



REPORT FOR ACTION

20 Brunel Court - Leases with the Toronto District School Board and the Toronto Catholic District School Board

Date: June 10, 2019
To: General Government and Licensing Committee
From: Acting Director, Real Estate Services
General Manager, Parks, Forestry and Recreation
Wards: Ward 10 - Spadina Fort York

SUMMARY

The purpose of this report is to seek Council authority to enter into Agreements with the Toronto District School Board and the Toronto Catholic District School Board for the leasing and shared use of 20 Brunel Court, in accordance with Item EX38.3 titled, Block 31 in the Railway Lands - Development Agreement, Update and Next Steps, adopted by City Council on February 19, 2014.

RECOMMENDATIONS

The Acting Director, Real Estate Services and the General Manager of Parks, Forestry and Recreation recommend that:

1. City Council authorize the City of Toronto to enter into Leases with the Toronto District School Board and the Toronto Catholic District School Board, severally, respecting a portion of the property at 20 Brunel Court, substantially on the terms and conditions contained in Appendix A and on such other terms and conditions deemed appropriate by the Deputy City Manager, Corporate Services, in consultation with the General Manager, Parks, Forestry and Recreation, and in a form satisfactory to the City Solicitor.
2. City Council approve the City's proportionate share of 41.9 percent for the Shared Facilities Agreement which includes 5.3 percent to be recovered from the third party child care operator.

3. City Council authorize the Deputy City Manager, Corporate Services, or their designate administer and manage the Leases, including the provision of any consents, approvals, waivers, notices, and notices of termination, provided that the Deputy City Manager, Corporate Services, may, at any time, refer consideration of such matters to City Council for its determination and direction.

4 City Council authorize the City of Toronto to enter into a Shared Facilities Agreement with both the Toronto District School Board and the Toronto Catholic District School Board, substantially on the terms and conditions contained in Appendix B and on such other terms and conditions deemed appropriate by the General Manager, Parks, Forestry and Recreation, in consultation with the Deputy City Manager, Corporate Services, and in form satisfactory to the City Solicitor;

5. City Council authorize the City of Toronto to enter into any ancillary agreements and other agreements, documents, notices, or instruments contemplated under, or necessary to give effect to the Leases and the Shared Facilities Agreement (Ancillary Agreements) on the terms and conditions deemed appropriate by the Deputy City Manager, Corporate Services, in consultation with the General Manager, Parks, Forestry and Recreation, and in form satisfactory to the City Solicitor

6. City Council authorize the Director of Real Estate Services to execute the Leases and Ancillary Agreements relating to the Leases, on behalf of the City of Toronto.

7. City Council authorize the General Manager, Parks, Forestry and Recreation to execute the Shared Facilities Agreement and Ancillary Agreements relating to the Shared Facilities Agreement, on behalf of the City of Toronto.

8. City Council authorize the General Manager, Parks, Forestry and Recreation, in consultation with the Deputy City Manager, Corporate Services, to amend the Shared Facilities Agreement as necessary, from time to time, provided the amendments must not be materially inconsistent with the original Shared Facilities Agreement and in a form satisfactory to the City Solicitor.

9. City Council approve the establishment of an obligatory reserve fund account called the Canoe Landing Reserve Fund in Schedule 15 - Third Party Agreements Obligatory Reserve Funds, of the City of Toronto Municipal Code Chapter 227, (Reserves and Reserve Funds) the purpose of which is to provide funding for minor and major repairs, replacements, and capital improvements for the Canoe Landing Facility and related property as set out in Appendix C.

10. City Council authorize the amendment of the Umbrella Agreement dated October 21, 1994 between the predecessors of the City of Toronto, the Toronto District School Board, and the Toronto Catholic District School Board, and the Development Agreement dated May 1, 2014 between the City of Toronto, the Toronto District School Board, and the Toronto Catholic District School Board such that the requirements in those Agreements to enter into:

- a. A ground lease from the City to the School Boards and the City, collectively, as ground lessee;
- b. Space leases from the ground lessee to each of the City and the School Boards;
- c. a facilities agreement among the ground lessee parties;
- d. A shared use park agreement between the City and the ground lessee; and
- e. Any other agreements relating to the Facility (as defined in the report), are superseded by the Leases and Shared Facilities Agreement authorized by Recommendations 1 and 3 above and are of no further force and effect.

FINANCIAL IMPACT

The Leases between the Toronto District School Board (TDSB) and the Toronto Catholic District School Board (TCDSB) will be for nominal consideration. The parties will be entering into a Shared Facilities Agreement to address the shared use of space, operating, maintenance, repair and cost allocations for the Facility.

The Shared Facilities Agreement will stipulate the proportionate interest in operating costs that each of the parties will be responsible for.

Below is the preliminary proportionate interest for each of the parties and will be finalized subsequent to the completion of the as-build drawings for the Facility.

Table 1 - Preliminary Proportionate Interest

Parties	Preliminary Proportionate Interest
City of Toronto (PFR)	36.60%
City of Toronto (Child Care Centre Operator)	5.30%
TDSB	30.10%
TCDSB	28%
Grand Total	100%

Parks, Forestry and Recreation will include funding to cover costs associated with the 36.60 per cent proportionate share along with any direct operational costs to operate the Community Centre in future operating budgets. There is sufficient funding in the 2019 Council Approved Operating budget to meet the financial obligations under the Shared Facilities Agreement for the current 2019 fiscal year.

The child care centre operator will be responsible for the operational costs associated with the child care centre to be located within the Facility, including costs associated with the Shared Facilities Agreement. There is no financial impact to Children's Services as a result of this agreement.

Revenues are also expected to be realized from the use of the parking garage within the Facility by the public and from the green roof of the Facility. A revenue estimate is not available at this time. These revenues will offset the cost of maintaining and operating the facility, reducing the amount to be paid by each party.

In any year of operation that results in a net surplus, the surplus shall be contributed to a dedicated reserve fund to provide a source of funding to finance minor and major repairs, replacements and capital improvements to the Facility.

The Chief Financial Officer and Treasurer 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 TDSB and the TCDSB for the purpose of collecting development levies to fund the construction of the Facility and setting out the framework for sharing the development process on 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 authorized 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.

<https://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.

<https://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).

<https://www.toronto.ca/legdocs/mmis/2009/te/minutes/2009-09-15-te27-mn.htm>

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://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX11.14>

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.

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

On July 16, 2013, City Council adopted TE25.5, which authorized 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.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.TE25.5>

On February 19, 2014, City Council adopted EX38.3, recommending that the Deputy City Manager, Cluster A, negotiate a development agreement for Block 31 between the City, the TDSB and the TCDSB. That report also directed the Deputy City Manager, Cluster A, in conjunction with the Deputy City Manager and the Chief Financial Officer to report to the Budget Committee either through the capital and operating budget process 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 were available.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.EX38.3>

On May 29, 2017, by approval of GM21.20, under its Delegated Authority, Government Management Committee granted authority to award the contract and approved the budget for construction of the new City of Toronto, Parks Forestry and Recreation's (PF&R) multi-purpose building on Block 31 (municipally known now as 20 Brunel Court.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.GM21.20>

At its meeting on June 24th, 2019, General Government and Licensing Committee, will receive companion report titled, Award of Request for Proposal 9119-19-7055 for Property Management Service for Canoe Landing, from the General Manager, Parks, Forestry and Recreation requesting that City Council grant authority to Award and enter into an agreement with Kipling Realty Management Inc. to provide Property Management Services for Canoe Landing for a fixed period of five (5) Years.

COMMENTS

The City, through the Deputy City Manager, Community and Social Services, is taking the lead on managing the development of 20 Brunel Court (formerly known as 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 the respective boards (TDSB and TCDSB) (the Facility)

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. They also signed a Development Agreement dated May 1, 2014 regarding the ownership and construction of the Facility.

The Umbrella Agreement and Development Agreement provides that the parties will enter into the following:

- a ground lease from the City, as landowner of the site, to the City and the Boards, collectively, as ground lessee;
- subleases from the ground lessee to each of the TDSB, the TCDSB and the City;
- A shared facilities agreement among the ground lessee for the integrated use and operation of the Facility; and
- A shared use park agreement between the City, as ground lessor, and the ground lessee.

In subsequent negotiations, the City and the boards agreed to simplify the above ownership structure. The requirement for a ground lease was eliminated, so that the City, as owner, would enter into a long term lease directly with each of the boards for their respective portions of the Facility, each to be used as an elementary school. The City, as landowner, will operate the community centre and, either itself or through third party operators, the child care centre and community space, in certain remaining areas of the Facility. The parties would also enter into a shared facilities agreement regarding the integrated use and operation of the Facility, including the shared use of certain building areas and systems and the cost sharing of operational and capital expenses. This shared facilities agreement would also govern the use of the shared park and other outdoor spaces. The main advantages of this simplified structure were that it eliminated a transaction which would attract land transfer tax (ground Lease), and greatly simplified the proposed administration of the Facility.

Given the multiple stakeholders and systems, the parties agreed the most efficient and effective approach to manage and operate the Facility is to source a third party Property Management firm to oversee the operation, maintenance and repair of the Facility. The property manager will also be responsible for directly invoicing and collecting payment for all costs shared under the Shared Facilities Agreement.

The companion report also before the Committee titled, Award of Request for Proposal 9119-19-7055 for Property Management Services for Canoe Landing, from the General Manager, Parks, Forestry and Recreation, seeks authority to award and enter into an Property Management Agreement with the successful proponent, for a five year term. The Property Manager will be paid as part of the proportionate interest stipulated in the Shared Facilities Agreement and will be responsible for the operation of the Facility, including maintenance, contracted services and custodial services.

A third party child care center operator has been selected through a formalized process administered by Children's Services. The child care operator will assume full responsibility for all operational costs associated with the space allocated for the Child Care Centre representing 5.3 per cent.

The multi-use Facility is currently under construction. It is currently estimated that the two elementary schools will be in operation at the start of the 2019 school year; the childcare centre in the fall and the community recreation centre and community space in early 2020.

Through the design and working groups represented by each party, the operational governance model was established that included a Governance Committee and a Management Committee, which will provide oversight to the Lease and Shared Facilities Agreement, once approved.

Negotiations have been ongoing regarding the various agreements required for the Facility. The drafting of these agreements has been a joint effort between PF&R, Real Estate Services, Children's Services, City Legal, TDSB and TCDSB.

The City will enter into a Lease with each school board separately, for the portion of the Facility that will be exclusively used by that board to operate its elementary school. The Leases will be for 99 year terms with automatic extensions unless the board gives notice of termination. The school boards will be responsible for the payment of any Land Transfer Tax triggered by the 99 year term. The Base Rent will be nominal, with additional rent being payment as per the Shared Facilities Agreement. Additional major terms of the Leases are set out in Appendix A.

The City, TDSB and TCDSB will also enter into a Shared Facilities Agreement to address the ongoing operation, maintenance and repair of the Facility. This agreement, among other things, will ensure effective ongoing operation of the various shared facilities of the building, including but not limited to the mechanical and electrical systems, the exterior walls and roof of the building and any interior areas of the building and those parts of the outdoor areas of the lands to be for the mutual benefit and shared use by all the Parties, through terms and conditions that all parties must adhere to.

The Shared Facility Agreement also outlines the proportionate share of shared facilities costs for all parties, sets out days and times for each parties' use of the shared facilities and sets out the budget and approval process for the maintenance and repair contracts. Major terms and conditions of the Shared Facilities Agreement are shown in Appendix B.

The Facility will have a garage, which during school hours, will be used for parking for the school boards, child care centre and the recreation centre. The garage will be open for public parking at all other times. The City (Real Estate Services) will be entering into a parking service arrangement, for a one year pilot project, with the Toronto Parking Authority (TPA) for the supply, installation and maintenance of revenue collection equipment. The initial term will be for one year, with options to renew on terms acceptable to both parties. If this arrangement is terminated, any third party brought in to provide this service shall be secured through the City's procurement process. The responsibility for all infrastructure aspects of the garage and access driveways, including cleaning, maintenance, repair, and capital improvements/refurbishments will be the responsibility of the property manager being retained by the City and will be

funded through the Shared Facilities Agreement. The net revenue collected from parking will be paid to the property manager and used to offset the operating costs of the Facility.

The roof of the Facility will have a green roof with photovoltaic panels. It is recommended that all revenue, if any, from the green roof including the photovoltaic panels, be used towards the ongoing maintenance and operation of the Facility. Costs for the maintenance and upkeep of both the garage and the green roof will be split in accordance with each party's proportionate share of operating costs. Any future revenues resulting from the green roof will be paid to the property manager and used to offset the operating cost of the Facility.

An estimate of the revenue generated annually from the TPA and the green roof is currently not available. Any net financial surplus from the operations of the Facility will be contributed to the Canoe Landing Reserve Fund as outlined in Appendix C and used as a source of funding to finance minor and major repairs, replacements and capital improvements to the Facility as agreed by the parties.

This Facility represents the innovative city building initiatives created through the various planning tools. These tools provide the capacity to address educational, recreational, child care and community infrastructure needs in a highly intensified area of the City.

CONTACT

Melanie Hale-Carter, Acting Manager, Program and Policy Management, 416-392-1227
Melanie.Hale-Carter@toronto.ca

Howie Dayton, Director, Recreation, Parks and Forestry, 416-392-7252
Howie.Dayton@toronto.ca

SIGNATURE

Nick Simos
Acting Director, Real Estate Services

Janie Romoff
General Manager, Parks, Forestry and Recreation

ATTACHMENTS

Appendix A - Major terms- Leases with TDSB and TCDSB, 20 Brunel Court
Appendix B - Major terms: Shared Facilities Agreement between City, TDSB and
TCDSB
Appendix C - Canoe Landing Reserve Fund