August 17, 2006

To: Toronto and East York Community Council

From: Director, Community Planning, Toronto and East York District

Subject: Supplementary Report Regarding Section 37

Applicant: The Board of Regents of Victoria University (c/o MintoUrban Communities Inc.)
Architects: Hariri Pontarini Architects and Zeidler Partnership Architects
4, 6 and 8 St. Thomas Street and 100 - 110 Charles Street West
Ward 27, Toronto Centre-Rosedale

Purpose:

This report reviews and recommends specific public benefits under Section 37 of the Planning Act in accordance with Development Guideline 2(ii)(g) for this site for community benefits, including streetscape improvements. This guideline forms part of the Development Guidelines adopted by City Council at its meeting of January 31, February 1 and 2, 2006 affecting the Official Plan Amendment and Rezoning application for 4, 6 and 8 St.Thomas Street and 100 - 110 Charles Street West, which is currently subject to appeals to the Ontario Municipal Board. The adjourned hearing resumes January 22, 2007, requiring Council direction at this time.

Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendations:

It is recommended that City Council:

(1) confirm the following community benefits:
(i) $200,000 to be paid to the City for the Toronto Heritage Grant Program;

(ii) $250,000 to be paid to the City for upgrades to the Museum Subway Station; and

(iii) $50,000 for area streetscape improvements;

all for the purpose of achieving Development Guideline 2(ii)(g) regarding public benefits, including streetscape improvements, which form part of the Development Guidelines adopted at the City Council meeting of January 31, February 1 and 2, 2006.

Background:

At its meeting of January 31, February 1 and 2, 2006, City Council adopted the recommendations in City Planning’s Refusal and Directions Report dated December 30, 2005. The report recommended that City Council:

(1) refuse the application to amend the Official Plan and Zoning Bylaw 438-86, as amended, of the former City of Toronto, in its current form;

(2) request the applicant to revise the application to address the issues identified in the report, in accordance with the recommendations of City Planning staff as set forth in the body of the report; and

(3) authorize the City Solicitor and other appropriate City staff to oppose the appeal of the application before the Ontario Municipal Board in the event the application is not amended to address the issues as identified in the report and to take such other steps as may be required to implement this recommendation.

City Council also adopted Development Guidelines based on the recommendations of City Planning staff as set forth in the body of the Refusal and Directions Report. In doing so, City Council authorized the City Solicitor, in the event that a settlement can be reached, to settle the appeal of the Official Plan and Zoning By-law Amendment application generally on the basis of the Development Guidelines (see Attachment 1).

Development Guideline No. 1 identifies a number of built form revisions to the application to achieve a built form appropriate for the site and consistent with the built and approved urban structure, and to minimize shadow impacts. Development Guideline No. 2 requests the Ontario Municipal Board to withhold its Order giving final approval to a modified application based on incorporation of the built form revisions identified in Development Guideline No. 1, until a number of conditions are satisfied. Conditions address such matters as heritage preservation, rental housing replacement, a tenant relocation and assistance package, building materials, public art, tree protection, various infrastructure-related items and community benefits.

Subsequent to City Council’s decision, City staff and the applicant discussed revisions to the application to address the Development Guidelines to achieve a supportable proposal. A satisfactory resolution was not achieved.
As a result, the Ontario Municipal Board hearing on the appeals of the Official Plan Amendment and Rezoning application by Victoria University and their development partners, MintoUrban Communities Inc., commenced on April 10, 2006. The hearing was not completed in the time set aside. Accordingly, on May 3, 2006, the Ontario Municipal Board adjourned the hearing and scheduled its continuation for January 22, 2007, for a period of seven weeks.

Comments:

Development Guideline No. 2 identifies a number of conditions to be satisfied. Development Guideline No. 2(ii)(g) requires the provision of other community benefits, including streetscape improvements, as appropriate. As discussed above, the Development Guidelines were based on the recommendations within the body of the Refusal and Directions Report. With respect to Section 37, the December 30, 2005 report states:

“if City Planning staff were recommending approval of the application in its current form, staff would recommend an appropriate package of public benefits pursuant to Section 37 of the Planning Act. Such benefits would include facilities, services and matters in addition to those referenced earlier in this report and would be developed having regard to the needs of the area, the potential impacts of the development, the increase in development permissions and in consultation with the local community, the Ward Councillor and the applicant. Since staff are not recommending approval of the proposal, staff have not discussed a potential contribution or benefits package with the applicant.

If the applicant revises the application to address the issues identified in this report, then an appropriate public benefits package would need to be considered and secured through the implementing by-laws and an agreement pursuant to Section 37 of the Planning Act.”

In addition to adopting the recommendations in the Refusal and Directions Report and the Development Guidelines, City Council indicated its intention to designate the McKinsey Building at 110 Charles Street West located adjacent to the development site. In its decision, City Council requested City Planning staff to take into consideration the designation in any further negotiations relating to the settlement of this appeal. This request was taken into consideration, including in identifying appropriate public benefits under Section 37 of the Planning Act.

City Planning staff had anticipated addressing the Official Plan policies on Section 37 as part of further discussions with the applicant within the context of revisions to the application to address the outstanding issues. As noted earlier, further discussions did not result in resolution of the outstanding issues. On April 12, 2006, Victoria University appealed the City’s intention to designate the McKinsey Building as well as the University Apartments at 6 and 8 St. Thomas Street under Part IV of the Ontario Heritage Act. These appeals remain outstanding.
Section 37

Section 37 of the Planning Act permits municipalities to pass zoning by-laws to authorize increases in density and/or height beyond what is otherwise permitted in return for such facilities, services and other public benefits as are set out in the by-law authorizing the increase.

Section 16.21 of the (former) City of Toronto Official Plan, as well as other policies of the Plan and various site specific policies set forth City Council’s intent to use its powers under Section 37 of the Planning Act and support the use of Section 37.

Section 16.21 sets out the general policies and subsection (a) makes clear the general intent that density and/or height increases must be consistent with the objectives of the Plan regarding building form and the physical environment in order to utilize Section 37. It authorizes the use of Section 37 of the Planning Act to secure positive features of the development proposal, including the realization of the objectives of the Official Plan. Both the Preliminary Report dated September 3, 2004, and the Refusal and Directions Report dated December 30, 2005, identify the City’s intention to use Section 37 of the Planning Act.

In preparation for the Ontario Municipal Board hearing, City Planning staff identified public benefits, taking into consideration the proposal’s additional density and height above current permissions, Council’s direction vis-à-vis its decision to designate the McKinsey Building, the impacts of the proposal, the policy framework, Official Plan policies and on-going initiatives to implement such policies, the Bloor-Yorkville/North Midtown Urban Design Guidelines, and public benefits required in other developments in the vicinity of the site and generally across the City. The public benefits were discussed with the Ward Councillor.

Public benefits for the purpose of Development Guideline 2(ii)(g) were identified on the City’s Issues List appended to the Ontario Municipal Board’s Procedural Order issued on March 14, 2006, and in City Planning’s witness statement submitted for the Ontario Municipal Board hearing.

Public Benefits

The following public benefits should be secured pursuant to Section 37 of the Planning Act in accordance with Development Guideline 2(ii)(g):

(a) $200,000 to be paid to the City for the Toronto Heritage Grant Program

This is a reasonable and appropriate public benefit having regard to the Provincial Policy Statement and the Official Plan policies respecting the preservation and conservation of sites, buildings and structures of architectural and/or historical importance and the impact of the proposed development on the heritage resources on the site and having taken into account the designation of 110 Charles Street West (the McKinsey Building).

As an implementation tool, the Toronto Heritage Grant Program promotes restoration and retention of heritage buildings. In addition to addressing alterations to on-site designated
heritage buildings to City Council’s satisfaction, given the height and density increases under consideration, the long held goals regarding the preservation of the heritage buildings on the site, the previous settlement which secured the preservation of the University Apartments at 6 and 8 St. Thomas Street in their entirety together with the facades of the Charles Street heritage buildings, a contribution to the Program to support heritage initiatives to conserve heritage across the City of Toronto is appropriate and reasonable. Heritage preservation is a key provincial interest with implications for both the immediate area and city-wide. A similar approach was adopted for the 1 St. Thomas development where a contribution ($300,000) was secured for the Toronto Heritage Grant Program.

(b) $250,000 to be paid to the City for upgrades to the Museum Subway Station

Official Plan policies encourage and are directed at increased transit use, improving the design, safety and security of public transit and facilitating pedestrian access to public transit. They encourage all new development to reduce car use and encourage public transit. Policies emphasize improvement to public transit in and to the Central Area of the former City of Toronto. The proposal is located within the Central Area. Currently, no parking is provided for the University Apartments at 6 and 8 St. Thomas Street. The development’s proposed 140 parking spaces (133 resident spaces and seven visitor spaces) exceeds both the requirements of General Zoning By-law 438-86, as amended, and the City’s condominium parking guideline. Future residents of the development should be encouraged to take advantage of its proximity to public transit services including the subway.

A public benefit directed to public transit improvements at the Museum subway station on the Yonge – University Line (the closest station to the development) is appropriate. It will benefit future residents of and visitors to the development, the area and the wider community, and will assist with other important objectives of the Official Plan.

The requirement of a public benefit for public transit is consistent with public benefits secured from other developments for upgrades to the Bay Street subway station (Cumberland entrance) on the Bloor Line.

(c) $50,000 for area streetscape improvements

Official Plan policies encourage improvements to the public realm and pedestrian infrastructure to among other things, make streets more attractive, and to facilitate and encourage pedestrian movements and cycling. A high quality public realm is emphasized.

A public benefit directed towards area streetscape improvements is appropriate. This contribution could be pooled with a similar public benefit ($100,000) secured in the 77 Charles Street West development and directed towards area streetscape improvements providing an even greater benefit.

The requirement of a public benefit for area streetscape improvements is consistent with public benefits ($500,000) secured in the 1 St. Thomas development as well as public benefits secured from other developments for the proposed Bloor Street Transformation Project and in
developments in other areas of the city. These improvements benefit future residents of the
development as well as the wider community.

Conclusion:

The recommended public benefits are reasonable, appropriate, reflect good planning and should
be required by the Ontario Municipal Board in the event of an approval of the requested Official
Plan and Zoning By-law Amendments or as modified pursuant to the City’s Development
Guidelines.

Contact:

Corwin Cambray, Planner, Downtown Section
Phone: (416) 392-0459
Fax: (416) 392-1330
Email: ccambra@toronto.ca

______________________________

Gary Wright
Director, Community Planning, Toronto and East York District

List of Attachments:

Attachment 1: Development Guidelines
Attachment 1: Development Guidelines

“That:

(I) City Council authorize the City Solicitor, in the event that a settlement can be reached, to settle the appeal of the Official Plan and Zoning By-law Amendment application generally on the basis of the following Development Guidelines:

‘Development Guidelines:

(1) to achieve a built form appropriate for the site and consistent with the built and approved urban structure, and to minimize shadow impacts:

(i) reduce the 37-metre (12-storey) building component to approximately 29 metres (nine storeys);

(ii) reduce the 74-metre (21-storey) building component to approximately 60 metres (18 storeys) and incorporate articulation of the tower floor plate, including pulling back the northeast and southeast corners on the St. Thomas Street frontage;

(iii) extend the podium along the Charles Street West frontage to the westerly edge of the development. Alternatively, set back the tower element at least two metres so that the McKinsey Building and the currently proposed podium read as a lower scale street wall on Charles Street West; and

(iv) in conjunction with the above, maintain the setbacks and upper levels step-backs on the St. Thomas Street frontage;

(2) request the Ontario Municipal Board to withhold its Order giving final approval to the modified proposal as set out in (1) above, until the following conditions set out in (i), (ii), (iii), (iv) and (v) are satisfied:

(i) the Owner executes one or more heritage easement agreements pursuant to Section 37 of the Ontario Heritage Act satisfactory to the Chief Planner and Executive Director of City Planning and the City Solicitor, and such agreements are registered on title to the lands in a manner satisfactory to the City Solicitor, for the properties municipally known as 8 St. Thomas Street and 6 St. Thomas Street;

(ii) the implementing by-laws include the provision and maintenance of the following facilities, services and matters by the Owner, at its expense, and in accordance with the agreement referred to below, as conditions to the increases in height and density to the satisfaction of the City Solicitor in consultation with the Chief Planner and Executive Director of City Planning pursuant to Section 37 of the Planning Act:

(a) a public art contribution in accordance with the City of Toronto’s Public Art Program for a value not less than one
percent of the gross construction cost of all buildings and structures on the lands;

(b) exterior building materials on the elevations of the development and landscaping materials satisfactory to the Chief Planner and Executive Director of City Planning;

(c) tree protection securities for the four London Plane trees in the St. Thomas Street right-of-way abutting the site satisfactory to the General Manager of Parks, Forestry and Recreation;

(d) provisions requiring the Owner to replace and secure as rental housing for a period of not less then 20 years, not less than 29 affordable replacement rental units of a similar size and type subject to Victoria University providing the outstanding documentation verifying that 11 units were used as student housing by Victoria University. In the absence of submitting the appropriate documentation, the number of affordable replacement rental units shall be 40 units representing the number of existing units at 6 and 8 St. Thomas Street;

(e) provisions requiring the Owner to maintain the affordable replacement rental units at affordable rents for a period of not less than 10 years, with the rent increase protections continuing for tenants remaining at the end of the 10 year period for as long as they occupy their units;

(f) a tenant relocation and assistance package including the right to return to a replacement unit, to the satisfaction of the Chief Planner and Executive Director of City Planning;

(g) other community benefits, including streetscape improvements, as appropriate;

(h) payment to the City for any improvements/ upgrades to the municipal infrastructure and municipal lighting, should it be determined that improvements/upgrades are required to support the development, according to the reports identified in 2(iv)(b) and (iv)(c) below, as reviewed and accepted by the Executive Director of Technical Services;

(i) payment to the City for the cost of removing the pay and display parking spaces on Charles Street West plus any additional costs to offset the lost revenue of these parking spaces satisfactory to the Toronto Parking Authority;
(j) installation of an irrigation system with automatic timer when three or more trees are planted in a City right-of-way to the satisfaction of the Executive Director of Technical Services;

(k) provisions securing the appropriate rights-of-way and easements over the existing ramp off Sultan Street for vehicular and pedestrian access to the underground parking garage servicing the development to the satisfaction of the General Manager of Transportation Services;

(l) fully document the existing building at 4 St. Thomas Street and submit such documentation to the satisfaction of the Manager, Heritage Preservation Services, prior to any demolition activities on the site; and

(m) such other conditions as may be appropriate to ensure the orderly development of the lands as required by the Chief Planner and Executive Director of City Planning;

(iii) the Owner enters into one or more agreements with the City pursuant to Section 37 of the Planning Act satisfactory to the Chief Planner and Executive Director of City Planning and the City Solicitor, to secure the facilities, services and matters set forth in 2(ii)(a) to (m) above, such agreement(s) be registered on title to the lands in a manner satisfactory to the City Solicitor;

(iv) the applicant submits at least six weeks prior to the City Solicitor forwarding the final Official Plan Amendment and Zoning By-law Amendment to the Ontario Municipal Board for its consideration, the following outstanding studies as set out in the Refusal and Directions Report and materials to the satisfaction of the appropriate City officials:

(a) a Pedestrian Level Wind Study;
(b) a Site Servicing Report;
(c) a Street Lighting Review;
(d) a Heritage Impact Statement;
(e) final drawings of the revised proposal as set out in (1) satisfactory to the Chief Planner and Executive Director of City Planning; and
(f) survey and reference plans to the Executive Director of Technical Services for review and approval; and

(v) an Official Plan Amendment, Zoning By-law Amendment are prepared to the satisfaction of the City Solicitor in consultation with the Chief Planner and Executive Director of City Planning.’