

Attachment to MM37.44



**STAFF REPORT  
ACTION REQUIRED**

**Supplementary Report: Official Plan Review - Official  
Plan Amendment to Adopt New Section 37 Policies  
Related to Affordable Housing**

|                          |  |
|--------------------------|--|
| <b>Date:</b>             | July 8, 2013   |
| <b>To:</b>               | City Council   |
| <b>From:</b>             | Chief Planner and Executive Director, City Planning Division |
| <b>Wards:</b>            | All  |
| <b>Reference Number:</b> | P:\2013\Cluster B\PLN\City Council\CC13053                   |

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CITY CLERK'S OFFICE  
SECRETARIAT SECTION

**SUMMARY**

The Official Plan Amendments recommended by this report will regulate and facilitate through the Section 37 Official Plan policies the acquisition by not-for-profit housing providers of affordable rented residential condominium units, by way of a voluntary contribution by a for-profit developer.

City Council referred Item PG22.1 to the Chief Planner for a report to the July, 2013 Council meeting on the implications of the removal of specific conditions, as recommended by Planning and Growth Management Committee, from a proposed Official Plan Amendment. The conditions to be removed related to a 20-unit cap and the minimum 50-year rental tenure, pertaining to the provision of condominium-registered affordable rental units as a Section 37 community benefit. In addition, the Chief Planner was also to report on the results of consultation with the Affordable Housing Office and stakeholders, and the creation of a definition of affordable ownership housing.

Following consultation with the Affordable Housing Office, Legal Services and stakeholders, this report recommends the adoption of the Official Plan Amendment with revised conditions. While the rationale for the two conditions remains valid, the consultation and review has yielded more effective policy alternatives to better achieve the objectives. The 20-unit cap is recommended to be replaced with the requirement that the units be contributed by a for-profit developer, together with an expanded list of policy exclusions. The minimum 50-year rental term and the 25-year affordability term are recommended to be replaced with conditions requiring such terms to be permanent.

The definition of affordable ownership housing is currently part of the work program with respect to the Official Plan Review. Staff anticipate providing preliminary directions in the Fall of 2013 on the definition.

## **RECOMMENDATIONS**

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### **The City Planning Division recommends that:**

1. City Council adopt the following alternatives to the maximum 20-unit condition and the minimum 50-year rental tenure condition that were originally recommended by City Planning staff to be included in the wording of proposed Official Plan Section 37 policy 5.1.1.6(j):
  - a. Delete the 20-unit maximum, add a requirement that the affordable rented residential condominium units be contributed by a share capital corporation, and add further exclusions respecting affordable rental housing units otherwise required to be provided by a Secondary Plan or policy 3.2.1.9 or other policies of the Official Plan;
  - b. Delete the conditions requiring a minimum 25-year affordability term and a minimum 50-year rental term and replace with a condition requiring that affordability and rented tenure be permanent;

such that the revised wording of proposed Official Plan policy 5.1.1.6(j) reads as follows:

- "j. rented residential condominium unit or units, provided the units:
  - i) are contributed by a share capital corporation;
  - ii) are owned and operated, in accordance with City guidelines, by a not-for-profit housing corporation satisfactory to the City;
  - iii) comprise permanent rented residential units with permanent affordable rents;
  - iv) are not replacing demolished rental housing under policies 3.2.1.6 or 3.2.1.7 of this Plan;
  - v) are not otherwise required to be provided by a Secondary Plan, or any other policy of this Plan, including policy 3.2.1.9 of this Plan; and
  - vi) are subject to one or more agreements with the City securing (i)-(v) to the satisfaction of the City."
2. City Council amend the Official Plan substantially in accordance with the proposed Official Plan Amendment appended as Attachment 1 to this report dated July 8, 2013 from the Chief Planner and Executive Director, City Planning.

3. City Council authorize the City Solicitor to make such stylistic and technical changes to the proposed Official Plan Amendment as may be required.
4. City Council declare by resolution to the Minister of Municipal Affairs and Housing that this Official Plan Amendment:
  - a. conforms with Provincial Plans or does not conflict with them;
  - b. has regard to the matters of Provincial Interest listed in Section 2 of the Planning Act; and
  - c. is consistent with policy statements issued under subsection 3(1) of the Planning Act.

### **Financial Impact**

There are no financial impacts resulting from this report.

### **DECISION HISTORY**

City Council on April 3 and 4, 2013, referred Item PG22.1 to the Chief Planner and Executive Director, City Planning, for a report to the June 11 and 12, 2013 meeting of City Council, in consultation with the Director, Affordable Housing Office, on:

1. the implications of removing the following matters from the proposed Official Plan Amendment:
  - i. allowing a maximum of 20 individual affordable rental units in a registered condominium; and
  - ii. securing rental tenure for at least 50 years;
2. the results of consultation with the individuals who submitted correspondence on this Item and other stakeholders in the development of the requested report; and
3. addressing the creation of a definition of affordable ownership housing.

The report dated January 30, 2013 from the Chief Planner and Executive Director, City Planning can be found at the following link:

<http://www.toronto.ca/legdocs/mmis/2013/pg/bgrd/backgroundfile-56262.pdf>

City Council, at its meeting of June 11, 12 and 13, through Motion MM36.32, adopted the following:

1. City Council direct that the report from the Chief Planner and Executive Director, City Planning with respect to Item PG22.1, requested by City Council at its meeting of April 3 and 4, 2013, be submitted directly to the July 16 and 17, 2013 meeting of City Council.

## **ISSUE BACKGROUND**

At its meeting of September 13, 2012, Planning and Growth Management Committee, among other amendments, deleted the condition regarding a 20-unit maximum in the number of affordable rented units that could be contributed in any one condominium building as a voluntary Section 37 benefit. The resulting Council decision (October 2, 2012) and a link to the staff report can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.PG17.9>

Following public consultation on the proposed policies, City Planning staff forwarded a report to the February 28, 2013 meeting of Planning and Growth Management Committee recommending adoption of amendments to the Section 37 policies related to affordable housing. Planning and Growth Management Committee deleted the condition regarding the minimum 50-year rental tenure term. When the matter proceeded to Council at the meetings of April 3 and 4, 2013, and June 11, 12 and 13, 2013, Council adopted the motions referenced in the Decision History, above.

This report responds to Council's request for a report directly to the July 16 and 17, 2013 Council meeting.

## **COMMENTS**

The Official Plan Amendment recommended by this report will regulate and facilitate through the Section 37 Official Plan policies the acquisition by not-for-profit housing providers of affordable rented residential condominium units, by way of voluntary contributions by for-profit developers. These units will be owned and operated as permanent rented residential housing by eligible community not-for-profit housing providers, pursuant to agreements with the City. In a period of time where senior government funding for affordable housing is in short supply, these changes will improve the City's ability to work with private developers and not-for-profit groups to deliver much needed affordable housing for lower-income households.

The recommended amendments lay the foundation for the City to enter into agreements with for-profit (share capital) corporations under Section 37 of the Planning Act for the provision of affordable rented residential condominium units as a community benefit. Community sector not-for-profit housing providers will be chosen by the City and will enter into Affordable Housing Contribution Agreements with the City that detail the requirements to maintain and operate the affordable units, which will include provisions addressing affordable rents and tenure among other matters.

The Official Plan Amendment attached to this report as Attachment 1, and which is recommended for adoption involves the replacement and modification of the two conditions under discussion with revised conditions that will better achieve the intent and address the matters raised by participants and council. To provide context the entire Official Plan policy 5.1.1.6 with the amendments inserted is included in Attachment 2.

## **Consultation with Affordable Housing Office and Stakeholders**

Comments were expressed that the 20-unit cap unduly limits the voluntary provision of affordable rented condominium residential units as a Section 37 benefit, and that the minimum 50-year rental tenure condition should be deleted in favour of permanent affordable rental housing.

Consultations were held by City Planning staff and the Affordable Housing Office on May 3, 2013 with individuals and groups involved in affordable rental housing, or who had expressed interest in the conditions under discussion. Invitations were distributed to 53 individuals and representatives. Attendees represented tenants, community groups and a range of not-for-profit housing providers, including Ganesh Co-op, Gooderham and Worts Neighbourhood Association, At Home Not-for-profit Housing Corporation, West Don Lands Committee, Kehilla Residential Programme, the Advocacy Centre for Tenants Ontario (ACTO), the Co-op Housing Federation of Toronto, and Deep Quong Community Fund Inc.

Overall, there was a consensus that allowing condominium-registered affordable rented units as a Section 37 benefit is a positive policy change. However, there was concern about the potential loss of the rental housing protections and restrictions associated with this policy. Stakeholders recognized that the proposed amendments would not result in large numbers of new affordable rented units through voluntary provision of units as Section 37 benefits.

Written comments received in this consultation are contained in Attachment 3 to this report. In summary, the comments received were as follows:

### **Comments Favouring Retention of Conditions**

- Removal undermines City's long-term ability to protect the secured rental housing
- The two conditions are not problematic for not-for-profit housing providers
- Condominium-registered rented units easier to sell off and should be permanent
- No cap would allow larger amounts of affordable rental housing to be condominium-registered instead of purpose-built, through this and other Official Plan policies, placing that housing beyond the City's rental protection policies
- All potential impacts of new policy cannot be anticipated, so caution is prudent

### **Comments Favouring Deletion of Conditions**

- Some not-for-profit groups want flexibility and control, e.g. provide options to convert to affordable ownership or rent-to-own or sale
- 50-year rental tenure could act as a disincentive for not-for-profit participation by increasing their financial risk
- Not-for-profits are not in the business of providing market rental, so why have different terms of affordability and rental tenure?
- No need for a 20-unit maximum if the units are operated by non-profit provider;
- Why limit the number of units if a developer is willing to provide more?

- City should retain the cap and add a proportion of units for greater flexibility
- Sale of units should not be allowed, except to other non-profit housing providers
- 50-year tenure not necessary as not-for-profits not interested in operating market rental units

### **Proposed Alternative to the 20-Unit Maximum Condition**

#### a) Proposed Alternative Condition

The proposed policy approach is to delete the cap and to expand the list of policy exclusions beyond rental replacement units, in order to eliminate the known unintended consequences. If the proposed policy excluded affordable rental units secured under Section 37 where required by the Official Plan, then those units provided in conformity with Secondary Plans (central Waterfront, York University and Downsview Secondary Plans), Housing Policy 3.2.1.9 and Building New Neighbourhoods policy 3.3.1(e) would also be excluded. Those required affordable rental units would thus have to be provided as purpose-built rental units, which is the intent of those policies. Furthermore, if the permission to allow the Section 37 voluntary contribution of condominium units is limited to for-profit corporations, that would also greatly reduce the possibility that entire social housing or not-for-profit rental housing developments involving height/density increases could be registered as condominiums as a result of this policy.

At the same time, in eliminating the 20-unit maximum, the voluntary contributions as Section 37 benefits of affordable rented condominium units by private developers would not be limited to 20 units or less. The results represent an improvement over the imposition of the 20-unit maximum.

#### b) Original Rationale

In the context of a voluntary Section 37 contribution of condominium-registered affordable rented units by a developer to a not-for-profit housing provider, the purpose of the 20-unit maximum condition was to limit the long-term risk to the affordable rental stock by limiting the number of rental units permitted to be condominium-registered at the possible expense of contributions of purpose-built rental units. Condominium-registration of affordable rental units removes the rental units from the Province's and the City's rental housing protection planning policies and legal framework. Even with not-for-profit ownership, there is still a risk that financial problems or issues, a desire to adjust or relocate the rental housing portfolio, or transition to ownership units, could cause a not-for-profit housing provider to want to sell or convert to ownership tenure some or all of the units. Such sale or conversion is easier for condominium-registered units than for purpose-built units.

The 20-unit maximum would limit the number of condominium-registered affordable rented units secured through Section 37 where required by other Official Plan policies such as the Central Waterfront Secondary Plan and the “large site” affordable housing policy 3.2.1.9, and also in not-for-profit housing developments involving a height/density increase. The condominium-registered units would for the most part be displacing the

contribution of purpose-built affordable rental units. The 20-unit threshold would be more likely to be exceeded in these situations than in a voluntary Section 37 contribution of affordable, condominium-registered rented residential units. Staff anticipates that the 20-unit limit would rarely be exceeded in voluntary contribution situations involving for-profit developers.

c) Discussion of Deleting the Condition

Simply deleting the 20-unit maximum condition, without an alternative approach to address the unintended consequences described above, would facilitate not just the voluntary Section 37 contributions of affordable rented condominium units, but also the condominium-registration of any affordable rental units secured through Section 37 and required to be provided by other Official Plan policies. Furthermore, deletion of the cap would also facilitate the condominium-registration of social housing and other not-for-profit rental housing developments where a height/density increase is involved. The entire not-for-profit development could conceivably be secured as a Section 37 benefit and thus qualify for condominium-registration under the proposed policy.

Staff is also concerned about the potentially short policy leap, facilitated by the removal of the 20-unit maximum with no policy alternative, from permitting the condominium-registration of social housing or not-for-profit affordable rental developments involving a height/density increase and secured as a Section 37 benefit, to permitting any such social or not-for-profit affordable rental housing developments to be condominium-registered, with the concomitant loss of long-term security for such units.

The 20-unit maximum per registered condominium is admittedly a blunt instrument. Staff anticipates that individual developers will rarely voluntarily provide more than 20 condominium units as a Section 37 community benefit in a building, but it may happen and a 20-unit maximum could be an obstacle.

### **Proposed Alternative to the 50-Year Rental Tenure Condition**

a) Proposed Alternative Condition

Staff recommend that both the minimum 25-year affordability requirement and the minimum 50-year rental tenure term be replaced with "permanent" terms for both. That would clearly convey the policy intent of permanent affordability and rental tenure as well as eliminate any confusion over intent that has been caused by the differing minimum time periods. Legal staff in both planning law and real estate law have agreed that such a modification is appropriate.

b) Original Rationale

In the context of a voluntary Section 37 contribution of condominium-registered affordable rented units by a developer to a not-for-profit housing provider, the purpose of the minimum 50-year rental tenure was to ensure that affordable condominium-registered

rented housing is as stable and long lasting a community benefit as possible in that location, given the lack of protection by the Provincial and City policy and legal framework applicable to purpose-built rental housing. Purpose-built rental housing has an unlimited term of rental tenure.

In addition, the establishment of a 50 year rental tenure was intended to recognize that the affordable rented residential condominium unit benefit is a public benefit first, and secondarily a benefit received by a specific not-for-profit housing provider approved by the City. The housing provider cannot treat the units as a private possession that can be sold at their discretion to transition to ownership tenure, to raise funds or to adjust the portfolio. Rather, the housing provider is considered a steward entrusted with administering and delivering a public good of affordable rented residential units, in the public interest, at that location.

The minimum rental tenure term also ensured that the proposed conversion to non-rental uses in the first 50 years requires a formal amendment process afforded by the Planning Act framework. Any decision to convert the community benefit to a non-rented use will be a public decision of Council with the statutory notice and public meetings and other checks and balances afforded by the planning approval process.

#### c) Discussion of Deleting the Condition

Condominium-registered rented residential units are already less stable and long-lasting than purpose-built rental units because they are not protected by the Provincial and City rental protection policies and legal framework. The deletion of the minimum 50-year term of rented tenure without a suitable alternative would make them even more vulnerable to conversion to non-rented uses. Failure to secure rental tenure would be inconsistent with the Official Plan Housing policy framework and the City's practices which have been to specifically secure rental tenure separately from affordability.

The proposed minimum 25-year term of affordability, and the proposed minimum 50-year rental tenure, caused confusion regarding their combined intent. Staff's intent was to provide terms that could be reasonably compared to terms that would be secured for a Section 37 contribution of purpose-built affordable rental units. Purpose-built rental units with affordable or mid-range rents are protected indefinitely as rental units by the Provincial and City legal and planning framework. Staff of the Affordable Housing Office and some housing stakeholders advised that the terms of both the affordable rents and the rented tenure of the condominium units should be permanent.

The contributing developer has no financial stake in the length of the affordability or rental terms, other than a desire that the contribution provide the greatest public benefit possible at the least cost. The length of those terms does not affect the developer's costs.



## **Overview of Proposed Implementation Agreements**

There has been some confusion over what agreements would be required to implement this proposed policy and what such agreements would secure. The main implementation agreements consist of the Section 37 Agreement and an Affordable Housing Contribution Agreement. The respective role played by each type of agreement is summarized as follows:

### a) Principles to be Addressed in Section 37 Agreement

The Section 37 Agreement(s) would be executed by the owner (for-profit corporation) and would secure certain basic requirements and minimums, which would typically include:

- The number and unit type of the affordable rented condominium units to be contributed, and the details including minimum floor areas, access to facilities, location within the development, etc.;
- The costs (if any) to be paid by the not-for-profit provider, and the costs to be absorbed by the developer as part of their Section 37 contribution;
- The maximum rent ceilings to ensure affordable rents, and the permanent affordability;
- The rented tenure of the units, and the permanent nature of that rented tenure;
- Agreement to a S.118 (Land Titles Act) restriction on title to ensure notification to the City and right to approve sale or transfer of ownership, or other encumbrances on the units;
- Requirement that the initial condominium declaration explicitly allow the rental of units;
- Requirement that the not-for-profit housing corporation enter into a Contribution Agreement with the City (through the Affordable Housing Office).

### b) Principles to be addressed in Affordable Housing Contribution Agreement

An Affordable Housing Contribution Agreement will be signed between the City and the chosen not-for-profit housing corporation and will detail the terms under which the housing is operated. The City's Affordable Housing Office will oversee the signing and administration of the Contribution Agreements, acting on behalf of the Municipal Housing Service Manager under the Housing Services Act.

The Affordable Housing Contribution Agreement will cover such requirements as:

- an acknowledgement that the not-for-profit corporation is delivering a public benefit on behalf of the City;
- protections to ensure the public benefit is protected through a restriction under Section 118 of the Land Title Act to prevent any dealings without the City's authorized consent;
- protections to provide for a mortgage in favour of the City for the value of the public benefits as security;
- obligations of the not-for-profit corporation to provide the homes at rents to residents at or below 80% average market rent, and that residents be income tested to qualify;

- requirement that the not-for-profit corporation report annually to the City on rent levels and occupancy of units to ensure program compliance.

As not all such processes, practices and obligations with respect to either agreement are enshrined in Council-adopted policies and/or implementation guidelines, staff recognizes the need for further consultation and reporting to establish the appropriate implementation framework. The dollar value of the contributed condominium units is an important component of the implementation framework that will be addressed shortly by City Planning staff in consultation with the Affordable Housing Office and other stakeholders.

### **Definition of Affordable Ownership Housing**

A revised definition of affordable ownership housing is being considered as part of the Official Plan Five Year Review. Staff will report to Planning and Growth Management Committee on a proposed definition of affordable ownership housing, and assess and evaluate different options and provide recommendations on a revised approach for Council's consideration in the late fall of 2013. Staff will be looking at defining affordability across a spectrum of ownership to support the City's housing policy framework and program initiatives. This work will include involvement of staff from the Affordable Housing Office and internal stakeholders and will involve consultation with a range of external housing stakeholder groups.

### **Conclusions**

In considering the intent of the two conditions pertaining to the 20-unit maximum and the 50-year minimum rental tenure, and the comments of the Affordable Housing Office, Legal Services Division and housing stakeholders received in the consultation exercise, City Planning staff is of the view that there are more effective policy alternatives for achieving the intent of those conditions.

Staff recommends that the 20 unit cap be deleted in favour of excluding affordable rental units required by other policies of the Official Plan together with a condition restricting the permission to the contribution of units by for-profit (share capital) corporations. The minimum 50 year rental tenure and minimum 25 year affordability conditions are both recommended to be deleted and replaced with a condition requiring permanent affordability and rental tenure.

Legal services also recommends the addition of a condition that would require that the conditions listed in the policy be secured in agreements. Other improvements from a legal and implementation perspective have been incorporated. Staff, in consultation with Legal Services and the Affordable Housing Office, recommend the adoption of the official plan amendment as proposed in this report.

## **CONTACT**

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## **SIGNATURE**



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Jennifer Keesmaat, MES, MCIP, RPP  
Chief Planner and Executive Director  
City Planning Division

## **ATTACHMENTS**

Attachment 1: Official Plan Amendment No. 214

Attachment 2: Complete Official Plan Policy 5.1.1.6 with Proposed Amendments  
Incorporated

Attachment 3: Written Comments Received from Stakeholders

[P:\2013\Cluster B\PLN/City Council/CC13053]

## Attachment 1

### AMENDMENT NO. 214 TO THE OFFICIAL PLAN OF THE CITY OF TORONTO

**The following text and schedule constitute Amendment No. 214 to the Official Plan for the City of Toronto, being an amendment to Section 5.1.1 Height and/or Density Incentives, Policy 6.**

1. Section 5.1.1, Height and/or Density Incentives, Policy 6 is amended by:
  - a) In subsection (i), adding the words "affordable ownership housing," after the words "land for affordable housing," and adding the words "or ownership" after the words "cash-in-lieu of affordable rental"; so that the revised subsection (i) reads as follows:
    - "i. purpose built rental housing with mid-range or affordable rents, land for affordable housing, affordable ownership housing, or, at the discretion of the owner, cash-in-lieu of affordable rental or ownership units or land;"
  - b) Adding a new subsection (j) which reads as follows:
    - " j. rented residential condominium unit or units, provided the units:
      - i) are contributed by a share capital corporation;
      - ii) are owned and operated, in accordance with City guidelines, by a not-for-profit housing corporation satisfactory to the City;
      - iii) comprise permanent rented residential units with permanent affordable rents;
      - iv) are not replacing demolished rental housing under policies 3.2.1.6 or 3.2.1.7 of this Plan;
      - v) are not otherwise required to be provided by a Secondary Plan, or any other policy of this Plan, including policy 3.2.1.9 of this Plan; and
      - vi) are subject to one or more agreements with the City securing (i)-(v) to the satisfaction of the City." and
  - c) Renumbering the existing subsections (j) to (m) as (k) to (n).

## Attachment 2

### Complete Official Plan Policy 5.1.1.6 with Proposed Amendments Incorporated

#### 5.1.1 HEIGHT AND/OR DENSITY INCENTIVES

6. Section 37 community benefits are capital facilities and/or cash contributions toward specific capital facilities, above and beyond those that would otherwise be provided under the provisions of the Planning Act or the Development Charges Act or other statute, including:
  - a. the conservation of heritage resources that are designated and/or listed on the City of Toronto Inventory of Heritage Properties;
  - b. fully furnished and equipped not-for-profit child care facilities, including start-up funding;
  - c. public art;
  - d. other not-for-profit arts, cultural, community or institutional facilities;
  - e. parkland, and/or park improvements;
  - f. public access to ravines and valleys;
  - g. streetscape improvements on the public boulevard not abutting the site;
  - h. rental housing to replace demolished rental housing, or preservation of existing rental housing;
  - i. purpose built rental housing with mid-range or affordable rents, land for affordable housing, affordable ownership housing, or, at the discretion of the owner, cash-in-lieu of affordable rental or ownership units or land;
  - j. rented residential condominium unit or units, provided the units:
    - i) are contributed by a share capital corporation;
    - ii) are owned and operated, in accordance with City guidelines, by a not-for-profit housing corporation satisfactory to the City;
    - iii) comprise permanent rented residential units with permanent affordable rents;
    - iv) are not replacing demolished rental housing under policies 3.2.1.6 or 3.2.1.7 of this Plan;
    - v) are not otherwise required to be provided by a Secondary Plan, or any other policy of this Plan, including policy 3.2.1.9 of this Plan; and
    - vi) are subject to one or more agreements with the City securing (i)-(v) to the satisfaction of the City.
  - k. local improvements to transit facilities including rapid and surface transit and pedestrian connections to transit facilities;
  - l. land for other municipal purposes;
  - m. substantial contributions to the urban forest on public lands; and
  - n. other local improvements identified through Community Improvement Plans, Secondary Plans, Avenue Studies, environmental strategies, sustainable energy strategies, such as deep lake water cooling, the capital budget, community service and facility strategies, or other implementation plans or studies.

## Attachment 3

### Written Comments Received from Stakeholders

#### 1. Email dated May 17, 2013 from Chair, West Don Lands Committee

Thank you again for the opportunity to participate in the consultation on the OPA s. 37 policies relating to affordable housing.

The West Don Lands Committee continues to support inclusion of the 20 unit cap and the 50 year rental tenure as minimum requirements for condominium-registered affordable housing secured as a section 37 benefit. As we stated in our March 27, 2013 letter to Council, we are concerned that, without these minimum controls, allowing condominium-registered units to be secured as affordable rental will unacceptably increase the risk that they will be lost as a public benefit in the longer term.

At this point, the city has had extremely limited experience with condominium-registered affordable housing. The other crucial components in protecting condominium-registered affordable rental units are 1) a clear policy that such housing can be conveyed only to city approved not-for-profit affordable housing providers and 2) a standard Contribution Agreement that ensures the City can protect the public interest in s.37 affordable rental over the term of the agreement. Among other things, the Agreement should include provision for the units to revert to city ownership or control, if the not-for-profit ceased to operate the housing in accordance with the agreement and a public process to be engaged in the event that there were a need for the not-for-profit to change the terms of the agreement. We understand that there is no standard Contribution Agreement in place at this time.

In addition to restoring the 20 unit cap and the 50 year rental tenure, we would recommend that approval or, at the very least, implementation of any s.37 amendments related to condominium-registered affordable rental be conditional upon development of a suitable Contribution Agreement template.

Thank you, again, for the opportunity to contribute to this discussion.

#### 2. Letter attached to Email dated May 17, 2013 from Executive Director, Federation of Metro Tenants Associations

I am writing on behalf of the Federation of Metro Tenants Associations (FMTA) with comments for your consideration regarding the original recommendation from City Planning Division with respect to the proposed Section 37 Official Plan amendments which included a 20-unit maximum for the number of affordable rental units per condominium building and a requirement to secure rental tenure in condominium-registered rental units for 50 years. FMTA attended the City Planning Division Open House held on November 21, 2012 and shared our concerns regarding the proposed amendments. Subsequently, the two conditions mentioned above were removed when

the proposed amendment was considered at the Planning and Growth Management Committee meetings on September 13, 2012(20-unit cap) and on February 28<sup>th</sup> (50-year rental tenure).

FMTA believes the removal of the 20-unit maximum for the number of affordable rental units per condominium building is not good housing policy and the 20 unit cap should be restored. This is an important issue in that if there was no cap, it could lead to the future construction of not-for-profit affordable housing of any size project as condominium-registered rental units, with time-limits on rental affordability and rental tenure. There might be pressure to condominium-register the not-for-profit rental housing that will in the near future be developed on public lands such as Build Toronto or on the Waterfront, for example, and including it within condominium complexes.

The FMTA is also greatly concerned with the removal of the requirement to secure rental tenure in a condominium-registered unit for 50 years. Removing this requirement will ensure that all the not-for-profit housing currently approved, which is being secured as a public benefit, will have a definitive shelf life of only 25 years with no public recourse if operators chose to convert or sell it. By putting it in the Official Plan, tenants of the not-for-profit housing and the public in the surrounding community will be notified for a 50-year period of any proposal to sell it or convert to ownership and have a chance to express their views to City Council. The scope of condominium development in Toronto leads us to believe that this is a major concern going forward.

More importantly social housing rental units which are condominium-registered would be much easier to sell off, either a few units at a time or entirely, because the City's rental housing protection policy framework does not apply to condominium-registered rental units. This could lead to a major loss of affordable housing down the road no matter how you cut it.

Restoring the 20-unit cap will ensure that most future social housing will be purpose built rental housing to serve the residents of tomorrow, while still allowing developers to more conveniently provide smaller numbers of condominium-registered units as not-for-profit housing within a condo building as a Section 37 benefit. It seems unlikely that a developer will contribute more than 20 units at a time within a single condo building.

As others have noted, "If the affordable and rental housing in the vibrant St. Lawrence Neighbourhood had been developed on a 25 year time horizon, it would already be disappearing from the fabric of the city."

A City currently facing an absurdly low vacancy rate should take this to heart. Ensuring access to affordable housing (and economic and social benefits to the City that this brings) requires planning and foresight down the road. Removing the requirement to secure rental tenure in a building for 50 years is not, in our opinion, keeping with the commitment to good planning for a vibrant City that wants to remain livable.

The FMTA continues to urge the City to make affordable rental units a cornerstone of Official Plan policy. This requires more effective use of Section 37 to increase the supply of affordable purpose-built rental housing, not further diluting of it.

**3. Letter attached to Email dated May 16, 2013 from Research/Policy Analyst, Advocacy Centre for Tenants Ontario (ACTO)**

Further to City Planning's consultation held on May 3, 2013 on the implications of removing two conditions from the above-mentioned proposed amendment, I am writing on behalf of the Advocacy Centre for Tenants Ontario (ACTO) with additional comments and recommendations for consideration.

ACTO is a community legal clinic, funded by Legal Aid Ontario, with a province-wide mandate. We work for the advancement of human rights and social justice in housing for low-income Ontarians through legal advice and representation, law reform, community organizing, and education and training. The clinic also coordinates the Tenant Duty Counsel Program across Ontario which provides legal information assistance to self-represented tenants appearing at the Landlord and Tenant Board.

ACTO's position remains that Council should not adopt the proposed new section 6(j) to explicitly authorize condominium-registered affordable rental units as eligible Section 37 community benefits.

However, should Council decide to proceed with adopting these policy changes, ACTO continues to strongly urge the re-instatement of the 20-unit maximum for the number of affordable rental units per condominium building in the proposed new section 6(j) and the replacement of the requirement that condominium-registered affordable rental units are retained as rental for at least 50 years.

We support the retention of these two conditions in the amendment to the Official Plan because:

- The 20-unit cap will allow for the voluntary provision of affordable rental housing units in market condominium developments, while not opening the door to the wholesale future construction of all new affordable rental and social housing as condominium-registered units;
- The requirement for rental tenure for at least 50 years will clearly and explicitly secure the public benefit in place for a significant time period in return for the overall economic uplift that the City is providing to the private developer with the granting of increased height and/or density for their condo project; and
- During the 50-year rental tenure requirement, the condominium-registered rental units would be subject to the City's rental housing protection policy framework, ensuring a process and review if there is any proposed sell-off or change in tenure during the time period.

It has been suggested that ACTO and other interested stakeholders have expressed about the removal of the two conditions in Housing Contribution Agreements between the



City's Affordable Housing Office and not-for-profit housing providers, rather than included explicitly in the Official Plan. Currently, there is no statutory provision for tenants and the general public to be notified and involved in consultations should there be a proposed change to rental tenure terms in a Housing Contribution Agreement – unlike that provided under the Official Plan if the 50-year rental tenure requirement is explicitly set out in it.

We would require more information about the content of such Housing Contribution Agreements (i.e. how the City's policy goals and priorities with respect to affordable rental housing are expressed in the terms and conditions) and how such agreements can be enforced before being able to evaluate and comment on this option.

In addition, we understand that there is no standard, clear framework or process in place should a not-for-profit housing provider wish to change the terms of the Housing Contribution Agreement, or can no longer meet the terms and conditions of the Agreement. In fact, ACTO is not aware of any policy direction or mandate from Council on what should be achieved or guaranteed through Housing Contribution Agreements.

ACTO believes there needs to be more work done to explore these gaps and deficiencies before proceeding with any proposed section 37 policy changes.

**4. Email dated May 23, 2013 and attached Letter dated January 31, 2013 from Toronto Women's City Alliance, Planning Team**

Thank you for your reply.

Attached is the initial submission from the Toronto Women City Alliance (TWCA); in support of the main thrust of the Amendment to OP policies re. Section 37 of the Planning Act.

We again would like to request that no limit be set for the number of affordable units in projects, nor on the number of years such units remain rental and affordable.

We understand that planning staff will propose a definition of affordability in a later amendment of housing policies.

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Toronto City Women's Alliance, (TWCA) wishes to respond to the proposed OP amendments under Section 37 of the Planning Act. Because of their relatively lower incomes compared with men, and their inequitable burden of care giving responsibilities, women are more dependent on affordable housing than men. This applies not only to single parenting women, but also to elderly women, who represent the considerable majority among senior citizens.

***We therefore support***

“amendments to the Section 37 policies to explicitly authorize affordable ownership housing and condominium-registered rental units as eligible Section 37 benefits.

“notably revisions to the definition of "affordable ownership housing", adding secondary suites to the list of a full range of housing, adding demolition control for residential buildings, revisions to the "large site" affordable housing policy, adding requirements for "familysized" units, and revisions to facilitate tower renewal, and “amendments to the Official Plan Section 37 policies to explicitly authorize affordable ownership units and condominium-registered affordable rental units as eligible Section 37 benefits. However as the actual amendment to the policy reads, it includes what we believe to be unnecessary limitations.

*We suggest that these time limitations are unnecessary.*

- 1 The affordability of such units should be geared to income and not exceed 30% of moderate and low income households respectively.*
- 2 Both affordability and tenure should be in perpetuity, as the developer retains the benefits of increased density in perpetuity too.*
- 3 There should not be a limitation of to 20 units. A percentage of 45% is preferable as this still would allow for a diversity of income groups within a project.*

The City has historically worked very well with a range of non -profit housing providers. The City has recognized the importance of working with organizations with expertise related to and connections with particular communities. We urge the City to draw on these relationships to ensure the full potential of the proposed amendments. The above positions are also supported by the Wellesley Institute, and the Toronto Coalition for Better Child Care, and the Young Women’s Christian Association.