

Consolidated Clause in Policy and Finance Committee Report 7, which was considered by City Council on September 25, 26, 27 and 28, 2006.

3**Policy on Donations to the City for Community Benefits**

City Council on September 25, 26, 27 and 28, 2006, amended this Clause by adding the following:

“That the City Manager be requested to report to the Executive Committee in January 2007, for consideration by City Council in January 2007, on an ‘Appeal Mechanism’ and ‘Legal Support Program’ to be endorsed by City Council.”

This Clause, as amended, was adopted by City Council.

The Policy and Finance Committee recommends that:

- (1) City Council adopt the staff recommendations contained in the Recommendations Section of the report (September 6, 2006) from the City Manager; and**
- (2) the City Manager be requested to:**
 - (i) report to the Executive Committee clarifying the role of staff and Councillors in the Planning process; and drafting an appeal procedure and legal assistance plan for Councillors;**
 - (ii) report to the Executive Committee early in 2007 on how pertinent details of donations and Section 37 benefits will be reported out to Council and will be available to the public;**
 - (iii) come forward with an implementation plan as soon as possible, and be requested to consult with all Members of Council prior to the submission of her report to the Executive Committee; and**
 - (iv) submit a status report with respect to this matter in the first quarter of 2007.**

The Policy and Finance Committee submits the report (September 6, 2006) from the City Manager:

Purpose:

This report sets out a corporate policy on donations to the City and its agencies, boards and commissions for community benefits. The report also identifies when it is appropriate to request or accept donations, appropriate types of donations, and applicable approval requirements. The proposed policy (Figure 1) includes amendments to clarify aspects of the policy that was before the Policy and Finance Committee at its January meeting.

Financial Implications and Impact Statement:

There are no financial implications arising from the recommendations in this report.

Recommendations:

It is recommended that:

- (1) Council adopt the “Policy on Donations to the City for Community Benefits” as set out in Figure 1, which complements other current policies on donations;
- (2) the Chief Financial Officer and Deputy City Manager develop a form for donors to declare that donations to the City and its agencies, boards and commissions for community benefits are not concurrent with an approval or procurement process;
- (3) the appropriate Deputy City Managers ensure bidders, grant applicants, and applicants seeking planning approvals, permits or other licences, are advised of this policy;
- (4) the City Manager request the City’s agencies, boards and commissions to adopt a policy consistent with the City’s “Policy on Donations to the City for Community Benefits”; and
- (5) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

Some City policies address specific aspects of voluntary donations (e.g., policy on Income Tax Receipts for Cash Donations and Gifts-In-Kind). However, no overall corporate policy on community benefits is in place.

At its meeting of September 28, 29, 30 and October 1, 2004, Council approved Clause 22 of Policy and Finance Committee Report 7, and requested the CAO to report on a corporate policy on acceptance of charitable donations, including the donation of real property, to the City and its agencies, boards and commissions. At its meeting of June 14, 15 and 16, 2005, Council considered Clause 13 of Scarborough Community Council Report 5 which outlined an offer of a donation from Monarch Corporation for community events in Ward 38, and requested the City Manager to report on a policy on donations for community benefits.

An earlier report on the “Policy on Donations to the City for Community Benefits” (January 10, 2006) from the City Manager was before the Policy and Finance Committee in January, and is appended to this report (Attachment 1). The earlier report addressed policy issues concerning voluntary donations for community benefits made to the City and its agencies, boards and commissions (in this report referred to in general as agencies). It also identified when it is appropriate to request or accept such donations, appropriate types of donations, and applicable approval requirements. The information in the earlier report (Attachment 1) should be referred to in conjunction with this report.

The Policy and Finance Committee referred the earlier report back with a request that staff meet with Members of Council to discuss the implications and submit a further report containing any recommended revisions. Consultations were undertaken with interested Councillors, and also with program and agency staff. The proposed policy in this report (Figure 1) includes amendments to clarify parts of the policy previously before the Committee in January.

The earlier report on the “Policy on Donations to the City for Community Benefits” also addressed the offer of a donation from Monarch Corporation and recommended Council decline the offer. The recommendation was not considered as the report was referred back. Subsequently, a letter was received from Monarch Corporation (March 9, 2006) indicating that Monarch was withdrawing the offer of the donation in question (Attachment 2).

Comments:

(1) Voluntary Donations:

Donations for community benefits encompass projects, money, assets or activities that provide a public good (and are distinct from gifts, hospitality or favours that provide a personal benefit). Voluntary donations involve a transfer of property or cash, are made on a voluntary basis, and are made without expectation or receipt of a benefit in return. These criteria define a gift or charitable donation under the Income Tax Act (Canada), and inform the definition of voluntary donations for community benefits in this report. The City can issue receipts for income tax purposes only where donations meet these criteria. Statutory contributions (a requirement), sponsorship arrangements (benefits exchanged) and donations of services in-kind (intangible) do not meet the criteria and are not eligible for income tax receipts.

(2) City Building:

Voluntary donations to the City and its agencies for community benefits provide a valuable contribution to city building. Torontonians have a demonstrated interest in contributing to and participating in city building efforts. Donations occur in relation to different City agencies and programs, take many forms, and support a variety of objectives and community benefits. Donations may arise from individual or corporate philanthropic acts, Members of Council encouraging private sector donations for community benefits, fundraising initiatives conducted by a City program or agency, and independent community fundraising efforts resulting in donations to the City for community benefits. Partnership opportunities for donations to the City and its agencies remain an important and ongoing civic endeavour.

(3) Decision Making Processes:

All donation activity should be guided by the principle that donations should remain at arms length from municipal decision making processes. While it is not practical to specify all types and circumstances of decisions made, in general, voluntary donations to the City and its agencies should respect relevant legislative and policy provisions and occur within an ethical framework that preserves the integrity of municipal decision making processes.

A voluntary donation concurrent with a City approval process, including an approval by Council, has the potential to call into question the objectivity of the decision made. The report of Commissioner Bellamy on the Toronto Computer Leasing Inquiry identified several situations where actions have to be fair and impartial and also have the appearance of being fair and impartial. Although there may be no real impropriety, the fact that a voluntary donation is sought or offered concurrent to a decision making process leaves the appearance that the decision making process could have been influenced by the donation. Circumstances are such that the potential for impropriety exists, which calls into question ethical standards and undermines public confidence in the decision making processes of the City and its agencies.

In practice, applicants seeking an approval from the City or its agencies should not concurrently offer voluntary donations for community benefits, and Councillors and staff should avoid soliciting or accepting voluntary donations for community benefits from individuals or businesses with an application for an approval outstanding, including procurement decisions. The test is that the voluntary donation is seen to be above reproach. The obligation to confirm that voluntary donations occur in the context of these principles rests with the individuals involved in the process. These principles apply with the necessary modifications to City agencies.

Issues and Clarifications Arising from the Consultations:

(1) Benefits under Section 37 of the Planning Act:

The question was raised about how the role of Councillors would be affected concerning benefits the City may request under section 37. The policy on donations for community benefits does not affect the current process for identifying appropriate section 37 benefits.

(2) Scope of Policy 1.2:

Policy 1.2.1 in Figure 1 of this report has been amended to clarify that the prohibition of concurrent voluntary donations is with respect to donations to the City and its agencies:

“1.2.1 applicants seeking an approval, permit or licence shall not concurrently offer or make voluntary donations to the City or an agency, board or commission for community benefits;”

The wording of policy 1.2.2 in Figure 1 of this report has been amended to clarify that when there is a concurrent application for approval, Councillors, members of the board of an agency, and City and agency staff should not be soliciting donations for any purpose or beneficiary (e.g., external organizations):

“1.2.2 voluntary donations for community benefits shall not be solicited or accepted, for any purpose or community beneficiary, from applicants with a concurrent application for an approval, permit or license.”

(3) Determining Concurrent Applications:

Staff and Councillors are expected to clarify that there is no concurrent application when a donation for community benefits is proposed. The onus ultimately rests with the donor, and a declaration form is proposed for this purpose. Policy 1.3 in Figure 1 is amended accordingly.

“1.3 Where a voluntary donation is solicited or offered, there is an obligation on the parties to confirm that there is no concurrent application or proposal for an approval, permit or license. Donors are required to make a written declaration that a donation to the City or an agency, board or commission for community benefits is not concurrent with an approval or procurement process in which they, or their organization or company if applicable, are involved.”

(4) Small Cash Donations:

Donations for community benefits are distinct from donations for a personal benefit, and the issues surrounding each are different. Rules and procedures for personal gifts and benefits that arise as a matter of protocol, for example, are addressed in the context of the Members' Code of Conduct. Donations for community benefits raise a different set of concerns including financial pressures and impacts on City priorities, and a different set of policies is required to address these issues. Therefore, it is recommended that criteria not be established to exempt from the policy small donations for community benefits that fall below a specified dollar value.

Occasionally, a cash donation for a specified purpose may not be attributable to a donor (e.g., anonymous cash donation from passing a hat at a community meeting). The fact that a donation is anonymous does not exempt it from related policies in Figure 1 such as policy 3.1 and 3.2 which require Council or an agency to approve the specific purpose that the donation would support. If Council or the agency does not approve the specific purpose, any anonymous cash donation that cannot be returned to the donor is deemed to be undesignated and becomes a contribution to general revenue. Policy 3.1 and 3.2 are amended accordingly.

“3.1 Donations of cash designated for specific purposes will only be accepted by the City where Council has authorized the specific purpose or a fundraising campaign, and where the necessary capital or revenue account has been established or a reserve created and the necessary by-law enacted. Where a cash donation is received from donors whose identity cannot be ascertained and

Council does not authorize the specific purpose, the donation is deemed to be undesignated and becomes a contribution to general revenue of the City.”

“3.2 Donations of cash designated for specific purposes of a City agency, board or commission will only be accepted where the agency, board or commission has authorized the specific purpose or a fundraising campaign, and where the necessary capital or revenue account has been established or a reserve created and the necessary by-law enacted. Where a cash donation to an agency, board or commission would create a further financial impact that is material or adversely affects approved program objectives (e.g., an in-year budget adjustment or binding future year financial impact), Council approval is required before the donation may be accepted. Where a cash donation is received from donors whose identity cannot be ascertained and the agency, board or commission does not authorize the specific purpose, the donation is deemed to be undesignated and becomes a contribution to general revenue of the agency, board or commission.”

(5) Independent Budgets:

Some agencies receive funding from an independent entity or fundraising process (e.g., the Zoo Foundation; independent Community Centre program budgets). If a donation would result in a further financial impact to the budget of an agency and hence the City, then Council approval is required. In policy 3.10 in Figure 1 (and also in policy 3.2, discussed above), a further financial impact is clarified to include material financial impacts and adverse impacts on approved program objectives.

“3.10 Proposed donations to City agencies, boards and commissions for operational activities are to be assessed for potential operational and financial impacts by appropriate staff prior to acceptance by the agency, board or commission, unless the donation is for a specific operational purpose or fundraising campaign that was previously approved. Where a donation for operational activities would create a further financial impact that is material or adversely affects approved program objectives (e.g., an in-year budget adjustment or binding future year financial impact), Council approval is required before the donation may be accepted.”

(6) Technical Matters:

For greater consistency with the procurement processes policy as approved by Council, the following technical changes are included in policy 1.6 and 1.7 in Figure 1:

“1.6 Voluntary donations for community benefits may not be solicited and offers may not be made by or accepted from a bidder, proponent or applicant to a procurement, or their representative, concurrent to the procurement solicitation and award process.”

“1.7 There is a blackout period in procurement decision making processes during which discussions about voluntary donations for community benefits are not permitted and voluntary donations may not be offered, solicited or accepted. The

blackout period for procurements commences when the request or call for a bid, quote, proposal, etc. is formally issued, and it ends at the time the procurement is awarded.”

A transcription error occurred in Appendix 1 on Height/Density Incentives: Section 5.1.1 of the City of Toronto Official Plan, as appended to the earlier report on the policy on donations that was before the Policy and Finance Committee at its January meeting. To reflect the correct wording in the Official Plan, the following technical change is included in the version of Appendix 1 included in Attachment 1 to this report.

- “4. 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 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 converted to gross floor area at the rate of 100 square metres per unit in order to determine whether these thresholds are exceeded.”

Figure 1

Policy on Donations to the City for Community Benefits

Objective:

City building is a collective and ongoing endeavour. Seeking or obtaining voluntary donations for community benefits provides valuable contributions to city building. Partnership opportunities for donations for community benefits should respect relevant legislative and policy provisions and occur within an ethical framework that preserves the integrity of municipal decision making processes.

Scope:

The policy on voluntary donations to the City for community benefits includes donations made to the City and its agencies, boards and commissions, and donations requested or encouraged by Councillors or staff which are directed to other organizations or community agencies.

Policies:

- (1) Donations in Relation to City Decision Making Processes:

General:

- 1.1 Conditions, contributions and community benefits may only be requested from an applicant seeking an approval, permit or license from the City or its agencies, boards or commissions if such requests are permitted or required by that decision making process.

- 1.2 In the case of an applicant seeking an approval, permit or license from the City or its agencies, boards or commissions, beyond matters permitted or required as part of the decision making process, voluntary donations from the applicant or their representative may only be requested or accepted at arms length from the decision making process:
 - 1.2.1 applicants seeking an approval, permit or licence shall not concurrently offer or make voluntary donations to the City or an agency, board or commission for community benefits;
 - 1.2.2 voluntary donations for community benefits shall not be solicited or accepted, for any purpose or community beneficiary, from applicants with a concurrent application for an approval, permit or license.
- 1.3 Where a voluntary donation is solicited or offered, there is an obligation on the parties to confirm that there is no concurrent application or proposal for an approval, permit or license. Donors are required to make a written declaration that a donation to the City or an agency, board or commission for community benefits is not concurrent with an approval or procurement process in which they, or their organization or company if applicable, are involved.

Planning Approvals:

- 1.4 Voluntary donations for community benefits that fall outside the scope of a planning approval may not be solicited and offers may not be accepted from an applicant or their representative concurrent to a planning approval or from a party proposing to make a planning application.
- 1.5 There is a blackout period in planning approval processes during which discussions about voluntary donations for community benefits are not permitted and voluntary donations may not be offered, solicited or accepted. For Councillors and staff, the blackout period commences when they receive information, formally or informally, that an individual, organization or company has an interest or intent in submitting an application for planning approval. For specific types of planning applications, the end of the blackout period is as follows:
 - 1.5.1 for official plan amendments, zoning by-law amendments and combined applications is the date of expiry of the appeal period after Council makes its decision on the by-law(s) and there is no appeal; or, if appealed, is the date the Ontario Municipal Board makes its decision;
 - 1.5.2 for plans of subdivision and condominium is the date of expiry of the appeal period after the City makes its decision on draft plan approval and there is no appeal; or, if appealed, is the date the Ontario Municipal Board makes its decision;

- 1.5.3 for site plan control is the date the site plan agreement is executed; or, if appealed, is the date the Ontario Municipal Board makes its decision;
- 1.5.4 for part lot control exemption by-laws is the date Council adopts or refuses to adopt the by-law;
- 1.5.5 for minor variance and consent to sever is the date of expiry of the appeal period after the Committee of Adjustment makes its decision and there is no appeal; or, if appealed, is the date the appeal body makes its decision.

Procurement Decisions:

- 1.6 Voluntary donations for community benefits may not be solicited and offers may not be made by or accepted from a bidder, proponent or applicant to a procurement, or their representative, concurrent to the procurement solicitation and award process.
- 1.7 There is a blackout period in procurement decision making processes during which discussions about voluntary donations for community benefits are not permitted and voluntary donations may not be offered, solicited or accepted. The blackout period for procurements commences when the request or call for a bid, quote, proposal, etc. is formally issued, and it ends at the time the procurement is awarded.

(2) Donations of Real Property:

- 2.1 Donations of real property to the City or its agencies, boards and commissions may only be accepted with the prior approval of Council, which is to include approval of the budget for any future or ongoing obligations arising from the donation.
- 2.2 Where appropriate, approval of a donation of real property is to include the use and disposition of the real property including the net proceeds arising from a property transaction.
- 2.3 Donations of real property to the City or its agencies, boards and commissions, whether designated for specific purposes or not, will be held in the name of the City.
- 2.4 Donations of real property designated for specific purposes are exempt from the City's property management process.

(3) Accepting and Managing Donations:

- 3.1 Donations of cash designated for specific purposes will only be accepted by the City where Council has authorized the specific purpose or a fundraising campaign, and where the necessary capital or revenue account has been established or a reserve created and the necessary by-law enacted. Where a cash

donation is received from donors whose identity cannot be ascertained and Council does not authorize the specific purpose, the donation is deemed to be undesignated and becomes a contribution to general revenue of the City.

- 3.2 Donations of cash designated for specific purposes of a City agency, board or commission will only be accepted where the agency, board or commission has authorized the specific purpose or a fundraising campaign, and where the necessary capital or revenue account has been established or a reserve created and the necessary by-law enacted. Where a cash donation to an agency, board or commission would create a further financial impact that is material or adversely affects approved program objectives (e.g., an in-year budget adjustment or binding future year financial impact), Council approval is required before the donation may be accepted. Where a cash donation is received from donors whose identity cannot be ascertained and the agency, board or commission does not authorize the specific purpose, the donation is deemed to be undesignated and becomes a contribution to general revenue of the agency, board or commission.
- 3.3 Donations designated for specific purposes or for the general purpose of a specific program, including donations of real property and the net proceeds of any property transaction, are to be used by the program for the purpose specified by the donor.
- 3.4 For accountability purposes, donations are to be credited to appropriate accounts of the City or its agencies, boards or commissions, and approved budgets are required to receive and spend the donations, commencing at the time the donations are received. Donations may not be managed informally or held in personal or external accounts or trust funds. This would not apply to independent community fundraising campaigns until such time that campaign contributions are donated to the City or its agencies, boards or commissions.
- 3.5 Where projects or assets of the City or its agencies, boards or commissions are funded in whole or in part by donations, the donated funds for such projects or assets must come directly from an account of the City or agency, board or commission.
- 3.6 Donations of cash or property to the City or its agencies, boards and commissions, where the purpose is not specified and which are not part of an approved fundraising initiative, are deemed to be undesignated and become contributions to general revenue of the City or assets of the City.
- 3.7 Where donations are being accumulated for a major project or fundraising campaign, the funds will be held in an appropriate account or reserve until sufficient funds for the proposed project have been obtained. Funds from donations may not be released and the proposed project may not commence until sufficient funds to complete the project have been secured, and spending authority has been obtained. Where appropriate, sunset provisions should be identified at the outset for major projects and fundraising initiatives to provide guidance in the event funding targets are not attained.

- 3.8 Eligible donations are those that support durable assets; capital facilities or projects; asset improvement, restoration or capital maintenance; or cash for such purposes.
 - 3.9 Proposed donations to the City for operational activities are to be assessed by the Chief Financial Officer for potential operational and financial impacts prior to acceptance of the donation by Council, unless the donation is for a specific operational purpose or fundraising campaign already approved by Council.
 - 3.10 Proposed donations to City agencies, boards and commissions for operational activities are to be assessed for potential operational and financial impacts by appropriate staff prior to acceptance by the agency, board or commission, unless the donation is for a specific operational purpose or fundraising campaign that was previously approved. Where a donation for operational activities would create a further financial impact that is material or adversely affects approved program objectives (e.g., an in-year budget adjustment or binding future year financial impact), Council approval is required before the donation may be accepted.
 - 3.11 Donations that support special purposes to be provided by an organization independent of the City should be directed, where possible, to the intended organization.
- (4) Related Policies:
- 4.1 This policy complements other existing policies of the City that pertain to donations.
 - 4.2 To the extent of any conflict between this policy and any other existing policies of the City that pertain to donations, this policy prevails.

Conclusions:

Voluntary donations to the City, its agencies, and other organizations, provide important contributions to city building. It is equally important that donations occur in a manner that does not call municipal decision making processes into question. Donations should occur at arms length from decision making processes. Voluntary donations should not be sought or accepted if offered concurrent to a planning approval or a procurement process. Donations have the potential to create new obligations and result in operational and financial impacts for the City, and certain approval requirements apply in these circumstances. Donations of real property and donations designated for specific purposes require special policy considerations.

Based on these principles, it is recommended that Council adopt the policy on donations for community benefits as outlined in Figure 1 of this report. These principles apply to the City's agencies, boards and commissions, and their Boards are requested to adopt a similar policy.

Contact:

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List of Attachments:

- Attachment 1: Report on the "Policy on Donations to the City for Community Benefits"
(January 10, 2006)
- Attachment 2: Communication from Monarch Corporation (March 9, 2006)

Attachment 1

Consolidated Clause in Policy and Finance Committee Report 1, which was received, for information, by City Council on January 31, February 1 and 2, 2006.

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Other Items Considered by the Committee

(The Committee is authorized to take certain actions without Council's approval.
These actions are listed in this Clause for Council's information.)

City Council on January 31, February 1 and 2, 2006, referred Item (q), entitled "Request to Toronto Police Services Board to Expand Strategic Traffic Enforcement Measures (STEM) Team", contained in this Clause, back to the Policy and Finance Committee for further consideration.

The balance of this Clause was received for information.

Council also considered additional material, which is noted at the end of Item (u) and Item (x).

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- (a) Policy on Donations to the City for Community Benefits

The Policy and Finance Committee:

- (1) referred the report (January 10, 2006) from the City Manager back to the City Manager with a request that her staff meet with each interested and available Member of Council to discuss the implications of this report and submit a further report containing recommended revisions to the Policy and Finance Committee; and

- (2) requested staff, after consultation with Councillors, to compile a list of benefits that require additions to the policy to ensure that a broad range of community benefits are codified.

(January 10, 2006) from the City Manager setting out a corporate policy on donations to the City and its Agencies, Boards and Commissions for community benefits and identifying when it is appropriate to request or accept such donations, appropriate types of donations and applicable approval requirements.

Recommendations:

It is recommended that:

- (1) Council adopt the “Policy on Donations to the City for Community Benefits” as set out in Figure 1, which complements other current policies on donations;
- (2) this report be forwarded to the City’s Agencies, Boards and Commissions with a request that they adopt a policy consistent with the City’s Policy on Donations to the City for Community Benefits;
- (3) Council decline the offer of community benefits contained in the letter of understanding in Clause 13 of Scarborough Community Council Report 5 that was before Council at its meeting of June 14, 15 and 16, 2005; and
- (4) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

At its meeting of September 28, 29, 30 and October 1, 2004, City Council considered Clause 22 of Policy and Finance Committee Report 7 entitled “Amendments to Article II, Chapter 103 of the Toronto Municipal Code Governing Heritage Toronto”. The Clause included a recommendation requesting the Chief Administrative Officer to consult with appropriate staff and submit a report on a corporate policy on acceptance of charitable donations, including the donation of real property, to the City and its agencies, boards and commissions. Response to this directive was delayed with the redirection of resources to the new City of Toronto Act, administrative restructuring and the Bellamy inquiry.

More recently, at its meeting of June 14, 15 and 16, 2005, City Council considered Clause 13 of Scarborough Community Council Report 5 entitled “Community Donations”. The Clause consists of a letter of understanding (referred to as the MOU) from Monarch Corporation to Ward 38 Councillor De Baeremaeker, dated May 30, 2005, which confirms an intended cash donation of \$109,000 to the City to finance community festivals and events in Ward 38. The Councillor tabled the MOU at Scarborough Community Council in the interests of policy clarification. City Council, in turn, referred the MOU to the City Manager requesting that the Integrity Commissioner be consulted and a report be submitted on a policy on donations for community benefits, separate from community benefits derived under section 37 of the Planning Act, giving consideration to the Council Members’ Code of Conduct.

Negotiations on the MOU were concurrent to a site plan approval for a 109 unit development, and the \$109,000 donation appears linked to the number of units proposed. The Integrity Commissioner examined the actions in this case in relation to the Code of Conduct and, in a report to the September 2005 meeting of Council, concluded the actions in this case did not violate the Code of Conduct, noting that there is no City policy and no explicit provision in the Code that addresses actions of this type.

The City has faced a number of challenges since amalgamation concerning city building and appropriate avenues for residents, organizations and businesses to contribute to city building. Policies are in place which clarify some aspects of voluntary donations, including:

- (a) At its December 1999 meeting, Council approved a policy on “Income Tax Receipts for Cash Donations and Gifts-In-Kind” (Clause 3 of Policy and Finance Committee Report 11).
- (b) At its June 2002 meeting, Council approved a policy on developing and managing the City’s historical collection, including donations practices (Clause 10 of Economic Development and Parks Committee Report 6).
- (c) At its September 2004 meeting, Council amended the Toronto Municipal Code to include provisions on donations of real property to Heritage Toronto (Clause 22 of Policy and Finance Committee Report 7).
- (d) At its June 2005 meeting, Council approved a policy on receiving “Charitable Donations for Parks, Forestry and Recreation Capital Projects” (Clause 9 of Economic Development and Parks Committee Report 6).

This report addresses policy issues concerning voluntary donations to the City and its agencies, boards and commissions for community benefits, identifying when it is appropriate to request or accept such donations, appropriate types of donations and applicable approval requirements. In this report, the City’s agencies, boards and commissions are referred to in general as agencies. Within the context of donations provided to the City, its agencies or other organizations, community benefits encompass projects, initiatives, assets and activities that provide a public good (and are distinct from gifts, favours, hospitality or contributions to election campaigns that provide a personal benefit). The Integrity Commissioner, Solicitor, Chief Financial Officer, Chief Planner and key program staff were consulted in the preparation of this report.

Comments:

(1) Policy Issues Related to Voluntary Donations:

Voluntary donations involve a transfer of property or cash, are made on a voluntary basis, and are made without expectation or receipt of a benefit in return. These criteria define a gift or charitable donation under the Income Tax Act (Canada). The City can issue receipts for income tax purposes only where donations meet these criteria. Statutory contributions (a requirement), sponsorship arrangements (benefits exchanged) and donations of services in-kind (intangible) do not meet the eligibility criteria for income tax receipts.

City Building:

Voluntary donations to the City and its agencies, boards and commissions (referred to as agencies) for community benefits provide a valuable contribution to city building. Torontonians have a demonstrated interest in contributing to and participating in city building efforts. Donations occur in relation to different City agencies and program areas, take many forms, and support a variety of objectives and community benefits. Donations may arise from individual or corporate philanthropic acts, Members of Council encouraging private sector donations for community benefits, fundraising initiatives conducted by a City program or agency, and independent community fundraising efforts resulting in donations to the City for community benefits. Partnership opportunities for donations to the City and its agencies remain an important and ongoing civic endeavour.

Decision Making Processes:

All donation activity should be guided by the principle that donations should remain at arms length from decision making processes. While it is not practical to specify all types and circumstances of decisions made, in general, voluntary donations to the City and its agencies should respect relevant legislative and policy provisions and occur within an ethical framework that preserves the integrity of municipal decision making processes.

A voluntary donation concurrent with a City approval process, including an approval by Council, has the potential to call into question the objectivity of the decision made. The report of Commissioner Bellamy on the Toronto Computer Leasing Inquiry identified several situations where actions have to be fair and impartial and also have the appearance of being fair and impartial. Although there may be no real impropriety, the fact that a voluntary donation is sought or offered concurrent to a decision making process leaves the appearance that the decision making process could have been influenced by the donation. Circumstances are such that the potential for impropriety exists, which calls into question ethical standards and undermines public confidence in the decision making processes of the City and its agencies.

In practice, applicants seeking an approval from the City or its agencies should not concurrently offer voluntary donations for community benefits, and Councillors and staff should avoid soliciting or accepting voluntary donations for community benefits from individuals or businesses with an application for an approval outstanding, including procurement decisions. The test is that the voluntary donation is seen to be above reproach. The onus to ensure that voluntary donations occur in the context of these principles rests with the individuals involved in the process. These principles apply with the necessary modifications to the City's agencies.

Planning approvals and procurement decisions are two areas where the City makes recurring decisions and where consideration of specific policy provisions regarding voluntary donations is warranted.

(a) Planning Approvals:

Conditions imposed and contributions required in relation to an application for planning approval must adhere to the statutory and policy basis for such requests, and occur as part of the formal and open public planning process. While a rezoning may warrant contributions of specific community benefits under Section 37 of the Planning Act, in general, the conditions and requests permitted in a planning approval have a land use planning basis and are site-related. Except for those contributions for community benefits that are authorized by legislation or policy (Section 37), voluntary donations for community benefits are not permitted as part of a planning approval decision.

Requesting or offering voluntary donations concurrent to a planning approval process calls into question the fairness and objectivity of the planning approval. There is also the potential that the value of capital contributions requested under Section 37 in accordance with the City's Official Plan would be materially diminished by a concurrent request for a voluntary donation. Conditions and benefits requested under Sections 37 and 41 (zoning and site plan approval) are open to appeal. Parallel negotiations for voluntary donations will make it difficult for the City to successfully defend conditions and benefits requested under the authority of the Planning Act if these are contested before the Ontario Municipal Board. Voluntary donations for community benefits should neither be sought nor accepted if offered concurrent to a planning approval. This applies to donations for community benefits made to the City, the City's agencies, and community organizations.

For planning applications, there are specific decision points that indicate the completion of a planning approval. To avoid the potential for impropriety or the appearance of impropriety, the process leading up to the planning approval should be treated as a blackout period for the purposes of requesting or accepting voluntary donations for community benefits. During these blackout periods, no discussions or negotiations should occur regarding voluntary contributions or community benefits, other than those authorized by statute. Planning staff are already bound by the Planning Act, Official Plan policy and any Council approved policies as to the contributions that may be requested and the conditions that may be applied in the context of a planning approval. Applicants and their representatives, Councillors and staff wishing to discuss opportunities for voluntary donations, other than contributions permitted through a planning approval, should respect these blackout periods to preserve the integrity of both the voluntary donation and the planning approval process.

(b) Procurement Decisions:

Procurement of goods and services is an ongoing process that is integral to City operations and service delivery. Competitive procurement encompasses various methods and processes, including tendering, leasing arrangements, RFPs and RFQs. Taxpayers have a right to expect that their money will be used wisely and

that procurement processes and decisions that support the achievement of City objectives will be carried out in an open and objective manner.

In the report on the Toronto Computer Leasing Inquiry, Commissioner Bellamy made numerous recommendations on avoiding personal conflict and ensuring fairness and objectivity in City procurement processes. These principles apply equally to voluntary donations to the City for community benefits. Procurement processes should be free from influence and interference by bidders or lobbyists offering, or Councillors or staff requesting, voluntary donations for community benefits. Voluntary donations for community benefits should neither be sought nor accepted if offered concurrent to a procurement process. This applies to donations made to the City, its agencies, or community organizations.

The Bellamy Inquiry recommended a blackout period, when communications between the City and bidders should be prohibited, to cover all times during which communication with the City by a bidder may give rise to an appearance that the bidder is able to gain an advantage of any kind over other bidders. Similarly, a blackout period should be applied to voluntary donations concurrent to a procurement process. During the blackout period, no discussions or negotiations should occur regarding voluntary contributions or community benefits. Bidders and their representatives, Councillors and staff wishing to discuss opportunities for voluntary donations, should respect these blackout periods to preserve the integrity of both the donation and the procurement process.

Donations for Specified Purposes:

Donations are often made with the aim of achieving specific community benefits. Conditions may be attached to donations requesting they be used for designated purposes, such as restoration of a particular heritage site, improvement of a specific playground, installation of a special amenity at a Home for the Aged, securing land to extend a designated portion of a public trail, or to be used for the general purposes of a specific program or agency. Where a donation is made for a specified purpose, in accepting the donation the City and its agencies assume an obligation to apply the donation to that purpose. If a donation is made in one form (e.g., investment, real property) but needs to be converted into another form to be put to use, this should not change the specific purpose where one has been designated, and the funds or assets should remain dedicated to that purpose. Where a donation is made for a specified purpose, and is in the form of cash or real property, the requirements set out below must also be satisfied.

Donations of cash or property, where the purpose is not specified and which are not part of a fundraising initiative with a predetermined purpose, are deemed to be undesignated. Undesignated donations are contributions to general revenue, or assets whose use has yet to be addressed, and disposition of such donations is determined through appropriate City priority setting processes. Accordingly, net revenue from undesignated donations to City programs and agencies should be directed to the appropriate account as determined by the City's Chief Financial Officer.

Council confirmed these principles in the policy on donations of real property to Heritage Toronto (Clause 22 of Policy and Finance Committee Report 7 approved by Council in September 2004). These principles remain valid for all types of donations, including cash and real property, and should apply to donations made to the City and its agencies.

Donations of Real Property:

Donations of real property can provide valuable assets that contribute to city building. Most real property used by City programs and agencies for operational and service delivery purposes is held in the name of the City. Real property donated to the City and its agencies should similarly be held in the name of the City, whether the donation is for a specified purpose or not.

In certain situations, donations of real property could create new obligations for the City. To ensure donations of real property are appropriate and in the interests of the City, Council approval of donations of real property to the City and its agencies is required before the donations may be accepted. Council approval of the budget for any future or ongoing obligations arising from the donation of real property is also required.

Real property donated to the City for a specific purpose could be sold or exchanged to allow the value of the donation to be put to its intended use. Selling real property donated for a specific purpose should not change the purpose to which the net proceeds of the sale are applied. Similarly, if another City program or agency requires the property, the fair market value of the donated property (based on net proceeds) should be made available to the program in question to be used for the purpose specified in the donation. The importance of the donation may be intrinsic to the property itself (e.g., heritage structure, work of art, archival document, land for open space in a particular location) and in these situations the item or real property should be retained in the form donated. To ensure that the value of real property is applied to the purpose specified for the donation and that any intrinsic value of real property is preserved, donations of real property for specific purposes should be exempt from the City's property management process.

Implications arising from the specific purpose attached to the donation of real property and the options for using or disposing of that property are best considered at the time Council is determining whether the donation is in the interests of the City. Where appropriate, a disposition plan for donated real property should be prepared to address issues that may arise in the future, and the disposition plan should form part of the decision to accept a donation of real property. This is consistent with the current policy approach on the acquisition and deaccessioning of historical objects, including donated objects (Clause 10 of Economic Development and Parks Committee Report 6 approved by Council in June 2002).

Donations of Cash:

Voluntary donations in the form of cash can provide valuable community benefits. Undesignated cash donations to the City or its agencies are contributions to the City in general, as discussed above. Donations to the City should not result in a new purpose of

the City unless the new purpose has been authorized by Council. Cash donations to the City designated for specific purposes should only be accepted through a Council-approved fundraising initiative, or where Council has approved the specific purpose and the spending authority in the appropriate budget. Cash donations to City agencies for specific purposes should only be accepted where the agency has approved the specific purpose; where the donation would result in further financial impacts, Council approval would also be required. For all cash donations to the City and its agencies, the necessary capital account or revenue account would have to be established or, where appropriate, a reserve created and the necessary by-laws enacted.

Council established these principles in the policy on Income Tax Receipts for Cash Donations and Gifts-In-Kind (Clause 3 of Policy and Finance Committee Report 11 approved by Council in December 1999). These principles remain valid for voluntary cash donations to the City and its agencies, and are applicable regardless of whether the donation is or is not eligible for a tax receipt.

Assets and Operations:

Donations for community benefits that provide durable assets, or cash for such purposes, allow the impacts and benefits of accepting the donation to be readily determined. Capital projects contemplated by a donation should also have clear objectives and timeframes. Assets may include small items such as plaques, trees, benches, public art or playground equipment; capital facilities or projects; or asset improvement, restoration or capital maintenance.

Donations intended for operational activities could have operational impacts such as: adverse effects on staff workloads, distorting approved service delivery priorities, raising public expectations about service levels, and creating new financial pressures for the City. Where the specified purpose of a donation is operational in nature and Council approval is required, the proposed donation is to be referred to the Chief Financial Officer for review of potential operational and financial impacts, including identification of a source of funding if necessary, prior to Council considering acceptance of the donation. Where approval of the specific operational purpose is required from the Board of a City agency, an appropriate official with that agency should provide advice on operational and financial impacts to the Board before it considers acceptance of the donation. Where such a donation would result in further financial impacts, Council approval would also be required.

Major Projects:

Donations may be collected over a period of time for a major project or for a project where a fundraising campaign has been established. Such funds would be accumulated and held in an appropriate account or reserve until sufficient funds for the proposed project have been obtained. Fundraising campaigns should not result in new financial obligations for the City unless a partial contribution or shared-cost arrangement has been authorized by Council. To provide guidance in the event funding targets are not attained, where appropriate, sunset provisions should be identified for such projects at the time the project or campaign is approved or as part of the by-law where a reserve is established.

To avoid unexpected financial impacts, funds donated for a project of the City or its agencies will not be released and the project may not commence until such time that sufficient funds to complete the intended project have been collected.

Custody of Funds:

Where donations are made to the City or its agencies for community benefits, the donations are made with the intent that the City administers the funds through its programs and agencies. To ensure an open and accountable process, donations to the City are to be credited to the appropriate accounts of the City and its agencies commencing from the time the donations or campaign contributions are received by the City or its agencies, and the funds should not be administered informally or through personal or external accounts or trust funds. This would not apply to independent community fundraising campaigns until such time that campaign contributions are donated to the City or its agencies. Where City or agency projects or assets are funded in whole or in part by donations, the donated funds for such projects or assets must come directly from an account of the City or agency, and the budget must be adjusted to reflect the revenue and expenditure. This will ensure that donations occur in an open manner, donated funds for which the City assumes accountability are managed through City accounts, and appropriate financial tracking can take place.

Initiatives of Other Organizations:

If a donation comes to the City with a request that it support an initiative of another organization independent of the City (e.g., a school, hospital or community organization), it would be preferable for the donation to be directed to the intended organization. Where a donation is made to the City to obtain an income tax receipt and the donation is for purposes to be provided by an independent organization, Council would first need to determine if the donation is in the interest of the City, and any transfer of funds would then have to occur by way of a grant from the City. This requirement was approved at the December 1999 meeting of Council as part of the policy on Income Tax Receipts for Cash Donations and Gifts-In-Kind (Clause 3 of Policy and Finance Committee Report 11).

(2) Policy Issues Arising from the MOU:

Statutory Authority:

The MOU is related to two planning approvals: MOU negotiations were concurrent to a site plan approval for a property, and the property earlier received approval for a zoning amendment.

Zoning amendments to increase height or density limits may warrant contributions of community benefits (refer to Appendix 1). Community benefits under Section 37 of the Planning Act were not obtained at the time of zoning approval in 1994. Since the request for community benefit contributions in this case arose after the rezoning approval, the Official Plan policies for obtaining Section 37 community benefits cannot be applied at this stage. Insofar as the MOU is intended to address the issue that Section 37 benefits

were not obtained when the initial rezoning application was approved, if the MOU were to proceed it would have the effect of reopening Council's previous zoning decision. However, there is no procedural or statutory basis for reopening and amending the zoning decision.

Matters that can be addressed in a site plan agreement are site-specific and narrowly defined (refer to Appendix 2). There is no provision for requesting contributions of community benefits through site plan approval under Section 41 of the Planning Act. The type of donation proposed in the MOU falls outside the scope of what can be requested during site plan approval.

Type of Community Benefit:

The community benefit in the MOU is operational in nature, consisting of a cash donation to finance community festivals and events in Ward 38 such as those planned for Canada Day, the Toronto Trails Festival, Ward 38 Annual Summer Picnic, Ward 38 Parades, Compost Days, Environment Day, Christmas Party. Contributions towards ongoing operational responsibilities are not permissible under Section 37 or the development charges by-law. Community benefits permissible under Section 37 are capital facilities, capital improvements or cash for such purposes; development charges similarly fund growth-related capital infrastructure projects. This recognizes that donations for operational activities can distort service priorities, affect staff workloads and create new financial pressures.

Type of Donation:

The MOU includes an expectation that the contributor will receive public acknowledgement in newsletters and other advertising material related to the events. As this entails a mutual exchange of benefits, the donation is more appropriately defined as a sponsorship arrangement rather than a voluntary donation.

Planning approval processes, including those for zoning and site plan, all rely upon statutory authority to require applicants to meet conditions or make contributions. Contributions and donations obtained under the Planning Act have a clear statutory basis, and are more appropriately defined as statutory contributions rather than voluntary donations. A valid statutory contribution would have to be consistent with the legislative and policy requirements of the particular planning approval.

(3) MOU Reference:

In light of the recommended Policy on Donations to the City for Community Benefits, Council should decline the offer of the donation of community benefits to the City as proposed in the MOU that was before Council at its meeting in June 2005, (Clause 13 of Scarborough Community Council Report 5). It would be more appropriate to consider Monarch's interest in making a voluntary donation after execution of the site plan agreement, which has now occurred. Any voluntary donation to the City for community benefits preferably should be in the form of a durable asset, or cash for such purposes.

Figure 1
Policy on Donations to the City for Community Benefits

Objective:

City building is a collective and ongoing endeavour. Seeking or obtaining voluntary donations for community benefits provides valuable contributions to city building. Partnership opportunities for donations for community benefits should respect relevant legislative and policy provisions and occur within an ethical framework that preserves the integrity of municipal decision making processes.

Scope:

The policy on voluntary donations to the City for community benefits includes donations made to the City and its agencies, boards and commissions, and donations requested or encouraged by Councillors or staff which are directed to other organizations or community agencies.

Policies:

(1) Donations in Relation to City Decision Making Processes:

General:

- 1.1 Conditions, contributions and community benefits may only be requested from an applicant seeking an approval, permit or license from the City or its agencies, boards or commissions if such requests are permitted or required by that decision making process.
- 1.2 In the case of an applicant seeking an approval, permit or license from the City or its agencies, boards or commissions, beyond matters permitted or required as part of the decision making process, voluntary donations from the applicant or their representative may only be requested or accepted at arms length from the decision making process:
 - 1.2.1 applicants seeking an approval, permit or license shall not concurrently offer or make voluntary donations for community benefits;
 - 1.2.2 voluntary donations for community benefits shall not be solicited or accepted from applicants with a concurrent application for an approval, permit or license.
- 1.3 Where a voluntary donation is solicited or offered, there is an obligation on the parties to confirm that there is no concurrent application or proposal for an approval, permit or license.

Planning Approvals:

- 1.4 Voluntary donations for community benefits that fall outside the scope of a planning approval may not be solicited and offers may not be accepted from an applicant or their representative concurrent to a planning approval or from a party proposing to make a planning application.
- 1.5 There is a blackout period in planning approval processes during which discussions about voluntary donations for community benefits are not permitted and voluntary donations may not be offered, solicited or accepted. For Councillors and staff, the blackout period commences when they receive information, formally or informally, that an individual, organization or company has an interest or intent in submitting an application for planning approval. For specific types of planning applications, the end of the blackout period is as follows:
 - 1.5.1 for official plan amendments, zoning by-law amendments and combined applications is the date of expiry of the appeal period after Council makes its decision on the by-law(s) and there is no appeal; or, if appealed, is the date the Ontario Municipal Board makes its decision;
 - 1.5.2 for plans of subdivision and condominium is the date of expiry of the appeal period after the City makes its decision on draft plan approval and there is no appeal; or, if appealed, is the date the Ontario Municipal Board makes its decision;
 - 1.5.3 for site plan control is the date the site plan agreement is executed; or, if appealed, is the date the Ontario Municipal Board makes its decision;
 - 1.5.4 for part lot control exemption by-laws is the date Council adopts or refuses to adopt the by-law;
 - 1.5.5 for minor variance and consent to sever is the date of expiry of the appeal period after the Committee of Adjustment makes its decision and there is no appeal; or, if appealed, is the date the appeal body makes its decision.

Procurement Decisions:

- 1.6 Voluntary donations for community benefits may not be solicited and offers may not be made by or accepted from a bidder, proponent or applicant to a procurement, or their representative, concurrent to the procurement decision process.
- 1.7 There is a blackout period in procurement decision making processes during which discussions about voluntary donations for community benefits are not permitted and voluntary donations may not be offered, solicited or accepted. The blackout period for procurements commences when the request or call for a bid,

quote, proposal, etc. is formally issued, and it ends on the date the procurement decision is made.

(2) Donations of Real Property:

- 2.1 Donations of real property to the City or its agencies, boards and commissions may only be accepted with the prior approval of Council, which is to include approval of the budget for any future or ongoing obligations arising from the donation.
- 2.2 Where appropriate, approval of a donation of real property is to include the use and disposition of the real property including the net proceeds arising from a property transaction.
- 2.3 Donations of real property to the City or its agencies, boards and commissions, whether designated for specific purposes or not, will be held in the name of the City.
- 2.4 Donations of real property designated for specific purposes are exempt from the City's property management process.

(3) Accepting and Managing Donations:

- 3.1 Donations of cash designated for specific purposes will only be accepted by the City where Council has authorized the specific purpose or a fundraising campaign, and where the necessary capital or revenue account has been established or a reserve created and the necessary by-law enacted.
- 3.2 Donations of cash designated for specific purposes of a City agency, board or commission will only be accepted where the agency, board or commission has authorized the specific purpose or a fundraising campaign, and where the necessary capital or revenue account has been established or a reserve created and the necessary by-law enacted. Where a cash donation to an agency, board or commission would create a further financial impact, Council approval is required before the donation may be accepted.
- 3.3 Donations designated for specific purposes or for the general purpose of a specific program, including donations of real property and the net proceeds of any property transaction, are to be used by the program for the purpose specified by the donor.
- 3.4 For accountability purposes, donations are to be credited to appropriate accounts of the City or its agencies, boards or commissions, and approved budgets are required to receive and spend the donations, commencing at the time the donations are received. Donations may not be managed informally or held in personal or external accounts or trust funds. This would not apply to independent community fundraising campaigns until such time that campaign contributions are donated to the City or its agencies, boards or commissions.

- 3.5 Where projects or assets of the City or its agencies, boards or commissions are funded in whole or in part by donations, the donated funds for such projects or assets must come directly from an account of the City or agency, board or commission.
 - 3.6 Donations of cash or property to the City or its agencies, boards and commissions, where the purpose is not specified and which are not part of an approved fundraising initiative, are deemed to be undesignated and become contributions to general revenue of the City or assets of the City.
 - 3.7 Where donations are being accumulated for a major project or fundraising campaign, the funds will be held in an appropriate account or reserve until sufficient funds for the proposed project have been obtained. Funds from donations may not be released and the proposed project may not commence until sufficient funds to complete the project have been secured, and spending authority has been obtained. Where appropriate, sunset provisions should be identified at the outset for major projects and fundraising initiatives to provide guidance in the event funding targets are not attained.
 - 3.8 Eligible donations are those that support durable assets; capital facilities or projects; asset improvement, restoration or capital maintenance; or cash for such purposes.
 - 3.9 Proposed donations to the City for operational activities are to be assessed by the Chief Financial Officer for potential operational and financial impacts prior to acceptance of the donation by Council, unless the donation is for a specific operational purpose or fundraising campaign already approved by Council.
 - 3.10 Proposed donations to City agencies, boards and commissions for operational activities are to be assessed for potential operational and financial impacts by appropriate staff prior to acceptance by the agency, board or commission, unless the donation is for a specific operational purpose or fundraising campaign that was previously approved. Where a donation for operational activities would create a further financial impact, Council approval is required before the donation may be accepted.
 - 3.11 Donations that support special purposes to be provided by an organization independent of the City should be directed, where possible, to the intended organization.
- (4) Related Policies:
- 4.1 This policy complements other existing policies of the City that pertain to donations.
 - 4.2 To the extent of any conflict between this policy and any other existing policies of the City that pertain to donations, this policy prevails.

Conclusions:

Voluntary donations to the City, its agencies, and other organizations, can make important contributions to city building. It is equally important that donations occur in a manner that does not call municipal decision making processes into question. Donations should occur at arms length from decision making processes. Voluntary donations should not be sought or accepted if offered concurrent to a planning approval or a procurement process. Donations have the potential to create new obligations and result in operational and financial impacts for the City, and certain approval requirements apply in these circumstances. Donations of real property and donations designated for specific purposes require special policy considerations.

Based on these principles, it is recommended that Council adopt the policy on donations for community benefits as outlined in Figure 1. These principles apply to the City's agencies, boards and commissions, and their Boards are requested to adopt a similar policy. The Bellamy Recommendations Steering Committee will have an opportunity to take the policy on donations for community benefits into account as it reviews the Council Members' Code of Conduct.

List of Attachments:

- Appendix 1 Height/Density Incentives: Section 5.1.1 of the City of Toronto Official Plan
Appendix 2 Site Plan: Excerpts from Section 41 of the Planning Act

Appendix 1

Height/Density Incentives

Section 5.1.1 of the City of Toronto Official Plan

- (1) Zoning by-laws, pursuant to Section 37 of the *Planning Act*, may be enacted to permit more height and/or density than is otherwise permitted by the zoning by-law in return for the provision of community benefits in the form of facilities, services or matters that are set out in the zoning by-law. Development involving increases in height and/or density must constitute good planning and be consistent with the objectives and development policies of this Plan.
- (2) An owner may elect to either develop at the increased density and/or height in return for providing specified community benefits, or 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 community benefits, they will be secured in one or more agreements that are registered on title to the lands.
- (3) Increases in height and/or density are to be measured from the higher of:
 - (a) the maximum height and/or density for the use in the zoning by-law or a prevailing Secondary Plan or a site or area specific policy in this Plan, whichever is the greatest; or

- (b) the maximum height and/or density for the use in the predecessor municipal Official Plan, as a transition measure, where:
 - (i) the new comprehensive City of Toronto Zoning By-law that implements this Plan has not yet been approved; and
 - (ii) all conditions required under the predecessor Plan have been satisfied.
- (4) 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 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 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 the previous policy, 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;
 - (b) to replace rental housing in accordance with Council-adopted guidelines;
 - (c) where a Secondary Plan or site-specific policies in this Plan contain Section 37 provisions that prevail; and
 - (d) as a mechanism to secure facilities, services or matters required to support development.
- (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 *Development Charges Act* 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; and
 - (l) 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, the nature of the development application, any implementation guidelines or plans adopted by Council and the strategic objectives and policies of this Plan. Priority will be given to on-site or local community benefits.
- (8) Section 37 policies may be adopted for defined areas or purposes that include a quantitative relationship between the increases in density and/or height and the community benefits to be provided.
- (9) All zoning by-law provisions enacted pursuant to section 37 and agreements in effect at the time of adoption of the Plan are authorized by this Plan and deemed to comply with this Plan.

Appendix 2

Site Plan

Excerpts from Section 41 of the Planning Act

Establishment of site plan control area:

41 (2) Where in an official plan an area is shown or described as a proposed site plan control area, the council of the local municipality in which the proposed area is situate may, by by-law, designate the whole or any part of such area as a site plan control area. R.S.O. 1990, c. P.13, s. 41 (2).

Designation of site plan control area:

(3) A by-law passed under subsection (2) may designate a site plan control area by reference to one or more land use designations contained in a by-law passed under section 34. R.S.O. 1990, c. P.13, s. 41 (3).

Approval of plans or drawings:

(4) No person shall undertake any development in an area designated under subsection (2) unless the council of the municipality or, where a referral has been made under subsection (12), the Municipal Board has approved one or both, as the council may determine, of the following:

- (1) Plans showing the location of all buildings and structures to be erected and showing the location of all facilities and works to be provided in conjunction therewith and of all facilities and works required under clause (7) (a).
- (2) Drawings showing plan, elevation and cross-section views for each building to be erected, except a building to be used for residential purposes containing less than twenty-five dwelling units, which drawings are sufficient to display:
 - (a) the massing and conceptual design of the proposed building;
 - (b) the relationship of the proposed building to adjacent buildings, streets, and exterior areas to which members of the public have access; and
 - (c) the provision of interior walkways, stairs, elevators and escalators to which members of the public have access from streets, open spaces and interior walkways in adjacent buildings. R.S.O. 1990, c. P.13, s. 41(4); 2002, c. 9, s. 56(1).

Exclusions from site plan control:

(4.1) The colour, texture and type of materials, window detail, construction details, architectural detail and interior design of buildings described in paragraph 2 of subsection (4) are not subject to site plan control. 2002, c. 9, s. 56 (2).

Same:

(4.2) The layout of interior areas of buildings described in paragraph 2 of subsection (4), excluding interior walkways, stairs, elevators and escalators referred to in clause (c) of that paragraph, are not subject to site plan control. 2002, c. 9, s. 56 (2).

Dispute about scope of site plan control:

(4.3) The owner of land or the municipality may apply to the Municipal Board (by means of a notice of motion for directions) to determine a dispute about whether a matter referred to in paragraph 1 or 2 of subsection (4) is subject to site plan control and the Board shall make a final determination that is not subject to further appeal or review. 2002, c. 9, s. 56 (2).

Drawings for residential buildings:

(5) Despite the exception provided in paragraph 2 of subsection (4), the council of the municipality may require the drawings mentioned therein for a building to be used for residential purposes containing less than twenty-five dwelling units if the proposed building is to be located in an area specifically designated in the official plan mentioned in subsection (2) as an area wherein such drawings may be required. R.S.O. 1990, c. P.13, s. 41 (5).

Proviso:

(6) Nothing in this section shall be deemed to confer on the council of the municipality power to limit the height or density of buildings to be erected on the land. R.S.O. 1990, c. P.13, s. 41 (6).

Conditions to approval of plans:

(7) As a condition to the approval of the plans and drawings referred to in subsection (4), a municipality may require the owner of the land to,

- (a) provide to the satisfaction of and at no expense to the municipality any or all of the following:
 - (1) Subject to the provisions of subsections (8) and (9), widenings of highways that abut on the land.
 - (2) Subject to the Public Transportation and Highway Improvement Act, facilities to provide access to and from the land such as access ramps and curbings and traffic direction signs.
 - (3) Off-street vehicular loading and parking facilities, either covered or uncovered, access driveways, including driveways for emergency vehicles, and the surfacing of such areas and driveways.
 - (4) Walkways and walkway ramps, including the surfacing thereof, and all other means of pedestrian access.
 - (5) Facilities for the lighting, including floodlighting, of the land or of any buildings or structures thereon.
 - (6) Walls, fences, hedges, trees, shrubs or other groundcover or facilities for the landscaping of the lands or the protection of adjoining lands.
 - (7) Vaults, central storage and collection areas and other facilities and enclosures for the storage of garbage and other waste material.
 - (8) Easements conveyed to the municipality for the construction, maintenance or improvement of watercourses, ditches, land drainage works, sanitary sewage facilities and other public utilities of the municipality or local board thereof on the land.

- (9) Grading or alteration in elevation or contour of the land and provision for the disposal of storm, surface and waste water from the land and from any buildings or structures thereon;
- (b) maintain to the satisfaction of the municipality and at the sole risk and expense of the owner any or all of the facilities or works mentioned in paragraphs 2, 3, 4, 5, 6, 7, 8 and 9 of clause (a), including the removal of snow from access ramps and driveways, parking and loading areas and walkways;
- (c) enter into one or more agreements with the municipality dealing with and ensuring the provision of any or all of the facilities, works or matters mentioned in clause (a) or (d) and the maintenance thereof as mentioned in clause (b) or with the provision and approval of the plans and drawings referred to in subsection (4);
- (d) subject to subsection (9.1), convey part of the land to the municipality to the satisfaction of and at no expense to the municipality for a public transit right of way. R.S.O. 1990, c. P.13, s. 41 (7); 1996, c. 4, s. 24 (1, 2).

Widening must be described in official plan:

(9) An owner may not be required to provide a highway widening under paragraph 1 of clause (7) (a) or under paragraph 1 of clause (8) (a) unless the highway to be widened is shown on or described in an official plan as a highway to be widened and the extent of the proposed widening is likewise shown or described. R.S.O. 1990, c. P.13, s. 41 (9).

Limitation:

(9.1) An owner of land may not be required to convey land under clause (7) (d) or (8) (c) unless the public transit right of way to be provided is shown on or described in an official plan. 1994, c. 23, s. 24 (3); 1996, c. 4, s. 24 (3).

(A copy of Attachment 2 referred to in the foregoing report was forwarded to all Members of Council with the September 18, 2006, agenda of the Policy and Finance Committee and a copy thereof is also on file in the Office of the City Clerk, City Hall.)