



STAFF REPORT ACTION REQUIRED

Protocol for Negotiating Section 37 Community Benefits

Date:	August 8, 2007
To:	Planning and Growth Management Committee
From:	Chief Planner and Executive Director, City Planning
Wards:	All
Reference Number:	Pg070052

SUMMARY

As requested by Planning and Growth Management Committee at its March 29, 2007 meeting, this report forwards a protocol for negotiating community benefits to be secured in rezoning applications involving increases in height and/or density, pursuant to Section 37 of the *Planning Act*. The protocol attached as Appendix A to this report addresses the use of Section 37 (S.37), the inputs for determining the types of community benefits to be secured, including where relevant the land value of the proposed density increase, how the Ward Councillor is informed and consulted, the role of City Planning staff in the negotiations, and other issues regarding the negotiation of benefits.

The application of the relevant Official Plan policies is the primary basis for determining an appropriate package of S.37 community benefits, and the proposed S.37 Implementation Guidelines, when adopted by City Council, may provide additional assistance. Staff recommends that this protocol be used by City staff and Councillors 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.

ISSUE BACKGROUND

In considering the proposed Section 37 Implementation Guidelines, Planning and Growth Management Committee requested additional reports relating to the process of negotiating Section 37 agreements, as set out items (a)(i), (a)(ii), and (a)(iii) in the Decision History, above. This report responds to the Committee's requests.

The most recent version of the proposed S.37 Guidelines is that contained in the report dated May 22, 2007 to Council from City Planning staff, which can be found at the following internet link:
<http://www.toronto.ca/legdocs/mmis/2007/cc/bgrd/pg3.3a.pdf> (report dated May 22, 2007)

The references to section and sub-section numbers in the Committee's requests for reports are to Implementation Principles in Section 2 of the proposed S.37 Implementation Guidelines. The specific principles as referenced are summarized in the Guidelines as follows:

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| Section 2.3 | Section 37 community benefits should be specific capital facilities, or cash contributions to achieve specific capital facilities. |
| Section 2.5 | No citywide formula, or quantum, exists in the Official Plan or these Guidelines for determining the level of Section 37 benefits. |
| Section 2.11 | The Ward Councillor should always be consulted by City Planning staff prior to any substantial negotiation of S.37 community benefits. |
| Section 2.12 | City Planning staff should always be involved in discussing or negotiating Section 37 community benefits with developers/owners. |

Staff anticipate that reports on both the requested Official Plan Amendment to authorize S.37 funding of studies for Heritage Conservation Districts, Secondary Plans and *Avenues*, and the S.37 Guidelines will both be forwarded to the October 4, 2007 meeting of Planning and Growth Management Committee. Staff will also report as requested on

item (b) in the Decision History, above, after the S.37 Guidelines have been adopted and implemented for one year, and anticipates reporting on item (c) in the fall of 2007 or early in 2008.

COMMENTS

The issues on which City Planning staff was requested to report by Planning and Growth Management Committee at the March 29, 2007 meeting, regarding negotiation of S.37 community benefits and outlined in the Decision History above, are addressed in Appendix A attached to this report. Appendix A constitutes a protocol for negotiating S.37 community benefits, and addresses the inputs for determining the types of community benefits to be secured, including where relevant the land value of the density increase, how the Ward Councillor is informed and consulted, the role of City Planning staff in the negotiations, and other issues regarding the negotiation of benefits.

The Committee's requests for reports included a request for "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." Staff has included in the protocol the provision to the Ward Councillor of the calculated range of land values of the proposed density increases, based on the estimate of the land value of a basic unit of density (sq. metre or sq. ft. of additional floor area) provided by Facilities and Real Estate Division. This input is just one piece of information used in the process of negotiating community benefits. The general S.37 policies of the Official Plan are the primary basis for such negotiations, and these policies are attached as Appendix B to this report. The proposed S.37 Implementation Guidelines, once adopted by Council, may provide additional assistance with respect to the negotiations.

Calculating the land value of the density increase is not intended to be used in a formulaic manner. As stated in Section 2.5 of the proposed Section 37 Implementation Guidelines, a citywide value-based formula for determining the level of benefits would likely be successfully challenged as an illegal tax. A citywide formula is not consistent with the Official Plan policies. The land value of the density increase may be of assistance in assessing the general reasonableness of the level of community benefits being offered or requested in the negotiations.

The attached 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 previously developed. This is noted in the protocol.

Staff recommends that the attached protocol be used as a guide by Council members and staff in negotiating Section 37 community benefits.

CONTACT

Barbara Leonhardt,
Director of Policy and Research,
City Planning Division,
Tel: 416-392-8148, Fax: 416-392-3821
E-mail: bleonha@toronto.ca

SIGNATURE

Ted Tyndorf
Chief Planner and Executive Director
City Planning Division

ATTACHMENTS

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

Protocol for Negotiating Section 37 Community Benefits

(August 8, 2007)

This protocol was initially developed in response to requests (March 29, 2007) from Planning and Growth Management Committee, and is based on Official Plan policy, the content of the proposed Section 37 Implementation Guidelines, and best practices. 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.

Use of Section 37

The decision by the City as to whether, and how, to use S.37 is primarily based on the application of 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.

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 determination of appropriate type(s) of community benefits for a specific application will be primarily based on the application of the relevant Official Plan policies in the specific context of the application. The following additional matters, which are listed in no particular order, may also 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;
- v) Consultation with the local community; and
- vi) Interests of the applicant.

Consultation with Ward Councillor

- i) Ward Councillor consulted by City Planning staff prior to any negotiations with the applicant;
- ii) City Planning staff provides Ward Councillor with the following information:
 - 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; and
- ii) Any further community consultation on S.37 issues would be coordinated by the Ward Councillor.

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

OMB-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.