



**STAFF REPORT  
ACTION REQUIRED**

**TORONTO PORT AUTHORITY PEDESTRIAN TUNNEL  
AND RELATED ISSUES**

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| <b>Date:</b>             | July 11, 2011   |
| <b>To:</b>               | City Council  |
| <b>From:</b>             | City Manager  |
| <b>Wards:</b>            | Ward 20 Trinity-Spadina & Ward 28 Toronto Centre-Rosedale |
| <b>Reference Number:</b> |   |

**SUMMARY**

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This report seeks Council authorization for the City to enter into an agreement with the Toronto Port Authority ("TPA") (the "Master Agreement") consistent with the Term Sheet attached as Attachment A. The Master Agreement will address an exchange of easements between the City and the TPA and the granting of a lease from the City to TPA, along with several related matters. The easement exchange will facilitate the construction of a pedestrian tunnel between the Toronto mainland and the Billy Bishop Toronto City Airport ("BBTCA") located on the Toronto Islands. Initially planned as only a tunnel to provide pedestrian access to the airport, the pedestrian tunnel has the potential to house the City's upgraded water main and sanitary sewer forcemains. The City and TPA agreement will provide both pedestrian infrastructure and financial benefits from the joint tunnel approach. The proposed lease will provide the TPA with access to the Canada Malting Site to stage construction equipment and materials, queue taxis, and provide parking during the construction of the tunnel project. Given that access to the Canada Malting site will likely be phased, this report recommends that City Council direct staff to implement a taxi staging area on lands located east of 450 Lake Shore Boulevard West.

In addition to the easements and lease, the Master Agreement will address the possible relocation of the historic Administration Building currently located on the airport lands to a new site to facilitate its adaptive reuse and will commit the parties to resolving traffic management issues along Eireann Quay.

## RECOMMENDATIONS

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### **The City Manager recommends that:**

1. City Council determine that the decision to declare surplus be made solely by it, and City Council declare surplus a subsurface easement in the City-owned dockwall located at the foot of Eireann Quay, as set out in Attachment A to this report and illustrated in Attachment B (the "Dockwall Easement"), with the intended manner of disposal to be by way of an exchange of easement rights with the Toronto Port Authority ("TPA").
2. In accordance with Chapter 213 of the City of Toronto Municipal Code, Council determine that the requirements to give notice to the public of the proposed disposition and to obtain an appraisal of the fair market value with respect to the disposition of the Dockwall Easement do not apply.
3. The City enter into a Master Agreement with the TPA substantially on the terms and conditions described in this report and set out in the Term Sheet attached as Attachment A to the report dated July 11, 2011 and such further terms and conditions as may be acceptable to the City Manager and the City Solicitor.
4. The City grant the Dockwall Easement to the TPA for a term being the greater of 70 years or the life of the proposed tunnel, for the purpose of constructing and operating a pedestrian tunnel under the Western Gap connecting the TPA lands on the mainland with the Billy Bishop Toronto City Airport, in exchange for the conveyance to the City of easement rights over TPA lands adjacent to portions of City dockwalls as generally illustrated in Attachment C.
5. The appropriate City officials be authorized and directed to take the necessary actions to negotiate, complete and implement the Master Agreement substantially on the terms and conditions agreed to by the City and the TPA, as expeditiously as possible, including, but not limited to, entering into such further and other agreements as are necessary including but not limited to granting and receiving the easements, the lease, and completing any necessary agreements with third parties.
6. City Council direct the Chief Planner and Executive Director of City Planning to expedite an amendment the Zoning By-law for the property located east of 450 Lake Shore Boulevard West, as generally shown in Attachment F to the report dated July 11, 2011, to permit a taxi staging area.
7. City Council authorize the Chief Corporate Officer or their designate to enter into discussions with the TPA for a lease agreement with the TPA for the property located east of 450 Lake Shore Boulevard West as generally illustrated in Attachment F to the report dated July 11, 2011.

8. Council's 2003 decision regarding a fixed link to the Toronto City Centre Airport (now called BBTCA) be revised to permit the proposed pedestrian tunnel.
9. Council authorize the City to receive the conveyance of a sliver of land adjacent to the road allowance near Ashbridges Bay.

## **Financial Impact**

The Toronto Port Authority will provide the funding for the pedestrian portion of this pedestrian tunnel joint project. The City will fund the watermain and forcemain portion of the project. The cost to provide this water infrastructure to the island was originally estimated at \$20-\$22 million. However, as a result of the water infrastructure's relocation into the pedestrian tunnel, the cost of providing this infrastructure should be reduced significantly by approximately \$10 million. Funding for the water infrastructure portion of this joint project will be included in the Toronto Water 2012-2021 10-Year Capital Plan, beginning in 2012.

The TPA will repair, at its sole expense, all damage caused to the City's dockwall arising as a result of the Tunnel's construction, operation, repair and removal. It is anticipated that any improvements required for TPA's use of the Silos site will be borne by the tenant.

The City will not bear any cost for relocation and/or restoration of the Administration Building.

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

## **Equity Impact Statement**

This report is limited to recommendations regarding easement transfers, a lease, approvals related to the City's Official Plan, a building relocation, a land sliver adjustment, and related traffic management issues, none of which raises equity impact concerns. Therefore, an equity impact analysis is not applicable.

## **DECISION HISTORY**

The City, the TPA and the Federal Government entered into a Tripartite Agreement in 1983 which relates to the operation of what is now the Billy Bishop Toronto City Airport (BBTCA). The Tripartite Agreement was amended in 1985, and again in 2003. The Tripartite Agreement did not allow for a bridge or vehicular tunnel to the BBTCA, but the 2003 amendment did allow the construction of a bridge on specific terms and conditions.

After the municipal election in 2003, at a special session on December 3, 2003, Council adopted a decision entitled "Construction of a Fixed Link to the Toronto City Centre

Airport" that, among other things, stated that "the Council of the City of Toronto . . . does not support the construction of a bridge (fixed link) to the Toronto City Centre Airport" and directed that changes consistent with this policy be made to the Tripartite Agreement among the City, the Toronto Port Authority, and the federal government.  
(<http://www.toronto.ca/legdocs/2003/agendas/council/cc031203/cofa.pdf>)

In 2005, the Federal Government adopted a regulation stating that the Toronto Port Authority shall not use, or authorize or permit another person to use, the port to build a bridge or similar fixed link between the mainland of the City of Toronto and the Toronto Islands. This regulation is currently under review by the Federal Government and proposed to be amended to permit the pedestrian tunnel.

## **ISSUE BACKGROUND**

### **1. The Tri-partite Agreement for the operation of the Billy Bishop Airport**

In June 1983, the three owners of the island airport lands, namely the former City of Toronto, The Toronto Harbour Commissioners (now the Toronto Port Authority), and Transport Canada entered into a 50-year Tripartite Agreement governing BBTCA operations. This Agreement remains in effect today and sets out the terms for the operation of the BBTCA. The agreement specifically prohibits additional runways or extensions to runways, a bridge or vehicular tunnel to the Island, turboprop or piston aircraft generating excessive noise, and jet operations (with the exception of medical evacuations, other emergency medical uses as required, and the Canadian National Exhibition air show). The agreement also contains terms addressing the provision of easements across airport lands and the decommissioning of the Terminal Building (also known as the Administration Building).

### **2. TPA's Pedestrian Tunnel Project and the need for a Dockwall Easement**

The TPA owns and operates the BBTCA on the western edge of the Toronto Islands. This airport provides general aviation and scheduled commercial services with annual volumes of approximately 1 million passengers. The airport is only accessible via an existing ferry service from Eireann Quay across the Western Channel to the airport which makes four crossings per hour. While this service is able to accommodate the projected growth of the airport, the restricted number of crossings and waiting periods creates an uneven flow of passengers entering and exiting the airport. The proposed pedestrian tunnel is anticipated to spread the flow of passengers to reduce the current 15 minute peaks in passenger volumes created by the ferry.

The TPA is undertaking a public-private partnership to finance the construction and operation of the pedestrian tunnel. Through a Request for Qualifications, the TPA has identified a short-list of three qualified proponents to participate in the Request for Proposals.

The initial tunnel route across the Western Gap utilized land owned by the TPA, this route resulted in a change in direction under the north ferry slip. During the Environmental Assessment process, an alternative route was proposed that included a direct route under the Western Channel but required access under the City's dockwall. Realizing that a straight tunnel would result in cost savings and would create a more desirable structure, the TPA Chairman sent a letter to the Mayor requesting that the City grant the TPA an easement under – or otherwise sell – the City's dockwall to permit a direct route for the proposed pedestrian tunnel. According to the TPA, access to the City-owned dockwall would reduce tunnel construction costs by \$3.5 million and provide a more direct route between the mainland and the island airport. The TPA offered to purchase the dockwall from the City on an "as-is, where-is" basis and assume all required structural dockwall repairs; however, the City has indicated it is not interested in selling the dockwall to the TPA.

In a letter, dated March 2, 2011, Mayor Ford responded to the TPA, offering his support for the TPA's request for a dockwall easement and asking that the City Manager, in consultation with City staff, enter into discussions with the TPA concerning the dockwall easement and related issues. The Mayor's letter further advised that any discussions would need to address taxi and traffic problems along Eireann Quay and that any agreement between the City and the TPA would need to be approved by City Council.

In response to an earlier TPA proposal to construct a bridge to the airport, on December 3, 2003, Council had adopted a decision entitled "Construction of a Fixed Link to the Toronto City Centre Airport" that among other things, stated that "the Council of the City of Toronto . . . does not support the construction of a bridge (fixed link) to the Toronto City Centre Airport". Subsequent to Council's decision, Transport Canada enacted a regulation barring such a project. Consequently, the TPA focused on construction of a pedestrian tunnel which is permitted under the Tripartite Agreement.

### **3. Toronto Water's Toronto Island Watermain and Sanitary Sewer Forcemain Project**

In the Fall of 2006, the City of Toronto initiated a Class Environmental Assessment to determine the preferred route for a new watermain to supply water from the mainland to Toronto Islands, servicing Island Residents and the BBTCA. This study was initiated in response to the Island Water Treatment Plant being converted to a dedicated supply plant for the mainland. The study also examined the replacement of an existing aging section of watermain from the Island Water Treatment Plant to Hanlan's Point.

One segment of the proposed watermain would run from the intersection of Bathurst Street and Queen's Quay to the southern limit of the island airport. That segment would need to cross the Western Channel, through a deep rock tunnel, and then continue under airport lands owned by the TPA at an estimated cost of \$20-22 million. Given the significant cost of this proposal and competing water infrastructure priorities, Toronto Water had deferred plans to proceed with this project at this time.

The design of the proposed pedestrian tunnel proposal provides an opportunity to incorporate the proposed watermain while also providing for the construction of a new sanitary sewer forcemain to service the Toronto Island to replace two existing aging sanitary sewer forcemains. The pedestrian tunnel and its connections are shallower than the above-noted deep rock tunnel concept and would represent a significant cost saving to Toronto Water. This option requires the TPA to permit the construction of the watermain across the airport lands, through easements granted by the TPA, to enable construction and operation of the City's watermain and sanitary sewer forcemains.

#### **4. Community Consultation**

The TPA advises that throughout 2010 and 2011 their senior staff have met with community organizations and attended neighbourhood association meetings to listen to community interests and answer questions. In particular, TPA has established a Community Liaison Committee, composed of neighbourhood representatives, City Councillors for Wards 20 and 28, stakeholders, and service providers, and has conducted public consultations as part of its environmental review process for the tunnel project that commenced in March 2010.

In addition to community consultation meetings, the TPA advised that it has adopted other measures to address community concerns. These measures include a new noise management system that includes a five-day customer service commitment to respond to complaints, an expanded security staff to manage traffic and meetings with taxi associations and City staff in the Municipal Licensing and Standards Division to address taxi congestion and operations along Eireann Quay.

The TPA plans to continue consulting with community groups, staff of The Waterfront School at 635 Queens Quay West, the Harbourfront Community Centre at 627 Queens Quay West, and the Ward Councillors about the pedestrian tunnel project and the request to lease the Canada Malting Silos Site.

#### **5. Passenger Vehicle Traffic and Taxis**

Key concerns raised by the community in the vicinity of the airport have been the traffic safety, pollution, and noise issues that have resulted from the increased passenger vehicle traffic and taxi activity associated with airport operations. Similar issues will likely result from construction vehicles and equipment staged in the vicinity of the ferry slip while the pedestrian tunnel is constructed.

In order to mitigate traffic congestion during construction, the TPA has submitted a proposal to lease the Canada Malting Site from the City. The Canada Malting Site is shared by the Harbourfront Community Centre and School, a Forestry Yard, Ireland Park and the heritage silo structures once owned by Canada Malting. This site will be subject to a Master Planning exercise by Build Toronto in the upcoming years. Details about the lease terms are provided in the Comments section below.

## **6. Decommissioning and Relocation of the TPA Administration Building in time for construction**

The Toronto Island Airport Terminal Building (also known as the Administration Building) is a National Historic Site and is included on the City of Toronto Inventory of Heritage Properties. The building is a two-storey, wooden aviation terminal with a central control tower. It is located on the airport lands directly south of the island airport ferry slip.

Designed and built by the Toronto Harbour Commission in 1938-1939, the Administration Building was part of the first group of aviation terminals to be funded and approved by the newly formed Department of Transport, as part of the development of the federally funded Trans-Canada Airway. It is one of a few early terminal buildings to have survived and is likely the oldest, extant, terminal building of its kind in Canada.

The Tripartite Agreement includes a provision that addresses the future of the terminal in the event that the TPA determines that it is no longer required for the operation of the airport. In such circumstances, the City is to be given notice and within 180 days of receiving the notice, must decide whether to take over the Building.

In advance of formally notifying Transportation Canada who, in turn, would issue the official decommissioning letter, the TPA already has advised the City that the Administration Building is no longer appropriate for airport uses and is required to be relocated. In an effort to help expedite the Tripartite Agreement timeframes, the TPA has offered to contribute \$ 250,000 toward the cost of preparing, relocating, building a foundation for, and reassembling the building securely to a site that is acceptable to the City and Transport Canada.

After thorough consideration, City staff has concluded that taking ownership of the building is not in the City's interest, but that the City should assist in efforts to have a third party own and operate the building in a manner consistent with the building's Heritage status.

Although no final decision has been made on the future of the building, discussions between the Toronto Port Authority, the City and potential partners (i.e. Downsview Park) are on-going and positive. The Term Sheet provides that the parties will commit to continuing to work together cooperatively to find an agreeable solution.

## **COMMENTS**

The City and the TPA have negotiated the provisions of a term sheet which will form the basis for terms and conditions to be incorporated into the Master Agreement a copy of which can be found at Attachment A. Below is a summary of the proposed terms and conditions.

## 1. Dockwall Easements

The TPA is requesting an easement under the City's dockwall (as shown in Attachment B) for a term of 70 years or the life of the pedestrian tunnel. This easement will facilitate a direct route across the Western Channel and will reduce the overall cost of construction for the tunnel. In exchange for the easement under the City's dockwall, the TPA will grant two surface easements over the Western Channel of an equal size to facilitate the City's maintenance of its dockwalls and permit the enlargement of the dockwall caps (as shown in Attachments C and D). The granting of the surface easements by the TPA over the Western Channel to the City will ensure that public access to the water's edge will be protected along the northern edge of the Western Channel.

The portion of dockwall in which TPA seeks a subsurface easement from the City is part of City-owned land officially designated as *Parks and Open Space Areas – Parks* within the Official Plan. Section 4.3 of the Official Plan contains the Council adopted land use policies applying to lands designated *Parks and Open Space Areas* (see [http://www.toronto.ca/planning/official\\_plan/pdf\\_chapter1-5/chapters1\\_5\\_oct2009.pdf](http://www.toronto.ca/planning/official_plan/pdf_chapter1-5/chapters1_5_oct2009.pdf)). The entire dockwall – both surface and subsurface -- is subject to Official Plan policies governing Parks and Open Space. In addition to strictly limiting development within these areas, the Official Plan also places strict limits on the sale or disposal of City owned lands within the *Parks and Open Space Areas* designation. Policy 8 of Section 4.3 states:

*The sale or disposal of publicly owned lands in Parks and Open Space Areas is discouraged and no City owned lands in Parks and Open Space Areas will be sold or disposed of. However, City owned lands in Parks and Open Space Areas may be exchanged for other nearby land of equivalent or larger area and comparable or superior green space utility.*

As this dockwall - both surface and subsurface - is City owned land within the *Parks and Open Space Areas*, the proposed subsurface easement conveyance from the City to TPA is subject to Policy 4.3.8 as stated above. Easements (singular or cumulative) in excess of 21 years granted by the City are deemed to be dispositions of City owned land. Thus, the TPA is required to provide a qualifying land exchange for the Dockwall Easement to satisfy Policy 4.3.8.

The Dockwall Easement located at the foot of Eireann Quay has an approximate area of 210 sq. meters. The two easement rights as illustrated in Attachment C that the TPA is proposing to convey to the City to satisfy Official Plan Policy 4.3.8, have an approximate combined area of 210 sq. metres

The Chief Planner and Executive Director of City Planning Division and the General Manager of Parks, Forestry & Recreation have reviewed the proposed exchange of lands and confirmed that the easement rights being exchanged are (i) nearby; (ii) of equivalent or larger area; and (iii) of comparable or superior green space utility, and as such, the



proposed exchange of easements meets the requirements of Official Plan Policy 4.3.8 with respect to the sale or disposal of publicly owned lands in Parks and Open Space Areas. In addition, the proposed terms and conditions include a provision that the exchange of easements between the City and the TPA must satisfy the requirements of Policy 4.3.8.

The proposed terms and conditions also include provisions to protect the City's dockwall from any damage arising as a result of proposed tunnel's design, construction, operation, repair, maintenance, or removal.

## **2. Logistics for Placement of Watermain and Sanitary Sewer Force mains in the Pedestrian Tunnel**

The TPA and the City agree that the specifications to accommodate the City's infrastructure in the tunnel will become part of the TPA's procurement documents. If the City is satisfied and decides to proceed, the work will be included in the award contract. Moreover, should the Master Agreement take effect, the parties will be constructing a new pedestrian tunnel that differs from each party's initial projects. The noted change will require agreement by the TPA to permit construction of the watermain, extending at shallower depths than the original study proposed, across the Airport lands, and the granting of easements, by the TPA, to enable construction and operation of the City's watermain and sanitary sewer force mains.

Changes in the current design of the tunnel to accommodate the City's water mains and sanitary sewer force mains may require amending the City's Environmental Assessment Report for administrative purposes but that should not cause any undue delay to the construction process. However, based on discussions thus far, the City and TPA understand that the changes to the tunnel construction will not trigger the need for any further environmental assessments.

## **3. Lease of the Canada Malting Site and potential taxi staging area located east of 450 Lake Shore Boulevard West**

As indicated above, the TPA proposes to lease the Canada Malting site, or a portion of this site (as shown in Attachment E) for a term of three years commencing in late 2011 or early 2012, with possible extensions at the City's discretion so long as Build Toronto does not yet need the site vacated. The proposed lease would provide areas for TPA to possibly contain construction staging, taxi queuing and parking designed to reduce congestion on Eireann Quay and, in particular, in front of Little Norway Park, the Waterfront School, and the Harbourfront Community Centre. The TPA advises that it continues to consult community groups, the Waterfront School, and the Harbourfront Community Centre about the proposal. In addition, City staff have discussed the proposal with the Ward Councillor. The TPA has also requested the City to consider leasing the site under the Gardiner Expressway located east of 450 Lake Shore Boulevard West (as shown in Attachment F) for a taxi staging area serving the BBTCA.

Aside from the park and heritage structures, the Canada Malting site is occupied by an Urban Forestry office and yard and currently used as a construction staging area by a contractor retained by the City to repair the dockwall on the eastern edge of the Canada Malting site. Forestry staff has advised that there is currently no plan to relocate the existing office and yard to a new location and that any such move would require additional time and budget than is currently available. Facilities Management staff has advised that the City's dockwall contractor requires use of a portion of this site for construction staging until November 2011. Waterfront Toronto has advised that they will be completing the surface improvements to the dockwall between November 2011 and summer-fall 2012 and requires the staging area currently occupied by the City's dockwall contractor. Any lease with the TPA for the Canada Malting lands will require provisions that protect the operation of the Forestry office and yard and ensure that the City and Waterfront Toronto's contractors are able to complete their work with minimal interference.

The Government Management Committee on May 2, 2011 recommended that City Council authorize Build Toronto to undertake a master planning process for the Canada Malting site to determine redevelopment options and to seek an appropriate amendment of the Official Plan to permit the sale or other disposal of the property through its normal procurement process. City Planning and the Ward Councillor have been working with the local community on development concepts for this site which will inform the master planning exercise conducted by Build Toronto.

Consent from Build Toronto for the short-term lease may be required. Assuming it is provided; Build Toronto may need the Canada Malting site vacated and clear of all leases and other encumbrances by December 31, 2014. The parties will resolve these issues during the negotiation of the lease.

Although most of the Canada Malting site would be used non-commercially, the possibility does exist that the TPA would operate a commercial parking lot on a portion of the Site. A proposal with a commercial parking lot requires a Site Plan Control Application and a City lease would require such an application for any of the uses proposed to ensure on-site improvements. The TPA has acknowledged that this is a required process. City staff has committed to completing the site plan review as expeditiously as possible provided the TPA is timely in submitting all materials for the review. City staff have provided the TPA with a preliminary assessment of the proposal, as a guide for the TPA's formal site plan application submission.

The TPA has also requested that the City lease a site under the Gardiner Expressway located east of 450 Lake Shore Boulevard West (as shown in Attachment F). This site is currently unimproved and is used informally for parking. The TPA has requested that the City consider that the lands be used as a taxi staging area serving the BBTCA in order to reduce the number of taxis queuing along Eireann Quay. Taxi's would be corralled at this site and ordered down to the existing taxi lanes by on-site supervisors. This arrangement is similar to the limousine staging area at Pearson International Airport. This proposal also has the potential to be used as a central staging area for all taxis along the central

waterfront, which has been identified as a significant issue for the community by the Ward Councillor.

City Planning has advised that the site located east of 450 Lake Shore Boulevard West is currently zoned "T" under By-law 438-86, which does not permit a commercial parking lot. A taxi staging area is not a defined use under this zoning by-law, and as such, the taxi staging area is interpreted as a commercial parking lot.

In order to implement the taxi staging area on this site, the Chief Planner is requested to expedite a Zoning By-law amendment or Temporary Use By-law. The Chief Corporate Officer, or their designate, is also directed to enter into a lease agreement with the TPA for this site.

#### **4. Traffic and Taxi Congestion and Safety**

Traffic and taxi congestion along Eireann Quay remains a significant issue for the local community and the TPA. The TPA has attempted to manage traffic and taxis related to the operation of the airport through paid-duty police officers and private security with modest success. As discussed above, the TPA's short-term lease of the Canada Malting Site and use of 450 Lake Shore Boulevard West could result in additional parking and taxi queuing areas to partially resolve those issues. Moreover, the parties have committed in the Term Sheet to working cooperatively to resolve all currently outstanding traffic management issues.

#### **5. Other Matters**

The proposed terms and conditions include terms addressing other issues to be resolved between the City and the TPA. These include an indemnity in favour of the TPA for lands adjacent to Ashbridges Bay, and the resolutions of payment in lieu of taxes ("PILTS"),

Indemnity for Lands Adjacent to Ashbridges Bay:

The TPA owns lands adjacent to Ashbridges Bay and Lake Shore Boulevard East (described as Part 2 on Plan 66R-24965) that are currently occupied by the City's Lake Shore Boulevard right-of-way. The City would like to acquire these lands. The TPA has agreed to convey these lands to the City at no cost (save and except transaction costs). As an interim measure, the TPA is requesting that the City provide an indemnity in favour of the TPA in respect to any claims arising out of the City's use of the land.

Payment in Lieu of Taxes ("PILTS")

On December 4, 2009, City Council approved the Macro Settlement Agreement between the City and the TPA. City Legal (Litigation) has been negotiating with the TPA for the possible resolution of remaining "PILT" matters. The terms and conditions include a

requirement that the City and the TPA use best efforts to resolve and reach an agreement on PILTs prior to November 1, 2011.

## **CONTACT**

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## **SIGNATURE**

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Joseph P. Pennachetti  
City Manager

## **ATTACHMENTS**

Attachment A: Proposed Term Sheet

Attachment B: Proposed Subsurface Easement in Favour of the TPA on City of Toronto  
Property

Attachment C: Proposed Surface Easement in Favour of the City of Toronto on TPA  
Property

Attachment D: Existing Dockwall Extension and Cap within Western Channel

Attachment E: Canada Malting Site – Subject to Lease to the TPA

Attachment F: Potential Taxi Staging Area located east of 450 Lake Shore Boulevard  
West

## **Attachment A: Proposed Term Sheet**

### **Term Sheet – July 11, 2011**

- A. The Toronto Port Authority (the "TPA") is considering plans to construct and operate a pedestrian tunnel (the "Tunnel") under the Western Gap to connect the lands owned by it on the mainland with the Billy Bishop Toronto City Airport ("BBTCA"). The Tunnel, which will not be a vehicular tunnel, will allow pedestrians to travel between BBTCA and the mainland. The most direct route for the Tunnel is under the dockwall owned by the City of Toronto (the "City"). The Tunnel is expected to have a useful life of approximately seventy years.
- B. The TPA has issued a request for proposal ("RFP") for the design, construction and operation of the Tunnel. The City has requested the TPA to accommodate the design, construction and installation of watermains and sewer forcemains to service the Toronto Islands (the "City Mains") within the Tunnel RFP. The parties acknowledge that such installation will benefit the BBTCA. The parties estimate that as a result of including the City Mains in the Tunnel, the City's expenditure for providing this infrastructure should be reduced significantly from the originally projected cost. The future value of the savings to the City are currently estimated by the City to be approximately \$10 million. By having the Tunnel go under the dockwall, made possible by the Dockwall easement, the TPA will have a Tunnel that is greatly improved in its design and utility throughout its useful life, and the cost to the TPA of constructing the Tunnel should be reduced significantly from the originally forecasted amount. The present value savings to the TPA are currently estimated by the TPA to be approximately \$2.5 million.
- C. The TPA has issued an addendum to the RFP to accommodate the City Mains requiring Proposals to be submitted to accommodate the Mains in accordance with the City's Specifications.
- D. The City is owner of the Canada Malting Site. The TPA wishes to lease the Site during the period in which construction of the Tunnel is ongoing, or longer if available.
- E. The TPA would like to relocate the Terminal A Building (referred to as the "Administration Building").
- F. The TPA and the City wish to set out in short form the basic business points for various agreements to be entered into with respect to the foregoing.

The following sets out the preliminary business terms as the framework for the negotiation and finalization of the various agreements between the parties.

1. Dockwall Easements:

i) The City will grant the TPA a below grade easement for a term being the greater of 70 years or the life of the Tunnel, for the Tunnel to pass through the dockwall lands, under the dockwall, approximately as shown on the attached Schedule A. The TPA will repair, or cause to be repaired, at its or the Tunnel consortium's expense, all damage caused to the City's dockwall arising as a result of the Tunnel's design, construction, operation, repair, maintenance or removal, or any negligent act or omission related to the foregoing, except to the extent such damage is related to the operation, repair, maintenance, or any negligent act or omission related to the foregoing of the City Mains, which is the City's responsibility, which will be included in the indemnity described in paragraph 2(i) below. To eliminate the need for an amendment to the City's Official Plan, the TPA will grant the City easements over two portions of the Western Gap to facilitate the City's maintenance of the dockwalls and to permit enlargement of the dockwall caps. These easement lands are approximately as shown on the attached Schedule B.

ii) Notwithstanding any other provision of this term sheet, or any agreement made pursuant to the term sheet or the failure of the parties to enter into a binding agreement for any such matter, the provision of the easements is acknowledged and agreed by the parties to be required, and the provision of the easements, which easements will contain customary terms and conditions such as repair and maintenance and indemnities acceptable to both parties will be completed by both parties on or before September 30, 2011.

2. Watermains and Sewer Forcemains (the City Mains):

(a) As part of the Tunnel RFP, the TPA has required the proponents to include a mandatory innovation that provides for the development, construction, testing and commissioning of the City Mains in the Tunnel, and the TPA will require the proponents to separately identify the costs related specifically to the design, construction, installation and commissioning of the City Mains as contemplated herein. The portions of the Tunnel RFP that relate directly to the City Mains are referred to herein as the "Mains RFP ". The TPA has provided the City with an addendum and a draft addendum regarding the Mains RFP, and will provide the City with any further draft addenda related to the Mains RFP for the City's review and approval prior to issuance, on the basis that the City will be given a reasonable time to provide its approval.

(b) The City shall be entitled to participate in the evaluation of the proposals for the Mains RFP in respect of the procurement of the services as they relate to the City Mains, which shall include but not be limited to review of proposals for the Mains RFP and the negotiation and final approval of the elements related to the City Mains.

- (c) The City acknowledges that the TPA has advised the City that the RFP process includes confidential, proprietary information. As such, the City will treat all information related to the RFP process, including Proposals, received from the TPA as confidential, and not reveal or release any such information to any person not employed by or working with the City on the City Mains, where identified by the TPA as such or reasonably implied by the nature of the document, subject to the City's obligations under the *Municipal Freedom of Information and Protection of Privacy Act* or any other applicable law.
- (d) The TPA shall, in respect to the issuance of any addenda to the RFP and the review, evaluation, acceptance and negotiation of any Proposal and subsequent agreement as they relate to the City Mains, act in good faith to protect the City's interests in the procurement of the City Mains and the cost thereof, but without obligation to accept a Proposal for the Tunnel that includes a lower cost for the City Mains if that Proposal is not otherwise acceptable to the TPA, acting reasonably. The TPA shall be transparent and fair in its dealing with the City in respect to the procurement of the City Mains. Notwithstanding any other provision of this Term Sheet, this requirement shall be binding on the TPA.
- (e) The City, in its sole discretion, shall be entitled to elect whether it wishes to have the City Mains included in the Tunnel or not. If the City were to elect not to have the City Mains included in the Tunnel, the TPA shall ensure the deletion of the City Mains from the RFP without any cost or liability to the City, and the TPA would be entitled to proceed with the Tunnel.
- (f) After the financial submissions are received during the RFP process, the TPA will provide to the City, on the same private and confidential basis described herein, information about all of the costs that would be required for the Mains RFP to be paid by the City in order to include the City Mains in the Tunnel including the proposals referenced in (b) above. The City will then be provided thirty days after receipt of such information to elect to either have the City Mains included in the Tunnel or not. During the said thirty day period, the City shall have the right to negotiate with the preferred proponent with respect to the Mains RFP only. If the City does not notify the TPA of its election within such period, then the City will be deemed to have elected not to have the City Mains included in the Tunnel. In either event, the City's election shall be final. In the event that the City elects to proceed with the procurement of the City Mains in the Tunnel, the City shall be responsible for all costs for such City Mains as separately identified in the Mains RFP proposal accepted by the TPA.
- (g) The TPA shall include a requirement in the RFP, in respect of the City Mains, that the proponents shall extend to the City the same contractual protections, indemnities, insurance and securities as the TPA obtains in respect of the Tunnel. Provided further, the TPA shall assign to the City all warranties in respect of the City Mains.

- (h) The City shall pay the costs related to the City Mains in accordance with a payment schedule agreed to between the parties, subject to any reserved rights or obligations, including any holdbacks required by applicable law, the parties may have.
- (i) Upon acceptance, where applicable, of the City Mains by the City, the title and ownership of the City Mains shall transfer immediately thereupon to the City and the TPA shall undertake to do all things to effect the documentation of such transfer. Upon ownership transferring to the City, the City shall be responsible for maintaining the City Mains at its own cost in such a manner as may be agreed between the parties, and, at a minimum the City Mains must be kept in an appropriate condition in light of their installation within the Tunnel. The TPA shall provide at no cost to the City such access as may be necessary or appropriate for the City to maintain the City Mains. The parties agree that each will indemnify the other for any damages that may occur as a result of their respective operation, maintenance or repair of their works (the City Mains and the Tunnel otherwise, respectively) or any negligent act or omission by such party related thereto. In the case of the City's indemnity to the TPA, that indemnity will extend to the Tunnel consortium for the term of its ownership and operation thereof.
- (j) In the event the City elects to proceed with the City Mains as contemplated herein, the TPA will grant easements in favour of the City for the City Mains, within the Tunnel across the Western Gap and, to the extent considered necessary, across the TPA's lands on the Toronto Islands and on the mainland at the north end of the Tunnel, which will include the requirement for the City to provide access to the City Mains at the TPA's expense for use at the BBTCA, on terms and conditions consistent with, and in consideration of, the City granting the TPA the easement in respect of the Dockwall as identified in paragraph 1 and the terms described in paragraph (k) and (l) of this Term Sheet.
- (k) In the event that the City elects not to proceed with the City Mains within the Tunnel as contemplated herein, but proceeds independently with the construction of a watermain and sewer forcemain to service the Toronto Islands and the BBTCA, the TPA agrees to grant easements in favour of the City allowing for the construction of sections of the watermain and sewer forcemain across TPA lands on the Toronto Islands and on the mainland on customary terms and conditions, such easements to be consistent with and at a similar depth to the easements contemplated in (j) above (rather than the depth stipulated in the City's Class Environmental Assessment Study initiated by the City in the fall of 2006 for the proposed City watermain and sewer forcemain). Any easement provided by the TPA at the BBTCA will be on the basis that the construction, maintenance, use and decommissioning of the watermain and sewer forcemain will not interfere with any use at the BBTCA, including the airport and related operations and services, provided however that the parties acknowledge that the initial construction and installation of the City Mains within the TPA lands will



inevitably cause some disruption to TPA operations but the parties agree to work cooperatively to minimize any such disruption to the extent reasonably possible. Notwithstanding any other provision of this Term Sheet, this requirement shall be binding on the TPA.

(l) The parties agree that the respective easements exchanged under this Term Sheet shall be at a nominal cost to the respective party to which the grant of easement is provided.

3. Canada Malting Site:

The City will lease portions of the Canada Malting Site to the TPA to facilitate the Tunnel construction process on the following terms:

(a) Use: The TPA will be permitted to move commercial parking, taxi queuing and other parking uses by the TP A on lands that the TPA owns or leases at the foot of Eireann Quay to the Canada Malting Site and to use the Premises for construction staging, including as described in paragraph 3(d) below.

(b) Term: 3 years, or longer if available, and subject to a right in favour of the TPA to terminate early on not less than 3 months' notice. The commencement date will be tied to commencement of any construction of the Tunnel, expected to be in late 2011 or early 2012 or sooner, if available, for site preparation work.

(c) Rent: \$3.00 per square foot per annum. The lease will be a net lease to the City.

(d) Premises: Certain portions of the Canada Malting Site, subject to the use by the City's Forestry Services Division, subject to a 15 ft. buffer around the silos, and subject also to temporary use by Waterfront Toronto and the City to complete dockwall and promenade improvements on the west side of the Portland Slip currently scheduled to take place commencing late in 2011 and continuing to late summer or early fall of 2012. The lease will address which portions the TPA shall be entitled to use without interference. The City will use its best efforts to provide sufficient area to accommodate the TPA's permitted uses.

(e) Improvements: The TPA will take the site "as is", but will not be liable for any preexisting contamination. The TP A has and will continue to engage in reasonable community consultations in developing its plan for the Premises, including further consultations with the Waterfront School and the Harbourfront Community Centre. Any improvements to the site will require the City's prior approval, including site plan approval where applicable.

4. Relocation of the Administration Building:

The TPA has requested that the Administration Building (the "Building") be

relocated, which is contemplated under the Tripartite Agreement. The TPA acknowledges that the City has no obligation to take ownership of the Building. The City will provide written notice to the TPA on or before August 5, 2011 whether the City wishes to take ownership of the Building as contemplated by the Tripartite Agreement and will advise as to the site to which the Building is to be relocated. If the City designates Hanlan's Point as the location to which the Building is to be relocated, or in the alternative if arrangements are made by the City for Parc Downsview Park to accept the Building to its lands, the TPA will pay all reasonable costs incurred to relocate the Building to the designated site (to a maximum of \$250,000), and in such event, the TPA will work cooperatively with the City and the intended recipient of the Building to provide comfort that the maximum payment by the TPA will cover the costs to relocate the Building. Otherwise, the TPA will be entitled, at its sole option and discretion, to move or demolish the Building or to deconstruct the Building and place it into storage. If the City's notice provides that the City will take ownership of the Building and designates a site at Gibraltar Point, and the cost of such a relocation is greater than the estimated cost of a relocation to the first two possible sites, the TPA will complete the relocation but the City will pay any incremental costs associated with a move to Gibraltar Point that are over and above the mover's estimated cost of the move to either of the first two sites. If the notice provided by the City indicates that the City does not wish to take ownership of the Building, or if the City fails to provide the notice before August 5, 2011, the TPA will be entitled to move or demolish the Building at its option and as it wishes, and the City would have no obligation to pay for any work given it would not be taking ownership of the Building. For the purposes of this paragraph 4, the term "relocate" or "relocation" shall be the staging, moving, installing on a new foundation, and reassembling/securing (as applicable and required) the Building that would be sufficient for a future restoration project.

5. Ashbridges Bay:

The parties have agreed to take this opportunity to regularize a matter that has been outstanding between them. The TPA agrees to work with the City to convey a sliver of land described as Part 2 on Plan 66R-24965, adjacent to the road allowance near Ashbridges Bay, to facilitate installation of underground utilities in Part 2. The parties agree to work together to complete the preliminary steps required and to proceed with the conveyance by the TPA to the City of the said Part 2 at no cost to the City, save and except that the City shall pay for transaction costs and fees related to the conveyance, including surveying fees, the cost of preparation and deposit of the reference plan, and registration fees, with due diligence (each party shall be responsible for its own legal fees). Such land is currently occupied by the City, although owned by the TPA, and during the interim period until the land is conveyed to the City, the City shall immediately upon acceptance of this term sheet provide an indemnity by the City in favour of the TPA in respect of any claims arising out of the City's use of the land, which shall also be included in the final agreement to be entered into by the parties.

The City and the TPA agree to use reasonable efforts to complete the conveyance by December 15, 2011.

6. Traffic Management:

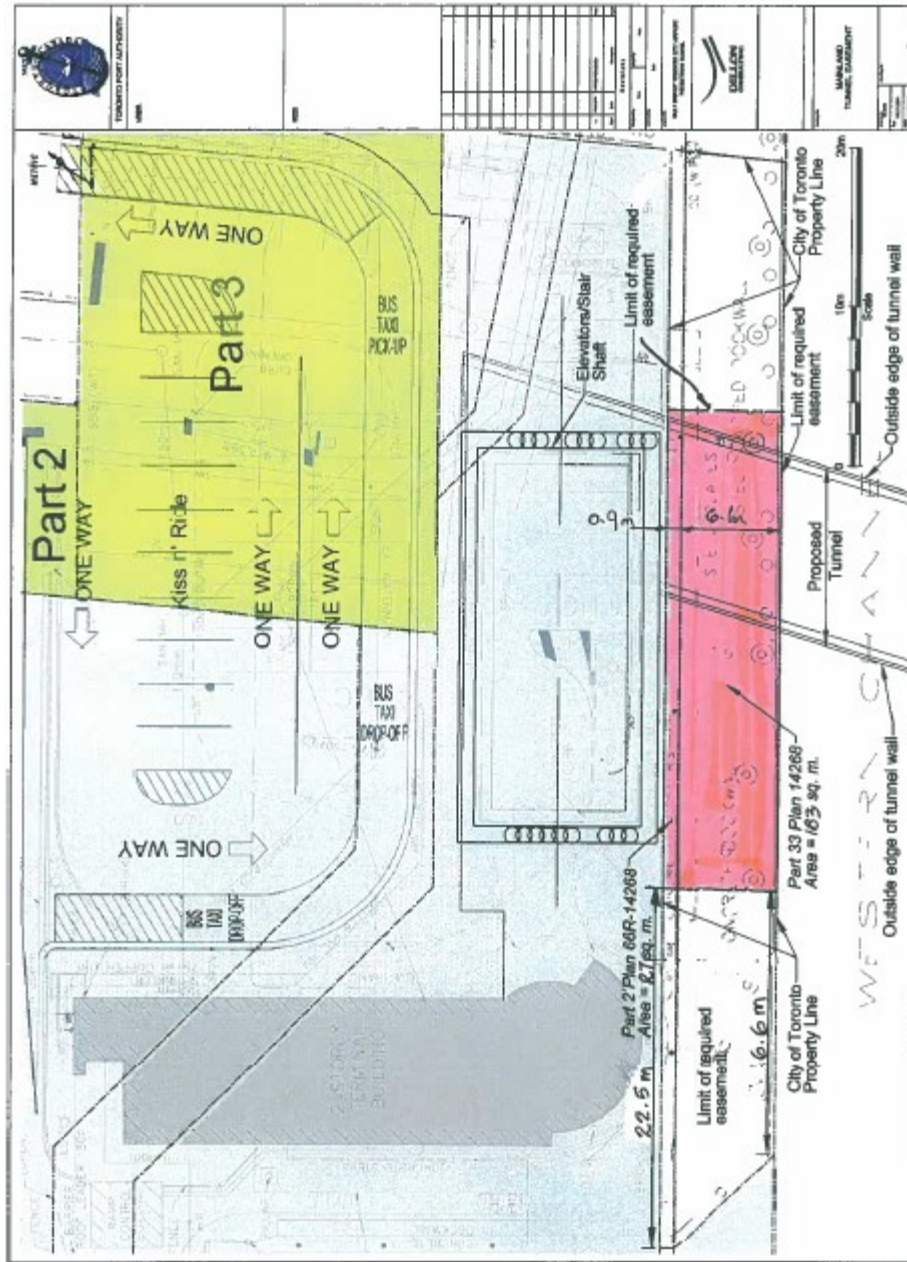
The City and the TPA agree that they will continue to work together cooperatively to manage traffic management issues associated with access to and from the BBTCA.

7. Payment in lieu of taxes ("PILTS"):

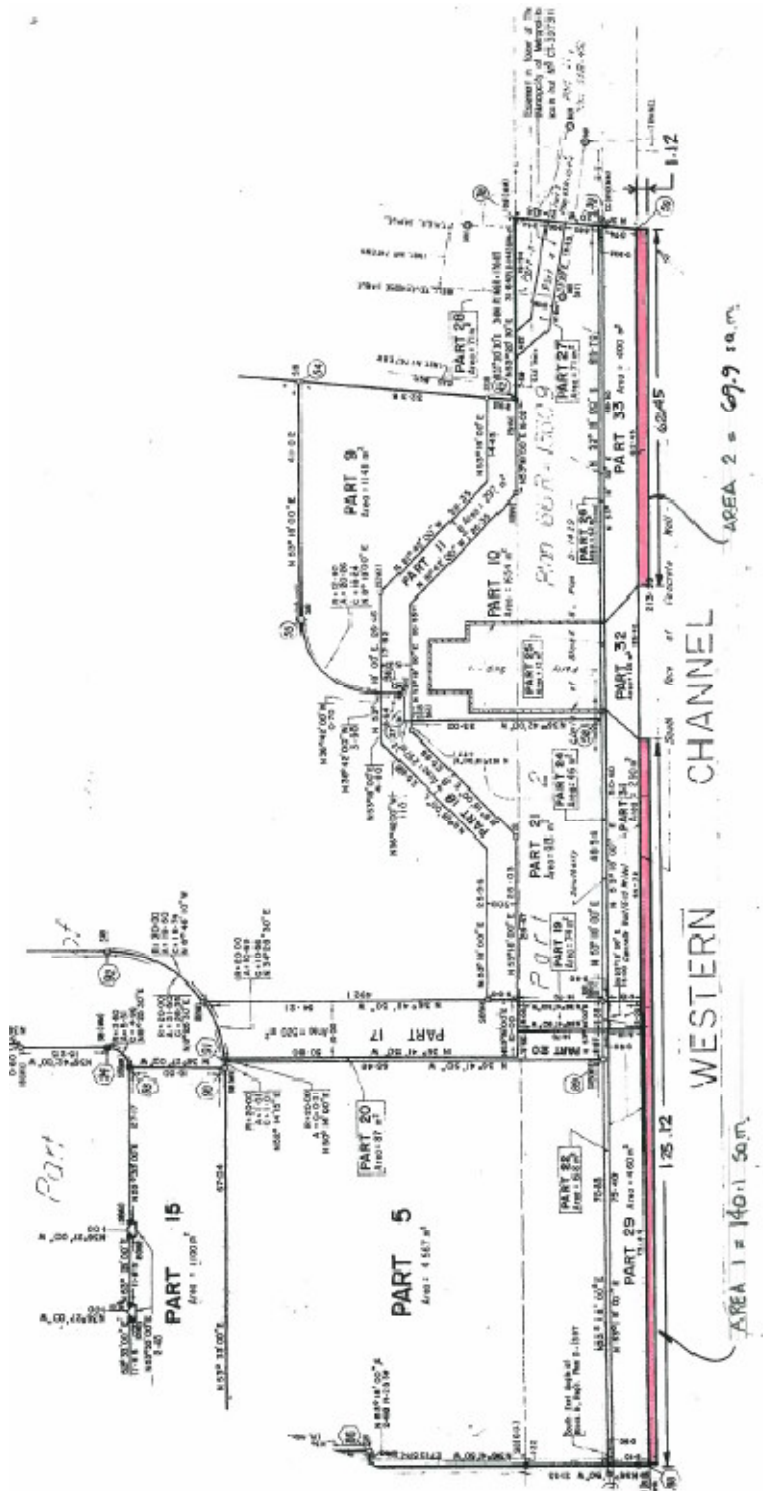
The City and the TPA will use best efforts to resolve and reach an agreement on PILTs prior to November 1, 2011.

This term sheet is not intended to be a binding agreement, other than for the exchange of easements and commitments contained in paragraph 1 and subparagraphs 2(d), (k) and (l), and the provision of an indemnity by the City in paragraph 5, which shall be binding upon approval of this term sheet by the City and the TPA's board of directors, which shall be pursued forthwith. Upon such approval, the parties will immediately negotiate in good faith the various agreements which will be required to implement this term sheet and use reasonable best efforts to have all such agreements finalized on or before September 30, 2011.

## Attachment B: Proposed Subsurface Easement in Favour of the TPA on City of Toronto Property



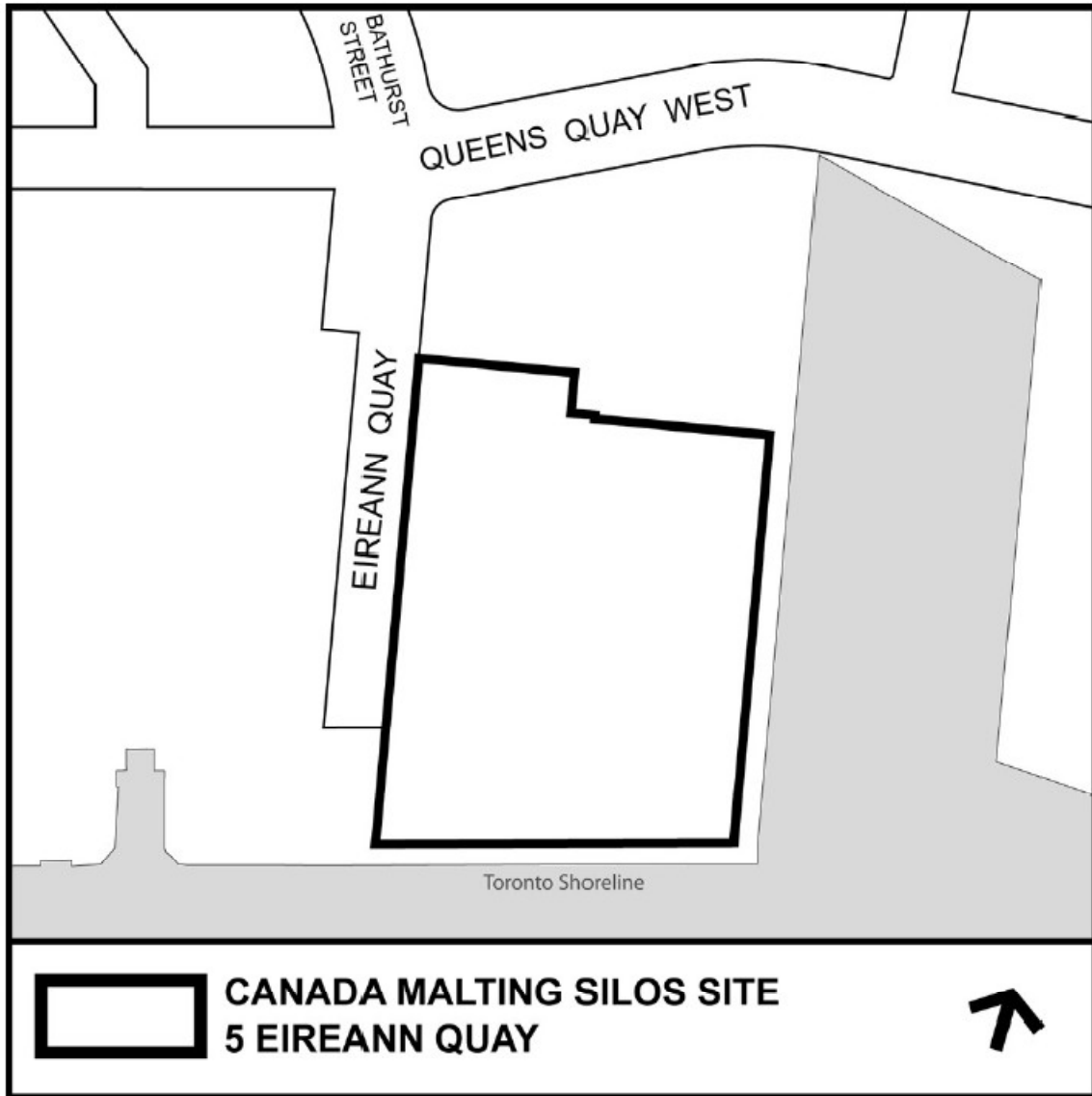
## Attachment C: Proposed Surface Easements in Favour of the City of Toronto on TPA Property



**Attachment D: Existing Dockwall Extension and Cap within Western Channel**



**Attachment E: Canada Malting Site – Proposed Lease to the TPA**



**Attachment F: Potential Taxi Staging Area located east of 450 Lake Shore Boulevard West**

