

Union Station Enhancement Project, Package 1 - Metrolinx Expropriation

Date: September 25, 2024

To: City Council

From: City Solicitor

Wards: Ward 10 - Spadina - Fort-York

REASON FOR CONFIDENTIAL INFORMATION

This report contains advice or communications that are subject to solicitor-client privilege. This report contains information regarding potential litigation.

SUMMARY

Pursuant to the *Expropriations Act* and the *Metrolinx Act*, Metrolinx has expropriated areas of Union Station from the City for the purpose GO Expansion of constructing a south concourse that will connect to Union Station, being the Union Station Enhancement Project.

On or around March 6, 2023, Osmington (Union Station) Inc. ("Osmington") as head lessee. Osmington filed a Notice of Arbitration and Statement of Claim for compensation under the lease agreement between it and the City to the Ontario Land Tribunal ("OLT"). Metrolinx is named as the respondent in Osmington's claim.

On May 15, 2023, the City filed a Notice of Arbitration and Statement of Claim for compensation to the OLT in respect of the expropriations which also named Metrolinx as the respondent.

The OLT has held three case management conferences in respect of the City's claim and Osmington's claim and has scheduled a 40-day hearing to commence on June 9, 2025 at which time the City's claim and Osmington's claim will be heard together. The OLT has ordered the City, Osmington, and Metrolinx to complete discoveries in the litigation on or before November 1, 2024.

This report deals with litigation that affects the City and contains advice or communications that are subject to solicitor-client privilege. The purpose of this report is to seek further direction regarding the litigation the information in this regard is being provided as confidential material.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in Confidential Attachment 1 to this Report.
2. City Council direct that all information contained in Confidential Attachment 1 including Confidential Appendix "A" and the confidential recommendations are to remain confidential at the discretion of the City Solicitor as it contains advice and information which is subject to solicitor-client privilege.

FINANCIAL IMPACT

The financial impact is discussed in Confidential Attachment 1 to this report.

DECISION HISTORY

In April 2018, City Council adopted Item EX33.1 "Implementation of the SmartTrack Stations Program and the Metrolinx Regional Express Rail Program", and approved, in principle, the use of the City-owned land to the south of Union Station for the USEP Package 1 and authorized the Deputy City Manager, Corporate Services, to negotiate the terms of the necessary easements, licenses and other agreements with Metrolinx, and the terms of any required amendments to existing agreements that will be impacted by the USEP Package 1 and report back to the Executive Committee on the recommended terms of such agreements.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EX33.1>

In July 2018, City Council adopted Item EX36.13 "Metrolinx's Union Station Enhancement Project, Package 1 Implementation and Package 3 Review", and approved the key terms and negotiating principles to be used in the negotiations with Metrolinx on the Framework Agreement, the Design and Construction Agreement and certain other Key Agreements for the USEP Package 1.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EX36.13>

In December 2019, City Council adopted Item EX11.7 "Metrolinx's Union Station Enhancement Project - Package 1", which provided an update on Metrolinx's proposed expropriation of certain City-owned lands at Union Station and directed staff to waive the City's right to request a Hearing of Necessity in respect of the expropriation.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EX11.7>

During its meeting of September 30, October 1, and October 2, 2020, City Council adopted Item EX16.6 "Union Station Enhancement Project, Package 1 - Update on Metrolinx Expropriation and Design and Construction Agreement" which provided an update on the details of Metrolinx's expropriation of City-owned lands at Union Station and reported on negotiations between City staff and Metrolinx on agreements for the design and construction of USEP Package 1 for a new south concourse.

<https://secure.toronto.ca/council/agenda-item.do?item=2020.EX16.6>

COMMENTS

Pursuant to the *Expropriations Act* and the *Metrolinx Act*, Metrolinx expropriated areas of Union Station from the City on January 9, 2020 (the "First Expropriation") for the purpose of advancing GO Expansion works at Union Station. The First Expropriation was for the purpose of constructing a south concourse that will connect to Union Station, being the Union Station Enhancement Project, Package 1 ("USEP Package 1").

The First Expropriation included the following areas in order to advance USEP Package 1: unexcavated lands behind Union Station; two corridor areas within the Station that provide access to the most southern platforms from the teamways and concourses; airspace above the viaduct on both York Street and Bay Street; access to and from Maple Leaf Square; and a temporary exclusive easement over the rest of the City-owned portion of Union Station until the end of 2024, to ensure it has unfettered access throughout the Station for the purpose of constructing USEP Package 1.

The expropriated areas include a bike storage room in the York East Teamway, a portion of the truck tunnel leading to the City's loading dock, and a portion of York West Teamway that was leased to VIA Rail.

Lands included in the First Expropriation was also the subject of a lease agreement between the City and Osmington as head lessee. Osmington has filed a Notice of Arbitration and Statement of Claim for compensation under the lease agreement to the OLT.

On May 13, 2021, Metrolinx expropriated additional areas of Union Station from the City (the "Second Expropriation"). These additional areas are heritage freight elevator enclosures within Union Station. The elevator enclosures are intended to provide additional vertical access points for pedestrians to Platform 20/21, which is currently servicing VIA Rail. Platform 20/21 will be widened by Metrolinx in order to temporarily re-allocate GO train service in an effort to minimize impacts to transit operations while the new south concourse is being built. As a result of increased pedestrian traffic to Platform 20/21, additional vertical access points are required to safely manage the flow of passengers. These elevator shafts are located north of the City-owned lands that were the subject of the First Expropriation.

On September 20, 2024, Metrolinx expropriated an exclusive temporary easement interest in Union Station (the "Third Expropriation"). The Third Expropriation effectively extended the term of the expropriation of the temporary exclusive easement that formed a part of the First Expropriation for an additional four years.

The lands that Metrolinx has expropriated from the City as a part of the First Expropriation and Third Expropriation are shown and described in Attachment 1 to Item EX16.6 which can be accessed by the link provided above. The lands which Metrolinx has expropriated from the City as a part of the Second Expropriation are attached to this Report as Public Attachment 1.

This report has been prepared in consultation with staff from Corporate Real Estate Management and Corporate Finance.

The City Solicitor requires further instructions. This report is about litigation before the OLT and contains advice or communications that are subject to solicitor-client and litigation privilege. The report is urgent as it relates to ongoing litigation the related deadlines and cannot be deferred. Confidential Attachment 1 to this report contains confidential advice and should be considered by City Council *in camera*.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Public Attachment 1 - Expropriation Plan AT5736714 and Summary of Expropriated Lands (the "Second Expropriation")
2. Confidential Attachment 1 - Confidential Recommendations and Confidential Information
3. Confidential Appendix "A" - Confidential Information