



BOUSFIELDS INC.

MEMORANDUM

To: Jennifer Allen, City of Hamilton

Project No.: 2330

From: David Falletta, MCIP, RPP

Date: February 27, 2023

Re: Rental Replacement Requirements for 121-125 King Street East

We have prepared this memorandum on behalf of Scholar Properties Ltd. (the “owner”) to assist with the ongoing assessment of the proposed Plan of Condominium (FC-23-016) for the two properties located at 121 and 125 King Street East in the City of Hamilton (the “subject site”). Specifically, the City of Hamilton, through a review of the proposed Plan of Condominium, has raised a conflict with Policy 6.1.4.11 of the Downtown Hamilton Secondary Plan, which requires the replacement of all rental units which are demolished within the City’s downtown.

File History

The subject site is currently occupied by a nearly completed, partially occupied 6-storey residential apartment building, containing 40 apartment units and two retail units at grade. Prior to construction beginning in 2019, the development was approved by the City of Hamilton through Site Plan Approval file SPA-17-086. While Bousfields was not party to this approvals process, the owner has indicated that they participated collaboratively with the City of Hamilton through the entire process and was clear that the development was always intended as a condominium project.

The owner purchased the subject site in 2017, intending to redevelop the lands. While we understand that the City of Hamilton has in it’s records that 16 rental units existed on the subject site prior to redevelopment, the owner has informed Bousfields that at the time of purchase, the property at 121 King Street East, other than the ground floor commercial unit, had been vacant for some time. While residential rental units may have existed at one time on the uppermost levels of the building, these units had not operated as such in many years and were in a level of extreme disrepair and partial demolition. The property at 125 King Street East was also additionally largely vacant, with just two active residential tenancies in 2016, though 13 rental units were listed on the building’s rent roll. Further, the building was completely vacant by the end of 2017.

As the two buildings have since been reconstructed, it is no longer possible to confirm the state of these vacant units and how many were in an occupiable condition. However, the Owners can confirm the above statements.

Policy Context

The subject site is subject to the policies in the Urban Hamilton Official Plan (“UHOPA”) and is within the Downtown Hamilton Secondary Plan (the “**Secondary Plan**”). The UHOPA designates the subject site as *Downtown Mixed Use Area*, and the Secondary Plan designates the site as *Downtown Mixed Use* with a height limit of 12 storeys. This designation permits residential apartment buildings and commercial uses, including condominiums. The development as constructed entirely conforms with the UHOPA. The proposed Plan of Condominium only conflicts with Policy 6.1.4.11 within the Secondary Plan, discussed below.

Hamilton Zoning By-law 05-200 zones the property as D-2 – Downtown Mixed-Use Pedestrian Focus Zone. The development as constructed complies with the Zoning By-law.

The specific policy with relation to rental demolition and replacement is Policy 6.1.4.11 of the Secondary Plan:

Notwithstanding Policy B.3.2.5.6 of Volume 1, the demolition/redevelopment of rental housing units shall be permitted only where the following can be achieved to offset the impacts:

- a) it shall be demonstrated that the rental housing units have been replaced on-site; and,*
- b) an acceptable tenant relocation and assistance plan addressing the right to return to occupy the replacement housing at similar rents, the provision of alternative accommodation at similar rents, and other assistance to lessen the hardship, is provided.*

We note that while the policy requires the rental housing units shall be replaced on-site, no details are provided on how to implement the policy. Issues relating to the replacement including unit sizes, period the units shall remain as rentals, exact determination of what constitutes a rental unit which is required to be replaced, and other matters are not specified.

Additionally, despite the owner always intending the proposed development to be registered as a condominium following the completion of construction, the City of Hamilton did not raise issue with Policy 6.1.4.11 b) at the time of Site Plan Approval. Indeed, it appears that the City of Hamilton issued both Site Plan Approval and the required building permits for the proposed project without addressing the requirements set out in Policy 6.1.4.11 b) of the Secondary Plan. This is likely due to the fact that a draft plan of condominium application had not been received.

In addition, the Secondary Plan was approved by City Council on May 9, 2018 and ultimately by the Local Planning Appeal Tribunal on August 14, 2019, well after the existing units were vacant and in disrepair.

Hamilton’s Evolving Policy Context

The City’s Planning Department is undertaking a Rental Housing Protection Policy Review (the “**Policy Review**”), which is planned to conclude with a recommendation report to Planning Committee and Council in May 2023. As part of Policy Review, the City has prepared a draft Official Plan Amendment (the “**Draft OPA**”) and Municipal Act By-law (the “**Draft By-law**”) for review and comment. In our review of these documents we note the following:

- the Draft OPA does not define an “existing rental unit”.
- The Draft OPA states (see Policy 3.2.5.6) that development or redevelopment that would have the effect of removing all or part of a rental apartment or townhouse buildings with six or more rental units shall only be permitted where any of the following three general criteria are met:
 - (a) The proposal will not adversely affect the rental vacancy rate or supply of affordable rental housing;
 - (b) the building is determined to be structurally unsound, confirmed by a structural audit; or,
 - (c) the following criteria are met:
 - Units removed are replaced on site, off site or through a cash-in-lieu payment.
 - Replacement units are maintained for a period (not disclosed) of time with similar rents the development application is made.
 - An acceptable tenant relocation and assistance plan.

- The Draft By-law also includes a transition regulation that establishes an Effective date that aligns with the passing of the By-law. It also states that if a determination is made on a related development application (including a site plan) prior to the Effective Date, it is not subject to the replacement policies.

In our review of the Draft OPA and Draft By-law, these documents are ambiguous and do not provide a detailed framework for reviewing rental replacement proposals. This would include a detailed description of what constitutes an “existing rental unit” and the terms related to replacement. Notwithstanding these gaps, the Draft By-law is clear and provides transition regulations for applications that were made prior to the policies and regulations coming into effect.

Examples from Other Municipalities

The City of Hamilton has informed Bousfields that they are open to working with the owner to create an appropriate rental replacement response to Policy 6.1.4.11 of the Secondary Plan. The City of Hamilton has requested that Bousfields provide contextual examples from other municipalities within Ontario on the process for the implementation of rental replacement requirements.

The City of Toronto has had policies relating to the replacement of rental units for over a decade and represents the most robust policy framework for the replacement of rental units in new development in the Province of Ontario.

The City of Toronto secures rental replacement requirements through a separate application process from the typical development approval processes seen in Ontario. The required Rental Housing Demolition and Conversion Application, of which its requirements are set out in Section 667 of the City of Toronto Municipal Code, allows the City of Toronto to screen all proposed developments which would demolish or convert any rental residential dwellings. Section 667 of the Toronto Municipal Code provides detail with regards to the requirements for the Rental housing Demolition and Conversion Application and its approval process. We have attached Section 667 of the Toronto Municipal code to this memorandum for reference.

This application process and review is undertaken by City of Toronto Housing Staff who review applications to ensure that projects meeting the threshold for rental replacement are replacing these units appropriately in any redevelopment. This is

secured through what is known as a Section 111 Agreement, registered against the property through Section 111 of the *City of Toronto Act*.

Specific requirements for Section 111 agreements are set out through Policy 3.2.1.6 of the City of Toronto Official Plan and Section 667 of the Toronto Municipal Code. Policy 3.2.1.6 of the City of Toronto Official Plan provides:

“3.2.1.6 New development that would have the effect of removing all or a part of a private building or related group of buildings, and would result in the loss of six or more rental housing units will not be approved unless:

- a) all of the rental housing units have rents that exceed mid-range rents at the time of application, or*
- b) in cases where planning approvals other than site plan are sought, the following are secured:*
 - i. at least the same number, size and type of rental housing units are replaced and maintained with rents similar to those in effect at the time the redevelopment application is made;*
 - ii. for a period of at least 10 years, rents for replacement units will be the rent at first occupancy increased annually by not more than the Provincial Rent Increase Guideline or a similar guideline as Council may approve from time to time; and*
 - iii. an acceptable tenant relocation and assistance plan addressing the right to return to occupy one of the replacement units at similar rents, the provision of alternative accommodation at similar rents, and other assistance to lessen hardship, or*
- c) in Council’s opinion, the supply and availability of rental housing in the City has returned to a healthy state and is able to meet the housing requirements of current and future residents. This decision will be based on a number of factors, including whether:*
 - i. rental housing in the City is showing positive, sustained improvement as demonstrated by significant net gains in the supply of rental housing including significant levels of production of rental housing, and continued projected net gains in the supply of rental housing;*
 - ii. the overall rental apartment vacancy rate for the City of Toronto, as reported by the Canada Mortgage and Housing Corporation, has been at or above 3.0 per cent for the preceding four consecutive annual surveys;*

- iii. the proposal may negatively affect the supply or availability of rental housing or rental housing sub-sectors including affordable units, units suitable for families, or housing for vulnerable populations such as seniors, persons with special needs, or students, either in the City, or in a geographic subarea or a neighbourhood of the City; and iv. all provisions of other applicable legislation and policies have been satisfied.*

While the specifics of Section 111 agreements have evolved over time and vary on a site-by-site basis, several key items as identified in the City of Toronto Official Plan of the City of Toronto Municipal Code are set out for every rental replacement application:

- The same number of units are replaced;
- Units are to be the same general size and type (same number of bedrooms, etc.);
- Units are to be rented at similar rents as before the redevelopment;
 - o There are specific protocols on calculating permitted rents, including annual rent increases which would have otherwise occurred through the construction process and a one-time increase to reflect an increase in unit quality resulting from the new construction;
- Units are replaced in a similar area to the demolished units, though not necessarily on-site;
- Units are maintained at similar rents for a minimum of 10 years following completion; and
- Units are maintained as dedicated rental units for a minimum of 20 years.

We note that the City of Toronto’s Official Plan policy provides far more guidance and specific requirements than the Policy set out in the Downtown Hamilton Secondary Plan which applies to the subject site. Furthermore, the determination of what constitutes an existing rental unit is determined by the City’s Housing Staff.

Most importantly, Section 667 of the Toronto Municipal Code includes a transition and only applies to demolitions or conversions of residential rental property in any related application made after the Effective Date of July 19, 2007, which is the date the by-law was originally approved.

Analysis of Policy

In our opinion, the implementation of rental replacement policies is done through a by-law passed via authority from the Municipal Act and such a by-law would include an

Effective date that aligns with the date in which the By-law was approved. This, in our opinion, establishes a date for which the residential rental supply/inventory in an area (such as the Downtown) or the entire City can be identified.

The City has yet to pass such a by-law, however, the policies in the Secondary Plan, which seeks to protect the residential rental supply/inventory in the Downtown came into effect on **August 14, 2019**. In the absence of a by-law that includes an effective date, a conservative approach would be to apply the date the Secondary Plan came into effect as the effective date for the policies.

A site plan application was filed for the subject applications in late 2017 (SPA-17-086) well before the Secondary Plan came into effect. In this regard, both Section 667 of the Toronto Municipal Code and the Draft By-law outline that where a related application (including a site plan) is made (Toronto Municipal Code) or a determination has been made on a related application (the Draft By-law), the rental replacement and conversion regulations and policies do not apply.

Based on the foregoing, it is our opinion that the residential rental units existed on the subject site well before the Secondary Plan was approved and came into effect and the City issued conditional site plan approval for SPA-17-086 well before the Secondary Plan policies came into effect. As such, it is our opinion that the policies in the Secondary Plan and future by-law should not apply to the subject site.