

# **WATERFRONT EXPROPRIATION PROTOCOL**

## **Background**

1. Waterfront Toronto, incorporated pursuant to the Toronto Waterfront Revitalization Corporation Act, 2002, Statutes of Ontario, 2002 c. 28, has the mandate and responsibility for revitalizing the designated waterfront area described in O. Reg 200/03 of the said Act (the "Designated Waterfront Area"). Waterfront Toronto is severally funded by the City of Toronto, the Province of Ontario and the Government of Canada and is the master developer for all revitalization activities in the Designated Waterfront Area.
2. In this capacity, Waterfront Toronto in cooperation with the City of Toronto commissioned certain Environmental Assessment Studies within the Designated Waterfront Area as Class and Individual Environmental Assessments. The Class and Individual Environmental Assessment reports listed in Appendix A, as amended from time to time (the "Environmental Assessment Reports"), were approved by the Minister or deemed accepted by the Minister when no Part II requests were brought forward.
3. As a consequence of the acceptance of Environmental Assessment Reports and/or City approved precinct plans, land acquisition requirements for municipal purposes including roads, transit, public spaces, parks, municipal facilities and municipal services ("Municipal Purposes") are fixed. If a potential land acquisition has been identified in an approved Environmental Assessment Report and/or approved precinct plan, Waterfront Toronto will engage in negotiations with the impacted landowners to secure necessary permissions to enter the lands and conveyances of their property interests to Waterfront Toronto. All of the property interests acquired will be conveyed to the City of Toronto for the stated Municipal Purpose described in the applicable Environmental Assessment Report and/or City approved precinct plan.
4. The City of Toronto, pursuant to the *City of Toronto Act*, 2006, Statutes of Ontario, 2006 c. 11, has authority to acquire lands for Municipal Purposes, including the power to expropriate. Waterfront Toronto's goal is to acquire all the public land requirements on a voluntary or consensual basis within the time frame available for negotiations. However, if it appears as though there is a risk that consensual negotiations will not lead, in a timely manner, to the acquisition of the required lands, Waterfront Toronto will request the City of Toronto to exercise the City of Toronto's powers of expropriation.
5. Where lands are identified by Waterfront Toronto for expropriation by the City of Toronto (the "Required Lands") this document sets out the protocol that will be followed.

## **Pre- Expropriation Process**

6. When Waterfront Toronto requests the City of Toronto to exercise its expropriation powers, it will send a Property Requisition Form addressed to the Director of Real Estate Services, in the form attached as Appendix B, accompanied by:

- a) a Financial Commitment Letter in the form of the draft letter attached as Appendix C. This letter will irrevocably commit Waterfront Toronto to funding the expropriation process, and to fully indemnify the City of Toronto for all costs associated with the expropriation, should the City of Toronto elect to proceed;
  - b) a legal description, in the case of the proposed acquisition of a complete parcel, or a sketch or draft reference plan prepared by a surveyor of the Required Lands;
  - c) an appraisal report, prepared by an AACI accredited appraiser, providing an estimate of market value as of the current date and injurious affection, if applicable;
  - d) an expropriation justification statement, which will be suitable for inclusion in a staff report to City Council, should the Director of Real Estate Services elect to proceed, seeking authority to initiate the expropriation process and to issue a Notice of Application for Approval to Expropriate any Required Lands ('Notice of Application').
7. If the Director of Real Estate Services decides to submit to City Council a report recommending the issuance of a Notice of Application for the Required Lands, it is expressly agreed and understood that City Council is under no obligation whatsoever to Waterfront Toronto to approve the issuance of a Notice of Application. It is acknowledged and agreed the City of Toronto will exercise its own independent discretion in determining whether or not to authorize the issuance of the Notice of Application.
8. At the City Solicitor's sole discretion, the City Solicitor may direct City of Toronto Legal Services to undertake all or any legal work required in respect of the expropriation process in consultation with Waterfront Toronto and Waterfront Toronto will reimburse the City of Toronto for all City staff costs on a fee for service basis.
9. Should City Council authorize a Notice of Application and if requested by the Director of Real Estate Services, Waterfront Toronto will, subject to paragraph 8. of this protocol, undertake all steps necessary to obtain approval to expropriate the Required Lands, in consultation with City of Toronto Legal Services, including but not limited to:
- a) preparation of Application for Approval to Expropriate Land and Notices of Application for execution by the City Clerk,
  - b) service of Notices of Application in accordance with the Expropriations Act;
  - c) contacting and corresponding with property owners as required;
  - d) scheduling and attendance at any Hearings of Necessity, if requested, to lead evidence on behalf of the City of Toronto, if attendance is required; and
  - e) if an Inquiry Officer's Report is received, preparation of a summary of the Inquiry Officer's report with recommendations suitable for inclusion in the City of Toronto staff report to City Council on the results of the Hearing of Necessity.
10. Once Waterfront Toronto has submitted the report of the Inquiry Officer to the Director of Real Estate Services, or notifies the Director of Real Estate Services that no requests for a Hearing of Necessity are received, or if for any other reason no report of an Inquiry

Officer is delivered, the Director of Real Estate Services may elect to submit the appropriate staff report to City Council requesting it to approve the expropriation(s) as approving authority in accordance with the *Expropriations Act* and it is expressly agreed and understood that City Council has no obligation to Waterfront Toronto or any other party other than to exercise independent judgment and discretion in determining whether or not to approve and issue a Certificate of Approval for the expropriation of the Required Lands.

### **Post- Expropriation Process**

11. Should City Council authorize the execution of a Certificate of Approval, and if requested by the Director of Real Estate Services, Waterfront Toronto will, subject to paragraph 8. of this protocol, undertake responsibility for the preparation of all remaining documentation necessary and take all action necessary to implement the expropriation including;
  - a) Certificate of Approval for execution by the City Clerk
  - b) Draft expropriation reference plans
  - c) Notice of Expropriation, Notice of Possession and Notice of Election
  - d) Postponements, releases and directions as may be required
  - e) Offer of compensation as required by section 25 of the Expropriations Act including a supporting independent appraisal report.
12. All documents prepared by Waterfront Toronto will be subject to the prior approval of the City Solicitor or City Surveyor as appropriate prior to execution by the City Clerk or other City officials and/or service by Waterfront Toronto.
13. In parallel and throughout the expropriation process as described above, Waterfront Toronto will continue its efforts to secure a consensual resolution of the acquisition of the Required Lands. At any time, Waterfront Toronto may advise the Director of Real Estate Services that an appropriate consensual resolution has been reached and that the Required Lands can be conveyed by way of transfer, in which event the expropriation process will be terminated. In the event that a consensual resolution has been reached, but the affected owners agree that in order to conveniently convey title a plan of expropriation will be registered, the City of Toronto agrees to cooperate in facilitating a land transfer in that manner, subject to reserving to itself its unfettered discretion with respect to these matters.
14. If requested by the Director of Real Estate Services, and in consultation with City of Toronto Legal Services, Waterfront Toronto through its solicitors shall respond to any claims for compensation pursuant to the *Expropriations Act* on behalf of the City of Toronto, including all steps necessary to arbitrate the compensation. Waterfront Toronto agrees to consult with City of Toronto Legal Services in respect of any proposed settlement of expropriation matters to ensure that all settlements are consistent with City policies and any outstanding litigation.

## **Environmental Issues**

15. Upon City of Toronto becoming the registered owner of the Required Lands, Waterfront Toronto shall complete or provide, to the satisfaction of the Director of Real Estate Services, the following:
  - a) completion of soil and ground water testing of the Required Lands and, if necessary, development by Waterfront Toronto of a comprehensive remediation and risk management plan (the "Remediation and Risk Management Plan") for the Required Lands;
  - b) a written undertaking by Waterfront Toronto to the City of Toronto to implement the Remediation and Risk Management Plan to the satisfaction of the City of Toronto, acting reasonably, and at no cost to the City of Toronto, other than the City of Toronto's proposed contribution for that purpose which is included in the Council-approved five year plan for Waterfront Revitalization; and
  - c) confirmation from Waterfront Toronto of a comprehensive package of risk mitigation tools relating to the Required Lands including insurance, and may also include indemnities from third parties in favour of the City, reserve funds, or other protections in favour of the City.

## **General**

16. All the costs incurred by City of Toronto or Waterfront Toronto with respect to undertaking its obligations pursuant to this protocol, including legal, survey, appraisal and other costs will be the responsibility of Waterfront Toronto pursuant to its funding agreements otherwise in place. No account will be rendered directly to the City of Toronto by the lawyers, appraisers, surveyors or other consultants retained by Waterfront Toronto pursuant to this protocol. City of Toronto Legal Services will render quarterly accounts directly to Waterfront Toronto for payment.
17. For emphasis and clarity, it is stated the City of Toronto is not, pursuant to this protocol in any way delegating or assigning to Waterfront Toronto any of its powers under the *City of Toronto Act, 2006* or the *Expropriations Act*. Rather this protocol provides a framework to allow Waterfront Toronto to undertake its work, which the City of Toronto may elect to facilitate by the independent exercise of its powers of expropriation and while at all times retaining its independent and unfettered discretion with respect to such matters.
18. This protocol will be a public document and referred to on occasions when reports concerning Required Lands are made to City Council.
19. This protocol is effective as of the date of its execution by both parties.

## **Appendix A – Environmental Assessment Reports**

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| <b>Designated Waterfront Area Environmental Assessments</b>                   |
| Mimico Waterfront   |
| Port Union Waterfront Park  |
| West Don Lands (WDL) Class Master Plan  |
| ORC's WDL Land Management Activities  |
| East Bayfront (EBF) Class Master Plan   |
| WDL Transit Class   |
| Lower Don River West Flood Protection   |
| Queens Quay Extension /Queens Quay East of Parliament Master Plan             |
| Tommy Thompson Park Master Plan   |
| Western Beaches Watercourse Facility  |
| Unwin Avenue Demolitions  |
| 115 Unwin Demolitions   |
| 242 Unwin Demolitions   |
| Leslie Street Greening  |
| Improvements to the Martin Goodman Trail                                      |
| Off-Site Remediation (Adjacent to the Port Lands Artificial Sports)           |
| Port Lands Artificial Sports Fields   |
| Spadina Head of Slip Project  |
| WDL and EBF District Energy System  |
| The Rees and Simcoe Heads of Slips Project                                    |
| Martin Goodman Trail Project  |
| Marilyn Bell Park Trail Improvements  |
| Construction of the Spadina Bridge  |
| Cherry Beach Life Saving Station  |
| Don River Park  |
| EBF Public Realm and Stormwater Management Facility                           |
| York Quay Revitalization Phase 2 (Underground Parking Garage and park/square) |
| Underpass Park  |

**Appendix B – Property Requisition Form**

Date: \_\_\_\_\_

**WATERFRONT TORONTO PROPERTY EXPROPRIATION REQUEST FORM**

| <b>PROPERTY INFORMATION</b>  |                         |                |                        |   |             |        |       |
|--|-------------------------|----------------|------------------------|---|-------------|--------|-------|
| Property Address:<br><br>Legal Description:<br><br>Property Area Required:<br>Permanent:<br><br>Temporary:   |                         |                |                        | Registered Owner:<br>(please note if more than 1 please attach a list with names and addresses)<br><br>Mailing Address: |             |        |       |
| Council Approval:  |                         |                |                        | Financial Commitment:<br><br>(Please attach copy of Confirmation Letter or Contribution Agreement)                      |             |        |       |
| Type of Property Requirements  | Type of Property Taking |                |                        |   |             |        |       |
|  | Fee Taking              |                |                        | Easement  |             |        | Other |
|  | Full Taking             | Partial Taking | Sub-Surface Fee Taking | Surface   | Sub-Surface | Aerial |       |
| Permanent  |                         |                |                        |   |             |        |       |
| Temporary  |                         |                |                        |   |             |        |       |
| Other  |                         |                |                        |   |             |        |       |
| <b>INTENDED USE OF PROPERTY (CHECK AS APPROPRIATE)</b>   |                         |                |                        |   |             |        |       |
| PARKLAND:  |                         |                |                        | RIGHT-OF-WAY:   |             |        |       |
| INCLUSION IN DEVELOPMENT PARCEL:   |                         |                |                        | UTILITY RELOCATION:   |             |        |       |
| OTHER: (please specify)  |                         |                |                        |   |             |        |       |
| DURATION OF OCCUPANCY:   |                         |                |                        | CONSTRUCTION COMMENCING:  |             |        |       |
| DATE PROPERTY REQUIRED BY:   |                         |                |                        |   |             |        |       |
| DESCRIPTION OF REQUIREMENTS / KEY ISSUES IN NEGOTIATIONS: (This area will be included in the Council report) |                         |                |                        |   |             |        |       |

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**INFORMATION ATTACHED:**

|                  |               |
|------------------|---------------|
| Site Map:        | Draft R Plan: |
| Property Map:    | Final R Plan: |
| Other (specify): |               |

|                     |  |
|---------------------|--|
| <p>Approved By:</p> | <p><b>WATERFRONT TORONTO</b></p><br><p>_____</p> <p>Signature</p><br><p>_____</p> <p>(Please print name)</p> |
|                     | <p>_____</p> <p>Date</p><br><p>_____</p> <p>(Title)</p>  |

|                     |  |
|---------------------|--|
| <p>Received By:</p> | <p><b>CITY OF TORONTO</b></p><br><p>_____</p> <p>Director</p> <p>Waterfront Secretariat</p><br><p>_____</p> <p>Brian Varner</p> <p>Mgr. Policy &amp; Appraisal Section</p> |
|                     | <p>_____</p> <p>Date</p><br><p>_____</p> <p>Date:</p>  |

## **Appendix C – Financial Commitment Letter**

WT LETTERHEAD

City of Toronto  
Real Estate Services

RE: Land Acquisitions via. Expropriation in the Designated Waterfront Area

To Whom it May Concern:

The City of Toronto, pursuant to the City of Toronto Act, 2006, Statutes of Ontario, 2006 c.11, has authority to acquire lands to augment its road system and also authority to acquire lands to improve public transit. Waterfront Toronto's goal is to acquire all the land requirements for road-widenings and realignments on a voluntary or consensual basis within the time frame available for negotiations. However, if it appears as though there is a risk that consensual negotiations will not lead, in a timely manner, to the acquisition of the required lands, Waterfront Toronto will seek to engage the City of Toronto in the exercise of the City of Toronto's powers of expropriation.

If the City in exercise of its independent discretion proceeds to expropriate, Waterfront Toronto will pay all costs relating to the expropriation of the required lands including land value, environmental costs, land transfer taxes, any additional compensation related to expropriation, legal fees and other disbursements.

If the City in exercise of its independent discretion proceeds to expropriate, Waterfront Toronto agrees to indemnify the City against any financial claims that arise as a result of undertaking the expropriation process.

Yours truly,

John Campbell  
President and CEO  
Waterfront Toronto