

Provincial Transit-Oriented Communities Program

Date: April 15, 2021

To: Executive Committee

From: Deputy City Manager, Infrastructure and Development Services

Wards: All

SUMMARY

All orders of government are currently making substantial investments in transit expansion in Toronto. Through their transit-oriented communities ("TOC") program, the Province is creating the opportunity for third-parties to also make investments in transit infrastructure, thereby offsetting capital costs. The TOC program applies to all transit expansion programs, including the Subway Program (i.e., Ontario Line, Scarborough Subway Extension, Eglinton Crosstown West Extension and Yonge North Subway Extension), the SmartTrack Stations Program, GO Expansion and the LRT Program. Through their agencies Infrastructure Ontario ("IO") and Metrolinx, the Province is pursuing agreements with third-party partners to integrate transit infrastructure with new development in various locations, thereby bringing more housing and jobs closer to transit.

The City and the Province share objectives related to TOC, as described in the Memorandum of Understanding on the TOC program (the "MOU on TOC") entered into by the two parties, effective February 14, 2020. The purpose of this report is to provide Council with an overview of work currently underway to operationalize the terms of the MOU on TOC, including the TOC review process being jointly developed by the City and the Province to address TOC proposals. The report also contains information known to-date on TOC proposals at the 271 Front Street East, 25 Berkeley Street and 44 Parliament Street (the "First Parliament Properties") and the East Harbour site.

In order to build on the progress the City and the Province have made related to operationalizing the TOC program, the City will continue discussions with Metrolinx and IO on the First Parliament Properties while ensuring that any agreement reflects strategic city-building priorities and the key principles and design elements set out in the Master Planning work completed to-date. Staff will report back to Executive Committee on the status of the TOC program by the fourth quarter of 2021, including recommendations for any authorities needed related to the program.

RECOMMENDATIONS

The Deputy City Manager, Infrastructure and Development Services recommends that:

1. City Council receive this report for information.

FINANCIAL IMPACT

There are no financial implications arising from the recommendations in this report.

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

DECISION HISTORY

In January 2020, City Council adopted, as amended, *EX12.3 Toronto-Ontario Transit Partnership - Status Update*, which included the Ontario-Toronto Memorandum of Understanding on Transit-Oriented Development ("MOU on TOD", now known as the "MOU on TOC") as Attachment 1. The MOU on TOC established a series of shared objectives for TOC and identified the roles and responsibilities of the City and Province for TOC specific to the Province's Subway Program.

Link: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.EX12.3>

COMMENTS

Background and Context

The City and the Province share objectives related to TOC, and accordingly the two parties entered into a Memorandum of Understanding on TOC¹ (the "MOU on TOC"), effective February 14, 2020. In the MOU on TOC, the Province recognized that the City is a critical partner in the successful delivery of TOC opportunities. Both parties committed to ongoing, proactive and good faith collaboration in respect of the Province's TOC program, and acknowledged the need to collectively design a governance and engagement framework to operationalize the MOU. The Province committed to work with its third-party developer partners to provide the City all documentation required for review of, and input into, each provincial TOC proposal.

The MOU on TOC acknowledged that the Province would lead commercial negotiations with third-party partners. There was also a commitment that the Province would engage the City as TOC proposals are developed to:

¹ <https://www.toronto.ca/legdocs/mmis/2020/ex/bgrd/backgroundfile-141912.pdf>

- Ensure that the proposals will align with, and balance, mutually-shared objectives; and
- Establish, as appropriate, the site-specific parameters that will serve as inputs to the market solicitation processes.

The MOU on TOC is the guiding document for the City and Province's work on the TOC program, which is being applied to all transit expansion initiatives, including the Subway Program (i.e., Ontario Line, Scarborough Subway Extension, Eglinton Crosstown West Extension and Yonge North Subway Extension), the SmartTrack Stations Program, GO Expansion and the LRT Program. Through their agencies Infrastructure Ontario ("IO") and Metrolinx, the Province is pursuing agreements with third-party partners to integrate transit infrastructure into new development, thereby bringing more housing and jobs closer to transit. As part of the TOC program, third-parties will make investments in transit and associated infrastructure, offsetting the capital costs of the transit program.

The *Transit Oriented Communities Act*,² passed in July 2020, gives the Provincial government broad authority to enter into third-party TOC agreements for the Subway Program. Combined with recent changes to Provincial planning authorities, the Province has several tools available to advance its vision of TOC, including Minister's Zoning Orders ("MZOs").

Draft TOC Review Process

In the context of the TOC program, and consistent with the MOU on TOC, the City has been working with the Province to establish a draft TOC review process to determine the development parameters for each TOC site. The Province would like to confirm the parameters for development on each site and establish zoning certainty, which would be similar to the approach the City has taken on the Housing Now program.

The success of the TOC review process depends on a strong partnership and a sharing of information by both parties to define a development concept that could meet the City's interests while providing an opportunity to attract third-party contributions to the transit program. Establishing a time-bound, coordinated review process for TOC proposals is needed to maximize the value, public benefits and opportunities for TOC.

Process Assumptions

City staff used the following assumptions to inform discussions with the Province on the proposed TOC review process, including the following:

- Growth pays for growth: new development should cover the reasonable costs associated with infrastructure and services to support the development;
- TOC development should be context-sensitive and reflect the City's planning vision and objectives for the specific area;
- The TOC planning process should involve engagement with the community and Council;

² <https://www.ontario.ca/laws/statute/20t18>

- TOC developments should include community services and facilities and other community benefits needed for a complete community; and
- The City should not be expected to advance approvals of TOC proposals that City Council does not support.

Types of TOC Delivery Models

The Provincial government expects to advance several TOC proposals across all transit expansion programs. IO is pursuing TOC partnerships on properties obtained for the construction of subway infrastructure. The TOC partnerships will take one of two forms: "partnership opportunities" with existing and viable development partners, or "collect and compete" processes to find development partners for particular properties.

In a "partnership opportunity", the Province may negotiate a TOC partnership with an existing and viable developer that has land holdings at the potential TOC site. Zoning permissions for the future TOC, to be discussed in consultation with the City, will be included in the deal. Upon completion of the subway project, the property will be released back to the owner who may then proceed with the TOC development based on the previously secured zoning permissions.

The "collect and compete" model assumes that a required property or group of properties is not currently owned by a viable development partner. These properties would be fully acquired by Metrolinx to facilitate construction activities. Zoning permissions for the future TOC would be secured in consultation with the City to assist IO with marketing the properties at the completion of the subway construction.

Overview of Draft TOC Review Process

The draft TOC review process, once finalized, could lead to zoning approval within six months, and includes several key phases: feasibility, pre-application and formal application. An overview of phases and steps is provided in Figure 1 and Table 1, and a description of each phase follows.

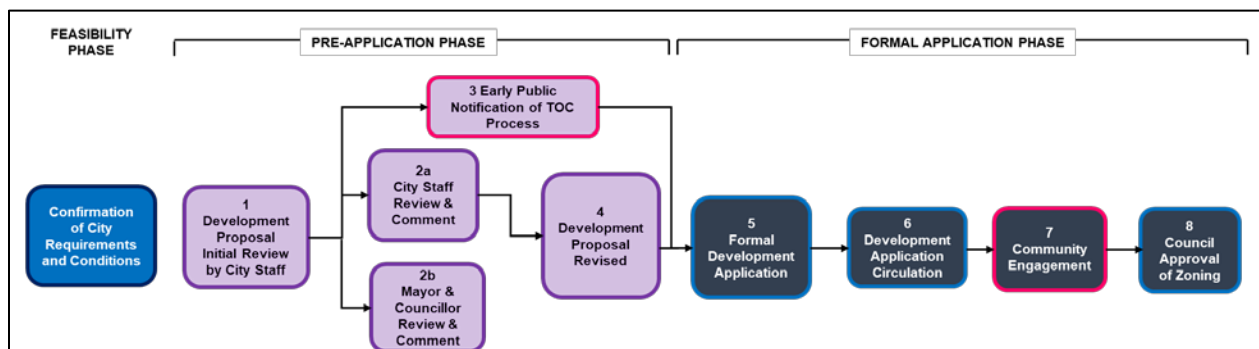


Figure 1. Draft TOC review process flow chart.

Table 1. Overview of phases and steps of draft TOC review process.

Phase or Step	Input	Output
Feasibility Phase	Province to discuss TOC potential, share proposals with City	City to confirm development requirements, conditions and community infrastructure
Pre-Application Phase		
1. Development Proposal Initial Review by City Staff	City and Province discuss proposal assumptions, vision, guiding principles, information requests, and process/consultation approach	City review initiated, community consultation plan formulated, process timing milestones and durations determined; refinement of proposal and completion of studies
2. City Staff, Mayor and Councillor Review and Comment	Planning rationale; draft core studies; concept plans	Consolidated City comments on submission
3. Early Public Notification of TOC Process	Public notice online of TOC proposal submission	Public notified of TOC site and process for future engagement
4. Development Proposal Revised	Consolidated City comments on submission	Revised submission
Formal Application Phase		
5. Formal Development Application	Formal development application submission	Public release of plans and studies
6. Development Application Circulation	Circulation of formal submission to City Divisions	Consolidated City comments to applicant
7. Community Engagement	Renderings and plans for public comment	Public feedback on proposal
8. Council Approval of Zoning	Revised development proposal or application submitted for approval	Zoning certainty

Feasibility Phase

This stage of the process is critical in the initial shaping of TOC development parameters. For "collect and compete" sites, the Province will provide information to the City about the TOC site prior to engagement with any potential third-party partners. For "partnership opportunities", the Province will provide the City with a draft development concept for review. The City will identify its vision, objectives and requirements for the site, including initial expectations regarding community infrastructure. This initial discussion will be an important opportunity for the City and Province to identify shared priorities for development of the TOC site.

Pre-Application Phase

At the start of this phase, the Province will table an initial development proposal or concept for City review. This phase will involve discussions with the Mayor and the local Councillor to get their views on the proposal. City staff will also review and comment on the initial proposal for refinement by the Province. Consistent with the process principles, City staff have recommended community engagement at this early stage to help shape the TOC proposal. The Province will provide notice to the public of the start of a TOC process, and will engage communities during the formal application phase.

The Province will consider comments raised in this pre-application phase, and update its TOC proposal for more formal review and community engagement.

Formal Application Phase

This third phase of the process involves the submission by the Province of a formal TOC development application or submission. This phase will follow an accelerated review and approval process that mirrors the City's normal planning application process, and will include formal community engagement. The Province will consider comments raised in this phase and adjust its TOC proposal, prior to City staff seeking Council approval to confirm zoning permissions for the site.

Community Infrastructure

In discussions with the City, the Province has indicated that development charges and parkland levies will apply to TOC sites, with all such funds flowing to the City. The Province and City are working together to determine how the subway TOC program aligns with the City's work on a new community benefits charge ("CBC") framework, recognizing that the City is working through the practicalities of transitioning from the old regime to the new. To finalize the draft TOC review process, the City and the Province will need to confirm how CBCs will be addressed. Future staff reports will contain any required recommendations related to the treatment of CBCs at TOC sites.

Minister's Zoning Orders

While the City and Province have developed the draft TOC review process with the intention to reach consensus on TOC development proposals, there may be situations in which the Province may choose to pursue a Minister's Zoning Order ("MZO"), through the Minister of Municipal Affairs and Housing, to meet timelines related to procurement processes for the Subway Program. Consistent with the City's broader approach on the use of MZOs, City staff will work with the Province to influence and help frame the

provincial zoning measures in a manner that works with the City's broader planning and zoning framework.

The City has communicated to the Province a number of factors it considers important in the application of MZOs. The Province has committed to engage in, at a minimum, the feasibility and pre-application phases of the TOC review process prior to issuing an MZO. In addition, while not required by the *Planning Act*, the City has recommended that the Minister consult and engage with the affected municipality in advance of making a decision to issue an MZO. These efforts would essentially mimic a development review process that would otherwise apply to any other public or private development proposal. The goal would be to ensure that any proposed development can be implemented at the local level giving consideration to potential land-use planning issues related to site plans, and ensure that the development is compatible with the surrounding area and contributes to the economic, social, cultural and environmental vitality of the City.

In addition, the Province should consider some form of formal public engagement in the use of the MZOs. Public engagement not only results in more informed residents, but also can generate more support for the final decisions reached by decision-makers.

The use of an MZO where new density, height and built-form entitlements differ from those provided for by the municipality through a master plan exercise will set precedents that deviate from the Council approved plans. City staff anticipate these precedents will result in requests for amendments and potential LPAT appeals from other landowners, with a potentially cascading effect on all elements of the master plan for the neighbourhood. The City has therefore recommended that there should be consistency of application of the MZO tool with the Minister collaborating with the City and residents to balance local planning policy, including the Official Plan and technical considerations in order to support complete communities and good planning.

First Parliament Properties

On January 11, 2021, Metrolinx advised the City that it is seeking to acquire fee simple interests in the City-owned properties municipally known as 271 Front Street East, 25 Berkeley Street and the north portion of 44 Parliament Street (collectively, the "First Parliament Properties"), as well as a stratified fee simple below-grade interest in a portion of the Parliament Square Park (also at 44 Parliament Street), to accommodate the construction of Corktown Station for the Ontario Line. City staff raised concerns to Metrolinx regarding the impact of the proposed tunneling and project site works on the First Parliament site and its archaeological resources. Metrolinx advised that it requires possession of the lands by August 1, 2021, and that given this aggressive schedule, it would initiate expropriation while concurrently negotiating with the City.

On January 13, 2021, the City of Toronto was served a "Notice of Intention for Approval to Expropriate" for the fee simple interests in 271 Front Street East and 25 Berkeley Street. Metrolinx has provided the appraised values of the required property takings, allocating a total value of \$155.9 M (including 44 Parliament Street) for the interests Metrolinx intends to acquire by negotiation or expropriation. This value reflects the "highest and best use" value for the First Parliament Properties. Metrolinx has not yet

provided the appraisal report to CREM, and therefore the valuations have not been verified.

Historical Designation and Master Planning Work

The City has been involved in protecting the First Parliament site since 1996, when City Council passed a recommendation to designate it as a historical site. The First Parliament Properties are the site where Upper Canada's first purpose-built parliamentary buildings once stood and have been subject to significant City-led planning and community engagement to develop a 20-year Master Plan that celebrates the site's history and creates an animated multi-functional community hub.

The First Parliament Properties are of local, provincial and national significance as they relate to the early history and development of Canada. The properties at 265-271 Front Street East and 25 Berkeley Street are designated under the Ontario Heritage Act based on the historical value or interest of the First Parliament Site (By-law 1997-0091). The First Parliament archaeological site is registered with the Ministry of Heritage, Sport, Tourism and Culture Industries as AjGu-41. The site is also designated as the First Parliament Archaeologically Sensitive Area under the City of Toronto's Archaeological Management Plan, which restricts allowable activities at the site.

The Master Planning work, now led by CreateTO, remains in progress. CreateTO has developed a Demonstration Plan that includes a mid-rise built-form centered on an animated public space that celebrates the site's history and critical new community space, including a 25,000 square foot district library and an interpretative centre. Two blocks identified in the Demonstration Plan could support a number of uses, including affordable housing, seniors housing, cultural or institutional uses. A new park is proposed for the south end, with features and park elements that interpret the history of the site (e.g., a water course to depict the fact that the Lake Ontario shoreline was located at its base).

Status

City staff have raised concerns to Metrolinx and the Province regarding the impact of the proposed tunneling and project site works on the First Parliament site and its archaeological resources. At any time during the expropriation process, Metrolinx and the City can come to a negotiated settlement on the transfer of rights to Metrolinx, the value of such rights and any terms and conditions related to such transfer of rights. Accordingly, on March 3, 2021, City staff formally tabled City staff's priorities with respect to the expropriation and long-term use of the First Parliament Properties. City staff stated that the First Parliament Properties should continue to be owned publicly to ensure the site's historical and archaeological resources will be protected and celebrated. Continued public ownership, *in situ* protection of archaeological resources, and a commitment to continue the Master Planning work completed to date, including long-term site development that reflects the key principles and design elements developed to date, are essential conditions required by the City.

On March 31, 2021, Metrolinx formally responded to the City, indicating that immediate expropriation remains the only option to maintain Metrolinx's construction schedule, and

that site access for due diligence activities planned for the next 12-18 months is a priority. Metrolinx also indicated that archaeological work would be done properly, in line with the historical significance of the site. City staff recommended a draft licence agreement, which would grant Metrolinx full care and control over the site for 12 months to maintain the planned construction activities. This timeline would also allow the City, Metrolinx and IO to negotiate a long-term real estate solution that reflects strategic city-building priorities and the key principles and design elements set out in the Master Planning work completed to-date for the First Parliament Properties.

On April 12, 2021, the Province formally announced that it will pursue TOC developments on the two Corktown sites. With regard to the draft TOC review process the City and Province are developing, this announcement and associated materials submitted to the City are part of the Pre-Application Phase.

The Province has indicated its commitment to commemorating the heritage elements of the area, and to develop the First Parliament Properties with regard to the City's Master Planning exercise. Accordingly, the preliminary proposal includes the planned public library and open space.

On the northern portion of the site, the Province is proposing a development concept for two forty-six storey towers and a midrise tower above the subway station entrance (see Attachment 1 – Figure 1). On the southern portion of the site, three towers are proposed, the highest being 46 storeys (see Attachment – Figure 2). For both sites (see Attachment 1 – Figure 3), the Province has indicated to the City its desire to establish the development parameters through a joint zoning exercise and both sites are proposed to include residential and commercial space.

City staff are reviewing these pre-application materials in the context of the City's planning vision and objectives as articulated in the proposed King-Parliament Secondary Plan, and the First Parliament Master Planning project. Based on an initial review of the proposals, it is clear that the building heights exceed the emerging permissions in the Secondary Plan. City staff also need to determine opportunities to better align the TOC proposal with the vision and principles from the Master Planning exercise. The proposed development on this site exceeds the emerging vision for that plan.

At a community meeting on the proposal on April 15, 2021, community members expressed concerns about the scale of the proposals and about the preservation of the heritage value of the First Parliament site. There was strong interest in further community engagement to shape the TOC proposals.

City staff will continue to engage with the Province on the First Parliament Properties to work towards a negotiated solution that meets the needs of both organisations and the interests of the public.

East Harbour

After a comprehensive planning and consultation process, in June 2018 City Council adopted the Unilever Precinct Secondary Plan for an office employment hub supported

by transit and other infrastructure.³ Council also adopted associated Zoning By-laws for the developer-owned portion of the Precinct to enable their proposed East Harbour development.

That approved planning framework is intended to guide the phased development of the largest planned commercial and retail hub in the Greater Toronto Area, including 926,000 square meters (approximately 10 million square feet) of employment space and 50,000 anticipated workers; a new transit hub combining access to SmartTrack, the Ontario Line (at the time, the Relief Line South), and streetcar service; flood protection infrastructure; and new and active streets, parks and open spaces that will seamlessly connect this precinct into the adjacent urban fabric.

On April 12, 2021, the Province announced its intention to enter into a commercial arrangement with Cadillac Fairview under the TOC program to deliver the East Harbour Transit Hub and contribute to other infrastructure in the area. This proposed partnership between the Province and Cadillac Fairview is meant to accelerate the delivery of transit and infrastructure on the site, linked to the inclusion of a significant new residential development component on top of existing planning permissions for the employment uses in the precinct. The Provincial announcement appears to represent a significant change from Council's approved planning framework for the Unilever Precinct.

City staff have received a "conceptual master plan" without supporting studies from Cadillac Fairview. City staff are expecting additional materials in May.

Next Steps

In order to build on the progress the City and the Province have made related to the TOC program, the City will continue discussions with Metrolinx and IO on the First Parliament Properties while ensuring that any agreement reflects strategic city-building priorities and the key principles and design elements set out in the Master Planning work completed to-date. Staff will evaluate the East Harbour proposal based on the approved Unilever Precinct Secondary Plan, Zoning By-law and Official Plan, and will report back to Planning and Housing Committee as required. Staff will also report back to Executive Committee on the status of the TOC program by the fourth quarter of 2021, which will include recommendations for any authorities needed related to the program.

³ <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.PG30.5>

CONTACT

Gregg Lintern, Chief Planner and Executive Director, City Planning
Email: gregg.lintern@toronto.ca, Tel: 416-392-8772

Derrick Toigo, Executive Director, Transit Expansion Office
Email: derrick.toigo@toronto.ca, Tel: 416-338-5222

SIGNATURE

Tracey Cook
Deputy City Manager,
Infrastructure and Development Services

ATTACHMENTS

Attachment 1 – First Parliament Concepts