



## STAFF REPORT INFORMATION ONLY

### Potential for Including Heritage Conservation District Studies as Benefits Under Section 37 of the Planning Act

<b>Date:</b>	January 29, 2007
<b>To:</b>	Planning and Growth Management Committee
<b>From:</b>	Chief Planner and Executive Director, City Planning
<b>Wards:</b>	All
<b>Reference Number:</b>	pg070006

#### **SUMMARY**

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As requested by City Council at its September, 2006 meeting, this report discusses the potential for including Heritage Conservation District (HCD) studies as eligible benefits under Section 37 (S.37) of the Planning Act.

The S.37 policies of the Official Plan, as approved by the Ontario Municipal Board (OMB), require that S.37 community benefits be capital facilities. HCD studies are not capital facilities, and thus an amendment to the Official Plan would be necessary for such studies to become eligible community benefits. City Planning staff does not support such an Official Plan amendment, for the following reasons:

- the historical practice in Toronto in the use of S.37, pre- and post-amalgamation, has been to generally limit S.37 benefits to capital facilities;
- the intent of the former City of Toronto Official Plan S.37 policies was to limit benefits to capital facilities;
- the S.37 Implementation Framework adopted by Council in 2000 specified that S.37 benefits were to be capital facilities;
- other jurisdictions, such as the City of Vancouver's density incentives, limit benefits to capital facilities;
- the Official Plan S.37 policies adopted in 2002 limited S.37 benefits to capital facilities;
- community benefits should be durable, physical assets;
- developers who contribute the funds are generally opposed to non-capital facilities as benefits (as are many residents' organizations);

- including HCD studies as eligible S.37 benefits would set an undesirable precedent for inclusion of other studies or other program/operating matters;
- Council's adopted policy on donations for community benefits outside the planning and procurement processes also requires such benefits to be capital facilities and maintains a consistent approach; and
- HCD study funding should be provided through the City budget process.

## **Financial Impact**

This report will have no financial impact.

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## **DECISION HISTORY**

At its meeting on September 25, 26 and 27, 2006, City Council considered Clause 25 of Report 6 of the Planning and Transportation Committee, regarding Partial Settlement of Appeals to the New Official Plan - Section 37 Policies. The Planning and Transportation Committee recommended that City Council adopt the staff recommendations in the two confidential reports from the City Solicitor regarding a proposed settlement of the appeals of the S.37 Official Plan policies.

In amending and adopting the Clause, City Council endorsed the proposed settlement and added the following:

“That the Chief Planner and Executive Director, City Planning, be requested to report to the Planning and Growth Management Committee on the proposed implementation guidelines for the new Official Plan policies respecting S.37 of the Planning Act and the potential for including Heritage Conservation Districts as a community benefit under S.37.”

This report deals with only the issue of Heritage Conservation District studies as a community benefit. The report on the S.37 Guidelines is anticipated to be forwarded to the March 29, 2007 meeting of the Planning and Growth Management Committee.

## **ISSUE BACKGROUND**

From February through June, 2006, City Planning staff sought and received comments on the Proposed S.37 Implementation Guidelines, as circulated to residents, neighbourhood, ratepayer, business and interest organizations. In this process, staff met with certain members of the Heritage Preservation Board and with representatives of the Grange Park Preservation Group. The former recommended that funding for heritage-related studies such as a Heritage Conservation District (HCD) study be considered as an eligible benefit. The latter recommended that planning/visioning studies in general should be an eligible community benefit. In a report dated June 15, 2006 to Planning and Transportation Committee,

([www.toronto.ca/legdocs/2006/agendas/committees/plt/plt060905/it010b.pdf](http://www.toronto.ca/legdocs/2006/agendas/committees/plt/plt060905/it010b.pdf)), City Planning Division discussed these comments (pp. 53 and 54) and concluded that the Proposed S.37 Guidelines could not and should not list studies as eligible benefits because studies are not capital facilities. The report was deferred by Planning and Transportation Committee at the July 4, 2006 and September 5, 2006 meetings.

City Planning staff was invited to make a presentation on S.37 as it relates to heritage matters at the Heritage Preservation Board meeting of August 31, 2006. Board members and deputants expressed views supporting the inclusion of HCD studies, and other studies, as eligible S.37 benefits.

The Official Plan S.37 policies require that community benefits be capital facilities or cash contributions toward specific capital facilities. There has been at least one case since adoption of the Official Plan where funds for an HCD study have been secured through S.37, and one case where funds for a “visioning study” have been secured, but those decisions did not comply with the adopted, but as of then unapproved, Official Plan S.37 policies.

For a number of months prior to the September, 2006 meeting of Council, City Planning and Legal Services staff had been negotiating with appellants to the S.37 policies of the Official Plan with respect to a settlement of the appeals. The S.37 policy appellants included the Greater Toronto Home Builders’ Association (GTHBA) and the Urban Development Institute (both now merged as the GTHBA), two ratepayer organization groups, and an individual developer (The Conservatory Group). A tentative settlement had been reached, and as indicated in the “Decision History” section above, Council endorsed that policy settlement at its September, 2006 meeting. The OMB verbally approved those policies at a hearing on October 17, 2006, and in a written Order dated November 10, 2006.

## **COMMENTS**

Now that the S.37 policies are approved and in force, the Planning Act requires that any City works and by-laws conform to the Official Plan. The OMB-approved S.37 policies of the new Official Plan require that community benefits be capital facilities or cash contributions toward specific capital facilities. The only exceptions involve matters that are incidental to secured capital facilities, such as start-up funding associated with the securing of a child care facility, or rent levels and tenant relocation and assistance packages associated with the securing of the replacement of rental housing to be demolished.

Studies are not capital facilities, and HCD studies cannot be funded through S.37 in accordance with the approved Official Plan policies. While arguments have been made that planning studies, and HCD studies in particular, result in capital facilities, they are not capital facilities themselves. Therefore, if Council were to decide that HCD studies should be eligible community benefits, an amendment to the Official Plan would be required. Staff does not support such an amendment, for the following reasons:

- a. In practice, where S.37 was used prior to amalgamation (January 1, 1998), the former municipalities generally limited S.37 public benefits to capital facilities. The most extensive S.37 policies were contained in the former City of Toronto Official Plan, and they generally limited S.37 benefits to capital facilities;
- b. In practice, post-amalgamation, the City of Toronto generally limited S.37 benefits to capital facilities;
- c. A Citywide Implementation Framework for the Use of Section 37, adopted by City Council in August, 2000, specified that S.37 benefits were to be capital facilities;
- d. The citywide Official Plan adopted by Council in November, 2002 contained S.37 policies which required that the benefits be capital facilities;
- e. The City of Vancouver policy approach, expressed through the Community Amenity Contributions policies (analogous to S.37 policies), limits the benefits received in return for increased density through rezonings to capital facilities;
- f. Community benefits should be durable, tangible, physical assets, as in capital facilities. This important principle should not be compromised merely because the City has difficulty in funding studies through the budget approval process;
- g. Developers want visible, physical, long-lasting community benefits as a result of the funds they contribute to the City through S.37. Both the development industry and ratepayer appellants to the S.37 policies supported a policy settlement in which the community benefits remained limited to capital facilities;
- h. Designating HCD studies as eligible benefits through an amendment to the new Official Plan could set an undesirable precedent for inclusion of other studies and other programming or operational expenses as eligible S.37 benefits, further undermining support for the use of the tool from the development industry and undermining public credibility;
- i. A policy on donations for community benefits outside the planning approval and procurement processes, set out in a report dated September 6, 2006 to Policy and Finance Committee from the City Manager, ([www.toronto.ca/legdocs/2006/agendas/committees/pof/pof060918/it005.pdf](http://www.toronto.ca/legdocs/2006/agendas/committees/pof/pof060918/it005.pdf)), was adopted by Council at its meeting of September 25, 26 and 27, 2006. That policy also requires funds donated to the City for community benefits to be for capital facilities (section 3.8), maintaining Council's consistency in its policy approach; and
- j. While there is no question that HCD studies are an important and worthwhile endeavour, there are numerous other worthwhile, non-capital activities that could

also potentially receive S.37 funding if Council varies its approach. HCD studies and other programs or operations should be funded through the City's normal budget process.

## **Conclusion**

City Council's policy approach with respect to the use of S.37, limiting benefits to capital facilities, has been explicit since August, 2000. The City's general practice prior to that point, and the general practice of the former municipalities prior to amalgamation, was to limit benefits to capital facilities. Studies are not capital facilities. There have been rare cases where these policies have not been followed, but the policy approach should not be compromised because the City has difficulties in funding HCD studies through the budget process. Funding of HCD studies, or of studies in general, is not part of the tradition of use of density incentives in the City of Toronto or anywhere else in Canada. The City's general policy approach and practice has been, and should continue to be, consistent, and no amendment to the Official Plan should be initiated to authorize HCD studies as eligible S.37 community benefits.

## **CONTACT**

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## **SIGNATURE**

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