

**REPORT FOR ACTION WITH
CONFIDENTIAL ATTACHMENT****Release of City's Property Interest at 131 McCaul
Street**

Date: August 27, 2020

To: General Government and Licensing Committee

From: Executive Director, Corporate Real Estate Management and City Solicitor

Wards: Ward 11 - University-Rosedale

REASON FOR CONFIDENTIAL INFORMATION

The attachment to this report contains (i) information related to potential litigation affecting the City of Toronto (the "City"), (ii) commercial and financial information, supplied in confidence to the City, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual negotiations of an organization; and, (iii) advice or communications that are subject to solicitor-client privilege.

SUMMARY

This report seeks City Council authorization to grant a release to Tribute (McCaul Street) Limited (the "Developer") of any interest the City may have in a portion of the lands municipally known as 131 McCaul Street, and legally described in Appendix B (the "Restricted Lands"), pursuant to a deed from the City to the Congregation of the Most Holy Redeemer (the "Church").

In 1944, a portion of 131 McCaul Street was acquired by the Church from the City. A map showing the general location of the property is provided in Attachment A. The 1944 Deed to the Church provided that the grant of the lands was for so long as they are used for recreational purposes, that they were to be used for such purposes, and that they would vest again in the City in the event that they cease to be used for such purposes.

The Church has since entered into a sale agreement with the Developer to sell a larger development parcel, inclusive of these lands, and has requested that the City release any interest it may have in the lands pursuant to the 1944 Deed, while also disputing that the City currently has any enforceable interest. City staff, taking into consideration

legal advice from the City Solicitor contained in Confidential Attachment 1, are seeking City Council authorization to grant the release on proposed terms and conditions negotiated with the Developer (Attachment C).

RECOMMENDATIONS

The Executive Director, Corporate Real Estate Management and the City Solicitor, recommend that:

1. City Council authorize the City of Toronto to give a release to Tribute (McCaul Street) Limited of any interest the City may have (the "Disputed City Interest") in the lands legally described in Appendix B (the "Restricted Lands"), pursuant to a deed from the City to the Congregation of the Most Holy Redeemer, registered as Instrument No. 50874EP on September 14, 1944 (the "1944 Deed"), on the terms set out in Appendix C, and on such other terms that are acceptable to the Executive Director, Corporate Real Estate Management, in consultation with the City Solicitor.
2. City Council direct that the confidential information contained in Confidential Attachment 1 remain confidential in its entirety, as it (i) relates to potential litigation against the City; (ii) contains commercial and financial information, supplied in confidence to the City, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual negotiations of an organization; and, (iii) contains advice that is subject to solicitor-client privilege.

FINANCIAL IMPACT

The financial implications are discussed in Confidential Attachment 1.

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

DECISION HISTORY

On May 22, 2018, City Council adopted Item TE32.15, " 129-131 McCaul Street, 292-294 Dundas Street West and 170 St. Patrick Street - Zoning Amendment Application - Request for Direction Report", and instructed the City Solicitor to attend the LPAT in opposition to the appeals relating to the lands.

<https://www.toronto.ca/legdocs/mmis/2018/te/bgrd/backgroundfile-114346.pdf>

On May 14, 2019, City Council adopted Item CC7.10, "129-131 McCaul Street, 292-294 Dundas Street West and 170 St. Patrick Street - Zoning Amendment Application - Request for Directions Regarding Local Planning Appeal Tribunal Hearing", with amendments, and issued confidential instructions to staff regarding litigation or potential litigation.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC7.10>

On July 28, 2020, City Council adopted item CC23.11, "129-137 McCaul Street, 292-294 Dundas Street West and 170 St. Patrick Street - Zoning Amendment Application - Further Request for Directions" and issued confidential instructions on amending a number of conditions from the City Council direction of May 14, 2019.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.CC23.11>

COMMENTS

Background

The Restricted Lands are located west of St. Patrick Street, north of Dundas Street West, as approximately shown in Attachment A. The Church entered into an agreement to sell a portion of their lands that include the Restricted Lands to the Developer for inclusion in a development application. The Restricted Lands, included in the proposed development, have an area of approximately 3,028 square feet. The Church is retaining the lands that contain St. Patrick's Catholic Church.

In 1944, the Restricted Lands were sold to the Church by The Corporation of the City of Toronto on the following terms:

"TO HAVE AND TO HOLD unto the Grantee and its successors and assigns as long as the said lands are used for recreational purposes and upon trust to use the said lands for such recreational purposes.

THE GRANTEE covenants with the Grantor that the lands will be used for recreational purposes and that in the event that the lands cease to be used for such recreational purposes the same shall forthwith revert in the Grantor without any further act on the part of the said Grantor."

The sale price was \$1,000.00, which represented 20.4 percent of the 1944 market value of the Restricted Lands. The discount on the sale price reflected the limitation related to recreational use. At the time, the Church operated the Catholic Settlement House on the adjacent lands, providing a variety of settlement services to new immigrants. Building records indicate that in 1951, a sand pit was located on the western portion of the Restricted Lands, suggesting that it was used as a play area for children. In the early 1950s, the Catholic Settlement House was expanded and built over approximately 20 percent of the Restricted Lands. In the ensuing years, an additional portion of the Restricted Lands along the frontage of the building was fenced in and separated from the remainder of the Restricted Lands by the entry steps to the building. Based on the information available, it appears that the remainder of the Restricted Lands has been continuously used as a private playground and currently serves as the outdoor recreational space for the Catholic Settlement House Day Nursery.

Release and Quit Claim Request and Settlement

The Church contacted the City in September 2017 to request a release and quit claim in respect of the 1944 Deed. In 2019, in response to communications from the City requiring payment of fair market value for the release, the Church clarified that its request was made out of an abundance of caution given its pending sale to the Developer, and took the position the City does not have any enforceable right or interest in the Restricted Lands. It advised the City that if a satisfactory resolution could not be reached in a timely fashion, the Church and/or the Developer would take legal action including an application to court to seek a declaration (with costs against the City) that the City has no right, title or interest in the Restricted Lands under the 1944 Deed.

Negotiations with the Church and Developer have resulted in a proposed settlement with the Developer, based on terms of conditions outlined in Appendix C, which Corporate Real Estate Management staff consider fair and reasonable given the factors set out in Confidential Attachment 1.

Status of Development Proposal

The applicant is currently working with City staff to fulfil the outstanding conditions of approval. A Site Plan Control application is currently under review for the proposed development, and the planning process is proceeding independently of negotiations regarding the release of the Disputed City Interest.

CONTACT

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SIGNATURE

Patrick Matozzo
Executive Director, Corporate Real Estate Management

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1
Attachment A - Aerial Map
Attachment B - Legal Description of Restricted Lands & Reference Plan 66R-21755
Attachment C - Proposed Release Terms

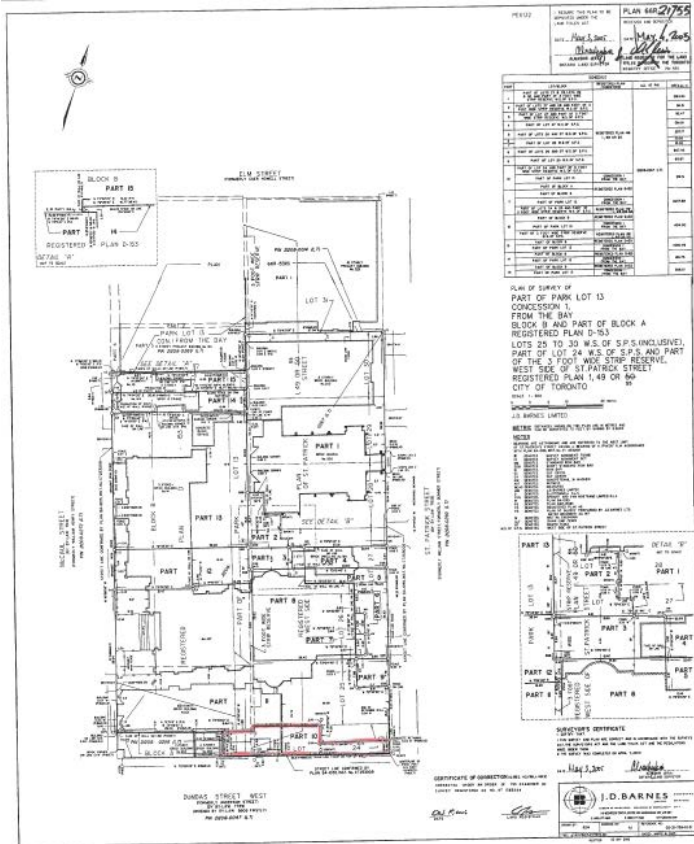
Attachment A - Aerial Map



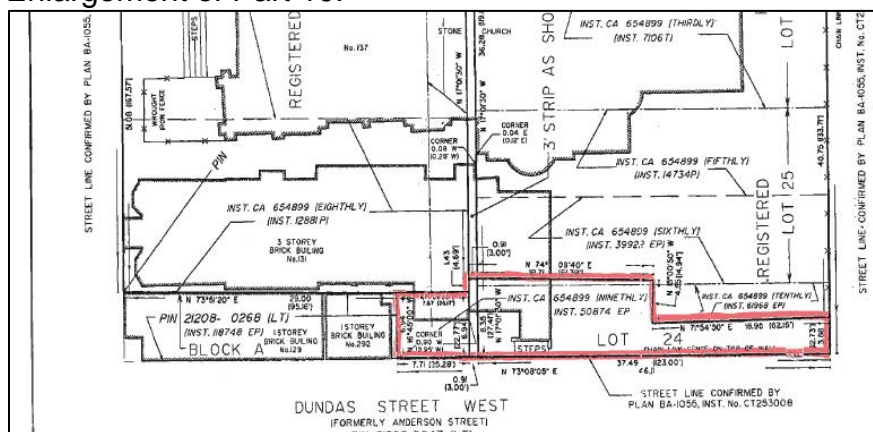
Attachment B - Legal Description of Restricted Lands & Reference Plan 66R-21755

Part of PIN 21208-0322(LT)

Part of Park Lot 13, Concession 1 FTB; Part of Block A, Registered Plan D-153; Part of Lot 24 W/S St. Patrick Street, Plan 1-49-55 Toronto and Part of 3 Foot Reserve W/S St. Patrick Street, Plan 1-49-55 Toronto, designated as Part 10 on Plan 66R-21755



Enlargement of Part 10:



Attachment C - Proposed Release Terms

Release Price: Set out in Confidential Attachment 1.

Taxes: Developer to pay any applicable land transfer taxes and HST in addition to Release Price.

Condition: Release is conditional to both parties upon completion of the sale of the Restricted Lands from the Church to Tribute by February 1, 2021 with the option to extend for two 6 month periods. Tribute may elect to close prior to completion of the sale.