



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### Relocation of ML Ready Mix Concrete Batching Facility - Purchase of 29 Judson Street and Lease Out of 545 Commissioners Street

**Date:** June 18, 2018

**To:** Government Management Committee

**From:** Deputy City Manager, Internal Corporate Services

**Wards:** Wards 6 and 30

#### **REASON FOR CONFIDENTIAL INFORMATION**

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This report is about a proposed or pending land acquisition by the City of Toronto.

#### **SUMMARY**

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This report responds to City Council direction from July 04, 2017 report CC31.24, for the Deputy City Manager to report back to the Government Management Committee on the overall financial implications of the following transaction, prior to finalizing any purchase or lease agreements for either property: the City acquisition of Remicorp Industries Inc. ("ML Ready Mix") owned 29 Judson Street and the Toronto Port Lands Company ("TPLC") lease out of a portion of 545 Commissioners Street to ML Ready Mix.

ML Ready Mix currently owns and operates a legal nonconforming concrete batching facility in South Etobicoke located at 29 Judson Street. These operations are adjacent to multiple residential and other sensitive uses which have resulted in inherent land use conflicts and ongoing community concerns. On the other hand, the City-owned 545 Commissioners Street property located in the Port Lands is directly adjacent to/surrounded by several other concrete batching ready-mix facilities within the immediate vicinity.

Relocating ML Ready Mix from 29 Judson Street to 545 Commissioners Street through this transaction presents a strategic opportunity to further consolidate concrete batching operations within an existing cluster of concrete businesses in the Port Lands, while simultaneously reducing the existing land use conflicts that are currently experienced by residents of the Judson Street community.

## **RECOMMENDATIONS**

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### **The Deputy City Manager, Internal Corporate Services, recommends that:**

1. City Council approve the purchase of 29 Judson Street and authorize the Deputy City Manager, Internal Corporate Services, to execute the Agreement of Purchase and Sale for the City acquisition of 29 Judson Street, pursuant to the general terms and conditions contained in Confidential Attachment 1, and on such other 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 authorize any two officers of Toronto Port Lands Company to undertake such actions and to execute any and all necessary documents required to complete the lease agreement at 545 Commissioners Street, pursuant to the general terms and conditions contained in Confidential Attachment 2, and on such other amended terms and conditions as may be approved by the Transition Lead of CreateTO, and in a form satisfactory to the Head Legal & Corporate Secretary of CreateTO.
3. City Council amend the 2018 - 2027 Council Approved Capital Budget and Plan for Facilities, Real Estate, Environment & Energy (FREEE) to include creation of a new project called "Concrete Batching Consolidation" with total project cost, cash flow funding and funding sources identified in Confidential Attachment 3.
4. City Council authorize funding from the Strategic Property Acquisition project, funded by the Land Acquisition Reserve Fund (XR1012), in the amount of \$4,938,000 to be used as part of the total consideration for the acquisition of 29 Judson Street.
5. City Council authorize the public release of the information in Confidential Attachments 1, 2 and 3 to this report, upon the completion of the respective transactions.

## **FINANCIAL IMPACT**

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Adoption of the recommendations contained in this report is anticipated to result in the one-time acquisition and lease out costs as outlined in Confidential Attachment 3.

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

## DECISION HISTORY

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At its meeting of April 14-16 2003, City Council requested that appropriate City and City of Toronto Economic Development Corporation formerly operating as Toronto Economic Development Corporation ("TEDCO"), now operating as Toronto Port Lands Company, undertake the necessary steps to relocate St. Mary's Cement from its present location in the Fort York Neighbourhood at Bathurst Street north of Lake Shore Boulevard to an alternate site located in the Port Lands area.

<http://www.toronto.ca/legdocs/2003/agendas/council/cc030414/to4rpt/cl006.pdf>

At its meeting of July 20-22, 2004 City Council adopted a By-law to establish a Concrete Works facility in the Toronto Port Lands around the Leslie and Commissioners Street Area. City Council also made its intentions known that, whenever possible, Concrete Batching operations should be relocated into the area.

<http://www.toronto.ca/legdocs/2004/agendas/council/cc040720/ts6rpt/cl010.pdf>

At its meeting of March 5, 2012, City Council enacted By-Law No. 339-2012 with respect to certain lands zoned I.C2 and bounded by Horner Avenue, Judson Street, Royal York Road, Drummond Street, Dwight Avenue, Lake Shore Boulevard West and Thirtieth Street (known as the South Etobicoke Employment Lands Review Area (SEELRA)). This By-law removed the concrete batching plant use along with other uses permitted in the I.C2 Zoning Code in SEELRA area, however ML Ready Mix's business operation continue to be permitted as as-of-right at 29 Judson Street since it was established before City Council enacted the new By-law.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EY13.1>

At its meeting of February 26, 2013 Etobicoke York Community Council adopted Item EY22.44, requesting a report on the feasibility of a western Concrete Campus, including potential sites, for its meeting of May 14, 2013.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EY22.44>

The feasibility review concluded that there were no suitable sites available to accommodate concrete batching operations in the Etobicoke York Community Council Area. Between May 2013 and July 2014 both City Council and Etobicoke York Community Council directed staff to explore the feasibility of relocating ML Ready Mix. City Council also directed that appropriate City staff, along with staff from the Ministry of the Environment and Climate Change, be requested to work with local residents to resolve various community concerns/issues with the ML Ready Mix operation at 29 Judson Street, including concerns related to public health, environmental impacts, air quality, noise and transportation.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EY24.31>

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EY29.24>

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EY29.46>

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.EY33.13>

<http://www.toronto.ca/legdocs/mmis/2015/ey/bgrd/backgroundfile-83061.pdf>

At its meeting of July 04, 2017 City Council adopted, without amendments, report CC31.24 from the City Manager on the Relocation of a Concrete Batching Facility. The report recommended Toronto Port Lands Company, working with City staff, to pursue negotiations to relocate ML Ready Mix operations from 29 Judson Street to 545 Commissioners Street conditional on the acquisition or lease of the ML Ready Mix 29 Judson Street property.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.CC31.24>

At its meeting of December 5, 2017 City Council adopted item PG24.6 on the Port Lands Planning Framework and Official Plan Modification, which guides the future land use direction for the Port Lands. 545 Commissioners Street is located within the future "East Port" area and land use direction is "Port and Industrial use". The proposed concrete batching use is in keeping with the type of industry anticipated to continue in the East Port district under this Framework plan.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PG24.6>

At its meeting on March 26, 2018 City Council adopted item TE30.7 from Acting Director, Community Planning, on a City-initiated site specific Zoning By-Law amendment to permit a concrete batching and mixing yard use on the 545 Commissioners Street property, which was not permitted on the site previously. This Zoning By-Law Amendment was carried out to facilitate the relocation of ML Ready Mix to 545 Commissioners Street, and brings the site in line with land use direction of the Official Plan Modification and the Port Lands Planning Framework, adopted by City Council in 2017, in advance of an overall zoning review for the entire Port Lands area.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.TE30.7>

## **COMMENTS**

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Concrete batching facilities have posed a number of land use challenges in the City of Toronto yet are an integral part of the construction industry, relying on a strategic network of locations within the city to support ongoing construction and development initiatives. However, when located too close to residential or other sensitive uses there can exist inherent land use conflicts and challenges. In such cases, the location requirements should be reviewed for possible relocation opportunities or alternative solutions that are to the mutual benefit of all stakeholders.

There currently exists an opportunity for the City to acquire the ML Ready Mix 29 Judson Street property and lease out the lands located at 545 Commissioners Street to ML Ready Mix in order to facilitate the relocation of their concrete batching operations into the more suitable Port Lands location.

## **29 Judson Street - Existing ML Ready Mix Operations**

ML Ready Mix currently operates a legal nonconforming concrete batching facility located at 29 Judson Street in Ward 6 (see Appendix A). The site is approximately 1.5 acres and is located within 150m of the Mimico Go Station, abutting a rail corridor. It is adjacent to multiple residential and other sensitive uses, resulting in land use conflicts and numerous complaints submitted to the City. A significant amount of the complaints relate to ML Ready Mix operations such as transportation congestion on residential streets, operations commencing before 7:00am, and environmental concerns (i.e. noise and air quality), among others.

Between May 2013 and July 2014, City Council and Etobicoke York Community Council directed staff to explore the feasibility of relocating ML Ready Mix operations from 29 Judson Street to a more suitable location within the City of Toronto. An Inter-Divisional Working Group, led by the former Deputy City Manager, Cluster B, was created to coordinate this search. Ultimately, 545 Commissioners Street was identified as the preferred site to relocate ML Ready Mix operations, conditional upon the purchase or lease to the City of Toronto of the existing ML Ready Mix 29 Judson Street property, and on other terms and conditions contained in Confidential Attachment 1. The proposed transaction allows for the City to facilitate the consolidation of additional concrete batching operations within the eastern Port Lands area, while simultaneously eliminating the existing land use conflicts that are currently experienced by residents of the Judson Street community.

## **545 Commissioners Street - Eastern Port Lands Area**

The City-owned 545 Commissioners Street property is located in the eastern Port Lands area in Ward 30 (see Appendix B) and is surrounded by a cluster of several existing concrete batching operations. The site is currently occupied by Toronto Water and utilized to conduct various service operations via the works yard and office building. However, to facilitate the relocation of ML Ready Mix, Toronto Water will vacate the 2.3 acre western portion of 545 Commissioners Street to allow TPLC to enter into a ground lease with ML Ready Mix, pursuant to the general terms & conditions contained in Confidential Attachment 2, and recommended by the CreateTO Board at their June 11th, 2018 Board meeting.

Relocating ML Ready Mix from the Judson Street community to 545 Commissioners Street aligns with the City's consolidation strategy to relocate concrete and aggregate companies to the eastern area of the Port Lands as a means of retaining jobs and economic efficiencies, in addition to the land use direction outlined in the Official Plan Amendment and Port Lands Planning Framework.

In 2004, City Council adopted a by-law to establish a Concrete Works facility in the Toronto Port Lands around the Leslie Street and Commissioners Street area, making its intentions known that whenever possible, concrete batching operations should be relocated and/or consolidated into this area. Previous examples of relocating concrete batching operating companies to the consolidated eastern Port Lands area include the relocation of St. Marys Cement, initiated in 2003, and the 2013 relocation of Essroc Canada Inc. (now Lehigh Hanson Materials Limited). By relocating heavy industry to the eastern Port Lands, TPLC has been able to secure longer-term leases in a defined area and has made prime lands available for future municipal and/or public use.

### **Relocation of ML Ready Mix - Letter of Intent**

In November 2017, the office of the Deputy City Manager, Cluster B, with consultation from TPLC, negotiated and executed a Letter of Intent ("LOI") with ML Ready Mix outlining both parties' shared understanding with respect to the proposed relocation of ML Ready Mix from the existing premises at 29 Judson Street to the new premises at 545 Commissioners Street (see Appendix C). The LOI sets forth the parameters and procedures for which the City, TPLC and ML Ready Mix were to negotiate the acquisition of 29 Judson Street and the lease out of 545 Commissioners Street. The City led negotiations for 29 Judson Street with consultation from TPLC, while TPLC led negotiations for 545 Commissioners Street with consultation from the City.

Considering the appeal of OPA 331-Mimico Judson Secondary Plan to the Ontario Municipal Board ("OMB"), there was uncertainty from the City and ML Ready Mix as to whether 29 Judson Street was to be zoned as a Mixed Use or an Employment Use area. In order for both parties to mitigate risk regarding the outcome of the OMB hearing decision on future area zoning, the LOI required both parties to retain a third party appraiser to provide two appraisals each for 29 Judson Street. The first appraisal was to identify the sites fair market value upon its present employment use, while the second appraisal was to identify the sites fair market value assuming that the City Council approved land use designation of Mixed Use was upheld at the OMB. Regardless of the actual outcome of the Mimico Judson Secondary Plan appeal, the City and ML Ready Mix were to negotiate a purchase price for 29 Judson Street between each consultants first and second appraised values. If an agreement could not be made on the purchase price within 30 days, either party may have provided notice to have the purchase price determined by a third independent arbitrator.

Fortunately, the City and TPLC were able to avoid the additional time and costs associated with arbitration and agreed on the purchase price and business terms with ML Ready Mix for the 29 Judson Street acquisition and 545 Commissioners Street lease, subject to City Council consideration. The transaction terms and conditions have been negotiated as per the direction of the Letter of Intent and are believed by staff to be fair and reasonable for both parties.

At the time of writing this report, the OMB has not released a decision on the final zoning for the Mimico Judson Secondary Plan area.

## Alignment with Strategic Property Acquisition

There has been a range of municipal interests expressed in 29 Judson Street from City stakeholders, however a formal circulation process has not yet been completed. Nonetheless, 29 Judson Street remains a strategically important property to the City for a variety of reasons. Acquiring the site provides the City with ownership of a well located, underutilized asset that can be repurposed for future municipal needs, while simultaneously addressing City Council's direction to consolidate concrete batching operations in the eastern Port Lands area. As seen in Table 1 below, the purchase of 29 Judson Street directly aligns with the Strategic Property Acquisition evaluation criteria.

Financial Impact	<ul style="list-style-type: none"><li>• Inability to defer to Capital Budget Process due to transaction timeline</li><li>• Ability to provide interim lease cash flow and recoup capital investment if the property is no longer required</li><li>• Difficulty or inability to purchase this property in the future</li><li>• Overall favourable assessment of risks</li></ul>
Strategic Fit	<ul style="list-style-type: none"><li>• Purchase of the site will eliminate the (legal) nonconforming concrete batching use</li><li>• It aligns with Council's direction to strategically consolidate concrete operations in the eastern Port Lands by facilitating the relocation of ML Ready Mix through the transaction</li></ul>
Use Assessment	<ul style="list-style-type: none"><li>• Property is well located within close proximity to Mimico Go Station, rail operations, and various residential uses</li><li>• Potential for consolidation/colocation of other City-owned assets and synergies between the City and Metrolinx</li></ul>

Overall, the 29 Judson Street property is considered to be strategically important to the City for current and future municipal use. This transaction meets the (i) Financial Impact, (ii) Strategic Fit and (iii) Use Assessment evaluation criteria required to use the Strategic Property Acquisition to fund a portion of this transaction.

## Conclusion

Relocating ML Ready Mix through the acquisition of 29 Judson Street and lease-out of the corresponding 545 Commissioners Street presents a strategic opportunity to further consolidate concrete batching operations within an existing cluster of concrete businesses in the Port Lands. Additionally, this relocation would significantly reduce the existing land use conflicts and operational impacts experienced by residents in the Judson Street community; moving equipment, materials, product and delivery trucks to a more appropriate area in the city, while retaining jobs and the availability of a key input material to ongoing city-building initiatives.

City ownership of 29 Judson Street would provide a permanent solution to the current issues faced by the Judson Street Community and provide the City with the opportunity to utilize the site for municipal and/or other strategic uses.

## **CONTACT**

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## **SIGNATURE**

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Josie Scioli  
Deputy City Manager, Internal Corporate Services

## **ATTACHMENTS**

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Appendix A - 29 Judson Street Location Map  
Appendix B - 545 Commissioners Street Location Map  
Appendix C - Letter of Intent

Confidential Attachment 1 - Terms of 29 Judson Street Acquisition  
Confidential Attachment 2 - Terms of 545 Commissioners Street Lease-out  
Confidential Attachment 3 - Financial Impact Details