

DELEGATED APPROVAL FORM
DEPUTY CITY MANAGER, CORPORATE SERVICES
EXECUTIVE DIRECTOR, CORPORATE REAL ESTATE MANAGEMENT

TRACKING NO.: 2023-251

Approved pursuant to the Delegated Authority contained in Article 2 of City of Toronto Municipal Code Chapter 213, Real Property

Prepared By:	Jatinder Rahul	Division:	Corporate Real Estate Management
Date Prepared:	November 29, 2023	Phone No.:	(416) 392-7290
Purpose	To obtain authority for City of Toronto (the "City") to enter into a tie-back and shoring agreement and a construction crane swing licence agreement (Collectively, the "Agreements") with Brenyon Way Charitable Foundation (the "Licensee"), a nonprofit corporation, to permit the installation of tie-backs on the terms set out in Schedule "C" attached hereto and to permit the swinging of a crane on the terms set out in Schedule "D" attached hereto, both in furtherance of the development project at 25 Sewells Road, Toronto, ON (the "Development Lands").		
Property	The tiebacks will be installed beneath the portion of the City-owned property municipally known as Wikson Trail Park and legally described as: PCLS E-1 & R-1 SECT M1607 BLKS E & R 66M1607 Scarborough, City of Toronto, being PIN 06065-0006 (LT) (the "Property") shown in Schedule "B" attached hereto and the crane swing will be permitted to swing over the portion of the Property known as the Licensed Area, as shown in Schedule "B" attached hereto.		
Actions	1. Authority be granted to enter into the Agreements between the City and the Licensee, substantially on the terms and conditions outlined in Schedules "C" and "D" attached hereto, and on such other amended terms as may be satisfactory to the Executive Director of Real Estate Services, and in a form acceptable to the City Solicitor;		
Financial Impact	<p>Per MM8.31 adopted by City Council on July 20, 2023, the value of the licence rights granted to the Licensee pursuant to the Agreements is being secured in a contribution agreement between the City and the Licensee pursuant to the City's Open Door Program. As such, no licence fee is being collected upon execution of the Agreements and can only be collected upon termination of said contribution agreement.</p> <p>The Licensee shall cover the City's cost of preparing the nominal licence agreements in accordance with Chapter 441 of the Municipal Code.</p>		
Comments	<p>The Licensee has requested to use of a portion of the Property for the purposes of installing tie-backs and the use of crane swing arm in relation to its development of affordable rental apartments on the Development Lands. This project is part of the City's Open Door program to support the creation of new affordable housing.</p> <p>Per MM8.31, City Council authorized the City to waive the licence fees and authorized the remainder of the terms and conditions to be negotiated to the satisfaction of the Executive Director, Corporate Real Estate Management in consultation with the General Manager, Parks, Forestry and Recreation.</p> <p>The terms and conditions of the Agreements have been reviewed by staff and have been determined to be reasonable.</p> <p>The Chief Financial Officer and Treasurer has reviewed this DAF and agrees with the financial impact information.</p>		
Terms	<p>See attached Schedule "C" for Tie-back and Shoring Agreement terms</p> <p>See attached Schedule "D" for Crane Swing Licence Agreement terms</p>		
Property Details	Ward:	Ward 25 - Scarborough-Rouge Park	
	Assessment Roll No.:	1901125371002000000	
	Approximate Size:		
	Approximate Area:	Crane swing: 533m ² (5737 ft ²) & Tie-backs: 86.86 m ² (946 ft ²)	
	Other Information:		

A.	Executive Director, Corporate Real Estate Management has approval authority for:	Deputy City Manager, Corporate Services has approval authority for:
1. Acquisitions:	<input type="checkbox"/> Where total compensation does not exceed \$3 Million.	<input type="checkbox"/> Where total compensation does not exceed \$5 Million.
2A. Expropriations Where City is Expropriating Authority:	<input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$3 Million.	<input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$5 Million.
2B. Expropriations For Transit-Related Purposes Where City is Property Owner or Has Interest in Property Being Expropriated:	<input type="checkbox"/> (a) Acceptance of statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$3 Million. Request/waive hearings of necessity delegated to less senior positions.	<input type="checkbox"/> (a) Acceptance of statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$5 Million. Request/waive hearings of necessity delegated to less senior positions.
3. Issuance of RFPs/REOs:	<input type="checkbox"/> Issuance of RFPs/REOs.	<input type="checkbox"/> Issuance of RFPs/REOs.
4. Permanent Highway Closures:	<input type="checkbox"/> Initiate process & authorize GM, Transportation Services to give notice of proposed by-law.	<input type="checkbox"/> Initiate process & authorize GM, Transportation Services to give notice of proposed by-law.
5. Transfer of Operational Management to Divisions, Agencies and Corporations:	<input type="checkbox"/> Transfer of Operational Management to Divisions, Agencies and Corporations.	<input type="checkbox"/> Transfer of Operational Management to Divisions, Agencies and Corporations.
6. Limiting Distance Agreements:	<input type="checkbox"/> Where total compensation does not exceed \$3 Million.	<input type="checkbox"/> Where total compensation does not exceed \$5 Million.
7. Disposals (including Leases of 21 years or more):	<input type="checkbox"/> Where total compensation does not exceed \$3 Million.	<input type="checkbox"/> Where total compensation does not exceed \$5 Million.
8. Exchange of land in Green Space System & Parks & Open Space Areas of Official Plan:	<input type="checkbox"/> Exchange of land in Green Space System and Parks and Open Space Areas of Official Plan.	<input type="checkbox"/> Exchange of land in Green Space System and Parks and Open Space Areas of Official Plan.
9. Leases/Licences (City as Landlord/Licensor):	<input checked="" type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$3 Million. <input type="checkbox"/> (b) Where compensation is less than market value, for periods not exceeding twelve (12) months, including licences for environmental assessments and/or testing, etc. Delegated to a more senior position.	<input type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$5 Million. <input type="checkbox"/> (b) Where compensation is less than market value, for periods not exceeding twelve (12) months, including licences for environmental assessments and/or testing, etc. <input type="checkbox"/> (c) Where compensation is less than market value, provided tenant and lease satisfy Community Space Tenancy Policy criteria set out in Item EX28.8, as adopted by Council on November 7, 8 and 9, 2017, as amended from time to time.
10. Leases/Licences (City as Tenant/Licensee):	<input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$3 Million.	<input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$5 Million.
11. Easements (City as Grantor):	<input type="checkbox"/> (a) Where total compensation does not exceed \$3 Million. <input type="checkbox"/> (b) When closing roads, easements to pre-existing utilities for nominal consideration.	<input type="checkbox"/> (a) Where total compensation does not exceed \$5 Million. <input type="checkbox"/> (b) When closing roads, easements to pre-existing utilities for nominal consideration.
12. Easements (City as Grantee):	<input type="checkbox"/> Where total compensation does not exceed \$3 Million.	<input type="checkbox"/> Where total compensation does not exceed \$5 Million.
13. Revisions to Council Decisions in Real Estate Matters:	<input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and subject to General Condition (U)).	<input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and subject to General Condition (U)).
14. Miscellaneous:	<input type="checkbox"/> (a) Approvals, Consents, Notices and Assignments under all Leases/Licences <input type="checkbox"/> (b) Releases/Discharges <input type="checkbox"/> (c) Surrenders/Abandonments <input type="checkbox"/> (d) Enforcements/Terminations <input type="checkbox"/> (e) Consents/Non-Disturbance Agreements/Acknowledgements/Estoppel Certificates <input type="checkbox"/> (f) Objections/Waivers/Cautions <input type="checkbox"/> (g) Notices of Lease and Sublease <input type="checkbox"/> (h) Consent to regulatory applications by City, as owner <input type="checkbox"/> (i) Consent to assignment of Agreement of Purchase/Sale; Direction re Title <input type="checkbox"/> (j) Documentation relating to Land Titles applications <input type="checkbox"/> (k) Correcting/Quit Claim Transfer/Deeds	<input type="checkbox"/> (a) Approvals, Consents, Notices and Assignments under all Leases/Licences <input type="checkbox"/> (b) Releases/Discharges <input type="checkbox"/> (c) Surrenders/Abandonments <input type="checkbox"/> (d) Enforcements/Terminations <input type="checkbox"/> (e) Consents/Non-Disturbance Agreements/Acknowledgements/Estoppel Certificates <input type="checkbox"/> (f) Objections/Waivers/Cautions <input type="checkbox"/> (g) Notices of Lease and Sublease <input type="checkbox"/> (h) Consent to regulatory applications by City, as owner <input type="checkbox"/> (i) Consent to assignment of Agreement of Purchase/Sale; Direction re Title <input type="checkbox"/> (j) Documentation relating to Land Titles applications <input type="checkbox"/> (k) Correcting/Quit Claim Transfer/Deeds

B. Deputy City Manager, Corporate Services and Executive Director, Corporate Real Estate Management each has signing authority on behalf of the City for:
<ul style="list-style-type: none"> • Documents required to implement matters for which each position also has delegated approval authority.
<ul style="list-style-type: none"> • Agreements of Purchase and Sale and all implementing documentation for purchases, sales and land exchanges not delegated to staff for approval.
<ul style="list-style-type: none"> • Expropriation Applications and Notices following Council approval of expropriation.
<ul style="list-style-type: none"> • Community Space Tenancy Leases approved by delegated authority by the Deputy City Manager, Corporate Services and any related documents.

Pre-Condition to Approval

Complies with General Conditions in Appendix B of City of Toronto Municipal Code Chapter 213, Real Property

Consultation with Councillor(s)

Councillor:	Councillor Jennifer McKelvie	Councillor:	
Contact Name:	Charrissa Klander	Contact Name:	
Contacted by:	<input type="checkbox"/> Phone <input checked="" type="checkbox"/> E-Mail <input type="checkbox"/> Memo <input type="checkbox"/> Other	Contacted by:	<input type="checkbox"/> Phone <input type="checkbox"/> E-mail <input type="checkbox"/> Memo <input type="checkbox"/> Other
Comments:	Concurs	Comments:	

Consultation with Divisions and/or Agencies

Division:	Parks, Forestry and Recreation	Division:	Financial Planning
Contact Name:	Glen Zeta	Contact Name:	Ciro Tarantino
Comments:	Concurs	Comments:	Concurs

Legal Services Division Contact

Contact Name:	Catherine Thomas
---------------	------------------

DAF Tracking No.: 2023- 251	Date	Signature
Recommended by: Jennifer Kowalski Manager, Real Estate Services	Dec. 1, 2023	Signed by Jennifer Kowalski
Recommended by: Alison Folosea Director, Real Estate Services	Dec. 8, 2023	Signed by Alison Folosea
<input type="checkbox"/> Approved by: Executive Director, Corporate Real Estate Management <input checked="" type="checkbox"/> Approved by: Patrick Matozzo	Dec. 8, 2023	Signed by Patrick Matozzo

Schedule "A" – Location Map

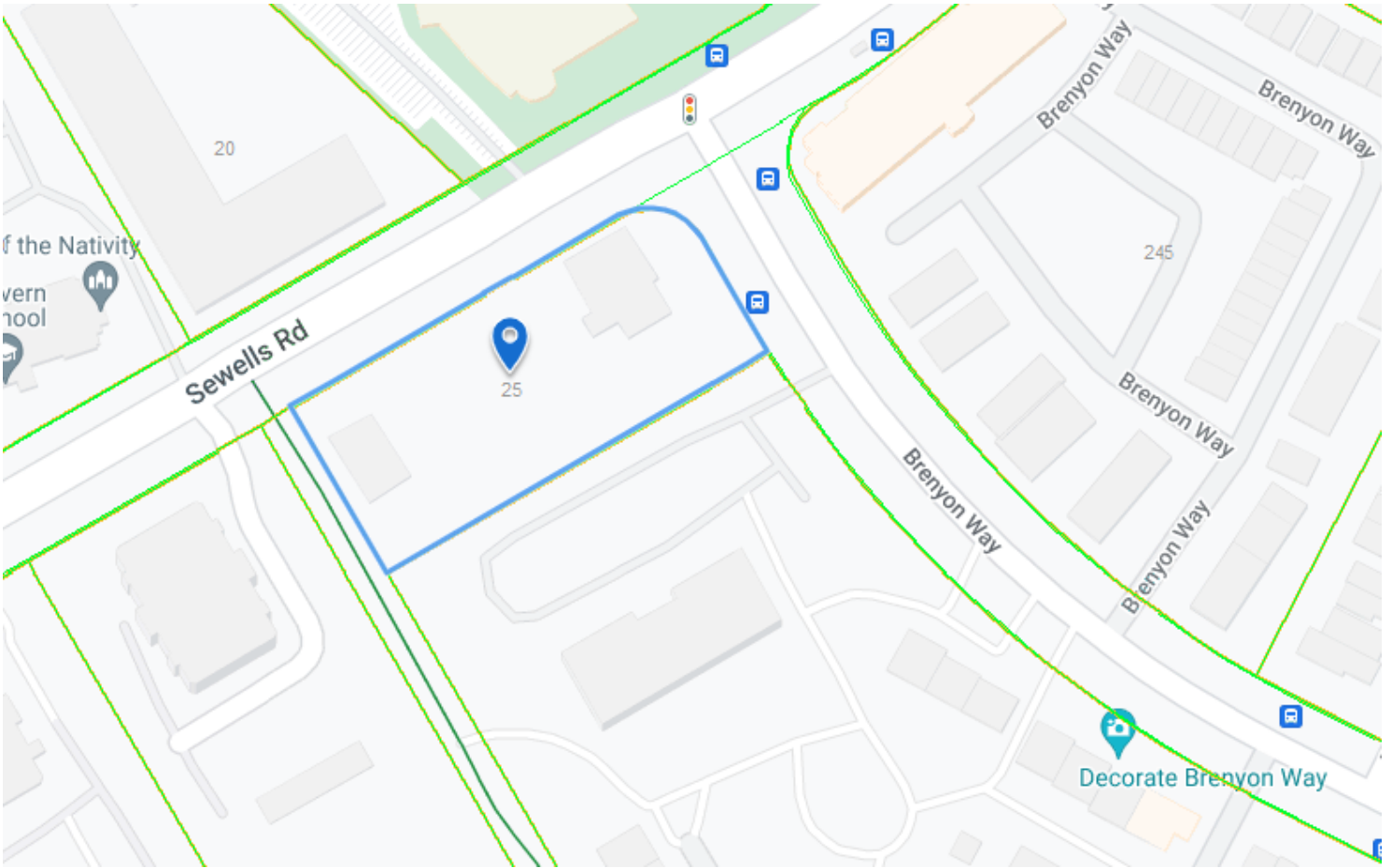


Figure 1: Development Lands

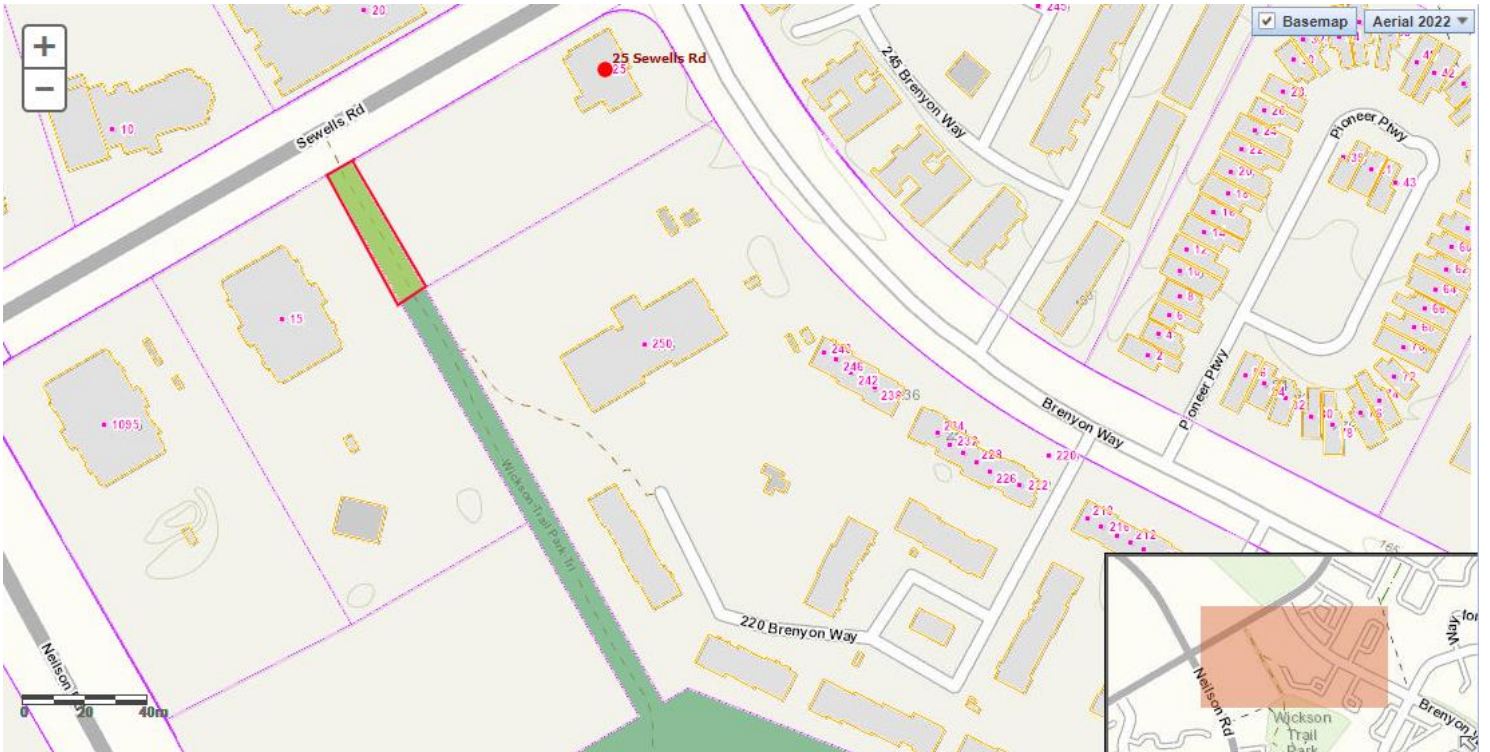
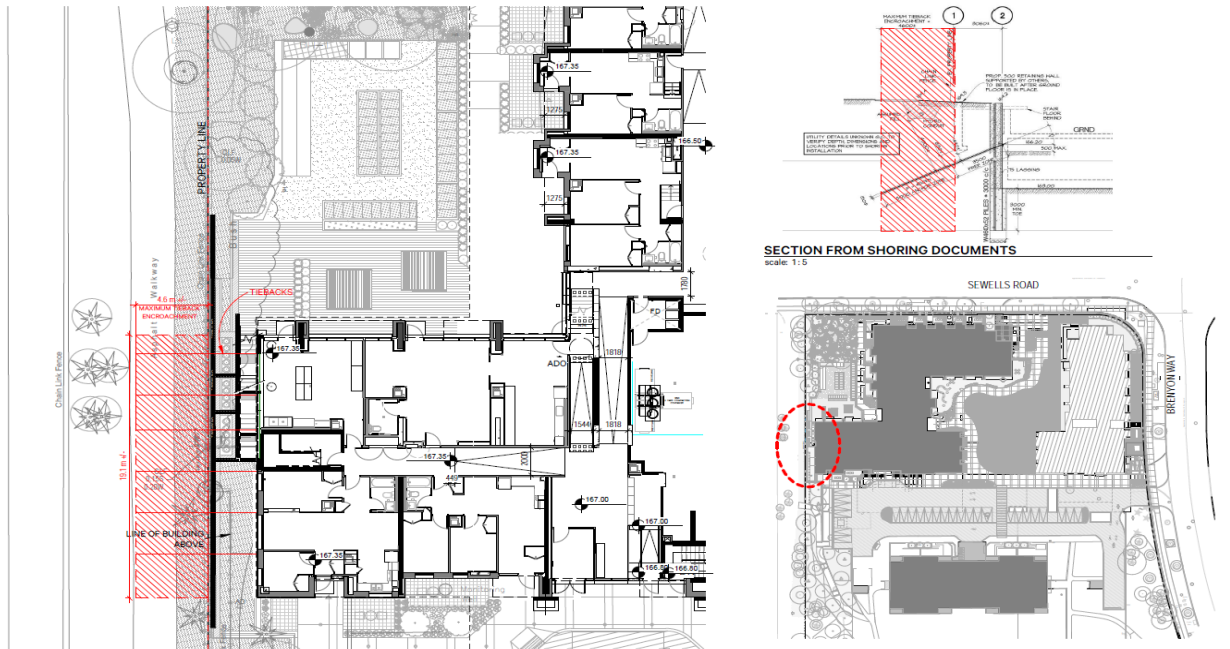
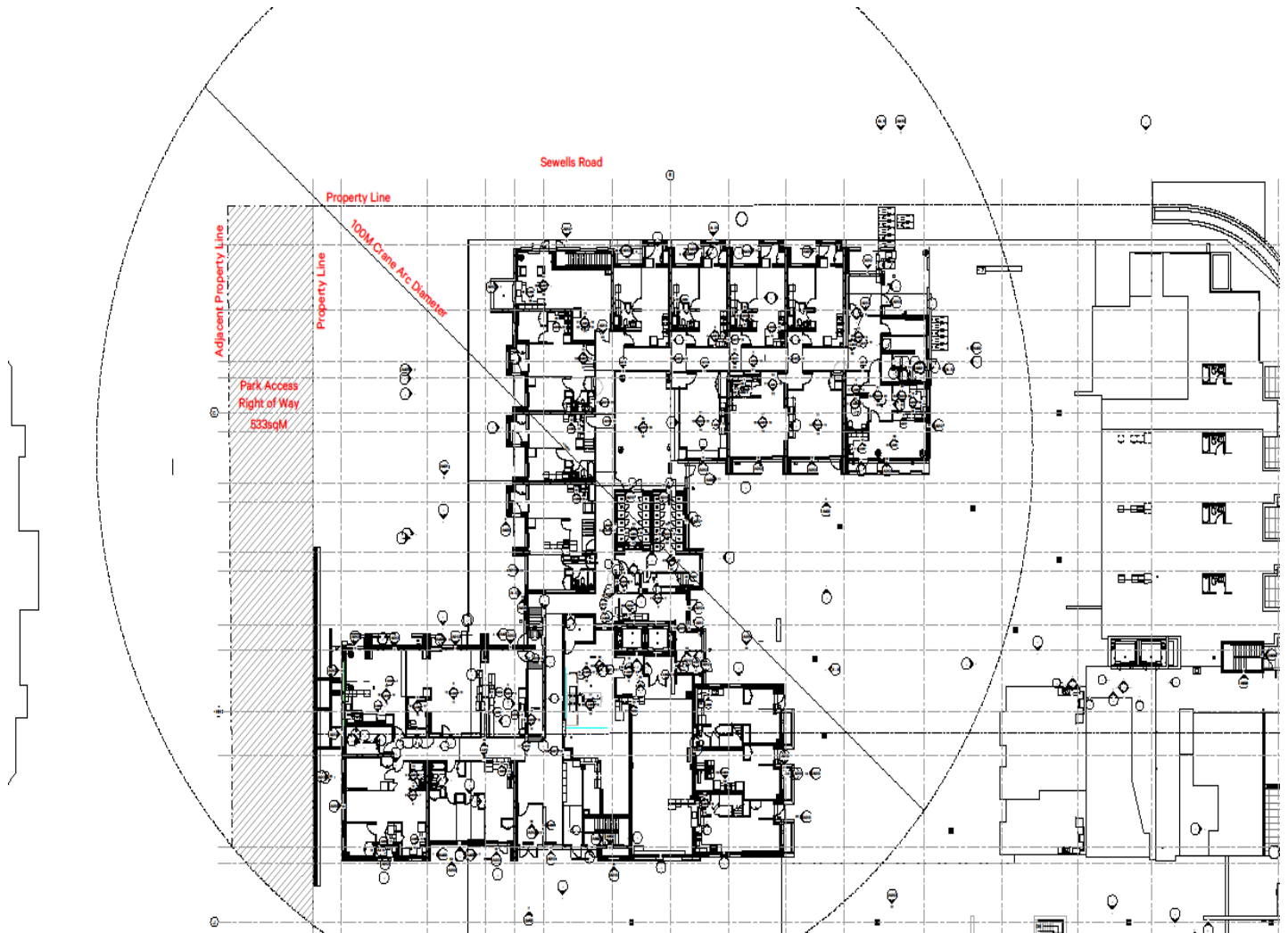


Figure 2: The Portion of Wikson Trail impacted by the Agreements

Schedule "B"
Licensed Area (Tie Backs)



Licensed Area (Crane Swing)



Schedule "C"

Major Terms for Tie Back and Shoring Agreement

1. **Licensee:** Brenyon Way Charitable Foundation
2. **Term:** earlier of six (6) months following the slab completion or three (3) years from commencement date
3. **Licence Fee:** Per MM8.31 adopted by City Council on July 20, 2023, the value of the licence rights granted to the Licensee pursuant to the Agreements is being secured in a contribution agreement between the City and the Licensee pursuant to the City's Open Door Program.
4. **Pre-conditions to commencement of Licensee's work:**
 - a. Report must be submitted from an independent and qualified geotechnical consultant, at the sole cost and expense of the Licensee, that indicates that the construction, installation, de-stressing and natural decomposition of the Tie-Backs will not have any adverse impact on the City Park Lands during the Term and at any point following the expiry thereof;
 - b. Detailed plans and specifications evidencing how construction of the Tie-Backs is to be carried out in, on, under, over or through the City Park Lands and certifying that the pathway located on the City Park Lands will be continuously available for regular and safe use by the City and members of the public for the duration of the Term
 - c. Licensee to Identify the location of and to protect all underground services, utilities and/or structures (collectively "Utilities") that may exist on, under or adjacent to the City Park Lands;
 - d. Licensee to obtain all necessary consents, permits, licences and inspections from all governmental and regulatory authorities having jurisdiction, including but not limited to other applicable City divisions. At the request of the City, the Licensee shall promptly submit proof of such compliance to the City;
 - e. Licensee delivers to the City certified funds or an irrevocable unconditional letter of credit in the amount of Sixty Thousand Dollars (\$60,000.00) as security for the Licensee's obligations pursuant to this Agreement, in the event that the Licensee defaults in its obligations under this Agreement and the Security is not sufficient to cover the City's costs of fulfilling such obligations, the Licensee shall pay any additional amounts owing to the City with respect to such costs forthwith upon demand; and
 - f. the Licensee has provided not less than seven (7) days' prior notice of commencement of the Licensee's Work.
5. **Post Installation Obligations:**
 - a. No later than three (3) months following the installation of the Tie-Backs, Licensee to provide the City with "as built final drawings", surveys and records identifying the exact locations and dimensions of the Tie-Backs within City Park Lands, stamped and certified by the engineer of record
 - b. No later than three (3) months following completion of the associated work, Licensee to provide the City with a letter, stamped and certified by the engineer of record, confirming that the ground floor slab of the Development has been constructed in accordance with the engineer's plans and design and that the foundation wall of the Development is capable of sustaining the resulting load if the Tie-Backs were to be de-stressed or removed after the expiry of six (6) months and the date of such letter shall constitute the Slab Completion Date
 - c. Licensee must restore to the satisfaction of the City any and all damage to the City Park Lands no later than the expiry of the Term
6. **Restrictions:**
 - a. Licensee will not do any digging, excavation, staging, or drilling shall occur on the surface of the City Park Lands
 - b. Licensee will not store or use any hazardous material on the City Park Lands
 - c. Licensee will stop all digging and drilling and/or installation of Tie-Backs if there is any indication of instability or movement within the City Park Lands and to forthwith notify the City and work together with the City to take all steps necessary to prevent any further instability or movement
 - d. Licensee will not undertake any action, operation or work or install or store any fixtures, improvements, equipment or materials on the City Park Lands in such a way as to increase the insurance risk
7. **Termination:** If the Licensee fails to perform or observe any of its covenants, conditions or obligations contained in this Agreement on or before the expiration of the 10th Business Day from the date on which the City gives notice to the Licensee that such failure of the Licensee occurred. The City may either:
 - a. terminate this Agreement and the Licence by giving to the Licensee a notice of termination; or
 - b. remedy the default and the costs of remedying such default shall be payable by the Licensee on demand.
8. **City's Rights to de-stress and or remove tie-backs:** Licensee represents and warrants that following the expiry of six (6) months from the Slab Completion Date the Tie-Backs will no longer be required and, at that time, any or all of the Tie-Backs can be de-stressed by the City without any adverse consequence to the City Park Lands whatsoever and the City shall have the right to enter in, on, under or through the Developments Lands at any time and from time to time for said purpose. Licensee shall indemnify City from any costs imposed on the City as a result of the de-stressing and/or removal of any of the Tie-backs.
9. **Insurance:** The Licensee shall obtain and maintain, throughout the Term, comprehensive general liability insurance against claims for bodily injury (including death) and property damage in an amount not less than \$10,000,000.00 per occurrence for bodily injury (including death) and property damage. Such insurance shall name the City of Toronto as an additional insured
10. **General Indemnity and Release:** Licensee shall indemnify and save the City harmless from and against any and all manner of actions, claims, charges, costs, damages, demands, expenses, losses and any other proceedings whatsoever made or brought against the City on account of the Licensee's occupancy or use of the City Park Lands.
11. **Assignment & Assumption:** Licensee shall not sell Development Lands or register a condo corporation in respect thereof without requiring purchaser or condo corp to enter into an assumption agreement.

Schedule "D"

Major Terms for Crane Swing Licence Agreement

1. **Licensee:** Brenyon Way Charitable Foundation
2. **Term:** eighteen (18) months (Jan 1st 2024 – July 1st 2025)
3. **Licence Fee:** Per MM8.31 adopted by City Council on July 20, 2023, the value of the licence rights granted to the Licensee pursuant to the Agreements is being secured in a contribution agreement between the City and the Licensee pursuant to the City's Open Door Program.
4. **General Terms and Conditions:**
 - a. This Licence does not grant the Licensee, its agents, employees, contractors or subcontractors, any rights or permission to enter onto or below the surface of the Licensed Area and that the operator cab, counterweight, outrigger or any other equipment, tool, material, personnel or supply shall not be allowed entry thereon.
 - b. Provided that the Construction Crane is not carrying any objects, supplies or materials, the Construction Crane shall be allowed to swing through the airspace over the Licensed Area at any time throughout the Term
 - c. Any and every time the Licensee plans to swing the Construction Crane through any part of the airspace above the Licensed Area carrying any object, material, tool or supply, a paid duty officer of the Toronto Police Service shall be retained, at the sole cost of the Licensee
5. **Termination:** In the event that the Licensee fails to perform or observe any of the covenants, conditions or obligations contained in this Agreement (a "Default"), and the Licensee fails to remedy such Default within five (5) business days of receiving a written notice of the Default from the City, the City may suspend the rights granted by this Agreement until the Licensee remedies the Default to the satisfaction of the City or the City may terminate this Agreement on written notice to the Licensee
6. **Insurance:** The Licensee hereby covenants and agrees to obtain and maintain for the duration of time that the Construction Crane, or any part thereof, is situate on the Development Lands, comprehensive general liability insurance against all claims for bodily injury (including death) and for property damage in an amount of not less than \$20,000,000.00 per occurrence for bodily injury (including death) and property damage. Such insurance shall name the City as an additional insured.
7. **Indemnification:** The Licensee hereby covenants and agrees to indemnify and save the City harmless from and against any and all liabilities, claims, losses, demands, expenses, actions, injuries, damages, causes of action and costs (hereafter the "Claims") whatsoever arising out of or in connection with the use and operation of the Construction Crane, or any part thereof, or resulting in any way from the exercise of this Licence.