



STAFF REPORT ACTION REQUIRED

90 Harbour Street and 1 York Street Revisions to Recommendations - Supplementary Report

Date:	November 5, 2012
To:	Toronto and East York Community Council
From:	Director, Community Planning, Toronto and East York District
Wards:	Ward 28 – Toronto Centre-Rosedale
Reference Number:	11 295626 STE 28 OZ

SUMMARY

This report provides revised recommendations for consideration for item TE20.12, *90 Harbour Street and 1 York Street Official Plan Amendment and Zoning Amendment – Final Report* dated September 21, 2012 Toronto and East York Community Council Agenda. Item TE20.12 reviews and provides recommendations for the Official Plan Amendment and Rezoning applications that propose one office building of 37 storeys (174 metres including mechanical penthouse) and the two residential towers at approximately 62 and 66 storeys (224 metres and 233 metres including mechanical penthouse) with a total of 1,305 dwelling units.

RECOMMENDATIONS

The City Planning Division recommends that the recommendations in the report (September 21, 2012) from the Director, Community Planning, Toronto and East York District, be deleted and replaced with the following:

1. City Council amend the Official Plan, for the lands at 90 Harbour Street and 1 York Street substantially in accordance with the draft Official Plan Amendment attached as Attachment No. 9 to the report (September 21, 2012) from the Director, Community Planning, Toronto and East York District.
2. City Council amend former City of Toronto Zoning By-law 438-86, as amended for the lands at 90 Harbour Street and 1 York Street substantially in accordance with the draft Zoning By-law Amendment attached as Attachment No. 10 to the report (September 21, 2012) from the Director, Community Planning, Toronto and East York District.

3. City Council authorize the City Solicitor to make such stylistic and technical changes to the draft Official Plan Amendment and draft Zoning By-law Amendment as may be required.
4. City Council require that the applicant provide sufficient parking on site as outlined in the Technical Services memo of July 31, 2012 and discussed in the report (September 21, 2012) from the Director, Community Planning, Toronto and East York District.
5. Before introducing the necessary Bills to City Council for enactment, City Council require the Owner to enter into one or more Agreement(s) pursuant to Section 37 of the Planning Act to secure the following at the owner's sole expense:
 - a. a cash payment of \$10,000,000.00 payable as follows, to the satisfaction of the Chief Planner and Executive Director of City Planning in consultation with the Ward Councillor:
 - i. \$1,000,000.00 upon bills being introduced to Council to facilitate the immediate start of the design process for the modification of the Gardiner Expressway York/Bay/Yonge off-ramp;
 - ii. \$4,000,000.00 upon issuance of the first above grade building permit for the site; and
 - iii. \$5,000,000.00 upon the first occupancy of any part of any building on the site.
 - b. require that the cash amounts identified in a 6a above shall be indexed upwardly in accordance with the Statistics Canada Non-Residential Construction Price Index for Toronto for the period from the date of the execution of the Section 37 Agreement to the date of payment.
 - c. The community benefits recommended to be secured in the Section 37 Agreement are as follows:
 - i. modification of the York/Bay/Yonge off-ramps of the Gardiner Expressway as approved by City Council at their meeting of August 25, 2010 and addressed in the Environmental Assessment Report to be filed with the Province in Fall 2012; and
 - ii. should there be any surplus funds from the implementation of the ramp modification that they be directed to the York "Off-Ramp" park improvements located north of Queens Quay West, east of

York Street, west of 85 Harbour Street and south of Harbour Street and/or to the Jack Layton Ferry Terminal revitalization.

- d. The following matters are also recommended to be secured in the Section 37 Agreement as a legal convenience to support development:
- i. Require the items retained from the demolition of the previous heritage building at 90 Harbour Street to be incorporated into *or within the vicinity* of the new development to the satisfaction of Heritage Preservation Services.
 - ii. The construction and development of the subject site shall in no way impede the construction and/or operation of the PATH pedestrian bridge between 40 Bay Street and 85 Harbour Street. The PATH pedestrian bridge is to be fully integrated into the subject site.
 - iii. The wind mitigation measures listed in the submitted Wind Study shall be implemented to ensure that the wind effects are acceptable.
 - iv. At least 10% of the total number of dwelling units to be constructed on the lot shall contain at least three or more bedrooms in compliance with the provisions of the Ontario Building Code.
 - v. Provide prior to the issuance of the first above grade building permit, a public art contribution in accordance with the Percent for Public Art Program for a value not less than one percent of the gross construction cost, of all buildings and structures on the lands.
 - vi. The proposed fitness centre shall be secured to ensure that the ownership of the space reverts to the residential condominium(s) in the future in the event that the commercial enterprise fails.
 - vii. The owner shall provide and maintain a PATH route north/south and east/west through 90 Harbour Street connecting the site to 85 Harbour Street and 10-20 Bay Street and ultimately to 40 Bay Street (through site plan 11-220406 STE 28 SA) and to York Street. Finishes, lighting and materials will generally be in accordance with the City of Toronto PATH Design Guidelines. The PATH connection will be fully accessible and is to be a minimum of 6 metres clear in width as shown on the approved plans and is to be kept free and clear for pedestrian use and is to be protected by way of City Easements as appropriate.

- viii. Prior to the occupancy of the building, the owner shall convey to the City an easement(s) over the PATH routes, including any necessary rights of support (the “City Easements”), for nominal consideration and to the satisfaction of the City Solicitor, shall maintain these areas free and clear of encumbrances for pedestrian use, in perpetuity, and shall pay all costs associated with the preparation and registration of all necessary documents and plans, to the satisfaction of the Executive Director, Technical Services.
- ix. With respect to any rights-of-way/easements described in Condition viii above, the owner shall construct, repair and maintain the City Easements, at its sole cost and expense and to the satisfaction of the Executive Director, Technical Services. Notwithstanding anything to the contrary which may be herein expressed, the owner shall have the right at all reasonable times to enter upon the City Easements for the purpose of repairs and maintenance and any appurtenances situate within the City Easements, provided the owner in exercising such right of access, shall not unreasonably interfere with the use of the City Easements as granted and shall exercise all reasonable care in conducting its operations and shall restore the City Easements to the same or an improved condition, as existed immediately prior to such entry.
- x. The owner shall, from time to time and all times hereafter fully indemnify and save harmless the City, its elected officials, officers, employees, agents, their successors and assigns, or any of them, from and against all actions, causes of action, suits, claims and other proceedings which may be brought against or made upon the City, its elected officials, officers, employees, agents, their successors and assigns, or any of them, and from and against all loss, liability, judgment, costs, charges, demands, damages or expenses which the City, its elected officials, officers, employees, agents, their successors and assigns, or any of them may sustain, suffer or be put to resulting from or arising out of:
 - a. the failure of the owner to maintain the City Easements in accordance with the terms of this Agreement;
 - b. the failure of the owner to design, construct or maintain lands and structures supporting the City Easements in accordance with the terms of this Agreement;
 - c. any loss, damage or injury (including death resulting from injury) to any person or property, howsoever caused directly or indirectly, resulting from or sustained by reason of any act or omission of the owner or any person for

whom it is in law responsible in connection with any of the purposes set out in the City Easements or in this Agreement with respect to the City Easements; and

- d. the owner shall take out and maintain, at its expense, commercial general liability insurance with respect to the City Easements acceptable as to form, limits and conditions to the City for a limit of not less than \$5,000,000 per occurrence (such limit be increased from time to time to reflect an amount which would be maintained by a prudent owner as determined by the City) covering possible, damages, losses, claims and expenses for or in connection with any personal injury, death or property damage that might be incurred on or about the City Easements. The insurance policy shall include the City as an additional insured and shall contain a cross-liability and severability of interest clause and include contractual liability coverage. The liability insurance policy shall provide that any breach of a condition of the policy by an insured shall not affect protection given by the policy to any other insured. The liability insurance policy shall contain a clause providing that the insurer will not cancel or refuse to renew the said insurance without first giving the City 30 day's prior written notice thereof. The owner shall supply the City with satisfactory evidence of such insurance upon request by the City, and a certificate of insurance shall be remitted to the Chief Planner within 30 days of issuance and evidence of continuance shall be remitted to the City at least 30 days prior to the expiration of any insurance policy. The owner shall provide to the City a copy of the insurance policy upon request.
- xi. The owner agrees to design, construct and maintain all required indoor and outdoor signage for the PATH to the satisfaction of the Chief Planner and Executive Director of Technical Services.
- xii. The owner agrees to pay for and construct PATH improvements internal to the building and for the connection to the PATH bridge to the Air Canada Centre.
- xiii. The owner agrees to enter into a Wayfinding Agreement or similar agreement with the City to secure that the City Easements that will be accessible to the public during TTC operating hours.

- xiv. Owner may refuse access to the Future PATH Connections or the Owner may require a person to leave such lands only in the case where a person or persons,
 - a. unreasonably interferes with other members of the public or lawful occupants of the Future PATH Connections,
 - b. carries on an unlawful activity,
 - c. acts in a manner unreasonably inconsistent with the intended use of the Future PATH Connections,
 - d. injures or attempts to injure any person, property or property rights,
 - e. obstructs, injures or attempts to obstruct or injure any lawful business or occupation carried on by the Owner or person in lawful possession of any component of the Future PATH Connections, or
 - f. commits or attempts to commit any criminal or quasi-criminal offence.
 - xv. Owner agrees to make all necessary improvements to the Future PATH Connections as required in the Wayfinding Agreement, Site Plan Agreement and this Agreement, to the satisfaction of the City Solicitor, Transportation Services, City Planning and Economic Development and Culture.
 - xvi. Owner agrees that the Future PATH Connections shall, for the life of the Proposed Building, remain publicly accessible in accordance with the provisions of this Agreement.
 - xvii. The City and the Owner agrees that the Future PATH Connections, or a portion thereof, may be closed to the public during emergencies.
 - xviii. Prior to shoring and excavation and/or any hoarding being installed around the periphery of the site whichever comes first the owner shall remove the vehicular lay-by on Harbour Street.
- 6. Through the Site Plan application process City Council require the owner to provide and secure the following to the satisfaction of the Chief Planner, in consultation with the Executive Director of Technical Services:
 - a. provide all ramp slopes in accordance with By-law 438-86;
 - b. A conveyance with a maximum width of 5.3 metres from a point 1.2 metres below finished grade, to the sky, including a daylight triangle at the southeast corner of York Street and Lake Shore Boulevard West, such lands to be free and clear of all encumbrances and subject to a right-of-way for

access purposes until such time as the said lands have been laid out and dedicated for public highway purposes, all as more particularly illustrated on a dimensioned sketch to be provided to the property owner;

- c. A further below-grade conveyance which excludes the parking -garage and all associated support structure, such conveyance to have a width of approximately 7.4 metres at the east limit of the site, and extend parallel to the existing north limit of the right-of-way to bring the width of the Lake Shore Boulevard West/Gardiner Expressway public right-of-way to a minimum width of 45 metres, in accordance with the requirement of the Official Plan;
- d. Setback the project, including all ramps, driveways, bridge support columns and ventilation shafts, in order to accommodate the road widening set out above but not including the location of temporary bridge support and driveways to the satisfaction of the Executive Director of Technical Services;
- e. Make provisions for the long term removal of the driveway on the northwest corner of the site to protect for the potential future removal of the Gardiner Expressway and the implementation of the "Grand Boulevard" scheme including warning clauses to be registered on title to advise future condominium owners of the potential removal of the driveway;
- f. Make provision for a possible future vehicular connection to the lands to the east;
- g. Setback the Ventilation shafts on the York Street frontage so that it is not located within the 6.0 metre wide pedestrian clearway area;
- h. Provision of continuous pedestrian weather protection on the west and south side of the site and where possible on the north side of the site;
- i. Identification of any future restaurant patio space in co-ordination with the pedestrian weather protection requirements;
- j. Carry out the requirements of the York Promenade Plan along the York Street frontage of the site;

- k. Provide upgraded streetscape along Lake Shore Boulevard West and Harbour Street to co-ordinate and be in keeping with the York Street Promenade requirements; and
- l. Provision of maintenance holes at the property line off city property for both storm and sanitary connections if required.
- m. require in the Site Plan Agreement the following to be addressed through the Condominium Approval process to ensure that the driveway on the north side of the site can be removed if the Grand Boulevard scheme is implemented in the future as the driveway will no longer be needed and the area would be used for streetscaping:

Notice to Purchasers of Condominium Units

- 1.1 The Owner also agrees, that in the event the Owner proposes to create a Condominium within the Proposed Building, or any part thereof,

to include provisions in Draft Declaration

- a. the Owner shall ensure that the draft Condominium Declaration shall include notice to acknowledge, for the benefit of future owners of the site, including owners of condominium units, that the one-way westbound driveway located within the (widened) Lake Shore Boulevard West/Gardiner Expressway public right-of-way, is for temporary driveway purposes only, until such time as the City opts, in its sole and unfettered discretion, to use these lands for other public right-of-way purposes, including but not limited to, public sidewalks, road widening and/or landscaping purposes, and

to submit draft Condominium Declaration to City for approval

- b. the Owner shall submit the draft Condominium Declaration to the City for review and acceptance prior to the approval of the draft plan of condominium application

to ensure that it contains notice of this matter,

Registered Declaration to include maintenance provisions

- c. the Owner shall ensure that the registered Condominium Declaration contains notice of this matter,

to advise purchasers in their Agreements of Purchase and Sale and disclosure documents

- d. the Owner shall advise all prospective purchasers of the associated Condominium Units, in their Agreements of Purchase and Sale and the associated Condominium disclosure documents, of this matter,

to submit a Solicitor's letter

- e. the Owner shall submit, in conjunction with the application for draft Condominium Plan approval, a letter from the Owner's solicitor confirming that the Owner is in compliance with the requirements of this Section.
- n. revise the Functional Servicing Report to address the matters detailed in the Functional Servicing section of the memo dated July 31, 2012, from the Executive Director, Technical Services, to the satisfaction of the Executive Director of Technical Services.

Financial Impact

The recommendations in this report have no financial impact.

DECISION HISTORY

At their meeting of October 10, 2012 the Toronto and East York Community Council deferred the staff report entitled *90 Harbour Street and 1 York Street Official Plan Amendment and Zoning Amendment – Final Report* to be considered at their meeting of November 6, 2012. Subsequent to the meeting the applicant submitted a letter dated October 3, 2012 (see Attachment 1) to staff requesting revisions to some of the recommendations of the Final Report. Staff have met with the applicant and discussed the various items requested. This report provides a summary of the staff review of the requests and recommends revisions to some of the recommendations of the Final Report dated September 21, 2012 for approval in principle of the Official Plan Amendment and Zoning By-law Amendment.

COMMENTS

Parking and Transportation (Applicant letter #1, #2)

Recommendation #4 of the staff report requires the applicant to provide parking in accordance with the requirements of Zoning By-law No. 438-86. The applicant has requested the parking rates be revised to reflect the reduced parking that the applicant is providing on the site. As stated in the Final Report, staff have indicated that while the proposed aggregated visitor/commercial parking supply is acceptable in principle, staff do not support the proposed reduction in the resident parking supply. Since the final report date no further information has been received by staff to justify the reduced parking requested for the subject site. Staff are still recommending that the parking rates as included in the draft zoning by-law should remain.

On page 55 of the staff report dated September 21, 2012, Attachment 10, Draft Zoning By-law there is a typographical error that has the visitors parking rate at 0.6 spaces rather than 0.06 spaces. This is recognized and will be corrected in the final bills.

Section 37 Contributions (Applicant letter #3, #6)

The applicant had requested that the Section 37 cash contribution be staged in terms of the payment times since the funds are to be directed to the ramp modification process. The timing of the funds are intended to align somewhat with the design process, request for proposals and awarding of the contract of the ramp modification. Recommendation 5a (originally 6a in the report dated September 21, 2012) provides the breakdown of the timing for the cash contribution. The applicant has requested that the payment clause for the Section 37 contribution as stated in Section 5 a iii of the recommendations be revised to be more explicit as to the timing. The wording provided by the applicant requires the \$5,000,000 payment when the City has commenced work on the removal of the ramp in addition to being upon first occupancy to ensure that the funds are used expeditiously for the ramp modification process. The applicant would like to co-ordinate the construction process of their site with the ramp modification process if possible to ease the extent of construction inconvenience for the area.

The timing of the construction process has been discussed with Technical Services and the applicant with the intent of finding an appropriate timing alternative. For example, the final payment be required at time of registration of the condominium. Registration would not occur until after the whole of the development is built and the residential units occupied which, given the uncertainty of market forces, could push the timeline into the future for possibly several years. Maintaining momentum in a process is one of the keys to success implementation. Once the ramp modification process is started it would be beneficial for the process to continue which would require the funds for the tender process and reconstruction of the ramps in the central waterfront area. To date no other appropriate option has been presented so staff suggest that the original wording remain in the recommendation requiring the final cash contribution at time of first occupancy.

Recommendation 6dv relates to a public art contribution in accordance with the City Planning's Percent for Public Art Program. The applicant advised that the Section 37

contribution of \$10,000,000.00 includes all community benefits. The applicant is not agreeable to an additional Public Art contribution.

The City of Toronto Official Plan and the Central Waterfront Secondary Plan contain policies that are supportive of public art. City Planning's Percent for Public Art Program Guidelines was adopted by City Council in 2010. The Percent for Public Art Program Guidelines provide direction on achieving public art in the public realm; how public art can boost economic development and tourism; and provide a sense of place for visitors and residents. The guidelines outline City Planning's role in securing public art and how the public art commitments are implemented. Developers are provided options of their contribution location in terms of providing the art on-site within the property, off-site within the local ward or the developer may select a combination.

The applicant is proposing a development of 191,640 sq.m. including a Class A office building, a significant commercial retail component and two residential towers. The Class A office building is in keeping with the quality of buildings as found within the Financial District of the downtown. The proposed development is considered significant particularly in the area of the central waterfront. Other significant sites within the central waterfront area that have provided public art in accordance with the Percent for Public Art Program include: Maple Leaf Square mixed use development (15 York Street), Pinnacle mixed use development (33 Bay Street), the Waterpark Place Phase III office tower (88 Queens Quay), Telus office tower (25 York Street), GWL Realty Tower (18 York Street), ICE mixed use development (16 York Street), and the Air Canada Centre (40 Bay Street). Staff are of the opinion that given the size and location of this significant development public art contribution should be provided either on or off site in accordance with the Percent for Public Art Program.

Retained Item from the Demolition of the Heritage Structure (Applicant letter # 4)

Section 6(d)(i) of the report contains wording that requires the items retained from the demolition of the previous heritage building at 90 Harbour Street to be incorporated into the new development to the satisfaction of Heritage Preservation Services. The Preliminary Report for the subject site contained an overview of the sequence of events relating to the demolished heritage structure that was previously on the subject site. The Preliminary Report can be found on the City of Toronto website at: <http://www.toronto.ca/legdocs/mmis/2012/te/bgrd/backgroundfile-43359.pdf>

The applicant has been requested to provide information relating to the retained materials and how they may be incorporated into the subject site. At this time the applicant has advised that the retained items include part of the limestone façade, the elevator doors and possibly some of the terrazzo floor but this has yet to be confirmed.

At the time of demolition the applicant was also requested to retain the artwork entitled "Balloon Dog" on the outside of the building by the street artist Banksy who is internationally known for his graffiti type art in urban areas of major cities. The applicant has informed staff that they are pursuing a detailed inventory of the items retained. The applicant has requested that the location of the items not be determined at

this time as they would like to pursue the option of locating the items in the York "Off-ramp" park once the ramp modification is complete and the park is landscaped. The recommendation has been revised to provide an option for the location of the pieces depending on the appropriateness in relation to the materiality of the pieces retained. In further discussions with the applicant the Banksy "Balloon Dog" was offered to be located within the PATH system or other publically accessible location in the building as their contribution towards Public Art. Although staff are willing to accept the Banksy "Balloon Dog" as a component of the Public Art, an independent evaluation by art expert is required to determine the value of the Banksy in terms of fulfilling the Percent for Public Art Guidelines.

PATH Clauses (Applicant letter # 5, #7, # 8)

There are several clauses in relation to the PATH pedestrian connection through the site. The PATH pedestrian way connects to the proposed bridge across Harbour Street to the south and to the moveable bridge over Lake Shore Boulevard West/under the Gardiner Expressway to the north to the Air Canada Centre which provides connection to Union Station. The applicant is also providing a PATH connection east/west through the site to connect the Class A office building to the north/south connection to Union Station. The clauses proposed are the standard clauses that the City requires for every development that has a PATH connection. Clarity has been provided in the clauses to note that they refer to the PATH on-site and the connection to the bridge. The bridge structure is being dealt with through a separate application process under Site Plan 11-220406 STE 28 SA. The clauses have been discussed with the applicant and found to be satisfactory.

Site Plan Requirements (Applicant letter #9, #10)

Recommendation 6 d xviii contains several recommendations that relate to requirements of the site plan application process. The recommendation is a sub-set of the Section 37 requirements that would be implemented through the Section 37 Agreement and the site specific Zoning By-law. The applicant has requested that some of the items be removed or revised as any changes would require Council approval. At the time of writing the Final Report staff did not have the information required to sign off on the items of concern. Since that time the applicant has provided information and have had discussions with staff to confirm which of the items can be removed or revised. The recommendations in this report reflect the changes.

The Site Specific Draft Zoning By-law (Applicant letter # 13, #14)

Map 2 of the draft zoning by-law for the subject site, attached to the final report as Attachment 10 depicts two gray areas between the towers which prohibits the placement of balconies within the setback area. This is to retain the 20 metre setback between the west residential tower and the office building and the between the two residential towers as well. The Final Report reviews the application of the Tall Buildings Urban Design Guidelines for this site. The Tall Buildings Guidelines require a 25 metre setback between towers into which balconies could encroach. Staff worked with the applicant in terms of the siting of the towers and the proposed setbacks, and were satisfied that sufficient progress had been made since the first submission to support a reduced setback between the towers to 20 metres as long as the towers were off-set and the setback was

tower face to tower face. The final report provides a detailed discussion of the setbacks between the towers and the massing on the site. Staff are happy to work with the applicant through the site plan approval process to address the location of the balconies at the points of interface but are still of the opinion that balconies should not be permitted to intrude into the interface areas. If balconies were permitted into this area, the setback between the office tower and the westerly residential tower would be reduced as required through the Tall Buildings Urban Design Guidelines to 18.5 metres and between the residential towers from 22 metres to 17 metres assuming a 1.5 metre balcony depth. Comments from the Waterfront Toronto Design Review Panel were supportive of the undulating balcony design of the applicant but were also concerned about locating the towers too close together. With the size of the site and the massing of the proposed towers staff are of the opinion that the setback between the towers should remain at 20 metres between facing glass, particularly between the residential towers. Staff may accept some minimal width balconies between the office tower and the west residential tower to accommodate the undulating design element and will refine Map 2 in that area only prior to bills being brought forward to Council.

The applicant has also requested that some additional wording in the draft zoning by-law be amended to clarify some of the provisions including: pedestrian weather protection being provided as a canopy and/or building overhang; and the wording relating to the interior and exterior amenity space and the fitness centre. These matters will be finalized prior to the bills being introduced to Council.

Site Specific Official Plan Amendment

The application for the subject site includes an Official Plan Amendment that is discussed in the Final Report dated September 21, 2012. Included in the Official Plan Amendment is the provision to address a conveyance along the north property boundary of the site for Lake Shore Boulevard West. The widening required is to address the current reduced right-of-way of Lake Shore Boulevard West in the central area of the waterfront from the west end of the site directly to the west at 120-130 Harbour Street (Tridel/Build Toronto Item 20.8 on the November 6, 2012 TEYCC) east to Bay Street. Conveyances are identified through the rezoning process but are taken through the site plan approval process with the document registration that is a necessary part of the process.

Through the review of the Tridel/Build Toronto Official Plan Amendment, detailed wording was drafted that staff found to be more acceptable in terms of providing future direction for the conveyances in this area. The wording has been discussed with the applicant for the subject site and has been included in the draft Official Plan Amendment for 90 Harbour Street and 1 York Street. The revised draft Official Plan Amendment is attached to this report as Attachment 2. Mapping associated with the Official Plan Amendment will be finalized prior to bills being introduced to Council.

CONTACT

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SIGNATURE

Gregg Lintern, Director, MCIP, RPP
Community Planning, Toronto and East York District

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ATTACHMENTS

Attachment 1: Letter from Adam Brown, Sherman Brown, October 3, 2012

Attachment 2: Revised Draft Official Plan Amendment

Attachment 1: Letter from Adam Brown, Sherman Brown, October 3, 2012

SHERMAN · BROWN · DRYER · KAROL
BARRISTERS & SOLICITORS

MEMORANDUM

Date: October 3, 2012

To: Ms. Sarah Henstock, Senior Planner, Community Planning
Mr. Al Rezoski, Acting Manager, Community Planning

C.C.: Councillor Pam McConnell
Mr. Mark Karam, Menkes Developments Ltd.
Mr. Jude Tersigni, Menkes Developments Ltd.

From: Adam J. Brown

Subject: Requested Revisions to the Final Recommendation Report
90 Harbour Street and 1 York Street

City File #: 11 295626 STE 28 OZ (Official Plan and Rezoning)
12 142177 STE 28 SA (Site Plan Approval)

We have had the opportunity to review the final recommendations and conditions contained in your Final Staff Report, and as such, would ask that the following revisions be made in order that such report reflects the agreement we believe is in place between the City and our client:

1. Recommendation 4 referenced parking to be provided in accordance with a technical services memo dated July 31, 2012 which rate is higher than the in force parking requirement in Zoning By-law 289-93. This recommendation should be deleted to reference the actual parking supply proposed. We confirm that on July 30th, our client provided a report which supported the proposed parking supply, only to be advised that Transportation Services has no record of the report needing to be commented on, which we believe is the reason for the higher parking standard being applied. The reduced parking supply reflects not only other approvals, but also accounts for the site's proximity to the Union Station transit hub. In addition, there are approximately 25% of the spaces which are usable, yet have columns located nearby, which again, was a necessary design accommodation resulting from the requirement imposed on our client for a dedication of lands to the City for the widening of Lakeshore Blvd. In the by-law, on page 55 of your report, Section 18 should be revised to replace in sections 18 a, b, c and d, a residential

SHERMAN · BROWN · DRYER · KAROL
PRACTISING IN ASSOCIATION

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parking rate of 0.26 parking spaces per residential unit. In addition, please add clause h which states that "25% of the parking spaces are permitted to be undersized, and counted towards the total parking requirement set out in this by-law".

2. In the report, page 55, clause 18(e), there is a typo, with the visitors' rate intended to be 0.06 spaces per unit, not 0.6 spaces per unit and should be permitted to be included in a commercial parking garage so that it may be shared with the non-residential uses on site;
3. The Section 37 payment clause, in Section 6(a), page 2, the \$5,000,000 payment should be upon the first occupancy, as set out therein, with the additional condition that the City has "commenced works on the removal of the ramp". In other words, the money should not be required prior to such works having commenced.
4. On page 3, Section 6(d)(i), the requirement to incorporate the retained items from the demolition should be deleted in its entirety. None of the plans have ever incorporated such elements, nor has there ever been any intention to incorporate same in the design of the new buildings. Instead, our client had also indicated a willingness to provide such materials, to the extent still in its possession, in conjunction with the construction and design of the nearby park, and as such, this condition should be deleted.
5. On page 3, Section 6(d)(ii) and (vii), there is reference to path connections, which include 85 Harbour Street. There is no path connection to 85 Harbour Street, and as such, reference to that address should be deleted in both clauses.
6. On page 3, Section 6(d)(v) references a contribution towards public art. As we have indicated previously, our client's agreement to provide a \$10 million community benefits package is "all in". In other words, with the \$10 million amount being well in excess of what has previously been secured on similar developments, our client is not agreeable to such \$10 million contribution if an additional 1% art contribution is to be requested. If the City wishes to use part of the \$10 million contribution towards public art, we would not object to same subject to being advised as to when such payments would be required.
7. On page 5, Section 6(d)(xii), there is reference to the PATH bridge to the Air Canada Centre, which is not a contribution being made by our client, that connection is the responsibility of Oxford Developments, not our client, and is part of a separate development application.
8. On page 6, Sections 6(d)(xv) and (xvi) seem to be completely open ended, and as such, our client cannot agree to such conditions. The specifics of the agreement to the path connections are previously included, and as such, this section should be deleted.
9. On page 6, Section 6(d)(xviii), there are several sections which include matters to be resolved at the site plan stage, as conditions of the passage of the by-law. It would be extremely cumbersome to include these conditions as a Section 37 condition, which would then require council approval each and every time a change was made to the site

plan as part of the extensive site plan review. Subsections a) and b) relate to ramp slopes, which subsections are clearly site plan matters which should be deleted from this section. Subsection e), which relates to setbacks, should delete the reference to the bridge support columns, which support columns cannot be removed, and as such, reference to such columns being relocated must be deleted as well as the reference to driveways as there is a proposed driveway connection to Lake Shore. Subsection g) refers to a vehicular connection to the east, which cannot be provided, and again, must be deleted. Subsection h) refers to the location of the ventilation shaft not being located within the pedestrian setback area, even though the plans show such ventilation shaft(s) being located within the planters, and as such, this subsection should be deleted. Subsection i) refers to weather protection surrounding the site, even though it should exclude the Lake Shore frontage and the eastern frontage of the Site. Please add the words "excluding the Lake Shore frontage and the eastern frontage of the site" to this subsection. (Please also amend Map 2 to the zoning by-law to delete the shading along Lakeshore Blvd, as well as amending Section 14 of the by-law (page 55 of the report) to add the same exclusion. Please also note that the Gardiner maintenance would be inhibited if the canopy wrapped around the site as shown on Map 2). Subsection j) refers to a future patio location, which again, should be deleted given that this is clearly a Site Plan matter. Subsection m) should also be deleted to account for the fact that there may be policy changes to how maintenance holes are dealt with which affect this requirement altogether.

10. On page 7, Section 7(a), it references the submission of a Site Plan application, which condition has already been satisfied, and as such, this condition should be deleted. Section 7(b) is a comment relating to the future site plan process, and as such, should be deleted as it should not be a condition of the bills going forward. Please also note that in that section, which we think should be deleted, it references notice to the purchasers about the temporary driveway being in City ownership and subject to public uses. This warning clause should be limited to the fact that "the temporary driveway may be relocated as a result of the Lakeshore widening", otherwise, the purchasers might be lead to believe the driveway is to be removed altogether or used for other purposes. Section 7(c) references the Functional Servicing issues being addressed, which we believe have already been satisfied based upon the report submitted by our client on August 14th.
11. At the bottom of page 13, there is a comment referencing a potential reduction to the overall residential gross floor area, which again, is not accurate given that our client was specific in confirming that their agreement to a \$10 million dollar S. 37 contribution is predicated on the approval of the residential gross floor area set out in the by-law attached to your report. We wanted to confirm that there will be no revision to the proposed by-law in so far as the proposed residential gross floor area.
12. On page 30 of your report, you reference a parkland requirement of 15%, as if the Site, net of public dedications, exceeds 1 ha in size. Please note that the Site, net of public dedications is below 1 ha in size, and as such, the report should reflect the standard requirement of a 10% cap for residential and 2% for commercial.

13. On page 53, you have included a chart which prohibits balconies (inset or projecting) on portions of the two residential towers, with Map 2 on page 59 providing hatching which depicts the area where balconies are to be deleted. Our client has never agreed to this significant design change which would be detrimental to both the ability to market the units, as well as the ability to create a "world class" design. It was always understood that we would be permitted 1.5 metre balcony protrusions within the 20 metre setback area, which balconies are not the primary view areas for either of the rooms within the two residential towers. Please delete the reference which prohibits balconies, and instead, replace such provision with a permission to permit the 1.5 metre balconies in each area.
14. On page 53, there is also a provision setting the maximum height of canopies to 3.5 metres even though the canopies which form part of the design have always been 4.5 to 6.0 metres in height. As a result, please delete this provision as well.

Thank you for your consideration of our requests. We look forward to discussing same at our upcoming meeting.

Attachment 2: Revised Draft Official Plan Amendment

Authority: Toronto and East York Community Council Item ~ as adopted by City of Toronto Council on ~, 20~

Enacted by Council: ~, 20~

CITY OF TORONTO

Bill No. ~

BY-LAW No. ~-20~

To adopt an amendment to the Official Plan For the City of Toronto Respecting the lands known municipally in the year 2012, as 90 Harbour Street and 1 York Street

WHEREAS authority is given to Council under the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, to pass this By-law;

WHEREAS Council of the City of Toronto has provided adequate information to the public and has held at least one public meeting in accordance with the *Planning Act*;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. The attached Amendment No. ~~~ to the Official Plan is hereby adopted pursuant to the *Planning Act*, as amended.

ENACTED AND PASSED this ~ day of ~, A.D. 20~.

ROB FORD,
Mayor

ULLI S. WATKISS,
City Clerk

(Corporate Seal)

AMENDMENT NO. ~ TO THE OFFICIAL PLAN
LANDS MUNICIPALLY KNOWN IN THE YEAR 2012 AS
90 Harbour Street and 1 York Street

The Official Plan of the City of Toronto is amended as follows:

1. Chapter 7, Site and Area Specific Policies, is amended by amending Site and Area Specific Policy No. 159 for the lands known municipally in 2012 as 90 Harbour Street and 1 York Street by deleting the wording in the existing policy and replacing it with the following:

#159. In addition to the Built Environment policies and the requirements of Map 3 in the Plan, the following also apply;

- a) a 9 metre setback to the face of the building along the east property line which is intended to accommodate views from the Financial District though to the waterfront;
- b) a 5.3 metre setback along the north property line separating the development from the Gardiner Expressway and Lake Shore Boulevard West;
- c) a 20 metre minimum separation between high buildings on the site to preserve views through the property from the north towards Lake Ontario and from the south towards the Financial District;
- d) Despite the right-of-way width of 45 meters and over, as shown for "Lake Shore" on Map 3, Right-of-Way Widths Associated with Existing Major Streets, a conveyance in fee simple to the City for nominal consideration of the lands abutting the right-of-way along Lake Shore Boulevard West from the owner of the lands known as 1 York Street and 90 Harbour Street:
 - i) that is at least as wide as shown on Schedule "A", (which shows an at grade conveyance from a depth of at least 1.2 metres to the sky with a maximum width of 5.3 metres of the, and

- ii) that also extends, at all points below Canadian geodetic elevation of, to a maximum width of at least 7.4 metres (which component may also be subject to a support easement),

is deemed to satisfy Policy 3a)i) of Chapter 2.2 of the Official Plan, Structuring Growth in the City, Integrating Land Use and Transportation, which protects for the development of the network of right-of-way widths as shown on Map 3 and Schedules 1 and 2, by permitting the City to require the conveyance of land for widening from abutting property owners as a condition of subdivision, severance, minor variance, condominium or site plan approvals.