



## STAFF REPORT ACTION REQUIRED

### 25 Queens Quay East –Requested Amendment to Amended and Restated Section 37 Agreement

<b>Date:</b>	August 18, 2010
<b>To:</b>	City Council
<b>From:</b>	City Solicitor
<b>Wards:</b>	Ward 28
<b>Reference Number:</b>	

#### **SUMMARY**

---

The purpose of this report is to obtain instructions with respect to the owner's request to amend the Amended and Restated Section 37 Agreement previously authorized by City Council and registered on title as a result of recent discussions with the Toronto Port Authority related to the repair of its dock wall. This amendment is required to allow the owner to proceed with its development.

#### **RECOMMENDATIONS**

---

The City Solicitor recommends that:

1. City Council authorize the City Solicitor, in consultation with the General Manager, Parks Forestry and Recreation, to amend Section 4.4.4 of the registered Amended and Restated Section 37 Agreement to allow the Letter of Credit for dock wall repairs to be held by the Toronto Port Authority, provided that:
  - a. Pier 27 Toronto Inc. funds a pier review of (i) the condition assessment of the dock wall; (ii) scope of work for any recommended repairs and (iii) certification of the completed repairs.
  - b. Pier 27 Toronto Inc. will notify the City prior to requesting the release of the Letter of Credit from the Toronto Port Authority.

2. City Council authorize the City Solicitor to make any stylistic and technical changes to the Amended and Restated Section 37 Agreement as may be required as a result of the amendments; and
3. City Council authorize the appropriate City officials to execute the amending agreement.

## **FINANCIAL IMPACT**

There is no financial impact resulting from the adoption of this report.

## **DECISION HISTORY**

The Council for the former Corporation of the City of Toronto enacted site specific Zoning By-law No. 1996-0483 on October 7, 1996 to permit a mixed use residential/commercial development By Avro Quay Limited at 25 Queens Quay East. The by-law was appealed to the Ontario Municipal Board. The Board subsequently approved the by-law on August 5, 2005 and site plan approval was granted by the City.

The site was subsequently sold to Pier 27 Toronto Inc., ("Pier 27") who submitted a revised development proposal by way of minor variance Application A0349/07/TEY on April 24, 2007 and a Site Plan Approval application in March 2007. It was refused by the Committee of Adjustment and appealed to the Ontario Municipal Board. City staff worked closely with the applicant to resolve issues and on July 15 and 16, 2008, by its adoption of Item MM23.16, City Council approved a settlement of the variances and authorized amendments to the development agreements, including an Amended and Restated Section 37 Agreement, necessary to implement the revised development proposal. This decision can be found at <http://www.toronto.ca/legdocs/mmis/2008/cc/decisions/2008-07-15-cc23-dd.pdf>

## **ISSUE BACKGROUND**

Both the original Avro Quay development and the revised Pier 27 development provided for Section 37 contributions including park land conveyances and money for park land improvements to provide a 25 metre wide water's edge promenade along the Yonge Street Slip and harbour's edge.

The portion of the property immediately adjacent to the water's edge, including the dock wall, is owned by the Toronto Port Authority ("TPA") and leased to Pier 27. The Amended and Restated Section 37 Agreement requires this lease to be assigned to the City for the water's edge promenade. The Lease with TPA requires the tenant to be responsible for all maintenance and repairs to the dock wall. As a result, the Amended and Restated Section 37 Agreement required Pier 27, prior to assigning the Lease to the City, to complete an assessment of the condition of the dock wall and to make any repairs necessary to certify that it will continue to exist in a safe and essentially

maintenance free condition for at least another 50 years. This work was secured by a Letter of Credit to be held by the City.

Subsequently, Pier 27 has entered into discussions with TPA requesting consent to the assignment of the lease among other matters necessary to implement the development. As the owner of the dock wall, TPA requires that it review and approve all plans for repairs to the dock wall and hold security. It would not be appropriate for both the City and TPA to hold security for the same work either jointly or separately. If TPA holds the Letter of Credit, TPA has agreed that the City, as the future tenant, will have the opportunity to peer review the condition assessment report; scope of work for any repairs and the completed repairs prior to TPA releasing the Letter of Credit to ensure compliance with Pier 27's obligations to the City under the Amended and Restated Section 37 Agreement. Pier 27 has agreed to fund the City peer reviews and to notify the City when it requests release of the Letter of Credit.

## **COMMENTS**

This request has been reviewed by staff from Legal Services and Parks, Forestry and Recreation and it is considered reasonable and practical. Although the City will not be holding the Letter of Credit, as contemplated by the Amended and Restated Section 37 Agreement, the work remains secured and this arrangement still allows the City the right to peer review the proposed repair work and the completion certification. It also provides additional comfort to the City that TPA, as owner of the dock wall and future landlord, has approved the repairs.

It is therefore recommended that section 4.4.4 of the Amended and Restated Section 37 Agreement be amended to allow the option for the Toronto Port Authority to hold the letter of credit as security for the dock wall repairs provided that:

- (1) Pier 27 will fund the retainer by the City of a qualified engineering firm to peer review:
  - a. the condition assessment of the dock wall,
  - b. scope of work for any recommended repairs, and
  - c. the certification of the completed repairs.

(2) Pier 27 will notify the City prior to requesting release of the Letter of Credit from the Toronto Port Authority.

## **CONTACT**

Patricia Simpson, Solicitor, Planning & Administrative Tribunal Law  
Tel: (416) 392-8057 Fax: (416) 397-5624 Email: psimpson@toronto.ca

## **SIGNATURE**

---

Anna Kinastowski, City Solicitor