1.0 Type of Report

Consent Item [ ]

Item For Consideration [X]

2.0 Topic

Update to Draft Plans of Condominium Condition – Reserve Fund Study [Financial Impact – None]

3.0 Recommendation

A. THAT the applicable Reserve Fund Study condition (Table 1 in Section 5.0 of Report 2020-84) affecting Draft Approved Plans of Condominium File Nos.: 29CD-15502, 29CD-16501, 29CD-17502, 29CD-17503, 29CD-18502, 29CD-19501 and 29CD-19502, BE DELETED and REPLACED with the revised condition listed in Section 8.0 of Report 2020-84; and

B. THAT written notice under Section 51(45) of the Planning Act, R.S.O. 1990 not be required to be given for modifications to the Conditions of Draft Plan Approval for Condominium 29CD-15502, 29CD16501 and 29CD-17503 as the change to the conditions is considered minor pursuant to Section 51(47) of the Planning Act, R.S.O. 1990.

4.0 Purpose

The purpose of this Report is to consider a revision to a condition of draft plan approval relating to the submission of a reserve fund study and which applies to
seven draft plans of condominium. The Report also considers how to address this condition for other draft plans of condominium going forward.

5.0 Background

Increasingly, new residential developments in the City are in the form of a condominium as opposed to freehold type units that would be created through a subdivision process. Typically these applications are reviewed and the staff report to Committee includes a series of recommendations which tie the draft plan of condominium approval to a number of conditions. These conditions are recommended by Staff in an effort to ensure that the City’s requirements have been addressed as well as to provide some assurance to future property owners that once they buy into the condominium, that the development has been constructed in accordance with an approved site plan and some protections are in place for the purchaser. One of the conditions that Planning Staff have typically included relates to the preparation and submission of a ‘Reserve Fund Study’.

Reserve fund studies are prepared once the condominium development is constructed and the condominium is registered. The study must be prepared by a qualified professional, such as a civil/structural engineer and it includes both a physical assessment of the common elements (assets) of the Condominium Corporation and a financial plan. These studies are to be approved by the registered condominium corporation and they typically address matters described below:

- All parts of the building in which the corporation will be required to repair or replace. These are usually referred to as “components” such as: foundations, parking garages, wall construction, windows, doors, elevators, mechanical systems, etc.;
- Estimates as to when the repair or replacement of a component is expected to occur;
- Estimates of the amount of each expenditure in each year as well as assumptions;
- A recommended reserve fund contribution amount; and,
- Recommended increases in reserve fund contributions.

The reserve fund study leads to the establishment of a reserve fund as required under the Condominium Act. All condominium corporations must establish a reserve fund to address the long term management of the condominium’s assets.
which include common elements such as: parking areas, shared amenity spaces/areas, etc. A reserve fund is a special account held by a financial institution that is separate from the condominium’s operating fund. Monies from the reserve fund are used to pay for major repairs (not maintenance) and replacements to the condominium’s common elements. A portion of the owner’s monthly condominium fee is deposited into the reserve fund every month.

In the past, Planning Staff have recommended the inclusion of a condition that requires the completion of a reserve fund study prior to registration of any condominium. The current reserve fund study condition reads as follows:

“Prior to final approval of the Plan, the Owner shall provide to the satisfaction of the Director of Planning, a Reserve Fund Study in accordance with the Condominium Act, together with a legal undertaking warranting that a reserve fund consistent with the recommendations of the Reserve Fund Study will be established by the Owner prior to the sale of any condominium units.”

This condition was originally included in decisions to facilitate the conversion of existing rental units to condominium units. In these instances, a review of the reserve fund study by the City was required to ensure that there was a sufficient reserve fund prior to converting an existing building from rental to condominium. This was also required to allow for an assessment of the condition and state of the building and to identify if there was a need for any major repairs that would be the responsibility of future condominium owners.

While this condition may be appropriate in the context of a condominium conversion, applying it to other forms of condominium, such as new build, is problematic. As noted previously, the Condominium Act requires the establishment of a reserve fund, but the reserve fund can only be established once the reserve fund study has been completed, and this study can only be completed once the development has been constructed, and the condominium corporation has been registered. Unfortunately, the above condition has been included in the list of draft plan conditions applicable to other draft approved plans of condominium which were not condominium conversions. Essentially a condition has been applied to draft approved plans of condominiums which cannot be satisfied because the reserve fund study cannot be prepared and the fund is established ahead of the registration of the condominium corporation. This issue was brought to the attention of Staff by an applicant who has been struggling to come up with a way to address the condition.

In addition, the current condition relating to the reserve fund (as noted above) requires the completion of a reserve fund study in accordance with the
Condominium Act to the satisfaction of the Director of Planning, and prior to the sale of any units. Not only can this condition not be met because the Condominium Act specifies when it is required, developers are legally able to sell units or secure deposits once they have obtained approval of the draft plan of condominium. In the past, Planning Staff have reviewed the reserve fund study in conjunction with Engineering Staff to satisfy the applicable condition, however, it is the responsibility of the Condominium Corporation to approve the study and City Staff do not have the expertise to evaluate such studies.

Staff have reviewed recent decisions in regard to draft plans of condominium and determined that a total of seven recently approved applications for draft plans of condominium are affected by this condition as described in Table 1 below. At the time of completing this Report, the applications are currently draft approved, and have not been registered:

**Table 1: Draft Approved Plans of Condominiums affected by Reserve Fund Study**

<table>
<thead>
<tr>
<th>Address</th>
<th>File No.</th>
<th>Date of Draft Approval</th>
<th>Type of Condominium</th>
<th>Number of Units</th>
<th>Condition No. Relating to Reserve Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>222-228 Mount Pleasant Street</td>
<td>29CD-15502</td>
<td>February 26, 2016</td>
<td>Vacant Land</td>
<td>15</td>
<td>3</td>
</tr>
<tr>
<td>6 Beckett Drive</td>
<td>29CD-16501</td>
<td>April 5, 2017</td>
<td>Vacant Land</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>(formerly 169-173 Mount Pleasant Street)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grey Street Extension – North Side</td>
<td>29CD-17502</td>
<td>December 21, 2018</td>
<td>Common Elements</td>
<td>113</td>
<td>5</td>
</tr>
<tr>
<td>232-242 Mount Pleasant Street</td>
<td>29CD-17503</td>
<td>May 2, 2018</td>
<td>Vacant Land</td>
<td>19</td>
<td>6</td>
</tr>
<tr>
<td>81 Peel Street</td>
<td>29CD-18502</td>
<td>October 10, 2018</td>
<td>Standard</td>
<td>12</td>
<td>4</td>
</tr>
</tbody>
</table>
In light of this, Staff are of the opinion that the condition relating to reserve funds needs to be modified. This is discussed in more detail in Section 8.0 of this Report.

### 6.0 Legislative Context


This Report was reviewed within the context of the *Condominium Act* which regulates aspects regarding the formation of a condominium, purchasing, ownership and governance. Section 94(1) of the *Condominium Act* requires every new condominium to establish a reserve fund study within one year following registration of the plan. The Act also requires the study to be updated every three years to determine whether the reserve fund and the amount of contributions collected from the owners are adequate to meet the expected costs of major repairs and replacement of the common elements of the corporation.

Planning Staff are of the opinion that the proposed amendment to the reserve fund study condition is consistent with the Act.

#### 6.2 Planning Act, R.S.O. 1990

In conjunction with the *Condominium Act*, this Report was also reviewed within the context of the *Planning Act*. Section 9(2) of the *Condominium Act* states that an application for a condominium must be processed in the same way as a Plan of Subdivision under Section 51 of the *Planning Act*.
and include any necessary modifications. This Act grants the City the authority to regulate the division of land and/or buildings through Plans of Condominium. The change of condominium conditions is also regulated by the Planning Act.

Pursuant to Section 7 of O. Reg. 544/06, the public notification requirements of the Planning Act do not apply to an application for approval of a condominium other than an application for approval of a vacant land condominium. As such, public notice would only be required for File No.’s 29CD-15502, 29CD-16501 and 29CD-17503.

However, Section 51(47) of the Planning Act states that an “approval authority is not required to give written notice under subsection (45) if in the opinion of the approval authority, the change to the conditions is minor”. In Planning Staff’s opinion, the proposed amendment to the draft approved conditions for File No.’s 29CD-15502, 29CD-16501, and 29CD-17503 is minor in nature. No other changes are proposed and the proposed change to the condition will ensure that there still would be a condition (see Section 8.0, Analysis) in place relating to reserve funds which can actually be satisfied prior to registration of the condominium. Planning Staff are of the opinion that written notice to the public is not required pursuant to Subsection 51(45) of the Act.

7.0 Input From Other Sources

This Report has been prepared in consultation with Staff from Legal and Real Estate Services. Staff also consulted with other local municipalities, which confirmed that this type of condition is not included in their decisions relating to draft plans of condominium. Planning Staff also notified the owners/applicants of the proposed change to the condition relating to the reserve fund. At the time of writing this Report, no comments or concerns have been received.

8.0 Analysis

As noted previously, the current wording of the draft plan condition relating to the reserve fund makes it impossible to satisfy. The study and its requisite reserve fund cannot be established before the condominium is registered and it is not consistent with the provisions of the Condominium Act. The study must be approved and be to the satisfaction of the condominium corporation, not City Staff.
To address this matter, Planning Staff recommend that the conditions listed in Table 1 be deleted and replaced with the following new condition:

“That, prior to final approval of the Plan, the Owner shall provide to the satisfaction of the Director of Planning, a letter of undertaking agreeing to complete a Reserve Fund Study in accordance with the Condominium Act, and that the Owner provide a copy of the of the Reserve Fund Study to the Director of Planning once it has been accepted by the Condominium Corporation”.

The above condition requires the submission of an undertaking agreeing to the completion of a reserve fund study and that the recommendations of that study are to be implemented. In accordance with the Condominium Act, the amended condition places responsibility on the Owner for providing an undertaking that a copy of the reserve fund study is provided to the City once the study is accepted by the condominium corporation. Planning Staff also note that there are other provisions in place to ensure that a condominium is developed in accordance with the City’s requirements. These include a condominium agreement as well as a site plan agreement with securities and detailed engineering drawings and plans. The City also requires the submission of as-built drawings following the completion of a development to ensure conformity with the approved site plan.

Since this amendment affects seven recently approved draft plan of condominiums, Planning Staff recommend that the reserve fund study condition in the Council approved decisions for File No.’s 29CD-15502, 29CD-16501, 29CD-17502, 29CD-17503, 29CD-18502, 29CD-19501 and 29CD-19502 (as listed in Table 1) be deleted and replaced with the new condition noted above.

Planning Staff are of the opinion that the amended condition is appropriate and can be satisfied. It should also be included as a standard condition for future applications of draft plan of condominium in the future, with the exception of condominium conversions.

9.0 Financial Implications

There are no direct financial implications with respect to this Report.

10.0 Conclusion

The current condition of draft plan approval for a condominium which relates to a reserve fund study cannot be satisfied. Accordingly, Planning Staff recommend that the related condition for the seven draft approved plans of condominium
listed in Table 1 be deleted and replaced with the revised condition noted in this Report and that this revised condition be applied to other plans of condominium in the future (with the exception of condominium conversions).

This revised condition will ensure that the decisions are consistent with the requirements of the Condominium Act. It should be noted that this condition is and in addition to a number of other conditions of draft approval which remain in effect such as entering into a condominium agreement with the City, certification for all civil engineering work, etc., that must be satisfied before the condominium can be registered. Together these conditions will ensure that the requirements of the City and any outside agencies are satisfied before the plan proceeds to registration. At the same time, the conditions provide some assurance to the future condominium owner that the development is in accordance with the approved site plan and it is ready to be assumed by the private condominium corporation which will then be responsible for preparing the reserve fund study and establishing the requisite reserve fund pursuant to the Condominium Act.

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In adopting this report, is a by-law or agreement required? If so, it should be referenced in the recommendation section.

By-law required  [ ] yes  [X] no

Agreement(s) or other documents to be signed by Mayor and/or City Clerk  [ ] yes  [X] no

Is the necessary by-law or agreement being sent concurrently to Council?  [ ] yes  [X] no