



STAFF REPORT ACTION REQUIRED

120 and 130 Harbour Street, and 10 York Street – Official Plan Amendment and Zoning Amendment Applications – Supplementary Report

Date:	November 5, 2012
To:	Toronto and East York Community Council
From:	Director, Community Planning, Toronto and East York District
Wards:	Ward 20 – Trinity-Spadina
Reference Number:	11 329885 STE 20 OZ and 12 256067 STE 20 OZ

SUMMARY

This report provides further direction and revised Recommendations 6 and 7 regarding the Section 37 contribution that is outlined in item TE20.8 *Final Report – 120 to 130 Harbour Street and 10 York Street – Official Plan Amendment and Zoning Amendment Applications* Toronto and East York Community Council dated October 19, 2012.

RECOMMENDATIONS

The City Planning Division recommend that:

1. City Council replace recommendations 6 (a) and (b) of report dated October 19, 2012, *Final Report – 120 to 130 Harbour Street and 10 York Street – Official Plan Amendment and Zoning Amendment Applications* Item TE20.8 be replaced with the following:
 - "6. Before introducing the necessary Bills to City Council, City Council require the owner of the subject lands to enter into one or more agreements with the City of Toronto pursuant to Section 37 of the Planning Act to secure the facilities, services and matters referred to below at the owner's sole expense, which agreements may be registered against title of the lands to which this By-law applies in the manner and to the extent specified in such agreements. The owner of the subject lands, in accordance with, and subject to, the agreements referred to above shall

provide or fund the following facilities, services and/or matters on terms satisfactory to the City of Toronto:

- a. Provide an affordable rental housing built contribution to the value of at least \$5,200,000, including:
 - i. the conveyance of twelve units in the development to a non-profit housing co-operative provider ("the Provider") for affordable rental housing;
 - ii. the twelve units shall comprise seven two-bedroom and five one-bedroom units, with storage lockers and bicycle parking;
 - iii. the conveyance shall be for nominal consideration plus interim occupancy fees prior to condominium registration, with other customary adjustments for any costs associated with those units at the time of closing to be absorbed by the applicant.
- b. Enter into Agreements of Purchase and Sale with respect to all twelve units referenced in Recommendation 6 (a), with the Provider and/or the City prior to the issuance of the first above grade building permit for the development, and there shall be provisions allowing the Agreements of Purchase and Sale of all twelve units in Recommendations 6 (a) to be assignable."

2. Recommendation 2 be amended to read as follows:

- "2. City Council amend Zoning By-law 438-86, for the lands at 120 and 130 Harbour Street and 10 York Street substantially in accordance with the draft Zoning By-law Amendment attached as Attachment No. 7 to the report (October 19, 2012) from the Director, Community Planning, Toronto and East York District with an amendment to Appendix 1 by replacing a and b with the following:
 - a. Provide an affordable rental housing built contribution to the value of at least \$5,200,000, including:
 - i. the conveyance of twelve units in the development to a non-profit housing co-operative provider ("the Provider") for affordable rental housing;
 - ii. the twelve units shall comprise seven two-bedroom and five one-bedroom units, with storage lockers and bicycle parking;

- iii. the conveyance shall be for nominal consideration plus interim occupancy fees prior to condominium registration, with other customary adjustments for any costs associated with those units at the time of closing to be absorbed by the applicant.
 - b. Enter into Agreements of Purchase and Sale with respect to all twelve units referenced in Recommendation 6 (a), with the Provider and/or the City for a period of at least 50 years, securing the rents of the 12 affordable rental housing units as affordable rents and the occupancy of the units as rental housing prior to the issuance of the first above grade building permit for the development, and there shall be provisions allowing the Agreements of Purchase and Sale of all twelve units in Recommendations 6 (a) to be assignable."
- 3. Recommendation 7, of report dated October 19, 2012, *Final Report – 120 to 130 Harbour Street and 10 York Street – Official Plan Amendment and Zoning Amendment Applications* Item TE20.8 of the Toronto and East York Community Council dated October 19, 2012 be replaced with the following:
 - "7. Before introducing the necessary Bill to City Council for enactment of the site-specific zoning by-law, a Bill for enactment of an Official Plan Amendment to permit the condominium registration of the 12 affordable rental housing units shall have been adopted by City Council."
- 4. That the following new Recommendations 8 and 9 be approved:
 - "8. City Council authorize the City to be a party to the Agreements of Purchase and Sale for the Provider's units as a contingent transferee, in order to ensure the benefit of the units to be conveyed is secured for the intended purpose as set out in the report from the Director, Community Planning, Toronto and East York District entitled " 120 and 130 Harbour Street, and 10 York Street – Official Plan Amendment and Zoning Amendment Applications – Supplementary Report" (dated November 5, 2012) in the event the Owner or the non-profit purchaser is not able to complete the proposed transactions, by either assigning their interests in the Agreements of Purchase and Sale or by selling the units in the open market at fair market value with the proceeds to go towards affordable rental housing.
 - 9. City Council authorize and direct the appropriate City Officials to take the necessary action to give effect to the foregoing, including the specific actions set out in "Council Authorities to Implement Matters Pursuant to the Section 37 Agreement" as Schedule 1 to the report from the Director,

Community Planning, Toronto and East York District (dated November 5, 2012) entitled "120 and 130 Harbour Street, and 10 York Street – Official Plan Amendment and Zoning Amendment Applications – Supplementary Report".

ISSUE BACKGROUND

The Section 37 contributions for the subject site were negotiated with the intent that the affordable housing and public art were secured as community benefits. The value of the affordable housing contribution recommended in the October 19, 2012 final report is \$5.2 million. Recommendation 6 (a) (i) of the staff report states that the provision of affordable rental housing shall be either in the form of cash payable at building permit or as a built contribution within the property. If the cash option was chosen, it would be directed to the Capital Revolving Fund for Affordable Housing to fund affordable rental housing on other sites.. If the option of providing it as a built contribution was chosen, negotiations with the applicant would be needed to determine the details on the number and type of units to be provided and the financial terms and implications, as this information was not available to staff at the time of the staff report.

After the October 19, 2012 staff report was submitted, an agreement was reached for a contribution of built units. The proposed agreement is to have the applicant convey twelve units to a non-profit housing co-operative at essentially no cost other than for certain closing and adjustment cost amounts to be paid by the purchaser at occupancy and at the time when adjustments for extra charges are customarily made.

COMMENTS

Applicant's provision of affordable rental units

The applicant has agreed to provide for nominal consideration the following built contribution for affordable rental housing units:

- 12 condominium apartments, scattered over 5 storeys, each with 5 appliances;
- 7 are two-bedroom units, each with floor area of about 830 square feet; and
- 5 are one-bedroom units of about 580 square feet.

Each unit will also have a storage locker provided, and access to a bicycle parking space

There are a number of other costs that a typical purchaser of a condominium unit at 10 York Street would incur, such as their own legal costs at the time of conveyance, registration costs, Land Transfer Taxes, adjustments to cover the costs of development charges, meter installation, Tarion Home Warranty fees, and other administrative costs of the developer. The applicant has agreed to provide to the co-operative an allowance of up to \$500 per unit to help cover the legal costs of conveyance. All other applicable extra charges and fees that would be part of the adjustments at closing will be absorbed by the applicant, and form a part of the value of the built contribution that is being secured in the Section 37 Agreement.

The applicant is requesting that all efforts be made by the non-profit co-operative and the City to pursue any applicable exemptions for the 12 affordable rental units such as building permit fees, development charges, parkland dedication and the municipal Land Transfer Tax.

The effect of the proposal on adjustments for costs is that the co-operative will remain responsible for the customary interim occupancy fees prior to condominium registration and conveyance of title, and any legal costs beyond the allowance of \$500 per unit.

Section 37 value of the built contribution

Currently, there is not an established practice or methodology used by City Planning to identify a specific Section 37 dollar value per unit of affordable rental housing when it is being conveyed to a non-profit corporation at close to no capital cost. There have been very few such instances, and none where a Section 37 dollar value was first agreed to with the owner prior to determining how many housing units should be provided for that value. For this application, a total value of \$5.2 million for the Section 37 contribution for affordable rental housing had already been accepted by the owner.

This creates a need to determine the value of each contributed housing unit in order to determine the number and types of units that can be requested from the applicant to reach a value of at least \$5.2 million. In this particular development, the average unit value for Section 37 purposes for the 12 affordable rental units proposed is just over \$433,000. As outlined above, the applicant's proposal includes not only the conveyance of the completed units, but also the absorption of a number of costs for adjustments and closing costs that would be typically paid by a purchaser. The applicant's position is that this figure constitutes the market price minus a small discount plus the adjustments/closing costs.

The available time has not permitted staff to develop and recommend to Council an appropriate general method to value this type of affordable rental unit 'built contribution' for the purposes of Section 37. Results vary widely, for example, if the valuation is based on market sale price or construction costs, or cash-in-lieu of new affordable rental housing,, to name just three approaches. Staff believe that for the future, this task of developing an appropriate valuation methodology is important to help staff and City Council in similar situations to choose between the options of built contributions or cash for the Capital Revolving Fund for Affordable Housing. City Planning staff views the valuation of the agreement reached as being within an acceptable range for the \$5.2 million amount secured for the Section 37 contribution.

Terms for the non-profit housing co-operative

The proposed housing provider for these affordable rental units is a non-profit housing co-operative, to be determined by the Co-operative Housing Federation of Toronto. The applicant will convey the constructed units to the housing co-operative for nominal consideration, though the co-operative will be responsible for payment to the applicant of certain customary fees at the time of interim occupancy. These are expected to be minor, as the applicant is proposing to absorb the costs of many of the adjustments individual

purchasers typically pay, such as provincial Land Transfer Tax, meter installation fees, Tarion home warranty fees, education development charges, etc.

As they will be owned and operated by a non-profit rental housing provider, these co-operative units will be eligible for exemption from payment of various City fees and development charges, including the parkland dedication. The Affordable Housing Office is working with the applicant and the Co-operative Housing Federation of Toronto to make the appropriate arrangements. The waiving of these costs by the City has been assumed by the applicant in their proposal. Staff are also reviewing the possibility of exemptions from the municipal Land Transfer Tax for these affordable rental units, and the applicant has advised that their proposal does not provide for the applicant to pay such charges if no exemption is provided.

When combined with the very minimal costs the co-operative provider will absorb at the time of conveyance, the expected monthly costs of property taxes, utilities and operating costs should be low enough to ensure that the cooperative will be able to set and maintain rents within the City's affordable rent range. The City's agreements with the co-operative will secure the ongoing affordability of the rents and the provision of the units as rental housing to the occupants, among other matters.

Condominium registration of the non-profit co-operative rental units

The affordable rental units will be scattered within the condominium apartment building, and will be condominium registered. As discussed in the October 19, 2012 final report, an Official Plan amendment will be necessary to implement the condominium registration of rental units, and will need to be adopted in order for the site-specific zoning by-law amendment to proceed. A few recent applications for such an Official Plan amendment have been adopted by City Council, on condition that the units be owned and operated by a non-profit corporation, and that they maintain affordable rents and rental tenure for an extended period of time. At its meeting of October 2, 3 and 4, 2012, City Council adopted recommendations (Item PG17.9) pertaining to the review of the Official Plan housing policies, to consult with the public on proposals to permit the condominium registration of non-profit affordable rental housing units. In that proposal for a more general Official Plan Amendment, the units must be owned by a non-profit housing provider, have affordable rents for at least 25 years, and be operated as rental units for at least 50 years.

The provisions for the affordable units within the subject site are similar in nature to the recent Official Plan Amendment examples and in keeping with the recent Council direction regarding condominium registration of affordable units.

Securing the affordable rental units

The Section 37 Agreement will secure the applicant's obligations to construct and convey the affordable rental units to a non-profit co-operative, and finalize the terms of the conveyance including any financial obligations that the applicant and the housing co-operative must each assume to complete the purchase. It will provide for the timing of the agreements of purchase and sale, the option for them to be assigned, and the City's

role to secure this community benefit for the intended purpose if the agreements are not able to be completed.

The agreement will also secure key obligations of the affordable rental housing provider, consistent with Official Plan policies and the City's practices, with minimum requirements for the length of term of the affordability of the rents as well as for the rental nature of the occupancy.

The co-operative will also enter into a contribution agreement with the City to the satisfaction of the Director, Affordable Housing Office to provide for the detailed implementation of the provision of these affordable rental units and ongoing monitoring. Commensurate with the significant reduction of the co-operative's costs to maintain the affordability of the rents as a result of the Section 37 contribution, the Affordable Housing Office has advised that it is anticipated that the agreement will be able to secure affordability levels below the Official Plan maximum rent set at 100% of CMHC average market rent. The typical length of term for the affordability of the rents can also be extended to a minimum 50 years in recognition of this contribution. The contribution agreement to be executed between the Affordable Housing Office and the non-profit housing provider could potentially further extend the affordability and rental tenure.

A section 118 (Land Titles Act) restriction will be registered on title requiring consent by the City for any future charge or conveyance of these units, as set out in item 5 of attached Schedule 1.

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SIGNATURE

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ATTACHMENTS

Attachment 1: Schedule 1 - Council Authorities to Implement Matters Pursuant to the
Section 37 Agreement

Attachment 1:
Schedule 1 - Council Authorities to Implement Matters Pursuant to the Section 37 Agreement

1. City Council authorize and direct the City Solicitor to enter into a Section 37 agreement to implement the matters discussed in Recommendations 1 and 2 of the report from the Director, Community Planning, Toronto and East York District entitled " 120 and 130 Harbour Street, and 10 York Street – Official Plan Amendment and Zoning Amendment Applications – Supplementary Report" (dated November 5, 2012)
2. In order to ensure that construction, condominium registration and finalization of the transfer of units in the development may proceed in a timely manner, in the event any of the Agreements of Purchase and Sale with respect to the non-profit co-operative affordable housing provider ("the Provider") cannot be completed by the intended organizations, City Council authorize the City to assign its interests in the Provider's Units to another similar organization that would give effect to the intended purpose as set out in the report from the Director, Community Planning, Toronto and East York District, entitled " 120 and 130 Harbour Street, and 10 York Street – Official Plan Amendment and Zoning Amendment Applications – Supplementary Report" (dated November 5, 2012) chosen by the Director, Affordable Housing Office, on terms and conditions determined by him and in a form satisfactory to the City Solicitor, prior to the closing date with the Owner, with the intention that there are no financial consequences of the City having been a party to the Agreements of Purchase and Sale;
3. City Council authorize and direct the City Solicitor to execute the Agreements of Purchase and Sale with respect to the Provider's Units on behalf of the City, amending the closing, due diligence and other dates, and amending and waiving terms and conditions, on such terms as she considers reasonable;
4. City Council authorize and direct the Director, Affordable Housing Office, to enter into an agreement with the purchaser of the Provider's Units to secure the terms of the ongoing affordability of the affordable rental units, and to secure such other terms and conditions as he deems advisable, such agreement to be in a form satisfactory to the City Solicitor and to be entered into prior to the completion of the Agreements of Purchase and Sale referred to in the Recommendation 1 of the report from the Director, Community Planning, Toronto and East York District entitled " 120 and 130 Harbour Street, and 10 York Street – Official Plan Amendment and Zoning Amendment Applications – Supplementary Report" (dated November 5, 2012); and
5. City Council authorize the Chief Planner and Executive Director of City Planning Division to execute, in her sole discretion, consents pursuant to the restriction to be registered on title to the Provider's units under Section 118 of the *Land Title Act*.