



**STAFF REPORT
ACTION REQUIRED**

Block 31 in the Railway Lands: Development Agreement, Update and Next Steps

Date:	January 20, 2014
To:	Executive Committee
From:	Brenda Patterson, Deputy City Manager, Cluster "A"
Wards:	20, Trinity Spadina
Reference Number:	

SUMMARY

Block 31 is a City-owned site in the Railway Lands located West of Spadina, south of Fort York Boulevard, north of the Gardiner Expressway and adjacent to Canoe Landing Park. The site is 12,229 square metres (m²) with an additional 3,500 m² on the western edge of the site (a 30 m wide strip). The City entered into agreements in 1994 with the Canadian National Railways (CN, succeeded by Concord Adex and Wittington Developments), the Toronto District School Board (“TDSB”) and the Toronto Catholic District School Board (“TCDSB”) for the purpose of collecting development levies to fund the construction of a community centre, a child care centre and an elementary school for each of the TDSB and the TCDSB.

These agreements required the City to collect development levy revenues from all development within the Railway Lands Central and West to finance the construction of a community centre, and elementary schools for both of the TDSB and the TCDSB. In addition, the City received Section 37 funds dedicated to building a child care centre on the site.

This report provides an update to Council regarding the progress of the Block 31 development, an update on the funds dedicated for this project, information on next steps, and recommends that Council authorize the Deputy City Manager (DCM), Cluster “A” to enter into a development agreement with the TDSB and the TCDSB with respect to this project. Key elements to be included in the development agreement are set out in Appendix “A” to this report.

This report further recommends adjustments to the 2014 Council Approved Capital Budget for Parks, Forestry and Recreation Services to include full planned project cost for the community centre and the school board's shared facility on Block 31 and the 2014 Council Approved Capital Budget for Children's Services for the planned child care centre.

RECOMMENDATIONS

The Deputy City Manager, Cluster "A" recommends that:

1. City Council authorize the Deputy City Manager, Cluster "A" to negotiate and execute on behalf of the City, a development agreement for Block 31 between the City, the TDSB and the TCDSB, which agreement shall be in a form satisfactory to the City Solicitor, based substantially on the terms and conditions set out in Appendix "A" and other terms and conditions satisfactory to the Deputy City Manager, Cluster "A".
2. City Council authorize the amendment of Parks, Forestry and Recreation's 2014 Council Approved Capital Budget by adding a new sub-project for the construction of the TDSB and TCDSB schools in Block 31 in the amount of \$36.451 million with cash flows of \$2.000 million in 2014, \$16.451 million in 2015, and \$18.000 million in 2016. The project cost will be fully funded by the school boards.
3. City Council authorize the amendment of 2014 Council Approved Capital Budget for Children's Services by adding a new project with a project cost of \$3.628 million, with a 2014 cash flow budget of \$1.000 million; \$1.314 million in 2015; and \$1.314 million in 2016 to include the planned project cost for the child care centre on Block 31, funded from Section 37 and other funding sources (\$3.628 million).
4. City Council direct the Deputy City Manager, Cluster "A" in conjunction with the Deputy City Manager and Chief Financial Officer to report to the Budget Committee either through the capital and operating budget processes or by separate report on the project management, design and development , overall project costs including development and construction costs and other requirements including environmental remediation, sources of funding and the details of the cost-sharing agreement once these details are available.

FINANCIAL IMPACT

The 1994 Umbrella Agreement signed by the City, the school boards and CN (succeeded by Concord Adex and Wittington Properties) provided for development levy revenue to be collected from all development within the Railway Lands Central and West to finance

the construction of a community centre, a child care centre and elementary schools for both the TDSB and the TCDSB. As of December 31, 2013, the City has received \$35.712 million with an additional \$1.600 million projected to be received to finance the construction of these community facilities.

The Development Levy Trust Agreement requires that the levies be expended on the construction of these facilities and sets out a time frame for the expenditure of these levy funds in the completion of the community infrastructure that is within 5 years of reaching a threshold amount of above-grade gross floor area in the Railway Lands Central and West. It is expected that the building permits for this threshold gross floor area will be issued in Q1 2014. Consequently, it is essential that the DCM Cluster “A” be authorized to enter into a development agreement with the school boards in order to proceed with the development of Block 31.

City Council, at its meeting of October 22, 2012, authorized funding of \$0.200 million from the Development Levy Trust account (XT6104) to undertake a Phase I and Phase II Environmental Assessment of Block 31 and adjacent lands with an understanding that this funding be adjusted for in the final project budget through pro-rata cost-sharing arrangement with the school boards.

The City of Toronto is overseeing the purchasing process for the architect, external project manager, environmental and geotechnical consultants, general contractor and auditor and entering into the contracts with each of these on behalf of all the parties. The City will be responsible for the cost relative to its share of the development and construction (community centre and child care centre) on the site while the school boards will be responsible for their share of the costs of development and construction. The school boards will be required to deposit funds in advance with the City in accordance with the terms of the development agreement.

Included in the 2014-2023 Capital Plan for Parks, Forestry and Recreation is \$13.400 million for the construction of the Railway Lands Community Centre in Block 31 with cash flows of \$7.255 million 2014 and \$6.145 million in 2015, funded by \$5.200 million in development levies, \$5.945 million from the Capital Financing Reserve Fund, \$2.029 million in Development Charges, \$0.166 million in other reserve funds, and \$0.060 million in debt. This report seeks the authority to add a new capital project to PF&R 2014 – 2023 Capital Plan in the amount of \$36.451 million with cash flows of \$2.000 million in 2014, \$16.451 million in 2015, and \$18.000 million in 2016. These funds represent the cost of constructing the two schools for TDSB and TCDSB. The school boards will be responsible for funding their share of \$36.451 million and any other costs that may arise during the development process for the cost of the schools to be deposited in advance with the City in accordance with the development agreement.

The estimated operating impacts of this new community centre are approximately \$1.500 million, based on preliminary estimates commencing in 2017 and is subject to change pending final programming plans.

The City has secured funding for one child care centre, in the amount of \$3.188 million in Section 37 funding, and other funding of \$0.440 million. Pending Council approval of this report, Children's Services will amend its 2014 -2023 Capital Plan to include a future-year child care centre with a project cost of \$3.628 million with 2014 cash flow budget of \$1.000 million; \$1.314 million in 2015; and \$1.314 million in 2016, funded from Section 37 and other funding sources (\$3.628 million).

The following table details the distribution of project costs and available funding sources;

Source of Funds for the Block 31 Development

(in dollars)

Project	City Levy Trust Account	Other Funding Sources	Section 37 and Other Funding	School Board Funding	Total
PF&R 2014-2023 Capital Plan (Community Centre)	5,200,000.00	8,200,000.00			13,400,000.00
Schools (included in PF&R Capital Plan)				36,450,569.00	\$ 36,450,569.00
Children's Services 2014-2023 Capital Plan (Child Care Centre)			3,628,000.00		\$ 3,628,000.00
Total	\$ 5,200,000.00	\$ 8,200,000.00	\$ 3,628,000.00	\$ 36,450,569.00	\$ 53,478,569.00

The Deputy City Manager and Chief Financial Officer will report to the Budget Committee either through the capital and operating budget processes or by separate report on the outcomes of the development agreement negotiations, overall project costs including development and construction costs and other requirements including environmental remediation, sources of funding and the details of the cost-sharing agreement once these details are available.

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

DECISION HISTORY

On October 21, 1994, the City of Toronto, signed agreements with the Canadian National Railways (CN, succeeded by Concord Adex and Wittington Developments), the Toronto District School Board (“TDSB”) and the Toronto Catholic District School Board (“TCDSB”) for the purpose of collecting development levies to fund the construction of the multi-user facility and setting out the framework for sharing the development process on the Block 31.

On April 12, 13, and 14, 2005, City Council adopted Report No. 4, Clause No. 36 of the Policy and Finance Committee, which approved Toronto Community Housing as agent for the City to conduct due diligence, feasibility site plan and other pre-development studies required to develop affordable housing on the City's Block 31, 32, 36, 18AB of the Railway Lands.

<http://www.toronto.ca/legdocs/2005/agendas/council/cc050412/pof4rpt/cl036.pdf>

On July 16, 17, 18, and 19, 2007, City Council adopted EX10.34 as amended, which authorized the Director of Real Estate Services in consultation with the Director of Development, Affordable Housing Office (AHO), to negotiate and enter into Offers to Sell Block 31, 32, 36 and 18AB to TCH.

<http://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-07-16-cc11-dd.pdf>

On August 4, 2009, the Director of Community Planning, Toronto and East York District, reported to the Toronto and East York Community Council on the re-zoning application and preliminary report submitted by TCH regarding 419 Fort York Blvd (Block 31 Railway Lands West).

<http://www.toronto.ca/legdocs/mmis/2009/te/bgrd/backgroundfile-23177.pdf>

On October 3, 2011, Executive Committee referred Item EX11.14 "Release of Blocks 31 and 18AB in the Railway Lands (Item AH3.2)" to the City Manager to report back in conjunction with the Chief Corporate Officer within six months providing further information on the plans for the future disposition of Blocks 31 and 18AB.

(September 13, 2011) Letter - Release of Blocks 31 and 18AB in the Railway Lands

<http://www.toronto.ca/legdocs/mmis/2011/ex/bgrd/backgroundfile-41195.pdf>

On November 27, 2012, City Council adopted EX24.15, as amended, pursuant to which the Deputy City Manager, Cluster "A" was authorized and directed to assume management of Block 31 of the Rail Lands and the Adjacent Lands and develop a plan for the property.

<http://www.toronto.ca/legdocs/mmis/2012/ex/bgrd/backgroundfile-51463.pdf>

On May 22, 2013, the Director of Community Planning, Toronto and East York District, reported to the Toronto and East York Community Council (TE25.5) on 20 Brunel Court (Block 31 - Railway Lands West) and 95 Fort York Boulevard - City-Initiated Official Plan Amendment - Final Report. The report which recommended amending the Official Plan to add the easternmost 30 metres of the lands at 95 Fort York Boulevard to Official Plan Site and Area Specific Policy #265, so they are exempt from Official Plan Policy 4.3.8, which prohibits the disposal of City-owned land in areas designated as *Parks and Open Spaces*. Community Council adopted the report.

<http://www.toronto.ca/legdocs/mmis/2013/te/bgrd/backgroundfile-58700.pdf>

ISSUE BACKGROUND

The City, through the Deputy City Manager, Cluster “A” is taking the lead on managing the development of Block 31, which consists of a community centre (PF&R), child care centre (Children’s Services), and the development of both a public and Catholic school under their respective boards (TDSB and TCDSB). In its role as lead, it is intended that the City will enter into agreements with the architect, external project manager and general contractor for this project. As a result it is critical that the City enter into a development agreement with the school boards in order to set out the rights and obligations of all three parties, particularly with respect to payment of the costs incurred in completing this project.

The key stakeholders in the development of Block 31 signed an Umbrella Agreement dated October 21, 1994, setting out the framework for sharing the development process and the future multi-use facility on the site. Concurrent agreements provided for development levy revenue to be collected from all development within the Railway Lands Central and West to finance the construction of a community centre and elementary schools for both the TDSB and the TCDSB. As of December 31, 2013, the City has received \$35.712 million with an additional \$1.600 million projected to be received to finance the construction of these community facilities

The key stakeholders also entered into a Development Levy Trust Agreement dated October 21, 1994 which requires that the levies be expended on the construction of these facilities within a time frame of five years from the time that levies have been collected for a threshold amount of above-grade gross floor area, 683,000 m² (7,351,991 ft²) is reached in the Railway Lands. If the funds are not spent within this timeframe, the levies are to be returned to those who paid them. The threshold level of gross floor area may be reached as early as Q1 2014, in which case, the funds will be required to be spent before Q1 2019. As a result it is critical that the DCM Cluster “A” enter into a development agreement with the school boards in order to enter into a contract with the successful architects.

The development agreement will cover various issues which need to be addressed to ensure the continued progress of the project, as more particularly set out in Appendix “A” to this report.

As most of the Railway Lands are now built out, the new community is awaiting the local access to schools, child care centre, and public recreational facilities that are part of the plan for the community. Furthermore, developing the site with these public uses will greatly enhance the neighbourhood and the conditions adjacent to the park.

The Railway Lands West Secondary Plan contemplated the provision of affordable housing on Block 31 in addition to the other public uses. While development levies were collected for the purpose of building the schools and community centre, no funds were collected for affordable housing given the available funding model and policy context at the time during which the agreements were signed. Through a previous preliminary

design stage it was determined that the Block 31 site is too constrained to also include a residential component. The removal of a residential component will also speed up the development of the public uses and thereby ensure the investment of the development levies collected over the next five years. Affordable housing development is, however, being prioritized by staff for future federal/provincial funding on the TCH owned site on Block 36 in the Railway Lands.

COMMENTS

Development on Block 31 and Adjacent Lands

The Official Plan and Zoning By-law for the Railway Lands West supports the use of the Block 31 for a community centre, TDSB and TCDSB elementary schools, and a child care centre. The estimated size of these community services is as follows:

TDSB elementary school	5,202 m ²	(56,000 ft ²)	550 students, Full Day Kindergarten to Grade 8
TCDSB elementary school	5,111 m ²	(55,000 ft ²)	500 students Full Day Kindergarten to Grade 8
Community Centre	3809 m ²	(40,000 ft ²)	
<u>Child care centre</u>	<u>706 m²</u>	<u>(7,600 ft²)</u>	<u>52 children</u>
Total	14,734 m ²	(158,600 ft ²)	

Based on the gross floor area of these facilities, the City's estimated portion of building (community centre and child care centre) amounts to slightly less than one-third (1/3) of the total. The school boards' facilities amount to more than two-thirds of the total building on Block 31.

Once the architectural contract has been awarded and a preliminary design approved, development costs (including construction costs), will be more accurately estimated. It is anticipated that through the design process there will be some operational sharing of facilities between the parties on the site in order to be efficient and more cost effective.

The City is taking the lead in the development of Block 31. As lead, it is intended that the City will enter into agreements with the architect, external project manager and general contractor for the project on behalf of all of the parties. A development agreement for Block 31 is currently being negotiated between the City and the school boards that will define the roles and responsibilities of the stakeholders and ensure that all project costs will be shared between the parties in an equitable manner as noted in Attachment "A".

Each party will be responsible for ensuring that it has the funds to cover its costs and not seek contribution from the other parties related to their share of the contracts with the architect, project manager, general contractor and auditor as well as for the construction

and related costs based on their share of building. The school boards will be required to deposit funds in advance with the City in accordance with the terms of the development agreement. It is intended that this agreement be finalized and signed before the architectural contract is awarded.

Block 31 Update

An interim steering committee has been formed with representation from the City (Legal, Real Estate Services, City Planning, Children's Services, Financial Planning, and Parks, Forestry and Recreation) along with representation from the TDSB and TCDSB. The committee, chaired by Deputy City Manager, Cluster "A", has been meeting regularly to ensure that the necessary steps are taken to move the project from the planning to development phase within the next twelve to eighteen months.

The environmental and geotechnical studies of Block 31 have commenced. Draft reports on the Phase I and Phase II Environmental Site Assessments have been submitted to the City from the consultant, Golder Associates Ltd.

The Request for Proposals (the "RFP") to select an architect for the Block 31 Project was issued in December 2013. The RFP was developed by the Steering Committee. The RFP closes on January 31, 2014 and the selection process will begin in early February. A fairness monitor will be selected to provide independent assurance of the integrity, fairness and transparency of the selection process. Upon completion of this process the successful proponent will be awarded a contract in March and design work will begin immediately.

Next Steps

Concurrent with this report, and in keeping with implementing the development plan, Real Estate Services staff is completing the process to declare the relevant lands surplus to the City's needs. Authority will be sought at a later date to negotiate and enter a land use agreement to confirm the various uses within the Block 31 Project.

Work will begin in February 2014 on an RFP to select an independent professional project management firm to provide monitoring, oversight and management of all activities related to the Block 31 Project through to completion. This contract is expected to be awarded by June 2014.

The next phase of work consists of the preparation and submission of a risk assessment and obtaining a record of site condition. The environmental consultants who have already been recruited will meet with the successful architect to strategize on the proposed location of buildings, landscaping, parking, loading and hard surfaces in order to minimize the cost implications of the environmental soil and water site issues.

Once a contract is awarded for architectural services, work will begin with the stakeholders to complete the required following design phases for the project including schematic design, design development, preparation of contract documents, and tendering. It is anticipated that the external project manager will be selected during the schematic design phase and will continue working through to completion. The City will be requesting tenders from pre-qualified general contractors through Purchasing and Materials Management Division (PMMD) in consultation with the project manager and the Steering Committee.

The Deputy City Manager, Cluster "A" will report to the Budget Committee either through the capital and operating budget processes or by separate report on the project management, design and development, overall project costs including development and construction costs and other requirements including environmental remediation, sources of funding and the details of the cost-sharing agreement once these details are available.

The approval of the recommendations in this report is an important step forward in the pre-development of Block 31 in the Railway Lands and moving the development of planned community facilities forward between the City and the Toronto District School Board and the Toronto Catholic District School Board.

CONTACT

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SIGNATURE

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Attachment: Appendix A – Key Terms and Conditions of the Development Agreement

APPENDIX A

KEY TERMS AND CONDITIONS OF THE DEVELOPMENT AGREEMENT

The development agreement between the City, TDSB and TCDSB in respect of Block 31 shall include the following terms and conditions:

1. The City will oversee the purchasing process for the architect, external project manager, general contractor and auditor and enter into the contracts with each of these.
2. The project costs shall be shared between the parties in an equitable manner taking into account the fact that some elements of the project will be for the sole use of one of the parties and other elements will be used by more than one party. The boards shall be required to deposit funds in advance with the City in accordance with a schedule to be agreed upon. The agreement will also provide for a final audit of project costs to be conducted within a reasonable time after substantial completion of the project.
3. A steering committee with equal representation from all of the parties will be established to oversee all elements of the project, including approval of the plans and specifications and budget for the project.
4. Each party shall be responsible for ensuring that it has the funds to cover its costs and will not seek contribution from the other parties. Each party is responsible for ensuring that its share of the development levies is spent appropriately.
5. The agreement requires the parties to negotiate a mechanism for ownership of the various elements of the project. Unless the parties agree otherwise, the parties will enter a ground lease as provided for in the Umbrella Agreement. The parties will enter into such other agreements as required to give effect to their decision in this regard.