

## **Update on Removal of Harbour Lead Line and Keating Rail Yard**

**Date:** May 2, 2022

**To:** Executive Committee

**From:** Deputy City Manager, Infrastructure & Development Services and City Solicitor

**Wards:** Ward 14 - Toronto Danforth

### **REASON FOR CONFIDENTIAL INFORMATION**

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This report is about potential litigation that affects the City of Toronto ("the City") and contains advice that is subject to solicitor-client privilege.

### **SUMMARY**

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The purpose of this report is to provide additional information about the proposed removal of the Harbour Lead Line and Keating Rail Yard, as described in the report to this Committee dated March 16, 2022. Entitled "Removal of the Harbour Lead Line and Keating Rail Yard", the report was originally scheduled for the Executive Committee's meeting of March 30, 2022, but was deferred to allow for further consultations with the Toronto Industry Network (TIN) and industries within the Port Lands area.

In letters to the March 30, 2022 Executive Committee meeting, TIN and Port Lands area industries expressed concern about a lack of consultation related to the findings of the March 16, 2022 staff report; further, the organizations took the position that rail service is an important component of any modern port facility. Accordingly, City staff met with representatives of TIN on two occasions:

- April 5, for a meeting dedicated to Harbour Lead Line issues; and
- April 14, for a meeting of the Port Industries Liaison Committee, where Harbour Lead Line issues were discussed as part of a longer agenda.

Toronto's port is not currently dependent on rail access. City staff have determined that, should trends in goods movement change in the future, it is physically possible to reinstate the Harbour Lead Line at a future date on lands managed by Transportation Services, as well as lands owned and managed by CreateTO. In order to justify investments to reintroduce the rail line, there would have to be significant growth in

industrial demand for rail service in Toronto's Port Lands; a strong business case would have to be made.

In addition to providing a summary of the above consultations, this report also provides advice from the City Solicitor within the attached confidential report regarding ongoing discussions with Ports Toronto about the Harbour Lead Line (Confidential Attachment 1).

## **RECOMMENDATIONS**

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The Deputy City Manager, Infrastructure & Development Services and City Solicitor recommend that:

1. City Council direct that Confidential Attachment 1 remain confidential in its entirety as it is about potential litigation and contains advice which is subject to solicitor-client privilege.

## **FINANCIAL IMPACT**

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There is no financial impact from the adoption of the recommendation in this report.

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

## **DECISION HISTORY**

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At its meeting of March 30, 2022 the Executive Committee deferred consideration of the report dated March 16, 2022 entitled "Removal of the Harbour Lead Line and Keating Rail Yard" to allow time for additional consultation with representatives from Port Lands area industries and TIN.

The Executive Committee's deferral, the staff report and communications can be found at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.EX31.13>

## **COMMENTS**

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As fully described in the deferred report also before this Committee, the Harbour Lead Line provided rail access into the Port Lands. Until operations formally ceased in 2018, the main user of the rail line was Toronto Water, with deliveries to the Ashbridges Bay Treatment Plant; Toronto Water has since adapted their operations so that required treatment materials can be delivered to the plant by truck. The rail line has not been

used by any industries in the Port Lands area for some time and is in need of significant refurbishment in order to bring it up to modern operational standards. Consultants retained by Transportation Services estimated that this refurbishment would cost approximately \$50 million.

## **Consultations with the Toronto Industrial Network (TIN)**

In a letter dated March 29, 2022, to the Executive Committee, TIN stated, that, in its view, rail service is essential to the operation and support of port operations in Toronto. This view was further expanded upon by TIN in a subsequent consultation meeting (held on April 5th), as well as the April 14th meeting of the Port Industries Liaison Committee. TIN acknowledged that the Harbour Lead Line had not been used by its members for some time prior to the line's operational shut down in 2018. This lack of usage was confirmed in correspondence to the March 30, 2022 Executive Committee by two TIN members, Lafarge Canada Inc. and St. Mary's Cement/CBM (Votorantim Cimentos).

TIN noted that there had been a lack of consultation with TIN member organizations on the findings of the March 16, 2022 staff report, including those who had provided correspondence to the March 30th meeting of the Executive Committee. The March 16, 2022 staff report provided details of the assessment work that was undertaken by City staff to study the status of the Harbour Lead Line. Referred to as the Toronto Port Lands – Rail Access Assessment Review, this study was undertaken in response to the Local Planning Appeal Tribunal settlement between the City and PortsToronto for OPA 387. The consultation for the study focussed on the main users/owners/operators of the rail line - Ports Toronto, Toronto Water, CreateTO, CanRoof, PNR Rail and CN Rail. City staff have subsequently met with TIN and concrete industry representatives and, in addition to addressing questions and provided clarification regarding the March 16, 2022 report, also received comments and input, which are described below.

Going forward, ongoing broader consultation with industrial users within the Port Lands, including TIN, will primarily be accommodated through the Port Industries Liaison Committee. The liaison committee will meet up to six times per year and will provide a forum for dialogue among industries and the City of Toronto, CreateTO, Waterfront Toronto, and PortsToronto on redevelopment and revitalization issues that impact industrial uses and port operations in the Port Lands. The Committee will be a focused forum where port industries can share ideas and concerns with the project team and explore solutions. The committee was established recently; it had its first meeting on April 14, 2022 and the meeting included a discussion on the Harbour Lead Line issue.

In the meetings of April 5 and 14, 2022, it was noted that the City agrees with TIN and its members regarding the importance of the port and ensuring that its operations are protected. Notable policy initiatives in this regard include:

- Facilitating supportive Local Planning Appeal Tribunal (now Ontario Land Tribunal) decisions related to the Port Lands Official Plan Modification which resulted in, among other outcomes, supportive land use designations to protect existing industrial users from encroaching sensitive uses;

- Working with Lafarge, CRH and Ports Toronto to resolve the goods movement issues (including rail) as part of the decisions on the Port Lands Official Plan Modification;
- Supporting goods movement by advancing the Port Lands Goods Movement Strategy;
- Accounting for goods movement in the Port Lands and South of Eastern Transportation and Servicing Master Plan; and
- The Port Lands Zoning Review, which focused on the Port Lands employment-focused districts.

Although, TIN has acknowledged that its members have not used, nor currently require, the Harbour Lead Line for their operations, TIN has taken the position that rail service is critical for the future of the port. PortsToronto has confirmed that the competitive advantage of the Port of Toronto does not depend on rail access; PortsToronto relies on truck and marine access, and the Port's proximity to downtown Toronto, which enables the efficient servicing of local supply chains by truck. Although, TIN's position does not align with that of PortsToronto, TIN has requested that City staff explore the option of "rail banking" by protecting the right-of-way, on land owned by a combination of Transportation Services and CreateTO, for the potential reintroduction of the rail spur at a future date. This approach is supported by Port Lands OPM Policy 13.1.5, which requires the retention of decommissioned rail corridors in the Port Lands as landscape features.

As noted above, it has been estimated that the cost of reinstating the Harbour Lead Line is approximately \$50 million. In addition to the costs associated with building new track, this cost includes providing and installing modernized signals, a new rail yard and rebuilding certain intersections where current and planned streetcar tracks would cause operational challenges. Any reinstated rail line would need to meet modern rail standards, as well as accommodate the current industry practice of utilizing longer rail cars. Addressing these requirements may consume additional land in the vicinity of Leslie Street and Unwin Avenue to accommodate safer train turning movements and for yard functions needed to support the shunting of train cars.

City staff consulted with Waterfront Toronto confirming the possibility of re-establishing the Harbour Lead Line crossing over the Don River and within Lake Shore Boulevard East between the Don Roadway and Carlaw Avenue at a future date. Waterfront Toronto is responsible for designing Lake Shore Boulevard East, working with City Divisions and CreateTO, and removing the Harbour Lead Line provides additional space for a sidewalk, multi-use trail and landscaping within the right-of-way of Lake Shore Boulevard East. Waterfront Toronto has confirmed that it is physically possible to reinstate the rail spur in the future on the north side of Lake Shore Boulevard East between Don Roadway and Carlaw Avenue.

Should the line be reinstated at a future date, it would consume land that is currently designated for separated cycling and pedestrian trails, as well as land reserved for public realm enhancements and plantings. This would potentially represent a reduction in space planned for cyclists and pedestrians as the two trails would be reduced to one multi-use trail with reduced plantings. Any proposal to reinstate the rail line would require further study by City and CreateTO staff, as well as stakeholder consultation.

In order to justify an investment to reintroduce and modernize the rail line, there would have to be significant growth in the demand for rail service in Toronto's Port Lands. Something would have to change vis-à-vis historic trends in goods movement within the Port Lands which has been limited in recent years to bulk cargo that is distributed, by truck, to local customers. In order to secure the entire right-of-way alignment for either future rail or other uses, the City would have to engage Metrolinx in discussions related to the status of their portion of the line west of the Don River and explore the option of acquiring the underlying property.

In acknowledging these and other commercial realities, PortsToronto advised the City and CreateTO by way of written correspondence dated February 27, 2020 that a better use of public dollars would be to invest in the existing land based transportation network in the Port Lands, and that if these investments were made, it could support the removal of the Harbour Lead Line. This approach would build on the port's main strength of handling freight that is best distributed by truck to local destinations.

### **Discussions with Ports Toronto**

In a letter dated March 14, 2022, the Deputy City Manager, Infrastructure and Development Services noted that a consensus has emerged on the appropriateness of the removal of the Harbour Lead Line as rail service to the port is no longer used or needed. The letter also stressed that the City is committed to working with PortsToronto to ensure that their road transportation needs within the Port Lands with respect to truck access and management are being fully taken into consideration by the City. Specifically, the letter noted that:

- City Council has approved capital funding for the rehabilitation of the Cherry Street Bascule Bridge. The City will be contributing approximately two-thirds of the required rehabilitation funding;
- The realignment and reconstruction of Unwin Avenue, between Leslie Street and Cherry Street is a project identified in the Council-approved Port Lands and South of Eastern Avenue Transportation and Servicing Master Plan and Ontario Land Tribunal approved Official Plan Modification for the Port Lands. Further, it is identified (albeit as an unmet need) in the Waterfront Revitalization Initiative section of the City's 10 year Capital Budget and Plan. The replacement of the single lane baily bridge, and provision of water/wastewater servicing are assumed as part of this project; and
- Staff of Transportation Services will be conducting a Phases 3 and 4 Class EA on Unwin Avenue in the next two to three years. City staff previously assumed implementation of the Unwin Avenue improvements as occurring between 2026 and 2035 and coordinated with other infrastructure upgrades; over the next 12 months staff will be reviewing these assumptions with City Divisions, CreateTO, Waterfront Toronto, PortsToronto and Port-area industries.

PortsToronto recently responded by letter dated April 11, 2022 stating that while there had been "significant progress" made on the matters raised in its 2020 letter, it disagreed with the statement that "a consensus has emerged on the removal of the

Harbour Lead Line", noting that further discussions would be required in order for PortsToronto to provide written notice that it no longer required the Harbour Lead Line.

In stating its position as set out above, PortsToronto is relying on its purported rights under a 2012 Siding and Cost Sharing Agreement it entered into with TPLC/CreateTO. The City and CreateTO disagree with PortsToronto and will continue discussions with them. The confidential attachment contains legal advice on these issues.

## **CONTACT**

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## **SIGNATURE**

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## **ATTACHMENTS**

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Confidential Attachment 1 - Confidential Information or Advice