

Expropriation of Property Interests at 2 Bloor Street East and 90 Bloor Street East for the Bloor Yonge Capacity Improvement Project – Stage 2

Date: December 20, 2023

To: General Government Committee

From: Executive Director, Corporate Real Estate Management

Wards: 11 - University-Rosedale

REASON FOR CONFIDENTIAL INFORMATION

This report deals with a proposed acquisition of land by the City of Toronto (the "City").

SUMMARY

On May 11, 2022, City Council authorized the initiation of expropriation proceedings for the partial fee simple taking and temporary easements from the freehold and leasehold property located at 2 Bloor Street East and 90 Bloor Street East, and on July 19, 2022 City Council further authorized the initiation of expropriation proceedings for the full fee simple taking of the freehold property located at 2 Bloor Street East, for the purposes of expanding the Bloor Yonge interchange station as part of the Toronto Transit Commission (T.T.C.) Bloor Yonge Capacity Improvement Project (the "Project").

This report relates to the second stage of the expropriation process for both expropriations. During the first stage and in accordance with the Expropriations Act (the "Act"), Notices of Application for Approval to Expropriate were served on all applicable "registered owners", who had 30 days to request an inquiry into whether the proposed taking is fair, sound, and reasonably necessary.

On July 6 and 7, 2023, a hearing was held by the Ontario Land Tribunal (the "O.L.T.") with respect to the proposed full fee simple taking, and the partial fee simple and temporary easement takings of 2 Bloor Street East. The City subsequently received a report from the O.L.T. on December 4, 2023, concluding that the proposed takings of 2 Bloor Street East is for a critical and necessary public purpose with a critical schedule, therefore it is recommended that the expropriation proceed as proposed. No hearing was requested or held in respect of 90 Bloor Street East.

To comply with the legislative requirements of the Act, the report of the O.L.T., attached as Appendix A, must be considered by City Council before it exercises its discretion as approving authority to authorize the expropriation by this second stage report. If authorized, the Expropriations Plans will be registered and associated notices served. Statutory Offers of Compensation must be served prior to the City taking possession of the expropriated properties.

The property requirements are set out in Appendix B and shown on the reference plans attached in Appendix C.

RECOMMENDATIONS

The Executive Director, Corporate Real Estate Management recommends that:

1. City Council, as approving authority under the Expropriations Act, consider the Report of the Ontario Land Tribunal attached as Appendix A.
2. City Council authorize and direct the City to pay \$200 in costs arising from the hearing to the expropriated owner, 6524443 Canada Inc. (the "Owner"), in accordance with the Expropriations Act.
3. City Council, as approving authority under the Expropriations Act, approve the expropriation for the full, and the partial fee simple taking and temporary easements from the freehold and leasehold property located at 2 Bloor Street East and 90 Bloor Street East, as set out in Appendix B and shown in Appendix C (the "Property Requirements"), for the purposes of expanding the Bloor Yonge interchange station as part of the Toronto Transit Commission Bloor Yonge Capacity Improvement Project.
4. City Council authorize the City, as expropriating authority under the Expropriations Act, to take all necessary steps to comply with the Expropriations Act, including but not limited to the preparation and registration of an Expropriation Plan, and the execution and service of Notices of Expropriation, Notices of Election and Notices of Possession, as may be required.
5. City Council authorize the Director, Transaction Services, Corporate Real Estate Management, or their designate, to execute the Notices of Expropriation and Notices of Possession, obtain an appraisal report to value the Property Requirements, and to prepare, execute, serve and pay out Offers of Compensation on all registered owners of 2 Bloor Street East and 90 Bloor Street East, at the appraised value, all in accordance with the requirements of the Expropriations Act.
6. City Council authorize the public release of the confidential information contained in Confidential Attachment 1 once there has been a final determination of the compensation payable to the Owners by arbitration, appeal or settlement to the satisfaction of the City Solicitor.

FINANCIAL IMPACT

Confidential Attachment 1 to this report identifies the initial estimated market value of the Property Requirements to be expropriated.

The costs to acquire the Property Requirements will be funded from the 2023-2032 Council Approved Capital Budget and Plan for the T.T.C. under capital project account CTT155-01 Yonge-Bloor Capacity Improvement.

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

DECISION HISTORY

On July 19, 2022, City Council adopted CC47.6 and approved the initiation of expropriation of the partial fee simple taking from the freehold property located in the property municipally known as 2 Bloor Street East, for the purposes of expanding the Bloor Yonge interchange station as part of the T.T.C. B.Y.C.I. Project.

<https://www.toronto.ca/legdocs/mmis/2022/cc/bgrd/backgroundfile-228831.pdf>

On May 11, 2022, City Council adopted GL29.10 and approved the initiation of expropriation of parts of 2 Bloor Street East and 90 Bloor Street East for the purposes of expanding the Bloor Yonge interchange station as part of the T.T.C. B.Y.C.I Project.

<http://www.toronto.ca/legdocs/mmis/2022/gl/bgrd/backgroundfile-222632.pdf>

On October 29, 2019, City Council adopted EX9.1 and approved the Preliminary Agreement with the Province as a starting framework for agreements that will result in significant new transit investment in Toronto to both maintain and expand the existing transit systems. As a part of this agreement, the Province of Ontario committed to endorse the Project under the Investing in Canada Infrastructure Program Public Transit Infrastructure Fund Phase 2 program.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EX9.1>

On August 26, 2019, the Government of Canada announced priority funding consideration would be given to the Project and is setting aside \$0.5 billion in federal funding through the Public Transit Infrastructure Stream, subject to conditions being met, including final approval by the Treasury Board. All three levels of government are expected to contribute \$0.5 billion towards the estimated \$1.5 billion project.

<https://www.canada.ca/en/office-infrastructure/news/2019/08/getting-torontoniansmoving-making-crucial-investments-in-public-transit.html>

On April 16, 2019, City Council endorsed the B.Y.C.I. through the adoption of EX4.1 as a priority project under the City of Toronto's funding allocation of the Investing in Canada Infrastructure Plan ("I.C.I.P.") Public Transit Infrastructure Fund ("P.T.I.F.").

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EX4.1>

On April 11, 2019 the T.T.C. Board approved "Line 1 Capacity Requirements - Status Update and Preliminary Implementation Strategy", which outlined next steps to achieve capacity improvements and accommodate forecast demand on Line 1. The expansion of Bloor-Yonge Station was identified as one of the key components to address capacity of the subway system, which would accommodate passenger and transfer growth at that station.

[https://www.ttc.ca/About the TTC/Commission reports and information/Commission meetings/2019/April 11/Reports/Decisions/18 Line 1 Capacity Requirements Status Update Decision.pdf](https://www.ttc.ca/About%20the%20TTC/Commission%20reports%20and%20information/Commission%20meetings/2019/April%2011/Reports/Decisions/18%20Line%201%20Capacity%20Requirements%20Status%20Update%20Decision.pdf)

In May 2017, City Council requested the T.T.C. to report on the status of plans to expand the Bloor-Yonge interchange station, including estimated costs, timelines and potential capacity added to Line 1. At the time, City Council also confirmed the expansion of the station as priority project for Provincial and Federal Funding.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX25.1>

COMMENTS

Background

City staff commenced negotiations with the owners of 2 Bloor Street East and 90 Bloor Street East in an effort to acquire the Property Requirements needed to expand the Bloor-Yonge interchange station as part of the T.T.C. Project. The Project is a critical component of addressing capacity constraints on T.T.C.'s subway Line 1 and is expected to alleviate impacts on the Bloor-Yonge Station from projected growth in the city of Toronto and surrounding jurisdictions, planned transit expansion programs as well as the expected higher density in the area. Council eventually deemed it appropriate to commence expropriation proceedings.

Pursuant to Council's authority and in accordance with the Act, Notices of Application for Approval to Expropriate were served on the registered owners and published in the newspaper.

The Hearing of Necessity

On November 11, 2022, the City received notice of a request for a hearing as to whether the proposed taking is fair, sound and reasonably necessary from the owner of 2 Bloor Street East. No hearing was requested or held in respect of 90 Bloor Street East.

The hearing of necessity (the "Hearing") was held on July 6 and 7, 2023 by the O.L.T. and heard evidence on behalf of the City and evidence on behalf of the Owner. Subsequently, the O.L.T. provided its report (the "Report") to the City on December 4, 2023, attached as Appendix A.

In the Report, the O.L.T. stated that evidence does not support the entire taking of 2 Bloor Street East, however in order to meet T.T.C.'s construction timelines, the O.L.T. recommends that to deny some or all of the takings as not fully supported may not afford sufficient time to cover all the ground for a potential agreement and

commencement of construction. Therefore, the O.L.T. concluded that the proposed construction is for a critical and necessary public purpose and it has a critical schedule and recommended that the expropriations proceed as proposed.

The Act also requires the City to render its second stage approval decision and serve it on the applicable owners within 90 days of receiving the Report.

Conclusion

For the reasons provided in the Report and to ensure the Project's construction deadlines are maintained, it is recommended that City Council, as approving authority under the Expropriations Act, approve the expropriation of the Property Requirements and that City Council authorize the City, as expropriating authority, to take all necessary steps to proceed with second stage of the expropriation.

CONTACT

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

Michael Stevenson, Director, Third Party - Property and Planning, Toronto Transit Commission, 416-590-6045, Michael.Stevenson@ttc.ca

SIGNATURE

Patrick Matozzo
Executive Director, Corporate Real Estate Management

ATTACHMENTS

Confidential Attachment 1 - Financial Implications
Appendix A - Ontario Land Tribunal's Report
Appendix B - Table of Property Requirements
Appendix C - Location Maps
Appendix D - Draft Reference Plans

Appendix A - Ontario Land Tribunal's Report

Ontario Land Tribunal

Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: December 04, 2023 **CASE NO(S):** OLT-22-004661

PROCEEDING COMMENCED UNDER subsection 6(2) of the Expropriations Act, R.S.O. 1990, c. E.26

Claimant: 6524443 Canada Inc.
Expropriating Authority: City of Toronto/Toronto Transit Commission
Property Address: Bloor-Yonge Capacity Improvement Project
(Various Addresses)
Municipality/UT: City of Toronto
OLT Case No.: OLT-22-004661
OLT Lead Case No.: OLT-22-004661
OLT Case Name: 6524443 Canada Inc. v. Toronto (City)

Heard: July 6 to 7, 2023 by Video Hearing

APPEARANCES:

| | |
|---------------------------------------|--------------------------|
| Parties | Counsel |
| City of Toronto | A. Kanner A. Valela |
| 6524443 Canada Inc. ("Brookfield") | F. Sperdutti M. Grant |

REPORT OF THE TRIBUNAL DELIVERED BY D.S. COLBOURNE

[1] This is a Report of a Hearing of Necessity held under s. 7 of the Expropriations Act, R.S.O. 1990, Chapter E. 26, as amended (the "Act").

[2] Informal inquiries are held to determine whether the proposed taking by the Expropriating Authority of an owner's land is "fair, sound and reasonably necessary in Expropriation of 2 Bloor St. E. and 90 Bloor S.t E. - Stage 2

the achievement of the objectives of the expropriating authority” as the Act states. The courts have interpreted this test to be whether the proposed taking is “reasonably defensible”.

[3] The lands to be taken in this matter are for the purposes of the Bloor-Yonge Capacity Improvement project (“BYCI”). This is to expand and modernize Bloor-Yonge Station, the main interchange station connecting Line 1 – Yonge-University Line 1 and Line 2, Bloor-Danforth Line, which is the busiest station on the Toronto Transit Commission (“TTC”) subway system. This served approximately 220,000 customers on an average weekday in 2019, and is anticipated to serve approximately 400,000 customers on an average weekday by 2056.

[4] The scope of the work outlined in the Notice of Grounds is extensive. For the purposes of this Hearing, it focuses on addressing passenger capacity at Bloor-Yonge station, by reducing platform overcrowding and distribution on the Bloor-Yonge platforms, all to provide for an optimal subway station operational design. As well, it is to commence construction in a timely and efficient manner, all the while maintaining station operations during the construction to the greatest extent possible.

[5] The TTC has established a timetable for all construction aspects.

[6] Contained within the exhibits is a Brookfield letter dated March 31, 2022, which sets out the background, in part. The letter reads:

By way of background, TTC approached Brookfield over two years ago with a proposal to expand capacity for the Yonge/Bloor subway line. It became readily apparent that a preliminary hurdle would need to be overcome before platform construction could proceed since the new TTC platform is proposed to be constructed through the space currently occupied by the existing “Chiller Plant”. The Chiller Plant houses critical infrastructure necessary to keep the Hudson’s Bay Complex open, including not just cooling equipment but also water services, sump pumps and related infrastructure. The Chiller Plant services not only those improvements owned by Brookfield but also other land interest across the Hudson’s Bay complex, including the 2 Bloor East office tower, the RBC Bank, and the majority of the Hudson’s Bay Podium. The platform in question is above the room/area which is presently housing the chiller plant serving the whole Brookfield building, which area is leased (Leasehold Lands) by Brookfield from the City. The platform alterations require that the chiller be moved and the City proposes to move it to an area next door to the current area.

[7] The current status as stated in Brookfield’s argument is:

The City of Toronto proposes to expropriate certain interests in Brookfield leasehold land, which is not opposed. The City also proposes to expropriate interests in Brookfield’s freehold lands, which is also not opposed. The City also proposes to expropriate interests in Brookfield’s freehold lands for a future platform and stairwell, which is also not opposed.

[8] Brookfield opposes the City’s Proposal to expropriate that portion of the Leasehold Lands occupied by the current chiller plant as premature (the Leasehold Expropriation of 2 Bloor St. E. and 90 Bloor S.t E. - Stage 2

taking), and it further opposes the City's proposal to expropriate the entirety of Brookfield's independent freehold parcel at the corner of Yonge and Bloor (the full freehold taking), when a more modest taking is needed, according to some evidence.

[9] With the expansion, the TTC proposes to move the Chiller to the adjacent area, which is owned by the TTC. This relocation to next door has the advantage in that the present chiller pipes run through that location and it is described as "the most logical, efficient and optimal location." The Landowner takes no issue with the need for expansion of the southbound platform on Line 1, but as this requires the relocation of the chiller and other equipment serving tenants in 2 and 90 Bloor Street, the control of this area by TTC is an issue for Brookfield. To review, the chiller is currently located on leasehold lands below Platform 2. It is to be moved from those lands of Brookfield to the adjacent area, which has piping and associated systems, and requires fewer modifications for the necessary services to allow for smooth integration.

[10] Over a number of years as the plan for improvement has developed, the Parties have been meeting to try to accomplish all the necessary arrangements. At one time, expansion of the whole building as proposed by Brookfield would have also required the relocation of the chiller. Brookfield abandoned that proposal and now only intends alterations to the podium of the building, which does not require the relocation of the chiller for that purpose. Subsequently, the effort has been solely to address the subway improvements and give effect to the relocation. No agreement has been accomplished and given its construction schedule the City decided it was necessary to expropriate the parts proposed. It still remains Brookfield's obligation to provide the chiller and other services to the building occupants, and its concern is it won't have control of the chiller area for access on City's lands.

[11] Contained in a letter in Exhibit 1, Tab 11 is the following:

Recognizing the importance of this pre-platform construction work, Brookfield entered into an agreement with the TTC on March 18, 2021 styled the "Yonge-Bloor 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.

[12] The existing Chiller plant cannot be eliminated until the new Plant is situated, constructed, reconnected and operational. Engineers have advised that the reconstructed Chiller Plant would optimally be situated on Brookfield's adjacent freehold lands at the north-east corner of Yonge Street and Bloor Street. This would, however, forever eliminate the ability of Brookfield or successor owners to redevelop those lands.

[13] Brookfield has advised that it would be agreeable to accommodate the new Chiller Plant within its freehold lands, subject to an agreement with the City and TTC on terms, which it has proposed in a Term Sheet delivered to CreateTO and the TTC on July 26, 2021.

[14] That appears to be when cooperation ended.

[15] Brookfield now urges the Tribunal to recommend that:

(a) Staff investigate alternatives to the Full Freehold taking, including but not limited to finding alternative space within the leasehold lands to accommodate a new chiller plant; and,

(b) Alternatively, that the City take a temporary interest in the freehold lands sufficient to permit its investigations and to construct the new chiller plant in the theatre space if necessary without causing Brookfield to lose ownership of lands needed for the BYCI project. The Leasehold taking is premature and could follow when the new chiller plant is operational.

FINDINGS AND CONCLUSION

[16] The Tribunal finds that some of the evidence does not support the entire taking of Brookfield lands. This is why Brookfield suggested the leasehold taking is premature and further study is required. What is proposed can create significant operational problems for Brookfield, its tenants and others. A letter submitted by the City dated June 2, 2022, contains the following:

Brookfield has been aware from the start of the discussions that the expropriation of the lands on which the existing chiller is located necessitates its removal and the construction of a new chiller in a new location. There is no viable alternative for this. As a result, Brookfield needs to plan around this requirement for completion effective December 1, 2023, which is the date that the City requires possession of the property on which the existing chiller is located. Brookfield must take steps now to mitigate its losses.

[17] Time is of the essence, and it would seem to the Tribunal that to deny some or all of the takings as not fully supported may not afford the Parties sufficient time to cover all the ground for a potential agreement and commencement of construction. Time already spent has not been successful in this respect. It seems that there is no reason disclosed in the evidence why Brookfield cannot have control of the proposed area or a lease in order to fulfill its obligations to the other areas of the building.

[18] This proposed construction is for a critical and necessary public purpose and it has a critical schedule. Therefore, it is recommended that the expropriations proceed as proposed.

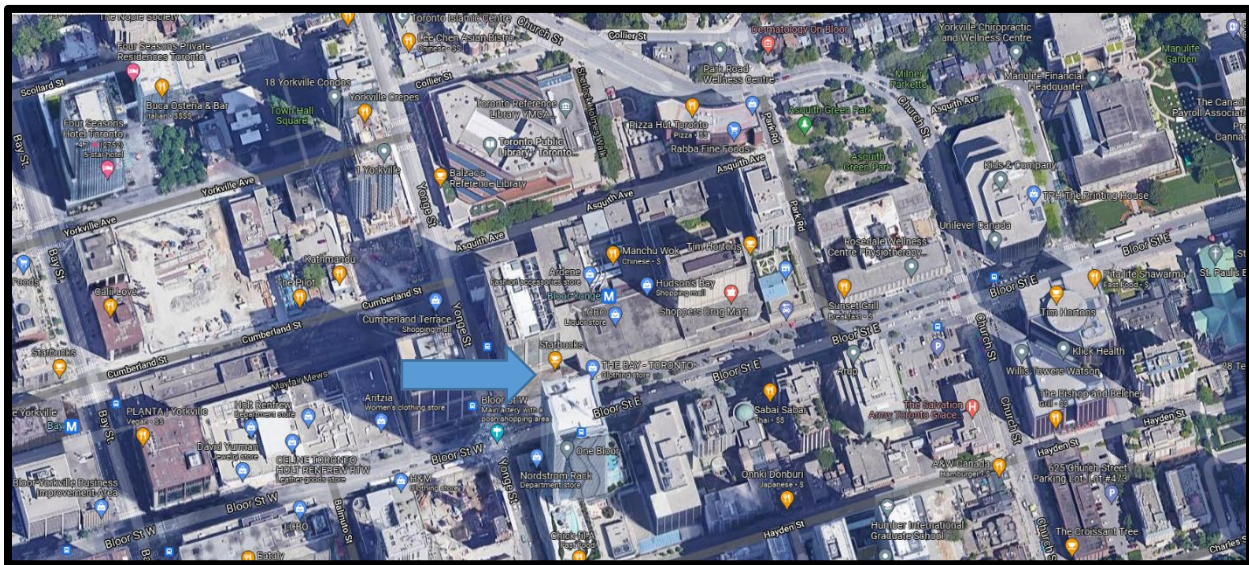
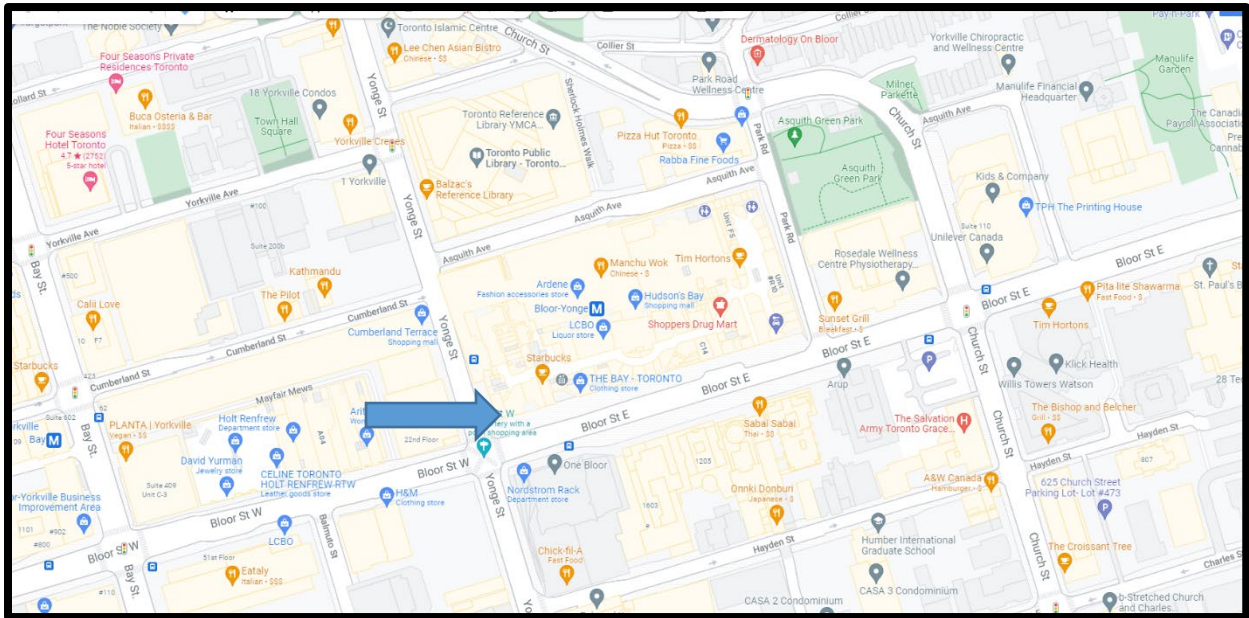
“D.S. Colbourne”

D.S. COLBOURNE
VICE-CHAIR

Appendix B - Table of Project Requirements

| Property Identification Number (PIN) | Required Interest |
|--|---|
| All of PIN 21110-0266 (LT) Part of Lot 20 Concession 2 FTB Township of York, designated as Part 14, Plan 66R-5391, City of Toronto | Fee Simple (All right, title and interest in the Freehold PIN). |
| 21110-0043 (LT) Leasehold PIN | Fee Simple (All right, title and interest in the Leasehold PIN) over Parts 2, 3, 4, 6, 7, 8, 12, 16, 17, 18, 19, 20, 21 and 22 shown in Appendix D on the attached reference plans. |
| 21110-0043 (LT) Leasehold PIN | Temporary Easement over Parts 1, 5, 9, 10, 11, 13, 14, 15, 23, 24, 25, 26, 27 and 28 shown in Appendix D on the attached reference plans. |
| 21110-0071 (LT) Freehold PIN & 21110-0053 (LT) Leasehold PIN | Fee Simple (All right, title and interest in the Freehold PIN and Leasehold PIN) over Part 1 shown in Appendix D on the attached reference plan. |

Appendix C - Location Maps



Appendix D - Draft Reference Plans

