



STAFF REPORT ACTION REQUIRED

Protocol for Negotiating Section 37 Community Benefits

Date:	September 18, 2007
To:	Planning and Growth Management Committee
From:	Chief Planner and Executive Director, City Planning
Wards:	All
Reference Number:	Pg070069

SUMMARY

In light of Planning and Growth Management Committee's direction and the deputations made at the September 5, 2007 meeting, City Planning staff has revised the Protocol for Negotiating Section 37 Community Benefits. Revisions have been made in order to clarify that the Protocol must be read together with the Official Plan policies and the Section 37 Implementation Guidelines (not yet adopted); that the implementation must comply with the Official Plan policies; that Section 37 is to be used only where the proposed development represents good planning; to encourage determination of community benefit priorities in advance of receiving development applications; to give priority consideration to consultation with the Ward Councillor and the community; and to clarify that generally, Section 37 funding is no substitute for normal operating budget or routine capital maintenance program funding.

Ratepayer and residents groups throughout the City and the development industry and the Board of Trade were notified and asked to comment on the Protocol, directly to Planning and Growth Management Committee. Staff is recommending that the revised Protocol be used as a guide in negotiating Section 37 community benefits.

RECOMMENDATIONS

City Planning Division recommends that:

1. The Protocol attached as Appendix A to this report be used as a guide by Councillors and staff in negotiating community benefits under Section 37 of the *Planning Act*, in accordance with the policies of the Official Plan.

Financial Impact

This report has no financial implications.

DECISION HISTORY

The Planning and Growth Management Committee had before it at the March 29, 2007 meeting a report (Item PG3.3) dated March 12, 2007 from the Chief Planner and Executive Director, City Planning Division, entitled “Council Adoption of Proposed Section 37 Implementation Guidelines”. The Committee recommended that the Guidelines be adopted with certain revisions.

In addition, the Planning and Growth Management Committee requested:

- a. the Chief Planner and Executive Director of City Planning to report to the Committee on the following:
 - i. proposed Guidelines for cash in-lieu benefits that will provide both a protocol and guidelines governing these agreements. (Sub-section 2.3 of the report);
 - ii. Guidelines and a protocol for how and when Section 37 benefits are negotiated, including guidelines on how calculations are made on particular projects and a protocol for Councillors to have access to the calculations and the rationale to those calculations prior to negotiating with the developer. (Sub-section 2.5 of the report); and
 - iii. in two months’ time, on a protocol to ensure that the principles of Appendix “A” Sections 2.11 and 2.12 are implemented practically;
- b. the Chief Planner and Executive Director of City Planning to solicit input from Councillors after one year from the adoption of the Guidelines on the outcomes achieved and on the efficacy of the Guidelines, and report to the Committee at its meeting in June 2008, on recommendations for modifications to the Guidelines.
- c. the Deputy City Manager and Chief Financial Officer and the Chief Planner and Executive Director of City Planning to report to the Committee on a protocol to ensure the adequate tracking and reporting of funds received through Section 37 on a ward basis.

City Council on April 23 and 24, 2007, deferred consideration of this Item to the May 23, 2007 meeting of City Council, and requested that the Chief Planner and Executive Director, City Planning, consult with Members of Council who have asked questions, or have issues with the Section 37 guidelines.

At its meeting of May 23, 24 and 25, 2007, Council had before it an additional report dated May 22, 2007 from the Chief Planner and Executive Director, City Planning, with

respect to the consultation on the proposed S.37 Implementation Guidelines with Members of Council. City Council referred this item to the City Manager, with a request that she bring the Guidelines back to Council for consideration when a requested Official Plan Amendment on funding heritage district studies is before Council. Planning and Growth Management Committee has since (Item 7.6, June 28, 2007) directed that the Official Plan Amendment also address S.37 funding for Secondary Plan and *Avenue* studies.

On September 5, 2007, Planning and Growth Management Committee had before it a report (dated August 8, 2008) from the Chief Planner and Executive Director, City Planning on a Protocol for Negotiating Section 37 Community Benefits. The online link to that report is as follows:

<http://www.toronto.ca/legdocs/mmis/2007/pg/bgrd/backgroundfile-5879.pdf> .

The Committee:

1. deferred the report until its meeting on October 4, 2007;
2. requested staff, in the interim, to notify representatives of resident and ratepayer groups and developers, and request feedback regarding the Protocol for Negotiating Section 37 Community Benefits and report thereon if necessary;
3. requested that consideration be given to including the following statements in the Protocol:
 - a. that Section 37 agreements be used only in instances where the increased density constitutes good planning in accordance with the Official Plan;
 - b. that in general, Section 37 funds not be used as a substitute for funding which would normally be provided as part of the City's operating budget or short-term capital budget;
 - c. that priority consideration be given to consultation with the local Councillor and the community; and
4. requested staff to bring forward a process for negotiating Section 37 agreements in the North York Centre and other similar areas.

ISSUE BACKGROUND

The background is addressed in the Decision History, above.

COMMENTS

Notification of Resident and Ratepayer Groups

Staff sent a written notice to approximately 475 community, neighbourhood and local business organizations on the City Clerk's general circulation list, inviting comments on the proposed Protocol and advising that a further report would be before Planning and Growth Management Committee at the October 4, 2007 meeting. As a result of the report deadlines, staff advised that any comments submitted would not likely be considered in the staff report forwarded to the October 4, 2007 Committee meeting, and that comments should therefore be submitted directly to the Committee. Also notified were the Building Industry and Land Development Association (BILD, formerly GTHBA-UDI), the Toronto Board of Trade, and representatives of the ratepayer organizations that were appellants to the Section 37 Official Plan policies.

Revisions to the Proposed Protocol

The Protocol attached as Appendix A to this report contains the following revisions that have been made to address concerns raised by Planning and Growth Committee and by the deputants. The revised wording in Appendix A is italicized to assist the reader.

1. Protocol must be read in conjunction with the Official Plan policies and the S.37 Implementation Guidelines.

The Protocol was never intended to be a stand-alone document. Some of the concerns expressed by the deputants appeared to assume that the Protocol should stand alone. To address this concern, a statement has been added as part of a second introductory paragraph which states that the Protocol must be read in conjunction with the Official Plan policies and the S.37 Implementation Guidelines.

2. The results of implementation of the Protocol must comply with Official Plan policies.

The requirement for compliance with Official Plan policy is now explicitly stated in the first introductory paragraph, the added second introductory paragraph, in the section entitled "Use of Section 37", and in the second paragraph of the section entitled "Determination of Appropriate Types of Community Benefits". It is also reinforced in the last paragraph of this latter section.

3. Explicitly state that the proposed development must represent good planning.

The principle contained in the Official Plan policies that the proposed development must represent good planning is now explicitly stated in the section entitled "Use of Section 37". Other components of Official Plan policy 5.1.1.6 pertaining to use of Section 37 and

the community benefits are also incorporated in this section and in the section entitled “Determination of Appropriate Types of Community Benefits”.

4. Encouragement for advance determination of community benefit priorities.

A statement is included in the first paragraph of the section entitled “Determination of Appropriate Types of Community Benefits” to emphasize the advantages, and encourage the determination, of priorities for community benefits in the local area, in advance of development applications, with the appropriate involvement of the Ward Councillor and the local community. In addition, in the same section, in item (iv) in the list of additional matters which may play a role, a reference to the advance assessment of community benefit priorities is added to the existing wording. An additional point is added in the section entitled “Community Consultation” to encourage such advance consultation with the community.

5. Priority consideration to consultation with Ward Councillor and the community.

A new paragraph is added to the end of the section entitled “Determination of Appropriate Types of Community Benefits”, the first sentence of which states that consultation with the Ward Councillor and the community have a high priority in the context of compliance with the Official Plan policies and seeking agreement with the applicant on an appropriate package of community benefits.

6. S.37 funding no substitute for normal operating budget or routine capital maintenance program.

A statement is included in the last paragraph of the section entitled “Determination of Appropriate Types of Community Benefits” to indicate that S.37 funds should not be used as a substitute for funding which would normally be provided as part of the City’s operating budget or as part of the routine capital maintenance program (e.g. road repairs). To explicitly allow for the possibility of future amendments to the Official Plan currently under consideration that would permit specific non-capital community benefits, a sentence is added to the effect that such amendments would constitute exceptions to this general principle. Once such amendments come into force, the Protocol can be further revised to more specifically reflect the amended Official Plan policy.

Report on S.37 Negotiation Process for North York Centre

Planning and Growth Management Committee requested that staff report on the process for negotiating Section 37 agreements in the North York Centre and similar areas. The Director of Community Planning for North York District will report to Planning and Growth Management Committee on that matter under separate cover.

Conclusions

Staff have made revisions to the proposed Protocol for Negotiating Section 37 Community Benefits, attached as Appendix A, to address the concerns of Planning and Growth Management Committee and deputations made to the Committee at the September 5, 2007 meeting. Staff has also notified community and business groups on the City Clerk's general mailing list, advising that comments are welcome and suggesting that such comments be forwarded directly to Planning and Growth Management Committee. Staff is recommending that the Protocol be used as a guide by Councillors and staff in negotiating S.37 community benefits.

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SIGNATURE

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ATTACHMENTS

Appendix A: Protocol for Negotiating Section 37 Community Benefits
Appendix B: Official Plan Section 37 Policies

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Appendix A

Protocol for Negotiating Section 37 Community Benefits

(September 18, 2007)

(Note: Italics indicates revised or additional wording.)

This protocol was initially developed in response to requests (March 29, 2007) from Planning and Growth Management Committee, and *conforms with* Official Plan policy, the content of the proposed Section 37 Implementation Guidelines, and best practices. The protocol incorporates revisions recommended by Planning and Growth Management Committee on September 5, 2007. The protocol is intended to generally apply across the City. In some circumstances, such as in the North York Centre Secondary Plan area, the applicable Official Plan policies are more specific regarding the type and level of community benefits, and negotiation processes unique to such specific areas have been developed.

Important: This Protocol must be read in conjunction with the Section 37 policies of the Official Plan (section 5.1.1), and/or any area-specific Section 37 Official Plan policies, and the S.37 Implementation Guidelines. All three documents must be read together. In all cases, the results of implementation of the S.37 Implementation Guidelines and/or this Protocol must comply with the Official Plan policies.

Use of Section 37

The decision by the City as to whether, and how, to use S.37 *must comply with* the general S.37 policies of the Official Plan (Section 5.1.1) and/or any more specific S.37 policies within Secondary Plans or area-specific policies. The S.37 Implementation Guidelines may provide additional assistance in applying such policies. *Section 37 agreements are appropriate only where the proposed development constitutes good planning in accordance with the objectives and policies of the Official Plan, including the built form policies and all applicable neighbourhood protection polices.*

Determination of Appropriate Types of Community Benefits

A general determination of community benefit priorities in the local area need not await the receipt by the City of a planning application. *The advance determination of priorities for community benefits in a community or neighbourhood, prior to receipt of planning applications, could be very beneficial to the community, the developer and the City, and is encouraged, with the appropriate involvement of the Ward Councillor and the local community.*

The determination of appropriate type(s) of community benefits for a specific application will comply with the relevant Official Plan policies in the specific context of the application, and the community benefits 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. The following additional matters, which are listed in no particular order, may play a role:

- i) Consultation with Ward Councillor;
- ii) Consultation with other City Divisions;
- iii) Knowledge on the part of City Planning staff, Councillor or other City staff of local community needs;
- iv) Council approved studies or assessments outlining community needs, *including any advance assessment of community benefit priorities*;
- v) Consultation with the local community; and
- vi) Interests of the applicant.

In the context of compliance with the policies of the Official Plan and seeking agreement with the applicant on an appropriate package of community benefits, consultation with the local Councillor and the community have high a priority. Section 37 funds should not be used as a substitute for funding which would normally be provided as part of the City's operating budget or as part of the routine capital maintenance program (e.g. road repairs). If the Official Plan policies are amended to allow for funding for specific non-capital facilities, such funding would be an exception to this general approach.

Consultation with Ward Councillor

- i) Ward Councillor *will be consulted by City Planning staff prior to any discussions or negotiations regarding S.37 benefits* with the applicant;
- ii) City Planning staff *will provide Ward Councillor with the following information as soon as it is available:*
 - Appropriate types of benefits, based on any information previously assembled, as noted above;
 - Advice regarding the implications for community benefits of Official Plan policies and other relevant considerations in the context of the specific application; and
 - Calculated range of land values of the density increase(s) (derived from estimates from Facilities and Real Estate Division (FRED) provided to City Planning Division of a range of land values of a basic unit of density).
- iii) Further consultation between City Planning staff and the Ward Councillor may occur as necessary and/or as agreed upon between them.

Community Consultation

- i) Community consultation meeting(s) and the statutory public meeting provide the public with opportunities to comment on the proposed development and the appropriate type and/or level of S.37 community benefits;
- ii) Any further community consultation on S.37 issues would be coordinated by the Ward Councillor; and
- iii) *Consultation with the community by City Planning staff and/or the Ward Councillor in advance of receipt of development applications, to help determine priorities for community benefits, is encouraged.*

Other Issues

- i) City Planning staff should coordinate S.37 negotiations:
 - City Planning staff is responsible for compliance with Official Plan policy and for recommending an appropriate decision on the application, including an appropriate package of S.37 community benefits where applicable;
 - Where the Ward Councillor independently pursues discussions with an applicant on S.37 benefits, Community Planning staff handling the application should be consulted prior to such discussions.
- ii) Timing of S.37 negotiations in relation to discussion of other planning issues:
 - The possibility of pursuing S.37 negotiations should be raised as early as possible in discussions of an application, based generally on the scale of the project and the increase in density, or as otherwise set out in the Official Plan policies;
 - S.37 discussions need not await resolution of all other issues, and the timing approach on each application may vary; and
 - The appropriate package of S.37 benefits is a planning issue to be resolved, along with other planning issues associated with a development application.
- iii) S.37 should be identified as planning issue in preliminary report:
 - The preliminary planning report should identify, where possible, the use of S.37 as a planning issue;
 - If not identified in the preliminary report, the applicant, Ward Councillor and the community should be made aware of City staff's intention to use S.37 as soon as possible in the processing of the application.
- iv) A summary list of recommended S.37 community benefits and, where possible, estimated values/costs of such benefits, should be included in the "Financial Impact" section of final planning reports.

Appendix B

Approved Policies of the Official Plan Section 5.1.1: Height and/or Density Incentives, plus Modifications to Non-Policy Text

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.

Proposed (Non-Policy) Sidebar to be located opposite Policy 1:

This Official Plan recognizes that planning issues related to a proposed development go beyond consideration of matters necessary to support that particular development. They include consideration of appropriate amenities and services in the local community within which the development is to be located. In other words, the planning issues may go beyond appropriate built form, use, compatibility, direct impact, site planning, adequate servicing and the proper functioning of the development to include the adequacy of, for example, the green space system, community services and facilities, the bikeway network, arts and cultural facilities, the public transit system and other aspects of the public realm. These amenities and services are important in maintaining the quality of life in the City while accommodating intensification and thus may have a reasonable planning relationship to the new 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.

Proposed Revision to Introductory (Non-Policy) Text of Section 5.1.1:

The third introductory (unshaded) paragraph of Section 5.1.1. Height and/or Density Incentives, is deleted.