

Pedestrian Cycling Bridge on Strachan Avenue - 11-25 Ordinance Street

Date: October 22, 2020
To: Toronto and East York Community Council
From: Director, Permits and Enforcement, Transportation Services
Wards: Ward 10 - Spadina-Fort York

SUMMARY

This staff report is about a matter for which Community Council has delegated authority from City Council to make a final decision

The proposed pedestrian and cycling bridge commences at the back edge of the sidewalk on Strachan Avenue and will connect to the proposed park at the south side of the property, at the on-going development of 11-25 Ordinance Street. On behalf of the owners, Bentall Kennedy (Canada) Limited has submitted an application which proposes to construct the new bridge. The owner of the property is BK Prime Ontario I LP c/o BentallGreenOak (Canada) LP.

Transportation Services has reviewed the application. The Applicant and Owner are required to satisfy all conditions of approval set out in the recommendations of this report and must comply with Transportation Services procedure for granting approval of bridges.

The purpose of this report is to seek Community Council authorization to enter into an encroachment agreement with the owner of the Lands to permit the construction of the bridge over the public right of way.

RECOMMENDATIONS

The Director, Transportation Services, Permits and Enforcement recommends that Toronto and East York Community Council:

1. Authorize the City to enter into an encroachment agreement (the "Agreement") with the Owner permitting the Encroachment on the terms and conditions set out in Paragraphs a. through z. below, and on any other or amended terms and

conditions satisfactory to the General Manager of Transportation Services (the "GM"), and in a form satisfactory to the City Solicitor:

- a. the Owner shall submit a report, stamped and signed by either the architect or professional engineer who designed the Encroachment , addressing how City boulevard, and possible pedestrians as well as any City-owned infrastructure will be protected from any snow and/or ice or other materials that may fall from the bridge;
- b. the Owner shall design, construct, repair and maintain the Encroachment, at its own expense to the satisfaction of the GM and shall not make or permit any additions or modifications to the Encroachment beyond what is permitted under the terms of the Agreement without the City's consent, which may be unduly delayed or arbitrarily withheld;
- c. the Owner shall allow the maintenance or construction of existing and/or proposed City infrastructure;
- d. the City shall not be responsible for repairing or replacing the Encroachment damaged as a result of clearing or removing litter, graffiti, posters, snow or ice, or as a result of street repairs, or resulting from the construction or maintenance of TTC infrastructure;
- e. the City shall maintain the right to place pipes, cables, wires, poles and other infrastructure within the Encroachment and shall be entitled to attach infrastructure, including that required by TTC, to the exterior of the Encroachment;
- f. the City shall be released from and against all actions, suits, claims or demands and from all loss, costs, damages and expenses that may result from such permission granted in a form and content satisfactory to the City Solicitor;
- g. the Owner shall indemnify the City from and against all actions, suits, claims or demands and from all loss, costs, damages and expenses that may result from such permission granted, any matter related to the bridge, and any failure of the property owner to comply with the Agreement in a form and content satisfactory to the City Solicitor;
- h. the Owner shall provide and maintain public liability and property damage insurance with an insurer satisfactory to the GM for the lifetime of the Agreement in a form as approved by the Deputy City Manager and Chief Financial Officer, including a cross-liability /severability of interest clause, a provision that the insurance is primary before the insurance of the City, and a 30 day prior notice of cancelation/renewal clause, and in the amount not less than \$10 million or such greater amount as the Deputy City Manager and Chief Financial Officer may require;

- i. the Owner shall provide and maintain an irrevocable letter of credit, in the amount of in an amount satisfactory to the General Manager of Transportation, to be retained by the City, for the duration of construction of the pedestrian/cycling bridge proposed over the City boulevard, to secure against any damage to the City right-of-way and to guarantee that the work within the public right-of-way is completed to the City's satisfaction. Prior to the release of the letter of credit, the property owner will be required to provide a construction sign-off letter stamped and signed by the structural engineering firm that designed the bridge which states that the bridge is safe and ready to be opened to pedestrian traffic, along with two sets of as-built drawings;
- j. the Owner shall pay (i) an annual licence fee in the amount of \$1,240.00 plus applicable HST, and (ii) any applicable real property taxes exigible. The licence fees will be recalculated every ten (10) years, and shall increase annually by an amount equivalent to the percentage increase in the Consumer Price Index (all items – Toronto);
- k. The design and construction of the Encroachment shall comply with the Canadian Highway Bridge Design Code (CAN/CSA) as amended, superseded or replaced from time to time;
- l. the Owner shall obtain all Public Utility Coordinating Committee clearances and/or sign-offs from the public utility companies and satisfy any requirements they may have;
- m. the Owner shall obtain approval and all necessary permits for the construction of the Encroachment from the Toronto Building Division, if required;
- n. the Owner shall provide as-built drawings within 60 days of completing the construction of the Encroachment to Survey and Mapping, Attention: Utility Mapping Supervisor, Engineering Design, 275 Merton Street, 1st Floor, Toronto, Ontario M4S 1A7, as well as to Transportation Services, Right of Way Management, Construction Activities, 55 John Street, 17th Floor, Metro Hall, Toronto, Ontario M5V 3C6;
- o. the provisions of Appendix 'A' to this report shall be substantially incorporated into the Agreement to the satisfaction of the GM;
- p. the Owner shall, at its own cost, charge and expense and to the satisfaction of the GM, alter or remove the Encroachment if deemed necessary for municipal purposes by the GM upon receiving not less than ninety (90) days' notice in writing by the GM;
- q. prior to commencement of construction, a street work permit shall be obtained by the Owner in accordance with Article III of Chapter 743, Streets and Sidewalks, City of Toronto Municipal Code;

- r. the Agreement shall be registered on title to the Owner's property and other affected properties deemed necessary by the City Solicitor, at the expense of the Owner, with appropriate title opinions provided to the satisfaction of the City Solicitor as may be required by the City Solicitor;
 - s. the Owner agrees that the pedestrian bridge shall remain publicly accessible in accordance with the provisions of the Agreement;
 - t. the Owner agrees that the City shall have the right to access the Encroachment for the purposes of inspection, repair, or removal of the Encroachment or performing any other activity permitted by the City under the Agreement;
 - u. the Agreement shall include rights and remedies acceptable to the GM including the right, but not the obligation, of the City to remedy any failure of the Owner to comply with the Agreement, and the costs incurred by the City in enforcing the Agreement shall be payable by the Owner;
 - v. the applicant shall submit a reference plan for the Bridge which includes the area of the Bridge in m2, upon completion of work;
 - w. shall require the Owner to adhere to applicable federal, provincial or municipal laws, by-laws, policies including the City of Toronto Municipal Code and Transportation Services' standard process for acquisition of encroachment agreements;
 - x. the provisions of Appendix 'A' to this report shall be substantially incorporated into the Agreement to the satisfaction of the GM;
 - y. the Owner shall submit a Traffic Management Plan and Construction Schedule letter outlining proposed Bridge Installation and advising on impacts within the public right-of-way in the area of the proposal which content shall be to the satisfaction of the GM prior to the issuance of a Construction Permit; and
 - z. the Owner will be responsible for restoration to the road pavement, to the satisfaction of the GM, if necessary, upon completion of the installation of the Encroachment.
2. Direct the GM to extend the Agreement to the new owner, in the event of sale or transfer of the properties abutting or encumbered by the encroachments, subject to the prior approval of the General Manager of Transportation Services in respect of the property owner's property, and provided in all cases the transferee or assignee enters into an assumption agreement with the City to assume the obligations under the Agreement, in form satisfactory to the City.
 3. Authorize the GM to administer and manage the Agreement including the provision of any consents, approvals, notices provided that the GM may, at any

time, refer consideration of such matters (including their content) to the Toronto and East York Community Council for its determination and direction.

4. Authorize the City Solicitor to prepare and arrange execution of the Agreement as required by this report.

FINANCIAL IMPACT

There are no financial implications as a result of the recommendations contained in this report as the cost of construction of the proposed pedestrian bridge will be privately funded. The Owner shall pay an annual licence fee of \$1,240.00 which shall increase by an amount equivalent to the percentage increase in the Consumer Price Index (all items).

DECISION HISTORY

This report addresses a new initiative.

COMMENTS

An application has been received from Bentall Kennedy (Canada) Limited on behalf of the owners of 11 - 25 Ordinance Street to install a pedestrian/cycling bridge. The proposed bridge, commencing at grade of the back edge of the City sidewalk, will span 4.9 m over the City boulevard to connect to a new park path on private property. The bridge is meant to provide a safe connection from City sidewalk to a proposed park path on private property at the south side of the new Development at 11 - 25 Ordinance Street.

The pedestrian /cycling bridge will be made of light steel frame. Engineer stamped plans are on file with Transportation Services and are attached as Appendix B. Railings on either side of the bridge will be a minimum of 1.0m in height. The bridge will have a length of approx. 4.9 m and will be approx. 4.4 m in width, situated 76.1m south of Ordinance Street.

A retaining wall exists on either side of the proposed bridge. The maximum height of the bridge above the existing boulevard below is approx. 2.8 m. Two bollards will be placed at the entrance of the bridge, to be installed at 1.45 m inwards from either side of the bridge. This leaves a minimum of 1.4 m for pedestrians and cyclists to access the bridge entering in between the bollards.

As there may also be potential impacts to existing utility infrastructure. It will be the applicant's responsibility to undergo a public utility review to a view of obtaining clearance from the affected utility agencies and satisfying their requirements prior to the issuance of a Construction Permit authorizing work within the public right-of-way.

An Encroachment Agreement is required in order to permit the construction of the pedestrian bridge within the City's right-of-way, as well as to set out the applicant's responsibilities of the maintenance, repair and operation of the Bridge.

The construction and maintenance of the Encroachment cannot be considered under criteria set out in Chapter 743, Streets and Sidewalks, City of Toronto Municipal. As such, Transportation Services is required to report on this application to Community Council.

CONTACT

Elio Cappizano, Manager
Permits and Enforcement
Transportation Services, Toronto East York
Tel:416-392-7878
E-mail: Elio.Cappizano@toronto.ca

SIGNATURE



Dave Twaddle
Director, Permits and Enforcement
Transportation Services

ATTACHMENTS

Appendix A - 'Appendix A'

Appendix B - Plans as noted

APPENDIX 'A'

1. All street work shall conform to all applicable federal, provincial and municipal statutes, laws and by-laws and other applicable legal requirements.
2. All street work shall conform to City of Toronto construction standards and specifications, and shall be conducted and completed to the satisfaction of the General Manager of Transportation Services.
3. All street work shall be performed in a manner that safeguards and protects all other equipment, facilities and improvements of any kind ("improvements") present in, on, over, under, across, or along the street and the environment.
4. The property owner shall take whatever steps are necessary to ensure the protection of the public.
5. The property owner shall not unduly interfere with the use of the street for free passage by the public.
6. The property owner shall make all necessary arrangements with traffic, police and fire authorities for the placing of barricades, notices, warning lights and signs and that all such barricades, notices, warning lights and signs shall conform with applicable law.
7. No street work shall block or impair the entrance to any premises abutting the work location unless the property owner has obtained and filed with the application for the permit the consent in writing of the owner and occupant of such premises.
8. All street work shall be conducted in a manner so as to maintain access for emergency vehicles.
9. The street work shall be completed without delay.
10. The permit shall not authorize occupying a larger portion of the street or extend for a longer period of time than may be necessary in the opinion of the General Manager of Transportation Services, having due regard to the property owner's needs and the safety and convenience of the public.
11. After completing any street work, the property owner shall restore and/or leave the street in substantially the same condition in which it was before such street work was undertaken by the property owner, free from nuisance and to the satisfaction of the General Manager of Transportation Services. If the property owner fails to repair and restore any street to the satisfaction of the General Manager of Transportation Services within 48 hours of being notified by the City, the City may undertake such repairs and charge all costs owing to the property owner, and may draw on any financial security or deposits submitted by the property owner.
12. The property owner shall maintain the equipment in good and proper repair and in a condition satisfactory to the General Manager of Transportation Services.
13. Should the General Manager of Transportation Services deem it necessary for the equipment to be removed or altered in an emergency, including repairs or maintenance to equipment owned or operated by the City or any agency, board or commission of the City, the General Manager of Transportation Services, without notice to the property owner, may

- alter or remove, or cause to be altered or removed, the equipment and, subject to the requirements of any applicable law or existing agreement, the cost of such alteration or removal of the equipment shall be borne by the property owner.
14. Should the General Manager of Transportation Services deem it necessary for the equipment to be removed or altered for any municipal purpose, including installation or alteration of new or existing plant by any agency, board or commission, the General Manager of Transportation Services may upon three months notice in writing to the property owner, alter or remove, or cause to be altered or removed, the equipment or such portions of same not already altered or removed by the property owner, and subject to the requirements of any applicable law or existing agreement, the cost of such alteration or removal of the equipment shall be borne by the property owner.
 15. If the City requires that any street work be stopped, the property owner shall cease such street work following notice to the property owner provided by the General Manager of Transportation Services.
 16. The property owner shall be at all times responsible for all aspects of the street work, including the cost of such street work.
 17. The property owner shall notify the City promptly of any damage caused by the property owner in connection with its street work.
 18. The City has made no representations or warranties as to the state of repair of the streets or the suitability of the streets for any business, activity or purpose whatsoever, and the property owner hereby agrees to take the streets on an "as is" basis for the purpose of the carrying out of the property owner's street work and the City is not responsible, either directly or indirectly, for any damage to property or injury to a person, including death, arising from the escape, discharge or release of any hazardous substance from its streets.
 19. The property owner shall conform and shall be responsible for the conformance by its officers, employees, agents, contractors and invitees to all health and safety laws including any regulations requiring installation of safety devices or appliances, and any applicable traffic laws or regulations (collectively "safety rules"). If in the opinion of the City the likelihood of harm to persons or property appears imminent, the City may suspend street work performed by or on behalf of the property owner where there appears to be a lack of compliance with the safety rules, or because conditions of danger exist that would likely result in injury to any person or property. Such suspension shall continue until the lack of compliance or danger is eliminated.
 20. For the purpose of this provision, "hazardous substance" means any hazardous substance and includes, but is not limited to, radioactive substances, petroleum products and byproducts, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, by-law or code, whether federal, provincial or municipal. The property owner agrees to assume all environmental liability relating to its work in, on, over, under, across, or along the streets, including but not limited to any liability for clean-up of any hazardous substance in, on, under, along, across and around streets that result from:

- a. The operations of the property owner in, on, over, under, along, across or around the streets; or,
 - b. Any products or goods brought in, on, over, under, along, across or around the streets by the property owner, or by any other person with the express or implied consent of the property owner.
- 21. The property owner shall in writing, prior to any permit being granted by the General Manager of Transportation Services, indemnify and save harmless the City, its elected and appointed officials, officers, employees, directors and agents from and against all actions, claims, executions, demands, damages, liabilities, liens, costs, expenses direct or indirect (including reasonable legal fees and disbursements), and losses whatsoever incurred by the City, its elected and appointed officials, officers, employees, directors and agents in connection with the issuing of the permit, the conduct of the property owner's street work or the use of property owner's equipment, including claims in respect of property damage or personal injury, including death, and will pay to the City and to each such official, servant or agent on demand any loss, costs, damages and expenses, including legal fees and disbursements, that may be sustained, incurred or paid by the City or by any of its officers, servants and agents in consequence of any such action, claim, lien, execution or demand, including any monies paid or payable by the City or any of its officials, officers, servants or agents in settlement or discharge or on account thereof, provided that on default of such payment all loss, costs, damages and expenses and all such monies so paid or payable may be deducted from any security held by the City on account of the permit of the street work.
- 22. The City shall not be liable in any way for indirect or consequential losses or damages, or damages for pure economic loss, howsoever caused or contributed to, in connection with the property owner's street work.
- 23. The property owner shall, at their own expense and to the satisfaction of the General Manager of Transportation Services, procure and carry, or cause to be procured and carried and paid for, full workers compensation coverage for itself and all workers, employees, and others engaged in or upon any street work.
- 24. The property owner shall deliver, when required by the General Manager of Transportation Services, a performance bond or letter of credit in a form satisfactory to the City Treasurer and in an amount which is satisfactory to the General Manager of Transportation Services to ensure proper compliance with Municipal Code Chapter 743 of the City of Toronto.
- 25. The property owner shall at all times during the term of the permit and subsequent to the completion of the street work provide an accurate and timely in-house "locate" service or be a member of a "locate" service, in which case the property owner shall advise the General Manager of Transportation Services of its membership in such a service. Should the property owner fail to comply with this provision, the City shall not be required to make any special effort to determine or confirm the location of the equipment. The property owner shall, at the request of the City or any third party, provide or cause to be provided accurate on-site locates within 14 consecutive days of receiving a request for such information.

26. The property owner shall respond within 14 consecutive days to any request from the City for a mark-up of municipal infrastructure design drawings showing the location of any portion of the equipment located in, on, under, over, across, or along the streets shown on the plans, and shall provide such accurate and detailed information as may be required by the General Manager of Transportation Services.
27. The property owner will, at its sole cost and expense, maintain the equipment according to the drawings or subsequent "as built" drawings and in a state of good order, condition and repair, to the full satisfaction of the General Manager of Transportation Services, acting reasonably.

Pedestrian and Cycling Bridge - 11-25 Ordnance Street



