**Date:** December 20, 2012  
**To:** Toronto and East York Community Council  
**From:** Director, Community Planning, Toronto and East York District  
**Wards:** Ward 20 – Trinity-Spadina  
**Reference Number:** 12 286844 STE 20 OZ

**SUMMARY**

At its meeting of November 6, 2012, Toronto and East York Community Council requested the Chief Planner and Executive Director, City Planning Division to commence a City-Initiated Official Plan Amendment (OPA) process for the lands at 120 to 130 Harbour Street and 10 York Street.

The proposed OPA amends the definition of "rental housing" for the lands known as 120 to 130 Harbour Street and 10 York Street in order for 12 condominium registered units to be considered affordable rental housing and thus be conveyed as a Section 37 benefit. The OPA would allow, by extension, any non-profit housing provided to benefit from municipal assistance such as waiving of development charges for the provision of affordable rental housing. This report provides the background and preliminary rationale for the potential site-specific OPA and seeks Community Council's directions on the community consultation process and public meeting notification.
In consultation with the Ward Councillor, staff held a community consultation meeting December 17, 2012. Staff anticipate submitting a final report to Community Council in the first quarter of 2013.

**RECOMMENDATIONS**

The City Planning Division recommends that:

1. Notice for the public meeting under the Planning Act be given according to the regulations under the Planning Act.

**Financial Impact**
The recommendations in this report have no financial impact.

**DECISION HISTORY**
At its meeting of November 27, 28 and 29, 2012, City Council, adopted a motion from Councillor Adam Vaughan, requesting that the Chief Planner and Executive Director, City Planning Division, commence a City Initiated amendment to the Toronto Official Plan to allow twelve affordable rental units at 120 to 130 Harbour Street and 10 York Street to be condominium registered and owned by a non-profit housing co-operative provider to be determined by the Co-operative Housing Federation of Toronto.

This City Initiated OPA is in response to City Council's direction.

**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.

**Official Plan**
Section 3.1.2 of the Official Plan (“OP”), Housing, requires the provision of a full range of housing, in terms of form, tenure and affordability, across the City and within neighbourhoods.

Policy 3.2.1.4 outlines how the City can provide assistance in the production of affordable housing stating:

“Where appropriate, assistance will be provided to encourage the production of affordable housing either by the City itself or in combination with senior government programs and initiatives, or by senior governments alone. Municipal assistance may include:
a. in the case of affordable rental housing and in order to achieve a range of affordability, measures such as: loans and grants, land at or below market rates, fees and property tax exemptions, rent supplement and other appropriate assistance;

b. in the case of affordable ownership housing provided on a long term basis by non-profit groups, especially affordable low rise family housing, measures such as: land at or below market rate, fees exemption and other appropriate forms of assistance;

c. with priority given to non-profit and non-profit co-operative housing providers.”

The Housing policies also include Housing Definitions, two of which are listed below:

“Rental housing is a building or related group of buildings containing one or more rented residential units, including vacant units that have been used for rented residential purposes, and units that are being or have last been used for rented residential purposes in equity co-operative or co-ownership housing, but does not include condominium-registered or life-lease units.”

“Affordable rental housing and affordable rents means housing where the total monthly shelter cost (gross monthly rent including utilities – heat hydro and hot water – but excluding parking and cable television charges) is at or below one times the average City of Toronto rent, by unit type (number of bedrooms), as reported annually by the Canada Mortgage and Housing Corporation.”

Section 5.1.1, Height and/or Density Incentives policies of the Official Plan, (Policy 6), specify that only ‘purpose built rental housing with mid-range or affordable rents” qualifies as an eligible Section 37 benefit community benefit.

Zoning

The site is currently zoned CR T3.0 C3.0 R0 and has no height limit. The CR zone generally 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 3.0 times the area of the lot. The current zoning does not allow for residential density.

At their November 27, 28, 29, 2012 meeting, City Council approved site specific zoning for the site to permit a mixed use development at 120 and 130 Harbour Street and 10 York Street. The site includes a 62-storey (224 metres including mechanical penthouse) residential tower with a 4-storey podium. There are a total of 726 dwelling units proposed in the tower. The uses within the podium include: retail at grade; mechanical, storage and guest suites on levels 2 to 3; and indoor and outdoor amenity space on level 3 and 4. The bills to implement the site specific zoning are being held until the City Initiated OPA proceeds.
Reasons for the Site-Specific Official Plan Amendment
The twelve affordable rental housing units will be provided as non-profit co-operative housing, and are intended to be units within a registered plan of condominium. The application for condominium approval has not yet been submitted to the City at this time. By virtue of the definition of "Rental housing" in the Official Plan, condominium-registered units do not qualify as rental housing, and by extension, do not qualify as an eligible affordable rental housing community benefit. Furthermore, for the same reason, they would not qualify for municipal incentives including waiving of development charges or property tax exemptions.

The twelve affordable rental housing units will have maximum rents set at affordable levels as defined in the Official Plan, which means rent levels at or below the CMHC average market rent by unit type for the City.

COMMENTS

Issues to be Resolved
The Official Plan definition of “rental housing” explicitly excludes condominium-registered units as a result of legal advice received during the formulation of the Plan. That legal advice was to the effect that a Section 37 or other agreement which attempts to secure rental housing cannot over-ride the rights conferred by the Condominium Act, which means that despite the agreement provisions, individual condominium-registered units could be sold and the municipality may not be able to enforce the agreement terms securing the units as rental units.

At their meeting of October 2, 3 and 4, 2012, City Council directed staff to pursue public consultation on proposed amendments to the definitions of the Official Plan to address affordable housing and report back to a meeting of the Planning and Growth Management Committee in the first quarter of 2013. The recommendations included, among other matters, proposals to amend the Section 37 policies to explicitly authorize condominium-registered rental unit as eligible Section 37 benefits provided the units were non-profit housing units with affordable rents, secured as rental tenure for at least 50 years. It is anticipated that the first quarter requirement will be a Preliminary Report followed by consultation and a Final Report later in the year.

A site-specific amendment to the Official Plan to allow condominium-registered affordable rental units is required in order to allow the 12 units to be provided as a Section 37 community benefit.

Ownership of condominium-registered affordable rental units by a non-profit housing provider, with agreements to secure the terms of the affordability and rental tenure, will significantly lessen, but not completely eliminate, the risks of losing the affordable rental housing community benefit. The related Section 37 agreement and the affordable housing agreement intended to be implemented by the Affordable Housing Office on this site could secure appropriate terms for the long term protection of the 12 rental units.
The terms could include a requirement to register a Land Titles Act Section 118 Restriction on title which would require City approval for the sale or conveyance by the non-profit housing provider of any of the units.

The provisions to be included in this site-specific amendment to the Official Plan and the agreements will be determined by City Planning staff and the Affordable Housing Office, taking into account the public input. The final report on the site-specific OPA will address the recommended provisions of the OPA and discuss the pertinent agreement provisions.

The Municipal Housing Facility By-law and related housing agreement intended to be implemented by the Affordable Housing Office for the affordable rental units on this site could also secure appropriate terms for the long term protection of the rental units.

**Community Consultation**

A community consultation meeting was held on December 17, 2012 at the Paws Way Pet Centre on Queens Quay West to allow the public to review the proposed Official Plan Amendment and ask questions of City staff. The meeting was attended by approximately 34 people. Issues raised included the following:

- additional traffic in the area generated by both this development and others in the area to the north and east,
- increased parking space 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,
- the number of units and their size should support housing,
- the process through which prospective tenants are selected,
- type and size of the units,
- support for providing affordable units in the community, and
- general support of the development.
The comments received from the community will be further considered through the analysis of this city initiated amendment and addressed in the final report.

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SIGNATURE

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