

AU6.7 Attachment 1



Source: CreateTO

Review of 260 Eighth Street Land Transaction

No Wrongdoing Identified

September 15, 2020

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Auditor General

**AUDITOR
GENERAL**

TORONTO

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Executive Summary

Concerns regarding a land transaction were received

The Auditor General received a complaint regarding the sale of a property at 260 Eighth Street in Etobicoke, Ontario (the Property) in 2018. The following concerns were expressed about the land transaction:

1. The sale amount of the Property was less than the market value.
2. The approval process for the sale of the Property was not conducted in accordance with City guidelines.
3. The best value for the Property was not attained.

Focus of the Auditor General's review

The Auditor General conducted a review of the sale including hiring a designated professional real estate appraiser to conduct an independent appraisal of the Property. Based on this review, it was concluded that there was insufficient evidence to support a claim that the Property was sold at less than market value.

We also reviewed the process surrounding the special meeting related to this transaction. Proper procedures appear to have been followed in the process, including the notice for and conduct of the special meeting of the Boards of Build Toronto and Toronto Port Lands Company which occurred on April 15, 2019.

In addition, no evidence came to our attention that would suggest that the Property's successful purchasers are likely to create fewer jobs than other developers or that late unsolicited offers from other proponents should have been accepted.

CreateTO approved and completed the sale

As of March 21, 2018, the Board of Directors of CreateTO approved the sale of 260 Eighth Street to the purchasers. The sale of the Property closed on August 15, 2019.

No wrongdoing was identified

This report was prepared to address concerns about the land transaction that took place. Based on our investigative review, we found sufficient evidence to support that the appropriate steps were taken to complete this transaction.

Concerns should be raised to the Auditor General

It should also be acknowledged that when there is a legitimate question or concern about a transaction including a potential wrongdoing, it is important and, in the City's best interest for the complainant to bring the matter to the Auditor General for investigation.

Appreciation to complainant and CreateTO

For this, we thank the complainant for doing so. We also express our appreciation for the co-operation and assistance we received from management and staff of CreateTO.

Background

Location of the Property	The land at 260 Eighth Street in Etobicoke, Ontario (the Property) is a 24-acre parcel located east of Islington Avenue, on the north side of Birmingham Avenue in Ward 3, Etobicoke-Lakeshore. The site is one of the few remaining City-owned large industrial properties that is served by an easily accessible road and highway network.
Contamination of the site	<p>The land was formerly occupied by Anaconda Brass and successors who performed metal forming and fabricating until 1989 when the buildings on the site were demolished. It has been vacant since the early 1990's.</p> <p>Environmental assessments have found contaminants within the property including various chemicals and metals in the soil and ground water. In 2005, a partial remediation of the property involved removal of contamination hot spots and the installation of an underground impermeable and permeable reactive barrier along the eastern property line and along a portion of the south property line.</p>
BuildTO to manage the sale of the Property	<p>In October 2013, City Council recommended that Build Toronto Inc. (BTI) manage the sale of the Property on behalf of the City owner, Toronto Port Lands Company¹ (TPLC).</p> <p>The lands were severed in 2016 when a 3.3-acre parcel (municipally known as 170 Birmingham Avenue) was sold to Humber College for use as a parking lot. The remaining 20.6-acre parcel, which also contains a historically designated Toronto Hydro Building (Heritage building), is the subject of this report.</p>

¹ Please refer to Exhibit 1 for the Real Estate Governance Structure

Chronology of events related to the land transaction

From 2013 to 2017 there were multiple efforts to sell the Property. In summary:

- **Early 2016** – Two competing offers (for ease of reference, referred to as Proponents A and B) were shortlisted, each proposed to purchase the remaining 20.6 acres for approximately \$600,000 per acre.
- **June 2016** – The proposal from Proponent B was approved by TPLC as recommended to the Board of Directors by BTI.
 - The proposal appears to have been accepted because it offered the greatest degree of certainty of closing, development implementation and achievement of City economic and infrastructure benefits.
 - However, the sale did not materialize, in part because of a dispute relating to the issues of land contamination within the Property.
 - The Property remained for sale.
- **May 2017** – Renewed efforts to sell the Property resulted in a public Request for Proposal issued to identify an agent to market and sell the Property.
 - The successful agent in this process estimated the value of the Property at \$1.2-\$1.3M per acre and estimated a high labour density industrial user would generate up to 1,000 new jobs.
- **August to September 2017** – A competitive public bidding process was undertaken by the agent and nine bids were received including Proponent A. The bid evaluation documentation we reviewed showed bids from five of the top proponents, which did not include Proponent A.
- **March 2018** – A purchase agreement was made with the successful bidder (Proponent C) from the 2017 bidding process for a price of \$23.7M, or approximately \$1.15M per acre.
 - The Board of Directors of CreateTO approved the sale on March 21, 2018.
 - In February 2019, a written agreement indicated that prior to the sale closing there would be a \$1,500,000 downward adjustment of the total sale price to reflect a settlement with a third party relating to land contamination.
- **March 2019** – Two unsolicited offers were received to purchase the Property, one from Proponent A for \$25M and the other from a new Proponent, D² for \$18M.

- Management reviewed the options for other development forms based on employment concerns and market demand.
- Neither unsolicited offer was accepted based on this review and considering that negotiations were already underway with the successful bidder (Proponent C) from March 2018.
- **April 15, 2019** - a combined special meeting of the Board of Directors of BTI and TPLC was held.
 - The meeting discussed aspects of the land transaction including the purchase and sale agreement, land valuation and certain legal considerations.
 - An excerpt from this meeting's minutes in regard to employment concerns and market demand follows:

“The Ward 5 [now Ward 3] Councillor Mark Grimes has been consulted and he is strongly opposed to this sale as he believes that (Purchaser) plan... will not achieve the maximum number and type of jobs that he believes are achievable on the Property.”

- **April 17, 2019** - Councillor Mark Grimes (Ward 3, Etobicoke-Lakeshore) attempted to introduce a Motion without Notice to City Council meeting, that Council should have input before any further steps are taken in the matter of the land transaction for 260 Eighth Street. However, Councillor Grimes lost the vote to Council and the Motion without Notice was not introduced.
- **August 15, 2019** – the sale of the Property closed between CreateTO and the successful purchasers.

² The exact timeframe of the unsolicited offer from Proponent D is unknown. From the documentation we reviewed, we assume the timing is similar to the timeframe for the unsolicited offer from Proponent A – March 2019.

The Complaint

Concerns regarding the land transaction at 260 Eighth St were received

The Auditor General received a complaint in relation to the sale of a property at 260 Eighth Street in Etobicoke, Ontario (the Property).

1. The sale amount of the Property was less than market value – a higher price could have been obtained.
2. The approval process for the sale of the Property was not conducted in accordance with City guidelines – the special meeting regarding the land transaction was not administered by the City Clerk and the appropriate notice was not given.
3. The best value for the Property was not attained - the successful purchaser's plan did not maximize the number of jobs that could be created.

An independent investigative review was performed

The Auditor General conducted an independent investigative review of the concerns listed above, including sufficient work to confirm if there was any evidence of wrongdoing.

Findings

This section of the report contains the findings from our investigative review of the land transaction at 260 Eighth Street in Etobicoke, Ontario.

A. Market Value of the Property

Concern regarding market value of the Property	A concern was raised by the complainant that a higher price could have been obtained for the sale of the Property.
Price from unsuccessful 2016 sale was \$600k per acre	We note that the unsuccessful 2016 sale of the Property for the development of a wholesale data centre (Proponent B) was going to yield a per-acre sale price of approximately \$600,000 – considerably less than what was eventually obtained for the Property.
The selling agent estimated a price of \$1-1.2M per acre	We examined public tender documentation with respect to the 2018 sale of the Property to understand the bids of the proponents ³ . Prior to the release of the Property to market, we noted that the sales agent expected a range of between \$1M and \$1.2M per acre value, and the proposals received were of a similar magnitude. The two highest bidders were approximately 2% apart with the higher being \$1.15M per acre.
The Auditor General requested for an independent real estate appraisal of the Property	<p>Although we saw a consistent pattern in purchase price, of approximately \$1M to \$1.2M per acre, we requested an independent real estate appraisal of the Property. The expert that was selected is a designated professional appraiser⁴ who is qualified to offer valuation and consulting services and expertise for all types of real property, including land and commercial/residential buildings.</p> <p>The appraiser conducted an extensive review to express an opinion on the retrospective market value of the Property and provided the Auditor General with a comprehensive 10-page report.</p>

³ For clarity, we did not examine the conduct of the tender process and we are not expressing a view about decisions that were made during that process, as there were no allegations suggesting that the tendering process was flawed, and nothing came to our attention in our review to suggest there were issues related to this process.

⁴ Accredited Appraiser Canadian Institute (AACI, P.App)

Appraisal determined a value of \$900k per acre at the time of the sale

Following are excerpts from their report to us, concluding a market value of approximately \$900,000 per acre at the time of the sale:

"The Highest and Best Use of the subject property would be its development with I.C2-Industrial and E 1.0-Employment uses, together with the rehabilitation of the heritage hydro substation and its conversion to an office or an alternative use. We acknowledge that the subject property has potential for the severance of the heritage structure however, the rehabilitation and conversion costs may limit marketability. Therefore, the property is appraised as a single property.

As a result of our investigation, subject to the assumptions and limiting conditions contained in our files, together with the hypothetical condition of this valuation (appraised "as if" free and clear of pollutants, contaminants and detrimental environmental conditions), it is our opinion that as of December 17, 2017⁵, the retrospective market value of the subject property would have been estimated at: \$18,550,000 (\$899,568 per acre for the 20.621 acres)."

⁵ The bidding process was conducted in the latter half of 2017 and a successful proponent was chosen. A retrospective forensic valuation of the property dated December 17, 2017 was conducted to determine if the Property was sold at market value during that point in time.

A similar sized property sold for higher value based on the sale date and contributory value of an existing building on the land

We were advised by the complainant that a similarly sized property, the Campbell Soup plant at 60 Birmingham Street, had sold for \$45.6M on December 14, 2018. We took this into consideration during our review.

Although the size of the parcels was similar, the Birmingham Street property included a large factory structure whereas the Property was bare land with a substantially smaller Heritage building on it – so there was the possibility that the former would have more value. For more certainty, we further engaged the same independent appraiser that we had originally commissioned and enquired if they had considered the Birmingham Street parcels in their appraisal. Their response follows:

"We were aware of the sale of 60 Birmingham Street. It is improved with a 616,716 square foot factory (for Campbell Soup) on an 18.94-acre site, reflecting a 74.8% lot coverage... It sold in December 2018 for \$45,600,000. The sale price reflects rates of ... \$2,407,603 per acre of land. In our opinion, the building contributed to the purchase price (in our view the existing building had a contributory value). Therefore, we did not rely on this transaction nor did we consider it a comparable to the subject property (the subject is vacant land). Also, the sale transacted in December 2018, a year after our effective date of valuation (December 17, 2017)."

We conclude that the Property was sold at fair market value

In summary, on the basis of publicly tendered development proposals, final sale value and an independent appraisal, we conclude that there is insufficient evidence to support a claim that the Property was sold at less than market value.

B. Special Meeting Conduct in Accordance with City Guidelines

Concern regarding conduct of the special meeting

A concern was raised by the complainant that a combined special meeting of the Board of Directors of BTI and TPLC, held on April 15, 2019 was not administered by the City Clerk and there was not proper notice given of the meeting that was to take place.

We reviewed the relevant rules for notice of meetings for BTI and TPLC

We followed up with the City Clerk and the Chief Legal Counsel and Secretary for CreateTO and reviewed minutes of that meeting while considering the requirements for notice of such meetings. We understand that the relevant rules for notice of meeting are:

- BTI and TPLC Shareholder Direction – S. 4.8(a) “Advance public notice of the [Board] agenda is required”.
- BTI by-law #1 – S. 4.10 - Notice of Board of Directors meeting must be given such that it is received “not less than 3 business days before the day on which the meeting is to be held”.
- TPLC by-law #1 – S. 3.12 - Notice of Board of Directors meeting must be given such that it is received “not less than 3 business days before the time when the meeting is to be held”.

Public notice was posted, and City Clerk does not provide meeting services to BTI and TPLC

We were informed that a public notice of the combined special meeting was posted to appropriate and accessible websites on or about March 27, 2019, with standard practice to post the notices approximately 2 weeks in advance. There does not appear to be any provision in either entity's bylaws or procedures requiring the presence of the City Clerk or any Council members at such a meeting or the requirement to provide special notice to the City Clerk or Councillors. City Clerk has also confirmed that they do not provide meeting services to BTI and TPLC.

Councillor Grimes attempted to introduce Motion without Notice regarding the matter

We also note that on April 17, 2019, concerns about notice were raised by Councillor Mark Grimes (Ward 3, Etobicoke-Lakeshore) on an attempt to introduce a Motion without Notice to City Council meeting, that Council should have input before any further steps are taken in the matter of the land transaction for 260 Eighth Street. However, Councillor Grimes lost the vote to Council and the Motion without Notice was not introduced.

We conclude that the proper procedures were followed

In summary, the proper procedures appear to have been followed in the notice for and conduct of the special meeting of the Boards of BTI and TPLC which occurred on April 15, 2019.

C. Value of the Property – Maximization of Jobs

Concern regarding best value and maximization of jobs

Another concern that was expressed by the complainant was that the best value for the Property was not attained and the successful purchaser's plan did not maximize the number of jobs that could be created on this Property.

The matter of job creation was not investigated in detail

When considering the results of an open bidding process in relation to a land transaction, job creation estimates may also be relevant as part of the evaluation.

However, given that the sale price of the Property was at fair market value and the appropriate processes were followed in the notice for and conduct of the special meeting, we decided not to investigate this matter further and no evidence to suggest wrongdoing came to our attention during our investigative review.

Unsolicited offers with higher estimates of job creation were received

We also recognize that unsolicited offers were received approximately one year after an agreement was made with the successful bidder and these offers included higher estimates of job creation.

It is important to consider that at that time, CreateTO reviewed the offers, however they already had a purchase agreement in place with the successful proponent from the open bidding process. These negotiations included many complex factors, one of which was the potential environmental contamination on the site and the impact that would have on the purchase price.

Negotiations with the successful bidder were already underway

It is our view that negotiations with the successful bidder were complex and had sufficiently progressed to a point where new unsolicited offers would not be accepted. This is also considering that the successful bidder was paying fair market value for the Property and with any new proponent, there would be renewed uncertainty, particularly based on the environmental issues.

Summary of use of land and estimated number of jobs for each proponent

For information purposes only, a brief summary related to the use of land and estimated number of jobs created by each proponent is included below. We examined tendering and other administrative documents relating to the Property and identified a range of claims for job creation.

- **Early 2016** – In relation to the two competing offers which were shortlisted from Proponents A & B:
 - Proponent A – multi-storey office and commercial buildings, 600,000 to 800,000 square feet, estimated job creation between 1,200 and 2,000 at full buildout.
 - Proponent B – wholesale data centre, 450,000 square feet, estimated job creation of 100-120 on-site plus over 1,400 off-site full-time employees of tenants.

- **March 2018** – For Proponent C, the successful purchaser's plan anticipated:
 - Two buildings for lease to tenants, 200,000 square feet each, estimated job creation of 600 to 700.

- **March 2019** – Two unsolicited offers from Proponents A & D to purchase the property as follows:
 - Proponent A – A number of 2-storey condominium office blocks, estimated job creation up to 1,500.
 - Proponent D – A mix of multi-storey office and industrial buildings, estimated job creation up to 2,600.

We conclude that there was no wrongdoing in the decisions related to maximizing jobs

In summary, on the basis of publicly tendered development proposals, final sale documents and other available documentation, we found insufficient evidence to support any concerns or wrongdoing about the decisions made during this process related to value based on the maximization of jobs.

Recommendations & Conclusion

Recommendations

We have made no recommendations in this matter.

Importance of bring the concerns forward

Not all concerns which are raised to the attention of the Auditor General are found as wrongdoing. However, it is still important and, in the best interest of the City to raise the matter when there is a legitimate concern about a how a transaction was handled.

The Auditor General’s review provides further insight and independent clarity as well as assurance to City Council and the public that such a transaction was handled appropriately. We thank the complainant for bringing this matter forward.

Insufficient evidence to support any wrongdoing

Based on a review of the concerns that were raised, it was concluded that there was insufficient evidence to support the claim that the Property was sold at less than market value.

We also found the land transaction processes including the notice for and conduct of the special meeting of the Boards of Build Toronto and Toronto Port Lands Company appeared to be appropriate.

Although we did not conduct an in-depth analysis of concerns related to job maximization in comparison to other proponents, no evidence came to our attention to support that any wrongdoing occurred in relation to any decisions made during this process related to value based on the maximization of jobs.

In our view, it was appropriate for CreateTO to proceed with the agreement it already had in place, considering that fair market value was being received from the successful proponent, as well as the complexity of the transaction and environmental issues on the Property. In addition, it is important for the public to be able to rely on the City’s open bidding process.

Objectives, Scope and Methodology

Objective, Scope and Methodology of the Auditor General's Review

Review based on legitimate concerns about a land transaction

The Auditor General conducted a review of the land transaction of a property at 260 Eighth Street in Etobicoke, Ontario. This review was initiated based on concerns brought forward by a complainant in relation to the sale of the Property.

This is not an audit, but rather a review

This was an investigative review wherein we undertook enough appropriate work to confirm whether there was sufficient information to raise a concern as to whether there was wrongdoing related to this transaction.

The work performed in relation to this investigation report does not constitute an audit conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS). However, we believe we have performed sufficient work in satisfaction that the evidence obtained provides a reasonable basis for our findings and conclusions.

Methodology of the Auditor General's review

The Auditor General reviewed documents related to the land transaction from when Council recommended the property to be managed by BTI in 2013. We also hired a designated professional real estate appraiser to conduct a retrospective appraisal of the Property and to provide an independent opinion on value of the land.

Objective of the Auditor General's review

The objective of the review was to examine whether the proper processes were followed and if the Property was sold at an appropriate value without causing loss to the City.

Scope of the Auditor General's review

The scope of the Auditor General's review of this transaction was comprehensive and included:

1. Reviewing the complainant's concerns and determining whether there was evidence to support the allegations.
2. Reviewing relevant information in relation to the sale of the Property and discussing the transaction with staff from Build Toronto Inc.
3. Assessing whether there was evidence of any improper or inconsistent practices followed throughout the process that might have influenced the sale of the Property.
4. Assessing whether there were potential conflicts of interest that might have led to the agreement with a purchaser.
5. Obtaining the opinion of a qualified independent real estate appraiser on the highest and best use of the Property.
6. Considering the Heritage building located on the property in the appraisal analysis and its impact on the property.
7. Confirming whether the Boards adhered to their own policies and guidelines in conducting their meetings related to the decisions about this property.

The review did not include:

1. An analysis of the maximum number of jobs achievable on the property because there was no evidence that came to our attention to suggest any wrongdoing related to the land transaction.
2. Contract provisions or the merits related to any issues of environmental contamination.

Scope limitation in relation to land appraisal

In addition, there was a scope limitation in relation to the independent real estate appraisal we received.

Scope Limitation of the Independent Real Estate Appraisal

An independent appraisal was requested by the Auditor General

The Auditor General hired a designated professional real estate appraiser to carry out an appraisal analysis and express an independent opinion of the retrospective market value of the Property as of December 17, 2017. The appraiser was asked to appraise the property under a hypothetical condition - "as if" free and clear of pollutants, contaminants and detrimental environmental conditions.

Scope and Methodology of the appraisal

The appraiser excluded the environmental costs, liabilities, etc. relating to the contamination from the former industrial use and disregarded its impact on the market value of the property.

The appraiser relied on research from websites, Land Registry documents, their own external inspection of the Heritage building, the Heritage Impact study, etc. and their own interpretation of this information. This is a departure from the normal investigative standards of practice of the Appraisal Institute of Canada.

The appraiser did not discuss the subject property with the owner/property manager, the parties involved in the property's marketing, the City's Planning department, the environmental consultants, the Committee of Adjustment, the Heritage consultant, City's roads department, etc. Also, they did not inspect the interior of the hydro substation.

Appraisal was performed in accordance with Professional Standards

The appraiser certified that they have no present or prospective interest in the Property of any kind whatsoever. The valuation was performed in accordance with the Canadian Uniform Standards of Professional Appraisal Practice of the Appraisal Institute of Canada.

Appraisal provides reasonable basis for our findings and conclusions

Despite these limitations, based on the detailed analysis and the evidence obtained we believe the appraisal provides reasonable basis for our findings and conclusions, including that the City has received fair market value for the property.

Exhibit 1: City-wide Real Estate Governance Structure

Source: CreateTO



The **Toronto Port Lands Company (TPLC)**, legally the Toronto Economic Development Corporation, is a City corporation which manages real estate assets and promotes development in Toronto’s Port Lands, an extensive industrial area southeast of Toronto’s downtown that is being redeveloped and revitalized.



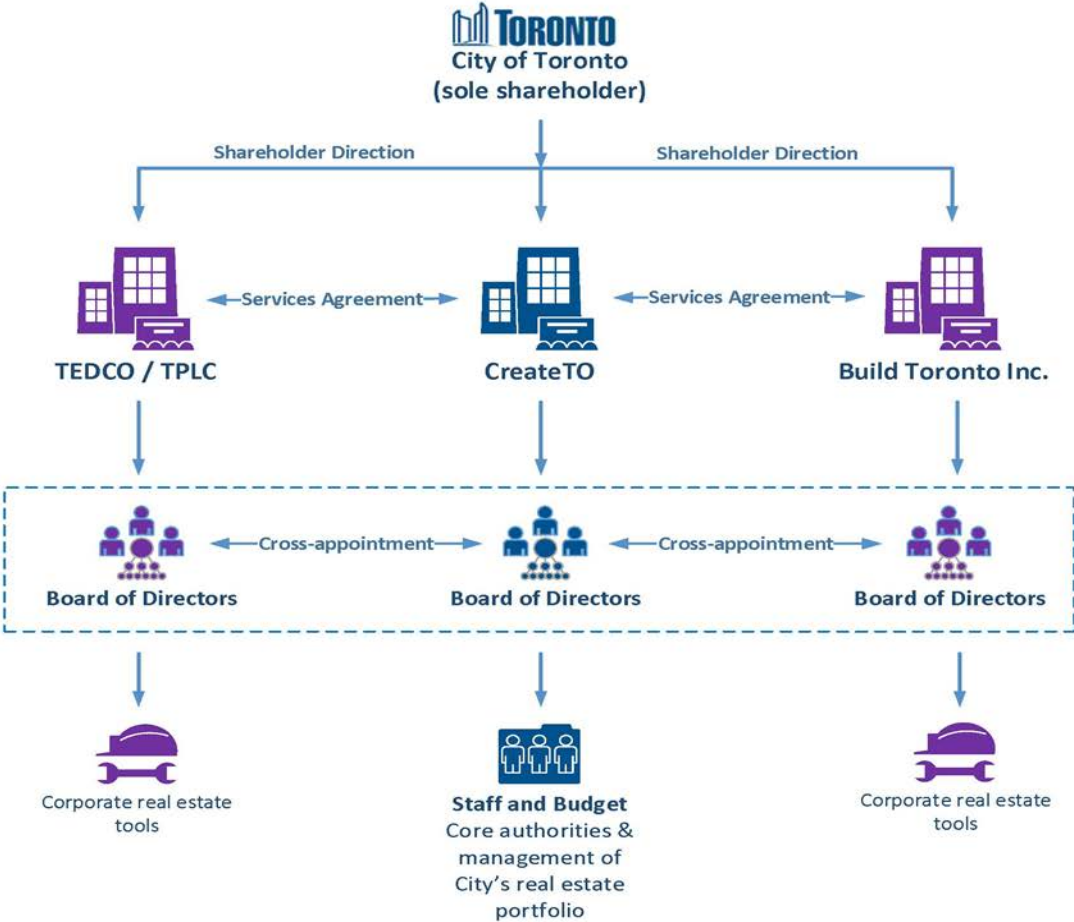
CreateTO is a City agency launched on January 1, 2018 to lead a new City-wide real estate service delivery model adopted by City Council in 2017.

CreateTO’s mandate is to manage the City’s real estate portfolio, develop City buildings and lands for municipal purposes and provide real estate solutions to City divisions, agencies and corporations. Its business streams focus on customer relationship management, real estate strategy, property management, asset management, major projects and development.



Build Toronto is a City corporation which develops underutilized City real estate assets to unlock their value, attract targeted industries, stimulate employment and regenerate neighbourhoods.

CreateTO Governance Structure



CreateTO

CreateTO is the prime real estate agency of the City. To enable joint ventures (e.g., public-private partnerships), & enter into financial arrangements to deliver strategic projects - it leverages two holding corporations (TEDCO/TPLC and Build Toronto Inc.).



Holding Corporations

Holding Corporations = Build Toronto Inc. (BT) & Toronto Port Lands Company (TPLC)



Board of Directors

The Board of Directors of CreateTO is also the ex officio board of directors both corporations as per their respective shareholder directions, approved by City Council



Service Agreements

CreateTO has established **service agreements** with both BT & TPLC to support cost recovery from operating the businesses & delivering projects

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