

**10 and 40 Adelaide Street West, 333 Bay Street, 40
Temperance Street and 118 Yonge Street– Part Lot
Control Exemption Application – Final Report**

Date:	June 6, 2011
To:	Toronto and East York Community Council
From:	Director, Community Planning, Toronto and East York District
Wards:	Ward 28 – Toronto Centre-Rosedale
Reference Number:	09 115495 STE 28 PL

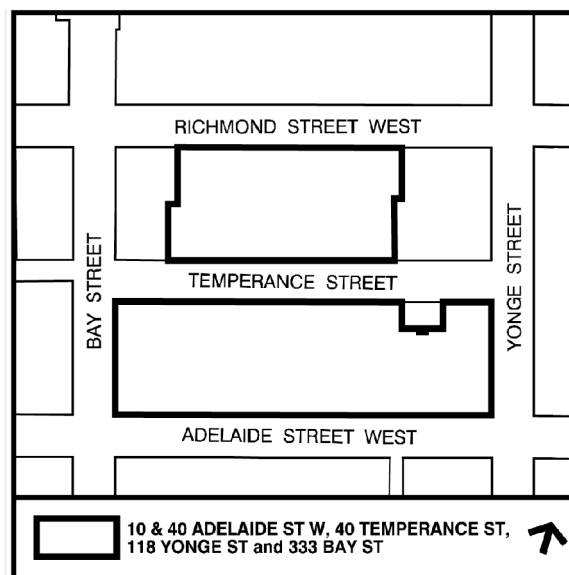
SUMMARY

This application was made on or after January 1, 2007 and is subject to the new provisions of the Planning Act and the City of Toronto Act, 2006.

This application proposes lifting of part lot control for a period of two years at 10 and 40 Adelaide Street West, 333 Bay Street, 40 Temperance Street and 118 Yonge Street.

The proposed exemption from the part lot control provisions of the *Planning Act* has been requested by the owner to facilitate transfers and changes of ownership interests, including beneficial transfers, financing, changes in ownership structure and mutual easements within the Bay-Adelaide Centre.

This report recommends approval of Part Lot Control Exemption and that the owner of the lands be required to first register a Section 118 Restriction under the *Land Titles Act* agreeing not to transfer or charge any part of the lands without prior consent of the Chief Planner or his designate. The report also authorises the passage of a by-law to repeal the Part Lot Control Exemption By-law and release the



Section 118 Restriction, in the event the owner requests the City to release the Section 118 Restriction.

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council enact a Part Lot Control Exemption By-law with respect to the subject lands at 40 Adelaide Street West, 333 Bay Street, 40 Temperance Street and 118 Yonge Street as generally illustrated on Attachment 4, to be prepared to the satisfaction of the City Solicitor and to expire two years following enactment by City Council.
2. City Council require the owner to provide proof of payment of all current property taxes for the subject lands to the satisfaction of the City Solicitor, prior to the enactment of the Part Lot Control Exemption By-law.
3. Prior to the introduction of the Part Lot Control Exemption Bill, the Owner shall confirm registration of the M-Plan.
4. Prior to the introduction of the Part Lot Control Exemption Bill, City Council require the owner to register, to the satisfaction of the City Solicitor, a Section 118 Restriction under the *Land Titles Act* agreeing not to transfer or charge any part of the lands without the written consent of the Chief Planner or his designate.
5. City Council authorize the execution of an Agreement with the owner, in a form and containing conditions satisfactory to the City Solicitor, whereby the Section 118 Restriction would be removed from title upon the request of the owner, on reasonable notice to the City permitting the City to repeal the Part Lot Control Exemption By-law.
6. City Council enact a By-law repealing the Part Lot Control Exemption By-law, as generally illustrated on Attachment 5, in the event the owner of the lands at 40 Adelaide Street West, 333 Bay Street, 40 Temperance Street and 118 Yonge Street, or any part thereof, requests the City to consent to the removal of the Section 118 Restriction from the lands or any part thereof.
7. City Council authorize and direct the City Solicitor to register the Part Lot Control Exemption By-law, and the associated repealing By-law if passed by Council, on title.
8. City Council authorize the City Solicitor to make such stylistic and technical changes to the draft Part Lot Control Exemption By-law and associated repealing By-law as may be required.
9. City Council authorizes City officials to take necessary steps, including the execution of agreements and documents which set out the implementation of the Part Lot Control Exemption By-law, or its repeal, to give effect to the above-noted recommendations.

Financial Impact

The recommendations in this report have no financial impact.

DECISION HISTORY

The subject lands were part of a larger area in the blocks bounded by Queen Street West, Yonge Street, Adelaide Street West and Bay Street that was approved for a comprehensive, integrated redevelopment in 1988. The proposal for the 1988 Bay-Adelaide project consisted of the following:

- the retention and restoration of the historic Simpson's store on the north block between Queen Street West and Richmond Street West;
- the creation of a public park and the construction of a 12-storey office building on the centre block between Richmond Street West and Temperance Street;
- the construction of a 57-storey office tower;
- an underground parking garage; and
- the preservation and relocation of the historic Aikenhead's building as part of a new office building on the south block between Temperance Street and Adelaide Street West.

Upon approval of the Part II Plan and Zoning By-law amendment in 1988, the following components of the project were constructed:

- the historic Simpson's building was retained and restored;
- the Cloud Gardens public park between Richmond Street West and Temperance Street; and
- the façade of the historic Aikenhead's building was incorporated into a new office building located on the south side of Temperance Street and is currently occupied by the Hong Kong Trade Development Council.

The concourse of the project was completed in shell form. In addition, three levels of below grade parking with approximately 1,000 spaces and a loading dock area were built to serve the now Hudson Bay department store and the new buildings anticipated on the Bay-Adelaide lands, before construction was suspended.

In 1999, a revised site plan for a 47-storey tower was approved and a variance to reduce the amount of common outdoor space was granted. This proposal did not proceed.

In 2005, the applicant submitted an application (05 175877 STE 28 OZ) to amend the Official Plan for the former City of Toronto and Zoning By-law to permit three new buildings:

- a 50-storey office tower (the "West Tower", fronting on Bay Street);
- a 43-storey office/residential tower (the "East Tower", fronting on Adelaide Street West); and
- a 49-storey hotel/residential tower (the "North Tower", fronting on Temperance Street).

The three proposed towers would contain a total aggregate density of 240,396 square metres (2,587,598 square feet). The existing Yonge/Temperance and Hong Kong Trade Development Council buildings and below grade retail space have an existing density of 9,830 square metres (105,812 square feet). This application included a new PATH connection between Scotia Plaza and the east tower between Adelaide Street West and Temperance Street.

In 2006, a new zoning by-law and Official Plan amendment were approved for the site which allowed for a 50-storey office building on Bay Street, a 43-storey office/residential building on Adelaide Street West and a hotel/residential building on Temperance Street with a height of 120 metres. Background information can be found at the following link:

<http://www.toronto.ca/legdocs/2006/agendas/committees/te/te060509/it006.pdf>

In January 2008, the Committee of Adjustment granted variances allowing an office tower to extend approximately 0.7 metre east of the easterly limit of Parcel C, as defined by Bylaw 460-2006 and included the lands located at 118 Yonge Street. The height for the east tower was increased to 192 metres (196 metres including the mechanical penthouse) and an aggregate gross floor area of 286,594 square metres was approved.

In 2009, City Council approved the conditions for draft plan approval of the plan of subdivision for the site. Notice of decision was issued April 5, 2011. The final plan has not yet been released for registration. An underlying approved plan of subdivision is required for part lot control exemptions. Additional background on the plan of subdivision can be found at the following link:

<http://www.toronto.ca/legdocs/mmis/2009/te/bgrd/backgroundfile-23836.pdf>.

ISSUE BACKGROUND

Proposal

As part of the ongoing phased development of the Bay Adelaide lands, the co-owners anticipate the need for numerous transactions relating to financing, changes in ownership structure, mutual easements, and the operation, maintenance and cost sharing of shared building facilities. The building facilities which will be shared by buildings to be erected on the north and south block include mechanical plant, underground parking and loading facilities, and utility services. Background project data is summarized in Attachment 2. A list of the proposed transactions is contained in Attachment 3. The owners have applied for part lot control exemption for a period of two years to allow them to complete these transactions without going before the Committee of Adjustment.

Site and Surrounding Area

The subject site includes lands on two city blocks bounded by Adelaide Street West, Yonge Street, Bay Street and Richmond Street West. The west tower and publicly accessible plaza has recently been completed.

The surrounding uses are as follows:

- North of the subject lands is the historic Hudson Bay department store and office tower.
- South of the subject lands is the 68-storey Scotia Plaza building and the site of the Trump Tower which is currently under construction.
- East of the subject lands are commercial and retail uses fronting onto the east side of Yonge Street and the Hong Kong Trade Development Council on Temperance Street; and

- West of the subject lands is Bay Street beyond which are commercial office buildings with grade-related retail uses fronting onto Bay Street.

Provincial Policy Statement and Provincial Plans

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The PPS sets the policy foundation for regulating the development and use of land. The key objectives include: building strong communities; wise use and management of resources; and, protecting public health and safety. City Council's planning decisions are required to be consistent with the PPS.

The Growth Plan for the Greater Golden Horseshoe provides a framework for managing growth in the Greater Golden Horseshoe including: directions for where and how to grow; the provision of infrastructure to support growth; and protecting natural systems and cultivating a culture of conservation.

City Council's planning decisions are required by the Planning Act, to conform, or not conflict, with the Growth Plan for the Greater Golden Horseshoe.

Under the *Planning Act*, there are tools for land division: a plan of subdivision, part lot control, consent to sever and a plan of condominium. The principles of land division are set out in s. 51(24) of *Planning Act* and include the suitability of the lands for the purposes of which it is to be subdivided and the dimensions and shapes of the proposed lots.

Official Plan

The site is designated Mixed Use Areas and subject to Site Specific Policy 224 setting out height and design guidelines for the Bay-Adelaide lands. Mixed Use Areas allow for a mix of residential, office, retail, services and institutional uses.

Zoning

In 2006 a new site specific zoning by-law (460-2006) was approved for the site which allowed for a 50-storey office building on Bay Street, a 43-storey office/residential building on Adelaide Street West and a hotel/residential building on Temperance Street with a height of 120 metres. A 2008 Committee of Adjustment application permitted the height of the 43-storey office/residential tower to be increased to 192 metres.

Site Plan Control

There is an approved site plan for the west tower at 333 Bay. The site plan for the east tower has been approved, but the agreement has not been registered and the owner has indicated that there may be some minor revisions. There is no development proposal yet for the north development block.

Agency Circulation

The application was circulated to all appropriate agencies and City divisions. Responses received have been used to assist in evaluating the application and to formulate appropriate draft plan approval conditions.

COMMENTS

Provincial Policy Statement and Provincial Plans

The proposal is consistent with the PPS.

The proposal conforms to and does not conflict with the Growth Plan for the Greater Golden Horseshoe.

Land Division

Section 50(7) of the Planning Act, R.S.O. 1990, as amended, authorizes City Council to adopt a by-law exempting lands within a registered plan of subdivision from Part Lot Control. The subject lands are within a registered plan of subdivision. The lifting of Part Lot Control on the subject lands is considered appropriate for the orderly development of the lands, subject to the Section 118 Restriction under the *Land Titles Act*, and will facilitate the development.

The applicant has requested a part lot control exempting by-law for the Bay Adelaide lands as a more efficient means of addressing the ongoing need for consent approvals. The site-specific approvals for the Bay Adelaide Centre, including the site-specific Policy 224, site-specific zoning by-laws, Heritage Easement Agreement, Section 37 Agreement and Site Plan Agreement, satisfactorily secure the City's interests and policy objectives with respect to the development of these lands. As well, there will be an operating agreement which ensures that the various owners have rights of access and support to common or shared facilities such as servicing, parking, loading and pedestrian access.

A Section 118 Restriction under the *Land Titles Act* is recommended as a precondition to the passage of the requested by-law to lift Part Lot Control. This will mean that the owners agree not to transfer or charge any part of the lands without the written consent of the Chief Planner or his designate. This allows for the City to ensure that there is not an unlimited exemption from Part Lot Control and that the appropriate mechanisms are secured to support the existing and future development.

The applicant has, as a pre-condition to registering the Section 118 Restriction, requested that the City enter into an agreement whereby the City would consent to its release upon receiving a request from the Owner. City staff can support this request only if the agreement permits the City to have a reasonable opportunity to first repeal the by-law lifting Part Lot Control. The form and content of this agreement have not been finalized and will be satisfactory to the City Solicitor. This agreement would provide for the unwinding the Section 118 restrictions and Part Lot Control Exemption, in advance of the expiry date of the Part Lot Control Exemption By-law.

In addition, to ensure that the Part Lot Control Exemption does not remain open indefinitely, it is recommended that the By-law contain an expiration date. In this case, the By-law should expire two years following enactment by City Council. This time frame provides sufficient time for the completion of the transactions proposed by the owner.

CONTACT

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SIGNATURE

Gregg Lintern, MCIP RPP, Director
Community Planning, Toronto and East York District

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ATTACHMENTS

Attachment 1A-C: Part Lot Control Exemption Plans – Draft Reference Plans

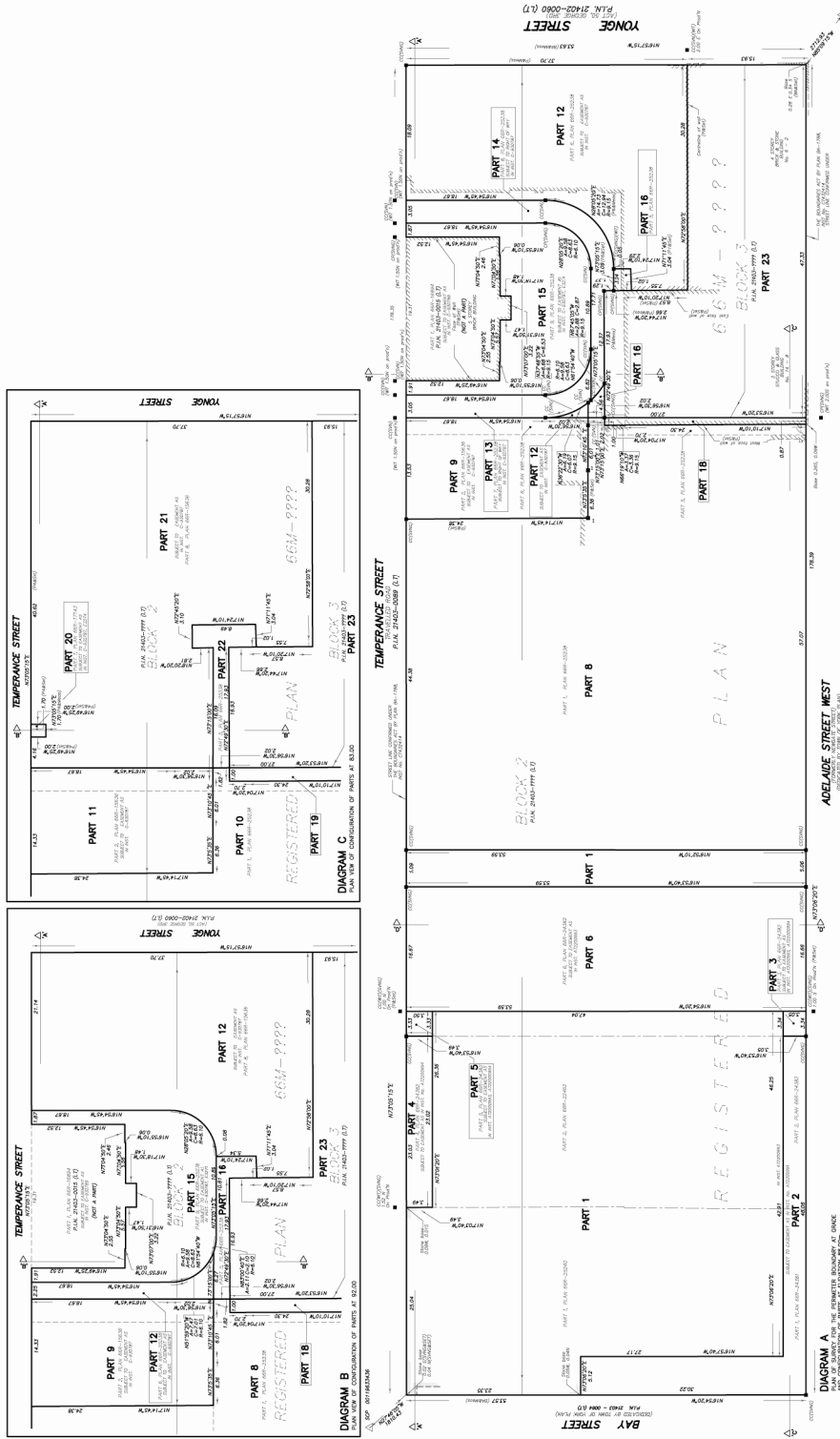
Attachment 2: Application Data Sheet

Attachment 3: Proposed Conveyances

Attachment 4: Draft Part Lot Control Exemption By-law

Attachment 5: Draft Part Lot Control Repeal By-law

Attachment 1A: Part Lot Control Exemption Plan



Draft Reference Plan 1

Part Lot Control Exemption

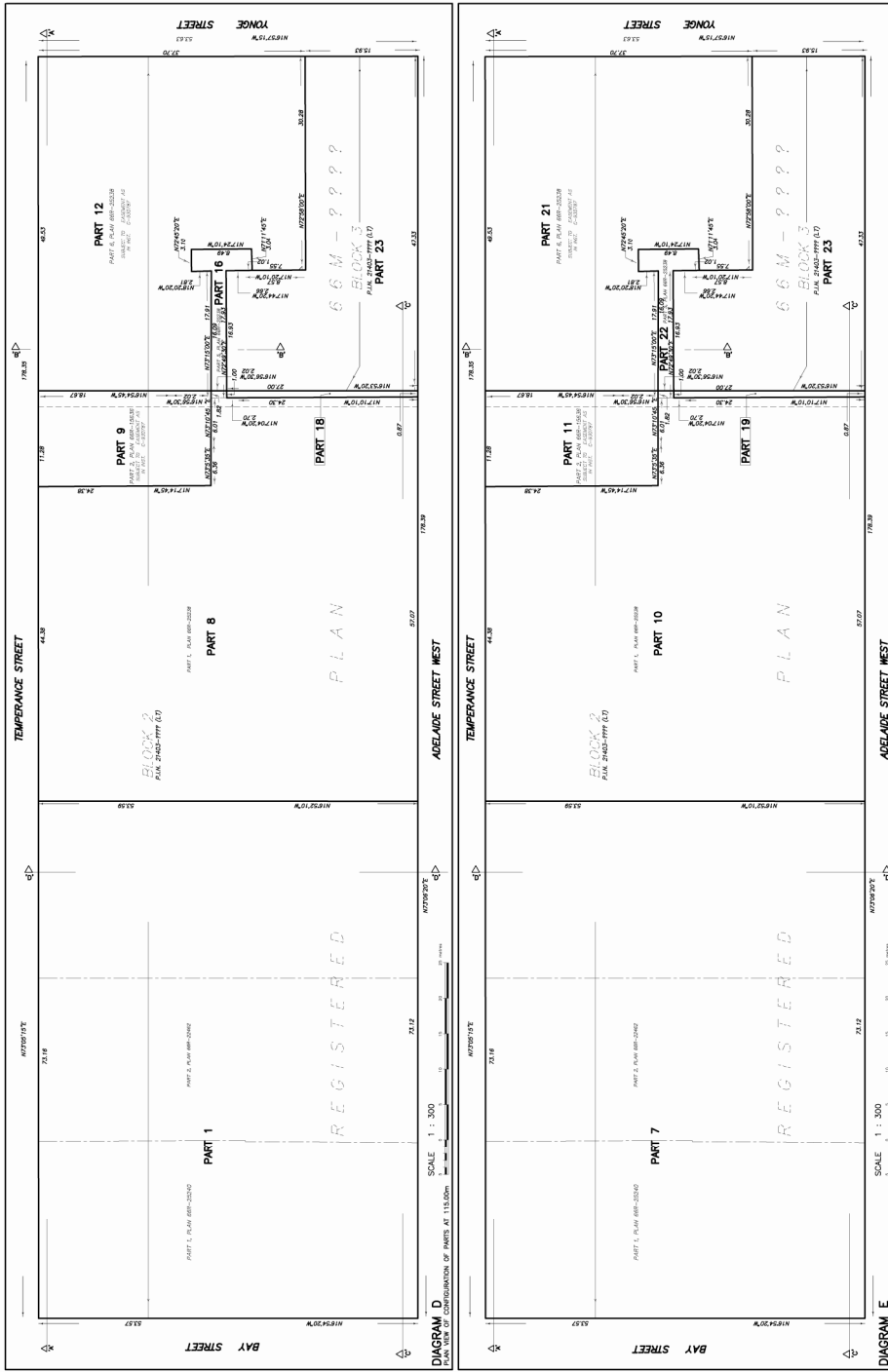
Applicant's Submitted Drawing

Not to Scale
06/06/2011

10 - 40 Adelaide Street West, 333 Bay Street
40 Temperance Street and 118 Yonge Street

File # 09 115495 PL

Attachment 1B: Part Lot Control Exemption Plan



Draft Reference Plan 2

10 - 40 Adelaide Street West, 333 Bay Street
 40 Temperance Street and 118 Yonge Street

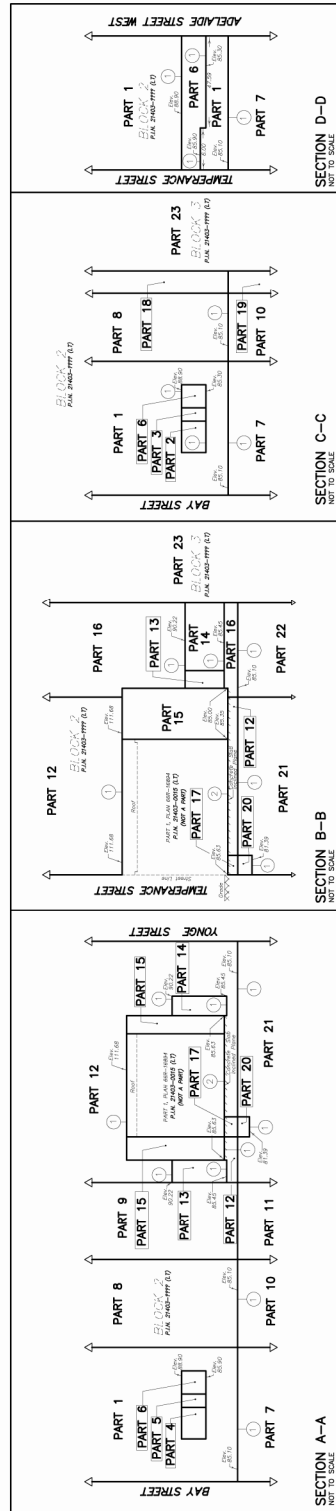
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Part Lot Control Exemption

Applicant's Submitted Drawing

Not to Scale
 06/06/2011

Attachment 1C: Part Lot Control Exemption Plan



Draft Reference Plan 2 - Sections

Part Lot Control Exemption

Applicant's Submitted Drawing

Not to Scale
06/06/2011

10 - 40 Adelaide Street West, 333 Bay Street
40 Temperance Street and 118 Yonge Street

File # 09 115495 PL

Attachment 2: Application Data Sheet

Application Type	Part Lot Control Exemption	Application Number:	09 115495 STE 28 PL
Details		Application Date:	March 10, 2009

Municipal Address: 40 ADELAIDE ST W, 40 TEMPERANCE ST, and 335 & 347 BAY ST
 Location Description: **GRID S2806
 Project Description: Exemption from part lot control for lands municipally known as 40 Adelaide St., 40 Temperance St., and 335 & 347 Bay St. Plan is described as Blocks 1-3 inclusive on plan dated Feb 26 2008. Also refer to related Draft Plan of Subdivision Approval over the whole of the lands (Blocks 1-3 Inclusive).

Applicant:	Agent:	Architect:	Owner:
GOODMANS 250 Yonge St, Suite 2400 Toronto, ON, M5B 2M6			EXCHANGE TOWER LIMITED 181 Bay St, Suite 330 Toronto, ON, M4J 2T3

PLANNING CONTROLS

Official Plan Designation:	Mixed Use Areas	Site Specific Provision:	460-2006, 94-0605, 998-88, 332-02, 138-03, 74-93
Zoning:	CR T12.0 C8.0 R11.7, G	Historical Status:	Y
Height Limit (m):	137, 76 (57, 275)	Site Plan Control Area:	Y

PROJECT INFORMATION

Site Area (sq. m):	15,025	Height:	Storeys:	N/A or 50
Block 1 (sq. m):	5,712		Metres:	N/A or 218 m
Block 2 (sq. m):	8,371			
Block 3 (sq. m):	942			Total
Total Residential GFA (sq. m):	29,881		Parking Spaces:	1015
Total Non-Residential GFA (sq. m):	256,713		Loading Docks	20
Total GFA (sq. m):	286,594			
Lot Coverage Ratio (%):	N/A			
Floor Space Index:	N/A			

DWELLING UNITS

FLOOR AREA BREAKDOWN (upon project completion)

Tenure Type:	Condo		Above Grade	Below Grade
Rooms:	0	Residential GFA (sq. m):	20,174	60
Bachelor:	33	Retail GFA (sq. m):	0	7,380
1 Bedroom:	277	Office GFA (sq. m):	215,353	0
2 Bedroom:	43	Industrial GFA (sq. m):	0	0
3 + Bedroom:	0	Institutional/Other GFA (sq. m):	30,530	0
Total Units:	353			

CONTACT: **PLANNER NAME:** Allison Meistrich, Senior Planner, ameistr@toronto.ca
TELEPHONE: (416) 392-7363

Attachment 3: Proposed Conveyances

Bay Adelaide Centre - Part Lot Control Exemption By-law LIST OF ANTICIPATED CONVEYANCES

The following is a list of the proposed transfers, charges and other transactions that the owners of the Subject Lands (as defined below) may effect after a part lot control exemption by-law has been enacted in respect of the Subject Lands.

Abbreviations:

“**Below Grade Parcels**” means, collectively, the East Below Grade Parcel, the West Below Grade Parcel and the North Below Grade Parcel.

“**East Above Grade Parcel**” means the lands designated as Parts 8, 9, 12, 13, 14, 15, 16, 17 and 18 on the R-Plan.

“**East Below Grade Parcel**” means the lands designated as Parts 10, 11, 19, 20, 21 and 22 on the R-Plan.

“**M-Plan**” means the draft plan of subdivision prepared by Speight, Van Nostrand & Gibson Limited.

“**North Above Grade Parcel**” means the lands designated as PIN 21403-0110 (LT).

“**North Below Grade Parcel**” means the lands designated as PIN 21403-0111(LT).

“**R-Plan**” means the draft reference plan prepared by Speight, Van Nostrand & Gibson Limited.

“**Subject Lands**” means, collectively, the East Above Grade Parcel, the East Below Grade Parcel, the West Above Grade Parcel, the West Below Grade Parcel, the North Above Grade Parcel, the North Below Grade Parcel and the Yonge Adelaide Parcel.

“**West Above Grade Parcel**” means the lands designated as Parts 1, 2, 3, 4, 5 and 6 on the R-Plan.

“**West Below Grade Parcel**” means the lands designated as Part 7 on the R-Plan.

“**Yonge Adelaide Parcel**” means the whole of Block 3 on the M-Plan.

1	East Above Grade Parcel (save for Part 18 on the R-Plan) –
A	Beneficial Transfer of East Above Grade Parcel (save for Part 18 on the R-Plan)
B	Registerable Transfer of East Above Grade Parcel (save for Part 18 on the R-Plan)
C	Beneficial Transfer of East Above Grade Parcel (save for Part 18 on the R-Plan)

2	Boundary Adjustment between East Above Grade Parcel and Yonge Adelaide Parcel –
A	Register Transfer of Part 18 on the R-Plan
B	Beneficial Transfer of Part 18 on the R-Plan
3	Boundary Adjustment between East Below Grade Parcel and Yonge Adelaide Parcel –
A	Register Transfer of Part 19 on the R-Plan
B	Beneficial Transfer of Part 19 on the R-Plan
4	East Below Grade Parcel –
A	Beneficial Transfer of East Below Grade Parcel
B	Lease of East Below Grade Parcel for 49 years (registered and unregistered versions)
5	North Above Grade Parcel –
A	Beneficial Transfer of North Above Grade Parcel
6	North Below Grade Parcel –
A	Beneficial Transfer of North Below Grade Parcel
B	Lease of North Below Grade Parcel for 49 years (registered and unregistered versions only)
7	West Below Grade Parcel –
A	Beneficial Transfer of West Below Grade Parcel
B	Lease of West Below Grade Parcel for 49 years (registered and unregistered versions only)
8	Other -
A	Retail Head Lease of retail concourse within Below Grade Parcels for 49 years less a day – unregistered and registered versions
B	Operating Agreement among, <i>inter alia</i> , all nominees and beneficial owners of Subject Lands – unregistered and registered versions
C	Addition Elle Premises – unregistered and registered versions

D	To the extent applicable and obtainable, partial releases of notices of leases registered against North Above Grade Parcel and East Above Grade Parcel (i.e. of tenancies in BAC West Above Grade)
9	Financing for East Tower -
A	Registerable and beneficial charges of the East Above Grade Parcel and all collateral security in respect thereof
B	Registerable and beneficial charges of the East Below Grade Parcel and all collateral security in respect thereof

Attachment 4: Draft By-law

Authority: Toronto and East York Community Council Report No., as adopted
by City of Toronto Council on _____, 2011

Enacted by Council:

CITY OF TORONTO

Bill No.

BY-LAW No. -2011

**To exempt lands municipally known as 10 & 40 Adelaide Street West, 40
Temperance Street, 118 Yonge Street and 333 Bay Street from Part Lot Control.**

WHEREAS authority is given to Council by subsection 50(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, to pass this By-law;

The Council of the City of Toronto **HEREBY ENACTS** as follows:

1. Subsection 50(5) of the *Planning Act* does not apply to the lands described in the attached Schedule "A".
2. This By-law expires two years from the date of its enactment by Council.

ENACTED AND PASSED this _____ day of July, 2011.

Mayor

City Clerk

Attachment 5: Part Lot Control Repeal By-law

Authority: Toronto and East York Community Council Report No., as adopted
by City of Toronto Council on _____, 201_
Enacted by Council:

CITY OF TORONTO

Bill No.

BY-LAW No. -201_

To repeal By-law No. _____ of the City of Toronto, being a By-law to exempt lands municipally known as 10 & 40 Adelaide Street West, 40 Temperance Street, 118 Yonge Street and 333 Bay Street from Part Lot Control.

WHEREAS By-law No. _____ was passed pursuant to subsection 50(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, to pass this By-law;

WHEREAS authority is given to Council by subsection 50(7.5) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, to repeal or amend a By-law passed under subsection 50(7), to delete part of the land described in it;

The Council of the City of Toronto **HEREBY ENACTS** as follows:

1. By-law No. _____ is hereby repealed and does not apply to any of the lands described in the attached Schedule "A".