

289 and 291 The Kingsway and 1, 3, 5 and 7 St. Steven Court – Rental Housing Demolition Application – Amendments to Section 111 and Section 37 Agreements Report

Date: May 26, 2020

To: Etobicoke York Community Council

From: Director, Community Planning, Etobicoke York District

Ward: 2 - Etobicoke Centre

Planning Application Number: 13 164266 WET 04 RH

SUMMARY

The purpose of this report is to seek authority from City Council to amend the existing Section 111 and Section 37 agreements (the "Agreements") on the properties at 289 and 291 The Kingsway and 1, 3, 5 and 7 St. Steven Court. The agreements were registered in accordance with the April 24, 2018 City Council decision to approve a Rental Housing Demolition Application under Chapter 667 of the Municipal Code for the consolidated development site at 289 and 291 The Kingsway and 1, 3, 5 and 7 St. Steven Court (Item EY29.1).

The proposed amendments are to lift the rental replacement obligations in the Agreements from the existing rental building at 289 The Kingsway. All other obligations in the Agreements that relate to the existing rental building at 289 The Kingsway, including the restriction against converting the existing 73 rental dwelling units to condominium tenure for a period of twenty years, will continue to remain on title. The remainder of the development site, which will contain four new residential buildings, will continue to be subject to the rental replacement obligations in the Agreements.

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council authorize the City Solicitor to amend the Section 37 and the Section 111 agreements registered on title to the existing rental building located at 289 The Kingsway to remove the rental replacement obligations in those agreements, all to the satisfaction of the City Solicitor and the Chief Planner and Executive Director, City Planning.

FINANCIAL IMPACT

City Planning confirms that there are no financial implications resulting from the recommendations included in this report in the current budget year or in future years.

DECISION HISTORY

On September 10, 2013, Etobicoke York Community Council (EYCC) adopted the Preliminary Report dated August 23, 2013 on the Zoning By-law Amendment and Rental Housing Demolition applications for the subject lands. The report can be accessed at: <http://www.toronto.ca/legdocs/mmis/2013/ey/bgrd/backgroundfile-61104.pdf> On July 23, 2015, the owner appealed the Zoning By-law Amendment application to the Ontario Municipal Board (OMB) citing City Council's failure to make a decision within the prescribed time lines set out in the *Planning Act*.

On February 3, 2016, City Council adopted the Request for Directions Report dated December 16, 2015, to authorize the City Solicitor, together with appropriate staff to attend any OMB hearings in opposition to the appeal. City Council also directed City staff to continue discussions with the applicant on a revised proposal. The report can be accessed at: <https://www.toronto.ca/legdocs/mmis/2016/ey/bgrd/backgroundfile-87028.pdf>

On April 24, 2017, the OMB approved the site specific zoning appeal, in part, to permit four new residential apartment buildings containing 523 dwelling units (including 156 replacement rental dwelling units) on the subject lands.

On April 24, 2018, City Council adopted the Final Report - 289 and 291 The Kingsway and 1, 3, 5 and 7 St. Stevens Court - Rental Housing Demolition Application Under Toronto Municipal Code Chapter 667 to allow the demolition of 156 existing rental dwelling units on the subject lands, subject to conditions. The report can be accessed at: <https://www.toronto.ca/legdocs/mmis/2018/ey/bgrd/backgroundfile-113236.pdf>

On July 16, 2019, City Council adopted the Final Report - 289 and 291 The Kingsway and 1, 3, 5 and 7 St. Stevens Court - Part Lot Control Exemption Application to enact a Part Lot Control Exemption By-law with respect to the subject lands, to expire three years following enactment by City Council. The report can be accessed at: <https://www.toronto.ca/legdocs/mmis/2019/ey/bgrd/backgroundfile-134310.pdf>

ISSUE BACKGROUND

289 The Kingsway formed part of a 2013 Zoning By-law Amendment application on the property at 289 and 291 The Kingsway and 1, 3, 5, and 7 St. Stevens Court. The site contained six existing rental apartment buildings. Five of the six buildings (291 The Kingsway and 1, 3, 5 and 7 St. Stevens Court) were proposed to be demolished to facilitate the redevelopment of the site with four new residential apartment buildings.

The existing rental apartment building at 289 The Kingsway was proposed to be retained. The Zoning By-law Amendment application was approved by the OMB on April 24, 2017.

The five existing rental apartment buildings at 291 The Kingsway and 1, 3, 5 and 7 St. Stevens Court collectively comprised 156 rental dwelling units. A Section 111 permit, pursuant to Chapter 667 of the Municipal Code, was required to allow for the demolition of the existing rental dwelling units and provide for 156 rental replacement dwelling units within a new stand-alone rental building as part of the proposed redevelopment of the site. On April 4, 2018, City Council approved the demolition, subject to conditions, including the registering of Section 111 and Section 37 agreements on title. Both agreements were registered on August 23, 2019 and applied to all properties at 289 and 291 The Kingsway and 1, 3, 5, and 7 St. Stevens Court as a single entity, as all properties were under the same ownership.

In 2018, the owner applied for a Part Lot Control Exemption in order to create five conveyable lots for the four proposed residential apartment buildings and the existing rental building at 289 The Kingsway. The exemption established easements for shared access and servicing between the proposed buildings. City Council approved the Part Lot Control Exemption By-law at its meeting on July 16, 2019 and it is scheduled to expire in three years from the date of approval.

As a result of this Part Lot Control Exemption By-law, 289 The Kingsway is a separate conveyable lot. The Section 111 and 37 agreements remain on title to 289 The Kingsway which contains the existing rental apartment building that was retained through the redevelopment. However, the obligations set out in the agreements relate uniquely to the demolition and replacement of the rental dwelling units at 291 The Kingsway and 1, 3, 5 and 7 St. Stevens Court.

COMMENTS

The owner is currently in the process of transferring the various parcels to separate title nominees, in accordance with the Part Lot Control Exemption By-law. The title nominee for 289 The Kingsway is seeking to register a new Canada Mortgage and Housing Corporation (CMHC) insured mortgage on the existing rental building at 289 The Kingsway. However, CMHC will not approve financing to the nominee as it is subject to the obligations set out in the Section 111 and Section 37 agreements that relate to the other proposed buildings on the development site. As a result, the solicitor for the owner has requested that the Agreements be amended to remove the rental replacement obligations from the existing rental building at 289 The Kingsway. The letter outlining the request can be found in Attachment 1.

City Planning and Legal Services staff do not have any concerns with the removal of the rental replacement obligations in the Agreements from the existing rental building to allow the owner to obtain CMHC financing.

All other obligations in the Agreements relating to the existing rental building, including the restriction against converting the existing 73 rental dwelling units to condominium tenure for a period of twenty years, will continue to remain on title to the existing rental building at 289 The Kingsway. The remainder of the development site, which will consist of four new residential buildings, will continue to be subject to the rental replacement obligations in the Agreements.

The intent of the Section 111 and Section 37 agreements will be retained as a result of this amendment.

Conclusion

City Planning and Legal Services staff have reviewed the potential implications of amending the Section 111 and Section 37 agreements to remove the rental replacement obligations from the existing rental building at 289 The Kingsway to allow the owner to obtain CMHC financing for the site. Staff are of the opinion this amendment is consistent with previous Council decisions for the development of the subject lands and recommend approval of the amendment.

CONTACT

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SIGNATURE

Neil Cresswell, MCIP, RPP
Director of Community Planning
Etobicoke York District

ATTACHMENTS

Attachment 1: Letter From the Owner's Solicitor, Dated February 19, 2020

Attachment 1: Letter From the Owner's Solicitor, Dated February 19, 2020

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February 19, 2020

File No.: 530863-8

Sara Amini
Solicitor
City of Toronto, Legal Services
Metro Hall, 26th Floor
55 John Street
Toronto ON M5V 3C6

Dear Sara:

RE: 289 The Kingsway, Toronto, Ontario (the "Existing Apartment Building")

We act for The Elia Corporation ("Elia") with respect to the redevelopment of a site municipally known as 289 & 291 The Kingsway and 1, 3, 5 and 7 St Steven's Court, Etobicoke (the "Site") being the whole of PIN 07485-0166(LT). The Site is currently subject to a Section 37 Agreement between Elia and the City of Toronto (the "City") dated June 25, 2019 and registered on August 23, 2019 as Instrument No. AT5219809 and a Section 111 Agreement between Elia and the City dated June 25, 2019 and registered on August 23, 2019 as Instrument No. AT5219810 (collectively the "Agreements").

Although the Agreements are registered on, and relate to the whole Site, including the Existing Apartment Building, the various rental replacement and other obligations set out in the Agreements should not affect, nor be binding upon, the Existing Apartment Building, and its owners and mortgagees from time to time, as only the specific obligations that solely relate to the Existing Apartment Building should be binding upon it. The Existing Apartment Building is an existing tenanted building and no new zoning approvals with respect to the redevelopment of the balance of the Site apply to it. It was included in the Agreements due to the fact that, the whole of the Site at the time the Agreements were entered into, was in one ownership with no separate legal description and thus, is somewhat atypical.

Elia is in the process of transferring the various redevelopment parcels on the Site to separate title nominees, in accordance with a part lot control exemption by-law that was recently passed by the City. In connection therewith, the Existing Apartment Building will be transferred to its nominee, Kingsway E Limited, and then it will register a new CMHC insured mortgage on the Existing Apartment Building. CMHC will not approve this existing apartment building financing if the Existing Apartment Building (and its owners and mortgagees from time to time), is subject to obligations set out in the Agreements that relate to other proposed buildings on the Site other than the Existing Apartment Building.

We understand that both City Planning Staff and City Legal are supportive of our client's request to amend the Agreements to confirm that the various terms, conditions and obligations set out in the Agreements that relate to the Site do not apply to the Existing Apartment Building (and its owners and mortgagees from time to time), save and except for those terms, conditions and obligations that specifically and solely relate to the Existing Apartment Building, being its non-conversion to condominium tenure for a period of twenty years. Please confirm as soon as possible so that once City Council approves the foregoing, the Agreements can be amended to reflect the foregoing.

Larrain Rencoret ► Hamilton Harrison & Mathews ► Mardemootoo Balgobin ► HPRP ► Zain & Co. ► Delany Law ► Dinner Martin
MacLay Murray & Spens ► Gallo Barrios Pickmann ► Muñoz ► Cardenas & Cardenas ► Lopez Velarde ► Rodyk ► Boekel ► OPF Partners
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Please do not hesitate to contact me if you require any further information.

Yours truly,
Dentons Canada LLP



per: Jules Mikelberg

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