



STAFF REPORT ACTION REQUIRED

Improvements to the Section 37 Implementation Process

Date:	February 10, 2014
To:	Planning and Growth Management Committee
From:	Chief Planner and Executive Director, City Planning Division
Wards:	All
Reference Number:	P:\2014\Cluster B\PLN\PGMC\PG14007

SUMMARY

This report summarizes the results of a consultant study undertaken to review the Section 37 implementation process, and recommends process changes. The recommendations in this report are informed by the outcomes of the accompanying consultant's study (Attachment 1) which relied on extensive consultation with City staff from a broad cross section of divisions, Councillors, and the development industry.

Staff have reviewed the consultant's findings and have made recommendations which address: clarifying what constitutes a reasonable planning relationship within the City's Section 37 Implementation Guidelines; requesting the Province to amend Section 37 of the Planning Act to enable a standardized determination of the quantum of benefits; continuation of the consideration of introducing base densities in specific areas of the City when updating Secondary Plan policies and/or site specific and area Official Plan policies; and annual public reporting on Section 37 benefits.

RECOMMENDATIONS

The Chief Planner and Executive Director, City Planning, recommends that Council direct that:

1. The Section 37 Implementation Guidelines be amended to add the following wording:
"An appropriate geographic relationship exists if one or more of the following criteria are applicable:

- a) The contributing development is located within the catchment area of the facilities being constructed or improved as a community benefit;
 - b) The contributing development is located within the community or neighbourhood that benefits from the provision of the community benefits;
 - c) The occupants of the contributing development will have the opportunity to use the facilities being constructed or improved;
 - d) The contributing development will benefit from the provision of the community benefits, possibly through increased value, or enhanced marketing or business opportunities."
2. The City Planning Division continue to consider the incorporation of base densities and a schedule of community benefits related to increasing density through a quantitative formula when updating Secondary Plan policies and/or site specific and area Official Plan policies for areas of the City as appropriate.
 3. The Chief Planner be requested to prepare public education materials that explain the City's process for securing Section 37 community benefits.
 4. The Chief Planner be requested to prepare an annual report summarizing the previous year's achievements regarding Section 37 community benefits.
 5. Council reiterate its request to the Province to introduce new language under Section 37 of the Planning Act that enables municipalities to establish a value-based formula or quantum approach for the use of Section 37.

Financial Impact

The recommendations in this report will have no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

In light of commentary raised by councillors, the development industry and the public with respect to Section 37 coming out of various consultations, staff undertook to review the Section 37 process. The consultant study responds to issues raised during the consultations and sets out recommendations for consideration.

ISSUE BACKGROUND

Existing Policy Framework

Under Section 37 of the Planning Act, municipalities are authorized to grant increases in height and density of development in exchange for the provision of facilities, services, or matters. Specifically, Section 37 states:

Increased density, etc., provision by-law

37. (1) The council of a local municipality may, in a by-law passed under section 34, authorize increases in the height and density of development otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law.

Since its introduction by the Province, the City has frequently and successfully applied Section 37 provisions for community benefits.

Section 5.1.1 of the Official Plan contains policies with respect to Section 37 and provides the planning framework for Section 37. In addition, area specific policies related to the use of Section 37 exist in some Secondary Plans such as the North York Centre Secondary Plan.

In fall of 2007, Council adopted detailed “Implementation Guidelines for Section 37 of the Planning Act” and a “Protocol for Negotiating Section 37 Community Benefits”. These were developed in response to public requests to have the Implementation framework adopted concurrent with the final approval by the Ontario Municipal Board of the Section 37 policies in the Official Plan. The guidelines outline the implementation principles of Section 37 and also address a number of other considerations. The Guidelines were prepared in consultation with both the Development Industry and interested residents groups.

The consultant study was initiated to review the implementation of Section 37 policies and the effectiveness of these policies, guidelines and protocol, and recommend any necessary improvements to enhance clarity, consistency and transparency.

Experiences with Section 37 in Toronto

Section 37 is a broadly supported planning tool that enables the City to achieve 'good planning' by integrating new development within a neighbourhood context through community benefit contributions, and improve the adjacent community through the development approval process.

Since amalgamation, the City has secured \$309 million in Section 37 cash contributions, of which \$212 million in payments and accrued interest have been received, as well as significant non-cash benefits. The specific figures pertaining to the non-cash benefits have not been calculated.

The accompanying consultant's report was initiated in response to issues around the use of Section 37 previously raised by Councillors, developers, Condominium Consultation participants, and by the public during the development review process. Few issues were raised regarding the actual policies themselves. Rather, concerns revolved around the implementation process for the existing Section 37 policies, including the clarity, consistency, and transparency of the process.

COMMENTS

Consultation

In the initial study phases, interviews were held with 11 Councillors and senior staff from City Planning and Legal Divisions to supplement background research undertaken by the consultant. The findings from this consultation process were summarized in the Interim Report (included within Attachment 1). Main findings and issues identified in this report were discussed in a series of workshops held by City staff and the consultant, including:

- A workshop with senior planning and legal staff at the City;
- A workshop with staff from operating divisions at the City;
- A workshop with City Councillors;
- A workshop with BILD Toronto; and
- A workshop with senior management from across the City.

Report Findings

1. Rationale for Section 37

The key conclusion of the consultant's study is that Section 37 represents a useful and valuable tool for achieving community benefits related to development approvals. It represents an integral component of 'good planning' as a key consideration in assessing development approvals in the City. Many participants in the study stated that in their view, consideration of community benefit contributions in the context of Section 37 of the Planning Act provides an important vehicle for relating development to its neighbourhood context. The view being that good planning refers not just to the nature and fit of the building under consideration but how it can improve the surrounding neighbourhood. Overall the policy framework of the Official Plan is seen as solid but there are concerns that the policy is not consistently applied and that variations in its implementation may have undermined its use.

The issues identified by the consultants relate to the need to clarify aspects of the Implementation Guidelines that are intended to strengthen the Guidelines and clarify the intent.

2. Reasonable Planning Relationship

In regards to the use of Section 37 funds, and whether their use must be localized to the subject development, the consultant's report emphasizes the Ontario Municipal Board has ruled in multiple cases that there must be a clear connection, or nexus, between the contributing development and the community benefits. Although the City's Section 37 Guidelines do make reference to this requirement, the consultant recommends further clarification of the wording, recognizing that what constitutes a reasonable distance varies at different community densities and with the type of community benefit.

Staff generally support the incorporation of the consultant's recommendation and recommend the Implementation Guidelines be amended to add the following:

An appropriate geographic relationship exists if one or more of the following criteria are applicable:

- a) The contributing development is located within the catchment area of the facilities being constructed or improved as a community benefit;
- b) The contributing development is located within the community or neighbourhood that benefits from the provision of the community benefits;
- c) The occupants of the contributing development will have the opportunity to use the facilities being constructed or improved;
- d) The contributing development will benefit from the provision of the community benefits, possibly through increased value, or enhanced marketing or business opportunities.

The consultant also recommended that in the case of affordable housing as a community benefit, the appropriate geographic relationship is considered to be citywide. Staff do not recommend including the consultant's suggested clause on affordable housing being considered as a citywide benefit as this ability exists already through the establishment of the Capital Revolving Fund for Affordable Housing.

3. Standardized Valuations and Contributions

During consultations there was general consensus for the need for a more consistent and transparent approach to Section 37 benefits secured in exchange for increases in density. Currently, the process relies on case-by-case negotiations involving individual Councillors and planners. This process has resulted in significant City resource inputs, as well as concerns from the development industry over inconsistency and a lack of transparency.

The consultant's report recommends the adoption of a standardized valuation process to provide more certainty to participants, reduce resource inputs, and provide guidance to developers on anticipated approval costs during land acquisitions. The consultant also recommends the City hire an outside appraiser to provide land values for each square metre of increased density for different geographic areas across the City and that these values be updated annually.

In addition, the consultant recommends that the City explore alternative approaches for calculating Section 37 community benefit contributions for developments in different areas.

Determining a suitable method and quantum of the secured Section 37 benefit will require further consultations. For example, an alternative valuation system process is already in effect in the North York Centre Secondary Plan where the City has been able to capture 100% of the increase in land value from rezoning, while clearly limiting applications to a maximum of 33% greater density than allowed in the Official Plan limits. Alternatively, Vancouver employs a pro forma analysis method to assess the level of "community amenity contributions", targeted at 70% of the increase in land value. A third option, as recommended by the consultant, would entail the implementation of annually updated and publicized charges per square metre of increased density for various areas of the city. Further study is required to assess the applicability of these methodologies in the Toronto context, a development environment that faces diverse and unique pressures.

As part of the City of Toronto's response to the "Provincial Review of Land Use Planning and Appeal System", adopted by Council on December 16-18, 2013 (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG29.16>), the City recommended that the Province introduce new language under Section 37 of the Planning Act to enable municipalities to establish a value-based formula, or quantum approach. A quantum approach to Section 37 benefits would relate to a request for a specific quantity or amount of a benefit being requested. For example that the development provide a specific number of bike sharing stations or a day care within a development or a specific number of affordable housing units in a development. A value based formula refers to a valuation formula to determine the financial contribution towards a community benefit requiring a proportional contribution that is based on the land value of the density increase. Staff recommends that the City reiterate this request for clarity from the Province on the use of a value-based formula within Section 37 of the Planning Act and that a copy of the consultant's report and this report be forwarded to the Province.

4. Base Density

Related to the issue of standardized valuation is the absence of base densities in the Official Plan. However, densities do exist in many Secondary Plan and Site and Area Specific policies. Section 37 valuations are generally considered to be based on the zoning bylaw. The consultant's report recommends the incorporation of base densities into Secondary Plan policies and/or site specific and area Official Plan policies, as appropriate. Similar to the North York Secondary Plan, base densities could be tied to a specific schedule of community benefits related to increasing density through a quantitative formula.

Staff will continue to review and apply the appropriate approach when developing new Secondary Plan and Area Specific policies. In addition, the application of a Development Permit System will enable the City to better apply expectations for a specific area.

5. Assessment of Community Needs

The consultant's report identifies that in most wards there is no systematic approach to identifying community benefits. Further, the discussion of community benefits often occurs near the end the development review process, leaving minimal time to consult on these matters. The consultant's report recommends that, where appropriate, Councillors prepare a public list of potential Section 37 benefits, in consultation with local communities, to provide clarity and transparency.

The Official Plan contains policy direction with respect to the creation of strategies for the provision of new social infrastructure or the improvement of existing community service facilities in areas that are inadequately serviced or experiencing major growth or change. In addition the Plan further requires the development of community services strategies and implementation mechanisms for residential or mixed use areas generally larger than 5 hectares and all new neighbourhoods, in order to inform the range of facilities needed in the area to support development.

Furthermore, this direction has already been adopted by Council (December 11-13, 2007) within the "Protocol for Negotiating Section 37 Community Benefits, in the section entitled Determination of Appropriate Types of Community Benefits" as noted below:

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.

Consistent with both the existing Protocol and the consultant's recommendation, Ward Councillors are encouraged to work in collaboration with the community, and City Divisions, to prepare an assessment of potential Section 37 community benefit contributions for various neighbourhoods within each ward, to be updated once during each term of Council.

Application of both the Official Plan policy direction and the Council adopted Protocols for Negotiating Section 37 Community Benefits will address this issue raised by the consultant. Staff will provide for information sessions to be offered at the start of each new term of council to ensure that Councillors and their staff are familiar with both the Section 37 policies of the Official Plan and the Guidelines and Protocols to provide opportunities for Councillors to familiarize themselves with the established policy framework and guidelines. The Guidelines are attached to this report as Attachment 2.

6. Flexibility Regarding Expenditures on Specific Benefits

The consultant's report identified that a lack of flexibility with regards to the reallocation of Section 37 funds has been problematic in certain instances, such as when the time lag between the securing funds and their receipt results in the original intended benefit no longer being appropriate. Recognizing this issue, staff currently include a standard clause in Section 37 agreements that enables funds unspent three years after development approval to be reallocated. In this regard the consultant's recommendation has been implemented in advance of this report and will continue to include this clause as a standard recommendation in reports regarding Section 37 community benefit contributions. This will ensure that funds intended for specific community benefits are able to be redirected if they remain unspent for a three year period after receipt without requiring an amendment to the site specific bylaw, provided that the benefits towards which the funds are redirected represent a reasonable planning relationship to the original application.

7. Transparency

Concerns were raised during consultations that information on Section 37 contributions was not sufficiently accessible to the public in a format that is clear, understandable, and transparent. The consultant's report advised creating an annual report summarizing the previous year's Section 37 contributions. In addition, the consultant's report identified that there is a level of misconception and misinformation regarding the Section 37 process which could be better addressed by producing public education materials. As such the consultant recommends that the Chief Planner and Executive Director City Planning be requested to prepare public education information explaining the City's process for securing Section 37 community benefit contributions to the public as well as an annual report summarizing the previous year's achievements regarding Section 37 community benefit contributions. Staff support the preparation of public education materials and the development of an annual report regarding the achievements with respect to Section 37 benefits and will be incorporating this into our work program.

8. Heritage Conservation and Rental Housing Protection

The consultant's report clarifies that heritage conservation and rental housing protection are addressed in Section 37 agreements, since in both cases the agreements are used as legal mechanisms to secure compliance with other sections of the Official Plan as well as in some cases to achieve higher levels of conservation and protection in return for increases in height and density. Heritage examples include 33 Bay Street, 311 Adelaide Street, 70 The Esplanade, and 197 Yonge Street (Massey Hall). Rental housing examples include 66 Isabella Street, 63 Callowhill Drive, and 140-162 Broadview Avenue.

9. Following up on the Delivery of Community Benefits

As identified in the consultant's report, issues were raised regarding the follow up on secured community benefits. Due to the time lag between securing and receiving funds, challenges have arisen in ensuring that received funds are distributed to their intended destination in a timely way. Turnover of staff and Councillors, or challenges in inter-divisional coordination, have created situations where funds have gone unspent for an

extended period of time. Staff concur with the consultants recommendations and will be applying dedicated resources to the monitoring and reporting of Section 37 and 45 benefits.

Conclusions

The consultant's report states that "most important conclusion of this study is that Section 37 represents a useful and valuable tool for achieving community benefits related to development approvals." A strong consensus was heard throughout the study that Section 37 is an important part of the planning process, and overall the existing framework is sound. The issues that were raised revolved less around the policy framework of the Official Plan and focused more specifically on the need to properly implement those policies and to clarify and consistently apply the existing Implementation Guidelines. The recommendations contained in this staff report are intended to help address these concerns, enabling Section 37 policies to continue to deliver public benefits to Toronto's residents, businesses and visitors.

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ATTACHMENTS

Attachment 1: Section 37 Review, Final Report

Attachment 2: Implementation Guidelines for Section 37 of the Planning Act and Protocol for Negotiating Section 37 Community Benefits.

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