

## **Interim Report on the East Harbour Transit Oriented Communities Proposal**

**Date:** March 22, 2022

**To:** Executive Committee

**From:** Deputy City Manager - Infrastructure and Development Services

**Wards:** Ward 14 - Toronto Danforth

### **SUMMARY**

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In April 2021, the Province announced a Transit Oriented Communities (TOC) commercial partnership with Cadillac Fairview for the East Harbour site. The TOC partnership proposes to add 302,000 square metres (3.25 million square feet) of residential development, or approximately 4,300 residential units, to the 926,000 square metres (10 million square feet) of employment development previously approved in the Unilever Precinct Secondary Plan and relevant Zoning By-laws. Materials submitted by Cadillac Fairview in May 2021 propose nine residential towers, nine office towers, and a street network similar to the 2018 East Harbour Master Plan. As part of the commercial Contribution Agreement between Cadillac Fairview and the Province, the two parties have negotiated a capital contribution toward matters they expected the City would require for the East Harbour site, including affordable housing, community services and facilities, and enabling infrastructure for the East Harbour Transit Hub.

Since the announcement, City staff have been working with the Province and Cadillac Fairview, including providing support for a public engagement process led by the Province, to review materials submitted for the proposal. A key focus of the review by City staff has been responding to the City Council mandated terms for negotiations with the Province and Cadillac Fairview. The East Harbour TOC proposal has been advanced by the Province within the context of the legislative framework provided by the *Building Transit Faster Act*, the *Transit Oriented Communities Act*, and Minister's zoning powers under the *Planning Act*. It is within this context that this proposal has been reviewed by City staff, and to every extent possible, City staff have sought to negotiate and protect for municipal objectives to achieve appropriate outcomes.

This report follows from the January 2022 update to Executive Committee (EX29.4 Assessment of the East Harbour Transit Oriented Communities Proposal) and outlines the high level terms of an initial agreement for the City on parameters for the East Harbour TOC proposal put forward by the Provincial government and Cadillac Fairview. City staff are seeking City Council approval of these terms and City Council direction regarding further detailed negotiations related to several Implementing Agreements.

There are two key means through which the TOC proposal will be advanced initially: a Minister's Zoning Order will provide the land use permission and development parameters for the site, and the Province and Cadillac Fairview will enter a commercial Contribution Agreement. This report requires City Council consideration of conditions which should be adopted in order for matters of municipal interest to be addressed to the greatest extent possible at this stage. A number of Implementing Agreements outlined below will constitute the next stage of approvals considered by City Council.

The commercial Contribution Agreement between the Province and Cadillac Fairview has framed the East Harbour TOC proposal. The City is not a party to this Contribution Agreement and City officials have not seen its full text. City staff have, however, reviewed the Conditions Precedent outlined in the Agreement and have had an opportunity to provide input into potential revisions to those conditions. (The Conditions Precedent describe conditions or events that must come to pass before parties are obligated to perform commitments in the agreement. These do not legally bind the City, but have shaped the issues under negotiation). Many of the Conditions Precedent require City actions or approvals to be executed prior to Cadillac Fairview releasing its financial contribution. The Conditions Precedent include:

- Confirmation of rail safety measures for development at East Harbour
- Conclusion of a Municipal Infrastructure Agreement between the City and Cadillac Fairview to advance infrastructure to enable the East Harbour Transit Hub and East Harbour development
- Acceptance of the design for an onsite flood protection landform and that it will satisfy East Harbour flood protection requirements
- Draft Plan Approval of the draft Plan of Subdivision
- Confirmation of the cross-section and Right of Way dimensions for the Broadview Avenue extension
- Confirmation by the Province and City of Cadillac Fairview's proposed approach to environmental requirements for conveyances
- Conclusion of an Access Agreement with the City and CreateTO to allow permanent and temporary access across the Keating Lands for the extension of Broadview Avenue, underground services, construction gate access points, contractor parking, and other elements deemed necessary for the development of East Harbour
- Confirmation of zoning permissions for residential development through a Minister's Zoning Order (MZO)
- Conclusion of an Affordable Housing Agreement with the Province, City and Cadillac Fairview
- Conclusion of a Development Agreement between Cadillac Fairview and the City related to required community services and facilities, parkland dedication and other planning matters

Over the course of the past nine months, City staff have negotiated terms to try to reflect the City's main interests as directed by City Council. City staff have achieved significant concessions in the negotiations to reflect these interests. The key high level terms of the proposed agreement with the Province and Cadillac Fairview for the East Harbour TOC include:

- Cadillac Fairview will deliver a minimum of 215 affordable rental housing units at Inclusionary Zoning levels of affordability for 99 years, in line with recent City policy on affordable housing
- Cadillac Fairview will deliver additional community services and facilities (two childcare centres and a Community Recreation Centre at East Harbour) along with cash contributions to public art and offsite libraries to serve the growing residential population in this area of the City
- Cadillac Fairview will deliver a minimum of 7,000 square metres of parkland, exclusive of the building footprint for the Community Recreation Centre, in two blocks
- Cadillac Fairview (through its financial contribution) will contribute a fifty per cent share of the costs of the Broadview Avenue extension north of the Metrolinx rail embankment
- Cadillac Fairview (through its financial contribution) and the Province will together contribute two-thirds of the costs of the Phase One Broadview Eastern Flood Protection project
- These contributions by Cadillac Fairview will be in lieu of future Community Benefits Charges and the application of Inclusionary Zoning provisions on the site
- The Province and the City (working with the Toronto and Region Conservation Authority and Waterfront Toronto) will conclude terms for the further design, construction and governance of the Phase One Broadview Eastern Flood Protection project
- The City will contribute a fifty per cent share of the costs of the Broadview Avenue Extension north of the Metrolinx rail embankment, and one-third of the costs of the Phase One Broadview Eastern Flood Protection project
- The Provincial MZO will maintain the Holding provisions and the existing Master Section 37 Agreement benefits, contained in the existing site specific Zoning By-law, will remain in place for non-residential development
- The Province, the City and Cadillac Fairview will continue negotiations on a series of Implementing Agreements to address the specific terms of the initial agreement and ensure implementation

The TOC proposal will be implemented through an MZO to introduce residential development permissions at East Harbour. This report discusses the basic parameters for the MZO. City staff have had an opportunity to review and comment on the draft MZO. City comments focused on strengthening the preservation of existing Holding provisions, ensuring the existing Master Section 37 Agreement remains intact, and protecting the integrity of the underlying site specific and parent Zoning By-laws. It is the City's expectation that the MZO will maintain the City's full site plan approval authority for future development at East Harbour, and that it will be deemed a municipal by-law. At the time of writing this report, discussions of the MZO continue with the Province. The Province is expected to issue the MZO sometime this spring.

Over the course of the next year, the Province, City and Cadillac Fairview will need to negotiate a number of Implementing Agreements that will flow from the Contribution Agreement and the broader negotiations among the Parties. Some of these agreements are tied to the use of an MZO, which will limit the City's ability to use some of its usual planning legal instruments. City staff are seeking City Council direction

regarding the negotiations of these Implementing Agreements, and will report back to City Council in early 2023 seeking approval of the final terms.

The target is to conclude the following Implementing Agreements by March 31, 2023:

- Memorandum of Understanding between the Province and the City related to the East Harbour TOC project as a whole
- Development Agreement between the City and Cadillac Fairview related to the delivery of the range of commitments and establishing a direct relationship between the City and Cadillac Fairview
- Affordable Housing Agreement between the Province, City and Cadillac Fairview to confirm the terms for the delivery of affordable housing
- Municipal Infrastructure Agreement between the Province, City and Cadillac Fairview to advance the construction of certain services that may be required for the East Harbour Transit Hub and related development
- Potential Conveyance Agreement involving the Province, City and Cadillac Fairview to address the timing and approach to property conveyance linked to advancing the East Harbour Transit Hub
- Access Agreement between Cadillac Fairview and CreateTO for permanent and temporary access across the Keating lands to facilitate the construction of the Broadview Avenue extension, site servicing, construction gate access points, constructor parking and other elements deemed necessary to facilitate East Harbour development
- Amendment to the existing Master Section 37 Agreement to reflect changes only to the location and timing of certain elements
- Delivery and Governance Agreement involving the Province and the City (working with the Toronto and Region Conservation Authority and Waterfront Toronto) related to the Phase One Broadview Eastern Flood Protection project
- Delivery and Governance Agreement involving the Province, City, and other parties related to the Broadview Avenue Extension from Eastern Avenue to the Metrolinx rail embankment

Based on negotiations among the Parties, targets have also been set for concluding several matters that do not require separate agreements. By March 31, 2023, the Parties aim to:

- Confirm rail safety measures for development at East Harbour with the appropriate approval authorities
- Confirm approval of the design of the flood protection landform south of the Metrolinx rail embankment on the East Harbour site
- Achieve draft Plan Approval of the draft Plan of Subdivision
- Confirm the final cross-section and Right of Way dimensions for the Broadview Avenue extension

This report provides an assessment of how the high level terms of agreement for the East Harbour TOC address the negotiating mandate set out by City Council for East Harbour. The report also outlines how City Council's negotiating mandate will be

advanced during the negotiation and drafting of the Implementing Agreements, and addresses further direction that City staff require to continue with negotiations.

## **RECOMMENDATIONS**

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

1. City Council approve the following terms and approach to be incorporated into the drafting of Implementing Agreements between the City, the Province of Ontario and Cadillac Fairview:

a) a minimum of 5% of the total permitted residential gross floor area at East Harbour, and no less than 215 affordable rental housing units, shall be constructed and financed by Cadillac Fairview for a 99-year period, based upon the City Council approved Inclusionary Zoning definition of affordable rent;

b) to the satisfaction of the City, Cadillac Fairview shall design, construct, finish and convey ownership of two 62 pupil childcare facilities to the City of Toronto, in accordance with the City of Toronto's Child Care Development Guideline;

c) to the satisfaction of the City, Cadillac Fairview shall design, construct, finish and convey ownership of a Community Recreation Centre of approximately 6,500 square metres south of Future Street "E" to the City of Toronto;

d) the Province of Ontario and Cadillac Fairview will be responsible for funding two-thirds of the cost for the Phase One Broadview Eastern Flood Protection project, with the remaining one-third to be funded by the City;

e) the City and Cadillac Fairview (through its financial contribution) will each be responsible for funding fifty per cent of costs associated with the road portion of the Broadview Avenue Extension from Eastern Avenue to the Metrolinx rail embankment;

f) Cadillac Fairview will contribute \$2.5 million to offsite capital upgrades to the Queen Saulter, Jones, and/or Riverdale branches of the Toronto Public Library;

g) Cadillac Fairview will contribute \$2.0 million to the delivery of public art in the vicinity of East Harbour;

h) the Province of Ontario and Cadillac Fairview will ensure the appropriate legal mechanisms are in place so that the community benefits secured as part of the existing Master Section 37 Agreement, dated October 5, 2018, will be honoured by the owner of East Harbour and incorporated into future agreements as required to confirm the obligation; and

i) No development charge credits will be provided to Cadillac Fairview for any of the community benefits and enabling infrastructure described in Recommendations 1(a) through (g) above.

2. City Council authorize the Deputy City Manager, Infrastructure and Development Services to negotiate Implementing Agreements with the Province of Ontario and Cadillac Fairview that secure City interests, subject to terms outlined in this report and including the key terms defined in Recommendation 1, and for the Deputy City Manager, Infrastructure and Development Services to report back to City Council in the first quarter of 2023 on the proposed terms for City Council consideration.

3. City Council direct the Deputy City Manager, Infrastructure and Development Services and the Chief Financial Officer to identify funding for \$57 million, the City's one-third share of the balance of the Phase One Broadview Eastern Flood Protection project, through the 2023 - 2032 Capital Budgeting and Planning process, with implementation subject to securing the remaining two-thirds share from the Province of Ontario and Cadillac Fairview.

4. City Council direct the Deputy City Manager, Infrastructure and Development Services and the Chief Financial Officer to identify funding for \$4.5 million, the City's fifty per cent share of the costs of the extension of Broadview Avenue from Eastern Avenue to the Metrolinx rail embankment, through the 2023 - 2032 Capital Budgeting and Planning process, with implementation subject to securing the remaining fifty per cent share from the Province of Ontario and Cadillac Fairview.

## **FINANCIAL IMPACT**

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This report outlines the high level terms of an initial agreement on parameters for the East Harbour TOC proposal put forward by the Provincial government and Cadillac Fairview, and seeks City Council approval of these terms and City Council direction regarding further detailed negotiations related to several Implementing Agreements. Future reporting on the Implementing Agreements will identify the specific funding impacts relating to City commitments and any required authorities will be the subject of a 2023 first quarter report to City Council.

This report provides an update on the negotiations to date, outlining the delivery of certain community facilities and cash contributions from Cadillac Fairview, Provincial capital contributions to the Phase One Broadview Eastern Flood Protection project, and the capital commitments required by the City as part of the terms of agreement for the East Harbour TOC.

The Contribution Agreement between the Province and Cadillac Fairview includes direct delivery of certain community facilities and cash contributions by Cadillac Fairview that are to be provided to the City for the additional residential permissions. These contributions replace contributions that would normally be secured through the development planning process (i.e. Section 37 / Community Benefits Charge, Inclusionary Zoning, Employment Land Conversions and Large-Site Policies) as well as offsite enabling infrastructure investments that would have been negotiated between the City and the developer.

The community benefits secured as part of the existing Master Section 37 Agreement for the East Harbour commercial development will remain in place. The full

development build-out (both commercial and residential) will be subject to Development Charges as per the normal course of development and Development Charge credits will not be provided for the community benefits and offsite enabling infrastructure secured as part of the East Harbour TOC.

As per the Contribution Agreement, Cadillac Fairview will provide cash contributions in two tranches and the community facilities will be delivered as build-out proceeds.

Based on year of expenditure dollars, the Province values the community facilities, offsite enabling infrastructure and cash contributions from Cadillac Fairview at \$300 million combined. These contributions are to be provided in two tranches, valued at \$100 million for Tranche 1 and \$200 million for Tranche 2. The Contribution Agreement between the Province and Cadillac Fairview includes a number of Conditions Precedent establishing the criteria for releasing each tranche of funding. Cadillac Fairview is expected to release Tranche 1 funding in 2023, subject to fulfilment of the conditions outlined above.

Tranche 2 funding is expected to be released as early as 2024, subject to construction starting on the Phase One Broadview Eastern Flood Protection project as well as the extension of Broadview Avenue from Eastern Avenue to the Metrolinx rail embankment. To advance these projects, the City will need to commit funding for one-third of the Phase One Broadview Eastern Flood Protection project, with the remaining two-thirds coming from the Province and Cadillac Fairview, as per the terms in Recommendation 1. Based on 30% design work, the Phase One Broadview Eastern Flood Protection project is estimated to cost \$171 million when escalated to year of construction, assuming a construction timeframe of 2022-2026. The City's share would be \$57 million. Cost refinements will be advanced as part of 60% design and related elements will be covered through the approved 2022 budgets for the Waterfront Secretariat and the Transit Expansion Office.

As part of the terms of this agreement, the City will also need to commit to fund fifty per cent of the cost for the road portion of the Broadview Avenue extension from Eastern Avenue to the Metrolinx rail embankment, with the remaining fifty per cent funded from Cadillac Fairview's financial contribution. The cost for this segment of the Broadview Avenue Extension is estimated at \$9.0 million based on schematic design (i.e. 10% design). A streetcar in the centre of the Right of Way will be protected for and implemented when the service is needed. Funding for this streetcar portion will be secured in a future budget cycle.

The Development Charge by-law review currently underway will consider the updated costs and assumptions, as appropriate.

Through negotiations and the terms in Recommendation 1, staff have sought to appropriately distribute the costs of offsite enabling infrastructure, to ensure that community infrastructure is funded and delivered by Cadillac Fairview, and to minimize City risk contained in the Contribution Agreement and the anticipated MZO. The approaches include seeking:

- A fifty per cent share of the Broadview Avenue Extension from Eastern Avenue to the Metrolinx rail embankment funded from Cadillac Fairview's contributions
- A two-thirds funding share of the Phase One Broadview Eastern Flood Protection project coming from the Province and Cadillac Fairview
- Commitments for the delivery of community benefits early in the build-out of East Harbour to minimize the risks associated with these benefits not being secured through traditional legal mechanisms contained in the *Planning Act*.

City staff are also engaging the Province and Cadillac Fairview on how financial risks are considered to ensure potential cost overruns for offsite enabling infrastructure are not borne solely by the City.

Cadillac Fairview has submitted Imagination, Manufacturing, Innovation and Technology (IMIT) applications, which were held in abeyance for a period of time. IMIT grants were not considered as part of the East Harbour TOC negotiations. Applications brought forward will proceed through the normal process and be subject to decision by City Council. A staff report to City Council for these applications is expected to be presented in the second quarter of 2022.

It is important to note that the ability of City staff to protect City interests is limited by not being Party to the Contribution Agreement. City staff have raised concerns about how elements of the Contribution Agreement create an expectation that the City will alter existing development processes and policies to accommodate East Harbour. City staff have consistently identified this tension and have proposed changes to conditions in the Contribution Agreement, the related schedules, and the proposed Implementing Agreements to address this matter. As negotiations on Implementing Agreements proceed, City staff will continue to advance City interests.

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

## **DECISION HISTORY**

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On February 24, 2016, Planning and Growth Management Committee adopted PG10.7 The Preliminary Report on First Gulf's application for an Official Plan Amendment for their initial development concept on the former Unilever Soap Factory site. City staff were directed to prepare a community consultation work plan with the Ward Councillor, integrating economic development considerations, and to report back to the Planning and Growth Management Committee on a recommended process to undertake comprehensive planning for the precinct in collaboration with the applicant, landowners and stakeholders.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.PG10.7>

On March 28, 2017, City Council adopted PG18.6 Status Update Report on the Unilever Precinct Planning Study, and related zoning amendment and subdivision applications. City staff were directed to commence the Eastern and Broadview Flood Protection



Municipal Class Environmental Assessment, and to report to the Government Management Committee on active investigations to consolidate municipal yard functions, including those provided out of the Booth Yard.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PG18.6>

On December 5 2017, City Council adopted PG24.1 Unilever Precinct Planning Study and East Harbour Application Review - Update. The report provided updated information on First Gulf's revised development proposal, information regarding ongoing public consultation activities, as well as information regarding consultation with Enbridge Gas.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PG24.1>

On March 26, 2018, City Council adopted, as amended, PG 27.3 21 Don Valley Parkway, 30 Booth Avenue, and 375 and 385 Eastern Avenue - Proposed Modifications to Official Plan Amendment 231 Site and Area Specific Policy (SASP) 426. The report recommended modifications to SASP 426 to modernize the language of that SASP in support of continued employment land use in that area, to be forwarded to the Minister of Municipal Affairs for approval.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.PG27.3>

On April 27, 2018, the Mayor and the Minister of Municipal Affairs and Housing and Minister of Natural Resources and Forestry entered into the Protocol Regarding the Lower Don Special Policy Area ("Protocol"), which applies to the lands affected by the existing flood plain. The Protocol is intended to address land use planning and development approvals in the Lower Don Special Policy Area in a manner that is consistent with the Provincial Policy Statement.

On June 26, 2018, City Council adopted, as amended, PG30.5 Unilever Precinct Planning Study Secondary Plan and Planning Framework for an office employment hub supported by transit, flood protection and other infrastructure. The Secondary Plan is in full force and effect.

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

On July 23, 2018, Council also adopted associated Zoning By-laws for the developer-owned portion of the Precinct to enable their proposed East Harbour development, having received the necessary land use policy approvals associated with SASP 426 on July 20, 2018 via correspondence from the Ministry of Municipal Affairs and Housing and the Ministry of Natural Resources and Forestry. The Zoning By-laws are in full force and effect.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.MM44.121>

On January 29 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.

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

On February 2 2021, City Council adopted EX20.2 Advancing the SmartTrack Stations Program, which updated terms that will be incorporated into a revised Agreement in Principle to advance the SmartTrack Stations Program. The East Harbour Transit Hub is a SmartTrack Station.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.EX20.2>

On April 8, 2021, City Council adopted IE20.11 Broadview and Eastern Flood Protection Environmental Assessment, directing staff to finalize the Environmental Study Report and issue a Notice of Study Completion, to be placed on the public record for minimum 30 day review period. Staff were also directed to initiate cost-sharing and implementation discussions with stakeholders and report back to the Infrastructure and Environment Committee with a funding and implementation strategy.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.IE20.11>

On May 5, 2021, City Council adopted, as amended, EX23.3 Provincial Transit-Oriented Communities Program, which introduced a proposed expedited process for the City's review of TOC proposals, reaffirmed South of Eastern as an employment area, and supported the designation of this area as a Provincially Significant Employment Zone.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.EX23.3>

On July 14, 2021, City Council adopted PH25.16 East Harbour Transit Oriented Communities Proposal, which provided direction to staff on the City's objectives and priorities in negotiations with the Province and Cadillac Fairview on the East Harbour TOC proposal, and directed staff to report back to Council in December 2021 on the progress on negotiated conditions related to the Province's and Cadillac Fairview's request to establish zoning certainty, including any financial terms and the next steps on planning approvals for East Harbour.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.PH25.16>

On November 25th, 2021 the Planning and Housing Committee received PH29.13 East Harbour Transit Oriented Communities Proposal that describes the proponent-led planning and public consultation processes, and outlines how City staff have been working to identify and advance City interests for the East Harbour TOC proposal.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.PH29.13>

On December 15th, 2021 City Council adopted, as amended, TE29.17: Transit Oriented Communities Update (Preliminary Report), which provided preliminary planning comments, affordable housing targets, outstanding issues, opportunities to secure City priorities, and a summary of feedback received by Infrastructure Ontario through its public engagement process for Transit Oriented Communities proposals at select sites in Ward 20 - Spadina Fort-York, Ward 13 -Toronto Centre, Ward 14 - Toronto Danforth. Staff were directed to establish a City-led review of the East Harbour TOC proposal through the creation of a local working group, in consultation with the Ward Councillor.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.TE29.17>

On January 26th, 2022 Executive Committee referred Item EX29.4: Assessment of the East Harbour Transit Oriented Communities Proposal to the Deputy City Manager, Infrastructure and Development Services to advance negotiations. The report outlined the status of negotiations with the Province and Cadillac Fairview, provided the City's

preliminary comments on the East Harbour Revised Master Plan, and identified City interests requiring immediate resolution.

<http://app.toronto.ca/tmmis/viewAgendaltemHistory.do?item=2022.EX29.4>

## COMMENTS

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### Parameters of the East Harbour Agreement

The East Harbour TOC proposal has been framed by a commercial Contribution Agreement negotiated between the Province and Cadillac Fairview. The TOC proposal is expected to be implemented through a Minister's Zoning Order (MZO) to introduce 302,000 square metres of residential development permissions at East Harbour on top of the existing 926,000 square metres of office development permissions. Over the course of the past nine months, City staff negotiated terms with the Province and Cadillac Fairview that reflect the City's main interests, as directed by City Council.

The commercial Contribution Agreement between the Province and Cadillac Fairview has shaped both the negotiating process for the East Harbour TOC and what terms the City can influence. The City is not a Party to this Contribution Agreement. While City officials have not seen its full text, staff have reviewed the Conditions Precedent outlined in the Agreement and had an opportunity to provide input into shaping some potential revisions. These Conditions Precedent relate to aspects of planning the East Harbour development that if achieved, will unlock community benefits and cash contributions from Cadillac Fairview. The majority of the Conditions Precedent in the Contribution Agreement relate to City actions or approvals, and they must be satisfied for Cadillac Fairview to release its financial contributions, including:

- Confirmation of rail safety measures for development at East Harbour
- Conclusion of a Municipal Infrastructure Agreement between the City and Cadillac Fairview to advance infrastructure to enable the East Harbour Transit Hub and East Harbour development
- Acceptance of the design for an onsite flood protection landform and that it will satisfy East Harbour flood protection requirements
- Conditional approval of the draft Plan of Subdivision
- Confirmation of the cross-section and Right of Way dimensions for the Broadview Avenue extension
- Confirmation by the Province and City of Cadillac Fairview's proposed approach to environmental requirements for conveyances
- Conclusion of an Access Agreement with the City and CreateTO to allow permanent and temporary access across the Keating Lands for the extension of Broadview Avenue, underground services, construction gate access points, contractor parking, and other elements deemed necessary for the development of East Harbour
- Confirmation of zoning permissions for residential development through a Minister's Zoning Order
- Conclusion of an Affordable Housing Agreement with the Province, City and Cadillac Fairview

- Conclusion of a Development Agreement between Cadillac Fairview and the City related to required community services and facilities, parkland dedication and other planning matters

Unlike other TOC proposals, the East Harbour TOC proposal does not include a Cadillac Fairview contribution to offset the costs of the East Harbour Transit Hub. The contribution is meant to offset any contributions Cadillac Fairview would have otherwise made through a Community Benefits Charge (applicable as of September 2022) as well as portions of the costs for offsite enabling infrastructure related to the East Harbour Transit Hub.

These negotiations have resulted in a high level agreement on the major principles and elements to advance the East Harbour TOC proposal. The parties have made significant progress in addressing many of the negotiating priorities identified by City Council to this point. The key high level terms of the proposed agreement with the Province and Cadillac Fairview include:

- Cadillac Fairview will deliver a minimum of 215 affordable housing units at Inclusionary Zoning levels of affordability for 99 years, in line with recent City policy on affordable housing
- Cadillac Fairview will deliver additional community services and facilities (two childcare centres and a Community Recreation Centre at East Harbour) along with cash contributions to public art and offsite libraries to serve the growing residential population in this area of the City
- Cadillac Fairview will deliver a minimum of 7,000 square metres of parkland, exclusive of the building footprint for the Community Recreation Centre, in two blocks
- Cadillac Fairview (through its financial contribution) will contribute a fifty per cent share of the costs of the Broadview Avenue extension north of the Metrolinx rail embankment
- Cadillac Fairview (through its financial contribution) and the Province will together contribute two-thirds of the costs of the Phase One Broadview Eastern Flood Protection project
- These contributions by Cadillac Fairview will be in lieu of future Community Benefits Charges and the application of Inclusionary Zoning provisions on the site
- The Province and the City (working with the Toronto and Region Conservation Authority and Waterfront Toronto) will conclude terms for the further design, construction and governance of the Phase One Broadview Eastern Flood Protection project
- The City will contribute a fifty per cent share of the costs of the Broadview Avenue Extension north of the Metrolinx rail embankment, and one-third of the costs of the Phase One Broadview Eastern Flood Protection project
- The Provincial MZO will maintain the Holding provisions and the existing Master Section 37 Agreement benefits, contained in the existing site specific Zoning By-law, will remain in place for non-residential development
- The Province, the City and Cadillac Fairview will continue negotiations on a series of Implementing Agreements to address the specific terms of the initial agreement and ensure implementation

Over the course of the next year, the Province, City and Cadillac Fairview will need to negotiate a number of Implementing Agreements that will flow from the Contribution Agreement and the broader negotiations among the Parties. Some of these agreements are tied to the use of the MZO, which limits the City's ability to use some of its usual planning legal instruments to secure obligations. Others relate to matters the Parties have identified related to expediting the delivery of the East Harbour Transit Hub. City staff are seeking City Council direction regarding the provisions of these Implementing Agreements, and will report back to City Council in early 2023 seeking approval of the final terms.

The target is to conclude the following Implementing Agreements by March 31, 2023:

- Memorandum of Understanding between the Province and the City related to the East Harbour TOC project as a whole
- Development Agreement between the City and Cadillac Fairview related to the delivery of the range of commitments and establishing a direct relationship between the City and Cadillac Fairview (this does not replace site plan agreements for buildings on the site)
- Affordable Housing Agreement between the Province, City and Cadillac Fairview to confirm the terms for the delivery of affordable housing
- Municipal Infrastructure Agreement between the City and Cadillac Fairview to advance construction of certain services that may be required for the East Harbour Transit Hub
- Potential Conveyance Agreement involving the Province, City and Cadillac Fairview to address timing and approach to property conveyance linked to advancing the East Harbour Transit Hub
- Access Agreement between Cadillac Fairview and CreateTO for permanent and temporary access across the Keating lands to facilitate the construction of the Broadview Avenue extension, site servicing, construction gate access points, contractor parking and other elements deemed necessary to facilitate East Harbour development
- Amendment to the existing Master Section 37 Agreement to reflect changes only to the location and timing of certain elements
- Delivery and Governance Agreement involving the Province and the City (working with the Toronto and Region Conservation Authority and Waterfront Toronto) related to the Phase One Broadview Eastern Flood Protection project
- Delivery and Governance Agreement involving the Province, City, and other parties related to the Broadview Avenue Extension from Eastern Avenue to the Metrolinx rail embankment

Based on negotiations among the Parties, targets have also been set for concluding several matters that do not require separate agreements. By March 31, 2023, the Parties aim to:

- Confirm rail safety measures for development at East Harbour with the appropriate approval authority

- Confirm approval of the design of the flood protection landform south of the Metrolinx rail embankment on the East Harbour site
- Achieve Draft Plan Approval of the draft Plan of Subdivision
- Confirm the final cross-section and Right of Way dimensions for the Broadview Avenue extension

### **Minister's Zoning Order and the Planning Process**

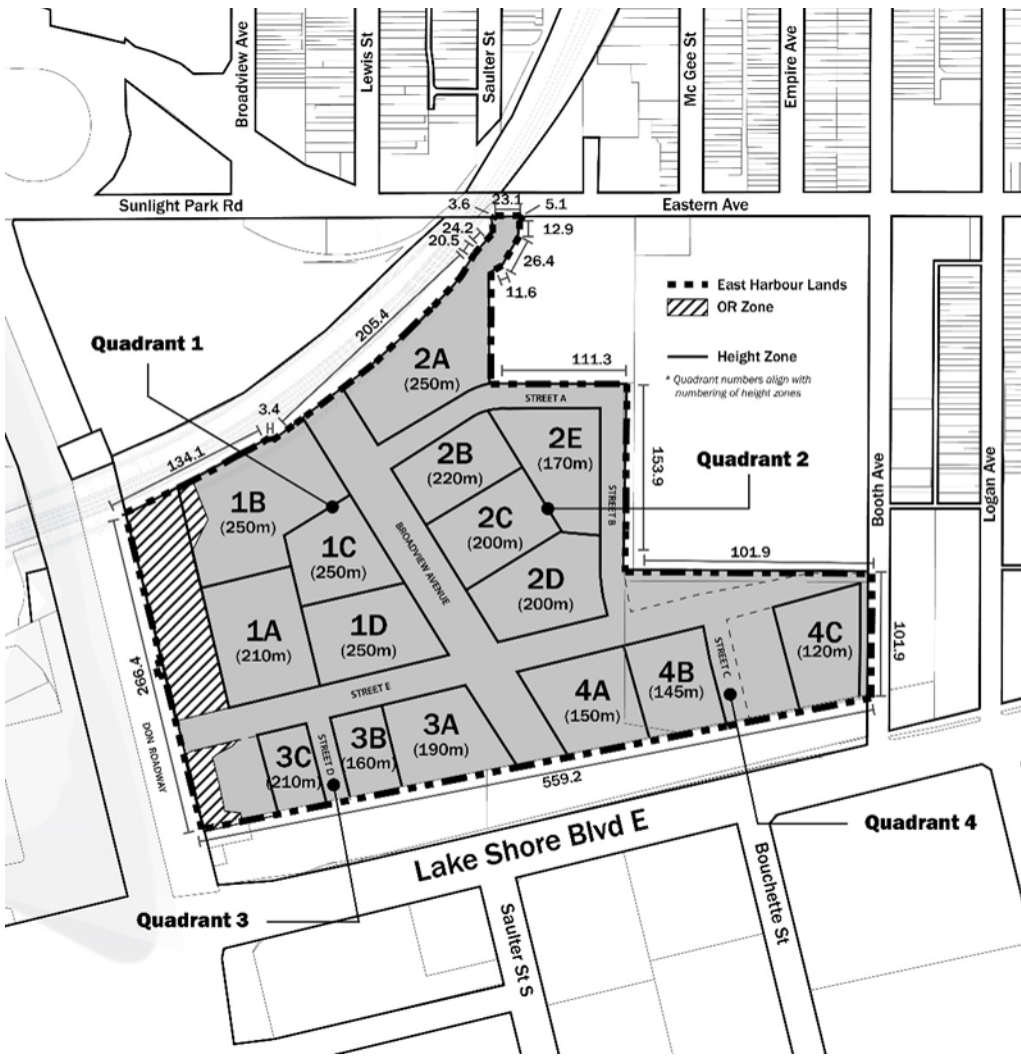
As indicated, the Province is expected to implement the East Harbour TOC proposal through an MZO. The MZO will provide zoning permissions for 302,000 square metres of residential development, in addition to the existing 926,000 square metres of office (employment) development permissions.

Based on discussions with Provincial staff, the City anticipates the Minister of Municipal Affairs and Housing will release an MZO before May 2022. While the Minister retains full discretion over the contents of an MZO, the Province has recently given City staff the opportunity to review and comment on a draft version. At the time of the writing of this report, discussions with the Province related to the contents of the MZO were continuing.

The Minister of Municipal Affairs and Housing has the legislative authority to issue an MZO pursuant to the *Planning Act*. In this case, an MZO would provide the zoning necessary to advance the terms of the commercial Contribution Agreement that frames the East Harbour TOC proposal, helping the project meet construction timelines for the East Harbour Transit Hub, as set by the Province. An MZO removes the statutory public consultation process and appeal rights that are embedded in the standard planning process.

The East Harbour TOC is a large scale, multi-phased development. The MZO is expected to establish development conditions by quadrant, including maximum residential and employment permissions, as illustrated in Figure 1.

Figure 1: East Harbour Development Quadrants



The scale of the East Harbour development presents some challenges for drafting an MZO. The *Planning Act* does not allow the Minister to impose Holds in an MZO, which limits the ability to sequence development through phasing. Further, the MZO reduces the City's ability to secure conditions of approval that are normally addressed through a variety of instruments under the *Planning Act*.

Provincial staff have indicated that their intention is to layer the residential permissions on the existing site specific Zoning By-law 1281-2018. With this in mind, the City's comments and advice to the Province on the draft MZO were focused on ensuring the Holding provisions in the existing Zoning By-law and the community benefits secured in the existing Master Section 37 Agreement remain in place. City staff also asked that the MZO be deemed a municipal by-law passed by the City so that any future modifications follow standard planning processes. The Province is expected to deem the MZO a municipal by-law.

The *Planning Act* also permits the Minister to issue an enhanced MZO, which allows the Minister to order that site plan control does not apply to the specified lands. In these instances, the Minister may require the landowner and municipality to enter into an agreement dealing with matters set out in the legislation that are similar to site plan

conditions. City staff have requested that site plan approval remain with the City, to allow City staff to review and comment on critical technical requirements moving forward, including:

- the location, suitability and provision of servicing infrastructure, roads and access points
- the location and design of public realm attributes (open spaces, sidewalk widths, connection points, setbacks, landscape plans, etc.)
- urban design features (building orientation, materiality, environmental performance measures, etc.)

Based on discussions to date, City staff expect to retain site plan approval authority at East Harbour. The City would also like the ability to review and comment on other matters necessary to achieve high quality of life measures for future workers and residents in this community and the surrounding area.

Given the scale, complexity and long term development horizon associated with the build-out of East Harbour, the City wishes to preserve its municipal planning authorities to the greatest extent possible. If the MZO is deemed a municipal by-law then any future minor variance or zoning by-law amendments that do not conflict with the MZO would follow the standard City process for development applications, including applicable permits and fees.

The City also requested that any future proposed modifications to the composition of uses at East Harbour, should they be contemplated, be subject to a Master Planning process led by the City.

Discussions are continuing between the Province and City related to the contents and structure of the MZO, and the Province's response to City staff comments.

## **Fulfilment of Council Negotiating Conditions**

On July 14, 2021, City Council adopted PH25.16: East Harbour Transit Oriented Communities Proposal, and directed staff to engage with Cadillac Fairview and the Province on the proposal subject to several conditions. The following is a summary of how City staff advanced each condition and the outcomes achieved to date. These City Council directions will continue to guide City staff, where appropriate, in the negotiation of the Implementing Agreements as outlined later in this report.

### ***The City's planning approval authority will be preserved for any required planning approvals following the establishment of zoning certainty for East Harbour***

City staff's review of the draft MZO was focused on ensuring any new permissions at East Harbour are layered on top of the existing site specific Zoning By-law 1281-2018. If accepted by the Province, the City's proposed changes will reduce potential ambiguity and preserve the existing holding provisions in the Zoning By-law and Master Section 37 Agreement for non-residential construction onsite. City staff expect to retain site



plan approval authority and regardless of how the MZO is executed, the City will retain responsibility for the approval of the Plan of Subdivision.

***Any required agreements between the Province and Cadillac Fairview will also address the interests of the City***

It is important to note that the ability of City staff to protect City interests is limited because the City is not a Party to the Contribution Agreement. City staff have raised concerns about how elements of the Contribution Agreement create an expectation that the City will alter existing development processes and policies to accommodate East Harbour. City staff have consistently identified this tension and have proposed changes to conditions in the Contribution Agreement, the related schedules, and the proposed Implementing Agreements to address this matter. As negotiations on Implementing Agreements proceed, City staff will continue to advance City interests.

The introduction of more than 7,000 new residents at East Harbour, above the already approved 50,000 workers, requires a robust community benefits package to support a complete community. The City negotiated the framing of Cadillac Fairview's capital contribution so that the first priority was to secure the provision of affordable housing as well as community facilities and services, with the residual net cash amounts allocated to offsite enabling infrastructure (e.g. the Phase One Broadview Eastern Flood Protection project and the Broadview Avenue Extension). Following the City's approach will help to ensure community services and facilities are realized onsite at East Harbour.

To reflect the shared benefit of offsite infrastructure, City staff have also negotiated a Provincial contribution to the delivery of the Phase One Broadview Eastern Flood Protection project.

***Initial negotiations will address City interests and will only focus on matters deemed essential to conclude the TOC commercial transaction between the Province and Cadillac Fairview, including any agreements related to the Broadview Eastern Flood Protection landform and the Broadview Avenue extension***

This has been the primary focus of the negotiations over the past nine months, and the high level terms of agreement reflect this direction. The complexity of the East Harbour site and the interdependencies with adjacent projects has made scoping the negotiations challenging. With this in mind, City staff have emphasized the importance of following existing City policies where possible. This limits confusion about intention and process, and will usually result in outcomes that are faster than bespoke processes.

***Development of East Harbour will be phased to ensure employment development happens prior to, or concurrently with any residential development, with phases advancing when conditions are met***

City staff have continually stressed the importance of phasing East Harbour development to ensure the site becomes a major office node over the long term. In 2018 City Council approved the Unilever Precinct Secondary Plan and the Unilever Precinct Planning Framework (together, the "Planning Framework") to recognize the

need to support the City's economic competitiveness through reimagining what was possible at East Harbour under the Official Plan's Employment land use designation.

The Planning Framework documents identified 926,000 square metres of non-residential development at East Harbour, which translates into approximately 50,000 jobs, and the area was designated as a Provincially Significant Employment Zone (PSEZ) under the Growth Plan. City Council re-affirmed this position in May 2021.

There is no comparable opportunity in the City, or the region, to establish a significant cluster of jobs linked to the regional transit network that is supportively integrated with the downtown core. This opportunity only exists because of East Harbour's Employment designation: where residential permissions exist, the land value escalation will drive more residential growth. Unabated residential development at East Harbour presents a significant risk to the City, both in terms of creating a viable office node as well as the rationale for the City's investment in the East Harbour Transit Hub. These items were highlighted in the January report to Executive Committee and have been raised in negotiations with the Province and Cadillac Fairview.

Cadillac Fairview has submitted an employment land conversion request for the East Harbour lands as part of the Municipal Comprehensive Review. Currently, there are three other addresses in the South of Eastern Employment Area that have been submitted as conversion requests. Staff remain concerned that the introduction of residential uses at East Harbour will set precedent for further employment land conversion requests. Staff have also been clear that a fundamental objective of the City's investment in the SmartTrack elements of the East Harbour Transit Hub is to unlock significant employment development in this area.

The South of Eastern Employment Area, along with the Port Lands to the south, plays an important role in the City's film industry due to the cluster and range of film and production studios, as well as other support and ancillary businesses to support the industry. To protect the employment provisions at East Harbour, the MZO is expected to include maximum residential permissions by quadrant. However, any restrictions on the timing of residential development or a linkage to employment development is considered inconsistent with the Contribution Agreement and not supported by Cadillac Fairview.

While the Province and Cadillac Fairview have not agreed to link residential permissions to office development, all parties have expressed their commitment to advancing employment development at East Harbour. Attachment 2 includes a letter from Cadillac Fairview stating its intention to develop employment at East Harbour as market conditions permit. The Attachment also includes an illustrative phasing plan for employment and residential development that may materialize if market demand warrants. Cadillac Fairview's first site plan application, expected in the second quarter of 2022, will be for an office tower in Quadrant 1, adjacent to the western portion of the East Harbour Transit Hub. Cadillac Fairview also intends to include a limited amount of employment uses within the podiums of the residential towers.

City staff will continue to work with the Province and Cadillac Fairview to encourage all opportunities for employment development at East Harbour.

***The East Harbour development will include a significant component of affordable housing, consistent with City policy and practice***

The high level terms of agreement include a commitment for Cadillac Fairview to deliver a minimum of 215 affordable housing units at East Harbour. The units will be leased for a period of 99 years, with affordable rents set at Inclusionary Zoning levels. This requirement represents a longer term and a deeper level of affordability, with a quantum consistent with the recently approved Inclusionary Zoning policies. This approach compares well to other major developments across the City. Details on the approach to affordable housing are outlined below in the discussion on the Implementation Agreement related to affordable housing.

***Cadillac Fairview will cover the normal costs of development / The City will not assume costs for hard and soft infrastructure and services required solely to service the East Harbour residential community***

City staff have been clear that the principle of growth paying for growth applies to the East Harbour TOC development. Cadillac Fairview will be expected to cover the full cost of services to support its development and the City will only consider contributing to the upsizing of infrastructure required to meet offsite demand and where there is a City-wide benefit. Cadillac Fairview's capital contribution will not cover the costs of onsite infrastructure to service the East Harbour development. This principle is reflected in the high level terms of agreement and will be further articulated in the appropriate Implementing Agreements.

***Parkland and community services and facilities will be provided at an appropriate level to serve the development and sustainability of a complete community***

City staff have negotiated the provision of two childcare centres and a Community Recreation Centre at East Harbour that will serve the new community and the surrounding area. A contribution to libraries in the area will also address new community needs created by this development.

The placement of the Community Recreation Centre at the eastern edge of East Harbour, with an option for Cadillac Fairview to incorporate a residential tower on the north portion of the facility, could make outdoor programming challenging and restricts any significant changes to the facility over time. The City's preference is for a standalone Community Recreation Centre. This matter requires further negotiation and will be part of the proposed Development Agreement between the City and Cadillac Fairview.

Cadillac Fairview will provide a minimum of 7,000 square metres of parkland in two consolidated park blocks, exclusive of the building footprint for the Community Recreation Centre. The 7,000 square meters represents an approach based on the current alternative parkland dedication rate requirement, which is influenced by the significant amount of non-residential development proposed at East Harbour. The City had discussed applying a master planning approach to parkland dedication to better

reflect the demand for park space that will be created by this large-scale residential and employment development.

Going forward the City is seeking the delivery of the western park block prior to the registration of Phase One of the Plan of Subdivision. The timing for the eastern park block shall be determined as part of the Community Recreation Centre negotiations, but in no event shall it be the last component of the East Harbour build-out.

***Improvements to the public realm will be augmented beyond the previous planned levels to serve the additional residential density***

The City expects to establish agreed principles related to the design of the public realm as part of the Development Agreement. While Cadillac Fairview will not be preserving the Soap Factory building or other industrial structures on the site, the City hopes to negotiate design principles that acknowledge and reflect the industrial character of the site, to establish a sense of place. This will also be addressed through the review and approval of the Plan of Subdivision and site plan control applications. The City has secured a Cadillac Fairview commitment to fund a \$2.0 million public art contribution as part of the East Harbour TOC.

**Implementing Agreements**

Over the course of the next year, the Province, City and Cadillac Fairview propose to negotiate a number of Implementing Agreements that flow from the Contribution Agreement and the broader negotiations among the Parties. Some of these agreements are required as a result of the implementation of an MZO for East Harbour, which limits the City's ability to use some of its usual planning instruments.

City staff are seeking Council direction to facilitate the negotiation of these Implementing Agreements based on the terms outlined below. City staff will report back to Council in early 2023 seeking approval of the final terms.

Implementing Agreements between the City and Cadillac Fairview will follow the standard principles that frame the relationship between a municipality and an applicant. To this end, the City will determine the appropriateness and applicability of City policy, risk will remain with the applicant, and securities will be provided to the City.

**1. Memorandum of Understanding between the Province and the City related to East Harbour**

The City and the Province will confirm full details of the agreement on the East Harbour TOC through a Memorandum of Understanding (MOU). The MOU will cover the high level terms of agreement as outlined in this report, as well as confirming the final terms negotiated among the Parties on the issues covered in the Implementation Agreements.

The MOU is expected to outline shared objectives and commitments flowing from the City's MOU with the Province related to Transit Oriented Development. City staff are seeking authority for the City Manager to conclude the negotiations of an MOU, and will return in early 2023 for City Council approval of the final terms.

## **2. Development Agreement between the City and Cadillac Fairview related to the delivery of the range of commitments and establishing a direct relationship between the City and Cadillac Fairview**

The City's direct relationship with Cadillac Fairview will be established through a proposed Development Agreement. The Development Agreement is intended to confirm commitments related to the delivery of community services and facilities that Cadillac Fairview will deliver during the build-out of East Harbour. The City will also seek commitments from Cadillac Fairview on a number of planning matters, including matters such as:

- Design principles to guide the overall development of East Harbour and create a sense of place
- Travel demand management measures to encourage walking, cycling and transit (10/90 modal split target)
- Environmental objectives to be achieved through implementation of the Toronto Green Standard
- Approaches to minimizing ongoing construction impact on future workers and residents
- Sequencing remediation works and infrastructure delivery with City processes

The Development Agreement is expected to detail the following cash contributions:

- Cadillac Fairview will contribute \$2.5 million to offsite capital upgrades to the Queen Saunter, Jones, and/or Riverdale branches of the Toronto Public Library
- Cadillac Fairview will contribute \$2.0 million to the delivery of public art in the vicinity of the East Harbour
- Each child care centre will receive a \$500,000 contribution from Cadillac Fairview for the City's Child Care Centre Replacement Reserve Fund

During the build-out of East Harbour, Cadillac Fairview will design, construct, finish, furnish, equip, commission and convey two child care facilities and a Community Recreation Centre to the City of Toronto. The following terms will apply to the child care facilities as well as the Community Recreation Centre:

- the owner shall cover all costs necessary to design, construct, and complete the facilities as operational and fully finished for their intended uses
- the owner shall be responsible for all costs relating to the transfer and registration of the facilities as free and clear of any encumbrances as determined by the City
- facilities will be constructed to City standards, including the Toronto Green Standard, and applicable provincial legislation
- facilities will comply with the Accessibility for Ontarians with Disabilities Act (AODA) parking standards and City of Toronto Accessibility Design Guidelines (TADG October 2016)
- the City will be consulted throughout the design process and shall have final authority to approve the design

- Development Charge credits will not be available for the child care facilities or the Community Recreation Centre

The first child care centre shall be located within Quadrant 1 and the second shall be located in Quadrant 3 or 4. Both child care facilities shall be constructed no later than in conjunction with the second building to be developed in each quadrant. The City is agnostic as to whether the child care facilities should be incorporated into residential or commercial buildings onsite so long as the valuations reflect their intended location.

Each child care centre shall be designed and constructed consistent with City policies, which are summarized below:

- Shall accommodate a minimum of 62 children, including infants, toddlers and preschoolers together with necessary staff
- Shall consist of a minimum of 930 square metres of interior area and a minimum of 280 square metres of contiguous outdoor play area located adjacent to the interior area. Exterior spaces shall be provided with weather protection all year round in accordance provincial regulations
- Designed in accordance with the Child Care Development Guideline, dated May 2021, prepared by City of Toronto Children's Services, and as applicable, in accordance with the Child Care Design and Technical Guideline prepared for City of Toronto Children's Services, dated 2016, the Toronto Children's Services Early Learning & Child Assessment for Quality Improvement, 2017
- Shall be integrated within a building containing other use(s) and will be located on the first and second floors, or as deemed suitable by the General Manager of Children Services GM and the Executive Director of Corporate Real Estate Management
- The owner shall submit plans, drawings and specifications for each child care facility, as well as such reports as the City may reasonably require as part of the site plan approval application for the building
- The owner, in consultation and with the assistance of the City, shall provide architectural drawings to Toronto Public Health and the Ministry of Education for approval, as necessary
- at a minimum, four (4) vehicular parking spots shall be provided to the City for exclusive use, at no cost to the child care centre
- a not for profit child care operator will be chosen for each child care centre through a process undertaken by the City's Children's Services Division
- preferential admittance for East Harbour residents and tenants cannot be guaranteed

Any deviations from the terms above shall be at the discretion of the City.

The Province and Cadillac Fairview have determined the East Harbour Community Recreation Centre will be located along the eastern edge of Quadrant 4. The owner shall design, construct, finish, furnish, equip, commission and convey a Community Recreation Centre to the City of Toronto based on the following specifications:

- the facility shall be a minimum of 6,200 square metres and may exceed 6,500 square metres
- the preliminary program includes two anchors: a double gymnasium with mezzanine walking track and 2 pools (one 25 metre six lane pool and one leisure pool)
- the General Manager of Parks, Forestry and Recreation shall have final authority during various stages of design and construction
- all elements of the Community Recreation Centre, including but not limited to internal program elements and finishes, shall be constructed to the satisfaction of the General Manager of Parks, Forestry and Recreation
- the architect for the Community Recreation Centre will have previous experience within the City of Toronto constructing similar facilities and will be selected by Cadillac Fairview, with input and final sign off from the General Manager of Parks, Forestry and Recreation

Cadillac Fairview is seeking the opportunity to explore integrating a residential tower within the north portion of the Community Recreation Centre. The incorporation of a residential tower has many potential impacts that would need to be discussed and agreed to by the City, including:

- architectural integration and consultant coordination
- high visibility from the surrounding area
- wayfinding
- outdoor and rooftop programming
- traffic impacts
- operating and maintenance impacts (e.g. chlorine delivery)
- ground floor animation
- stratified ownership plan
- cost sharing agreements (construction, operations, maintenance, parking, etc.)
- potential impacts on parkland dedication

Both Cadillac Fairview and the City would need to agree that the potential integration of a tower within the Community Recreation Centre is mutually beneficial and does not place an additional financial burden on the City.

It should be noted that City's ability to secure its interests in a Development Agreement are not as straightforward as under a Section 37 Agreement. A Section 37 Agreement uses authorities contained in the *Planning Act* to register community benefits on title, whereas a Development Agreement is not registered on title so it does not automatically bind future owners. In addition, because the Development Agreement is a commercial agreement, the City cannot withhold the issuance of building permits because it is not applicable law. For these reasons, securing the delivery of these in-kind contributions to the satisfaction of the City is going to be one of the key elements to be negotiated over the next year.

### **3. Affordable Housing Agreement between the Province, City and Cadillac Fairview to confirm the terms for the delivery of affordable housing**

The development of 4,300 new residential units at East Harbour requires the provision of affordable housing to achieve a housing mix that serves a diverse range of household incomes. City staff have been guided by City Council's recent decisions related to Inclusionary Zoning, as well as specific direction on the negotiation of affordable housing at East Harbour.

The City, Province and Cadillac Fairview have negotiated basic terms for affordable housing that will be confirmed through an agreement among the Parties:

- A minimum of 5% of total residential gross floor area will be affordable rental housing, resulting in a minimum of 215 units (represents 10% of the expected number of condominium units to be developed at East Harbour)
- Units will be leased for 99 years
- Cadillac Fairview will own, administer and maintain the affordable units
- Rents will meet the definition of affordability as approved in the City's Inclusionary Zoning policies
- Rent supplements will be provided for up to 20% of the units
- The City will approve the non-profit provider(s) to manage the placement of tenants in the units
- Restrictive covenants will be placed on title to secure the affordable housing units for the full term

Regarding the level of affordability and the term of this agreement, this approach compares well to other major developments across the City. Further details of the terms of the affordable housing commitments will be included in the Implementation Agreement. The City expects to review and approve the location, unit mix, sizes and layouts of the affordable units as part of the site plan approval application for each residential building. The City would also like to see the 215 affordable housing units realised as early as possible in the build-out of East Harbour.

#### **4. Infrastructure Agreement between the City and Cadillac Fairview to address certain advance construction of services that may be required for the East Harbour Transit Hub**

Water, sanitary and storm water infrastructure for the East Harbour Transit Hub is proposed on Broadview Avenue with connections into existing infrastructure along the Lake Shore Boulevard East corridor. The City will work with Cadillac Fairview and Waterfront Toronto, who is delivering the Lake Shore Boulevard East, Bridge and Public Realm project, to identify opportunities to integrate the East Harbour infrastructure within the existing Lake Shore Boulevard program. If feasible, this will minimize the rebuilding of Lake Shore Boulevard and the length of time that the public will experience delays along the corridor.

The Province and Cadillac Fairview are looking for a Municipal Infrastructure Agreement to allow for the early construction of East Harbour infrastructure that is required as part of Phase 1 of the Plan of Subdivision. The City's interest for considering such an agreement is related to advancing early delivery of services to expedite the construction of the Transit Hub. Any benefit to the East Harbour development would be incidental to



the advancement of services and infrastructure for the Transit Hub, and may be considered in a narrowly scoped manner.

#### **5. Potential conveyance agreement involving the Province, City and Cadillac Fairview to address timing and approach to property conveyance linked to advancing the East Harbour Transit Hub**

The Province and Cadillac Fairview, through their Contribution Agreement, have proposed a variance to the typical process and timing for the conveyance of future public assets to the City as part of the Plan of Subdivision. Any variance from City Council's approved conveyance policy will require City Council approval.

The City recognizes the need to facilitate the delivery of the East Harbour Transit Hub, and further recognizes the benefit of helping to advance office development at East Harbour to follow the construction of the Transit Hub as soon as possible afterwards. One of the key factors behind the request to consider a different approach to conveyances and the timing of construction of Broadview Avenue and underground services relates to the expected timelines for the review of the Records of Site Condition by the Ministry of Environment, Conservation and Parks. City staff continue to discuss construction timelines with Cadillac Fairview and how the timelines for the Records of Site Condition process interface with other development timelines, including Site Plan approval.

City staff have indicated the City could consider the proposed alternative that would show the roads as blocks in the Plan of Subdivision, and could consider an expedited approach to some advance infrastructure work subject to several key conditions:

- The approach related to conveyance would apply narrowly to the servicing work required to deliver the East Harbour Transit Hub, with allowance for any directly related benefits for the early development of the first East Harbour office building
- All other infrastructure will follow the regular process
- The City requires firm commitments on the final design of the road(s) and a way to secure this outcome with Cadillac Fairview and the Province
- The City expects a firm commitment on the timeline of the conveyance of the road blocks to the City, which may need to be tied to the issuance of building permits and may need to be set out in the MZO to make them "applicable law"
- The City expects a firm commitment on adherence to City conveyance conditions for the roads and all property conveyed to the City

The City is looking for the Province to provide assurance in this matter, as it relates directly to the Contribution Agreement negotiated with Cadillac Fairview.

#### **6. Conclude an agreement between Cadillac Fairview and CreateTO for access across the Keating lands to facilitate the Broadview Avenue extension and the construction of site servicing**

Cadillac Fairview is seeking to enter into an agreement with the City and CreateTO to secure temporary and permanent access rights across the Keating Lands for the extension of Broadview Avenue, installation of underground services, construction gate

access points, constructor parking, and other items deemed necessary for the development of East Harbour. The City acknowledges the need for landowner coordination to facilitate the development of the East Harbour Transit Hub and the Unilever Precinct more broadly. CreateTO is responsible for administering existing TEDCO contracts and any future agreements for the Keating Lands. As such, City staff and CreateTO are in agreement that all terms and transactions related to the Keating Lands will be handled by CreateTO. Discussions have begun in earnest between Cadillac Fairview and CreateTO to negotiate access and City staff are willing to facilitate discussions if required.

Cadillac Fairview is also seeking to secure a construction access road through the Booth Yards. The City has informed Cadillac Fairview that the Booth Yards is an active municipal works yard and accommodating this request poses several challenges that may not be possible as currently defined. City Planning staff will work with the appropriate City divisions to determine feasibility.

## **7. Amended Master Section 37 Agreement**

The provisions contained in the existing Zoning By-law and the East Harbour Master Section 37 Agreement (October 5, 2018) as they relate to non-residential development will remain in effect once an MZO is issued for East Harbour. The existing terms in the Master Section 37 Agreement include:

- A Cultural Community Space of 2,800 square metres, leased to the City for 25 years
- An Incubator Space of 1,400 square metres, leased to the City for 25 years
- Conveyance of the East Harbour flood protection landform in its entirety to the Toronto and Region Conservation Authority
- An offsite affordable housing contribution of \$5.0 million
- \$10.5 million for public art
- \$1.0 million for a multi-use trail adjacent to the Don River
- \$3.5 million for libraries, daycares, parks or other priorities identified by the City
- \$1.2 million for Cultural Community Space finishes
- \$0.6 million for Incubator Space finishes

Modifications to the timing of delivery and the location of specific Section 37 benefits will only be required to reflect the addition of residential permissions and its impact on the design and phasing of the East Harbour development.

The Incubator Space was intended to be located in the renovated Soap Factory building. Cadillac Fairview will not retain this building so the Incubator Space will need to be located in one of the other office buildings to be developed at the site. Cadillac Fairview has also discussed the opportunity to develop the Cultural Community Space in conjunction with the agreed Community Recreation Centre. Any modifications to the timing and location of these and other aspects of the existing Section 37 benefits will be discussed with the local Councillor and brought through Council for approval.

The agreed terms related to the modifications to the existing Master Section 37 Agreement are expected to be included in the Development Agreement between the

City and Cadillac Fairview. These will also require the City to implement changes to the By-law to implement.

## **8. Delivery and Governance Agreement involving the Province and the City (working with the Toronto and Region Conservation Authority and Waterfront Toronto) related to the Phase One Broadview Eastern Flood Protection project**

The Preferred Alternative of the Environmental Assessment for the Broadview Eastern Flood Protection landform is a landform along the east side of the Don Valley Parkway and Don River. The Environmental Assessment report described a phased implementation strategy where flood protection is realized incrementally and 30% design drawings were advanced (see Attachment #3).

For Phase One of implementation, the northern and southern portions of the flood protection landform would be fully constructed, while the land around the building at 1-9 Sunlight Park Road would be re-graded to ensure that flood waters would not flow east of the site's parking lot. This could be implemented in the near-term and would facilitate the removal of the Special Policy Area designation for most of the study area while the existing business at 1-9 Sunlight Park Road remains in place.

For Phase Two of implementation, the middle portion of the flood protection landform would be completed on privately-owned lands, consistent with the environmental assessment's Preferred Alternative. This work could be done by the owners of 1-9 Sunlight Park Road and would include the removal of the existing commercial building. There is currently no timeline for Phase Two; it could be implemented by the landowner as a component of a potential future development project.

A Class D Order of Magnitude Construction Cost Analysis was completed for implementation of Phase One. Construction cost totals included: construction, contingency, engineering, construction management, approvals and permitting, as well as an inflation factor. In addition, City staff secured a "ballpark value estimate" of potential land acquisition costs and a separate opinion was secured on potential business interruption costs. These analyses were completed in 2019 and 2020. As noted in the March 2021 Council Report, Phase One costs were estimated at approximately \$151 to \$168 million, when escalated to year of construction and assuming a construction timeframe of 2022-2026. The \$168 million figure was subsequently adjusted to \$171 million.

On April 7, 2021, City Council adopted two recommendations. The first was to finalize the Environmental Study Report and issue a Notice of Study Completion, to be placed on the public record for the minimum 30 day review period. The Notice of Completion was issued April 13, 2021, and the 30 day review period was completed on May 12, 2021. The Environmental Assessment is now complete. Council also directed staff to initiate cost-sharing and implementation discussions with stakeholders based on the phased implementation options in the Environmental Assessment, and report back with a funding and implementation strategy.

Work towards a 60% design for Phase One began in late 2021 through the initiation of survey work at 1-9 Sunlight Park Road. Further site investigations and design work will

continue through 2022. This project will continue to advance as a partnership between the City, working with the Toronto and Region Conservation Authority and Waterfront Toronto, with ongoing coordination with Metrolinx and other relevant parties. The 60% design process will:

- incorporate designs for an improved Eastern Avenue DVP on-ramp
- include an approach to utility relocations and oil pipeline removals required for Phase One implementation
- provide an updated cost analysis, as well as a more detailed construction phasing approach

The updated cost analysis and construction phasing approach will account for relationships with other construction projects in the area, including the East Harbour Transit Hub, Ontario Line and Broadview Avenue Extension, Coxwell Bypass and Gardiner Expressway Strategic Rehabilitation Plan. Costs to advance the 60% design and related elements will be covered through the approved 2022 Waterfront Secretariat and Transit Expansion Office budgets.

The future Delivery and Governance Agreement for the Phase One Broadview Eastern Flood Protection project will be informed by ongoing design work and negotiations between the parties. The Delivery and Governance Agreement will:

- acknowledge the Phase One implementation benefits that will be realized by all parties, including the current design of the East Harbour Transit Hub and the Revised Master Plan for East Harbour
- allocate one-third of the project costs to the City and the remaining two-thirds to the Province and Cadillac Fairview
- utilize a total project cost estimate of \$171 million, a slight adjustment to the \$168 million estimate noted in the March 2021 Staff Report. Cost estimates will be updated as the project design advances
- reconfirm the Province's role as the primary interface for negotiations with third-party landowners and for completing real estate transactions required to implement Phase One of the Broadview Eastern Flood Protection project
- define the construction delivery approach and governance structure for Phase One implementation

The Broadview Eastern Flood Protection project and the extension of Broadview Avenue are essential enabling infrastructure works for the East Harbour Transit Hub. A key consideration will be aligning the timing of delivery for these projects. The details above will be led by the Waterfront Secretariat and Transit Expansion Office, in consultation with the Toronto and Region Conservation Authority, Waterfront Toronto and Metrolinx, and will be brought forward for Council consideration as part of the East Harbour TOC report to Council in the first quarter of 2023.

## **9. Delivery and Governance Agreement involving the Province, City, and other parties related to the Broadview Avenue Extension from Eastern Avenue to the Metrolinx rail embankment**

A future delivery and governance agreement may be required between the City and the Province to set out the parameters and process for the further design and construction of the Broadview Avenue extension from Eastern Avenue to the Metrolinx rail embankment. This may also need to involve other relevant stakeholders, including Cadillac Fairview. This segment of Broadview Avenue, and the tunnel through the rail corridor, have implications for both the construction of the East Harbour Transit Hub and the broader East Harbour development. The construction of the road, Transit Hub and flood protection landform in this area will be complex, and will require careful coordination. The Transit Expansion Office is leading the work to coordinate the Transit Hub and related enabling infrastructure.

## **Other Required Approvals**

Based on the terms of the Contribution Agreement between the Province and Cadillac Fairview, and the negotiations among the Parties, targets have also been set for concluding several matters that do not require separate implementation agreements. By March 31, 2023, the Parties aim to finalise approvals on a number of other matters.

### **1. Confirm rail safety measures for development at East Harbour**

Cadillac Fairview is working with Metrolinx to determine a design solution at East Harbour that protects development adjacent to the Metrolinx rail embankment. Safety objectives can be addressed through the design and construction of a crash wall along the length of the Transit Hub, as well as specified separation distances between the rail corridor and future buildings.

The Province is responsible for the design of the East Harbour Transit Hub, designing and confirming rail safety solutions and establishing the zoning permissions at East Harbour. Given these considerations, the City's ability to influence the mitigation measures is limited and different from other development situations. City staff will work with the Province and Cadillac Fairview to ensure that the City's risk exposure is consistent with its influence over how rail safety is being considered at East Harbour.

### **2. Confirm approval of the design of the flood protection landform south of the Metrolinx rail embankment**

The Toronto and Region Conservation Authority and the City have roles in approving the design of the flood protection landform on the East Harbour lands. It is reasonable to expect that the design of the flood protection landform can be approved in this time.

### **3. Achieve Draft Plan Approval of the draft Plan of Subdivision**

Cadillac Fairview submitted an updated draft Plan of Subdivision in 2021 to reflect the changes created by the East Harbour TOC proposal. City staff reviewed the updated draft Plan and submitted comments to Cadillac Fairview in December 2021. Subject to Cadillac Fairview's responsiveness, it could be possible to have a final report advising City Council of the Chief Planner's intention to issue a Notice of Decision approving the draft Plan of Subdivision by the end of March 2023.

#### **4. Confirm the cross-section and Right of Way dimensions for the Broadview Avenue extension**

City officials have been working closely with Metrolinx and relevant stakeholders, including Cadillac Fairview, to develop the design of the Broadview Avenue extension from Eastern Avenue to Lake Shore Boulevard. The current phase of the Environmental Assessment process will determine the cross-section and Right of Way dimensions for the extension. This work is expected to be complete in the second quarter of 2022.

#### **Next Steps**

Subject to City Council approval of this report's recommendations, City staff will engage with the Province and Cadillac Fairview to negotiate the Implementation Agreements for East Harbour. Staff will report back to City Council early in 2023, seeking approval on final negotiated arrangements for East Harbour.

#### **CONTACT**

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#### **SIGNATURE**

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Tracey Cook  
Deputy City Manager  
Infrastructure and Development Services

#### **ATTACHMENTS**

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Attachment 1: Terms of Agreement  
Attachment 2: Cadillac Fairview Approach to Employment Development  
Attachment 3: Phase One Broadview Eastern Flood Protection Project 30% Design Drawing