



Transfer of 2530 Gerrard Street East to Build Toronto Inc.

Date: September 27, 2019
To: General Government & Licensing Committee
From: Deputy City Manager, Corporate Services
Wards: 20 - Scarborough Southwest

SUMMARY

CreateTO, through Build Toronto Inc., ("CreateTO") has jurisdiction over 15.5 acres of land near the southeast corner of Victoria Park Avenue and Gerrard Street East (the "CreateTO Property"). The City owns 2530 Gerrard Street East, a triangular piece of land situated adjacent to the CreateTO Property comprising 4.4 acres (the "City Property"). The CreateTO Property and the City Property are collectively referred to as the "Property". Portions of the Property were historically used as a landfill and, as a result, are contaminated.

In 2016, CreateTO obtained approval of an official plan amendment ("OPA 288"), rezoning and draft plan of subdivision for the Property, and authorization for the transfer of the City Property to Build Toronto Inc. ("Build Toronto") in accordance with OPA 288 and the eventual reconveyance of a portion of the Property back to the City for park purposes (the "Proposed Park"). Subsequently, it was determined that the development concept for the Property should be revised, including the relocation of Proposed Park. This revised development concept will require further official plan and zoning by-law amendments.

A developer has agreed to acquire the property and redevelop the land as a new community with affordable housing and the Proposed Park and is prepared to go through the time, expense and risk of obtaining these required planning amendments if they can first acquire the land. Given that the development concept has changed since City Council approved the transfer of the City Property to Build Toronto, staff are seeking confirmation from City Council before proceeding with the transfer to Build Toronto. Further, while CreateTO and the developer will remediate the Proposed Park, which is contaminated (as is the City Property), staff are seeking City Council approval to accept the transfer of the Proposed Park, as it will not comply with the City's *Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the Planning Act*.

RECOMMENDATIONS

The Deputy City Manager, Corporate Services recommends that:

1. City Council authorize the City of Toronto (the "City") to enter into one or more transfer agreements with Build Toronto Inc. ("Build Toronto") or a subsidiary of Build Toronto to transfer the property municipally known as 2530 Gerrard Street East (the "City Property"), as described in Attachment 3 of this report, in one or more transactions, including any related agreements, but excluding the portion of the City Property shown on Attachment 4 as "Land to Remain with the City as Park", substantially on the terms and conditions as set out in Attachments 5 and 6 of this report, and on such other and amended terms and conditions as may be approved by the Deputy City Manager, Corporate Services, in a form satisfactory to the City Solicitor.
2. City Council authorize the City to enter into a parkland reconveyance agreement substantially on the terms and conditions as set out in Attachment 7 of this report, in a form satisfactory to the City Solicitor, notwithstanding that portions of the parkland reconveyed will not comply with the City's *Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the Planning Act*.
3. City Council grant authority to fund the City's expenses related to the transfer of the Proposed Park to the City which are not the responsibility of Build Toronto from Corporate Real Estate Management's ("CREM") Council Approved Operating Budget funded from the Land Acquisition Reserve Fund ("LARF") (XR1012), with appropriate adjustments to CREM's Council Approved Operating Budget, as necessary, through subsequent Quarterly Variance Reports.
5. City Council authorize the Deputy City Manager, Corporate Services to execute any further transaction required to complete the transactions authorized in this report behalf of the City, including the execution of any required consents, approvals or permissions.
6. 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, and amending or waiving terms and conditions, as the City Solicitor may from time to time consider reasonable.

FINANCIAL IMPACT

The estimated budget for development of the above base park improvements for the Proposed Park is \$4.0 million. The 2019-2028 Council Approved Capital Budget and Plan for Parks, Forestry & Recreation does not currently include a project for the above base park improvements of the Proposed Park. Through the Official Plan Amendment and Zoning Bylaw Amendment Report, Council may approve that construction of the above base park improvements be completed by the developer.

Potential funding for park construction from the Parks, Forestry & Recreation component of Development Charges, Section 37 Benefits, and Above 5% Alternative Parkland Dedication Cash-in-lieu (if applicable) may be impacted by the proposed new Community Benefits Charge and changes to the *Planning Act* and *Development Charges Act under the More Homes, More Choice Act, 2019* (Bill 108). To ensure that the park development can be completed if the applicable legislative changes come into effect, the Third Party Purchaser has committed to a minimum of \$2.5 million and CreateTO has committed up to \$1.5 million for above base park improvements. Parks, Forestry & Recreation provides basic maintenance of the current City-owned parkland. Additional operating funds for enhanced maintenance of the new park and amenities will be requested as part of future Operating Budget submissions as the planning and design for the new park advances. The operating impact will include the cost of cap inspections required as part of the Certificate of Property Use.

As noted in Attachment 5, all costs associated with the development of the the City Property will be the responsibility of Build Toronto. Any expenses involved in the transfer of the Proposed Park to the City will be reimbursed to Build Toronto from CREM's Council Approved Operating Budget funded from the LARF (XR1012), with appropriate adjustments made to CREM's Council Approved Operating Budget through subsequent Quarterly Variance Reports.

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

DECISION HISTORY

At its meeting on January 31, 2017, City Council by its adoption of GM17.9 approved the transfer of the City Property to Build Toronto.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.GM17.9>

At its meeting on December 13, 2016, City Council by its adoption of MM23.25 approved Zoning By-law No. 1276-2016, which revised Parks zoning to reflect a reconfiguration of the Proposed Park.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.MM23.25>

In accordance with the City's Real Estate Disposal By-law, 814-2007, the City Property was declared surplus on November 15, 2016 (DAF No. 2016-257), with the intended manner of disposal to be by way of a transfer to Build Toronto.

<https://www.toronto.ca/wp-content/uploads/2017/10/8fe7-2016-257-Declare-Surplus-2530-Gerrard-Street-East.pdf>

At its meeting on September 30, 2015, City Council by its adoption of SC8.25 enacted Official Plan Amendment No. 288, Zoning By-law No. 986-2015 and Zoning By-law No. 987-2015 to facilitate the development of the Property. Official Plan Amendment No. 324 to establish a future public street adjacent to the Property (the 'Blantyre Extension') was also enacted.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.SC8.25>

At its meeting on October 29, 2008, by its adoption of EX24.1, City Council amended the method of disposal and authorized that the northerly portion of 411 Victoria Park Avenue be transferred to Build Toronto

<https://www.toronto.ca/legdocs/mmis/2008/cc/minutes/2008-10-29-cc25-mn.pdf>

At its meeting on January 31, 2006, City Council declared the northerly approximately 4.98 hectare (12.3 acre) portion of the lands at 411 Victoria Park Avenue to be surplus to municipal requirements and authorized their disposal by way of 'as is' transfer to City of Toronto Economic Development Corporation.

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060131/pof1rpt/cl028.pdf>

COMMENTS

Background

The Property is part of the precinct known as the Birchcliffe Quarry Lands (the "Quarry Lands"). The Quarry Lands were used as a brick quarry in the early part of the 20th century. Subsequently, the quarry pits at the Quarry Lands were filled in with construction debris and other waste. As a result, the Quarry Lands, including the City Property, were contaminated.

The properties municipally known as 411 and 435 Victoria Park Avenue and the City Property were acquired between 1974 and 1982 by the City of Scarborough for park purposes. The City Property was designated *Parks and Open Space* ("POSA") in 2002.

The property municipally known as 2510 Gerrard Street East was purchased by Build Toronto on June 6, 2012. The City transferred 411 and 435 Victoria Park Avenue to Build Toronto in October 2012, but retained ownership of the City Property. Build Toronto now owns the properties municipally known as 411 and 435 Victoria Park Avenue and 2508-2510 Gerrard Street East (collectively, the "CreateTO Property").

On December 15, 2016, City Council approved CreateTO's application for an Official Plan Amendment ("OPA 288"), Zoning By-law Amendments and a Draft Plan of Subdivision for the comprehensive redevelopment of the Property (the "Existing Approvals"). The Existing Approvals permitted the then proposed development and reconfigured the POSA designation to that shown on Attachment 2.

At its meeting on January 31, 2017, City Council, by its adoption of GM17.9, approved the transfer of the City Property to Build Toronto on the terms and conditions set out in the associated staff report, which required that the City Property be transferred to Build Toronto in accordance with OPA 288.

After receiving the Existing Approvals, CreateTO marketed the Property through an open and competitive Request for Proposals ("RFP") process. A selection was made from bids received through the RFP process and a purchase agreement was entered into with a third party developer (the "Third Party") for the sale of the Property. The purchase agreement was conditional upon, among other things, the Third Party being

satisfied with its due diligence related to the Property. Throughout the course of its due diligence, the Third Party determined, and CreateTO concurs, that portions of the Property are more suitable for POSA than the development of residential dwellings and/or roads due to geotechnical and other soil conditions. As a result, the Third Party does not intend to develop the Property in accordance with the Existing Approvals, and has prepared a revised development concept (the "Revised Development Concept") for the Property. The Revised Development Concept will require a further Official Plan Amendment, zoning by-law amendment, and revised plan of subdivision, which the developer intends to pursue through the normal planning process.

Transfer to Build Toronto

As noted above, the Existing Approvals required the transfer of the City Property to Build Toronto in accordance with OPA 288. Given that the Third Party has determined to proceed with the Revised Development Concept, CreateTO has requested that the City transfer the City Property to Build Toronto on the terms and conditions set out in Attachment 5 and 6 hereto, in addition to the obligation to reconvey the Proposed Park as set out below.

Proposed Park Land Reconveyance

The Revised Development Concept envisions locating the Proposed Park on a rectangular portion of the Property along Gerrard Street as shown on Attachment 4. Parks, Forestry & Recreation is generally in agreement with the configuration of the Proposed Park. The location, configuration and boundaries of the Proposed Park will be determined through an Official Plan Amendment process and to the satisfaction of the General Manager of Parks, Forestry & Recreation (the "Planning Approvals").

The City and Build Toronto will enter into a reconveyance agreement governing the terms of the development and the reconveyance of the Proposed Park as set out in Attachment 7 to this report.

CONCLUSION

Implementation of the recommendations in this report will facilitate further planning applications for the proposed development of a mixed-income community which includes provisions for approximately 120 units of affordable housing and 4.4 acres of parkland and will revitalize contaminated lands that have remained vacant for many decades.

CONTACT

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SIGNATURE

Josie Scioli
Deputy City Manager, Corporate Services

ATTACHMENTS

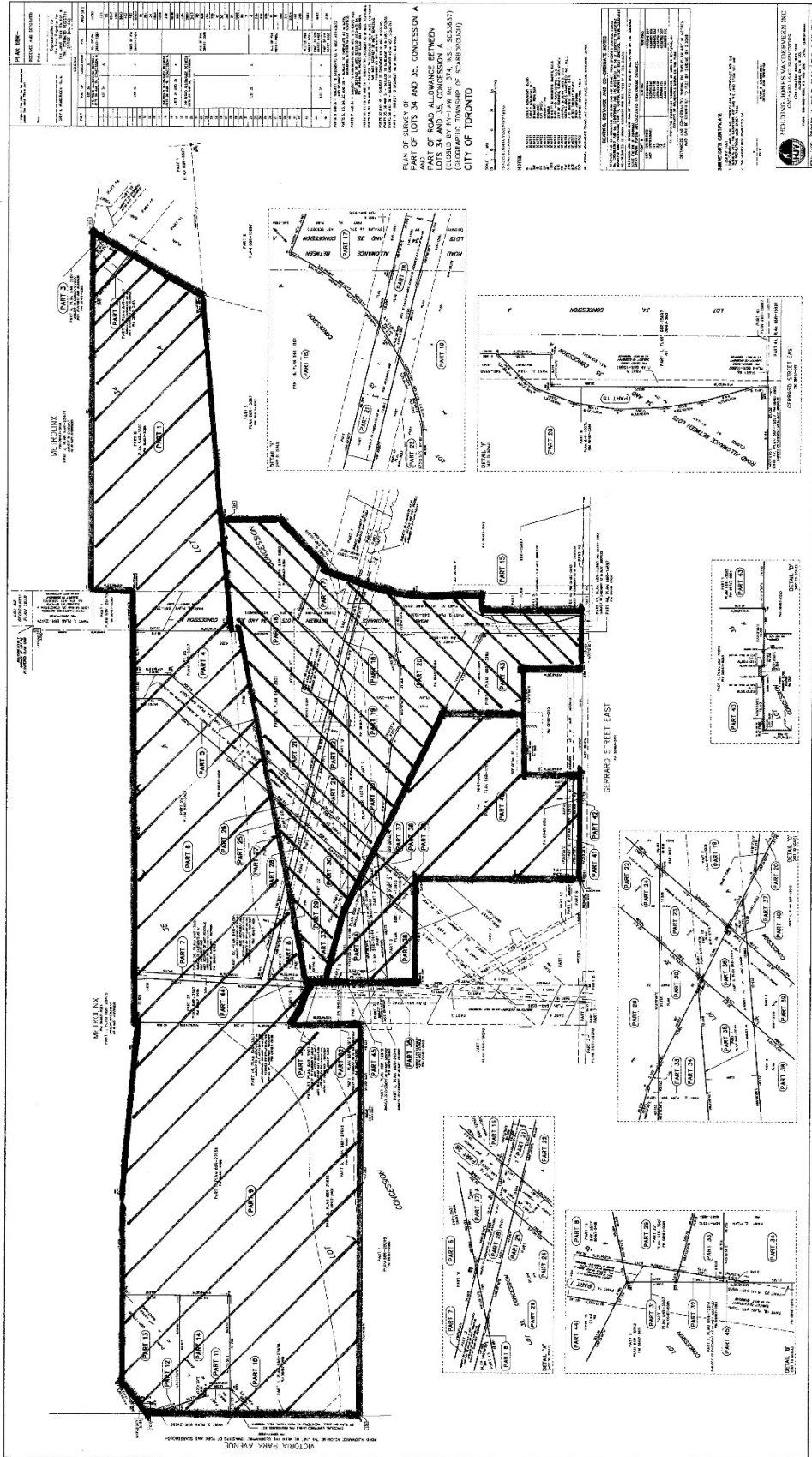
Attachment 1 - The Property, the City Property and the CREATETO Property
Attachment 2 - Schedule "1" to Official Plan Amendment No. 288
Attachment 3 – Disposition of Existing Park
Attachment 4 – Proposed Park
Attachment 5 – Terms and Conditions for all Transfer Agreements
Attachment 6 – Details of City Property and Terms and Conditions of Transfer
Attachment 7 – Terms of Park Reconveyance

ATTACHMENT 1 – DISPOSITION OF CITY OWNED EXISTING PARK

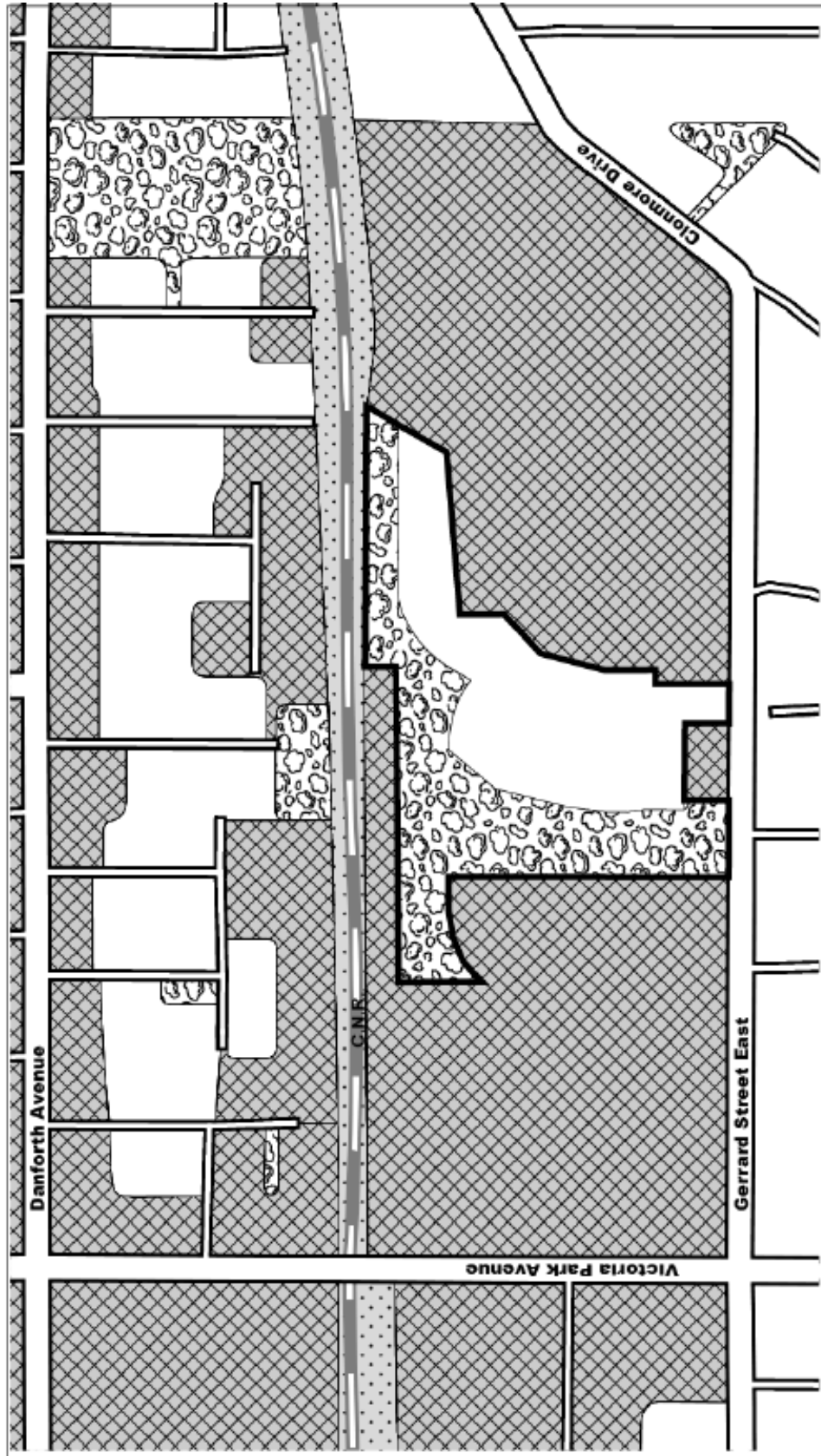
BT PROPERTY ha. (14.53 ac.)

CITY PROPERTY (EXISTING ██████████ PARKLAND) 1.81 ha. (4.47 ac.)

PROPERTY 7.69 ha. (19.0 ac.)



ATTACHMENT 2: SCHEDULE "1" TO OFFICIAL PLAN AMENDMENT No. 288










Official Plan Amendment #288

Revisions to Land Use Maps 20 and 21 to Redesignate lands from Mixed Use Areas and Parks to Neighbourhoods, Apartment Neighbourhoods and Parks

411 Victoria Park Avenue

File #'s 12 297365 ESC 36 0Z
and 13 233037 ESC 36 SB

-  Site Location
-  Neighbourhoods
-  Apartment Neighbourhoods
-  Mixed Use Areas
-  Utility Corridors
-  Parks & Open Spaces Areas
-  Parks

↑
Note to Scale
06/11/15

ATTACHMENT 3 – DISPOSITION OF CITY OWNED EXISTING PARK

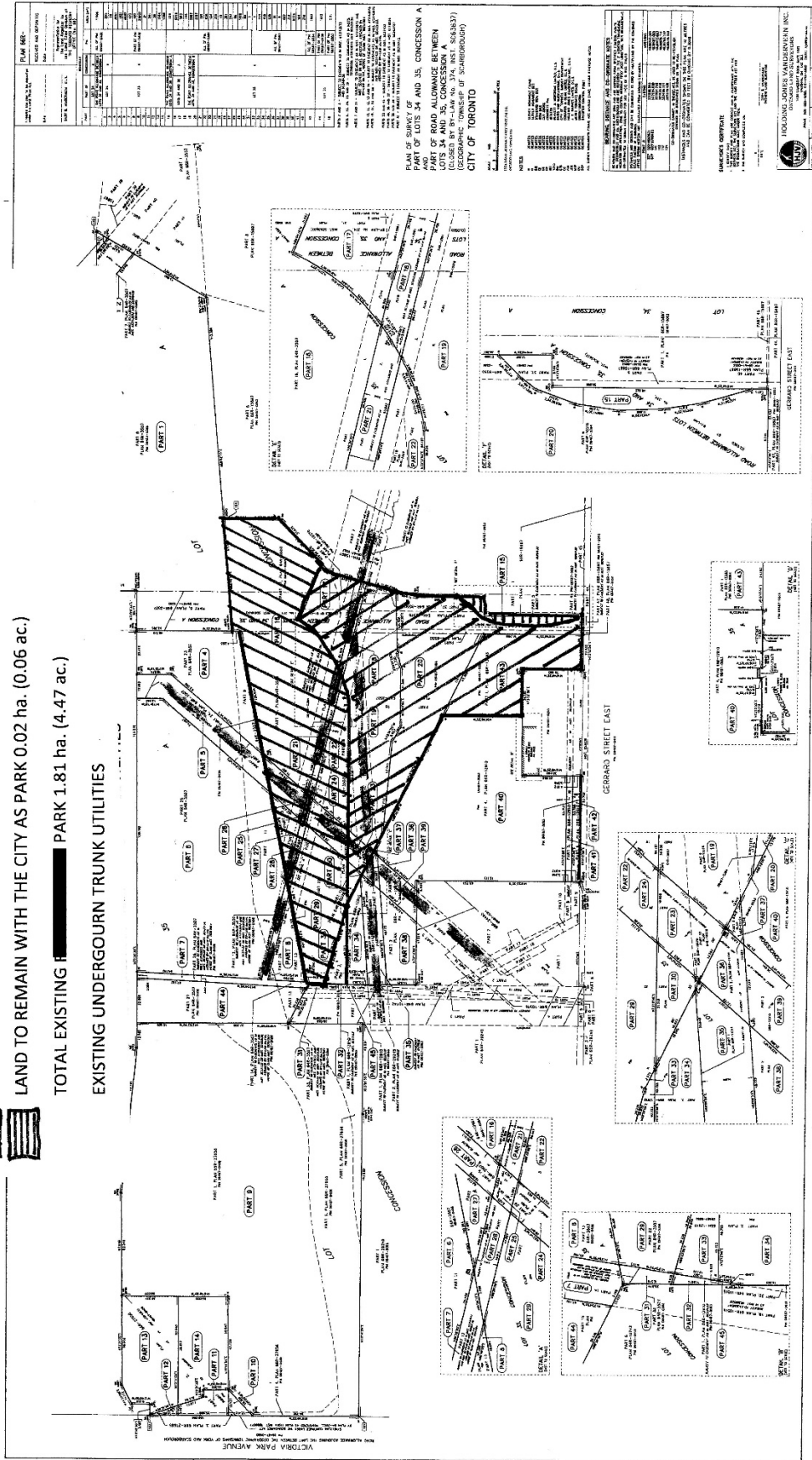
LAND TO BE TRANSFERRED TO BUILD TORONTO THEN TO THIRD PARTY 0.87 ha. (2.15 ac.)

LAND TO BE TRANSFERRED TO BUILD TORONTO THEN TO CITY AS PARK 0.92 ha. (2.27 ac.)

LAND TO REMAIN WITH THE CITY AS PARK 0.02 ha. (0.06 ac.)

TOTAL EXISTING PARK 1.81 ha. (4.47 ac.)

EXISTING UNDERGOURN TRUNK UTILITIES



ATTACHMENT 5 - 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 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 will be responsible for all costs associated with development. Upon transfer of the Proposed Park to the City, Build Toronto will be reimbursed for any expenses incurred in relation to such transfer from the Council Approved Operating Budget for Corporate Real Estate Management (CREM) funded from the Land Acquisition Reserve Fund (LARF) (XR1012).
4. Build Toronto 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 will provide such usual closing documents as the City may require.
6. The City makes no representations about permitted use, zoning, Official Plan designation or any similar matter.
7. Build Toronto will obtain from any purchaser or tenant of the properties an agreement releasing Build Toronto and the City from liability for environmental contamination, and an indemnity in favour of Build Toronto 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 as parties to the transfer agreement will relieve Build Toronto 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 will consult with the local councillor in planning the development of the properties.
11. Such other and amended terms and conditions as may be approved by the Deputy City Manager, Corporate Services in a form satisfactory to the City Solicitor.

ATTACHMENT 6 - DETAILS OF CITY PROPERTY AND TERMS AND CONDITIONS OF TRANSFER

DETAILS OF CITY PROPERTY

Address: 2530 Gerrard Street East, Toronto

Legal Description: Part of the Road Allowance between Lots 34 and 35, Concession A, Scarborough, closed by SC63637, and Part of Lot 34 being Part of Part 37 on Plan 64R-8550, Part of Lot 35, Concession A, described as Parts 16-22, 29, 30 and 33 on Plan 64R-3507; and Part of Lot 35, Concession A, being Part of Part 1 on Plan 66R-13283, shown as Parts 1 to 8 on Sketch No. PS-2016-144 (the "City Property").

Approximate Site Area: 18,101.7 m² (4.5 acres)

TERMS AND CONDITIONS OF TRANSFER

1. Build Toronto will address the affordable housing interest in the City Property.
2. Build Toronto will cause to be delivered (transferred/dedicated) to the City such lands within the Property as may be required to achieve 4.5 acres of land on the terms and conditions outlined in Attachments 10 and 11, and to the satisfaction of the General Manager of Parks, Forestry & Recreation.
3. The City will reserve easements for existing and future water, sewer, storm sewer, watermain and other municipal services in and on parts 1 and 6 on sketch PS2016-144.
4. Build Toronto will acknowledge that:
 - a. the City Property is located in a basement flooding study area;
 - b. the City Property is partially regulated and within a wetland area of interference. The portion of the City Property that is within the wetland area of interface (Shown on Attachment 4 as Land to Remain with the City as Park) will not be transferred from the City to CreateTO;
 - c. any development of the City Property will be subject to the City's established planning approval process.
5. Title to the City Property will be taken "as is" and will be subject to existing interests and to such easements or other interests as are required for existing and future utility installations and municipal services on the City Property including, but not limited to:
 - a. Instrument Number SC268220 - Easement
 - b. Instrument Number SC508730 - Easement
 - c. Instrument Number TB235403 - Encroachment agreement
 - d. Instrument Number SC252844 - Site Plan Agreement

Property Sketch PS-2016-144 - 2530 Gerrard Street East



ATTACHMENT 7 - TERMS OF PROPOSED PARK RECONVEYANCE

Build Toronto ("Build Toronto") will cause to be delivered to the City the 4.4 acre Proposed Park on the terms and conditions outlined herein, and to the satisfaction of the General Manager of Parks, Forestry & Recreation (the "General Manager").

1. In the event Build Toronto sells a portion of the Property ("**Development Lands**") to a third party, Build Toronto shall cause the third party to apply for and diligently pursue such Official Plan and Zoning By-law amendments and revised Draft Plan of Subdivision as may be necessary to pursue the third party's intended development plans for the Development Lands (the "Development Applications"). The location and configuration of the Proposed Park shall be determined in accordance with the Official Plan and Zoning approvals, to the satisfaction of the General Manager, Parks, Forestry & Recreation and the Chief Planner, City Planning.

2. Base Park Condition and Environmental Management of Land

If Build Toronto sells the Development Lands to a third party, and the third party obtains all required approvals on terms and conditions acceptable to it pursuant to the Development Applications on or before the Reconveyance Deadline:

- Build Toronto shall, through an agreement with the third party, cause the third party to complete, at the third party's sole cost and expense, all work required to bring the Proposed Park to a Turnover Condition, all to the satisfaction of the General Manager. Turnover Condition means the placement of a 1.5 metre cap of clean fill to approved grades with topsoil and sod and the provision of drainage, fencing and water, sewer and electrical service connections to the lot line
- On completion of the work required to bring the Proposed Park to the Turnover Condition, Build Toronto will transfer the Proposed Park to the City. The City acknowledges that delivery of the Park in the Turnover Condition and, if applicable, the Above Base Park Condition will not comply with the City's Policy for Accepting Potentially Contaminated Land
- If Build Toronto does not sell the Development Lands to a third party, or if the above work to a Turnover Condition is not Completed before the Reconveyance Deadline, Build Toronto shall convey the Proposed Park lands to the City in "as-is, where-is, with all faults" condition, by the Reconveyance Deadline, and otherwise to the satisfaction of the General Manager. The City acknowledges that this conveyance will not comply with the City's Policy for Accepting Potentially Contaminated Land.
- Build Toronto shall, at its cost, for a period of five (5) years after conveyance of the Park lands to the City, carry out all vapour and groundwater monitoring requirements, cap inspections and all other obligations of the land owner pursuant to the CPU for the Park as may be required to maintain compliance with the CPU.
- If during the five (5) year period there are measurements of contaminants that exceed the property specific standards established in the CPU and RSC, Build Toronto will complete remedial measures to the satisfaction of the MECP and the General Manager.

3. Above Base Park Condition

If requested by the General Manager and after completion of the Proposed Park to the Turnover Condition, the City and Build Toronto shall contract with the third party to build out improvements to the Park that are in addition to the Turnover Condition of the Proposed Park (the "Above Base Park Condition") at the third party's cost provided, however, that all such costs are refunded, credited or repaid to the third party through credits for the parks portion of the development charges, cash-in-lieu of parkland payments above the Planning Act requirements, and Section 37 contributions with respect to the Property, or any equivalent replacement funding mechanism due to changes in legislation or City policies, or through cash from the City (collectively, the "Credits"). Notwithstanding the foregoing, the third party shall pay for a minimum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) of the costs of the Above Base Park Condition (which sum, for certainty, shall be inclusive of HST and of the currently required Section 37 financial contribution of \$500,000.00 (indexed for construction costs). In addition, Build Toronto shall also fund the costs of the Above Base Park Condition to a maximum amount of One Million Five Hundred Thousand Dollars (\$1,500,000) but only to the extent that the funds that would otherwise have been made available to the City for such work in the absence of Ontario Provincial Bill 108 is reduced as a result of the changes imposed by the Ontario Provincial Bill 108.

4. The third party shall not have any obligation or liability to the City with respect to the environmental condition of the Proposed Park following completion of the Reconveyance. Other than as specifically set out herein, neither Build Toronto nor CreateTO shall have any obligation or liability to the City with respect to the environmental condition of the Proposed Park following completion of the Reconveyance.