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Delivered by Email: gglc@toronto.ca

General Government and Licensing Committee
10th Floor, West Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2

**Re: Committee Meeting March 22, 2022 – Agenda Item GL29.10
Application for Approval to Expropriate
Parts of 2 & 90 Bloor East for the Toronto Transit Commission (“T.T.C.”)
Bloor-Yonge Capacity Improvement Project (the “BYCI Project” or the
“Project”) - Stage 1 (the “Application”)**

We act for 6524443 Canada Inc. (“**Brookfield**”). Brookfield is the freehold and leasehold owner of various parcels of land within the block commonly referred to as Hudson’s Bay Centre, including the freehold lands comprising PIN 21110-0266 (LT) and the leasehold lands comprising PIN 21110-0043 which are the subject of this Application (the “**Subject Property**”). Brookfield leases the leasehold lands from the City of Toronto (the “**City**”) under a long term ground lease.

As acknowledged by Staff in previous reports to City Council the majority of the burden of the BYCI Project falls on Brookfield’s lands.

The Property and Brookfield’s Interest

The land which is proposed to be expropriated is part of a 2.2 million square foot mixed use Class A operational complex (the “**Complex**” or the “**Property**”) comprising various freehold and leasehold interests with numerous tenancies, subtenancies and occupants. This block-wide integrated development includes a 35 storey office tower with a Royal Bank of Canada branch (the “**RBC Branch**”) in its podium, a five storey department store which is currently occupied by Hudson’s Bay Company until May 31, 2022, a 22 storey condominium tower, a 24 storey rental building, the “**W**” Toronto Hotel, an above ground and below grade parking garage, and a retail concourse occupying the lower level of these structures.

It is an extremely complicated site which is highly inter-connected and shares a multitude of common facilities, which include, among other things, a chiller plant, water boilers, electrical transformers, utilities, life safety systems, loading dock, parking facilities, and internal pedestrian access routes across the Complex.

A Reciprocal Easement and Operating Agreement (the “**Complex REOA**”) entered into by the operating owners of the Complex, provides for and governs the integrated use, operation and maintenance of the various portions of the Complex. A Brookfield affiliate is the Project Operator for all common facilities and systems throughout the Complex.

Brookfield’s Efforts to Collaborate with the City and TTC

For over two years Brookfield has devoted its time and effort (including bi-weekly meetings) to work collaboratively with the TTC and CreateTO on the BYCI Project in order to reach a mutually beneficial solution to facilitate TTC’s and the City’s objectives, while mitigating its impact and risk of damages to the Complex.

As the Project Operator of the Complex and a long-standing owner at the Property, Brookfield has offered to cooperate with TTC and the City and assist in streamlining their efforts by sharing its intimate knowledge of the Complex and dialoguing with the various stakeholders, including to help reach consensus on the numerous agreements that will be needed to permit the Project to proceed in a timely, safe, and cost effective manner.

Brookfield also offered its cooperation to assist TTC and the City to navigate and plan its construction through a fully developed, inter-connected and functioning Complex.

A key focus of Brookfield and the TTC involves the need to remove the existing mechanical, HVAC and other chiller facilities and plant, storm water main, and attached sump pumps and associated facilities (collectively the “**Chiller Plant**”) from its present location on Brookfield’s leasehold lands and to reconstruct such infrastructure elsewhere to make way for the TTC Subway platform expansion. The New Chiller Plant Construction involves a design and construction of this new major system and a re-connection of the facilities to service the portions of the Complex which the Chiller Plant currently services, including, the 2 Bloor East Office Tower, the RBC Branch, the majority of the Hudson’s Bay Podium, the retail concourse and various common areas throughout the Complex.

Recognizing the importance of this pre-platform construction work, Brookfield entered into an agreement with the TTC on March 18, 2021 styled the “Bloor-Yonge Station Expansion Project Chiller Plant Relocation Design Planning and Reimbursement Agreement”. Pursuant to that agreement, not only did Brookfield allow the TTC access to its facilities, Brookfield also assisted the TTC in facilitating the design for the new Chiller Plant by retaining consultants and engineers to study and design the reconstructed Chiller Plant.

The existing Chiller Plant cannot be eliminated until the new Plant is situated, constructed and re-connected through the Complex.

Engineers have advised that the reconstructed Chiller Plant would optimally be situated on Brookfield’s freehold lands at the north- east corner of Yonge & Bloor. This would forever eliminate the ability of Brookfield or successor owners to redevelop these lands.

However, Brookfield has advised that it would be agreeable to accommodate the new Chiller Plant within its freeholds lands, subject to reaching an agreement with the City and TTC on terms which it has proposed in a Term Sheet delivered to CreateTO and TTC on July 26, 2021 (the “**Proposal**”).

As advised below, the City and TTC have not responded to this Proposal.

This Committee is being asked to support the proposed expropriation of the lands needed for the future subway platform areas. However, staff makes no mention of the fact that the location of the future platform now proposed to be expropriated pursuant to this Application includes the area housing the existing Chiller Plant and makes no provision for where and how the Chiller Plant will first need to be constructed before the existing Chiller Plant can be eliminated, nor how the reconnections through the Complex will be accomplished.

In our view, the Staff Report is incomplete and the phasing implicit in the proposal is inconsistent with the “critical path” discussions that have taken place between Brookfield and the City’s partners over the last two years which establishes the construction of the new Chiller Plant, the decommissioning of the existing Chiller Plant and the reconnections throughout the Complex as part of the Project Requirements.

The Comprehensive July 2021 Brookfield Proposal

In July, 2021 representatives of Brookfield provided the TTC and the City with a Proposal that Brookfield believes accomplished the TTC’s platform expansion objectives while respecting Brookfield’s long term interests and re-development objectives. Some key highlights of the Proposal included:

- Upfront assurances to the TTC that it will obtain the necessary land interests to meet its schedule in an undisputed, collaborative, efficient and cost- effective manner, including the lands comprising the existing Chiller Plant and provision for a new Chiller to be constructed on Brookfield’s freehold lands pursuant to a New Chiller Construction Agreement.;
- Minimizing cash outlay for compensation from the TTC and the City by providing Brookfield with an extension of its existing ground lease with the City in lieu of a portion of the monetary compensation;
- Securing Brookfield’s cooperation and assistance with tenants and physical and operational issues over the course of a multi- year construction Project.

If accepted, Brookfield’s Proposal would avoid the need for formal expropriation proceedings while allowing the City to acquire the lands and interests needed for the BYCI Project with little to no up-front cash payment from the City.

As stated above, there has been no response by the City or TTC to Brookfield’s Proposal, nor confirmation of a full set of Project Requirements despite repeated requests to provide such.

With concern over TTC’s stated timelines, Brookfield called an “all hands” meeting with representatives of the City in December, 2021 to outline the details of the July 2021 Proposal in

an attempt to induce a response, and to try to obtain clarity on TTC's land requirements which had not yet been identified.

Brookfield was advised in late December, 2021 that there would be a response imminently, at first promising the first week or two of January, but ultimately there has been no response to Brookfield's Proposal, although it has now been eight months since it was submitted.

The Report for Action attached to the Application states "Negotiations with the owners to acquire the Project Requirements have been ongoing, however if a resolution is not achieved in the near term, construction timelines for the Project may be adversely impacted. Accordingly, City Council authority is requested to initiate expropriation proceedings for the Project Requirements".

Negotiations have not been ongoing. Brookfield is and has been ready and willing to have negotiations with the City and TTC on the Proposal or an alternative agreement at any time. In contrast there has been no efforts from the TTC or the City to respond to Brookfield's Proposal.

The TTC and the City are solely responsible for any adverse impact on construction timelines by their own inaction and the Committee should not proceed with unnecessary and costly expropriation proceedings as a result of the TTC's and the City's failure to respond to a viable Proposal.

Recommendations Are Pre-mature, Ill Conceived and Unnecessary

In mid February, 2022, Brookfield was advised that the TTC would be presenting a "Property Report" to the City for consideration by City Council in April, 2022. When Brookfield asked for the details of the said report, Brookfield was told it would only be made available when the Report became public in March, 2022. Despite over two years of bi-weekly meetings, and notwithstanding the considerable time, effort and expense Brookfield has invested in working with TTC and CreateTo there was no advance sharing of this Report despite its significant impact to the Subject Property and the affected owners who would, in fairness, want more than a few days before a hearing to digest what Staff is recommending.

The Application for Approval is clearly deficient. Not only does it propose to remove the Chiller Plant serving major buildings with no identification as to where it will be first re-constituted, it only requests expropriations for early works, presumably leaving for the future, multiple rounds of additional expropriations. This manner of proceeding is crippling to Brookfield's ability to lease space as Brookfield has no certainty of which premises will be disrupted or need to be eliminated.

Similarly, Brookfield's plans for its renovation of the Hudson's Bay Podium must be informed by comprehensive knowledge of all of TTC's Project Requirements and the construction schedule. This piecemeal roll out of TTC's needs and the prospect of undefined future expropriations presents significant risks to Brookfield's renovation plans which may have to be altered midstream to align with rolling expropriations. As an example, in the course of Brookfield's work with TTC over the last two years the TTC Main Station Concourse Entrance design concept and land entitlements were agreed in concept. Although this work will take place in a subsequent phase of construction, establishing this as a TTC Project Requirement is essential to permit alignment of

Brookfield's and other owners' construction work. However, despite repeated requests for TTC to provide Brookfield with all of its Project Requirements, such has not been provided, exposing Brookfield and other stakeholders to significant project uncertainty and risk.

In Brookfield's view this approach is unfair and unreasonable in the present context and will create liability for the City and TTC should Brookfield be delayed or forced to revise work because of this manner of proceeding.

The July 2021 Proposal addresses these issues in a comprehensive fashion. It calls for Brookfield's participation and cooperation as a well experienced manager and developer with intimate knowledge of the Property, to mitigate the material risks that would otherwise be assumed by the City and TTC should expropriations occur and third parties without knowledge of the Complex be engaged to navigate the site. Moreover, it allows the City and TTC to take advantage of the cooperative ongoing relationships that Brookfield enjoys with its tenants and other stakeholders, to assist in negotiating the arrangements that will need to be made in connection with the Project.

Brookfield's Request

In Brookfield's view it is unnecessary and premature to seek authorization for approval to expropriate in the absence of: (a)) a response to Brookfield's July 2021 Proposal and reasonable attempts to negotiate and resolve any outstanding issues; (b) a plan to reconstitute the Chiller Plant and reconnect it to the benefitting lands before any plans are made to expropriate the lands which houses the existing Plant; (c) any clear phasing plans for the platform work; and (d) a clear plan to keep the Complex operational during construction.

From Brookfield's perspective the only viable way to mitigate the significant risk of the BYCI Project to the Complex is to proactively and collaboratively plan for the necessary land transfers, the physical changes that will need to be made, and the management of the ongoing operations to mitigate the adverse impacts which will ensue in a ten year plus construction program. This cannot reasonably be achieved by unilateral expropriations without significant risk to the Complex and material exposure to the TTC and the City. Brookfield has attempted to provide the groundwork for this collaboration in its Proposal which, in its view provides a cost effective, balanced and reasonable approach.

We ask that the proposed expropriation not be approved at this time, and that Staff be directed to actively engage Brookfield with a view to reaching a fair and reasonable strategy for the Project that respects the needs of the City and TTC, but also those of Brookfield, other stakeholders of the property and their tenants.

We ask that Staff be directed to prepare a Report for the next General Government and Licensing Committee Meeting on April 29, 2022, for review by City Council on May 11, 2022, which summarizes:

- 1) All TTC Project Requirements & TTC Project Risk including:
 - a. TTC Project - Chiller Plant Reconstruction in a new location and reconnection to benefitting parcels;

- b. TTC Project - Station Entrance;
- 2) Benefits / Drawbacks of Brookfield Proposal (July 2021) and alternatives to expropriation;
and
- 3) A Recommended Solution.

In order to achieve the above we request that Staff be directed to engage with Brookfield in regular weekly meetings.

We would be pleased to discuss any aspect of this letter or Brookfield's concerns and to attend at the meeting to make oral submissions if this would be helpful.

Yours very truly,

BORDEN LADNER GERVAIS LLP



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