SUMMARY

This City-initiated Official Plan Amendment proposes to amend the definition of “rental housing” for the lands known as 120 to 130 Harbour Street, 10 York Street in order that the units can be provided to a non-profit housing co-operative as an eligible Section 37 benefit for the provision of affordable rental housing.

City Council adopted amendments to the Official Plan and Zoning By-law for 120 to 130 Harbour Street and 10 York Street which secure 12 rental affordable housing units. The Bills have not yet been placed before City Council for enactment. These 12 units are proposed to be condominium registered units, which is explicitly prohibited by the definition of “rental housing” in the Official Plan. In order that the affordable rental units be permitted as an eligible Section 37 benefit, while at the same time being condominium registered units, the proposed site specific Official Plan Amendment is required for the 12 rental units on the subject site.

This report reviews and recommends an appropriate amendment to the Official Plan.
THE CITY PLANNING DIVISION RECOMMENDS THAT:

1. City Council amend the Official Plan, for the lands at 120 to 130 Harbour Street, 10 York Street substantially in accordance with the draft Official Plan Amendment attached as Attachment No. 1 to report (March 14, 2013) from the Director, Community Planning, Toronto and East York District.

2. City Council authorize the City Solicitor to make such stylistic and technical changes to the draft Official Plan Amendment as may be required.

FINANCIAL IMPACT
The recommendations in this report have no direct financial impact.

DECISION HISTORY
At its meeting of November 27, 28 and 29 2012, City Council adopted the recommendation that 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 for the purpose of permitting at this location the condominium registered affordable housing units. City Council’s decision document can be accessed at this link:
http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.TE20.8

City Council adopted several recommendations regarding the development including those dealing with the affordable rental housing units for the subject site that pertain to this report. All of these recommendations are attached to this report as Attachment No. 2.

A preliminary report was considered by Toronto and East York Community Council on January 22, 2013 containing recommendations to hold a community consultation meeting to give notice to landowners and residents within 120 metres of the site for the meeting and to give notice of the public meeting to be held. The recommendations were adopted without amendment. The preliminary report can be accessed at:

ISSUE BACKGROUND

Proposal
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 provider to benefit from municipal assistance appropriate for the provision of affordable rental housing on this site.
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 Preliminary Report dated December 20, 2012 provided an overview of the meeting and the issues raised.

**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 2.1 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 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.

Agency Circulation
The application was circulated to all appropriate agencies and City divisions. Responses received have been used to assist in refining the City initiated amendment to the Official Plan.

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 for affordable rental housing.

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

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.

City Planning staff do recognize that the risk of condominium units secured as rental housing being individually sold would be lessened (although not eliminated altogether) if the condominium units were owned by a non-profit housing provider. Properties owned by non-profit housing providers have been sold in the past and likely will be in the future. There is little opportunity for government review of such sales if they occur after the expiry of housing subsidy agreements. The sales of these types of units result in the permanent loss of rental housing on any individual property and in the local community. Under the ownership of a non-profit co-operative rental housing provider, City staff's position is that the risk will be mitigated to what would be in an acceptable level, and thus, the site-specific amendment is recommended by City Planning staff.

In allowing condo-registered rental units, unlike purpose-built rental units, the City loses the ability to protect the affordable rental units once the affordable rental housing term expires. In the past the time frame has often been either 20 or 25 years. At the Planning and Growth Management Committee meeting of February 28, 2013, the Committee considered Item PG22.1, dealing with a general amendment to the Official Plan as part of the Five Year Official Plan Review, dealing with, among other matters, amendments to the Section 37 policies of the Official Plan to allow condominium registered affordable rental units as an eligible Section 37 benefit. The Committee's decision, which at the time of preparation of this report had not been considered by City Council, can be found online at the following link:
http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG22.1

Planning and Growth Management Committee revised the Official Plan Amendment recommended by City Planning staff to delete the requirement for a 50-year period of rental tenure, leaving the requirement for a 25-year period in which the units would be provided as affordable rental housing. Consequently, City Planning staff has recommended the same conditions with respect to this site-specific amendment to the Official Plan pertaining to 120 to 130 Harbour Street and 10 York Street.

Proposed Official Plan Amendment

The Draft Official Plan Amendment for the subject site provides for a total of twelve affordable rental housing units to be registered as condominium units provided that the units:

- are owned by a non-profit housing provider;
shall comprise seven (7) two-bedroom and five (5) one-bedroom units, with storage lockers and bicycle parking; and

- are secured in one or more agreements with the non-profit housing provider as affordable rental housing for a period of at least 25 years.

CONTACT
Sarah Henstock, Senior Planner
Tel. No. 416-392-7196
Fax No. 416-392-1330
E-mail: shensto@toronto.ca

SIGNATURE

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

ATTACHMENTS
Attachment 1: Draft Official Plan Amendment
Attachment 2: City Council Decision, November 27, 28 and 29, 2012
Attachment 1: 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 2013, as 120 to 130 Harbour Street and 10 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. 218 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. 218 TO THE OFFICIAL PLAN
LANDS MUNICIPALLY KNOWN IN THE YEAR 2013 AS 120 TO 130 HARBOUR STREET and 10 YORK STREET

The Official Plan of the City of Toronto is amended as follows:

1. Chapter 7, Site and Area Specific Policies, is amended by adding Site and Area Specific Policy No. 405 for lands known municipally in 2013 as 120 to 130 Harbour Street and 10 York Street, as follows:

405. SITE AND AREA SPECIFIC POLICIES

120 to 130 Harbour Street and 10 York Street

On the lands shown as 405 on Map 29:

(a) Twelve (12) affordable units provided as affordable rental housing may be registered as condominium units, provided such units:

(i) are owned by a non-profit housing provider;
(ii) comprise seven (7) two-bedroom and five (5) one-bedroom units, with storage lockers and bicycle parking; and
(iii) are secured in one or more agreements with the non-profit housing provider as affordable rental housing with rental tenure for a period of at least 25 years.

(b) For the purposes of the Official Plan, the units described in (a) above are considered to be rental housing.”
2. Chapter 7, Map 29, Site and Area Specific Policies is revised to add the lands known municipally in 2013 as 120 to 130 Harbour Street and 10 York Street, as Site and Area Specific Policy Area Number 405.
Attachment 2 – City Council Decision, November 27, 28 and 29, 2012

City Council on November 27, 28 and 29, 2012 adopted the following:

1. City Council amend the Official Plan, for the lands at 120 to 130 Harbour Street and 10 York Street substantially in accordance with the draft Official Plan Amendment attached as Attachment No. 6 to report (October 19, 2012) from the Director, Community Planning, Toronto and East York District.

2. City Council amend Zoning By-law 438-86, for the lands at 120 and 130 Harbour Street and 10 York Street substantially in accordance with the draft Zoning By-law Amendment attached as Attachment No. 7 to the report (October 19, 2012) from the Director, Community Planning, Toronto and East York District with the following amendments:

   A. by deleting section 6 respecting "Parking Spaces", and replacing it with the following:

   "6. Parking spaces shall be provided and maintained on the site or below grade off-site within 6 metres of the southern property line of the site in a parking garage in accordance with the following requirements:

   a) a maximum of 264 residential parking spaces;
   b) a maximum of 25 visitor parking spaces."

   B. by deleting a. and b. in Appendix 1 respecting affordable housing, and replacing them with the following:

   "a. Provide an affordable rental housing built contribution to the value of at least $5,200,000, including:

   i. the conveyance of twelve units in the development to a non-profit housing co-operative provider ("the Provider") for affordable rental housing;

   ii. the twelve units shall comprise seven two-bedroom and five one-bedroom units, with storage lockers and bicycle parking;

   iii. the conveyance shall be for nominal consideration plus interim occupancy fees prior to condominium registration, with other customary adjustments for any costs associated with those units at the time of closing to be absorbed by the applicant."
b. Enter into Agreements of Purchase and Sale with respect to all twelve units referenced in Recommendation 5.a., with the Provider and/or the City for a period of at least 50 years, securing the rents of the 12 affordable rental housing units as affordable rents and the occupancy of the units as rental housing prior to the issuance of the first above grade building permit for the development, and there shall be provisions allowing the Agreements of Purchase and Sale of all twelve units in Recommendation 5.a. to be assignable."

3. City Council authorize the City Solicitor to make such stylistic and technical changes to the draft Official Plan Amendment and Zoning By-law Amendment as may be required.

4. Before introducing the necessary Bills to City Council for enactment, City Council require the owner of the lands at 120 to 130 Harbour Street and 10 York 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.

5. Before introducing the necessary Bills to City Council, City Council require the owner of the subject lands to enter into one or more agreements with the City of Toronto pursuant to Section 37 of the Planning Act to secure the facilities, services and matters referred to below at the owner's sole expense, which agreements may be registered against title of the lands to which this By-law applies in the manner and to the extent specified in such agreements. The owner of the subject lands, in accordance with, and subject to, the agreements referred to above shall provide or fund the following facilities, services and/or matters on terms satisfactory to the City of Toronto:

a. Provide an affordable rental housing built contribution to the value of at least $5,200,000, including:

i. the conveyance of twelve units in the development to a non-profit housing co-operative provider ("the Provider") for affordable rental housing;

ii. the twelve units shall comprise seven two-bedroom and five one-bedroom units, with storage lockers and bicycle parking;

iii. the conveyance shall be for nominal consideration plus interim occupancy fees prior to condominium registration, with other
customary adjustments for any costs associated with those units at the time of closing to be absorbed by the applicant.

b. Enter into Agreements of Purchase and Sale with respect to all twelve units referenced in Recommendation 5.a., with the Provider and/or the City prior to the issuance of the first above grade building permit for the development, and there shall be provisions allowing the Agreements of Purchase and Sale of all twelve units in Recommendation 5.a. to be assignable.

c. The community benefits recommended to be secured in the Section 37 Agreement are as follows:

   i. affordable housing.

d. The following matters are also recommended to be secured in the Section 37 Agreement as a legal convenience to support development:

   i. 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.

   ii. 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.

   iii. Through the Site Plan application process the following is required:

      a. A conveyance with a maximum width of 1.6 metres from a point 1.2 metres below finished grade, to the sky, including a daylight triangle at the southwest 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.

      b. A further below-grade conveyance which excludes the parking garage and all associated support structure, such conveyance to have a width of approximately 4.8 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 requirements of the Official Plan.

c. An easement with a minimum width of 5.0 metres to the full extent of the site abutting the southerly drip line or any other structural component of the Gardiner Expressway (including below grade foundation) along the F.G. Gardiner Expressway at a point 1.2 metres below finished grade, to the sky, the easement to be conveyed to the City for a nominal sum as required for maintenance purposes and the possible future dismantling of the F.G. Gardiner Expressway to the satisfaction of the Executive Director of Technical Services.

d. Setback the project, including all ramps, driveways, bridge support columns and ventilation shafts, in order to accommodate the road widening as set out above.

e. Provision of continuous pedestrian weather protection abutting York Street.

f. Identification of any future patio space in co-ordination with the pedestrian weather protection requirements.

g. Provide upgraded streetscape along York Street, Lake Shore Boulevard West and Harbour Street to co-ordinate and be in keeping with the York Street Promenade requirements.

h. Provision of maintenance holes at the property line off city property for both storm and sanitary connections.

i. Enter into an encroachment agreement for the area of the parking garage that will encroach into the Harbour Street and Lake Shore Boulevard right-of-way.

6. Before introducing the necessary Bill to City Council for enactment of the site-specific zoning by-law, City Council require that a Bill for enactment of an Official Plan Amendment to permit the condominium registration of the 12 affordable rental housing units shall have been adopted by City Council.

7. City Council authorize the City to be a party to the Agreements of Purchase and Sale for the Provider's units as a contingent transferee, in order to ensure the benefit of the units to be conveyed is secured for the intended purpose as set out in the report from the Director, Community Planning, Toronto and East York...
District, entitled "120 and 130 Harbour Street, and 10 York Street - Official Plan Amendment and Zoning Amendment Applications - Supplementary Report" (dated November 5, 2012) in the event the Owner or the non-profit purchaser is not able to complete the proposed transactions, by either assigning their interests in the Agreements of Purchase and Sale or by selling the units in the open market at fair market value with the proceeds to go towards affordable rental housing.

8. City Council authorize and direct the appropriate City Officials to take the necessary action to give effect to the foregoing, including the specific actions set out in "Council Authorities to Implement Matters Pursuant to the Section 37 Agreement" as Schedule 1 to the report from the Director, Community Planning, Toronto and East York District (dated November 5, 2012), entitled "120 and 130 Harbour Street, and 10 York Street - Official Plan Amendment and Zoning Amendment Applications - Supplementary Report".

9. City Council request the Chief Planner and Executive Director, City Planning Division, to commence a City-initiated amendment to the Toronto Official Plan to allow for affordable rental housing units at 120 to 130 Harbour Street and 10 York Street to be condominium registered and owned by a non-profit housing cooperative provider, which provider is to be determined by The Cooperative Housing Federation of Toronto.

10. City Council direct Planning staff to schedule a community consultation meeting, together with the Ward Councillor.

11. City Council direct that notice for the community consultation meeting be given to landowners and residents within 120 metres of the site.

12. City Council direct that notice for the public meeting under the Planning Act be given according to the regulations under the Planning Act.