

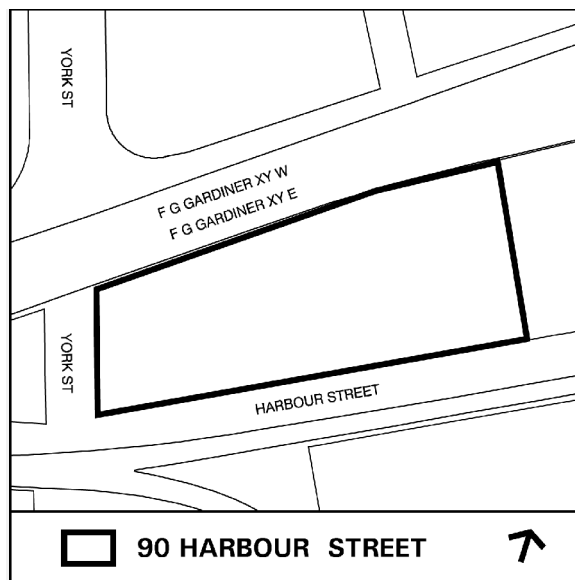
**90 Harbour Street and 1 York Street  
Official Plan Amendment and Zoning Amendment  
Applications – Final Report**

<b>Date:</b>	September 21, 2012
<b>To:</b>	Toronto and East York Community Council
<b>From:</b>	Director, Community Planning, Toronto and East York District
<b>Wards:</b>	Ward 28 – Toronto Centre-Rosedale
<b>Reference Number:</b>	11 295626 STE 28 OZ

**SUMMARY**

This application proposes one office building and two residential towers with a common podium ranging from 3 to 5 storeys at 90 Harbour Street and 1 York Street. The proposed office building is 37 storeys (174 metres including mechanical penthouse) and the two residential towers are 66 and 62 storeys (233 and 224 metres respectively including mechanical penthouse) each with a combined total of approximately 1,305 dwelling units. There are three storeys of commercial retail proposed in the base of the podium. The proposal integrates the elevated PATH pedestrian bridge spanning from 85 Harbour Street to the Air Canada Centre (40 Bay Street) along the easterly perimeter of the building on the second floor.

This report reviews and recommends approval in principle of the Official Plan Amendment and Zoning By-law Amendment subject to the provision of parking in accordance with the requirements as set out in this report.



## RECOMMENDATIONS

### The City Planning Division recommends that:

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 of the lands at 90 Harbour Street to address all such issues and if required by the Executive Director of Technical Services that the owner has entered into a secured Agreement with the City to ensure the provision of (a) the Functional Servicing Report, to the satisfaction of the Executive Director of Technical Services; and (b) the Transportation Study, to the satisfaction of the General Manager of Transportation Services, should it be determined that improvements to such infrastructure are required to support this development.
6. 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:
    - 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 to be applied at the discretion of the City as determined by the Chief Planner and Executive Officer, in consultation with the Ward Councillor.

- 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. upgrade of the "ramp" park bounded by Queens Quay West to the south, York Street to the west, 85 Harbour Street to the east and Harbour Street to the north.
- 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 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 to be paid at time of first building permit.
  - 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.

- 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 days 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 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, Culture and Tourism.
- 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. Through the Site Plan application process the following is required:
- a. provide all ramp slopes in accordance with By-law 438-86;
  - b. provide all ramps leading to the individual parking levels with maximum slope of 15 percent and transition areas at the top and bottom with maximum slopes of 7.5 percent for a minimum distance of 6 metres;
  - c. 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;
  - d. 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;

- e. Setback the project, including all ramps, driveways, bridge support columns and ventilation shafts, in order to accommodate the road widening set out above;
  - f. 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:
  - g. Make provision for a possible future vehicular connection to the lands to the east;
  - h. Setback the ventilation shaft on the York Street frontage so that it is not located within the 6.0 metre wide pedestrian setback area;
  - i. Provision of continuous pedestrian weather protection surrounding the site;
  - j. Identification of any future restaurant patio space in co-ordination with the pedestrian weather protection requirements;
  - k. Carry out the requirements of the York Promenade Plan along the York Street frontage of the site;
  - l. 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
  - m. Provision of maintenance holes at the property line off city property for both storm and sanitary connections.
- xix. 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.

7. Before introducing the necessary Bills to City Council for enactment, City Council require that the owner shall:

- a. submit a Site Plan approval application which includes all relevant drawings and reports as determined by the Chief Planner and Executive Director, City Planning Division;
- b. 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 of the City ownership of the temporary driveway, which may be used by the City for public 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.

- c. 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**

#### **PRE-APPLICATION CONSULTATION**

A pre-application consultation meeting was held with the applicant on October 3, 2011. At that meeting, the proponent outlined the proposal for a mixed use development with a 31-storey (150 Staff report for action – Final Report – 90 Harbour Street and 1 York Street



metre) office building on the westerly part of the site and two 70-storey (239 metre) residential towers on the easterly portion of the site. Two access points were proposed each off of Lake Shore Boulevard West and Harbour Street with a drop-off area at the north east corner of the site. The proposal presented at the pre-application meeting is exactly the same proposal as submitted to the City with these applications.

During the meeting, staff raised concerns over compliance with the site specific Official Plan policies regarding the view corridor between Queens Quay West and the *Financial District*, minimum tower separation requirements, setbacks to the easterly property boundary, height of the residential towers, minimum requirements for incorporating the PATH connection and future PATH connections, lack of family sized units, heritage retention of materials from the demolished building at 90 Harbour Street, reduction in bicycle parking, access off of Lake Shore Boulevard West and Harbour Street, provision of an internalized taxi stand in accordance with the Official Plan requirements and provision of amenity space (internal and external).

## **ISSUE BACKGROUND**

### **Heritage Background**

Following research and evaluation in early 2006, City staff determined that the former Workmen's Compensation Building (constructed in 1953) at 90 Harbour Street merited inclusion on the City of Toronto Inventory of Heritage Properties for its cultural heritage value as a good example of a mid 20<sup>th</sup> century office building that contributes contextually to the character of the Central Waterfront and Union Station District.

In a report dated March 9, 2006 to the Toronto Preservation Board and Toronto and East York Community Council, staff recommended that City Council include the property on the City's heritage inventory but advised that properties owned by the provincial government and its agencies were no longer eligible for municipal designation under Part IV, Section 29 of the Ontario Heritage Act. Notwithstanding this advice, at its meeting of June 27, 28 and 29, 2006, City Council placed the building on the city's heritage inventory and stated its intention to designate the property under Part IV, Section 29 of the Ontario Heritage Act.

Following the receipt of a letter of objection from the Ontario Realty Corporation (ORC), the City Clerk referred the matter to the Conservation Review Board. The Review Board convened a pre-hearing conference on August 31, 2007 with representatives of the ORC and City staff. City Legal concurred that under the changes to the Ontario Heritage Act (2005), municipalities cannot designate provincially owned properties. Section 26.1(1) of the Ontario Heritage Act states that municipal designation does not apply to property that "is owned by the Crown in right of Ontario or by a prescribed public body" (as described in Section 25.2 (2) (a)).

The parties reached an agreement that the ORC would withdraw its objection to the designation provided that the City then would withdraw its notice of intention to designate the site. The City's notice of intention to designate was withdrawn at its meeting of January 28 and 29, 2008, but the site remained listed on the City's heritage inventory, enabling staff to monitor any permits affecting its heritage attributes. Also any future owner would be subject to the requirement to submit a notice of its intention to demolish a heritage property under the provisions of the Ontario Heritage Act.

The property at 90 Harbour Street remained listed on the City of Toronto Inventory of Heritage Properties while ORC put the land and building up for sale. Potential purchasers were advised that if the ORC were to sell the property to an owner in the private sector, City Council would then have the ability to designate the property under Part IV, Section 29 of the Ontario Heritage Act. The ORC provided information to city staff with respect to the prevalence of on-site contamination and advised the city that they had conducted an assessment of the property and determined that it did not have provincial significance.

The building was occupied by the Ontario Provincial Police as its headquarters from 1975 until 1989, and had been vacant since that time apart from short-term occupancy for film productions. In the summer of 2011 the building was demolished under ORC ownership and without notice of Planning staff. Staff have been advised that some exterior panels and interior elements were salvaged and stored but at present it is unclear the extent of the salvage or the intent of incorporation. No heritage materials have been provided in the submission package.

## **PROPOSAL**

### **Original Proposal**

The applicant originally proposed a 31-storey (150.4 metres including mechanical penthouse, 140.4 excluding mechanical penthouse) office building with a 3-storey podium, and two 70-storey (239.5 metres including mechanical penthouse, 229.5 excluding mechanical penthouse) residential condominiums with an 8-storey podium. The development contained a total of 1,426 residential units including 95 bachelors (7%), 1,069 one- bedroom units (75%), 186 two- bedroom units (13%) and 76 three- bedroom units (5%).

The proposed tower separations were 20 metres from the office building to the west residential tower, 18.2 metres from the west residential tower to the east residential tower and 5.5 metres from the east residential tower to the property line of the adjoining lot owned by the Toronto Port Authority (60 Harbour Street). Although the towers were off-set, when viewed straight on from the south or north the separation distance of the two residential towers was 14.12 metres. There is currently site specific zoning in place to permit a tower on 60 Harbour Street immediately to the east of this site. The separation distance of the proposed east residential tower on the subject site to the permitted area for a tower on the abutting 60 Harbour Street site (owned by the Toronto Port Authority) in accordance with the zoning is 45 metres. The zoning for 60 Harbour Street also permits a lower building of 10 metres in height to be built up to the adjoining westerly lot line.

The applicant was proposing four levels of underground parking with one level shared parking for residential visitors and retail units and three additional levels of underground parking where the garage is separated into two sections, one for residential use and one for commercial office use. There were a total of 791 parking spaces proposed that include 411 spaces for residential use, 213 spaces for office use, and 167 spaces for shared commercial use for both residential visitors and retail unit parking. A total of 1,327 bicycle parking spaces were proposed to be provided on the ground floor and mezzanine level, including 1,141 residential spaces, 154 office spaces and 32 for the commercial and fitness centre. A total of 333 short term spaces were also provided some of which would be located outside the building including 30 BIXI spaces.

The original application proposed tower dimensions, typical floor areas and gross floor areas were as follows:

	<b>Office Tower</b>	<b>West Residential Tower</b>	<b>East Residential Tower</b>
<b>Dimensions of the Tower</b>	67.67m x 41.95m	30.22m x 25.75m	25.10m x 38.7m
<b>Typical Tower Floor Area</b>	2,838.75 sq.m.	778.16 sq.m.	971.37 sq.m.
<b>Total Gross Floor Area of the Tower</b>	77,184 sq.m.	53,556 sq.m.	42,856 sq.m.

A service driveway was proposed to run through the middle of the site between Lake Shore Boulevard West and Harbour Street. The service driveway would provide access to the residential parking garage ramp and to the commercial and residential loading areas, all of which were internalized within the building. One Type B and one Type G loading space are proposed to serve the residential buildings, while six loading spaces were provided for the commercial uses (one Type A, two Type B, and three Type C). The loading and building service functions were located within the northerly portion of the ground floor, set back from the Harbour Street and York Street frontages.

The two condominium towers propose a combined residential gross floor area of approximately 99,358 square metres with approximately 869 square metres of indoor amenity space including lounge rooms, theatre space, meeting rooms and 2,416 square metres of outdoor amenity space. A commercial fitness club was being proposed to address the indoor active amenity space needs. The fitness club was proposed to be 2,687 square metres. The office tower proposes 77,184 square metres of office space, with 574 square metres of retail at-grade.

The ground floor contained the residential and office lobbies, as well as street-related retail space along both Harbour Street and York Street. The second and third floors of the podium building would be used for a mix of retail and commercial office space. The office component would be located along the York Street frontage and the westerly third of the Harbour Street frontage. The remainder of the podium would be used for a large two-storey retail area of approximately 11,550 square metres, which would be accessed by way of a retail galleria on Harbour Street at the ground floor level as well as by retail elevators from the P1 parking level. The second floor also encompasses the PATH pedestrian connection that extends from the second floor of the Waterpark Place Phase III building at 85 Harbour Street to the south to the second floor of the Air Canada Centre to the north. The PATH pedestrian bridge is currently undergoing site plan review under file 11-220406 STE 28 SA. The subject application was reviewed to ensure that the provisions of the site plan for the PATH pedestrian bridge would be addressed in this location.

The applicant proposed to implement the City Council approved York Street Pedestrian Promenade Plan by providing a setback of the podium base for an expanded sidewalk area on the site with a minimum width of 6.0 metres along York Street. Continuous weather protection is being provided by the cantilever of the building at the second floor by 5.5 metres. Street trees are also proposed along each frontage of the site.

Attachments 1 and 2 show the proposed site plan and elevations for the project. For a summary of the application details, please refer to the Application Data Sheet in Attachment 6.

## Revised Proposal

The applicant has submitted two revisions to their original application. The second submission was dated January 27, 2012 and the third submission was dated June 25, 2012 each of which was circulated to departments and agencies for comment. A site plan application was also submitted in April 2012. The revisions to the plans include a number of changes to the site but the overall design concept and layout of the site is generally the same as in the original proposal. Table 1 is a summary of the revisions to the plans.

**Table 1 – Summary of Revisions to the Application**

<b>Revisions to the Application</b>	<b>First Submission October 26, 2011</b>	<b>Second Submission January 27, 2012</b>	<b>Third Submission June 25, 2012</b>	<b>Final Revision September 7, 2012</b>
Site Area	10,062 sq.m.	10,062 sq.m.	10,062 sq.m.	10,062 sq.m.
Tower floorplate (approximate average)	900 sq.m.	790 sq.m.	750 sq.m.	750 sq.m.
East Residential Tower	778 sq.m.	765 sq.m.	750 sq.m.	750 sq.m.
West Residential Tower	2,838 sq.m.	2,584 sq.m.	2,520 sq.m.	2,520 sq.m.
Office Tower				
Gross Floor Area (above grade)				
Total Residential	99,358 sq.m.	97,193 sq.m.	94,682 sq.m.	94,682 sq.m.
Office Tower	77,184 sq.m.	77,184 sq.m.	77,184 sq.m.	77,184 sq.m.
Commercial	13,283 sq.m.	16,707 sq.m.	16,707 sq.m.	16,707 sq.m.
<u>Fitness Club</u>	<u>2,687 sq.m.</u>	<u>3,067 sq.m.</u>	<u>3,067 sq.m.</u>	<u>3,067 sq.m.</u>
Total	192,512 sq.m.	194,151 sq.m.	191,640 sq.m.	191,640 sq.m.*
Floor Space Index	19.13 x lot area	19.29 x lot area	19.04 x lot area	19.04 x lot area
Setbacks and Separation (from tower face):				
East Tower face to the east property line	5.85 metres	5.5 metres	10 metres	10 metres
East Balcony face to the east property line	4.35 metres	4.0 metres	8.5 metres	8.5 metres
Between the residential towers (no balconies)	18.2 metres	20 metres	20 metres	20 metres
West Residential Tower to Office Tower (no balconies in area adjacent to office)	20 metres	20 metres	20 metres	20 metres
Podium to the Gardiner Expressway	6 metres	6 metres	6 metres	6 metres
West side of Office Tower (angled)	0-6.78 metres	6 metres	6 metres	6 metres
South side office tower	0 metres	0 metres	0 metres	0 metres
South side residential tower	3.02 metres	3.0 metres	3.0 metres	3.0 metres
Number of Units	1,426	1,413	1,305	1,305
Proposed Vehicular Parking				
Resident	411	414	354	354
Non-Residential (Office, Commercial, Fitness, Visitor)	380	386	362	362

Revisions to the Application	First Submission October 26, 2011	Second Submission January 27, 2012	Third Submission June 25, 2012	Final Revision September 7, 2012
Proposed Bicycle Parking				
Long Term Spaces	1,327	1,466	1,237	1,237
Short Term Spaces	315	187	320	320
Loading Spaces				
Type G	1 space	1 space	1 space	1 space
Type A	1 space	2 spaces	2 spaces	2 spaces
Type B	3 spaces	3 spaces	3 spaces	3 spaces
Type C	3 spaces	4 spaces	4 spaces	4 spaces
Interior Residential Amenity Space	3,556 sq.m. (2.49 sq.m. per unit)	769 sq.m. (0.54 sq.m. per unit)	929 sq.m. (0.71 sq.m. per unit)	929 sq.m. (0.71 sq.m. per unit)
Exterior Residential Amenity Space	2,416 sq.m. (1.69 sq.m. per unit)	2,826 sq.m. (2 sq.m. per unit)	2,315 sq.m. (1.77 sq.m. per unit)	2,315 sq.m. (1.77 sq.m. per unit)
Building Height (including mechanical penthouse)				
West Residential Towers	239.5 metres	246 metres	246 metres	222 metres
East Residential Towers	239.5 metres	246 metres	246 metres	233 metres
Office Tower	150.4 metres	173.5 metres	173.5 metres	173.5 metres

\* Note: Final gross floor area will be lower to reflect final tower heights

The revisions to the rezoning application for the subject site included changes to the shape of the easterly residential tower from the original elongated elliptical shape with rounded edges to more of a square shape. The change was a result of discussions with staff regarding the concerns about the facing distance of the towers and the setback to the easterly property boundary. The second submission included the revised tower shape to a square and shifted the towers further apart so that they were slightly offset. The third submission provided further off-set in the residential towers. This has increased the facing distance from 18 metres to 20 metres and increased the setback of the tower along the easterly property boundary from 5.85 metres to 10 metres.

The third submission continues to propose four levels of below grade parking with access the same as the original application. The number of loading spaces has also increased by type to accommodate the garbage/recycling, delivery, loading and moving requirements for the site.

Further discussions with the applicant since the last submission has resulted in additional revisions to the proposal as summarized on Table 1 and which will be further elaborated in this report. In summary, the applicant has agreed to reduce the height of the residential towers from 246 metres to 233 metres for the easterly tower and 224 metres for the westerly tower (heights noted are inclusive of mechanical penthouse). This would result in a reduction in the number of storeys from approximately 70-storeys for each tower to 66-storeys for the east tower and 62-storeys for the west tower. There will be a resultant reduction in residential gross floor area that will be finalized when the bills come forward to Council once the applicant has finalized their detailed internal design.

## Site and Surrounding Area

The site is located at the northeast corner of York Street and Harbour Street and occupies the westerly portion of the block bounded by York Street to the west, Lake Shore Boulevard West/Gardiner Expressway to the north, Bay Street to the east and Harbour Street to the south. The subject site is 1 hectare in size with frontages of 169.8 metres along Harbour Street, 48.8 metres along York Street and 164 metres along Lake Shore Boulevard West. The site is located in the Union Station District Plan and the proposed expansion area for the Waterfront Business Improvement Area.

The surrounding land uses are as follows:

North: Lakeshore Boulevard West/Gardiner Expressway, further to the north Maple Leaf Square at 15 York Street, consisting of a 10-storey mixed use podium connecting a 50-storey residential tower and a 54-storey residential tower.

South: Harbour Street and beyond is the Gardiner Expressway off-ramps leading to York Street and Bay Street, and Waterpark Place office complex, consisting of an existing 18-storey office tower and a 24-storey office tower in Phase I and II and approval for a 30-storey office tower in Phase III at 85 Harbour Street which is currently in the final stages of site plan review under application 11-194925 STE 28 SA.

East: Toronto Harbour Commission building at 60 Harbour Street, a six-storey building that is a designated heritage building subject to a Heritage Easement Agreement with the remainder of the site being used for commercial parking. These lands have a site specific by-law that permits a 125 metre high (approximately 29 storey) office building between Bay Street and the heritage building.

West: A triangular lot at 120 Harbour Street, which is owned by Build Toronto and is presently utilized as a surface parking lot managed by the Toronto Parking Authority. These lands are subject to a development proposal for a 68-storey residential condominium with below and above grade parking under file 11-329885 STE 20 OZ.

## Provincial Policy Statement and Provincial Plans

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The PPS sets the policy foundation for regulating the development and use of land. The key objectives include: building strong communities; wise use and management of resources; and, protecting public health and safety. City Council's planning decisions are required to be consistent with the PPS.

The Growth Plan for the Greater Golden Horseshoe provides a framework for managing growth in the Greater Golden Horseshoe including: directions for where and how to grow; the provision of infrastructure to support growth; and protecting natural systems and cultivating a culture of conservation. City Council's planning decisions are required to conform, or not conflict, with the Growth Plan for the Greater Golden Horseshoe.

Staff have reviewed the proposed development for consistency with the PPS and for conformity with the Growth Plan for the Greater Golden Horseshoe.

## Official Plan

The subject property is located within the *Downtown and Central Waterfront* area on Map 2 – Urban Structure in the Official Plan. Attachment 5 shows the Official Plan designation for the site and surrounding area.

In the City of Toronto's Official Plan, the lands at 90 Harbour Street are designated *Regeneration Areas*. These areas are intended to provide for a broad mix of commercial, residential, light industrial, institutional and live/work uses in an urban form in order to revitalize areas that are largely vacant or underused and to create new jobs and homes that use existing roads, transit, sewers, social services and other infrastructure.

The Development Criteria for *Regeneration Areas* requires that development should not proceed prior to approval of a Secondary Plan. The Official Plan sets out criteria through which a Secondary Plan would guide the revitalization of the area. The subject site is within the Central Waterfront Secondary Plan which is further discussed in the next section of this report.

The Official Plan also contains Site Specific Policy 159 which applies to 90 Harbour Street. This policy provides specific wording in addition to the policies in Section 3.1, Built Environment that requires the following:

- a) a 9.0 metre setback along the east property line which is intended to accommodate views from the *Financial District* though to the waterfront;
- b) a 6.0 metre setback along the north property line separating the development from the Gardiner Expressway and Lake Shore Boulevard West; and
- c) a 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*.

The applicant has applied for an Official Plan Amendment to delete the requirements of Site Specific Policy 159.

The City of Toronto's Official Plan is available on the City's website at:  
[http://www.toronto.ca/planning/official\\_plan/introduction.htm](http://www.toronto.ca/planning/official_plan/introduction.htm)

## Central Waterfront Secondary Plan

The Central Waterfront Secondary Plan was adopted by Council on April 16, 2003 as an amendment to Part II of the former City of Toronto Official Plan. It was appealed in its entirety, and although parts of the Plan have been approved by the Ontario Municipal Board, the Plan is not approved and in force as it applies to the subject site.

The Secondary Plan identifies the subject site as "*Regeneration Areas*" on Map E-Land Use Map. This designation applies to larger blocks and permits mixed-use development ranging from industries to housing to community services and parks including offices, hotels and restaurants. New development should incorporate a wide mix of uses both public and private, and should be designed at ground level to complement the activities anticipated in adjacent public spaces. The Regeneration sites will be subject to particular attention to ensure the highest quality of built form and design expected. The policies note that peer review of the design issues will be undertaken to ensure the high standards of excellence and to address scale, range of uses

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and overall building design. The Secondary Plan also contains policies to address enhanced public realm.

The Central Waterfront Secondary Plan is available on the City's website at: [http://www.toronto.ca/waterfront/cwp\\_2006.htm](http://www.toronto.ca/waterfront/cwp_2006.htm)

## **Zoning**

The site is zoned CR T6.0 C6.0 R0. The easterly portion of the site has a height limit of 125 metres, while the westerly portion has a height limit of 115 metres. The CR zone permits a wide range of residential and non-residential uses including apartment buildings, retail stores, offices, hotels and parks. The zoning permits a maximum non-residential density of 6.0 times the area of the lot. The current zoning does not allow for residential density. Attachment 4 shows the zoning for the site and surrounding area.

The site is subject to a restriction in Section 12(2)302 which requires a minimum above-grade setback of 10 metres from York Street and 3 metres from Lake Shore Boulevard West.

## **Tall Building Guidelines**

Toronto City Council approved the use of the document, "Design Criteria for Review of Tall Building Proposals" in June, 2006 and in April, 2010 extended authorization of its use. A tall building is generally defined as a building that is taller than the road right-of-way adjacent to the site. In this case, the right-of-way for Harbour Street east of York Street is 27 metres wide according to Official Plan Map 3 – Right-of-Way Widths Associated with Existing Major Streets. York Street is shown as "non-uniform width to be retained as existing at the time of Plan adoption" according to Official Plan Map 3. As such, the proposed building at 186 metres in height is considered a tall building. The Design Criteria provide policy recommendations for tall buildings on issues of building placement and orientation, entrances, heritage conservation, massing of base buildings, tower floor plates, separation distances, pedestrian realm considerations, sustainable design and transition. This document will be used to assess the proposed building.

The City's "Design Criteria for Review of Tall Building Proposals" can be found on the City's website at: <http://www.toronto.ca/planning/urbdesign/index.htm>.

## **Site Plan Control**

The subject site and proposed development are subject to Site Plan Control. A site plan application was submitted on March 26, 2012 and is being reviewed concurrently with the Official Plan and Zoning Amendment application.

## **Reasons for Application**

An Official Plan Amendment is being sought to delete Site and Area Specific Policy 159 which sets out specific policies for 90 Harbour Street regarding setbacks and view corridors.

An amendment to Zoning By-law 438-86 is required to increase the permitted height, total density and residential density, as well as to revise other development regulations as required to accommodate the proposed development.



## **Community Consultation**

A community consultation meeting was held January 31, 2012 at the Paws Way Pet Centre on Queens Quay West to allow the public to review the applicant's submission and ask questions of City staff and the applicant. The meeting was attended by approximately 63 people. Issues raised included the following:

- additional traffic in the area generated by both the commercial and residential components of the development,
- increased parking demand in the area as the proposal is providing reduced parking,
- increased pedestrian traffic particularly through peak tourist season and impact on public realm,
- ability of the existing infrastructure to accommodate the additional population,
- narrow sidewalk widths,
- lack of community services in the area in response to increased development,
- proposed height of the residential buildings,
- Inadequate green space in the community,
- The status of the removal of the York/Bay/Yonge off-ramp from the Gardiner Expressway, and
- Lack of bicycle lanes.

In addition, the York Quay Neighbourhood Association (YQNA) contacted Community Planning staff and submitted letters noting their concerns most particularly related to traffic volumes and long term impact on the area especially during peak times, height of the residential towers, density, setbacks and separation distance, intrusion into the York Street view corridor, massing and overcrowding. Additional comments were received from the Waterfront Business Improvement Area (BIA) regarding the concerns expressed above as well as questioning the type of retail that would locate in the development noting that, although they were supportive of additional retail in the area, big box type of retail was not appropriate.

Comments were also received from members of the public in writing and by e-mail after the public meeting expressing similar concerns to those noted above.

## **Waterfront Toronto Design Review Panel**

The application was before the Waterfront Toronto Design Review Panel on March 7, 2012 and May 9, 2012. The Panel voted for conditional support in each meeting. At the first Panel meeting the recommendations of the Panel included direction for further study of the existing and proposed context, the streetscape, distance separation between each of the towers, potential east side connection through the block, the connection to Union Station, the PATH connection, and the architectural features. The applicant revised the plans also incorporating comments from staff for the second Panel meeting which included shifting the residential towers to be more off-set, re-aligning the office tower to address the objectives of the York Street Promenade Plan. The Panel recommendations included a request for further design details for the office building and lobby space, and animation strategies for the ground floor as well as further information on sustainability strategies. The applicant will be providing further refinements through the site plan approval process.

## Agency Circulation

The application was circulated to all appropriate agencies and City divisions. Responses received have been used to assist in evaluating the application and to formulate appropriate by-law standards.

## COMMENTS

To predicate the analysis in this report it should be noted that this area of the Central Waterfront bounded by Bay Street, Harbour Street, Lake Shore Boulevard West and the west end of the site at 120 Harbour Street has been identified in the Official Plan and Secondary Plan as underused and in need of revitalization from its present use as parking lots and surrounded by highway ramps to something more vibrant and contributory to the community. The area has the benefit of being directly adjacent to the *Financial District* and Union Station to the north as well as the waterfront area to the south. The area also faces challenges including the proximity to the Gardiner Expressway and its access ramps as well as the multi-lane Lake Shore Boulevard West and Harbour Street.

This location is essentially an "island" of three remnant parcels that includes 120 Harbour Street to the west, the subject site and 60 Harbour Street to the east. The "island" effect has necessitated a broader review of the context of the subject site due to the inter-connection of issues including transportation, access, pedestrian area and streetscape as well as the density, height and massing. The Central Waterfront to the west, south and east is considered a stable area with limited intensification potential (i.e., the area east of Yonge Street, further west at Rees Street) of individual sites, not a grouping of sites as with this particular area. The location of these remnant sites acts as a gateway between the waterfront area and the downtown core. Although tower form of development may be appropriate on other sites in the waterfront area depending on the area and site analysis of those sites as they come forward, it is not anticipated or expected that the density or height of development proposed in this area would be appropriate throughout the waterfront.

## Provincial Policy Statement and Provincial Plans

This application supports the 2005 Provincial Policy Statement (PPS) direction of intensification to achieve growth and urban vitality while making efficient use of existing infrastructure. This application:

- provides a density of residential uses that efficiently uses land and resources, efficiently uses infrastructure and public service facilities and supports the use of alternative transportation modes (Section 1.1.3.2);
- provides for intensification of built form within an established settlement area (Section 1.1.3.3);
- optimizes the use of existing infrastructure and public service facilities by utilizing municipal services that are already in place (Section 1.6.2); and
- provides a compact building form in proximity to public transit, providing for additional housing uses in an area of high employment uses thereby providing the opportunities for shortening commute journeys (Section 1.8.1).

This application also supports the 2006 Growth Plan for the Greater Golden Horseshoe. The site is within an *Urban Growth Centre* which is a location where growth is expected to occur.

Section 2.2.3.6 (e) recognizes that *Urban Growth Centres*, intensification corridors, and major transit station areas as key focus for development to accommodate intensification.

Section 2.2.2.1 directs how this growth should be accommodated and this proposal addresses many of the policies including:

- (a) directing a significant portion of new growth to the built-up areas of the community through intensification;
- (d) reducing dependence on the automobile through the development of mixed-use, transit supportive, pedestrian friendly urban environments; and
- (e) providing convenient access to intra- and inter-city transit.

This proposal also complies with the policies set out in Section 2.2.3.7 which states that "all intensification areas will be planned and designed to:

- (a) attract a significant portion of population and employment growth;
- (b) provide a diverse and compatible mix of land uses, including residential and employment uses, to support vibrant neighbourhoods;
- (d) support transit, walking and cycling for everyday activities; and
- (e) achieve an appropriate transition of built form to adjacent areas.

The proposal conforms and does not conflict with the Growth Plan for the Greater Golden Horseshoe, as the site is within an identified Urban Growth Centre, an area intended to accommodate future intensification that is transit and pedestrian-friendly.

## **Land Use**

### ***City of Toronto Official Plan***

The proposed mixed-use development is consistent with the land use provisions of the Official Plan.

The subject site is within the *Downtown* and *Central Waterfront* area as shown on Map 6 – Urban Structure (December 2010) of the Toronto Official Plan. The current direction of the Official Plan and provincial planning documents identify the *Downtown* as the employment centre in the regional economy. The Official Plan describes the *Central Waterfront* as offering a unique opportunity for substantial employment and residential growth while recognizing that there is a Secondary Plan that guides development for the area. Growth will be directed to the *Downtown* in order to concentrate jobs and people in areas well served by surface transit and rapid transit stations (2.2 Policy 2).

The site is designated *Regeneration Areas* on Map 18- Land Use Plan. The Regeneration Areas are unique areas that provide an opportunity to re-use buildings and encourage new construction

to revitalize areas of the City that are either vacant or under used. This designation permits a range of uses including retail, office and residential and encourages the uses to be mixed within the same block or even the same building. The framework for new development in each *Regeneration Areas* is set out in a Secondary Plan.

The proposed intensification is generally appropriate for this site particularly given its location in the *Downtown* and *Central Waterfront Area*, the opportunity to revitalize an underused site in keeping with the direction of the *Regeneration Areas*, the proximity to a major transit hub of Union Station, direct connection of the development to major transit through the PATH pedestrian system, the location adjacent to the Gardiner Expressway and the close proximity to the City Centre Billy Bishop Airport.

### ***Central Waterfront Secondary Plan***

The proposed mixed-use development is in keeping with the land use provisions of the *Regeneration Areas* in the Central Waterfront Secondary Plan.

The Secondary Plan identifies the subject site as *Regeneration Areas* on Map E-Land Use Map. This designation permits the proposed mixed-use development including such uses as office, commercial and residential. New development should incorporate a wide mix of uses both public and private, and should be designed at ground level to complement the activities anticipated in adjacent public spaces. The *Regeneration sites* will be subject to particular attention to ensure the highest quality of built form and design expected.

### ***Site Specific Policy 159***

The Official Plan also contains Site Specific Policy 159 which applies to 90 Harbour Street. As described previously in this report there are specific requirements included in this policy that require: a 9.0 metre setback along the east property line; a 6.0 metre setback along the north property line; and a separation between high buildings on the site to preserve north/south views through the property.

The setbacks on the subject site have changed since the original submission to address staff concerns regarding proximity to the east property line and in terms of the site specific policy. The applicant has shifted and realigned the residential towers to provide a 10 metre setback from the easterly tower face to the property boundary compared to the original 3 metre setback. Balconies protruding 1.5 metres into this area would reduce the setback to 8.5 metres between the balcony face to the easterly property rather than the 9 metres required through the site specific policy.

Through the review of the current applications a road widening along the northerly boundary of the site has been identified as a requirement for Lake Shore Boulevard West. The details of the road widening are discussed further under the "Transportation" section of this report and have been included in the revision to Site Specific Policy #159 and will be a requirement of the site plan agreement. The road widening is proposed to be 5.3 metres at the widest point at the east end of the site tapering to the west end of the site. No buildings or structures are allowed to be placed within the widening to keep it free and clear from all encumbrances. The widening is to accommodate a potential future "Grand Boulevard" along Lake Shore Boulevard in the event that the Gardiner Expressway is removed in the future. The 6.0 metre setback required in Site Specific Policy along the north property boundary is to be reduced to 5.3 metres through wording to be included in the site specific policy.

The separation between buildings as required by Site Specific Policy #159 is addressed on the subject site by off-setting the location of the towers and the provision of a 20 metre setback between each of the towers. This will be discussed further in the massing section of this report. Staff are satisfied that the separation between buildings has been addressed.

As a result of the revisions discussed the site specific policy shall include the following wording:

*#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) the Lake Shore Boulevard West right-of-way shall be a minimum of 42 metres between York Street and the easterly property boundary of 90 Harbour Street.*

## **Union Station District Plan**

A Union Station District Plan was prepared in May 2006 and was presented to Planning and Transportation Committee in June 2006. The plan outlines the boundaries of the Union Station urban design study area as Simcoe Street/railway/Rees Street on the west, Harbour Street on the south, Yonge Street on the east and Wellington Street on the north. The plan recommends significant landscape and pavement improvements within the District including Harbour Street, York Street and Lake Shore Boulevard West. The plan also requires a view corridor to be maintained to the iconic Royal York Hotel which relates to Site Specific Policy 159 as discussed in the previous section.

## **Density, Height, Massing**

### ***Density***

The proposed density at 19 times the area of the lot, exceeds the current permissions of the Zoning By-law of 6 times the lot area for a commercial building and 0 times the lot area for residential.

The current direction of the Official Plan and provincial planning documents identify the *Downtown and Central Waterfront Area* as locations for intensification. Growth will be directed to the *Downtown* in order to concentrate jobs and people in areas well served by surface transit and rapid transit stations (2.2 Policy 2).

The density proposed for this site exceeds recently approved and under construction sites in the area to the north of Lake Shore Boulevard West. The ICE condominium development at 16 York Street has a total site density of 14 times the lot area which includes both the residential buildings and the commercial office building. Maple Leaf Square (15 York Street) has a total Staff report for action – Final Report – 90 Harbour Street and 1 York Street

site density of 12.5 times the area of the lot. The Pinnacle development at 33 Bay Street has a density of 10 times the area of the lot.

The density proposed by the applicant is 30% to 50% greater than other similar mixed use developments in the area and this is primarily related to the amount of commercial space proposed on the site in the podium and the office tower. There has been a change in the gross floor area of the site since the first submission that is summarized in Table 1 earlier in this report.

The overall density reduction is from 19.29 times the area of the lot to 19 times the area of the lot. While this is not a significant reduction overall it represents a redistribution of the density from the residential component of the site to the commercial component which is preferable in this location near Union Station. The residential gross floor area has been reduced by 4,676 sq.m. while the commercial area in the podium has increased by 3,424 sq.m. The fitness centre has also increased in size by 380 sq.m. The fitness centre is proposed to be the fitness amenity for residents as well as a commercial operation for use by the public. With a further reduction in the height of the residential towers there will be an associated loss of gross floor area that will be included in the final bills to be brought forward to Council.

The ICE development and Maple Leaf Square are located within the *Financial District* and the Railway Lands Precinct which envisioned substantial commercial office development with densities and heights in keeping with *Financial District* development. With the boundary of the Railway Lands and the *Financial District* being Lake Shore Boulevard West, the subject site is located directly adjacent to these areas. The subject site will contain a direct pedestrian access to Union Station, the city's main transportation hub, through the proposed PATH pedestrian bridge that is to connect from 85 Harbour Street and 10-20 Bay Street to the south of the subject site through to the Air Canada Centre at 40 Bay Street and then to Union Station. The site is also situated in the first block west of Bay Street, the central spine of the *Financial District*. Immediately to the south of the subject site is the Waterpark Place office development including three office buildings with the Phase III building under construction being the new headquarters of the Royal Bank of Canada. Immediately to the east of the subject site fronting on the west side of Bay Street is the 60 Harbour Street site which currently contains the Harbour Commission building (designated heritage on the City's heritage inventory) and an at grade commercial parking lot.

The 60 Harbour Street site has existing zoning in place through By-law No. 42-87 to permit 54,939 sq.m. of commercial space including an office tower and at grade retail to a height of 125 metres (approximately 29 stories). The location of the PATH pedestrian bridge on the east side of the subject site will enable the future development at 60 Harbour Street to also connect to Union Station.

To the west of the subject site is the proposed Tridel/Build Toronto development application at 120 Harbour Street for a 69-storey residential tower which is still under review by staff. Further to the west and south are existing residential condominiums and retail/office space. Further to the east on the east side of Bay Street is the existing Pinnacle mixed-use 4-tower development and the Westin Harbour Castle Convention Centre. Although there are lands on the east side of Yonge Street that will be subject to redevelopment in the future, it is not anticipated to have the same heights or densities as proposed on the subject site. That area of the Central Waterfront is currently under review to provide direction as to the appropriate form and type of land use that would be acceptable.

Although the proposed density of the site is greater than recently approved development applications in the area it is found to be acceptable in this particular location due to the unique location and city building features that it is bringing to the community. This includes the provision of commercial space to serve the immediate community, the provision of a Class A office building directly adjacent to the *Financial District*, a direct PATH pedestrian connection to Union Station, the upgraded streetscape along Harbour Street, Lake Shore Boulevard West and particularly York Street in keeping with the York Promenade Plan, and the proximity to other existing and permitted office developments to the east and south. This type of height and density is not anticipated within the broader waterfront area as distance from Union Station increases. Staff are of the opinion that the density of the development is appropriate on this particularly large site but should not become a precedent for the waterfront area as a whole.

### **Height**

The original proposed height of residential towers is 236 metres (246 metres including mechanical penthouse). The proposed height of the commercial office tower is 158 metres (173.5 metres including mechanical penthouse). The heights of all the proposed buildings on the site exceeds the current permission of the Zoning By-law of 125 metres on the east side of the site and 115 metres on the west side of the site.

The height proposed on the subject site is more in keeping with the heights in the *Financial District* than the height along the waterfront area. *Financial District* heights of other office and residential condominium proposals in or near the *Financial District* that have been approved by City Council include the following:

<b>Development</b>	<b>Height (metres)</b>
18 York Street (three buildings): Office tower Office tower Hotel tower	135.45 metres 126 metres 159.79 metres
ICE 16 York Street: North (east) residential tower South (west) residential tower Commercial tower	234.5 metres 202 metres 158 metres
Maple Leaf Square 15 York Street:	174 metres
Telus 25 York Street	160 metres
Ritz – Carleton 230 Front Street West	188 metres
Trump Tower 333 Bay Street	269 metres
1 King Street West	176 metres
Shangri-La 180-188 University Avenue	214 metres
Bay Adelaide Centre 40 Adelaide Street West	218 metres
Royal Bank Plaza 200 Bay Street	175 metres
BCE Place	195 and 255 metres
Pinnacle 33 Bay Street	162 metres
40 Scott Street	204

The Official Plan policies support and direct that the highest and most dense developments of the City be located within the *Financial District*.

Although the location of the site along the Gardiner Expressway corridor and at the edge of the *Financial District* is appropriate for a tall building there should be a transition from the *Financial District* to the existing lower forms of the development along the waterfront. Through the community consultation process transition from the *Financial District* to the waterfront was also noted as a concern. This site has also been identified by the Waterfront Toronto Design Review Panel as a gateway site between the *Financial District* and the waterfront area that warrants particular attention to provide an appropriate transition to each of the areas.

Staff have undertaken a detailed review of the site and the area and are of the opinion that the height of the residential towers should be revised to 233 metres (66 storeys) for the south (east) tower and 222 metres (62 storeys) for the north (west) tower to provide an appropriate transition to the waterfront. This has been discussed with the applicant and agreement has been reached on the height of the towers. The heights of the ICE development and Maple Leaf Square were used as a reference point. The proposed height of the towers on the subject site are less than the height of the ICE east residential tower. The taller of the towers is to be on the east side of the site closer to Bay Street with the shorter of the towers on the west side adjacent to the office tower.

It should be noted that additional requests for increases in height through future Committee of Adjustment applications or rezonings would not be supported. The intent of the transition area is to provide a stepping down of height from the *Financial District* to the waterfront. Additional height would go further to matching the *Financial District* height and not fit within the intent of providing an appropriate transition as required to respond to the context of the area.

### ***Massing***

The tall building policies of the Official Plan identify three parts of a tower: the base, the middle and the top. The base building should provide definition and support at an appropriate scale and integrate with adjacent buildings.

The development types are tower-podium form along Queens Quay, York Street and Bay Street. The proposed built form and massing is an appropriate response to the existing forms of development in the area.

The scale of the podium responds to the existing development adjacent to the site. The 5-storey podium on the north and easterly part of the subject site will step down to a 3-storey podium element along the south and west part of the site. This is appropriate in providing a higher podium element adjacent to the Gardiner Expressway with the lower podium adjacent to Harbour Street and Waterpark Place to the south which has a similar podium height.

In accordance with the direction provided in the Official Plan the middle of the tower should be designed with a floor plate size and shape with appropriate dimensions for the site. The average residential tower floor plate size is approximately 750 square metres for each tower which is generally in keeping with the direction of the Tall Buildings Guidelines.

In the previous submission of the plans the east and west elevations for the buildings overlapped so when viewed they appear as one slab building. The reduction of the height and the stepping



of the towers as described in the previous section will help provide a differentiation between the towers. The tower cladding is primarily glass panels which relate to other surrounding buildings within the waterfront area. Further analysis and review of the cladding will be undertaken through the site plan application process.

The Official Plan policies as noted above direct that new development respect and be massed to fit within the existing planned context, provide appropriate setbacks, create appropriate transitions to neighbouring development and provide for adequate light and privacy. The Development Criteria for Tall Buildings Proposals (Tall Buildings Guidelines) were developed to implement the Built Form policies as found in Section 3 of the Official Plan. Section 3 of the Tall Buildings Guidelines direct that a setback of 12.5 metres from the side lot line to the tower face be provided to adequately address the policy requirements. Site Specific Policy #159 requires a 9 metre setback to the easterly property boundary.

The setbacks on the subject site have changed since the original submission to address staff concerns on the erosion of the site specific policy. The applicant has shifted and realigned the residential towers to provide a 10 metre setback from the easterly tower face to the property boundary. With the balconies protruding 1.5 metres into this area the setback of the balcony face to the easterly property boundary is 8.5 metres rather than the 9 metres required through the site specific policy. The wording in the proposed revision to the site specific policy as discussed earlier in this report requires a 9 metres setback to the building face to accommodate design changes in the towers in case there are no balconies in the final design. Staff are satisfied with the easterly setback of 9 metres to the building face.

Union Plaza on the north side of Lake Shore Boulevard West was designed and oriented to maintain the view through to the iconic Royal York Hotel as directed by the Union Station District Plan. The Union Station District Plan directs that future development needs to maintain the south view corridor of Union Station and the Royal York Hotel. The increased setback of the easterly residential tower, the setbacks between the towers and the provision of an open private laneway addresses this requirement.

The proposed separation distance between the two residential towers is 20 metres face to face. The office tower is also proposed to be 20 metres from the westerly residential tower. The Waterfront Toronto Design Review Panel had expressed concerns with the proximity of the residential tower to the office tower and overlook so that the primary view of the residential owners in that part of the tower would be the office building. The applicant has addressed this concern by removing balconies from the southwest facade of the tower and revising the unit layout to have the primary windows of the units in this area face south. The applicant has assured staff that designing the units in this manner at this point in time will not result in revisions at a later date through the building permit process with smaller units that have primary windows looking into the office building.

The top of tall buildings shall contribute to the skyline character and integrate roof top mechanical systems into the design. The stepping of the tower heights will provide a differentiation to the top of the residential towers. This proposal masks the mechanical systems by integrating the architectural element at the top of the tower with the overall design of the building.

## **Sun, Shadow, Wind**

Section 3.1.3 (Built Form) of the Official Plan includes a policy that tall buildings must minimize the negative impact of shadows on adjacent public spaces including streets, parks and open spaces. The applicant has submitted a Shadow Analysis to illustrate the shadows created by the proposed development during March 21<sup>st</sup> and June 21<sup>st</sup> between the hours of 9:18 a.m. and 6:18 p.m. The proposed development casts an increased shadow to the north, including shadows cast on Union Plaza between 12:18 pm and 2:18 pm March 21<sup>st</sup>. The additional shadows will not impact the Roundhouse Park or any other parks in the area and the new shadows will fall within the existing mixed use area. The shadow impacts of the development are acceptable.

## **Transportation**

### ***Parking and Access***

The applicant is proposing a total of 716 parking spaces in 4 levels of underground garage with 354 resident spaces and 362 aggregated visitor/commercial parking spaces. The applicant submitted a Traffic Impact Study completed by LEA Consulting Ltd. which indicated that the parking provided was adequate. However, City Staff have reviewed the study and require additional information to support the parking provided. While staff have indicated that the proposed aggregated visitor/commercial parking supply is acceptable in principle, they do not support the proposed reduction in the resident parking supply from the required approximately 813 spaces to the provided 254 spaces. According to the Technical Services comments dated July 31, 2012 the following are required:

- that the applicant comply with the parking supply requirements under Zoning By-law 438-86 except that the minimum resident parking requirement may be reduced by four parking spaces for each *car-share* parking space provided on the lot;
- as an alternative to the above, the Owners transportation consultant can submit acceptable justification in respect of the residential parking reduction;
- the applicant comply with the parking space dimensional requirements of By-law 494-2007;
- satisfy all outstanding issues with respect to the Traffic Impact Study; and
- provide additional details with respect to the number of *car-share* parking spaces proposed on the site.

### ***Road Widening***

Map 3, "Right-of-Way Widths Associated with Existing Major Streets" of the Official Plan requires Lake Shore Boulevard to have a width of 45 metres or over. Through the review of this application it was noted that the segment of the Lake Shore Boulevard West/Gardiner Expressway right-of-way abutting the site has an approximate (irregular) width of 37.6 metres at this location. In order to address the Official Plan requirement the owner will be required to convey a strip of land to the City, for nominal sum, to the full extent of the site abutting Lake Shore Boulevard West.

Section A3 of the Central Waterfront Secondary Plan states that Lake Shore Boulevard is to be transformed into an urban avenue through the Central Waterfront to accommodate its function as  
Staff report for action – Final Report – 90 Harbour Street and 1 York Street

an arterial road. The new boulevard is to be generously landscaped; will maximize the opportunities for pedestrian crossings through frequent intersections with streets connecting into the downtown core; and will provide ample room for commuter cycling and pedestrians. To achieve this vision, the subject site was reviewed along with the surrounding area to determine the most appropriate conveyance. Along with the at grade vision for this corridor there has also been discussion of a possible underground transit link under Lake Shore Boulevard and this was also factored into the analysis for the area.

To achieve the long term transportation vision and protect for possible future options along the Lake Shore Boulevard corridor a tapered widening is required on the north side of the subject site. The widening is 5.3 metres at the widest point 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. An additional below grade conveyance is also required to protect for any future transit initiatives. The below grade conveyance commences at a point 1.2 metres below grade, and will wrap around the north limit of the parking garage, then extend below the level of the parking garage for a width of 7.4 metres at the east end of the site at the widest point. The wider conveyance below the garage structure will preserve the potential for a future deep level tunnel by providing a minimum right-of-way width of 45 metres beneath the parking garage and associated building supports.

Although the current plans illustrate some encroachments within the proposed road widening lands such as driveways, bridge support columns and ventilation shafts these encroachments are required to be removed from the widening lands.

The owner has requested permission to retain driveways within the widening lands until such time as the road is reconstructed in a manner that requires these lands for sidewalk or other purposes. This is because Lake Shore Boulevard West is one way at this time but should the Grand Boulevard scheme be implemented the intent would be to make Lake Shore Boulevard two-way. Although the preference is for the project to be designed in a manner that does not use of the right-of-way for ongoing access purposes this could be considered subject to encroachment agreements and other conditions that would facilitate the removal of the driveway in the future. Of course, the project must be designed in a manner that does not require the use of connecting driveways within the public rights-of-way.

### ***Site Plan requirements***

Other matters have been raised that are required to be addressed through the site plan process and will be secured through the Section 37 agreement are as follows:

- 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;
- 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 public right-of-way to a minimum width of 45 metres, in accordance with the requirement of the Official Plan;
- Convey an easement to the City of support rights in the lands located below the lands to be conveyed;
  - provide all ramp slopes in accordance with By-law 438-86;
  - provide all ramps leading to the individual parking levels with maximum slope of 15 percent and transition areas at the top and bottom with maximum slopes of 7.5 percent for a minimum distance of 6 metres;
  - Setback the project, including all ramps, driveways, bridge support columns and ventilation shafts, in order to accommodate the road widening set out above;
  - Setback the ventilation shaft on the York Street frontage so that it is not located within the 6.0 metre wide pedestrian setback area; and
  - Revise drawings in accordance with the requirements as outlined in the memo dated July 13, 2012, from the Executive Director, Technical Services, to the satisfaction of the Executive Director of Technical Services.

### ***Loading/Access***

Access to the site is to/from Lake Shore Boulevard West and Harbour Street. The main access driveway bisects the site in the middle to accommodate the underground parking for the commercial and residential components of the site and provide access to the mid-block loading area. A second access is provided on the east side of the site underneath the PATH pedestrian bridge by a driveway that connects Harbour Street to Lake Shore Boulevard West. Access to this driveway is two-way from Harbour Street and one-way out-bound only to Lake Shore Boulevard West. At the north end of the driveway is a one way round-about that provides access to a dedicated two-way ramp to the residential parking garage, the taxi pick-up/drop-off and to the outbound one-way to Lake Shore Boulevard West. Provision has been made through this application for a possible vehicular connection to the lands to the east at 60 Harbour Street as a possibility through any future development on that site.

The loading area is centralized in the middle of the site completely enclosed within the podium with the residential loading spaces located on the east side of the central driveway and the commercial and office loading on the west side of the driveway. The applicant has provided the required number and type of loading spaces including two Type A, three Type B and four Type C spaces. A drop-off layby is also provided in the centralized driveway at the south east corner to accommodate short-stay users such as couriers.

### **Servicing**

Technical Services staff have reviewed the most recent version of the Functional Servicing Report (FSR) submitted in support of the application for 90 Harbour Street, but cannot sign off on the report in its current form. In order to ensure that all site servicing issues resulting from the rezoning application for the subject site are identified and resolved, staff have recommended that Council not enact the bills until all such issues are resolved and if required by the Executive Director of Technical Services that the owner has entered into a secured Agreement with the City

to ensure the issues have been addressed including the provision of all identified improvements to the infrastructure, all to the satisfaction of the Executive Director of Technical Services.

### **Pedestrian Infrastructure**

The York Street Promenade Plan requires streetscape improvements to York Street to provide an improved pedestrian environment and strengthen the connection to the waterfront. The applicant has addressed the York Street Promenade requirements by setting back the face of the office building 6 metres from the York Street right-of-way and incorporating upgraded pavers, planters and weather protection. These will be implemented through the site plan approval process. Attachment 8 provides an excerpt from the York Street Promenade Plan as the requirements in this area that will be implemented through the site plan review process.

### **Cycling Infrastructure**

The applicant proposes to provide bicycle parking in accordance with the requirements of the Toronto Green Standard. This will provide a minimum of 1,557 bicycle parking spaces for this development. Bicycle parking would be located on the P1 parking level, at grade and at the mezzanine level. The bicycle parking standards will be incorporated into the zoning by-law for the site and the details of the location will be addressed through the site plan application review.

### **Transit Infrastructure**

The site is well served by public transit. The site is within a five minute walk of Union Station to north including a proposed direct PATH pedestrian connection. The site is also within a 5 minute walk to the Queens Quay streetcar line which provides a direct connection to Union Station as well as connections west to Spadina Avenue, Bathurst Street and the Exhibition lands.

### **Unit Mix**

The proposed development contains a majority (74%) of units that are one-bedroom or less, with 16% being two-bedroom units and 10% being three-bedroom units. City Council, Planning staff and local residents have been encouraging developers to provide more large sized units in an effort to attract families and less transient residents in residential condominium buildings throughout the City, and particularly in the waterfront area. The emerging practice is for buildings to contain a minimum of 25% two-bedroom units and 10% three-bedroom units. Although this application is achieving the minimum proportion for three-bedroom units the applicant is encouraged to increase the number of two-bedroom units to achieve the desired proportion of total units to align with the goal of creating units for families.

### **Residential Amenity Space**

The Official Plan Section 3.1.2(6) requires every significant multi-unit residential development to provide indoor and outdoor amenity space. The policies direct that each resident will have access to outdoor amenity space such as balconies, terraces, courtyards, rooftop gardens and other types of outdoor spaces.

Zoning By-law No. 438-86 requires two square metres of common outdoor and indoor residential amenity space per unit for exclusive use of the residents which results in a requirement of a minimum of 2,610 square metres each of exclusive use indoor and outdoor amenity space be provided given the number of units proposed.

This development proposes 2,315 square metres of outdoor amenity space to be located on the rooftop of the podium. This is approximately 1.77 square metres per unit whereas the provisions of the zoning by-law require 2 square metres per unit be provided. The applicant is also proposing to provide 929 square metres of indoor amenity area which is approximately 0.71 square metres per unit whereas 2 square metres is required. The applicant has opportunity to provide additional indoor and outdoor amenity area for the development given the size of the site.

The applicant is proposing that the fitness centre proposed for the site be counted as additional amenity space. This is acceptable as long as the fitness centre is 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 and also that the fitness centre remain fully accessible to the residents of this development.

Staff are satisfied with the provision of the amenity space.

### **Economic Impact**

The Official Plan policies for the *Downtown* and the *Regeneration Areas* and the *Regeneration Areas* policies of the Central Waterfront Secondary Plan encourage high quality commercial development and the generation of economic opportunities in the City core. The subject site previously contained an office building that was used over the years by private and public occupants. This development is proposing to provide a Class A office tower of 77,184 sq.m. and a commercial podium with 16,707 sq.m. commercial retail space. The proposed office and commercial space are in excess of the replacement space required for the demolished office building. The location of the proposed office building on the subject site creates an office hub with the adjacent Waterpark Place to the south including the new office tower at 85 Harbour Street and the site specific zoning for 60 Harbour to the east that permits an office tower.

The addition of office into this area of the neighbourhood satisfies the intent and direction of the Official Plan and Central Waterfront Secondary Plan policies for the *Downtown* and *Regeneration Areas*.

### **Open Space/Parkland**

The Official Plan contains policies to ensure that Toronto's system of parks and open spaces are maintained, enhanced and expanded. Map 8B of the Toronto Official Plan shows local parkland provisions across the City. The lands which are the subject of this application are in an area with 1.55 to 2.99 hectares of local parkland per 1,000 people. The site is in the second highest quintile of current provision of parkland. The site is in a parkland priority area, as per the City Wide Parkland Dedication By-law 1020-2010.

The application proposes 1,305 residential units and 93,891 m<sup>2</sup> of retail/commercial uses on a site with a net area of 10,062 m<sup>2</sup>. At the alternative rate of 0.4 hectares per 300 units specified in By-law 1020-2010, the parkland dedication requirement is 1.74 hectares or 173.92% of the site area. However, for sites that are between 1 and 5 hectare in size, a cap of 15% is applied to the residential use while the non-residential use is subject to a 2% parkland dedication. Based upon revised proposal statistics, the parkland dedication requirement is now 858 m<sup>2</sup>.

The applicant is required to satisfy the parkland dedication requirement through cash-in-lieu. This is appropriate as an on-site parkland dedication requirement of 858 m<sup>2</sup> would not be of a Staff report for action – Final Report – 90 Harbour Street and 1 York Street

useable size. The actual amount of cash-in-lieu to be paid will be determined at the time of issuance of the building permit.

## **Toronto Green Standard**

On October 27, 2009 City Council adopted the two-tiered Toronto Green Standard (TGS). The TGS is a set of performance measures for green development. Tier 1 is required for new development. Tier 2 is a voluntary, higher level of performance with financial incentives. Achieving the Toronto Green Standard will improve air and water quality, reduce green house gas emissions and enhance the natural environment.

The applicant is required to meet Tier 1 of the TGS.

The site specific zoning by-law will secure performance measures for the following Tier 1 development features: Automobile Infrastructure, Cycling Infrastructure, Storage and Collection of Recycling and Organic Waste.

Other applicable TGS performance measures will be secured through the Site Plan Approval process.

## **Section 37**

Section 37 of the Planning Act allows the City to grant increased density and/or height in exchange for community benefits. Community benefits can include (among other capital facilities): parkland, non-profit arts and cultural, community or child care facilities, streetscape improvements on the public boulevard not abutting the site; and other works detailed in policy 5.1.1.6 of the Official Plan. The community benefits must bear a reasonable relationship to the proposed development, including at a minimum, an appropriate geographic relationship and the addressing of the planning issues associated with the development. (e.g. local shortage of parkland, provision of new parks facilities).

Section 5.1.1.4 of the Official Plan allows Section 37 of the Planning Act to be used for all developments with a gross floor area of more than 10,000 square metres and when the zoning by-law amendment increases the permitted gross floor area by at least 1,500 square metres and/or increases the height significantly or where the applicant agrees to provide such benefits.

Transportation Services have been consulted and support that the benefits in this case are being directed toward the modification of the York/Bay/Yonge off-ramp in accordance with the Council approved Environmental Assessment. The goal of the ramp modification project is to maintain traffic capacity on the Gardiner Expressway and local streets while also improving the public realm, specifically the pedestrian conditions in the vicinity of York Street and Harbour Street and unlocking the existing park space to create a valuable neighbourhood amenity as shown on Attachment 7.

The community benefits recommended to be secured in the Section 37 agreement are as follows:

- a. a cash payment of \$10,000,000.00 payable as follows:
  - 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

to be applied at the discretion of the City as determined by the Chief Planner and Executive Officer, in consultation with the Ward Councillor.

- b. require that the cash amounts identified in a) 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. Upgrade of the "ramp" park bounded by Queens Quay West to the south, York Street to the west, 85 Harbour Street to the east and Harbour Street to the north.
- 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 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 to be paid at time of first building permit.

- 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.
- 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 ix 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 days 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 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, Culture and Tourism.
- 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. Through the Site Plan application process the following is required:
- provide all ramp slopes in accordance with By-law 438-86;
  - provide all ramps leading to the individual parking levels with maximum slope of 15 percent and transition areas at the top and bottom with maximum slopes of 7.5 percent for a minimum distance of 6 metres;
  - 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;

- 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;
  - Setback the project, including all ramps, driveways, bridge support columns and ventilation shafts, in order to accommodate the road widening set out above;
  - 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:
  - Make provision for a possible future vehicular connection to the lands to the east;
  - Setback the ventilation shaft on the York Street frontage so that it is not located within the 6.0 metre wide pedestrian setback area;
  - Provision of continuous pedestrian weather protection surrounding the site;
  - Identification of any future restaurant patio space in co-ordination with the pedestrian weather protection requirements;
  - Carry out the requirements of the York Promenade Plan along the York Street frontage of the site;
  - 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
  - Provision of maintenance holes at the property line off city property for both storm and sanitary connections.
- xix. 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.

## **Development Charges**

It is estimated that the non-residential portion of the development charges for this project will be \$227,125.00 and the residential portion of the development charges will be \$10,602,877.00 for a total of \$10,830,012.00. This is an estimate. The actual charge is assessed and collected upon issuance of the building permit.

## **Conclusion**

The application outlined and discussed in this report proposes a three tower mixed use development in the middle of the central waterfront area. The site is located in an area of the central waterfront that is surrounded by existing tall building community with three adjacent remnant parcels that comprise essentially an "island" with the subject site in the middle, 120 Harbour Street to the west, and 60 Harbour Street to the east. This "island" of sites has necessitated a broader review of the subject site due to the inter-connection of issues including transportation, access, pedestrian area and streetscape as well as the density, height and massing. The designation in the Official Plan and Central Waterfront Secondary Plan as *Regeneration Areas* recognizes the need for revitalization for these underused sites.

The application has been revised since submission in response to staff comments and community concerns with a reduction in the height of the residential towers, reduction in the residential gross floor area, greater separation distances on the east side of the site and between the towers, greater setback along York Street and Lake Shore Boulevard West, additional upgrades and greening in the streetscape surrounding the site as well as reconfiguration of some of the spaces to better address bicycle parking, amenity space, vehicular parking, access and loading.

The proposed development as revised will contribute to the City's economic base, enhance the public realm of the Central Waterfront and help connect a key site in the downtown to its local context.

The proposed intensification of the site is appropriate in this particular area given its location in the *Downtown* and *Central Waterfront Area*, the opportunity to revitalize an underused site in keeping with the direction of the *Regeneration Areas* and its unique location and city building features that it is bringing to the community. This includes the economic additions to the area and the city such as commercial space to service the immediate community and a Class A office building as well as the greening aspects of the development such as the direct connection to the major transit hub of Union Station through the PATH pedestrian system, the location adjacent to the Gardiner Expressway, the greening and improvement of the streetscape along each frontage particularly York Street and the unlocking of the "ramp" park and ramp modifications of the York/Bay/Yonge off-ramp through the Section 37 contributions and to the satisfaction of the Executive Director of Transportation Services.

## **CONTACT**

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Tel. No. 416-392-7196  
Fax No. 416-392-1330  
E-mail: shensto@toronto.ca

## **SIGNATURE**

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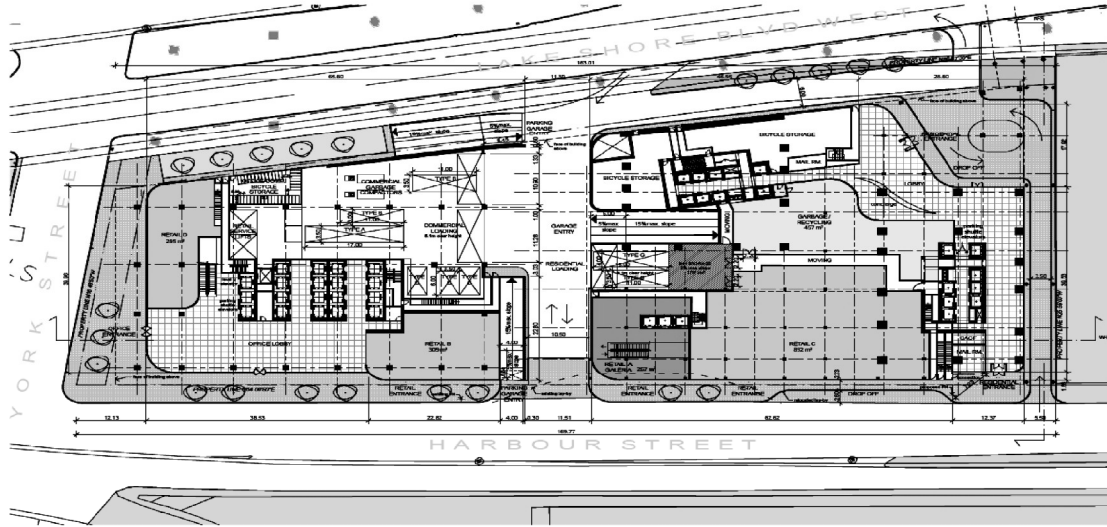
Gregg Lintern, MCIP, RPP  
Director, Community Planning,  
Toronto and East York District

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## **ATTACHMENTS**

Attachment 1: Site Plan  
Attachment 2a: North Elevation  
Attachment 2b: South Elevation  
Attachment 2c: East Elevation  
Attachment 2d: West Elevation  
Attachment 3: Revised Residential Tower Height  
Attachment 4: Zoning  
Attachment 5: Official Plan  
Attachment 6: Application Data Sheet  
Attachment 7: Graphic Design for "Ramp" Park  
Attachment 8: York Street Pedestrian Promenade Plan Excerpt Plan SK-2  
Attachment 9: Draft Official Plan Amendment  
Attachment 10: Draft Zoning By-law Amendment

# Attachment 1: Site Plan



## Site Plan

Applicant's Submitted Drawing

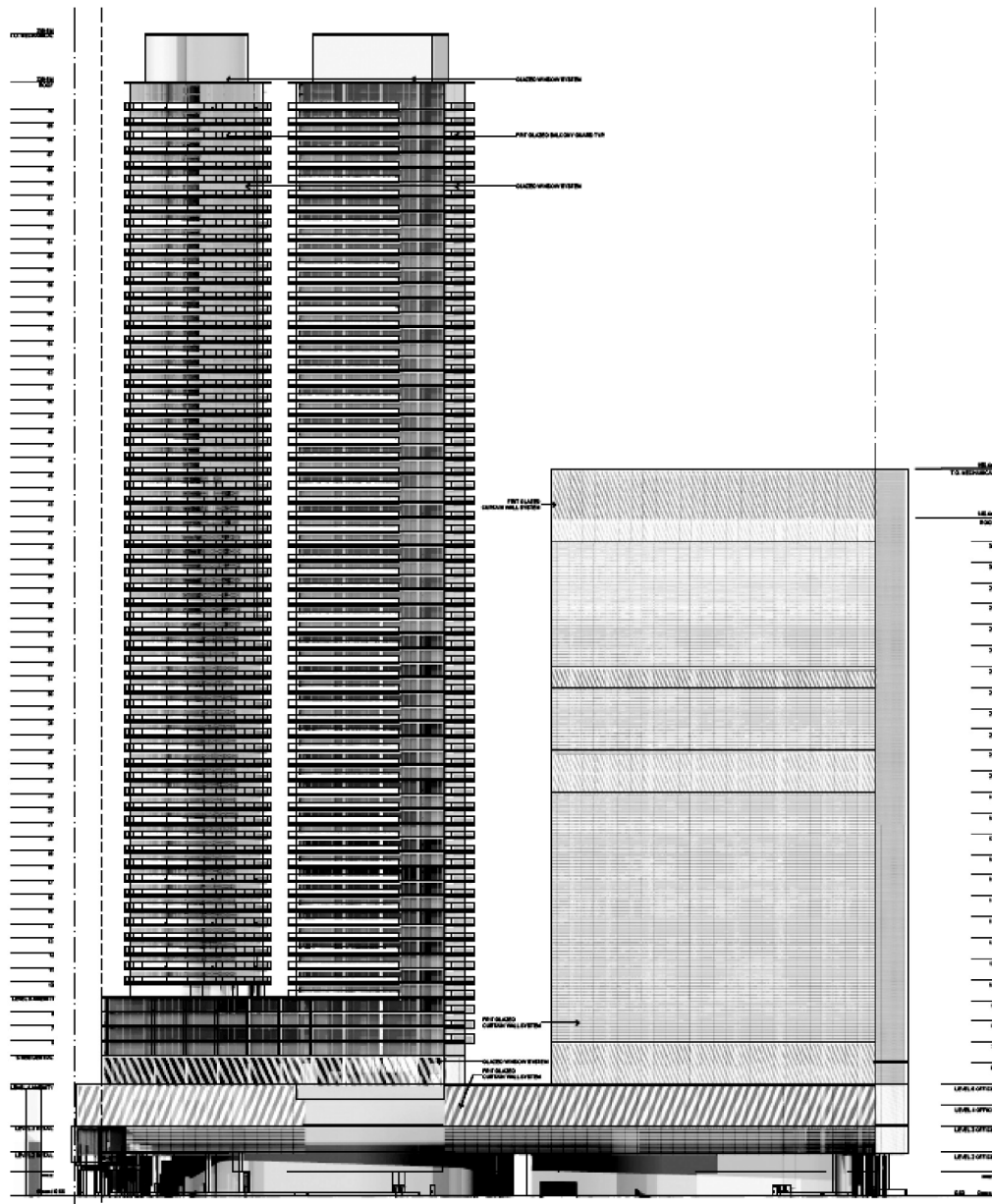
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90 Harbour Street

File # 11\_295626\_02

## Attachment 2a: North Elevation (original tower heights)



### North Elevation

Applicant's Submitted Drawing

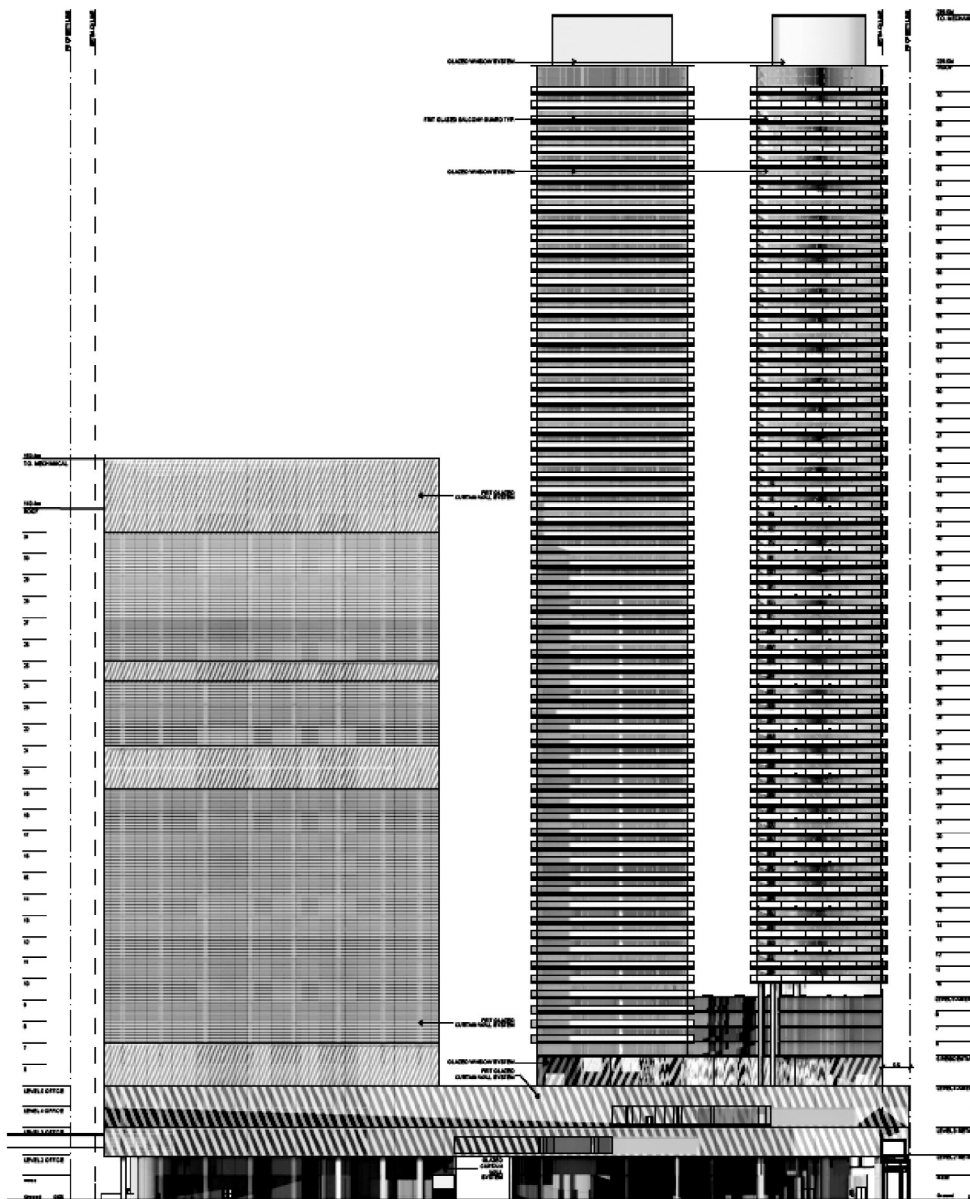
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90 Harbour Street

File # 11\_295626\_OZ



Attachment 2b: South Elevation (original tower heights)



South Elevation

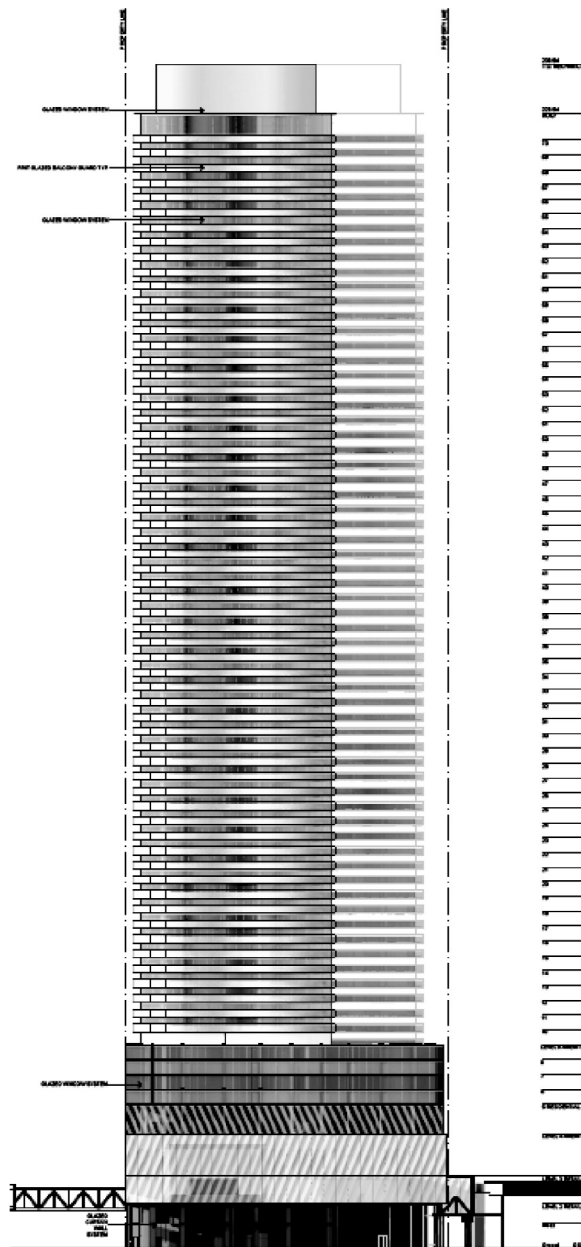
90 Harbour Street

Applicant's Submitted Drawing

Not to Scale  
11/16/11

File # 11\_295626\_OZ

## Attachment 2c: East Elevation (original tower heights)



### East Elevation

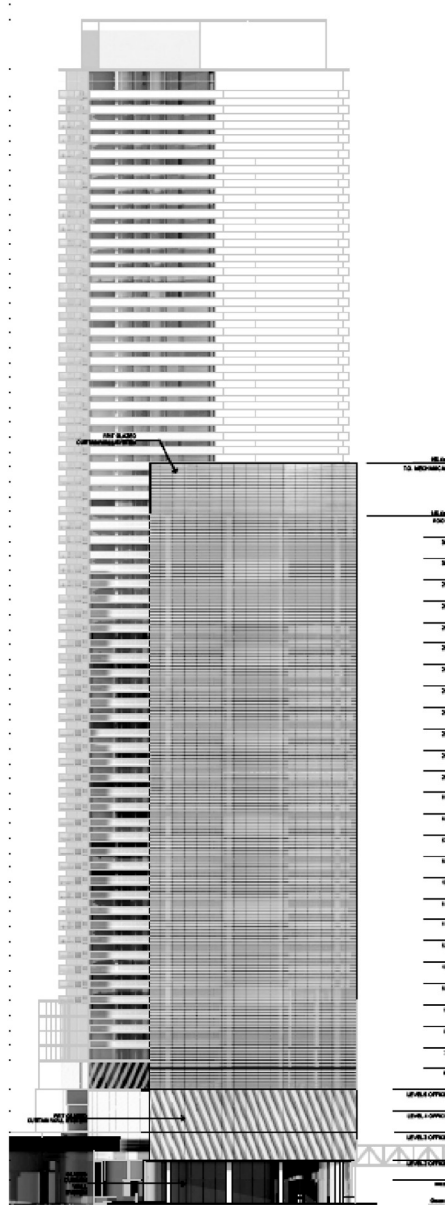
Applicant's Submitted Drawing

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90 Harbour Street

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**Attachment 2d: West Elevation (original tower heights)**



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**West Elevation**

**90 Harbour Street**

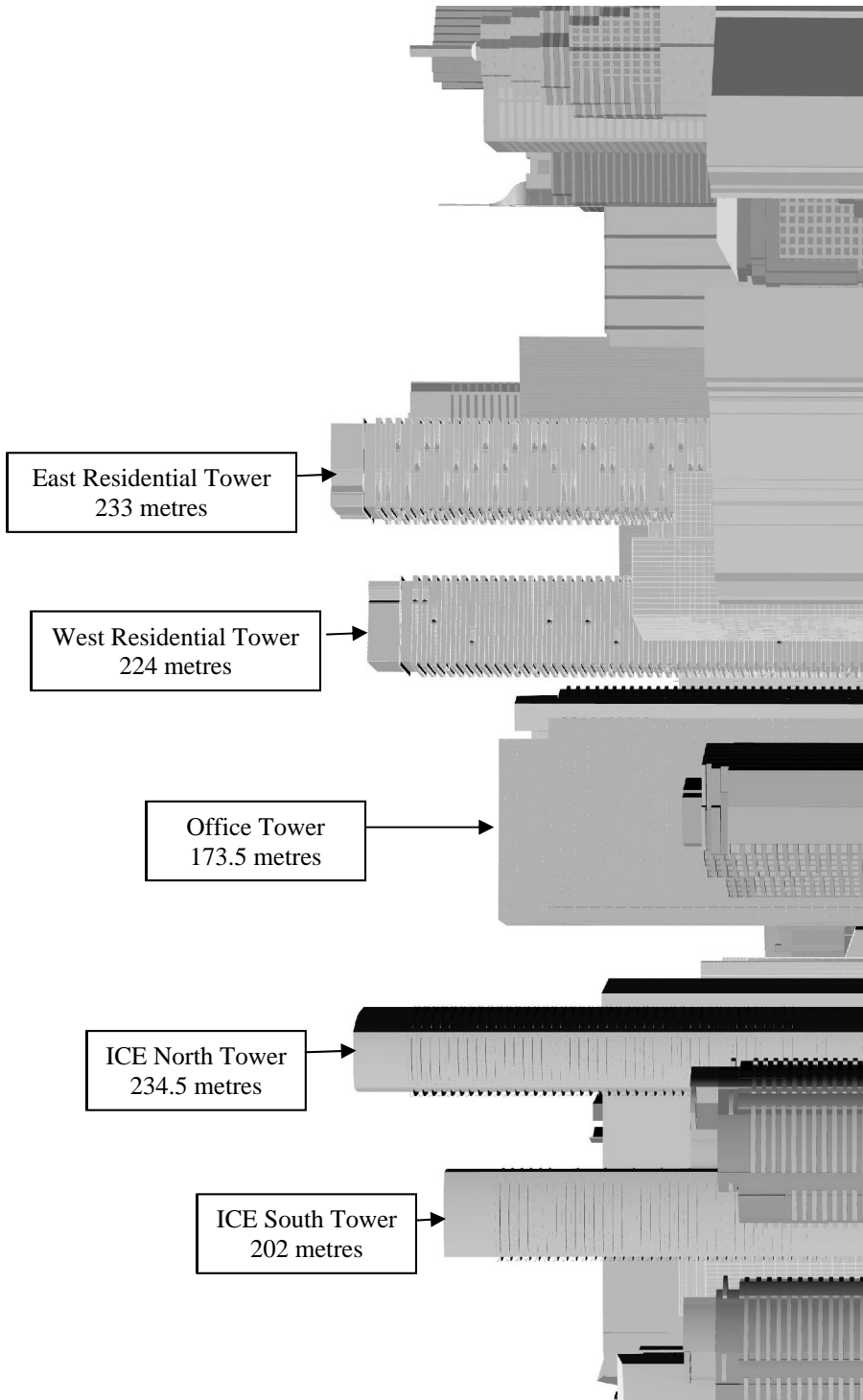
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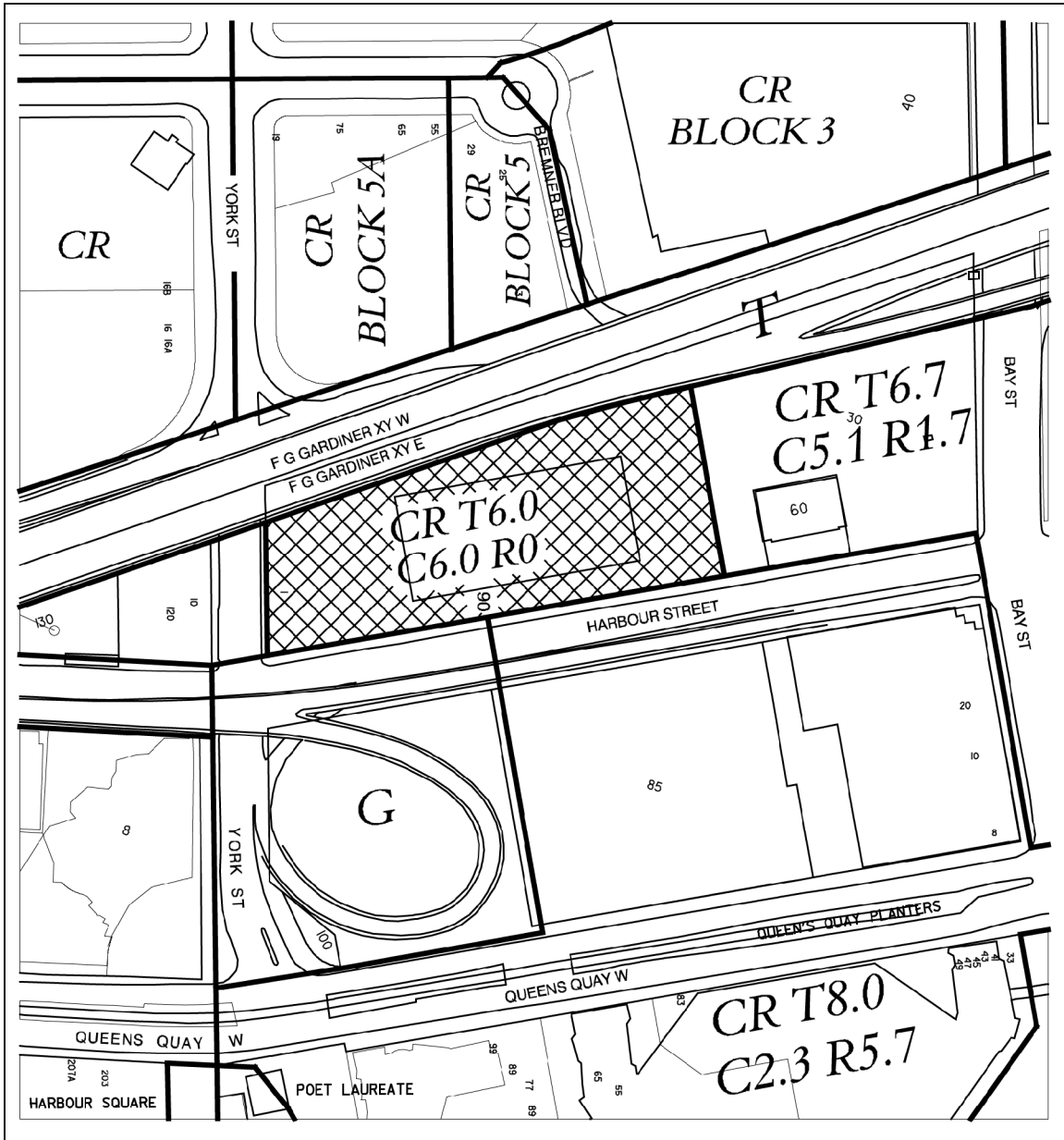
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### Attachment 3: Revised Residential Tower Heights (including mechanical penthouse)



Attachment 4: Zoning



**Toronto** City Planning  
Zoning

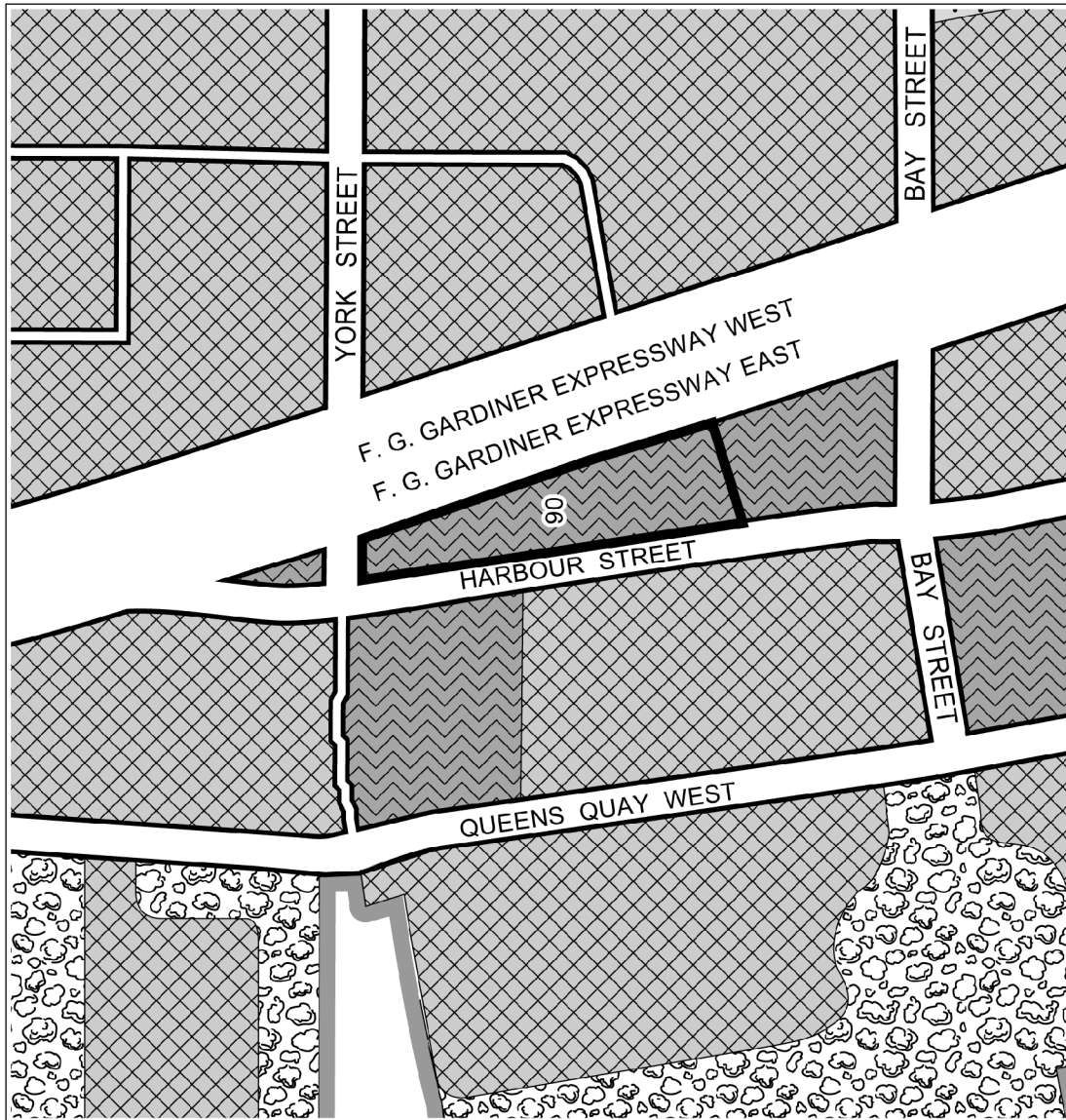
90 Harbour Street  
File # 11\_295626\_02

G Parks District  
CR Mixed-Use District



Not to Scale  
Zoning By-law 438-86 as amended  
Extracted 11/16/11

## Attachment 5: Official Plan



**Toronto** City Planning  
**Official Plan**

**90 Harbour Street**

File # 11\_295626\_02



Not to Scale  
 11/16/11

## Attachment 6: Application Data Sheet – Original Application

Application Type	Official Plan Amendment & Rezoning	Application Number:	11 295626 STE 28 OZ
Details	OPA & Rezoning, Standard	Application Date:	October 19, 2011
Municipal Address:	90 HARBOUR STREET AND 1 YORK STREET		
Location Description:	PLAN 655E PT BLK 2 RP 63R672 PART 1 **GRID S2811		
Project Description:	Property known as both 90 Harbour Street and 1 York Street, OPA and Rezoning application for new mixed use development - 3 buildings - with common podium ranging from 4 to 9 storeys, 1 office building and 2 residential buildings, Office building - 31 storeys, 2 residential buildings - 70 storeys - 1426 dwelling units. Shared parking with office and residential tower - 4 levels below grade - 791 parking spaces - (residential parkings spaces 411 - commercial spaces – 380, and 1300 bicycle parking spaces.		

<b>Applicant:</b>	<b>Agent:</b>	<b>Architect:</b>	<b>Owner:</b>
SHERMAN BROWN DRYER KAROL Attention Adam Brown 5075 Yonge Street Suite 900 Toronto, ON M2N 6C6		Architects Alliance 205-317 Adelaide Street West Toronto, ON M5V 1P9	90 Harbour Developments Inc. 4711 Yonge Street Suite 1400 Toronto, ON M2N 7E4

### PLANNING CONTROLS

Official Plan Designation:	Regeneration Areas	Site Specific Provision:	Y
Zoning:	CR T6.0 C6.0 R0	Historical Status:	Y
Height Limit (m):	115, 125	Site Plan Control Area:	Y

### PROJECT INFORMATION

Site Area (sq. m):	10062	Height:	Storeys: 70
Frontage (m):	48.5	Metres:	229.5 (excludes mech. penthouse)
Depth (m):	174.8		
Total Ground Floor Area (sq. m):	4574		<b>Total</b>
Total Residential GFA (sq. m):	99358	Parking Spaces:	791
Total Non-Residential GFA (sq. m):	90467	Loading Docks	8
Total GFA (sq. m):	189825		
Lot Coverage Ratio (%):	45		
Floor Space Index:	18		

### DWELLING UNITS

Tenure Type:	Condo
Rooms:	0
Bachelor:	95 (6%)
1 Bedroom:	1,069 (75%)
2 Bedroom:	186 (13%)
3 + Bedroom:	76 (6%)
Total Units:	1,426 (100%)

### FLOOR AREA BREAKDOWN (upon project completion)

	Above Grade	Below Grade
Residential GFA (sq. m):	99358	0
Retail GFA (sq. m):	13283	0
Office GFA (sq. m):	77184	0
Industrial GFA (sq. m):	0	0
Institutional/Other GFA (sq. m):	0	0

<b>CONTACT:</b>	<b>PLANNER NAME:</b>	Sarah Henstock, Senior Planner shensto@toronto.ca
	<b>TELEPHONE:</b>	416-392-7196

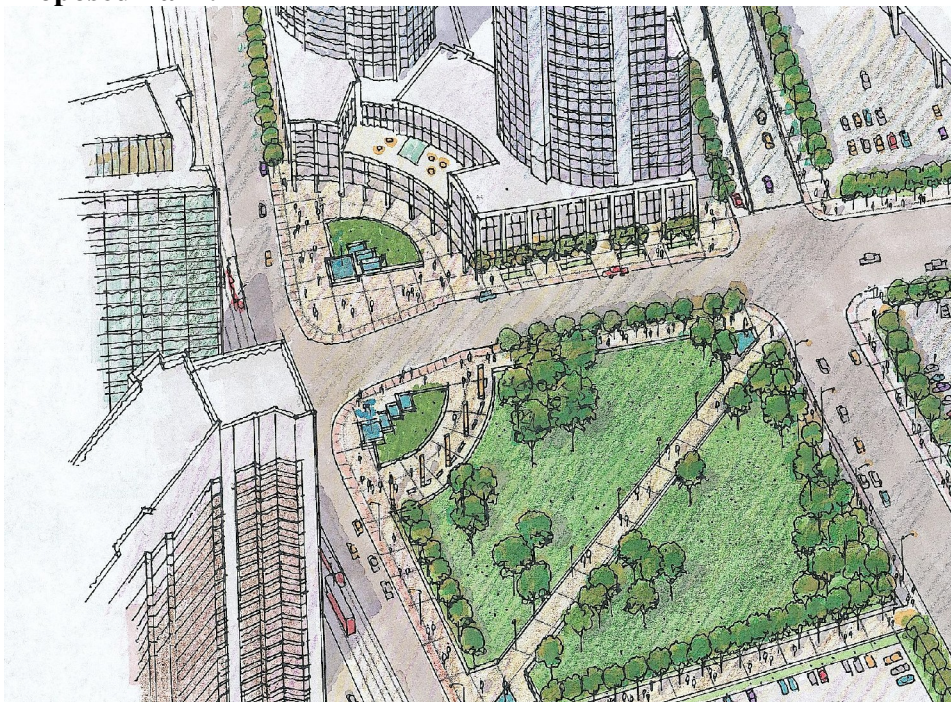


## Attachment 7: Graphic Design for "Ramp" Park

### Existing Situation:

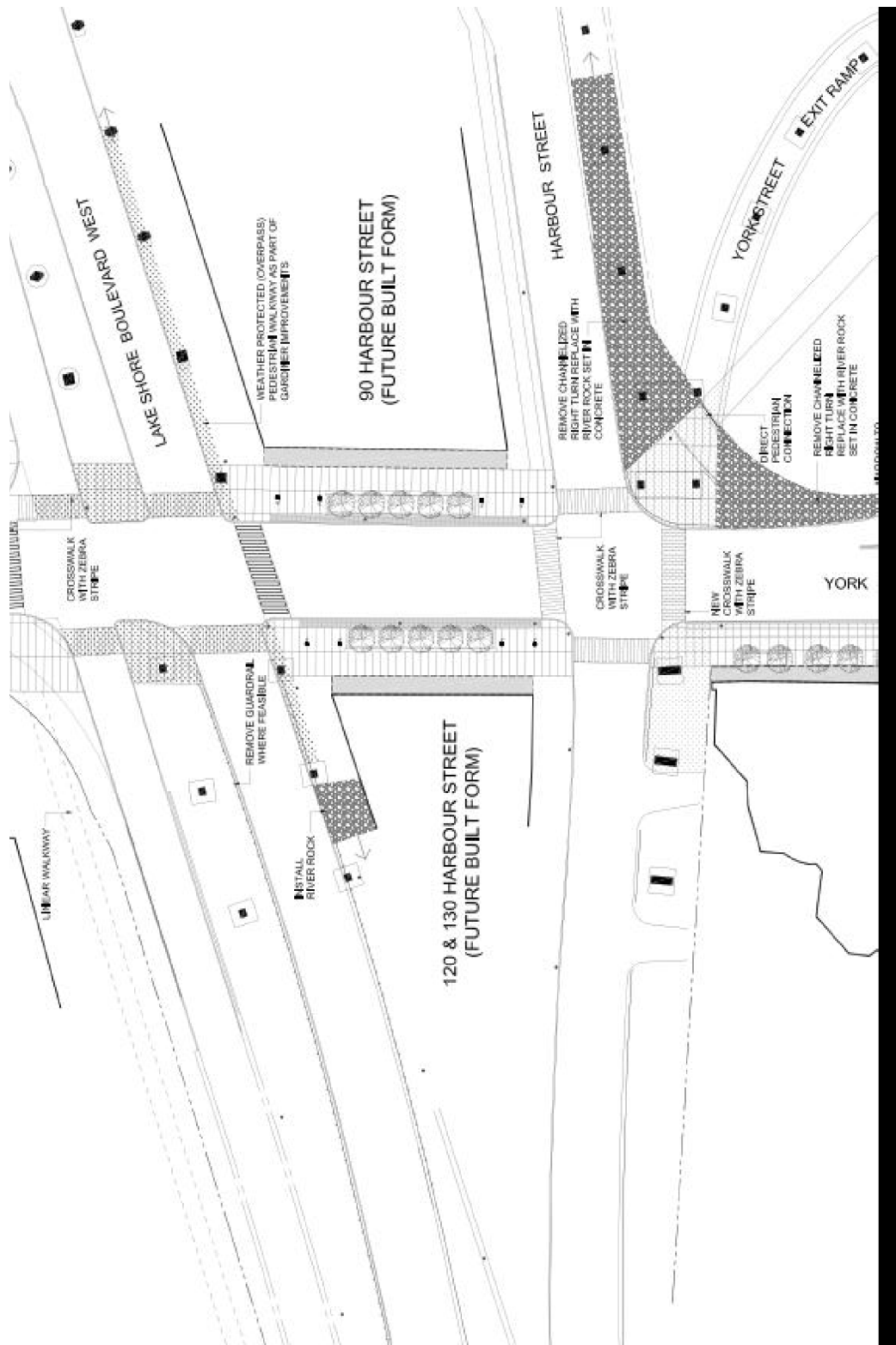


### Proposed Park:





**Attachment 8: York Street Pedestrian Promenade Plan Excerpt Plan SK-2**



**Attachment 9: 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**

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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) the Lake Shore Boulevard West right-of-way shall be a minimum of 42 metres between York Street and the easterly property boundary of 90 Harbour Street.

## Attachment 10: Draft Zoning By-law Amendment

Authority: Toronto and East York Community Council Item ---,  
adopted by City of Toronto Council on -----, 2012  
Enacted by Council: -----

### CITY OF TORONTO

Bill No. ---

### BY-LAW No. ----2012

#### **To amend the General Zoning By-law No. 438-86 of the former City of Toronto with respect to lands known municipally as 90 Harbour Street and 1 York Street.**

WHEREAS the Council of the City of Toronto has been requested to amend its Zoning By-law pursuant to Section 34 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, with respect to lands known municipally in the year 2012 as 90 Harbour Street and 1 York Street; and

WHEREAS the Council of the City of Toronto conducted a public meeting under Section 34 of the *Planning Act* regarding the proposed Zoning By-law amendment; and

WHEREAS the Council of the City of Toronto has determined to amend Zoning By-law No. 438-86, as amended, of the former City of Toronto;

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

1. Pursuant to Section 37 of the *Planning Act*, the heights and density of development permitted by this By-law are permitted subject to compliance with the conditions set out in this By-law and in return for the provision by the *owner* of the facilities, services and matters set out in Appendix 1 hereof, the provisions of which shall be secured by an agreement or agreements pursuant to Section 37(3) of the *Planning Act*.
2. Upon execution and registration of an agreement or agreements with the *owner* pursuant to Section 37 of the *Planning Act* securing the provision of the facilities, services and matters set out in Appendix 1 hereof, the *site* is subject to the provisions of this By-law, provided that in the event the said agreement(s) requires the provision of a facility, service or matter as a precondition to the issuance of a building permit, the *owner* may not erect or use such building until the *owner* has satisfied the said requirement.
3. Wherever in this By-law a provision is stated to be conditional upon the execution and registration of an agreement entered into with the City pursuant to Section 37 of the *Planning Act*, then once such agreement has been executed and registered, such conditional provisions shall continue to be effective notwithstanding any subsequent release or discharge of all or any part of such agreement.
4. Except as otherwise provided herein, the provisions of *By-law No. 438-86* shall continue to apply to the *site*.
5. None of the provisions of Sections 2(1) with respect to the definition of *grade*, and *height*, 4(2), 4(5)(a) – (f), 4(8), 4(12), 4(13)(d), 8(3) Part I 1, 2 and 3(a), 8(3) Part III 1(a),

12(2)302 of *By-law No. 438-86*, shall apply to prevent the erection or use of a *mixed-use building* within the *site*, which may contain dwelling units and non-residential uses and *accessory* uses thereto, including a *parking garage* provided that all of the provisions of this By-law are complied with.

6. The *lot* on which the uses are located shall comprise at least the *site*.
7. The total combined *residential gross floor area* and *non-residential gross floor area* erected or used on the *site* shall not exceed 192,000 square metres.
8. The total *residential gross floor area* erected or used on the *site* shall not exceed 95,000 square metres and total *dwelling units* erected or used on the *site* shall not exceed 1,305.
9. The total *non-residential gross floor area* erected or used on the *site* shall not exceed 97,000 square metres.
10. At least ten per cent (10%) of all total *dwelling units* erected or used on the *site* shall have three or more bedrooms.
11. No part of any building or structure erected within the *site* shall be located above *grade* otherwise than wholly within a *building envelope*, except for the type of structures listed in the column entitled “STRUCTURE” in the following chart, provided that the restrictions set out opposite the structure in the columns entitled “MAXIMUM PERMITTED PROJECTION” and “OTHER APPLICABLE QUALIFICATIONS” are complied with:

STRUCTURE	MAXIMUM PERMITTED PROJECTION	OTHER APPLICABLE QUALIFICATIONS
A. light fixtures, cornices, sills, eaves, bay windows, mullions, ornamental or architectural elements, balustrades, public art	1.0 metres	Provided the height of the "STRUCTURE" is no higher than that portion of the building to which it is attached
B. balconies on Towers 2 and 3	not more than 1.5 metres from the wall where it is attached	No balconies are permitted on Tower 1 or the podium base of the building
C. canopies, other than canopies set out in D. below	not more than 3.5 metres from the wall where it is attached	Provided the height of such "STRUCTURE" is not greater than 3.0 metres
D. canopy along York Street	A minimum of 3.0 metres and not more than 4.5 metres from the wall where it is attached	Area beneath the canopy is to be free and clear of all obstructions. No patios, cafes are permitted within the area under the canopy
E. parapets	Maximum 1.0 metre projection	Provided the height of such "STRUCTURE" is not greater

		than 1.0 metre above the height limits established in this By-law
F. fences, safety railings and guardrails	no restriction	Provided the height of such "STRUCTURE" does not exceed 3.0 metres above finished ground level
G. stairs, stair enclosures, ramps, wheel chair ramps and/or stairs (and associated structures), underground garage ramps and their associated structures, garbage and servicing areas and their associated structures, retaining walls, air shafts, transformer vaults and elements required for the functional operation of the building	No restriction	Provided the height of such "STRUCTURE" does not exceed 2.0 metres above finished ground level
H. any building or structure related to an above <i>grade</i> publicly accessible PATH connection	No restriction	No restriction
I. the structures listed in Section 13 of this By-law	no restriction	subject to the requirements of Section 13 of this By-law

12. The *height* of each portion of a building or structure erected above *grade* within the *site*, shall in respect of each *building envelope* area, have a maximum *height* in metres as shown following the symbol H on the attached Map 2 for the corresponding *building envelope* area.
13. The preceding section of this By-law does not apply to prevent the erection or use above the said *height* limits of:
- (a) with respect to *Tower 1* and *Area A*, - parapets, fences, railings, balcony and terrace guards and dividers, decorative screens, privacy screens, wind screens, planters, balustrades, open air recreation, safety or wind protection purposes and window washing equipment, for unenclosed heating, ventilation, or cooling equipment such as chimneys, stacks, and flues, extending no more than 2.0 metres above the applicable *height* limit shown on Map 2,
  - (b) a mechanical penthouse extending no more than 10.0 metres above the applicable *height* limit shown on Map 2 for On Tower 1;

14. A continuous pedestrian weather protection shall be provided along each frontage of the *site* as shown on Map 2.
15. A minimum of 2,610 square metres or 2 square metres for each *dwelling unit*, whichever is greater, of indoor *residential amenity space* shall be provided in a multi-purpose room or rooms (whether or not such rooms are contiguous), at least one of which contains a kitchen and a washroom.
16. A minimum of 2,300 square metres or 1.8 square metres for each *dwelling unit*, whichever is greater, of outdoor *residential amenity space* shall be provided, of which at least 40 square metres shall be provided in a location adjoining or directly accessible to indoor *residential amenity space*.
17. A minimum of one *loading space - type "G"*, two *loading spaces – Type "A"*, three *loading spaces - type "B"* and four *loading spaces - type "C"*, shall be provided and maintained on the *site*.
18. *Parking spaces* shall be provided and maintained on the *site* in a *parking garage* accordance with the following minimum and maximum requirements:
  - (a) *bachelor dwelling units* – a minimum of 0.3 *parking spaces* for each *bachelor dwelling unit*;
  - (b) *one-bedroom dwelling units* – a minimum of 0.5 *parking spaces* for each *one-bedroom dwelling unit*;
  - (c) *two-bedroom dwelling units* – a minimum of 0.8 *parking spaces* for each *two-bedroom dwelling unit*;
  - (d) *three and more bedroom dwelling units* – a minimum of 1.0 *parking spaces* for each *dwelling unit* containing three or more bedrooms;
  - (e) a minimum of 0.6 *parking spaces* for visitors for each *dwelling unit*, with *visitor parking* permitted to be provided by parking spaces for the *non-residential* uses with the *site*,
  - (f) the minimum *non-residential parking spaces* shall be calculated at 1 space per 300 square metres of net floor area;
  - (g) for each car-share *parking space* provided on the *site*, the minimum resident parking required may be reduced by four *parking spaces*.
19. Notwithstanding the requirements of Section 15 of this By-law regarding indoor *residential amenity space*, if the *mixed use building* contains a *fitness club* with at least 3,060 square metres of *non-residential gross floor area*, the total indoor *residential amenity space* required by Section 15 to be provided indoors shall be 929 square metres or 0.7 square metres for each *dwelling unit* of indoor *residential amenity space*, whichever is greater, provided:

- (i) no residents of the *mixed-use building* are excluded from eligibility as members of the *fitness club*; and
  - (ii) the remaining indoor *residential amenity space* otherwise required by Section 15 of this By-law:
    - (a) is provided elsewhere within the *mixed use building* for the exclusive use of its residents, in which event it need not be contiguous to the *fitness club*;
    - (b) is not located within guest suites; and
    - (c) is not less than 929 square metres.
- 20.** None of the provisions of this By-law shall apply to prevent a temporary *sales office* on the *site*.
- 21.** Notwithstanding any existing or future severances, partition, or division of the *site*, the provisions of this By-law shall apply to the whole of the *site* as if no severance, partition or division had occurred.
- 22.** Within the *site*, no person shall use any land or erect or use any building or structure unless the following municipal services are provided to the lot line and the following provisions are complied with:
- (a) all new public roads have been constructed to a minimum of base curb and base asphalt and are connected to an existing public highway, and
  - (b) all water mains and sanitary sewers, and appropriate appurtenances, have been installed and are operational.
- 23.** (a) Despite the requirement in Section 4(17) of *By-law No. 438-86*, that the minimum width of an obstructed *parking space* shall be increased by 0.3 metres, that provision shall not apply to obstructed parking spaces provided within the *site* provided that such obstructed parking spaces constitute no more than 10% of the *parking spaces* provided on the *site*:
- (b) Notwithstanding the minimum height and length of a *parking space*, a *bicycle parking space* may protrude into a *parking space* provided it protrudes no more than 1.0 metre so as to reduce the length of the *parking space* at a height of 2 metres above the finished surface;
  - (c) despite the definition of *bicycle parking space - visitor*" in section 2(1) (iii) of *By-law 438-86*, a *bicycle parking space* for visitors may be permitted within a secured room
- 24.** For the purpose of this By-law, the following expressions shall have the following meaning:
- (a) "*building envelope*" means a building envelope for each height area as shown by an "H", and as delineated by the heavy lines on Map 2 attached hereto;



- (b) "*By-law No. 438-86*" means By-law No. 438-86, as amended, of the former City of Toronto being, "A By-law to regulate the use of land and the erection, use, bulk, height, spacing and other matters relating to buildings and structures and to prohibit certain uses of lands and the erection and use of certain buildings and structures in various areas of the City of Toronto;"
- (c) "*City*" means the City of Toronto;
- (d) "*grade*" means the Canadian Geodetic elevation of 76.89 metres;
- (e) "*height*" means the vertical distance between *grade* and the highest point of the building or structure;
- (f) "*fitness club*" means a commercial club containing exercise facilities for its members.
- (g) "*owner*" means the fee simple owner(s) of the *site*;
- (h) "*parking garage*" means a building or portion of a building, other than a *private garage*, that is used for the temporary parking of motor vehicles;
- (i) "*sales office*" means an office, or sales trailer, used exclusively for the initial sale and/or initial leasing of *dwelling units* or the non residential use to be erected on the *site*;
- (j) "*site*" means those lands outlined by heavy lines on Map 1 attached hereto, and
- (k) each other word or expression, which is italicized in this by-law shall have the same meaning as each such word or expression as defined in *By-law No. 438-86*.

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

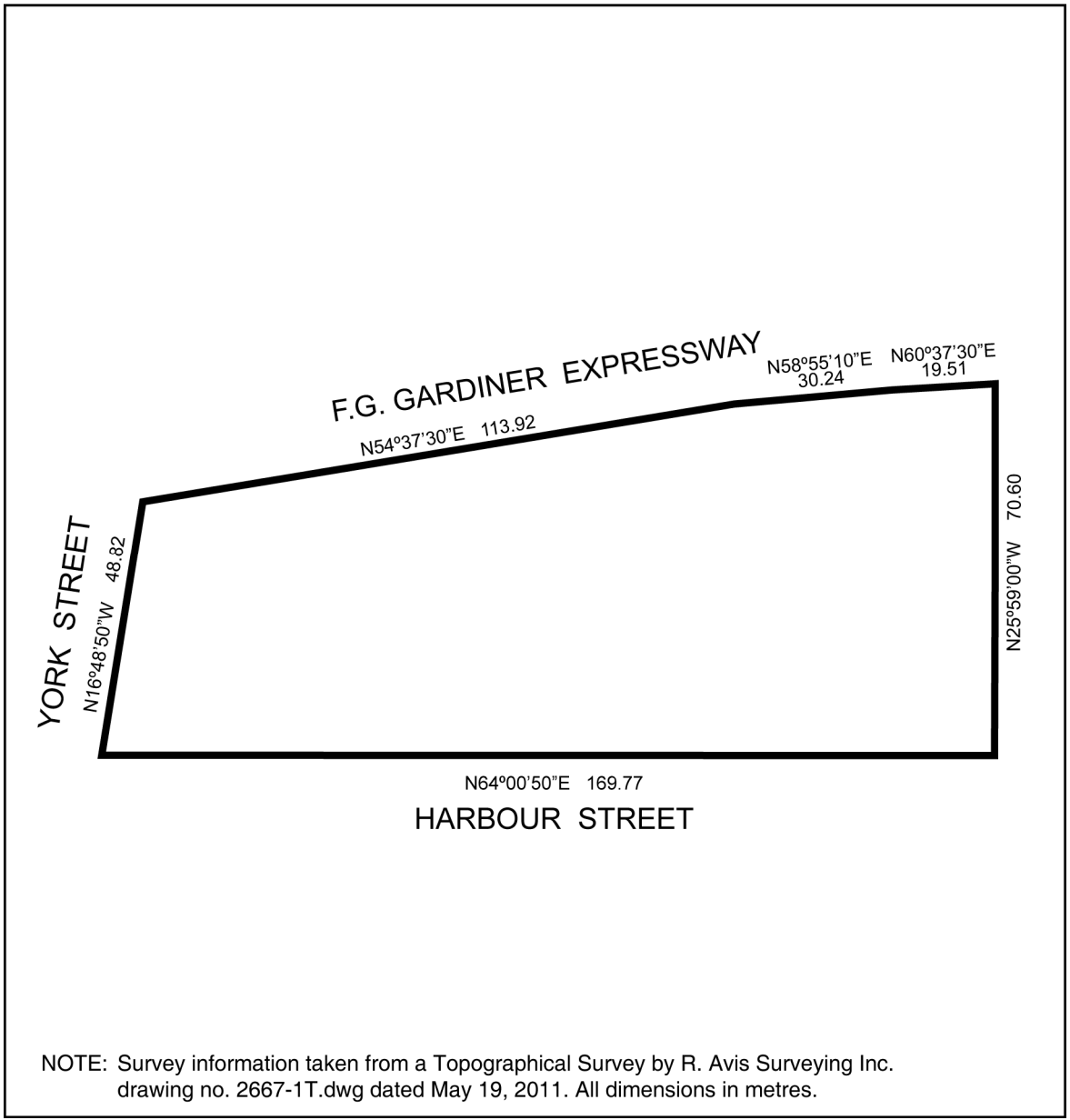
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Speaker

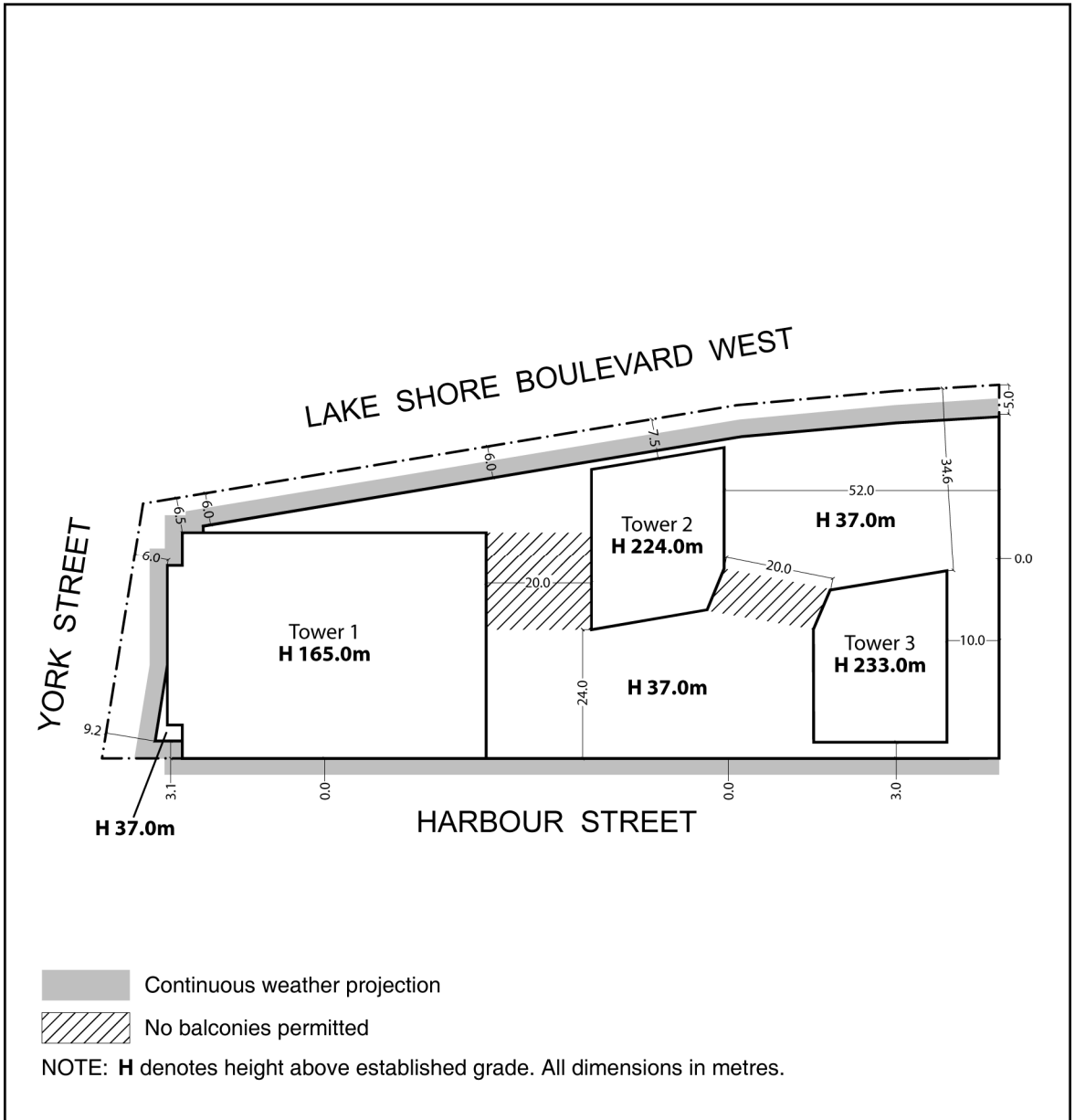
\_\_\_\_\_  
City Clerk

ROB FORD,  
Mayor

ULLI S. WATKISS,  
City Clerk

(Corporate Seal)





## Appendix 1

### Section 37 Provisions

The facilities, services and matters set out herein are the matters required to be provided by the owner of the *lot*, or portion thereof at its expense to the *City* in accordance with an agreement or agreements, pursuant to Section 37(3) of the *Planning Act*, in a form satisfactory to the *City* with conditions providing for indexing escalation of both the financial contributions and letters of credit, indemnity, insurance, GST, termination and unwinding, and registration and priority of agreement:

- a. a cash payment of \$10,000,000.00 payable as follows:
  - 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

to be applied at the discretion of the City as determined by the Chief Planner and Executive Officer, in consultation with the Ward Councillor 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. Upgrade of the "ramp" park bounded by Queens Quay West to the south, York Street to the west, 85 Harbour Street to the east and Harbour Street to the north.
- b. require that the cash amounts identified in a) 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.
- 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 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 to be paid at time of first building permit.
- 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.
- 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 ix 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 days 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 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, Culture and Tourism.
- 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 Through the Site Plan application process the following is required:
- provide all ramp slopes in accordance with By-law 438-86;
  - provide all ramps leading to the individual parking levels with maximum slope of 15 percent and transition areas at the top and bottom with maximum slopes of 7.5 percent for a minimum distance of 6 metres;
  - 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;



- 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;
  - Setback the project, including all ramps, driveways, bridge support columns and ventilation shafts, in order to accommodate the road widening set out above;
  - 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;
  - Make provision for a possible future vehicular connection to the lands to the east;
  - Setback the ventilation shaft on the York Street frontage so that it is not located within the 6.0 metre wide pedestrian setback area;
  - Provision of continuous pedestrian weather protection surrounding the site;
  - Identification of any future restaurant patio space in co-ordination with the pedestrian weather protection requirements;
  - Carry out the requirements of the York Promenade Plan along the York Street frontage of the site;
  - 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
  - Provision of maintenance holes at the property line off city property for both storm and sanitary connections.
- xix. 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.

- xx. 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 of the City ownership of the temporary driveway, which may be used by the City for public 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.

- c. revise the Functional Servicing Report to address the matters detailed in the Functional Servicing section of the memo dated July 13, 2012, from the Executive Director, Technical Services, to the satisfaction of the Executive Director of Technical Services.