

Transfer of 9 Madison Avenue

Date: March 21, 2018
To: Government Management Committee
From: Director, Real Estate Services
Wards: Ward 20, Trinity Spadina

SUMMARY

This report recommends terms of transfer for the lands municipally known as 9 Madison Avenue (the "Property") to CreateTO's corporate entity, Build Toronto Inc.

RECOMMENDATIONS

The Director, Real Estate Services recommends that:

1. City Council grant authority to enter into an agreement to transfer portions of the property municipally known as 9 Madison Avenue as described in Appendix 2 of this report (the "Property"), including any related agreements, to CreateTO's corporate entity, Build Toronto Inc., substantially on the terms and conditions as set out in Appendices 1 and 2 of this report, and on such other and amended terms and conditions as may be approved by the Deputy City Manager, Internal Corporate Services, and in a form satisfactory to the City Solicitor.
2. City Council grant authority to include in such transfer the substrata areas identified as Parts 5 and 6 on the draft Reference Plan attached as Appendix 4 to this report, as CreateTO staff have confirmed with the Toronto Transit Commission that including these areas will not impact upon the operation or ongoing maintenance or repairs of the existing subway infrastructure; subject to the reservation and/or grant of any easements or other interests as may be required for the protection of existing utility installations, TTC subway infrastructure and municipal services, as determined appropriate by the Deputy City Manager, Internal Corporate Services.
3. City Council grant authority to the Deputy City Manager, Internal Corporate Services, to permit CreateTO's corporate entity, Build Toronto Inc., to engage in licensing and leasing activities in respect of the Property that is or becomes the subject matter of an executed transfer agreement, during the period prior to the closing of the transfer transaction, on terms and conditions as may be approved by the Deputy City Manager, Internal Corporate Services, and in a form satisfactory to the City Solicitor.

4. City Council grant authority to fund the City's outstanding expenses related to the Property in this report from the Council Approved Operating Budget for Facilities Management and Real Estate, Environment & Energy ("FREEE"), in the year(s) that the expenses are incurred, as necessary, and, once these expenses are known, to transfer the funding for these expenses from the Land Acquisition Reserve Fund ("LARF") (XR1012), with appropriate adjustments to FREEE's Council Approved Operating Budget, as necessary, through subsequent Quarterly Variance Reports.
5. City Council approve, as the approving authority under the provisions of the *Expropriations Act*, the transfer of any portion of the Property that was acquired by expropriation without giving the original owner from whom the Property was expropriated the first chance to repurchase the Property.
6. City Council authorize severally each of the Deputy City Manager, Internal Corporate Services and the Director of Real Estate Services to execute the transaction documents required to implement Council's decision on behalf of the City, including the execution of any required consents, approvals or permissions.
7. City Council authorize the City Solicitor to complete the transactions provided for in this report on behalf of the City, including making payment of any necessary expenses, amending the closing and other dates to such earlier or later dates(s), and amending or waiving the terms and conditions, as the City Solicitor may from time to time consider reasonable.

FINANCIAL IMPACT

The transfer of the Property to CreateTO's corporate entity, Build Toronto Inc. will defer the receipt of proceeds from the disposition of the Property during the development process. However, the transfer will facilitate future development of the lands and the City will receive higher future dividends from Build Toronto Inc. as a result of the increased value of the Property.

As the Property will be transferred by the City on an "as is" basis, for nominal consideration, no revenue will be available to cover the expenses of effecting the transfer. Typically, such costs, if any, are relatively minimal, and Build Toronto Inc. will be responsible for all costs associated with development.

It is recommended that the expenses incurred in effecting the transfer be accommodated within FREEE's Council Approved Operating Budget, in the year(s) that the expenses are incurred, as necessary, and that, once these expenses are known, funds be provided by LARF (XR1012). Budget transfers to adjust FREEE's Council Approved Operating Budget, as necessary, will be submitted through subsequent Quarterly Variance Reports.

The Acting Chief Financial Officer has reviewed this report and agree with the financial impact information.

DECISION HISTORY

On November 29, 30, and December 1, 2011, City Council adopted Item GM9.10, as amended. The Property was declared surplus for turnover to Build Toronto Inc. (along with other properties) to facilitate master planning to determine whether the site is feasible for redevelopment, taking into account the subsurface subway infrastructure below most of the Property and the requirement for an above-grade easement to protect such infrastructure.

By its adoption of Item GM20.6 on April 3 and 4, 2013, City Council endorsed the enhanced process for property transfers to Build Toronto Inc. to augment the declared surplus and disposal process by, among other things, inclusion of City Planning on staff teams considering property transfers and earlier and ongoing communication and consultation between Real Estate Services and the local Councillor, City Planning and Build Toronto Inc. This process has been implemented with respect to the Property.

By its adoption of Item EX25.9 on May 24, 25 and 26, 2017, City Council authorized the formation of the new City realty agency, recently renamed CreateTO. The corporate entity, Build Toronto Inc., was maintained for the purpose of implementing transactions relating to properties within the mandate of CreateTO. A Service Agreement is in place whereby CreateTO provides staffing and development services to Build Toronto Inc.

On March 15, 2018, the Deputy City Manager, Internal Corporate Services, changed the intended method of disposal of the Property to Build Toronto Inc., from a turnover to a transfer (DAF tracking number 2018-089).

COMMENTS

Master planning has been completed by CreateTO in consultation with City Planning, and it has been determined that the Property is suitable for redevelopment.

The Property is approximately 1,126.8 square meters (12,128.8 square feet) located north of Bloor Street West, south of Dupont Street, west of Avenue Road and east of Spadina Avenue, in Ward 20 - Trinity Spadina. The Property is currently operated by the Toronto Parking Authority (the "TPA"), as a surface parking lot under a Master Umbrella Agreement (the "MUA") with the City of Toronto.

The site is surrounded by an established residential community, consisting of high, medium and low density residential buildings and mixed-use buildings to the north, east and west; the University of Toronto campus and a mix of residential, commercial and employment uses to the south.

The Property is encumbered by a below-grade subway structure for both the Bloor-Danforth and University-Spadina subway lines. The location of the below-grade subway structure is shown as Part 4 on the draft Reference Plan attached as Appendix 4. Ownership of Part 4 will be retained by the City on behalf of the TTC. Limitations will also be placed on the use of the areas located above the subway infrastructure, to ensure safe operation of the subway, and an easement will be retained to provide continued access to the subway boxes for ongoing maintenance and repair.

CreateTO has completed its due diligence for the Property and has engaged and consulted with the community and key stakeholders to evolve a built form, massing and use which meets the intent of the City's planning policy framework and the TTC's technical requirements for building above the subway boxes. It consulted with the following City stakeholders:

1. City Planning/Urban Design/Heritage Preservation Services, Toronto and East York District
2. Toronto Transit Commission ("TTC")
3. Affordable Housing Office ("AHO")
4. Toronto Parking Authority ("TPA")

A summary of this consultation is outlined below.

TTC Consultation:

The TTC advised that they have considered the development of the Property and will require the following:

1. There will be no weight bearing structure on the portion of Property on or above the City retained below grade strata, described as Part 4 on the draft Reference Plan attached as Appendix 4.
2. The City will retain ownership of that portion of the lower strata in which the subway boxes are located, and a three metre area to either side of the subway boxes, being the area shown as Part 4 on Appendix 4.
3. A minimum 1.20-1.25 metres setback from the top of the subway tunnel structure is maintained.

City Planning Consultation:

A number of meetings were held with City Planning/Urban Design and Heritage Preservation Services staff in the evolution of the built form and massing for the Property. The consultation and review process with City Planning has identified four key development parameters:

1. Use

Mixed use institutional, retail. Such uses will be addressed in the Planning context.

2. Upper and Lower Strata

The upper strata has been set at 18.5 meters measured from elevation 114.61 on the draft Reference Plan attached as Appendix 4, with the lower strata being at elevation 114.61; save and except for Parts 5 and 6 on Appendix 4 which will be transferred to Build Toronto Inc.

3. A Rooftop Restriction

A rooftop restriction is being imposed which will limit the use of the roof-top area on the building for cultural, social and similar functions, subject to compliance with any applicable zoning by-law provisions of the City.

4. Privately Owned Publicly-Accessible Space ("POPS")

The inclusion of a mid-block connection through a POPS pedestrian square framed by retail and institutional uses.

Toronto Parking Authority Consultation:

The TPA has been given notice regarding the pending transfer of the Property and notified City Real Estate Services of its intention to terminate 9 Madison Avenue (Car Park 238) under the MUA between the City of Toronto and the TPA, effective February 28, 2018. The TPA will have the option of entering into a license agreement with the future purchaser allowing the TPA to occupy and operate the Property, at a fair market lease/license fee, as a surface parking lot until such time as it is required for the development.

Affordable Housing Office Consultation:

As the development concept evolved in collaboration with City Planning, the local Councillor, the community, and the development does not include a residential component, the AHO confirmed that it is no longer interested in pursuing affordable housing on the Property and has released their interests in the Property.

Conclusion

This report recommends the terms of transfer to CreateTO's corporate entity, Build Toronto Inc., of 9 Madison Avenue. Implementation of the recommendations in this report will contribute to CreateTO's portfolio of development properties and help to enhance and realize the value of the City's real estate holdings.

CONTACT

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SIGNATURE

David Jollimore
Director, Real Estate Services

ATTACHMENTS

Appendix 1 - Terms and Conditions for All Transfer Agreements
Appendix 2 - Terms and Conditions of Transfer
Appendix 3 - Property Sketch PS-2011-089
Appendix 4 - Draft Reference Plan

Appendix 1

TERMS AND CONDITIONS FOR ALL TRANSFER AGREEMENTS

1. Closing on such date as the parties may agree.
2. Properties to be transferred "as is" for nominal consideration, with Build Toronto Inc. to assume and be responsible for any and all liabilities arising from or connected with the state, quality, matter or condition of the properties, whether or not known, including, but not limited to, any expense or costs incurred in connection with or relating to the environmental condition of the properties.
3. Build Toronto Inc. will be responsible for all costs associated with the development.
4. Build Toronto Inc. will pay any applicable Land Transfer Tax, HST, registration charges that would normally be for the account of the purchaser in a transaction of purchase and sale, and other taxes and costs.
5. Build Toronto Inc. will provide such usual closing documents as the City may require.
6. The City makes no representations about permitted use(s), zoning, Official Plan designation or any similar matter.
7. Build Toronto Inc. will obtain from any purchaser or tenant of the properties an agreement releasing Build Toronto Inc. and the City from liability for environmental contamination, and an indemnity in favour of Build Toronto Inc. and the City in respect of claims arising on the basis of environmental contamination.
8. Nothing in the transfer agreement will interfere with the exercise by the City of all of its rights as a municipality, or prejudice the City in carrying out its statutory rights and responsibilities, including planning rights and responsibilities.
9. No dealings between the City and Build Toronto Inc. as parties to the transfer agreement will relieve Build Toronto Inc. from the responsibility of discharging its obligations imposed by any shareholder direction, statute, regulation, by-law or in any other lawful manner.
10. Build Toronto Inc. will continue to consult with the local councillor in planning the development of the Property.
11. Such other and amended terms and conditions as may be approved by the Deputy City Manager, Internal Corporate Services and in a form satisfactory to the City Solicitor.

Appendix 2

TERMS AND CONDITIONS OF TRANSFER

DETAILS OF PROPERTY

Address	9 Madison Avenue
Legal Description	Part of Lots 33 and 34, Registered Plan M2, being Parts 2, 3, 5 and 6 on the draft Reference Plan attached as Appendix 4, City of Toronto and as shown as Part 1 on Sketch PS-2011-089, save and except for Part 4, being the below grade strata for TTC infrastructure and Part 1, being the stratified air space.
Stratification:	Transfer limited to the upper strata of 18.5 metres measured from elevation 114.61 metres on a draft Reference Plan attached as Appendix 4 and lower strata limit is shown as elevation 114.61, save and except Parts 5 and 6 on the draft Reference Plan which are to be transferred. For clarity, Parts 1 and 4 on the draft Reference Plan attached as Appendix 4 are to be retain by the City. Part 4 will extend 3 metres north and south beyond the exterior of the TTC infrastructure tunnels.
Approximate Site Area	1,126.8 m ² (12,128.8 ft ²)

TERMS AND CONDITIONS OF TRANSFER

1. The Property being transferred to Build Toronto shall be a stratified interest as indicated above.
2. A Negative Support Easement shall be reserved in favour of the City for support for and for the safe operation of the TTC subsurface subway infrastructure, including limitations on the placement of buildings, together with the right of ingress and egress over the Property, at any time, from time to time, by the City and TTC all on terms and conditions satisfactory to the TTC's Director, Planning and Approvals, the Deputy City Manager, Internal Corporate Services and in a form satisfactory to the City Solicitor.
3. A Rooftop Restriction, shall be reserved in favour of the City which will limit use of the Development's rooftop area to cultural, social and similar functions and will provide that Build Toronto or its successors in title would be entitled, subject to compliance with any applicable zoning by-law provisions of the City, to place or install on the rooftop area such safety railing, furnishing, landscaping and other improvements as may be reasonably required for the use of the rooftop area for social, cultural and similar events to the satisfaction of the Chief Planner and Executive Director.

4. In the event that surface parking is maintained on any portion of the site prior to redevelopment, the Toronto Parking Authority will be provided the option, and first right, to enter into a lease/licence with Build Toronto's prospective purchaser for such use on terms and conditions acceptable to the Toronto Parking Authority and the prospective purchaser.

5. Build Toronto Inc. will acknowledge that:

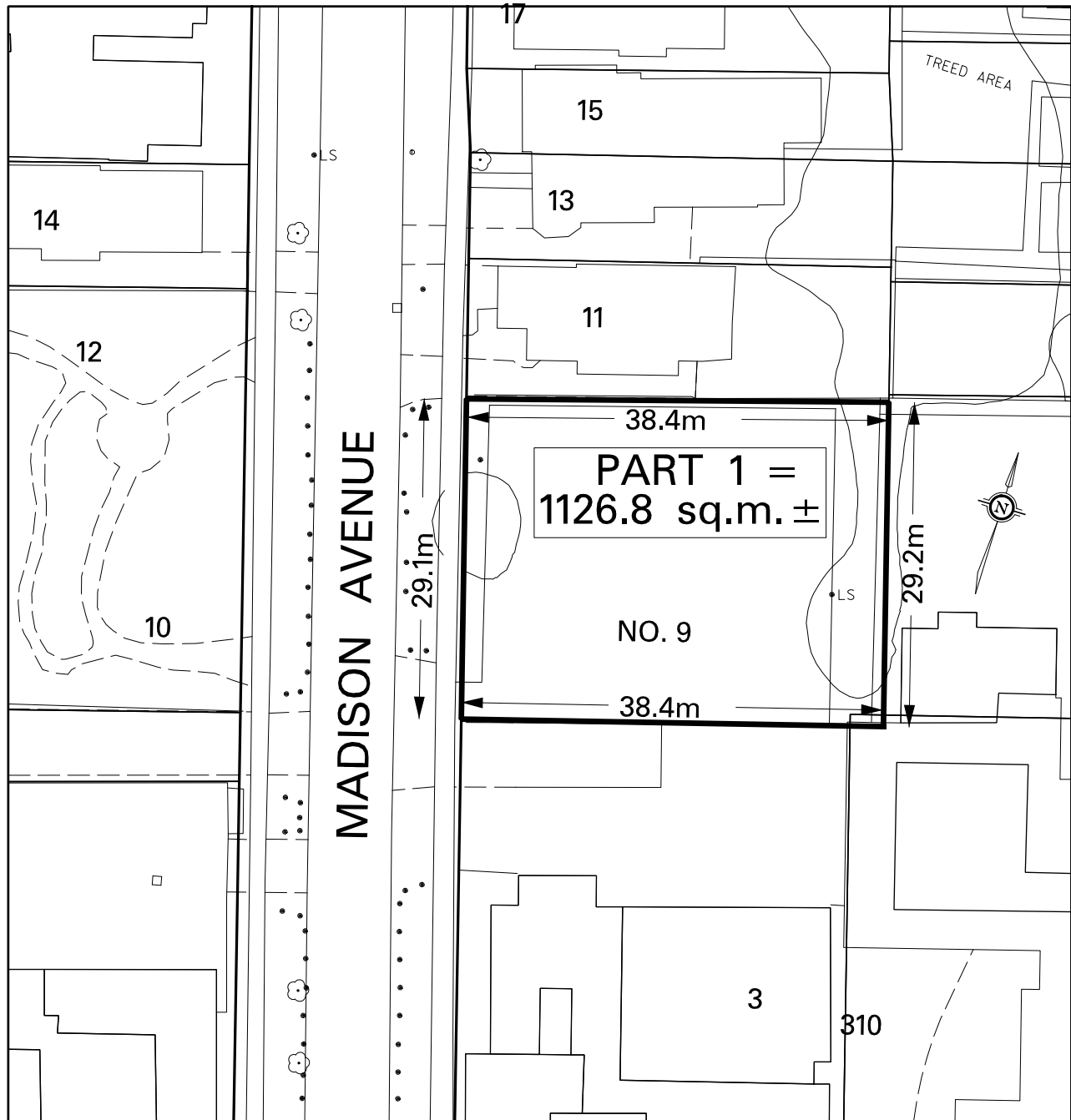
a. Any planning application for the Property will include a requirement for a Privately Owned Publicly-Accessible Space ("POPS"), together with the granting of any necessary easement(s) in favour of the City for access by the public over the privately owned publicly-accessible area and pedestrian walkway, secured through the planning process by way of an Agreement pursuant to Section 37 of the Planning Act, or as otherwise determined by City Planning.

b. Any development proposal for the Property will be subject to the City's established planning approval process for development property in the City of Toronto.

6. An easement will be granted to Bell Canada if required by Bell Canada for protection of any existing Bell facilities and infrastructure.

7. Title to the Property will be taken "as is" and will be subject to existing interests and to such easement or other interests as are required for existing and future utility installations and municipal services on the Property including, but not limited to:

a. B227692 - Notice of Lease -Tartu College.



TORONTO
 TECHNICAL SERVICES DIVISION
 SURVEY & UTILITY MAPPING

NOTE:
 THIS SKETCH HAS BEEN
 COMPILED FROM OFFICE
 RECORDS. MEASUREMENTS
 ARE APPROXIMATE

CHECK BY JOHN HOUSE
 PREPARED BY: DWAYNE PITT

PROPERTY INFORMATION SHEET
 CITY OWNED LAND
 NO. 9 MADISON AVENUE

WARD 20 – TRINITY-SPADINA
 DATE: OCTOBER 17, 2011

SKETCH No. PS-2011-089

Appendix 4: Draft Reference Plan

