



**STAFF REPORT
ACTION REQUIRED**

Amendment to the Official Plan – Funding of Heritage Conservation District Studies as an Eligible Section 37 Community Benefit

Date:	June 13, 2007
To:	Planning and Growth Management Committee
From:	Chief Planner and Executive Director, City Planning
Wards:	All
Reference Number:	pg#070053

SUMMARY

As directed by Planning and Growth Management Committee, a draft Official Plan Amendment (OPA) to authorize funding of Heritage Conservation District studies as an eligible community benefit under Section 37 of the *Planning Act* is forwarded for consideration. A public consultation program is recommended, including request for comments, a community consultation meeting in early September, 2007, and a statutory public meeting (October 4, 2007). The City Solicitor was consulted, and this report also addresses the legalities of funding such studies through development charges.

The Committee had also requested reports on restricting such funding to developments within potential heritage study areas and the process for identifying such areas, as well as the structure and costs of a heritage study program. This information will take time to prepare, and will be forwarded to the Planning and Growth Management Committee in the fall of 2007. Staff felt that the forwarding of the draft OPA should not be delayed, however.

RECOMMENDATIONS

The City Planning Division recommends that:

1. The proposed official plan amendment attached to this report as Appendix A, for the purpose of authorizing the funding of Heritage Conservation District studies as an eligible community benefit under Section 37 of the *Planning Act*, be used by City Planning staff as the basis for consultations.
2. Staff schedule a community consultation meeting with interested representatives from the heritage community, the development industry, the ratepayer appellants to the Section 37 policies of the Official Plan, ratepayer, community and neighbourhood organizations, and the public, to obtain their comments.
3. Notice for the public meeting under the *Planning Act* be given in accordance with the regulations under the *Planning Act*.
4. The appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Financial Impact

This report has no financial impact.

DECISION HISTORY

At the May 3, 2007 meeting, Planning and Growth Management Committee considered a proposed motion (Item PG4.11) regarding Heritage Conservation District Studies as an eligible S.37 benefit. The motion was referred to Planning and Growth Management Committee in accordance with Council procedures. The City Clerk's referral letter and the motion can be found at the following internet links:

<http://www.toronto.ca/legdocs/mmis/2007/pg/bgrd/backgroundfile-3312.pdf> (letter from city clerk)

<http://www.toronto.ca/legdocs/mmis/2007/pg/bgrd/backgroundfile-3313.pdf> (motion from Councillor Vaughan)

In considering this matter, the Planning and Growth Management Committee:

1. requested the Chief Planner and Executive Director, City Planning, to report to the Planning and Growth Management Committee as soon as possible on the following:

- a. amending the Official Plan to authorize the securing of funding for Heritage Conservation District studies as an eligible community benefit under Section 37 of the Planning Act;
 - b. recommending a consultation process to be undertaken in advance of the required statutory public meeting; and
 - c. addressing appropriate revisions to the Section 37 Implementation Guidelines for consideration of Council upon adoption of the amendment to the Official Plan;
2. requested the City Solicitor, Chief Planner and Executive Director, City Planning, and the Deputy City Manager and Chief Financial Officer, to report to the Planning and Growth Management Committee as soon as possible providing an opinion on funding Heritage Conservation District Studies through Development Charges;
 3. approved, in principle, that Section 37 funding for Heritage Studies be permitted only in defined geographic areas identified by Council as being in need of such studies ("Potential Heritage Study Areas"); and that Section 37 funding not be considered as a replacement City funding for Heritage Studies;
 4. requested the Chief Planner and Executive Director, City Planning, to report to the Planning and Growth Management Committee as soon as possible, on a process for identifying Potential Heritage Study Areas;
 5. requested staff to consult with ratepayers and developers involved in the Official Plan settlements to seek their endorsement of such proposal set out in Recommendation 4; and
 6. requested the Chief Planner and Executive Director, City Planning, to report to the Planning and Growth Management Committee as soon as possible, on the structure and cost of a program model to support Heritage Conservation District Studies.

At its meeting of May 23, 24 and 25, 2007, Council had before it a report dated May 22, 2007 from the Chief Planner and Executive Director, City Planning, with respect to the consultation with Members of Council on the Proposed Section 37 Implementation Guidelines. The internet link to that report is as follows:

<http://www.toronto.ca/legdocs/mmis/2007/cc/bgrd/pg3.3a.pdf> (report dated May 22, 2007)

City Council referred this Item to the City Manager, with a request that she bring the Guidelines back to Council for consideration when the Official Plan Amendment on heritage district studies is before Council.

ISSUE BACKGROUND

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. 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 (HCD) as a community benefit under S.37.”

The OMB approved the settlement of the S.37 policies in a verbal decision on October 17, 2006, and in written Order No. 3190 dated Nov. 10, 2006. With respect to the requested report regarding HCD studies, City Planning staff forwarded an information report (Item PG2.5, dated January 29, 2007) entitled “Potential for Including Heritage Conservation District Studies as Benefits Under Section 37 of the Planning Act” to the February 15, 2007 meeting of Planning and Growth Management Committee. Staff advised that the Section 37 policies of the Official Plan required S.37 community benefits to be capital facilities or cash toward specific capital facilities. As HCD studies were not capital facilities, an amendment to the Official Plan policies would be required if Council wished to fund HCD studies through use of S.37. That information report can be found at the following internet link:

<http://www.toronto.ca/legdocs/mmis/2007/pg/bgrd/backgroundfile-1539.pdf> (report dated January 29, 2007).

The proposed motion referenced in the Decision History, above, was intended to be considered at the Council meeting of April 23 and 24, 2007, giving direction to City Planning staff to report to Planning and Growth Management Committee on an amendment to the Official Plan to authorize HCD study funding as an eligible S.37 benefit, on the related public consultation process, and on revisions to the Proposed S.37 Implementation Guidelines to address the amendment, but due to a procedural problem the motion was not considered by Council. In accordance with Council procedures, the motion was referred to Planning and Growth Management Committee by the City Clerk, per the Decision History, above.

This report responds to the requests by Planning and Growth Management Committee for a draft OPA and a consultation program including a statutory public meeting, and discusses the other matters for which reports were requested by Committee.

COMMENTS

Proposed Official Plan Amendment

The amendment to the Official Plan requested by Planning and Growth Committee is attached as Appendix A to this report. The amendment adds a new Policy 10 to Section 5.1.1, Height and/or Density Incentives, to authorize the funding of Heritage Conservation District studies as an eligible Section 37 community benefit. The existing, approved policies of Section 5.1.1 are attached as Appendix B to this report. The proposed amendment does not restrict S.37 funding of HCD studies to defined geographic areas, as requested by Committee. This is discussed in more detail below.

Defined Geographic Areas

The Planning and Growth Management Committee “approved, in principle, that Section 37 funding for Heritage Studies be permitted only in defined geographic areas identified by Council as being in need of such studies ("Potential Heritage Study Areas").” Furthermore, the Committee “requested the Chief Planner and Executive Director, City Planning, to report to the Planning and Growth Management Committee as soon as possible, on a process for identifying Potential Heritage Study Areas.”

Staff were not able to complete the development of a comprehensive, robust process in the time available, and consequently, are not able to define potential Heritage Conservation District study areas for the purposes of this report. However, Phase 1 of the Heritage Management Plan, nearing completion, identifies HCD’s as a subject area in need research and development. In Phase 2 of the Heritage Management Plan, staff will continue to work on developing the process and identifying study areas and will report to the Committee on these matters in the fall of 2007. Staff did not feel that the forwarding of the draft OPA should be delayed pending the availability of the geographic and budget information.

Existing and currently proposed Heritage Conservation Districts are illustrated on the map attached as Appendix C to this report.

If the amendment is adopted and approved as currently proposed, the “reasonable planning relationship” between the community benefits and the contributing development that is required by the Official Plan policies will be determined on a case by case basis and will include consideration of the necessary geographic relationship also required (see Policy 1.(a) in Appendix B attached to this report).

Consultation Program and Community Consultation Meeting

Staff proposes that the Community Consultation meeting be held in early September, 2007. All Members of Council will be notified of that meeting. Holding such a meeting during the summer months is not desirable as many interested people or representatives would not be available. Should Committee approve the recommendations in this report, then comments will be requested on the contents of the proposed amendment from

organizations in the heritage community, the development industry through the Greater Toronto Home Builders Association and Urban Development Institute (GTHBA-UDI), the ratepayer appellants to the Section 37 policies of the Official Plan, other ratepayer, neighbourhood and community organizations, and those individuals and organizations which have previously expressed an interest in this matter to Council, Committee and/or staff.

As requested, staff will also consult with the ratepayer and development industry appellants to the Section 37 policies of the Official Plan on a proposed restriction of the S.37 HCD funding to defined geographic areas.

Statutory Public Meeting

Staff anticipates that the statutory public meeting on the OPA will be held at the October 4, 2007 meeting of Planning and Growth Management Committee, and is recommending that the appropriate notice for such a meeting be given in accordance with the Regulations under the *Planning Act*.

Section 37 Implementation Guidelines

Upon adoption of the OPA, related revisions will also be necessary to the Proposed Section 37 Implementation Guidelines. Those Guidelines have been referred to the City Manager, to be brought back to Council when the OPA is before Council for adoption. City Planning staff will consult with the City Manager to determine the appropriate course of action with respect to recommending revisions to the Guidelines to address the policy changes contemplated in the OPA.

Funding HCD Studies through Development Charges

The City Solicitor has advised that Heritage Conservation Studies cannot be funded through development charges collected under the authority of the Development Charges Act, 1997 ("the DC Act") for the following reasons.

The DC Act permits a municipality to impose development charges against land to pay for increased capital costs required because of the increased need for services arising from development. In developing a DC bylaw, a municipality is required by the Act to estimate the increase in need for each particular service that can be attributed to the anticipated development as estimated in a background study. A HCD study carried out under the provisions of the Ontario Heritage Act cannot be characterized as a "service" provided by a municipality; it is a study that must be completed before a municipality can invoke the protections provided for under the heritage legislation. Secondly, the need for a HCD study is not related to the anticipated amount of development; the need exists because of the inherent heritage character of a building or district, and will exist regardless of the level of anticipated development.

Further, a municipality can only collect for the increase in "capital costs" required to support new development. Capital costs are defined to include a number of matters, and although the DC Act refers to the cost of certain studies, these are limited to the development charge background study and studies relating to the acquisition and

improvement of land for various municipal services. None of the studies described in the DC Act would include a HCD Study pursuant to the Ontario Heritage Act.

Structure and Cost of Heritage Conservation District Study Program

Staff will also report to a fall, 2007 meeting of the Planning and Growth Management Committee, as requested, on the “structure and cost of a program model to support Heritage Conservation District Studies”.

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SIGNATURE

Ted Tyndorf
Chief Planner and Executive Director
City Planning Division

ATTACHMENTS

Appendix A: Proposed Official Plan Amendment
Appendix B: Official Plan Section 37 Policies
Appendix C: Map of Heritage Conservation Districts

Appendix A

Proposed Official Plan Amendment

PURPOSE AND LOCATION

This amendment to the Official Plan for the City of Toronto is for the purpose of authorizing as an eligible community benefit under Section 37 of the *Planning Act*, cash contributions to the City for the purpose of funding Heritage Conservation District studies. The amendment will apply to the entire geographic area of the City of Toronto.

OFFICIAL PLAN AMENDMENT

Section 5.1.1, Height and/or Density Incentives, is amended by adding the following new policy:

- “10. Despite the policies in this section which otherwise restrict community benefits to capital facilities or cash contributions toward specific capital facilities, cash contributions to the City for the purpose of funding Heritage Conservation District studies are deemed to be eligible community benefits under Section 37 of the *Planning Act*, subject to all other aspects of the policies.”

Appendix B

Official Plan Section 37 Policies

Section 5.1.1: Height and/or Density Incentives

1. Zoning by-laws, pursuant to Section 37 of the *Planning Act*, may be enacted to permit more height and/or density for a use than is otherwise permitted by the zoning by-law for that use in return for the provision of community benefits in the form of capital facilities to be set out in the zoning by-law together with the related increase in height and/or density, subject to the following:
 - a) the capital facilities must bear a reasonable planning relationship to the increase in the height and/or density of a proposed development including, at a minimum, having an appropriate geographic relationship to the development and addressing planning issues associated with the development;
 - b) the development must constitute good planning, be consistent with the objectives and policies of this Plan, and comply with the built form policies and all applicable neighbourhood protection polices; and
 - c) the use of Section 37 must be contingent upon adequate infrastructure to support the development.
2. Subject to the provisions of Policy 3, an owner may elect either to develop at such increased height and/or density as may be permitted by the Official Plan in return for providing specified capital facilities in accordance with Policy 1 or else to develop in accordance with the height and density permitted by the zoning by-law in the absence of any such increase(s). Where the owner elects to provide the capital facilities, they will be secured in one or more agreements that are registered on title to the lands.
3. Except as contemplated in Policy 5, if the applicable zoning has not been updated to implement this Plan or where a change of use is proposed, then the City will consider whether additional height and/or density beyond that permitted by the zoning by-law for the use is warranted without recourse to Section 37 of the *Planning Act*. However, in all cases, where a Secondary Plan or area specific policy contains an explicitly stated base value from which increased height and/or density may be permitted in return for certain capital facilities, then that base value will be used instead of the density permitted by the zoning by-law.
4. Except as contemplated in Policy 5, Section 37 may be used for development, excepting non-profit developments, with more than 10,000 square metres of gross floor area where the zoning by-law amendment increases the permitted density by at least 1,500 square metres and/or significantly increases the permitted height. Where

the zoning by-law measures residential density in units per hectare (UPH), the units are to be converted to gross floor area at the rate of 100 square metres per unit in order to determine whether these thresholds are exceeded.

5. Despite Policies 3 and 4, Section 37 may be used, irrespective of the size of the project or the increase in height and/or density:
 - a) to conserve heritage resources or rental housing in accordance with the provisions of this Official Plan;
 - b) to replace rental housing in accordance with the provisions of this Official Plan;
 - c) where Secondary Plan or area specific policies in this Plan contain Section 37 provisions that prevail;
 - d) as a mechanism to secure capital facilities required to support development; or
 - e) as may otherwise be agreed upon, subject to the policies contained in this Section.

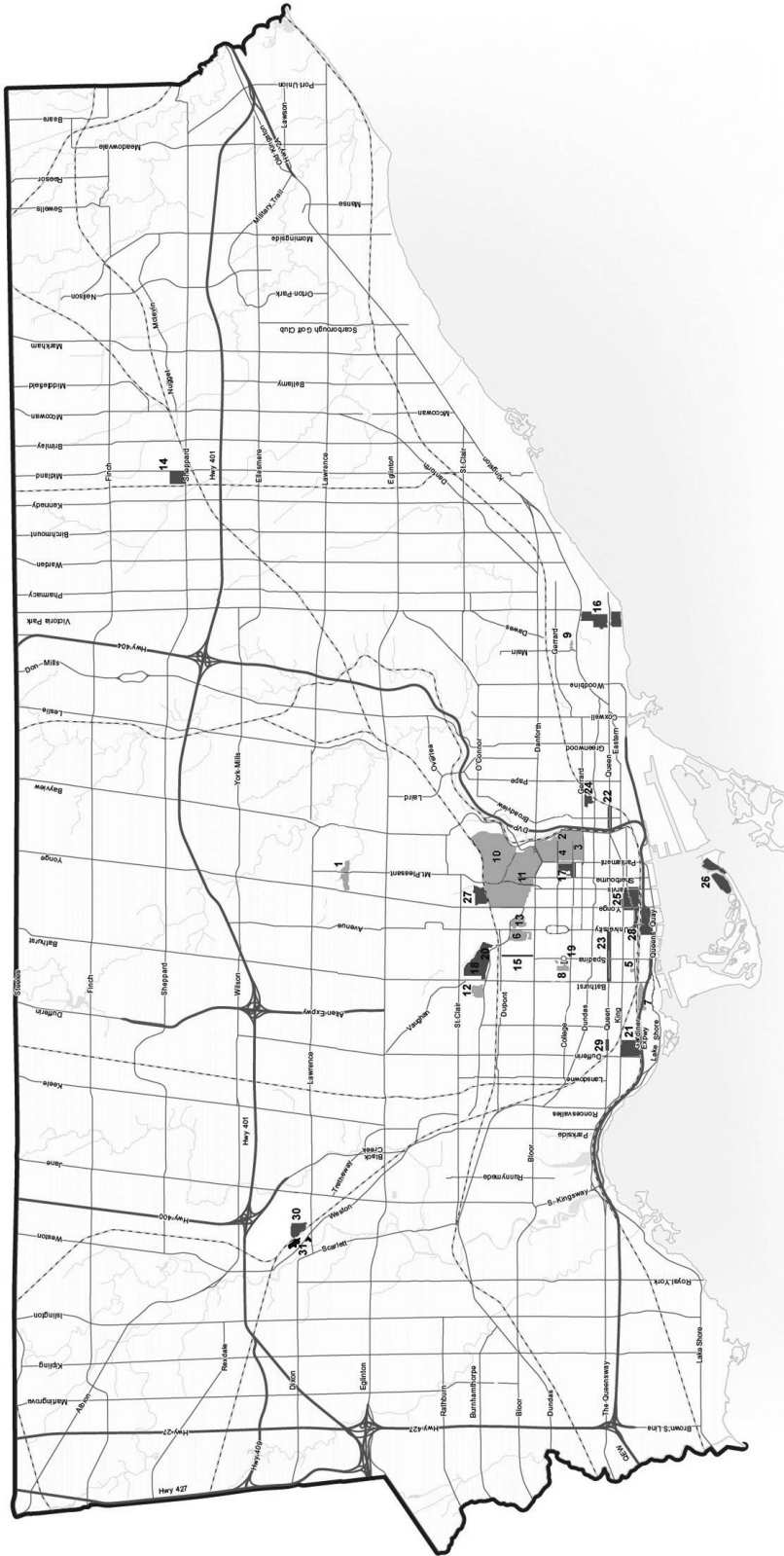
6. Section 37 community benefits are capital facilities and/or cash contributions toward specific capital facilities, above and beyond those that would otherwise be provided under the provisions of the *Planning Act* or the *Development Charges Act* or other statute, including:
 - a) the conservation of heritage resources that are designated and/or listed on the *City of Toronto Inventory of Heritage Properties*;
 - b) fully furnished and equipped non-profit child care facilities, including start-up funding;
 - c) public art;
 - d) other non-profit arts, cultural, community or institutional facilities;
 - e) park land, and/or park improvements;
 - f) public access to ravines and valleys;
 - g) streetscape improvements on the public boulevard not abutting the site;
 - h) rental housing to replace demolished rental housing, or preservation of existing rental housing;
 - i) purpose built rental housing with mid-range or affordable rents, land for affordable housing, or, at the discretion of the owner, cash-in-lieu of affordable rental units or land;
 - j) local improvements to transit facilities including rapid and surface transit and pedestrian connections to transit facilities;
 - k) land for other municipal purposes;
 - l) substantial contributions to the urban forest on public lands; and
 - m) other local improvements identified through Community Improvement Plans, Secondary Plans, *Avenue Studies*, environmental strategies, sustainable energy

strategies, such as deep lake water cooling, the capital budget, community service and facility strategies, or other implementation plans or studies.

7. Section 37 community benefits will be selected on the basis of local community needs, intensification issues in the area, the nature of the development application, and the strategic objectives and policies of this Plan. Priority will be given to the provision of on-site or local community benefits.
8. Where a Secondary Plan or area specific policy identifies additional capital facilities that bear a reasonable planning relationship to greater height and/or density over an area defined in the Secondary Plan or area specific policy, any Section 37 increase in height and/or density anywhere in that defined area, and the community benefits (specified capital facilities or cash contributions toward the specified capital facilities) in return therefor, will be tied to the identified capital facilities in the manner prescribed by that Secondary Plan or area specific policy. In such circumstances, where appropriate, the prescription will be quantitatively formulated.
9. All zoning by-law provisions enacted pursuant to Section 37 and agreements in effect at the time that this policy comes into force are authorized by this Plan and deemed to comply with this Plan.

Appendix C

HERITAGE CONSERVATION DISTRICTS



- Heritage Conservation District - Designated
 - 1: Blythwood Road
 - 2: Cabbagetown North
 - 3: Cabbagetown South
 - 4: Cabbagetown-Metcalfe
 - 5: Draper Street
 - 6: Fort York and Garrison Common
 - 7: Fort York and Garrison Common
 - 8: Hurvold Village Phase 1
 - 9: Lyall Avenue
 - 10: North Rosedale
 - 11: South Rosedale
 - 12: Wychwood Park
 - 13: Yorkville-Hazleton Avenue
- Heritage Conservation District - Under Study
 - 14: Agincourt
 - 15: Annex (Madison Avenue)
 - 16: Balmly Beach
 - 17: Cabbagetown Northwest
 - 18: Casa Loma
 - 19: Danforth
 - 20: Glen Echo
 - 21: Liberty Village
 - 22: Queen Street East
 - 23: Queen Street West
 - 24: Riverdale Area Phase 1
 - 25: St. Lawrence Area Phase 1
 - 26: Toronto Islands
 - 27: Summerhill
- Heritage Conservation District - Under Appeal
 - 28: Union Station
 - 29: West Queen West
 - 30: Weston Area Phase 2
 - 31: Weston Area Phase 1

*HCD boundaries are for reference only, for specific boundaries please see individual by-laws and study area maps