

Extracted from Implementation Guidelines for Section 37 of the *Planning Act* (as adopted by City Council at meeting of November 19-20, 2007) and Protocol for Negotiating Section 37 Community Benefits (as adopted by City Council at meeting of December 11-13, 2007) – City Planning Division, Policy and Research Section

Protocol for Negotiating Section 37 Community Benefits

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

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

Use of Section 37

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

Determination of Appropriate Types of Community Benefits

A general determination of community benefit priorities in an area anticipating potential intensification need not await the receipt by the City of a planning application. It is desirable and encouraged that an analysis and identification of existing and potential needs and services be done in advance of the receipt of any planning application. The purpose of such analysis is to assist in setting the determination of appropriate type(s) of community benefits as set out elsewhere in this protocol.

Such advance determination could be very beneficial to the community, the developer(s) and the City, and is encouraged, with the involvement of the Ward Councillor, City Planning staff, the local community and the relevant service provider(s) or facilitators, (e.g. community support, advocacy and other non-profit service groups, City representatives from Parks, Forestry and Recreation, Transportation Services, Children's Services, Public Art Coordinator, school board staff, etc.). A summary list of potential section 37 community benefits, and where possible estimated values/costs of such benefits, should be produced at the end of the advance determination process.

The determination of appropriate type(s) of community benefits for a specific application will conform to the relevant Official Plan policies in the specific context of the application, and the community benefits must bear a reasonable planning relationship to the increase in the height and/or density of a proposed development including, at a minimum, having an appropriate geographic relationship to the development and addressing planning issues associated with the development. The following additional matters, which are listed in no particular order, may play a role:

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

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

Consultation with Ward Councillor

- i) Ward Councillor will be consulted by City Planning staff prior to any discussions or negotiations regarding Section 37 benefits with the applicant;
- ii) City Planning staff will provide Ward Councillor with the following information as soon as it is available:
 - Advice as to whether Section 37 benefits are appropriate and desirable;
 - Appropriate types of benefits, based on any information previously assembled, as noted above;
 - Advice regarding the implications for community benefits of Official Plan policies and other relevant considerations in the context of the specific application; and

- Calculated range of land values of the density increase(s) (derived from estimates from Facilities and Real Estate Division (FRED) provided to City Planning Division of a range of land values of a basic unit of density).
- iii) Further consultation between City Planning staff and the Ward Councillor may occur as necessary and/or as agreed upon between them.

Community Consultation

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

Other Issues

- i) City Planning staff should coordinate Section 37 negotiations:
 - City Planning staff is responsible for compliance with Official Plan policy and for recommending an appropriate decision on the application, including an appropriate package of Section 37 community benefits where applicable;
 - Where the Ward Councillor independently pursues discussions with an applicant on Section 37 benefits, Community Planning staff handling the application should be consulted prior to such discussions.
- ii) Timing of Section 37 negotiations in relation to discussion of other planning issues:
 - The possibility of pursuing Section 37 negotiations should be raised as early as possible in discussions of an application, based generally on the scale of the project and the increase in height and/or density, or as otherwise set out in the Official Plan policies, without committing in principle or otherwise to any increase in height or density or both;
 - Section 37 discussions need not await resolution of all other issues, and the timing approach on each application may vary; and
 - The appropriate package of Section 37 benefits is a planning issue to be resolved, along with other planning issues associated with a development application.
- iii) Section 37, where relevant, should be identified as a planning issue in preliminary report:

- The preliminary planning report should identify, where possible and if relevant, the use of Section 37 as a planning issue;
- If not identified in the preliminary report, the applicant, Ward Councillor and the community should be made aware of City staff's intention to use Section 37 as soon as possible in the processing of the application.

iv) A summary list of recommended Section 37 community benefits and, where possible, estimated values/costs of such benefits, should be included in the "Financial Impact" section of final planning reports.