges

RECOMMENDATION TO COUNCIL:
That council rescind the following resolution made at the July 17, 2001 council meeting (No. 20):
"that the City of Kingston waive the interest charged until the new registered owner is mailed the tax bill in their name"

ORIGIN/PURPOSE:
The above council resolution should be rescinded in order to comply with the provisions of the Municipal Act, which does not provide council the authority to waive interest charged on taxes for this reason. During the Corporate Services Internal Efficiencies exercise this was identified as an issue.

OPTIONS/DISCUSSION:
The original resolution was approved by council to address the issue that new landowners were not receiving a tax bill from the city in a timely manner. The information used to update the tax roll was typically received months after the transfer of property (sale) occurred; thus, the tax bill had often accumulated interest for unpaid taxes. Staff prepared report C230, dated July 17, 2001, (see Appendix A), and recommended a plan to change practices to ensure landowners received timely notification. The report also summarizes the various sections of the Municipal Act that describes the issuance of tax bills and the responsibilities of landowners to pay their taxes. The report did not discuss the authority for council to cancel interest charged on taxes.
It is important to note that taxes are a special lien on the land and may be recovered from the taxpayer, originally assessed, and any subsequent owner of the land. Additionally, late payment charges, such as interest, are deemed to be taxes when they have been imposed. Section 354 of the Municipal Act provides the authority for council to write off taxes, as follows:

a) Deemed to be uncollectible after an unsuccessful tax sale;
b) Taxes are no longer payable as a result of tax relief under:
   i. Tax deferral (section 319);
   ii. An overpayment made as a result of an error or a change in assessment under the Assessment Act (section 345);
   iii. Cancellation, reduction, refund of taxes made in accordance with Section 357(1);
   iv. Overcharges, pursuant to an application brought under section 358;
   v. Tax reductions approved by by-law for capped classes, per section 362;
   vi. Vacant unit rebates, per section 364;
   vii. Cancellation, reduction or refund of taxes, as approved in a by-law for eligible property, pursuant to section 365;
   viii. Cancellation of taxes, pursuant to an approved by-law for environmental properties (brownfields), section 365.1;
   ix. Tax reductions for heritage properties, section 365.2; or,
   x. A decision of any court.

This list does not include cancellation of taxes, which includes waiving of interest charges, for new landowners and therefore no authority exists for council to do so.

We recognize that council was attempting to provide relief for new landowners to overcome inefficiencies in updating tax records. Sales listings from the Municipal Property Assessment Corporation (MPAC) are now being sent on a timelier basis with most listings being received no more than three weeks following registration of the sale. In addition, internal processes are changing to allow the update of new owners when affidavits, confirming new ownership, are provided from solicitors and owners.

EXISTING POLICY/BY-LAW:
Municipal Act, 2001

LINK TO STRATEGIC PLAN:
N/A

FINANCIAL CONSIDERATIONS:
There will be minor financial considerations as a result of this policy change; however, our policies need to align with current legislation.
CONTACTS:

Pat Carrol          Manager of Taxation & Revenue   546-4291   2468
Gerard Hunt        Manager of Finance            546-4291   2205
Hal Linscott       Director, Legal Services       546-4291   1296

DEPARTMENTS/OTHERS CONSULTED AND AFFECTED:
Legal Services

NOTICE PROVISIONS:
N/A

APPENDICES:

Denis Leger
Commissioner of Corporate Services

Bert Meunier
Chief Administrative Officer
TO: Bert Meunier, Chief Administrative Officer
FROM: Denis Leger, Commissioner of Corporate Services
SUBMITTED BY: Gerard Hunt, Manager of Finance
PREPARED BY: Pat Carrol, Manager of Taxation and Revenue
DATE PREPARED: 2001-07-04
DATE OF MEETING: 2001-07-17
SUBJECT: Waiving of Penalty and Interest

RECOMMENDATION:
That the Taxation and Revenue Section proceed with its plan to change its practices for updating tax records for new owners and complete the changes onsite, which will provide new owners timely notification of the City’s tax billing and collection policies; and, that Council support the position that penalty and interest not be cancelled.

ORIGIN/PURPOSE:
The origin of this report is to address the following motion of Council, which was deferred pending receipt of a staff report on April 3, 2001:
“Moved by Councillor Sutherland”
“Seconded by Councillor Beavis”

WHEREAS new landowners do not receive a tax bill from the City of Kingston in a timely manner; and
WHEREAS interest is charged on unpaid tax bills whether the landowner receives a tax bill or not;
THEREFORE BE IT RESOLVED THAT the City of Kingston waive the interest charged until the new registered owner is mailed the tax bill in their name.

OPTIONS/DISCUSSION:
A. Background
Taxes are billed in compliance with the requirements of the Municipal Act. The Act requires that bills be sent to the owner as per the last revised roll (sec. 392). The last revised roll is the yearly assessment roll last returned to the Clerk (Assessment Act, sec. 37). The tax bill notice must be given 21 days before the instalment due date which is set by council in a by-law (Sec. 399). This section also provides that the by-law may require a penalty to apply if the taxes are unpaid. The Act contains a saving provision under Section 401 which provides that “no defect, error or omission in the form or substance of the notice
required by Sec. 392, 395, and 399 invalidates any subsequent proceedings for the recovery of the taxes". Finally, taxes are a special lien on the land and are payable by the owner and any subsequent owner pursuant to Section 382.

When a property changes ownership, there is onus on the new owner to ensure (s)he is obtaining a clear title to the property. Solicitors usually perform this work by ensuring that there are no liens on the property, by examining title at the Registry and Land Titles Office, the Sheriff’s Office and through obtaining tax certificates from the municipality. At the time of the sale of the property, the taxes might be clear (i.e., no arrears or unpaid instalments) and this information is passed along to the purchaser. In other instances there might be arrears, which are generally paid at the closing of the sale, providing the new owner clear title. What is not communicated is the date of the next tax billing or a procedure to introduce the new owner to the tax office to ensure that future notices are sent to the new owner.

Presently, our procedures require tax records be updated to new owners upon receiving a listing from Ontario Property Assessment Corporation (OPAC). OPAC obtains copies of affidavits and other instruments conveying title from the registry/land titles office. The listing is produced every 2 weeks reflecting the affidavits processed since the last listing. The listing is not necessarily reflective of the affidavits registered as it often contains information for sales that occurred up to 3 months prior. Once the listing is received and tax records are updated, a letter is sent to owners of properties having arrears.

B. Issue

The motion presented by Council attempts to resolve a situation: the lack of issuing tax bills in a timely manner to new owners, through the waiving of charges. While this will achieve a resolve for individual taxpayers, it does not address the fundamental cause of the problem. Staff is therefore proposing a process improvement, which will deal with the situation and provide better customer service.

As preamble to discussing/resolving the issue raised, it might be useful to look at this matter from a customer perspective. Citizens are becoming increasingly vocal when they perceive they aren’t receiving good service and look to Council to find a solution. Since beginning my employment with the City of Kingston in May, and as part of my responsibilities as Manager of Taxation and Revenue I have been reviewing the practices of the Tax Section. I am familiar with the issues presented and believe that we can provide a customer-based solution that will resolve this matter.

Following is a discussion of the two issues raised in Council’s motion:

Issuing Tax Bills in a Timely Manner:

The City’s current procedure of updating owners on tax accounts relies on information supplied from OPAC; however, the information provided, while routinely done, is not always received at the most timely juncture (just prior to a tax billing) nor is it absolutely current.

To ensure that new owners are made aware of the City’s billing and collection procedures, and to provide as timely notice as possible, it is recommended that we undertake to expand our service. The first point of contact a new owner would most likely have would be through his/her solicitor. Most solicitors obtain a tax certificate, which certifies the tax status of the property. The tax arrears portion of the tax certificate is legally binding on the City and the Treasurer signs it. Tax certificates are issued for purposes other than property sale, such as mortgages and other liens. Much of the information contained in the tax certificate is prescribed in the Municipal Act. To assist both solicitors and purchasers be aware of their responsibility to pay taxes by due dates it is recommended that a special, brightly-coloured information notice be attached to tax certificates for new property owners (purchasers). This notice would include information about the City’s billing and collection procedures, including pre-authorized payment plan information and billing dates. This recommendation can be implemented immediately.
The second part of this process will be to develop and implement a procedure to ensure new owners receive timely notification of taxes due. This can be accomplished by updating tax accounts upon receiving correspondence from solicitors and others upon conclusion of a sale. Procedures for ensuring valid sales, tracking and filing will need to be set-up to fully implement this. We will work towards establishing this procedure.

Waiving penalty charges:
A survey of eight municipalities reveals that none of them waive penalty when new owners do not receive a tax bill. The City's by-law providing for penalty to be charged on unpaid taxes does not provide any exemptions but requires that penalty shall be added on all taxes. These provisions mirror those provided in the Municipal Act. The Municipal Act also provides that taxes are a special lien on the land and are payable by owners and subsequent owners. It is recommended that the existing by-law continue without change.

EXISTING POLICY/BY-LAW:
City of Kingston By-law no. 2001-42 provides for the levying of penalty and interest, on the first day of default and on the first day of each calendar month, pursuant to Sections 399 (3) and 412 of the Municipal Act, respectively. The rate is 1.25% per month (15% per annum) which is the maximum rate allowed.

FINANCIAL CONSIDERATIONS:
There would be insignificant costs associated with the changes proposed. An anticipated positive outcome of early notification to new owners would be increased use of the City's pre-authorized payment plan.

CONTACTS:
Pat Carrol, Manager of Taxation and Revenue, Corporate Services Department
David Clazie, Supervisor of Taxation & Revenue, Corporate Services Department
Gerard Hunt, Manager of Finance, Corporate Services Department
Sheila Hickey, Director of Client Services, Corporate Services Department
Denis Leger, Commissioner of Corporate Services

DEPARTMENTS/OTHERS CONSULTED AND AFFECTED:
Client Services and Communications Division, Corporate Services Department

Denis Leger
Commissioner of Corporate Services

Bert Meunier
Chief Administrative Officer
REPORT TO COUNCIL

TO: Bert Meunier, Chief Administrative Officer
FROM: Terry Willing, Acting Commissioner, Planning & Development Services
PREPARED BY: Cherie Mills, Supervisor, Land Use Policy, Planning Division
DATE OF MEETING: October 19, 2004
SUBJECT: Kingston Building Conservation Master Plan

RECOMMENDATION TO COUNCIL:

WHEREAS the City Council authorized funds in the 2003 Capital Budget for a Heritage Master Plan, and wished to have benefit of a Building Conservation Master Plan for municipally-owned buildings;

THEREFORE BE IT RESOLVED that the Kingston Building Conservation Master Plan (KBCMP) dated April 2004, be accepted in fulfillment of the Terms of Reference, and that the report be received;

AND BE IT FURTHER RESOLVED that a detailed review and recommendations on the study’s findings will come forward to Council at a later date;

AND BE IT FURTHER RESOLVED that the study be forwarded to the Properties Division, the Cultural Services Division, the Planning Division, and the Kingston Municipal Heritage Committee (LACAC) for review, consideration and the preparation of a strategic report regarding retention and investment for the heritage buildings owned by the City of Kingston.

ORIGIN/PURPOSE:

The purpose of this report is to present the Kingston Building Conservation Master Plan executive summaries and to briefly outline the process undertaken in the study’s preparation.

OPTIONS/DISCUSSION:

On September 23, 2003 City Council approved the hiring the consulting firm of Andre Scheinman Heritage Preservation Consultant and McCormick Rankin Corporation to undertake the Kingston Building Conservation Master Plan (KBCMP) at a cost of $24,500.00.
OPTIONS/DISCUSSION: (Cont’d)

The purpose of the study was to determine the present condition, causes for deterioration and recommended 5 year capital plan for restoring and/or maintaining building envelopes for 17 selected municipally-owned heritage buildings. The study did not include City Hall and the Frontenac County Court House, as it was considered that these are nationally significant buildings that should be given detailed examination in partnership with the Federal government (Parks Canada). City Hall has been dealt with through the Commemorative Integrity Statement for City Hall and the Municipal Accommodation Plan completed with Parks Canada in 2003. It is hoped that a similar Commemorative Integrity Statement will be completed for the County Court House.

The Municipal Accommodation Plan (MAP) was undertaken in 2003 to address strategic facilities planning for the 5 major employment sites of the City of Kingston. This document is the template for all subsequent facilities planning, including the KBCMP. The MAP combined with the Commemorative Integrity Statement (CIS) for City Hall, which was also undertaken in 2003; together provide a comprehensive review of City Hall. This detailed review of Kingston’s most significant heritage structure, is proving to be an excellent model for the City to use to review the future of the other heritage structures currently owned by the City of Kingston. It is hoped that a similar exercise will be done for the Frontenac County Court House.

The executive summaries attached to this report, highlight the significance of a number of sites, defining where reinvestment should go, in the short and long term in order to assure asset longevity from the perspective of the consultant. It is recognized that the next steps in the process are detailed discussions between the Properties Division, the Cultural Services Division and the Planning Division in order to provide recommendations to Council regarding retention and investment.

Introduction – An Architectural Legacy of National Significance

Over time, the City of Kingston has assumed ownership of twenty (20) buildings that represent a remarkable record of Kingston’s history and cultural heritage. Collectively, they represent a nationally significant legacy of 19th / early 20th century architecture, as well as real estate holdings worth tens of millions of dollars. The study speaks to the significance of this collection of assets, and defines the challenges and opportunities they present to the people of Kingston.

The Kingston Building Conservation Master Plan (KBCMP) of seventeen (17) municipally owned heritage buildings has been completed. The study is a detailed review of building conditions and prioritized work schedules. Executive summaries from each building condition assessment have been appended to this report.

In 2002-2003, the City invested $1.7 million dollars in restoration of municipally owned heritage buildings. The Kingston Building Conservation Master Plan (KBCMP) has determined there is a significant capital deficit associated with the 17 buildings assessed. Increasingly, it is apparent that the City of Kingston cannot continue in a pattern of underinvestment in the assets that it owns. Therefore using the findings of this study, staff will have to make strategic recommendations to Council regarding retention and investment.
OPTIONS/DISCUSION: (Cont’d)

Kingston Building Conservation Master Plan – Initial Findings

Most of the 17 municipally-owned heritage buildings in this study are very significant structures because of their age, style of construction, quality of architectural design and historical relationship to the settlement of Kingston. Ranging from an early stone loyalist house, to industrial buildings, to early town halls, they are among the most significant heritage structures in Ontario, and in Canada.

The 17 buildings assessed in this study represent over $31 million dollars in real estate assets (based on current replacement value excluding land and furnishings). This figure represents exact replication of each building.

The American Public Works Association published a document entitled Committing to the Cost of Ownership – Maintenance and Repair of Public Buildings (1990). It identified under-funding as a crucial issue of maintenance, finding that “an appropriate budget allocation for routine maintenance and repair for a substantial inventory of facilities will typically be in the range of 2 to 4 per cent of the aggregate current replacement value of those facilities (excluding land and major associated infrastructures). In the absence of specific information upon which to base the maintenance and repair budget, this funding level should be used as an absolute minimum value". The KBCMP findings suggest Kingston needs to be spending about $1 million dollars a year on maintenance and repair for these 17 buildings. This represents 3% of total replacement costs.

The study has identified a capital deficit of approximately $8.7 million dollars. The study structures this capital deficit as a 5 year capital plan. Urgent repair works that need to be completed in 2004-2005 total $1.3 million dollars. Several of these buildings are in a serious state of deterioration most notably the Imperial Oil Warehouse on Wellington Street, the former CN Train Station on Montreal Street (which Council has previously dealt with), and the Stella Buck building. Unlike City Hall, these buildings have experienced low levels of maintenance, resulting in substantial maintenance backlogs, and premature failure of building systems that have dramatically shortened the assets’ useful service life. These three buildings account for 75% of the capital deficit, approximately $6.4 million dollars.

The executive summaries of the KBCMP are intended to highlight where municipal investment should flow to ensure the most significant buildings are in good condition and appropriately used. As a result of the study and the buildings included in its review, it is concluded that the top sites for investment for the City of Kingston are the Tourist Information Office and the Pump House Steam Museum. Again it is noted that this study excluded City Hall and the Court House in its recommendations.

As well, there are two groups of buildings that are at risk of loss to public use due to arson, collapse or sale by the municipality. Therefore, the future of these buildings needs to be addressed. First are the former town halls of the communities that comprise the City of Kingston that are currently in municipal ownership (Pittsburgh, Kingston Township and Portsmouth town halls). It is recommended that Cultural Services Division determine reuse options for these three sites as community facilities before any potential sale or long term lease agreements are entered into.
OPTIONS/DISCUSSION: (Cont’d)

Kingston Building Conservation Master Plan – Initial Findings

The second set of buildings that require consideration are the J.K. Tett Centre buildings at 370 King Street West. This site constitutes one of the most important historic distillery complexes in Canada. The current cultural uses provide a base for discussing a potential renewal strategy focusing on cultural activity and associated uses similar to the Gooderham and Worts complex in Toronto. The future of these buildings will have to be examined very carefully by the Properties Division and the Cultural Services Division.

This report only mentions the sites not central to a municipal historic buildings strategy as outlined in the study. These sites include buildings at 19-23 Queen Street, the Imperial Oil Warehouse on Wellington Street, and Depot Daycare (610 Montreal Street). Over time, the City of Kingston has assumed ownership of these buildings. Necessary safeguards to ensure preservation of buildings if they are sold by the City of Kingston should be reviewed in a separate report to be prepared by Properties Division.

It should be noted that the report also deals with the former CN train station (810 Montreal Street) which was not owned by the City but was assessed in the BCMP. On April 20, 2004, Council through a recommendation in Report 04-136, exercised their option and respectfully declined the gift of the former Canadian National Rail Station on Montreal Street.

EXISTING POLICY/BY-LAW:

N/A

LINK TO STRATEGIC PLAN:

The Community Strategic Plan identified seven priority areas, one of which was the Official Plan Initiative. The Official Plan contains policies and provides direction for heritage preservation. The Building Conservation Master Plan will provide some direction and will assist the City in the preparation of land use policies for municipally-owned buildings. The KBCMP assists in providing policy direction and background information that is critical for an Official Plan which is defensible at the Ontario Municipal Board.

Other identified initiatives through the strategic planning process include the Cultural Strategic Plan which allows Kingston to place cultural development in the strategic and corporate planning processes. The cultural strategic plan will be expanded to afford opportunities to merge the heritage and arts studies into a long term course of action including the KBCMP and Kingston City Hall Commemorative Integrity Statement.

The Assets & Opportunities Cultural Action Plan identifies the need for an assessment of cultural and heritage resources, a needs analysis to identify the gaps between the need for cultural services and the existing services and programs. The City partnered with Parks Canada to do a ‘commemorative integrity statement’ (CIS) for City Hall which serves as a cornerstone in the overall cultural/heritage assessment and planning process.
FINANCIAL CONSIDERATIONS:
The 2003 Capital Budget allocated $25,000 for this study.

CONTACTS:
Cherie Mills, Supervisor, Land Use Policy, Planning Division, 384-1770, ext. 3289;
Bianca M.V. Bielski, Manager, Planning Division, 384-1770, ext. 3250

DEPARTMENTS/OTHERS CONSULTED AND AFFECTED:
Barclay Mayhew, Manager, Properties Division, 546-4291, ext. 1233;
Ann Pappert, Manager, Cultural Services Division, 546-4291, ext. 1341

NOTICE PROVISIONS:
N/A

APPENDICES:
Appendix 1 – Executive Summaries, Building Conservation Master Plan

Terry Willing, Acting Commissioner of Planning & Development Services

Bert Meunier, Chief Administrative Officer