



Acquisitions and Expropriation of Air Space Related to Rail Deck Park

Date: January 9, 2020

To: Executive Committee

From: Deputy City Manager, Corporate Services

Wards: Ward 10 - Spadina-Fort York

SUMMARY

This report provides an update on the status of real estate matters related to the Rail Deck Park project, and seeks authority to initiate expropriation proceedings for just over 3 acres (1.2 hectares) of air space above the Union Station Rail Corridor, south of Front Street West between Spadina Avenue and Blue Jays Way (the "Property Interests"), as set out in Appendix A and shown approximately in Appendix B, for the purposes of the Rail Deck Park project.

Negotiations for the acquisition of the Property Interests have been ongoing with the various owners with no success to date.

Together with the City's existing 1-acre Northern Linear Park property, the Property Interests would support the development of the first 4 acres of Rail Deck Park. A 4-acre park provides a wide range of programming potential and is roughly the same size as Grange Park in Downtown Toronto.

The Property Interests are also adjacent to the Oxford Properties Group Inc. Union Park proposal, which is located to the east of Blue Jays Way. The Union Park proposal provides approximately 3 acres of contiguous park and open space, including 2 acres to be built above the rail corridor. When both projects are completed, they will create a combined park area of approximately 7 acres. The opportunity to assemble a parkland parcel of this scale rarely arises in downtown Toronto, and aligning the design and implementation of a first phase of Rail Deck Park with the Union Park proposal would enhance the public benefits of each proposal.

The Property Interests represent a strategic acquisition by the City of Toronto to guide the future development of this area of the rail corridor in a manner consistent with the City's Official Plan policies. Additional air space in the Rail Deck Park project area (ie: between Spadina Avenue and Bathurst Street) will be pursued at a time when staff are confident that they can be acquired at fair market value.

The acquisition of the Property Interests by the City of Toronto is necessary to proceed with joint planning and delivery of Rail Deck Park and the GO Expansion project, as directed by Council in 2017. Agreement between the City and Metrolinx will be required in 2020 for the delivery of capital works related to the Rail Deck Park project that cannot be independently delivered by the City, to meet Metrolinx's procurement and delivery timelines. The City should only enter into an agreement for delivery of capital works if it has a reasonable prospect of acquiring the properties in which they are proposed to be built.

This report is the first stage of the expropriation process and authorizes staff to continue negotiations to acquire the Property Interests and, if unsuccessful, to initiate expropriation proceedings, including associated administrative costs. This report does not authorize spending on the Rail Deck Park project beyond the budget approved through previous Council reports.

Staff will bring forward a report to Council by Q3 2020 to authorize the next stage of the Rail Deck Park project, including a funding and financing strategy for acquisition of the air space and capital delivery of the project.

RECOMMENDATIONS

The Deputy City Manager, Corporate Services recommends that:

1. City Council authorize the Executive Director, Corporate Real Estate Management, in consultation with CreateTO, to continue to negotiate an agreement with all applicable parties for the acquisition of the Property Interests, as set out in Appendix A and shown approximately in Appendix B, at fair market value and, if unsuccessful, to initiate expropriation proceedings for the Property Interests.
2. City Council authorize the Executive Director, Corporate Real Estate Management, and/or a designate, to serve and publish Notices of Application for Approval to Expropriate Land for the Property Interests, to forward any requests for hearings to the Chief Inquiry Officer, to attend any requested Hearings of Necessity in order to present the City's position and to report the Inquiry Officer's recommendations to City Council for consideration.
3. City Council request that the CreateTO Board of Directors consider any proposed transaction(s) concerning the Property Interests and that the CreateTO Board of Directors provide recommendations to the Executive Committee on any proposed transaction(s) involving the Property Interests and a strategy for the acquisition of remaining properties in the Rail Deck Park project area.

FINANCIAL IMPACT

The costs to serve and publish the required Notices of Application for Approval to Expropriate Land, together with any costs related to attendance at the Hearing of Necessity, if any, will be funded from the 2019 Council Approved Parks, Forestry & Recreation (PF&R) Capital Budget and 2020-2028 Capital Plan (CPR115-48-03) and will be included in PF&R's 2020-2029 Staff Recommended Capital Budget and Plan for Council consideration. These administrative costs are not anticipated to exceed \$12,000.

The detailed funding amounts will form part of a subsequent report, as part of the stage gating strategy, to the Committee and Council identifying the financial implication to the City and confirming funding availability within the appropriate funding sources for the acquisition of the Property Interests, or for expropriation costs including the market value of the lands, as well as disturbance costs (if any), interest, land transfer tax costs, and all other associated costs stipulated under the Expropriations Act.

This report does not authorize spending on the Rail Deck Park project beyond the budget approved through previous Council reports. Staff will bring forward a Rail Deck Park project report to Council by Q3 2020 to authorize the next stage of work, including a funding and financing strategy for both the acquisition of the air space and capital delivery of the project.

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

DECISION HISTORY

In October 2016, City Council adopted EX17.1 ("Rail Deck Park - Work Plan for Official Plan Amendments and an Implementation Strategy") which directed staff to (i) initiate necessary changes to the Official Plan and Zoning By-law to support a park use in the rail corridor and (ii) advance an Implementation Strategy for the Rail Deck Park proposal, including real estate matters, structural design and engineering, costing and financing, and partnership strategies. More information on this decision is available on the City's website at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX17.1>

In June 2017, Toronto and East York Community Council adopted TE25.57 ("Rail Corridor - Bathurst Street to Blue Jays Way - Official Plan and Zoning By-law Amendments Application - Preliminary Report"), which provided preliminary findings and emerging directions for the updated planning framework for the rail corridor by way of a preliminary report, as directed by City Council's adoption of EX17.1 (the "Preliminary Report"). A draft Official Plan Amendment will be considered at the current meeting of Council. More information on this decision is available on the City's website at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.TE25.57>

In December 2017, City Council adopted EX29.2 ("Rail Deck Park - Results of Feasibility Analysis and Next Steps for Implementation"), which authorized staff to advance the Stage Two Work Plan for Rail Deck Park.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX29.2>

In December 2017, City Council adopted item number TE28.7 amending the Official Plan for the lands located within the rail corridor between Bathurst Street and Blue Jays Way including Northern Linear Park and Mouth of the Creek Park. The Property Interests have been designated as Parks and Open Space, while supporting existing or future rail operations. More information on this decision is available on the City's website at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.TE28.7>

COMMENTS

Purpose

The recommendations in this report authorize staff to continue negotiations and, if necessary, initiate expropriation proceedings for approximately 3 acres (1.2 hectares) of air space above the Union Station Rail Corridor, south of Front Street West between Spadina Avenue and Blue Jays Way (the "Property Interests"), for the purposes of Rail Deck Park. The Property Interests are set out in Appendix A and shown approximately in Appendix B. This report does not authorize spending on the Rail Deck Park project beyond the budget approved through previous Council reports.

This report has been drafted in consultation with Corporate Real Estate Management, Parks, Forestry & Recreation, City Planning, Legal Services, Financial Planning, Corporate Finance and CreateTO.

Rail Deck Park Proposal

Rail Deck Park is a City-led proposal for a new park of approximately 20 acres above the Union Station Rail Corridor, between Bathurst Street and Blue Jays Way.

The implementation strategy was first approved by City Council in 2016. The project is currently in stage II ("due diligence & concept development") as approved by Council in December 2017.

In 2017, Council also adopted Official Plan Amendment (OPA 395) which designated this area of the rail corridor for parks and open space. The OPA was subsequently appealed and upheld by the Local Planning Appeal Tribunal in 2019.

The downtown rail corridor area is the last remaining site suitable for a large park (more than 3 hectares or 7.4 acres in size) to support growth in the Downtown and serve as a City-wide asset. In keeping with the principles of the recently-approved City of Toronto Parkland Strategy, Rail Deck Park will connect the broader parks and open space system, unite surrounding visitor attractions (Rogers Centre, Ripley's Aquarium, Fort

York) into a major destination district, and enhance regional connectivity by integrating with the planned GO Expansion program.

Staff intend to bring forward the next project "stage gate" report to Council by Q3 2020 which will provide direction on the scope and budget for ongoing work on the Rail Deck Park project. The next stage gate report is expected to provide proposed terms for coordination with the Metrolinx GO Expansion program. It will also include the funding and financing strategy for land acquisition and capital work, based on the framework previously approved by Council, as well as public engagement and park design considerations.

Project Phasing and Property Interests

Implementation of Rail Deck Park will be phased in order to manage the anticipated cost and complexity of the project. The December 2017 staff report stated that the approach to phasing would be guided by opportunities or constraints presented by other capital works, park-related program and design priorities, and other factors. In that report, staff identified an emerging phasing plan that included a priority phase comprising areas of the rail corridor exclusively to the west of Spadina Avenue.

In August 2019, Oxford Properties Group Inc. submitted a planning application for the redevelopment of 325 Front Street West, between Blue Jays Way and John Street. The development application, known as "Union Park" includes a proposal for approximately 3 acres of contiguous park and open space, including 2 acres to be built above the rail corridor. The proposed park and open space would be immediately across the street from the eastern extent of Rail Deck Park (see Appendix B).

City Planning and Parks, Forestry & Recreation staff have determined that there is a unique opportunity to align the design and implementation of Rail Deck Park and the Union Park proposal in order to enhance the public benefits of each proposal. As a result of the City's proposed acquisition of the Property Interests described in this report, Council could decide to advance a first phase of the Rail Deck Park project between Spadina Avenue and Blue Jays Way, inclusive of Northern Linear Park and adjacent to the planned Union Park overbuild.

A shared design vision for this area of the rail corridor will produce a large, connected park and open space of approximately 7 acres (2.8 hectares) between John Street and Spadina Avenue: 3 acres (1.2 hectares) in the Union Park proposal, 1 acre (0.4 hectares) of existing Northern Linear Park and 3 acres (1.2 hectares) represented by the Property Interests. The opportunity to assemble a parkland parcel of this scale rarely arises in downtown Toronto. The combined parkland resulting from the Union Park proposal and Rail Deck Park (at full build-out) could bring the total park space above the rail corridor to up to 23 acres (9.3 hectares).

The City remains committed to the full Rail Deck Park vision, and will explore opportunities to acquire additional air space in the project area, should the City be in a position to acquire those properties at fair market value in the future. Opportunities to extend a continuous park area beyond John Street to the east may also exist, should those properties become available for park development in the future.

Coordination with the GO Expansion Program

In 2017, City Council requested that staff and Metrolinx work in partnership to advance Rail Deck Park with related capital projects in the rail corridor, such as the GO Expansion program.

GO Expansion is a transformative plan to implement new service across the GO rail network. It will involve significant infrastructure, including station improvements, track work, electrification and signaling technologies. A proponent will be selected to design and build the entire infrastructure to implement enhanced GO service and operate and maintain the entire system for 30 years after completion. Metrolinx is currently in the process of selecting the proponent to deliver GO Expansion, from a shortlist of bidders identified in 2018. A Request for Proposals was issued in 2019 and is expected to close in 2020.

It is anticipated that work on GO Expansion will commence in 2022 and is expected to be fully operational approximately 8 to 10 years later.

The City and CreateTO are currently working with Metrolinx to develop options and terms for joint or coordinated delivery of Rail Deck Park enabling works and the GO Expansion program. Enabling works are those capital components of the Rail Deck Park project that cannot be independently delivered by the City either for logistical or financial reasons (e.g., track-level works). The scope and budget for enabling works will be provided to Council in the next Rail Deck Park stage gate report targeted by Q3 2020.

Acquisition of the Property Interests by the City is a necessary precondition for the City and Metrolinx to agree to terms for delivery of Rail Deck Park enabling works.

In order to meet Metrolinx procurement and delivery timelines, agreements concerning overbuild in the rail corridor, including Rail Deck Park, will have to be in place in 2020. These agreements will provide greater certainty in terms of how and when overbuild can be executed in the rail corridor in order to align with delivery of the GO Expansion program. If these agreements are not in place, it may not be possible to pursue overbuild construction until after substantial completion of the GO Expansion program.

Acquisition of Air Space

City and CreateTO staff have been engaged in negotiations with the various air rights holders to acquire the Property Interests and additional properties in the Rail Deck Park project area since 2018. To date, these negotiations have not been successful in producing an agreement between the parties.

In order to provide relative certainty for the acquisition of the Property Interests to support coordination with Metrolinx, it is necessary to authorize the acquisition of the Property Interests and if necessary, initiate expropriation proceedings.

This report is the first stage of the expropriation process and authorizes staff to continue negotiations to acquire the Property Interests and, if unsuccessful, to initiate expropriation proceedings, including associated administrative costs.

As a result of the City's proposed acquisition of the Property Interests described in this report, Council could decide to advance a first phase of the Rail Deck Park project between Spadina Avenue and Blue Jays Way, inclusive of Northern Linear Park and adjacent to the planned Union Park overbuild.

The Property Interests also represent a strategic acquisition by the City to guide the future development of this area of the corridor in a manner consistent with the City's Official Plan policies.

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SIGNATURE

Josie Scioli
Deputy City Manager, Corporate Services

ATTACHMENTS

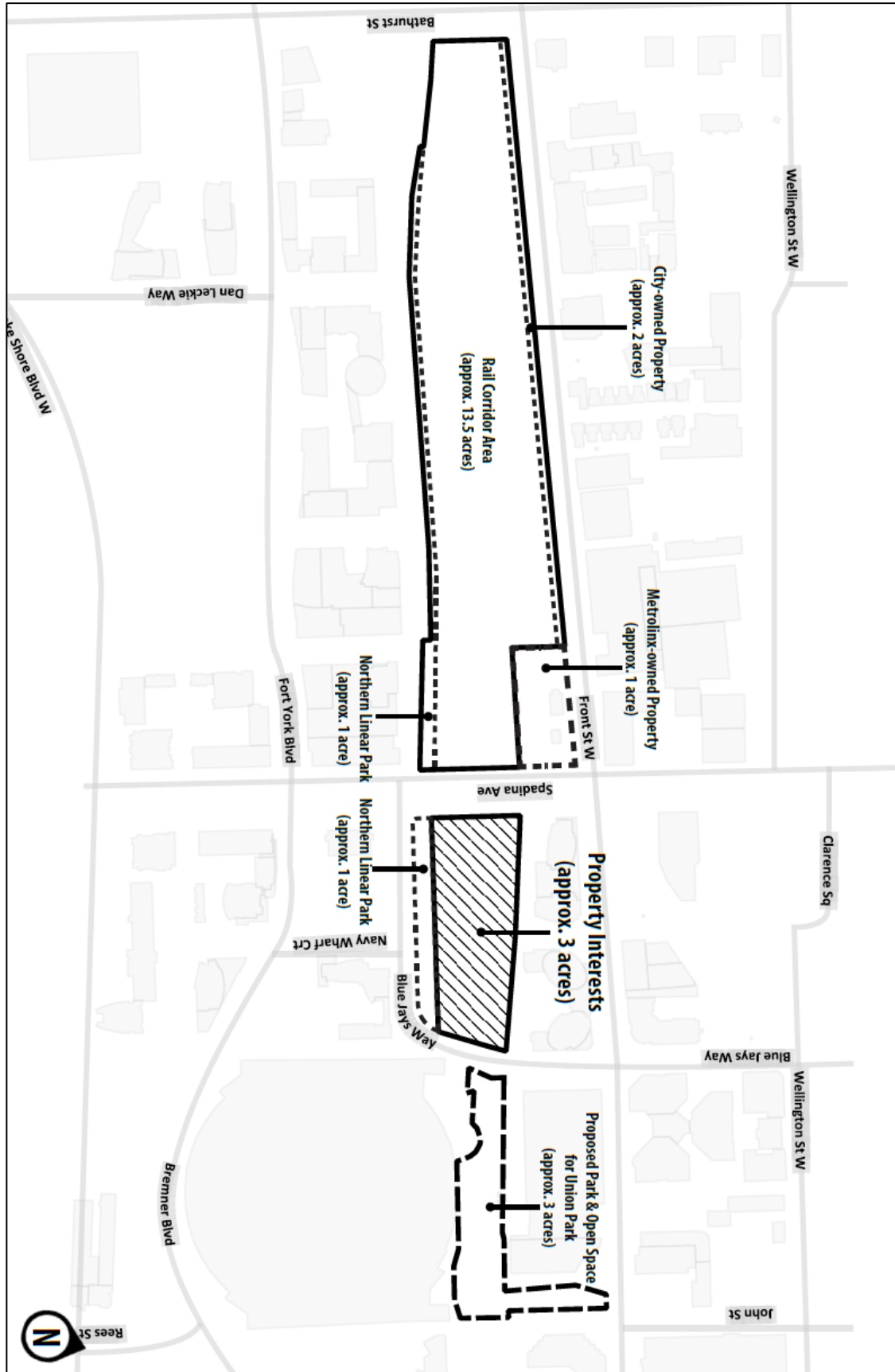
Appendix A - Property Requirements

Appendix B - Location Map and Property Requirements Sketch

Appendix A: Property Requirements

Legal Description	Required Interest	Approximate Area (square metres)
<p>Airspace comprising part of Lot 11, Index Plan D-970 [Parcel owned by CN.] commencing at an approximate elevation of 87.9 metres, being approximately 8.23 metres above the top of rail in the lands below</p>	Fee Simple	4,343
<p>Airspace comprising part of Lot 9, Index Plan D-970 [Parcel owned by TTR.] commencing at an approximate elevation of 87.9 metres, being approximately 8.23 metres above the top of rail in the lands below</p>	Fee Simple	5,469
<p>Airspace comprising part of Lots 9 and 12, Index Plan D-970 [Parcel owned by CN.] commencing at an approximate elevation of 87.9 metres, being approximately 8.23 metres above the top of rail in the lands below</p>	Fee Simple	2,625

Appendix B: Location Map



Appendix B: Property Requirements Sketch

