TORONTO

STAFF REPORT
ACTION REQUIRED

7, 15, 25R, 29 and 39 Queens Quay East – Section 37 Agreement Daycare Elections – Request for Direction Report

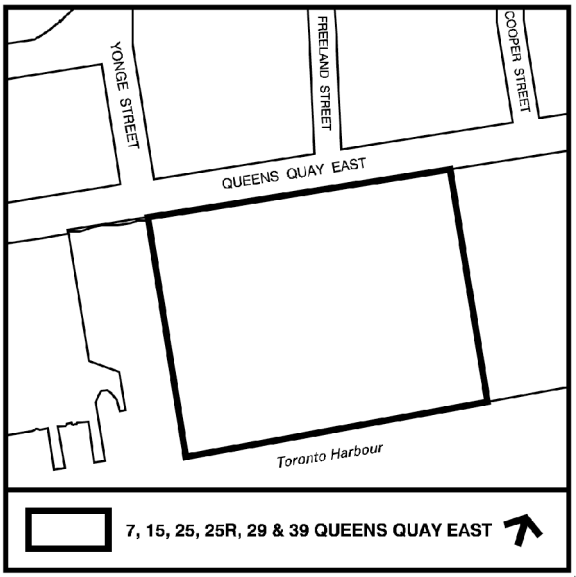
Date:	March 8, 2011
To:	City Council
From:	City Solicitor Chief Planner and Executive Director, City Planning
Wards:	Ward 28 – Toronto Centre-Rosedale
Reference Number:	cc11016 (File #10 147083 STE 28 OZ)

SUMMARY

Public benefits were secured in the site specific Zoning By-law and a Section 37 agreement as subsequently amended and restated (the Section 37 Agreement) for a previous development proposal on this site located at 7, 15, 25R, 29 and 39 Queens Quay East (previously known as 25 Queens Quay East). Official Plan Amendment, rezoning and site plan control applications have been submitted for second phase of this development and are still under review.

The purpose of this report is to seek Council direction on elections the City can make regarding the daycare space as provided for in the Section 37 Agreement.

Planning staff recommend that Council elect to take the cash contribution in place of the daycare space on this site, in order to realize a financially viable daycare to serve the area. Alternatively, should Council determine to accept this smaller daycare space, it is recommended that the City elect a 99-year leasehold interest, as provided for in the Section 37 Agreement.



RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council elect to require the owner to pay to the City the cash contribution for the daycare instead of the provision on site of a 33 space daycare, all as provided for in the Section 37 Agreement registered on September 25, 2009 as Instrument No. AT 2186244 for the lands known municipally as 7, 15, 25R, 29 and 39 Queens Quay East, and direct staff to notify the owner in writing of the City's decision.

2. City Council authorize the Chief Planner and Executive Director, City Planning Division, in consultation with the Director, Real Estate Services and other appropriate staff to negotiate the amount of the cash contribution in Recommendation 1 with the owner in accordance with the Section 37 Agreement, and in the event no agreement is reached, direct the City Solicitor to report back for instructions for arbitration.

3. Alternatively, in the event City Council determines to accept the basic contribution for daycare space provided for in Section 8.1.1 of the Section 37 Agreement, City Council elect that this facility be conveyed to the City through a 99-year leasehold interest as provided for in Section 8.1.7 of such Agreement and direct staff to notify the owner in writing of the City's decision.

Financial Impact

If City Council elects to require the owner to pay the cash contribution for the daycare, the amount of potential cash contribution is unknown at this time and is subject to negotiations failing which it is subject to arbitration. In the event that City Council accepts the basic contribution for daycare space and that this facility is conveyed to the City through a 99-year leasehold interest, there will be no expenses to the City.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

Official Plan Amendment No. 27 was adopted on July 24, 1995, increasing the permitted density of the lands from 2.85 FSI to 4.0 FSI. Following an Ontario Municipal Board hearing, By-law 1996-0483 was enacted to implement Official Plan Amendment No. 27 as it applied to the subject property, setting out maximum height restrictions as well as provisions to buffer the adjacent Redpath Sugar operation.

In 1998, Council approved the terms of the zoning by-law and Section 37 Agreement which secured a package of public benefits including waterfront parkland, money for basic park improvements, community services and public art.
http://www.toronto.ca/legdocs/1998/agendas/committees/to/to980401/it125.htm

On April 24, 2007, the applicant submitted a minor variance application for four Phase 1 buildings on the southerly portion of the site, with a companion site plan approval application. These variances were required to permit the buildings to be reoriented in a north-south direction from the previous east-west orientation. The application was appealed to the Ontario Municipal Board, which approved the variances, with the consent of the City and Redpath on March 17, 2009. The Board withheld its Order until October 15, 2009 to await confirmation that the Section 37 Agreement between the owner and the City had been amended, executed and registered on title to the subject site. It also waited for confirmation that a Three Party Amending Agreement between the owner, the City and Redpath Sugar Ltd. had been amended, executed and registered on title to the Redpath lands. The order is now in force.

This application and appeal resulted in amendments to the Section 37 agreement, to reflect revisions to the public benefits previously secured.

A preliminary report on Official Plan Amendment and rezoning applications for the second phase of the development was before Toronto and East York Community Council on June 22, 2010 and City Council on July 6, 7, and 8, 2010. The proposal is to construct three mixed use buildings containing retail at grade and residential above which would result in the total proposed development comprising seven buildings and public open space along the Yonge Street Slip and the water's edge.
http://www.toronto.ca/legdocs/mmis/2010/te/bgrd/backgroundfile-31171.pdf

ISSUE BACKGROUND

The site specific zoning by-law for these lands and the implementing Section 37 Agreement registered against the title obligates the owner to provide community service facility and licensed daycare space in a phased manner, commensurate with the amount of gross floor area (gfa) identified in the agreement. If the gfa of the proposed development exceeds certain thresholds, it triggers an additional level of community facility contribution by the owner.

The levels and types of contribution as defined in the site specific zoning by-law and Section 37 Agreement are as follows:

> Basic Contribution: 497 square metres of community service space and 347.5 square metres of interior space and 184 square metres of exterior space for licensed daycare purposes (sufficient to accommodate 33 children); and
>
> Bonus Contribution: 271 square metres of community service space (in addition to the 347.5 square metres secured in the Basic Contribution scenario), and 532 square metres of interior space and 290 square metres of contiguous outdoor space (which includes the daycare component of the Basic Contribution and would be sufficient to accommodate 52 children).

The community service space will be provided in the first phase of development and will be the subject of a request for proposals to determine the most appropriate community

agency and type of local programming that will occur upon completion.

The applicant submitted revised drawings for the second phase of the development on December 24, 2010 for their applications for Official Plan Amendment, rezoning and site plan control. As provided for in the Section 37 Agreement, the applicant's December 24, 2010 cover letter notifies the City that the applicant does not intend to trigger the Bonus Contribution. The December 24, 2010 resubmission shows the location and configuration of the proposed daycare, which was not illustrated or referred to in the original application submission. The proposed 33 space daycare is shown on the revised plans at the base of Building A at the north-eastern corner of the Phase 2 development. Assuming no further revisions to the plans resulting in increased gross floor area, the public benefit package as it pertains to community services would be confined to 497 square metres of community service space and a day care facility sufficient for 33 children.

The Section 37 Agreement contains provisions enabling the City to elect to accept a cash-in-lieu contribution, instead of the Basic Contribution for the daycare within a specified timeframe. The City is required to notify the Owner in writing of its election within 120 days of receipt of the owner's notice that they will not be exceeding the thresholds. This amount is payable to the City prior to the issuance of an above-grade building permit for a Phase 2 building and is to be equal to the present value, including any land component, of constructing, finishing, furnishing and equipping the daycare component including the outdoor space associated with it, and including the operating costs associated with the daycare facility for a term of 99 years. The amount of the payment is to be determined by agreement between the owner and the Chief Planner, failing which it is to be determined by arbitration in accordance with the terms of the Section 37 Agreement.

If the City determines to accept the provision of the daycare facility rather than electing the cash-in-lieu contribution, the Section 37 Agreement requires that the owner shall convey the daycare space of the Basic Contribution to the City for nominal consideration in fee simple, condominium, or leasehold title for a term of 99 years. Pursuant to the Section 37 Agreement the City must advise the owner in writing on how it wishes to take title, failing which the City will be deemed to have requested a 99 year leasehold interest.

COMMENTS

City Planning has been advised by Children's Services staff that the 33-child proposed daycare facility would not result in a financially viable program in this funding climate, and are therefore in agreement with staff recommending that the City Council provide notice that it is electing to receive a cash contribution. The provision of additional licensed spaces for infants remains a Council priority. Typically programs serving infants require facilities sufficient to accommodate a minimum of 52 children in order to operate on a break-even basis and to achieve the right balance of age groups. Providing care for the youngest age group is the most costly, and must be off-set by sufficient numbers of 2 ½ to 5 year olds. The smaller licensed capacity being proposed in this instance (33 spaces) would make it very difficult to achieve this balance and offer care to the full age range while not incurring deficits. Because of the concern with the financial

viability of a 33 child facility, the Section 37 Agreement provided for the cash-in-lieu option at the City's election. The cash-out option would allow a larger, financially viable daycare program to be developed in the vicinity of this development which serves the most vulnerable youngest age group or, other community facilities.

The Section 37 Agreement requires in the event the City elects the cash-in-lieu contribution, that the funds received be used for the provision of community services and facilities within the area bounded by King Street, Bathurst Street, Cherry Street and Lake Ontario provided the City uses reasonable efforts to locate such facility in proximity to the site.

Staff is seeking Council instructions to elect the cash-in-lieu payment for the day care component.

In the event that Council determined to elect to accept the 33-child facility, staff recommend that Council elect, pursuant to the Section 37 Agreement, that the facility be conveyed to the City at nominal cost as a 99 year leasehold interest. It is standard practice for the City to accept leasehold interest for community facilities, as leased facilities typically limit the City's liability with respect to taxes and common expenses, and is therefore the preferred option.

CONCLUSIONS

In order to achieve a financially viable daycare and larger facility or other community facility in this area, it is recommended that Council elect to take the cash contribution option provided for in the Section 37 agreement. Alternatively, in the event that Council elects to accept the smaller facility rather than the cash-in-lieu contribution, it is further recommended that the facility be accepted as a leasehold interest.

CONTACT

Sharon Haniford, Solicitor
Tel. No. (416) 392-6975
Fax No. (416) 397-4420
Email: shanifo@toronto.ca

Allison Meistrich, Senior Planner
Tel. No. (416) 392-7363
Fax No. (416) 392-1330
E-mail: ameistr@toronto.ca

SIGNATURE

Anna Kinastowski
City Solicitor

Gary Wright
Chief Planner and Executive Director
City Planning

(p:\2011\Cluster B\pln\teycc7573151015) - vc