

Additional Information on 770 Don Mills Road - Memorandum of Understanding with Toronto Lands Corporation

Date: July 23, 2024

To: City Council

From: Acting Executive Director, Corporate Real Estate Management

Wards: 16 - Don Valley East

SUMMARY

This report, prepared in consultation with Housing Secretariat, is supplementary to PH14.11 "770 Don Mills Road - Memorandum of Understanding with Toronto Lands Corporation" from the Board of Directors of CreateTO and provides City Council with information on a proposed transaction between the City of Toronto (the "City") and Toronto Lands Corporation ("TLC"), on behalf of the Toronto District School Board ("TDSB"), and requests Council to endorse the attached terms of a Memorandum of Understanding between CreateTO and TLC in respect of the opportunity to incorporate a public elementary school within the Housing Now development at 770 Don Mills Road, following which the parties will continue negotiations in order to finalize all business terms of the arrangement. The key terms of the Memorandum of Agreement were approved by the Board of Directors of CreateTO on June 14, 2024 via Item RA12.2.

RECOMMENDATIONS

The Acting Executive Director, Corporate Real Estate Management recommends that:

1. City Council authorize the Executive Director, Corporate Real Estate Management, in consultation with the Executive Director, Housing Secretariat and the Chief Executive Officer, CreateTO, to continue negotiations with Toronto Lands Corporation based on terms of the Memorandum of Understanding as outlined in Attachment 1 to this report, and such other terms and conditions as may be considered appropriate by the Executive Director, Corporate Real Estate Management, and to report back to City Council for authority to enter into the agreements contemplated by such Memorandum if their terms cannot be authorized pursuant to staff's existing delegated real estate authority.

FINANCIAL IMPACT

There are no immediate financial impacts resulting from the recommendations contained in this report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in the Financial Impact Section of this report.

DECISION HISTORY

On July 11, 2024, Planning and Housing Committee amended PH14.11 - 770 Don Mills Road - Memorandum of Understanding with Toronto Lands Corporation" and directed the Executive Director, Corporate Real Estate Management, in consultation with the Executive Director, Housing Secretariat, to provide a supplementary report directly to City Council following a review of the terms of the Memorandum of Understanding contained within Confidential Attachment 1 to the report from the Chief Executive Officer, CreateTO.

<https://secure.toronto.ca/council/agenda-item.do?item=2024.PH14.11>

On June 26, 27, and 28, 2024, City Council adopted PH13.8 - Launching the Rental Housing Supply Program, which establishes a new Rental Housing Supply Program to offer City funding and incentives to deliver on a range of rent-geared-to-income, affordable, and rent-controlled homes, and set a clear focus on prioritizing the growth and development of the community housing sector to build more non-market homes.

<https://secure.toronto.ca/council/agenda-item.do?item=2024.PH13.8>

On June 19, 2024, the Board of Directors of CreateTO adopted RA12.2 "770 Don Mills Road - Memorandum of Understanding with Toronto Lands Corporation" and endorsed the key terms of the Memorandum of Understanding with Toronto Lands Corporation, on behalf of Toronto District School Board, to include an elementary school within the 770 Don Mills Housing Now site and recommended CreateTO and relevant City staff negotiate and finalize all necessary agreements to facilitate the arrangement with Toronto Lands Corporation.

<https://secure.toronto.ca/council/agenda-item.do?item=2024.RA12.2>

On November 8 and 9, 2023, City Council adopted EX9.3 – “Generational Transformation of Toronto’s Housing System to Urgently Build More Affordable Homes”. The report outlines several recommended actions, and highlights initiatives underway, which will make a generational change to transform and strengthen Toronto’s housing system and expedite delivery of the HousingTO and Housing Action Plan targets.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.EX9.3>

On June 16, 2022, City Council adopted PH34.2 "Housing Now – 770 Don Mills Road - City-Initiated Zoning By-law Amendment and Draft Plan of Subdivision – Final Report" to facilitate the development of mixed-use residential developments with a minimum of 33 percent affordable rental units. There were no appeals or objections and By-Law 582-2022 came into full force and effect as of June 16, 2022.

<https://secure.toronto.ca/council/agenda-item.do?item=2022.PH34.2>

On January 30 and 31, 2019, City Council adopted EX 1.1 "Implementing the "Housing Now" Initiative". This report provided recommendations on the organizational structure and processes to deliver the Housing Now Initiative, the proposed affordable housing program and the overall financial implications of the program.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EX1.1>

On December 13, 2018, City Council adopted CC1.3 "Housing Now", which approved the activation of 11 City-owned sites for the development of affordable housing as part of creating mixed-income, mixed-use and transit-oriented communities. 770 Don Mills was named as one of the Phase One sites.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC1.3>

On July 4, 2018, North York Community Council adopted NY32.25 "Preliminary Report – Official Plan Amendment and Zoning By-law Amendment Application – 770 Don Mills Road and 805 Don Mills Road" with amendments. This report provided preliminary information and an early opportunity to raise issues for follow-up with regard to the application submitted by Build Toronto Inc. (now CreateTO).

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.NY32.25>

COMMENTS

The purpose of this supplementary report is to provide further information on a proposed transaction between the City and Toronto Lands Corporation related to the City's redevelopment of the Housing Now site at 770 Don Mills Road (the "Development Site"). The Development Site is a Phase 1 Housing Now site located at the southwest corner of Don Mills Road and Eglinton Avenue East. The site is currently a 5.48-acre vacant surface parking lot, and is located directly adjacent to the Eglinton Crosstown LRT Science Centre station, a future Ontario Line station, as well as directly north of the Ontario Science Centre.

On November 8 and 9, 2023, City Council adopted item [EX9.3 - Advancing a Generational Transformation of Toronto's Housing System to Urgently Build More Affordable Homes](#) which updated the City's HousingTO targets, recommends new approaches to delivering rental housing in Toronto and on City land, and prioritizes a shift in the housing system to deliver more non-market homes. This includes enhancing the City's HousingTO targets by introducing new targets for rent-geared-to-income homes and rent-controlled market homes; prioritizing public ownership of land; accelerating the delivery of housing ready projects on City and non-profit land; and implementing the City's income-based definition of affordable rental housing in the City's housing programs, ensuring rents are more reflective of residents' ability to pay rather than market conditions. In June 2024, City Council further built on this direction in adopting a new [Rental Housing Supply Program](#) which established new funding and incentives to support the delivery of rental homes with a clear priority of supporting the growth of the community housing sector, including Indigenous, non-profit, and cooperative housing providers.

The proposed development at 770 Don Mills Road will be delivered in accordance with these principles and new approaches to housing delivery in Toronto. The Development Site will create a new mixed-use, mixed-income community with 100 percent of the 1,254 new homes being developed as rental. At least one-third of the new homes will be affordable rental, with rents set at the City's new income-based definition. The remaining two-thirds of homes will be rent-controlled market rental homes. The development will retain public ownership of the lands while supporting the continued transformation of the area into a transit-oriented complete community, including new public streets, a non-profit child-care centre, new parkland, new publicly accessible open space, and the expansion and improvement of the public realm. In addition to these community facilities, the proposed development includes a TDSB elementary (K-8) school anticipated to accommodate approximately 550 students. See the Board of Directors of CreateTO Item RA12.2 for additional details.

The attached terms of a Memorandum of Understanding reflect the arrangement that has been negotiated between CreateTO and TLC to date regarding the school to be constructed as part of the development. Through the market offering for this site, the City will require the successful proponent to construct the TDSB school in accordance with TLC Program Requirements. Finalizing the key terms in the Memorandum of Understanding is critical to advancing this project to the next stage where a development partner will be selected. The City is currently assessing approaches to the development partnership to achieve the outcomes identified for this site, and support the transformation of the City's housing system in alignment with Council's direction in the EX9.3 report. The City expects to select a development partner by the first quarter of 2025.

Staff have reviewed the terms of the draft Memorandum of Understanding with TLC, will continue negotiations based on these terms, and report back to City Council for additional authority as required.

CONTACT

Alison Folosea, Director, Transaction Services, Corporate Real Estate Management, 416-338-2998, Alison.Folosea@toronto.ca

Noah Slater, Director, Housing Development, Renewal and Improvements, Housing Secretariat, 416-397-4165, Noah.Slater@toronto.ca

SIGNATURE

Marco Cuoco
Acting Executive Director, Corporate Real Estate Management
770 Don Mills Road - Toronto Lands Corporation

ATTACHMENTS

Attachment 1 - Key Terms of Memorandum of Understanding with Toronto Lands Corporation

Attachment 1 - Key Terms of Memorandum of Understanding with Toronto Lands Corporation

Below is a summary of the key terms of the Memorandum of Understanding ("MOU") between CreateTO and the Toronto Lands Corporation ("TLC"), on behalf of the Toronto District School Board ("TDSB"), for stratified and condominium lands (the "New School Property") within the 770 Don Mills Road Housing Now site (the "Development Site").

Transaction Terms	Description
Purchaser	Toronto District School Board ("TDSB"), by its manager and agent Toronto Lands Corporation ("TLC").
Vendor	The City of Toronto in its role as land-owner.
TDSB School Program Requirements	<ul style="list-style-type: none"> • Approximately 63,600 square feet of shell space for an elementary school • At least 10,000 square feet of outdoor podium space for exclusive use by the TDSB. • An outdoor play space of approximately 35,000 square feet for exclusive use by TDSB during school hours. TDSB will provide access to the outdoor play area to the City at nominal value for use by the public outside school hours. • Eight underground parking spots for exclusive use by TDSB
Title Transfer	<p>A strata freehold interest in the portion of the property comprising the elementary school building, outdoor podium space and outdoor play space to be sold to TDSB.</p> <p>To the extent the TDSB Parking is located within the underground parking garage forming part of a rental housing building on the Property, the Developer will sublease the TDSB Parking to TDSB for nominal consideration for the term of the ground lease.</p> <p>To the extent the TDSB Parking is comprised of condominium parking units within a residential condominium building on the Property, the Developer will be required to transfer ownership of each parking unit comprising the TDSB Parking to TDSB following registration of the condominium for nominal consideration.</p>
Closing Date	On the date that is 30 days following the later to occur of the following (the "New School Property Closing"):

	<p>(a) the substantial completion of the construction of the TDSB School, and</p> <p>(b) the registration on title to the Property of a strata reference plan legally describing the boundaries of the TDSB School (the “New School Property”).</p>
Deposit	There shall be no deposits paid in respect of the purchase agreement
Purchase Price	<p>The purchase price (the “Purchase Price”) shall be the market value of New School Property. Each party shall appoint an appraiser to determine the market value of New School Property. If (i) the lower of the two appraised values is within 10% of the higher of the two appraised values then the Purchase Price will be determined by taking the average of the two appraisals; or (ii) the two appraised values differ by more than 10% of the higher of the two appraised values then the two appraisers will appoint a third appraiser whose appraised value will conclusively determine the Purchase Price.</p>
Prepaid Amount	<p>Provided that the Purchase Agreement has been fully executed and provided that the Conditions set out in Sections 4(a), 4(b), 4(c)(i) and 4(c)(ii)(A) below have been satisfied, then within [●] days of confirmation of the Purchase Price through the appraisal process, TDSB shall prepay the full amount of the Purchase Price (the “Prepaid Amount”) to counsel to the City Owner, in trust, pending completion of the transaction contemplated by the Purchase Agreement (with such completion date being referred to herein as the “New School Property Closing Date”). The Prepaid Amount shall be held in an interest-bearing trust account with accrued interest payable to TDSB. Upon the New School Property Closing Date, the Prepaid Amount shall be released to the City Owner in satisfaction of the Purchase Price. If the transaction contemplated by the Purchase Agreement does not close, the Prepaid Amount and accrued interest shall be promptly repaid to TDSB without deduction.</p>
Conditions in the Definitive Agreements	<p>4. Any obligation of the parties to proceed with the Definitive Agreements and the Transaction shall be conditional on the following:</p> <p>(a) prior to the date that is [●] days following execution of the MOU, the TDSB shall be satisfied in its</p>

	<p>sole, absolute and unfettered discretion, with all of its investigations and searches in respect of the Property, including title to the Property, the physical and environmental condition of the Property, including any environmental and geotechnical investigations made by the TDSB and the zoning of the Property;</p> <p>(b) within [●] days following the waiver or satisfaction of the condition contained in (a) above:</p> <p>(i) the Board of Directors of CreateTO and City Council, in their sole, absolute and unfettered discretion, shall have authorized and approved the template Definitive Agreements to be included in City Owner's electronic data room and the transaction contemplated by this MOU; and</p> <p>(ii) the Board of Directors of Toronto Lands Corporation and the TDSB, in their sole, absolute and unfettered discretion, shall have authorized and approved the template Definitive Agreements to be included in City Owner's electronic data room and the transaction contemplated by this MOU;</p> <p>(c)</p> <p>(i) once the Purchase Price has been determined, then the TDSB shall have a period of [●] days [NTD: to be confirmed] within which to obtain the sole, absolute and unfettered approval of the Ministry of Education to the Transaction; and</p> <p>(i) within [●] days [NTD: to be confirmed] after the Ministry of Education approval contemplated in section 4(c)(i) above has been obtained, TDSB shall provide reasonable evidence to the City Owner that:</p> <p>(A) TDSB has received Ministry of Education funding for payment of the Purchase Price;</p> <p>(B) TDSB has received Ministry of Education funding for TDSB's share of hard costs incurred in respect of the TDSB School and TDSB Parking, including contingency reserves related thereto; and</p> <p>(C) TDSB has established a segregated bank account specific to the Project and that the funds set forth in section 4(c)(ii)(B) above have been deposited into such account.</p>
Definitive Agreements	<p>Purchase and Sale Agreement in respect of the transfer of title to the New School Property. A Tri-party Development Agreement and reciprocal rights and cost sharing agreement.</p>

	<p>TDSB to enter into a reciprocal rights and cost sharing agreement with the Developer (and subsequently, the owner of the Condominium Lands) providing for the integrated use, operation, maintenance, repair and reconstruction, if necessary, of the Project and the TDSB Project (the “Reciprocal Agreement”), the material terms of which shall be incorporated as a Schedule to the executed Tri-Party Development Agreement.</p> <p>City Owner shall prepare and deliver to TDSB a draft of the template Tri-Party Development Agreement, based upon the Term Sheet, within 30 days following mutual execution of the Term Sheet. The City Owner and TDSB shall use reasonable efforts to settle the terms of the template Tri-Party Development Agreement within 30 days following receipt of the draft. The template Tri-Party Development Agreement shall contain a comprehensive dispute resolution provision and shall contain all of the terms set forth in this Term Sheet and other terms typical and appropriate for a transaction of this type as agreed between the City Owner and TDSB.</p>
Construction of the TDSB School and TDSB Parking	<p>The City Owner will cause the Developer to act as development manager for the design and construction of the TDSB School and the TDSB Parking in accordance with the terms of a tri-party development agreement to be entered into among the City Owner, the TDSB and the Developer (the “Tri-Party Agreement”), the terms and conditions of which shall be satisfactory to the City Owner and the TDSB. The Tri-Party Agreement shall contain the terms and conditions set out in Key Terms of the transaction.</p>
Joint Construction Initiative	<p>The Developer will design and construct the Project in accordance with the Project design plans, using [an affiliate of the Developer][a third construction company] as construction manager (the “Construction Manager”), and will carry out and complete the construction of the Project by the Target Project Completion Date in accordance with (i) the overall design development and construction schedule approved by the Developer and TDSB; and (ii) the overall development budget approved by TDSB.</p> <p>TDSB agrees that it shall be responsible for the TDSB Project hard costs actually incurred and payable in connection with the construction of the TDSB Project and for a Proportionate Share of the soft costs of the</p>

	<p>Project related to the TDSB Project. “Proportionate Share” of Project soft costs means the proportion equal to the TDSB’s percentage of the budgeted soft costs of construction of the Project.</p> <p>The Project and the TDSB Project shall be designed and constructed in a manner such that the building systems and facilities for each of the Project and the TDSB Project shall be self-sufficient and separate from the other and contained within each respective component, to the maximum extent that is legally acceptable, commercially practical and reasonable to do so in the circumstances.</p>
Construction Management	<p>The Developer shall:</p> <p>(a) as “Owner” enter into a CCDC 5B construction management contract with Supplementary Conditions with the Construction Manager for the construction of the Project and TDSB Project (the “Construction Management Agreement”). The terms and provisions of the Construction Management Agreement shall require the approval of TDSB, acting reasonably;</p> <p>(b) retain the necessary, qualified and experienced persons selected by the Developer to act as consultants for the Project and TDSB Project, including an architect and such other consultants as the Developer determines from time to time are necessary or advisable for the Project, provided that all such consultants required for the TDSB Project shall be retained in consultation with TDSB and shall have been approved by TDSB, acting reasonably and without restricting TDSB’s right to appoint its own consultants;</p> <p>(c) pay all hard costs and soft costs of construction of the Project, subject to reimbursement by TDSB of TDSB’s share of (i) hard costs incurred in respect of the TDSB Project; (ii) soft costs for the TDSB Project, being reasonable, (A) consulting, legal and other professional fees and expenses, (B) government planning and building permit fees, (C) development charges and levies (if applicable to TDSB), (D) financing and guarantee fees, (E) insurance premiums, and (F) similar fees and expenses related thereto, and (iii) off-site improvement costs for the construction of all roads, services and other master plan improvements required by governmental agencies to be completed prior to and as a condition to the use and occupancy of the Project;</p>

	<p>(d) pay all costs payable to all consultants engaged by the Developer in respect of the Project, subject to reimbursement by TDSB of TDSB's share of consulting costs which are reasonable and market for projects similar to the Project and which are to be included within soft costs set out in (ii) immediately above;</p> <p>(e) develop the detailed design for the Project and, in consultation with and approval by TDSB (acting reasonably), the TDSB Project;</p> <p>(f) work with the City to secure site plan approval and all necessary permits and approvals required for the construction of the Project and the TDSB Project;</p> <p>(g) make all TDSB Project hard costs and soft costs incurred by or on behalf of the Developer in connection with the TDSB Project available for review by TDSB (and its designee) on a full transparent and open book basis at any time by TDSB on written request to the Developer and with appropriate audit rights on the part of TDSB at TDSB's cost; and</p> <p>(h) obtain warranties for the benefit of TDSB respecting the construction work and equipment included in the TDSB Project subject to approval by TDSB, acting reasonably;</p>
<p>General Principles Applicable to the Construction Management Agreement</p>	<p>The Developer shall cause the Construction Manager, at the Construction Manager's expense, to promptly correct all defects and deficiencies in the TDSB Project which appear prior to and during the warranty period specified in the Construction Management Agreement.</p> <p>TDSB shall have the right to approve any changes to the amount of all fees and bonuses (if any) payable to the Construction Manager under the Construction Management Agreement to the extent they shall apply to the TDSB Project.</p> <p>TDSB agrees that the TDSB Project hard costs include payment by TDSB of [●]% of the fixed amount of the Construction Manager's fee payable to the Construction Manager under the Construction Management Agreement in respect of the TDSB Project.</p> <p>TDSB (and its designee) shall be afforded reasonable access to all of the Developer's and the Construction Manager's books, records, correspondence, instructions, drawings, receipt vouchers, invoices and memoranda relating to the Cost of the Work and Reimbursable Expenses (as defined in the Construction</p>

	<p>Management Agreement), and for this purpose the Developer shall preserve all of its such records, and shall require and cause the Construction Manager to preserve all of its such records, for a period of two years following the date of the final certificate of payment under the Construction Management Agreement.</p> <p>The following matters under the Construction Management Agreement shall require approval from TDSB, acting reasonably:</p> <p>(a) the exercise by the Developer of any right to temporarily suspend or terminate the construction of the Project at any time for any reason;</p> <p>(b) any change to the Project implemented by the Developer, as Owner, which would have a material impact on the overall design development and construction schedule, a Material Change to the overall construction budget, a Material Change to the cost of the work and/or reimbursable expenses, and a material impact on the scope of work to be carried out and performed under the Construction Management Agreement;</p> <p>(c) Change directives and change orders resulting in:</p> <p>(i) an extension of the contract time (resulting in a delay to the Target Project Completion Date, including any recovery/mitigation plans); or</p> <p>(ii) any increase in any fixed amount of the fee payable to the Construction Manager under the Construction Management Agreement;</p> <p>(d) any assignment of the Construction Management Agreement by the Developer or the Construction Manager;</p> <p>(e) the types and amounts of insurance to be obtained and maintained by the Developer, as Owner, and the Construction Manager under the Construction Management Agreement. TDSB shall be a named insured on all insurance policies arranged by the Developer and the Construction Manager under the Construction Management Agreement; and</p> <p>(f) any public statements regarding the Project.</p>
Assignment	Neither the City Owner nor TDSB may assign the Definitive Agreements in whole or in part.
Indemnity and Release of City Owner	The Developer and TDSB shall provide a full release with respect to, and shall agree to indemnify and save

	the City Owner harmless from, any and all claims, losses, damages, liabilities, judgments, penalties, fines and expenses, including, but not limited to, reasonable legal fees and costs, resulting from or arising out of construction of the Project and the TDSB Project, save and except to the extent caused by the gross negligence or willful misconduct of the City Owner.
Development Fee	In addition to the fee payable to the Construction Manager under the Construction Management Agreement, as part of the TDSB Project costs, TDSB agrees to pay a development management fee to the Developer based on [●]% of construction costs for the TDSB Project.