

3. SECTION 37 FIVE-YEAR REVIEW

RÉVISION QUINQUENNALE DE L'ARTICLE 37

COMMITTEE RECOMMENDATION

That Council approve the Section 37 Guidelines 2017, attached as Document 1.

RECOMMANDATION DU COMITÉ

Que le Conseil approuve la version de 2017 des lignes directrices l'article 37, constituant le document 1 ci-joint.

DOCUMENTATION / DOCUMENTATION

1. Director's report, Economic Development and Long Range Planning, Planning, Infrastructure and Economic Development Department, dated 24 April 2017 (ACS2017-PIE-EDP-0010)

Rapport du directeur, Développement économique et Planification à long terme, Direction générale de la planification, de l'infrastructure et du développement économique, daté le 24 avril 2017 (ACS2017-PIE-EDP-0010)

2. Extract of draft Minutes, Planning Committee, 9 May 2017

Extrait de l'ébauche du procès-verbal, Comité de l'urbanisme, le 9 mai 2017

**Report to
Rapport au:**

**Planning Committee / Comité de l'urbanisme
May 9, 2017 / 9 mai 2017**

**and Council / et au Conseil
May 24, 2017 / 24 mai 2017**

**Submitted on April 24, 2017
Soumis le 24 avril 2017**

**Submitted by
Soumis par:**

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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2017-PIE-EDP-0010

SUBJECT: Section 37 Five-year Review

OBJET: Révision quinquennale de l'article 37

REPORT RECOMMENDATION

**That Planning Committee recommend Council approve the Section 37 Guidelines
2017, attached as Document 1.**

RECOMMANDATION DU RAPPORT

Que le Comité de l'urbanisme recommande au Conseil d'approuver la version de 2017 des lignes directrices l'article 37, constituant le document 1 ci-joint.

EXECUTIVE SUMMARY

Background

Section 37 in the *Planning Act* is a tool used by municipalities to obtain community benefits in return for increases in height and/or density of development.

The City of Ottawa established Section 37 Guidelines (the Guidelines) in April 2012 and represent the City's approach to using Section 37 of the *Planning Act*. This report responds to Council motions from March and April of 2012, which directed staff to review the implementation of Section 37, to review the best practices of other municipalities and a protocol for circumstances where an application is abutting or straddles two or more ward boundaries. In addition, the motion requested that staff provide a protocol for the role that the affected Ward Councillors and impacted communities would play in determining the community benefit. Based on the review undertaken, modifications are recommended to the Guidelines as discussed in this report.

2017 Section 37 Guidelines

A number of changes are recommended to the 2012 Guidelines based on the review of the current process and consultation with stakeholders. The key changes include:

- The Guidelines have been reformatted into themes, terminology has been simplified and a Definition Section (2.0) has been added;
- The development threshold has been clarified (Guideline 4.1);
- The calculation of gross floor area, draw down factors and issues related to the uplift value have been clarified (Guidelines 5.4, 5.5 and 5.6);
- The timing of collection and use of funds and financial tracking/reporting has been clarified (Guidelines 7.4, 7.5, 7.6, 7.7); and
- Any changes to existing development or agreements have been addressed (Guidelines 8.1, 8.2 and 8.3).

Public Consultation/Input

Community associations, the Federation of Community Associations (FCA), the Greater Ottawa Home Builders' Association (GOHBA), Ward Councillors, developers, consultants and City staff from a variety of departments who all had experience with Section 37 were consulted during the review that included individual interviews to discuss the current process and identify areas for improvements.

A draft of the updated Guidelines was circulated to the participating community groups, FCA, GOHBA, developers and consultants on March 3, 2017 for comment.

RÉSUMÉ

Contexte

L'article 37 de la *Loi sur l'aménagement du territoire* est un outil qu'utilisent les municipalités pour obtenir des avantages communautaires en échange d'accroissements de hauteurs et/ou de densités d'aménagements.

Les lignes directrices de l'article 37 (les lignes directrices) que la Ville d'Ottawa a élaborées en avril 2012, correspondent à son approche dans son recours à l'article 37 de la Loi. Le présent rapport fait suite aux motions de mars et avril 2012 du Conseil, qui enjoignaient le personnel d'étudier la mise en application de l'article 37 et d'effectuer une recherche sur les pratiques exemplaires appliquées par d'autres municipalités ainsi qu'un protocole pour les cas où la mise en œuvre touche ou chevauche deux ou plusieurs limites de quartiers. De plus, cette motion invitait le personnel à fournir un protocole sur le rôle joué par les conseillers concernés et les collectivités touchées dans l'établissement des avantages communautaires. Au regard de l'examen effectué, des modifications sont recommandées aux lignes directrices, comme l'expose le présent rapport.

Lignes directrices de 2017 de l'article 37

Un certain nombre de changements aux lignes directrices de 2012 sont recommandés, compte tenu de l'examen du processus en vigueur et de la consultation menée auprès des parties intéressées. Les principaux changements sont les suivants :

- les lignes directrices ont été restructurées par thèmes, leur terminologie a été simplifiée et une section de définitions (2.0) a été ajoutée;
- le seuil d'aménagement a été clarifié (ligne directrice 4.1);

- le calcul de la surface de plancher hors œuvre brute, les facteurs minorants et les questions liées à la valorisation ont été clarifiés (lignes directrices 5.4, 5.5 et 5.6);
- les échéanciers de collecte et d'utilisation des fonds, de suivi financier et de production de rapports financiers ont été clarifiés (lignes directrices 7.4, 7.5, 7.6 et 7.7);
- tous les changements aux aménagements ou aux ententes en cours ont été pris en compte (lignes directrices 8.1, 8.2 et 8.3).

Consultation publique et commentaires

Des associations communautaires, la Fédération des associations communautaires, la Greater Ottawa Home Builders' Association (GOHBA), des conseillers municipaux, des promoteurs, des consultants et des employés de divers services de la Ville et ayant tous travaillé avec l'article 37 ont été consultés pour cet examen, notamment dans le cadre d'entretiens individuels, afin de discuter du processus actuellement en place et de désigner les domaines à améliorer.

Une version provisoire des lignes directrices mises à jour a été distribuée le 3 mars 2017 aux groupes communautaires participants, à la Fédération des associations communautaires, à la GOHBA, aux promoteurs et aux consultants, aux fins de commentaires.

BACKGROUND

Section 37 in the *Planning Act* is a tool used by municipalities to obtain community benefits in return for increases in height and/or density of development.

The City of Ottawa established Section 37 Guidelines (the Guidelines) in April 2012 and are the City's approach to using Section 37 of the *Act*. Since that time, there have been fifteen development applications subject to Section 37, nine of which have progressed to the stage where Section 37 agreements have been entered into, and five of these have progressed to the stage of development where the community benefits (cash-in-lieu) have been received.

This report recommends modifications and an update to the Guidelines based on a review and assessment of the City's use of Section 37 since 2012. This report responds specifically to Council motions from March and April of 2012, which directed staff to review the implementation of Section 37, to review the best practices of other

municipalities and a protocol for circumstances where an application is abutting or straddles two or more ward boundaries. In addition, the motion requested that staff provide a protocol for the role that the affected Ward Councillors and impacted communities would play in determining the community benefit. This report also responds to the Motion that staff review opportunities, including Section 37, to include traffic calming and management solutions as part of infrastructure planning.

Scope of Review

This review of the Guidelines addresses a number of different elements of the use of Section 37 and the City's process including:

- a detailed review of the Guidelines;
- a review of the current process and opportunities for improvements;
- identifying gaps in the process and ways to fill those gaps;
- a review of the administration and implementation of the community benefits; and
- a review of the best practices in other municipalities.

As the review was focused on the current Guidelines, processes and implementation, consultation was focused to City staff, Ward Councillors, developers and consultants and community associations who all have had experience with the Section 37 process. Document 2 provides the consultation details.

Current process

After the adoption of the Section 37 Guidelines in 2012, Development Review staff have been using the Guidelines as a basis for determining community benefits as part of Zoning By-law amendment applications where Section 37 may apply.

When an application has been received, staff confirm if Section 37 applies and notify the applicant. Staff process the application as per the City's normal requirements and calculate the uplift value for the proposed development. This uplift value is based on the proposed density increase using the Zoning By-law definition of gross floor area and the uplift value rates provided by Real Estate Services.

Once the uplift value is determined, staff review the proposed development with the list of draw down factors contained in the Guidelines. The uplift value is then reduced through a negotiation of the draw down factors to determine the value of the community

benefit to be provided. Based on the use of Section 37 in the past five years, approximately 30 to 40 per cent of the uplift value has been obtained.

Once the value of the community benefit is determined, potential community benefits are identified through collaboration between staff, the applicant, Ward Councillor, other City branches and departments as well as the community.

When the application is presented to Planning Committee, the staff report identifies the value of the community benefits and how these will be implemented. In some cases, the applicant may provide the community benefit. This typically occurs when the community benefit is directly related to the development such as a day care inside the proposed building. However, in most cases cash payment is provided. Details of the community benefit are included in the associated by-laws.

Once the rezoning and Section 37 details are approved, Development Review staff then work with Legal Services to prepare a Section 37 agreement between the Owner and the City, which is executed and registered on title prior to the passing of the by-law. This ensures that if the Owner sells the land, the Section 37 agreement carries forward to any future Owner along with the obligations in the agreement. If a cash payment is provided for the community benefits, the Financial Services branch creates specific accounts for the funds once the funds have been received.

The use of the funds depends on their purpose. If the funds are used for a City project that is ongoing or planned, staff responsible for the project consults with the Financial Services branch, planning staff and the Ward Councillor to confirm the use of the funds. If the funds are to be used for special projects that may not be undertaken by the City, such as building a community garden, the Ward Councillor works with the community group, planning staff and Financial Services to access the funds.

DISCUSSION

The following discussion highlights the key changes to the Guidelines and recommendations for improving the process for Section 37.

DEVELOPMENT THRESHOLD

2012 Guidelines

The 2012 Guidelines established a threshold to determine which Zoning By-law amendment applications would be candidates for negotiating Section 37 benefits. This threshold includes a proposed building of at least 7000 square metres (m²) in size and a

minimum increase of 25 per cent in the height or density over what is permitted in the as-of-right zoning. The 7000 m² was determined to be the approximate size of a mid- or high-rise building and reflects a sufficient building size that has a meaningful potential uplift value leading to community benefits that are proportionate with the time and resources required to negotiate and administer Section 37 agreements. The 25 per cent increase in height or density does not apply to a proposed development that results only in a 25 per cent increase in height as a result of redistributing the as-of-right density in a way that is consistent with the City's design guidelines. The 2012 guideline for the threshold also provides an exception that allows for a Community Design Plan (CDP) or Secondary Plan to determine a specific-area Section 37 threshold that is smaller than the above-noted threshold. This is being carried forward in the updated 2017 Guidelines.

Development threshold

The current threshold set out in the Section 37 Guidelines was raised as an issue with some supporting the current threshold, others recommending it could be lowered and others suggesting that it could be clarified.

Guideline 4.1 of the updated Guidelines clarifies the above-noted threshold by relying solely on the 25 per cent increase in density. The reason for removing the reference to height is that the current practice exempts increases in height over 25 per cent if the density is redistributed in a way that is consistent with the City's guidelines and does not exceed a 25 per cent increase. This means that any development proposals that are not requesting an increase in density above 25 per cent but are increasing the height by at least 25 per cent through a redistribution of the permitted density have not been subject to Section 37. Many Official Plan policies, Secondary Plans and CDPs encourage the redistribution of density for high-rise areas as a means to improve the design of high-rise buildings. As a result, the reference to height in the proposed 2017 Guidelines has been removed as a factor for determining the applicability of Section 37. Additional wording to Guideline 4.1 has been added that also indicates that height increases are subject to Official Plan policies, Secondary Plans and CDPs, in addition to the City's design guidelines.

The 2012 Guidelines also contained an exemption for non-profit housing developments to be exempt from Section 37. This exemption is being carried forward in the updated 2017 Guidelines.

Other municipalities' development thresholds

Staff have reviewed the threshold set out on the City's Section 37 Guidelines in relation to other municipalities. A list of different thresholds that are used by other municipalities for Section 37 is contained in Document 3. All of the municipalities have thresholds that reference an increase to density only, other than the City of Burlington which does not specify a threshold.

No change to the threshold other than the clarification noted above is being recommended. The City's threshold is similar to those used by others and staff are of the view that they continue to represent an appropriate threshold for determining the application of Section 37

CALCULATION OF INCREASE OF DENSITY

As-of-right density

The Zoning By-law provides a definition of gross floor area (GFA) which is used to calculate the as-of-right density on a site. This definition uses the total square metres (m²) of a building and subtracts hallways, elevators and other service elements of a building. When calculating the as-of-right density for a site, this definition is difficult to implement as typically there is no existing building on the site nor are there any building plans to calculate the GFA. To address this issue and provide consistency in the use of the Zoning By-law GFA, the guidelines have been modified to provide direction on how to calculate as-of-right GFA. Guidelines 5.4 and 5.5 provide clear direction on how to calculate the as-of-right zoning and determine the uplift value for a proposed development.

Designated heritage buildings and as-of-right density

Designated heritage buildings that are not also subject to the Heritage Overlay in the Zoning By-law has presented a challenge in determining as of right zoning because calculating the as-of-right density does not take into consideration that the building is a designated heritage building. This results in the as-of-right zoning not having a true representation of what would be permitted for a designated building based on requirements under the *Ontario Heritage Act*. Section 5.5 (c) has been added to provide guidance on how to calculate the uplift value for this situation.

Incremental changes in zoning and as-of-right zoning

Over time, small incremental changes in zoning that result in an increase to the as-of-right density could be made through Minor Variance or Minor Rezoning applications and thus exempt a future proposed development from Section 37. Section 5.3 has been added to the Guidelines to address this issue.

CALCULATION OF THE VALUE OF COMMUNITY BENEFITS

Uplift value rates

Uplift value rates are the dollar per square metre (\$/m²) rates that are provided to the Planning Infrastructure and Economic Development (PIED) department by Realty Services on an annual basis. These rates are based on two geographic zones, which were developed in 2012. The general feedback on these rates was positive as it provides clarity on the anticipated uplift value; however, a gap was identified as these rates have not been consistently updated on an annual basis. Guideline 5.1 has been modified to make it clear that it is PIED's responsibility to request the uplift value rates from Realty Services on an annual basis and ensure that these rates are updated on the City's webpage.

Draw down factors

The draw down factors used to reduce the uplift value based on elements included as part of a proposed development have been updated (Guideline 5.6) and some of the draw down factors have been clarified. Developments are not required to provide everything in the list of draw down factors rather, depending on the development, the number and type of draw down factors can vary. The extent of the drawdown that would apply is an element that is central to the negotiation process for Section 37 applications.

AFFORDABLE HOUSING

Funds for affordable housing is often a popular Section 37 community benefit with some Ward Councillors and community groups; however, there is also a perception that funds for affordable housing are ineffective because of the amount of funds needed for an affordable housing development. Collecting funds for affordable housing is a worthwhile community benefit as the use of these funds are not dictated by a funding partner and as such can be used for a wide variety of affordable housing initiatives.

Use of funds

The management of affordable housing funds and how long the City can hold these funds until they are used was a point that was raised through the review. Guidelines 7.7 and 8.2 provide clarity on both of these issues designating the General Manager of Community and Social Services as the overseer of the funds and that the City is required to allocate received funds within three-years but allows the allocated funds to be held with no specific time restriction.

FINANCIAL DETAILS

The 2012 Guidelines provided little direction on the implementation stage for the use of Section 37 funds in the delivery of projects. Since 2012, the Financial Services branch has kept detailed records and accounts of all Section 37 funds.

Collection of funds

The timing of the collection of funds has been identified was another item requiring clarification. Over the past five years, the Section 37 community benefits have been collected at different stages with no clear direction as to what would be most appropriate both from an administrative and project delivery perspective. Guideline 7.4 provides direction on when community benefits should be collected or provided, depending on the type of community benefit. With cash payments, funds will be required to be paid prior to the issuance of an above-grade building permit or earlier. For community benefits that are part of the development or being constructed off-site, such as improvement to the right-of-way, the delivery of those benefits will be determined on a case-by-case basis and secured through subsequent Site Plan agreements.

Indexing

Section 37 of the *Planning Act* allows for municipalities to index funds. This is a useful tool for municipalities to use as in many cases, a building permit may not be issued for a development until years after the Section 37 agreement is executed and registered on title. Therefore, the funds determined years before are worth more at the time of payment. Guideline 7.5 details the requirements for indexing of funds.

Financial reporting

The *Planning Act* requires the Treasurer to provide an annual report of the statement of the Section 37 funds. This additional requirement was added as part of the Bill 73 *Smart*

Growth for Our Communities Act passed in 2015. Guideline 7.6 has been added that reflects this new requirement.

CHANGE TO EXISTING SECTION 37 AGREEMENTS

The 2012 Section 37 Guidelines provide little direction on the processes after an agreement has been executed and registered on title. Additional guidelines have been clarified or added in Section 8.0 to address this situation.

Change of community benefits

As there may be time delays from when the community benefits are determined to the receipt of the funds, there may be cases where the original community benefit is no longer appropriate. Guideline 8.1 provides guidance and sets out the requirements to modify an existing Section 37 agreement.

Secondary increases to GFA

While this has not been a common occurrence, the review has identified a potential scenario where an existing Section 37 agreement is in place and changes to the design of a building adds additional storeys or a new development application for the site results in a notable increase to the GFA. To address this situation, Guideline 8.3 has been introduced and outlines the process for calculating the additional Section 37 community benefit.

Unspent or unallocated funds

Specific direction has been included in Guideline 8.2 that ensures that the City spend the received funds within a three-year timeframe on the identified community benefit or that community benefit could be changed.

OTHER CHANGES TO THE GUIDELINES

A theme identified through the review was that the 2012 Guidelines are difficult to follow and written similar to Official Plan policies, rather than in plain language. The updated Guidelines have been reformatted into themes and the terminology has been changed to plain language in an effort to make these Guidelines more accessible to everyone involved in the process. A Definition Section (2.0) has also been added to provide clarity on some of the most commonly used terms.

MOTIONS FROM 2012

Applications subject to Section 37 that straddle or are adjacent to ward boundaries

Staff did not find any specific direction in other municipal Section 37 Guidelines which specifically addresses the issue of ward boundaries. The City's practice, when a development application straddles a ward boundary or is adjacent to another ward, is for Development Review staff to circulate both Ward Councillors. Guideline 6.3 has been added that provides guidance in these circumstances.

Role of Ward Councillors and community groups

The role of Ward Councillors and community groups varies depending on a variety of factors including the type development proposal, awareness of Section 37, degree of engagement and the value of Section 37 funds. Section 6.0 of the Guidelines has been added to provide additional guidance on the role of everyone who is involved in the Section 37 process. More discussion on the topic of participation and roles is noted below under Key Issues.

Transportation Committee motion

At the same time as the other motions, Transportation Committee passed a motion directing staff to review opportunities for Section 37 to address traffic calming and management solutions.

Traffic calming and traffic management is a potential community benefit or if proposed as part of a development application, could also be considered a draw down factor. In other cases, traffic management solutions may also be provided as part of the regular development application review process regardless of the applicability of Section 37. For those wards that are experiencing growth through plans of subdivision and other greenfield developments, the Building Better Smarter Suburbs and Infrastructure Standards Review initiatives will address traffic calming and management solutions.

KEY ISSUES IDENTIFIED

Many of the key issues identified by stakeholders who have had experience with the Section 37 process fall outside the scope of the Guidelines but are still an important part of this review. The issues raised are proposed to be addressed through the establishment of a Section 37 Coordinator role utilizing existing staff resources. The following summarizes the issues and highlights how a Section 37 coordinator role would

fill these gaps. Other recommendations to resolve these issues are also included in this section.

Knowledge of Section 37 and its use

The general knowledge and awareness of Section 37 was raised as an issue with everyone involved in the process. Some are very aware of Section 37, what the funds can be used for, when it applies and availability of the funds for use, while others were not as aware. New Councillors at the beginning of their term of Council may not be aware of Section 37 or that there are existing funds in designated accounts for their wards. In addition, as members of community groups change, there may also not be the knowledge of Section 37. City staff who have not dealt with Section 37 may also not be aware of the process and procedures.

Existing list of potential community benefits

Since the inception of the Section 37 Guidelines, some lists of potential community benefits have been developed by community groups either through working with their Ward Councillor, during a CDP or Secondary Planning process or in 2012 when the Guidelines were developed. Other community groups have not determined a list or if they have a list, sometimes suggest community benefits outside of an existing list. In other cases, the developer or Ward Councillor may wish to identify other potential community benefits for discussion. All of these scenarios are acceptable approaches to determining Section 37 community benefits; however, they can result in delays in the development review process if it takes time to determine community benefits for a specific application.

Additionally, Section 37 can only apply to capital facilities (Guideline 3.3), must have a planning relationship to the proposed development (Guideline 3.1) and are over and above what is typically required in the development review process. These community benefit lists need to meet this requirement; however, the knowledge of these details varies.

Point of contact and resource for status updates, notification of projects

Many stakeholders highlighted the need for regular status updates on Section 37 account balances, when funds have been received, notifications when Section 37 projects are starting or have been completed as well as a resource person for general Section 37 questions. A need was also identified for a web page dedicated to the

Section 37 process that explains what Section 37 is and possibly where the above requested information could be provided.

Other municipalities have created web pages with easy to read infographics as well as brochures that can be downloaded that clearly explain what Section 37 is, how it is used and what it can be used for. These types of resources can be used by all who are involved in the process to help facilitate the Section 37 process.

SECTION 37 COORDINATOR ROLE

As a result of some of the issues and gaps highlighted through the review, the department will be designating a Section 37 Coordinator role in PIED to help with the Section 37 process. This co-ordinator role would help to fill the identified gaps in the Section 37 process such as:

- Liaise with Councillors at the beginning of each Term of Council to determine a community consultation approach to determining ward lists for desired community benefits (primarily with urban Councillors)
- Provide Councillors at the new Term of Council with a Section 37 training session
- Point of contact for all existing Section 37 agreements to:
 - Councillors;
 - Community associations;
 - City staff;
 - Members of the public; and
 - Developers.
- Provide status updates to Councillors and Community Associations on Section 37 funds received, timing or completion of projects;
- Coordinate with Finance to provide account balances to department heads at budget time;
- Coordinate with Finance to advise City departments when S.37 funds have been received;

- Develop procedures and assist with the coordination for the use of funds - such as community gardens and the construction of parks; and
- Oversee the development of a Section 37 web page and educational materials (infographics, brochures).

Based on the previous five years, the City is averaging two Section 37 by-laws, two agreements signed and registered and two community benefit projects undertaken per year. Staff have reviewed these results and anticipate that the Section 37 coordinator role would result in approximately a 15 - 20 per cent workload requirement for a coordinator, based on a regular full-time staffing resource.

This coordinator role has been added to Section 6.0 in the Guidelines along with a more comprehensive explanation of the different roles in the Section 37 process.

Provincial Policy Statement

The update to the Section 37 Guidelines deals with internal city processes that are outside the scope of the directions set out in the Provincial Policy Statement, 2014.

RURAL IMPLICATIONS

There are no rural implications associated with this report.

CONSULTATION

Consultation details are contained in Document 2.

COMMENTS BY THE WARD COUNCILLORS

This is a City-wide report - not applicable.

LEGAL IMPLICATIONS

There are no legal impediments to the adoption of the recommendation in this report. As noted in this report and the proposed revised guidelines, when community benefits are obtained under the *Planning Act*, Section 37, the relevant provisions in respect of such community benefits must be within a zoning by-law amendment. As such, they are subject to appeal to the Ontario Municipal Board.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

FINANCIAL IMPLICATIONS

The 2017 Section 37 Guidelines outline appropriate financial processes and controls.

The Section 37 Coordinator role will be accommodated from within existing PIED resources.

ACCESSIBILITY IMPACTS

There are no accessibility impacts associated with this report.

TERM OF COUNCIL PRIORITIES

This project addresses the following Term of Council Priorities:

Governance, Planning and Decision-Making

- GP1 – Strengthen public engagement
- GP2 – Advance management oversight through tools and processes that support accountability and transparency

Financial Sustainability

- FS1 – Demonstrate sound financial management

SUPPORTING DOCUMENTATION

Document 1 The 2017 Section 37 Guidelines

Document 2 Consultation Details

Document 3 Municipal thresholds for Section 37

DISPOSITION

Staff in the Planning, Infrastructure and Economic Development Department will apply the Section 37 Guidelines 2017 as of May 24, 2017 to any new applications received by the City thereafter.

**PLANNING COMMITTEE
REPORT 44A
24 MAY 2017**

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**COMITÉ DE L'URBANISME
RAPPORT 44A
LE 24 MAI 2017**

Document 1 – Section 37 Guidelines 2017

SECTION 37 GUIDELINES 2017

CITY OF OTTAWA

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Section 1.0 Introduction

Section 37 of the *Planning Act* allows a municipality, with appropriate Official Plan policies, to pass Zoning By-laws permitting increases in the height and/or density above what is in the existing zoning, in return for the provision of community benefits.

These Guidelines are intended to assist in the implementation of the policies of the Official Plan contained in Section 5.2.1 (11) Increase in Height and Density By-law. Community benefits obtained through height and density increases are secured pursuant to Section 37 of the *Planning Act*.

The Guidelines must be read in conjunction with the policies of the Official Plan. If any conflicts arise between Official Plan provisions and these Guidelines, the Official Plan provisions will prevail. Over time and as Official Plan policies are amended or changes to the *Planning Act* occur, these Guidelines may need to be updated, which can be done through City Council adoption of a report or through Council Direction.

The Guidelines outline key steps to help ensure that the implementation of Section 37 is consistent, regardless of the type of community benefit that is secured. Collaboration amongst participants will ensure a transparent and fair process.

Section 2.0 Definitions

The following definitions are to be used for the purposes of these guidelines.

As-of-right zoning means the existing zoning on a property at the time a development application is deemed complete or the zoning on a property on March 28, 2012 as per Guideline 5.1.

Cash contributions or cash payments means money provided to the City that are used toward specific facilities or amenities in-lieu of the Owner constructing or providing those specific facilities or amenities.

Gross Floor Area (GFA) means the definition of Gross Floor Area from Zoning By-law 2008-250, as amended.

Incremental changes in zoning means any changes to the zoning on a property after March 28, 2012 through a privately-initiated Zoning By-law amendment or Minor Variance application, which resulted in an increase to the permitted density on a site.

Non-designated Cultural Heritage Resource means a cultural heritage resource that is not designated under the *Ontario Heritage Act* but that may be listed on the City's

Heritage Register or identified by another level of government as having cultural heritage value.

Non-Profit Housing means housing which is or is intended to be offered primarily to persons or families of low income on a leasehold or co-operative basis and which is owned or operated by:

- a. A non-profit corporation being a corporation, no part of the income of which is payable to or otherwise available for the personal benefit of a member or shareholder thereof; or
- b. A non-profit housing co-operative having the same meaning as in the *Cooperative Corporations Act*.”

Owner means the registered owner of the property or a representative (applicant or developer) of the registered owner of the property.

Secondary increase to GFA means where an existing Section 37 by-law and agreement apply and there is a change to the proposed building resulting in either additional storeys within the permitted height or a new development application that results in an increase to the number of storeys or the GFA of the proposed building.

Secondary decrease to GFA means where an existing Section 37 by-law and agreement apply and there is a change to the proposed building resulting in either a reduction to the number of storeys within the permitted height or a new development application that results in a reduction to the number of storeys or GFA of the proposed building.

Section 3.0 What is Section 37 and what can it be used for

Section 37 community benefits vary from project to project as outlined in this section. Community benefits however, must be over and above what would otherwise be required as part of the City's standard development application review process, parkland dedication requirements, budgeting process and Development Charges By-law. Further, the community benefits must be set out in a by-law and secured through a legal agreement between the Owner and the City that is registered on title.

Section 37 community benefits are not in-kind donations or contributions and the City will not provide recognition in the form of plaques or other means and will not provide naming rights for any benefit provided.

3.1 Planning relationship

There should be a reasonable planning relationship between the secured community benefit(s) and the proposed development. An increase to density can result in a higher number of people in a community, which can place higher demands on community facilities and amenities. The priority for community benefits is in the local area or where the benefit has an appropriate geographic relationship to the site, such as within the catchment area of a facility or amenity in the local community.

3.2 Community benefits

The Official Plan provides a list of Section 37 community benefits; however, this list is not exhaustive. There are other ways to determine community benefits including through a planning study or consultation specific to Section 37. In some cases, there may be an existing list of community benefits that was developed through a Community Design Plan (CDP) or Secondary Plan process. The Ward Councillor, Owner, community groups and area residents can participate in determining potential community benefits. Section 6 provides additional information.

3.3 Qualifications for Section 37 contributions

Section 37 cash contributions toward capital facilities are over and above the facility costs that are funded through development charges or parkland dedication requirements. Section 37 community benefits in the form of cash contributions may be secured toward facilities (or portions thereof) that cannot be or are not funded by the Development Charges By-law. The facilities should be specific capital facilities, not general or indeterminate facilities. The cash contribution must also be separate from the parkland dedication requirements under Section 42 of the *Planning Act*. Operating, programming or non-capital maintenance costs are not appropriate Section 37 community benefits. On occasion, cash contributions may be made towards special accounts already established by Council, which are intended to be used for capital facilities in the broader community.

3.4 Land use planning

The proposed development must represent good land use planning principles. An Owner should not expect inappropriate increases of height and density in return for community benefits. The City should not approve development applications simply to obtain community benefits. Decisions on development applications must respect good planning principles, conform to applicable Official Plan policies, Community Design Plan

provisions and Design Guidelines. Good architecture and urban design are required for all development applications and are not considered eligible Section 37 benefits.

3.5 Section 37 and cultural heritage resources

Section 37 benefits may be used to protect, restore, commemorate or interpret cultural heritage resources such as:

- a. Where there is an identified cultural heritage resource on the subject site, funds may be used to protect, restore, commemorate or interpret the cultural heritage resources.
- b. Where there is no identified cultural heritage resource on the subject site but one or more exist in proximity to the site, funds may be used to fund the conservation of the heritage resource under the direction of the Heritage Services Section or contribute to a heritage grant fund to assist with the future conservation of those resources.
- c. Where the subject site is located in a Heritage Conservation District, funds may be used to interpret the heritage attributes of the district such as interpretive plaques, street signs or streetscape improvements.

Funds for cultural heritage resources will be used in accordance with the *Ontario Heritage Act*, Council-approved heritage policies of the Official Plan, Arts and Heritage Plan and Standards and the Guidelines for the Conservation of Historic Places in Canada.

Section 4.0 When does Section 37 apply

Not all development applications will be subject to Section 37. The City has developed a threshold to determine which development applications will be subject to Section 37.

4.1 Section 37 applies to development applications on a city-wide basis, which meets the following development threshold:

- a. a proposed building of at least 7,000 m²; and
- b. where the requested density represents a minimum 25 per cent increase from the permitted as-of-right zoning.

This threshold avoids proposed building designs that increase the height by redistributing the as-of-right density in a way that is consistent with the City's Official

Plan policies, and any applicable Secondary Plan, CDP and design guidelines.

4.2 Specific exceptions for the applicability of Section 37:

Notwithstanding the above noted threshold, the following are specific exceptions to Section 37:

- a. Section 37 may be applied differently from these guidelines where there are specific policies in a Community Design Plan or Secondary Plan, which direct the use of Section 37 for different sizes of buildings, different increases in the height or density, or provides specific direction on any of the elements of Section 37.
- b. Section 37 does not apply where non-profit corporations or non-profit housing cooperatives are involved in the development of non-profit housing. If any part of the non-profit corporation's or non-profit housing cooperative's proposed development includes a for-profit component, that portion of the development may be subject to Section 37.

Section 5.0 How is Section 37 applied

Determining the value of Section 37 is one of the most important parts of the Section 37 process. When determining the value of the Section 37 contribution, a standardized approach that is a rigid, value-based formula may constitute an illegal tax and so the determination must be done on a case-by-case basis. This section provides information on how to calculate the uplift value and which draw down factors to use to help determine the value of the Section 37 contribution.

5.1 Uplift value rate

The City will establish the rate for calculating the uplift value, expressed as \$/m², on an annual basis. To ensure an orderly and consistent approach to the calculation of the uplift value, the Realty Services branch will provide the Planning, Infrastructure and Economic Development department an annual uplift value rate based on two geographic zones, as shown in Figure 1. These two zones represent the areas of the city where development applications subject to Section 37 are most likely to occur.

This annual value is expressed in dollars per square metre and will be updated on the City's website on an annual basis by the Planning, Infrastructure and Economic Development department.

5.2 Individual appraisals

For areas outside of the two geographic zones, an individual appraisal will be undertaken by the Realty Services branch and provided to the Planning, Infrastructure and Economic Development department. If the Owner disagrees with the uplift value based on the above, an agreed upon Terms of Reference will be established between the City and the Owner, and the City will hire a Land Evaluator to undertake an individual land appraisal at the Owner's expense.

5.3 As-of-right zoning and incremental changes in zoning

Definitions for as-of-right zoning and incremental changes in zoning are included in these guidelines to ensure that incremental changes in zoning over time that increase the permitted density on a site do not eliminate a proposed development from the application of Section 37. March 28, 2012 was the date that Council passed the first version of the Section 37 Guidelines and this date is used for the purposes of determining incremental changes in zoning. If any incremental changes in zoning have occurred through a privately-initiated *Planning Act* application after March 28, 2012, the zoning prior to these incremental changes will apply for the purposes of calculating the uplift value for a proposed building in Guideline 5.5.

5.4 Calculation of Gross Floor Area (GFA)

To ensure the most transparent and fair process possible when determining the uplift value between the as-of-right zoning and the proposed zoning, the City uses the definition of GFA found in the Zoning By-law. This definition reduces the GFA by subtracting hallways, elevators and other service areas of a building. If the definition of GFA is amended in the Zoning By-law, these guidelines will need to also be amended.

5.5 Calculating the uplift value

The uplift value is determined by multiplying the uplift value rate by the increase of the GFA between the as-of-right zoning and the proposed zoning, using the following applicable criteria:

- a. To calculate the as-of-right GFA, the same reduction that is used for the proposed building will be used to calculate the GFA for the as-of-right zoning. In addition, if the as-of-right zoning regulates the height of a building by metres only, the same floor to ceiling height of the proposed building will be used to calculate the number of storeys for the as-of-right zoning.

For example, if a proposed building's GFA is reduced by 17% based on the GFA exclusions in the Zoning By-law, the as-of-right zoning will use the same 17% reduction in the calculation of GFA. If the proposed building has an average 2.7 metre floor to ceiling height, the as-of-right zoning will use the same floor to ceiling height calculation to determine the number of storeys.

In the rare circumstance where the details of a proposed building are not provided by the applicant, the example listed above will be used to calculate as-of-right GFA.

- b. To determine the increase in GFA for the value uplift on a property that is designated under Part IV of the *Ontario Heritage Act* but does not have a Heritage Overlay, the calculation of the GFA will be based on the as-of-right zoning for the site including the building restrictions found in Heritage Overlay, Section 60(3)(a) to (c) in Zoning By-law 2008-250.
- c. The calculation of the uplift value will be completed after an application is deemed complete. If a decision on the development application is not made until the following calendar year, the uplift value rate that was used in the year when the application was deemed complete will apply. If the application has been on hold for more than one year, when the application is reactivated, the uplift value rate for that year will apply.

5.6 Draw down factors

The value of Section 37 is determined based on the uplift value as calculated above and then drawn down by the following factors, on a case-by-case basis:

- a. Conformity of the proposed zoning to the applicable policies of the Official Plan, Secondary Plan or CDP, which is not reflected in the as-of-right zoning.
- b. Restoration of a designated cultural heritage resource.
- c. Preservation or restoration of a non-designated cultural heritage resource.
- d. Publicly accessible lands with public easements granted to the City such as:
 - i. internal pathways that connect the site to an existing pedestrian or cycling network that are not already required by a CDP or Secondary Plan; and
 - ii. plaza spaces that are not already required by a CDP or Secondary Plan and that are adjacent to the public realm.

- e. The construction of a park not already listed in the Development Charges by-law.
- f. Implementation of public realm improvements above and beyond what is normally required through the development application review process.
- g. Implementation of publicly accessible benefits incorporated in the proposed development such as daycare space or public art.

Many of these draw down factors may be required to be secured through a Site Plan Control agreement or other mechanism.

5.7 Committee of Adjustment

When reviewing an application for a Minor Variance, staff will advise the Committee of Adjustment of the applicability of Section 37. A Section 37 benefit can only be obtained through the enactment of a by-law, which is not typically done through a Minor Variance application. If a Section 37 opportunity exists, the Planning, Infrastructure and Economic Development department will provide an objection to the Committee of Adjustment and advise that the application should not be a Minor Variance but rather a Zoning By-law amendment application.

Section 6.0 Who is involved in Section 37 and when

There are a number of different participants in the Section 37 process. Collaboration amongst participants will ensure a transparent and fair process.

The Section 37 Coordinator is part of the Planning, Infrastructure and Economic Development department. The Coordinator's primary responsibilities are to track Section 37 agreements, provide assistance to the Corporate Services department in the financial tracking of agreements, provide status updates on Section 37 projects, assist with the coordination of Section 37 projects, ensure the uplift value rate is updated annually, and is the main point of contact for other City departments, Ward Councillors and Community Associations.

Development Review staff take the lead during the development application review process to facilitate the Section 37 negotiations with the Owner and consult with the Ward Councillor throughout the process. Development Review staff may also consult with other Departments on potential community benefits.

At different stages in the Section 37 process, the public may also be involved, such as at the beginning of the Term of Council or during a CDP process when a list of possible

community benefits to be secured through Section 37 list is being developed for their community, and during the development application review process when potential community benefits are being confirmed. Community groups will also receive updates from the Section 37 Coordinator when funds are received and projects are completed.

Towards the end of the process other City departments will be involved to help implement the community benefit.

6.1 Section 37 consultation

The Central wards are most likely to deal with development applications that will be subject to Section 37. To avoid undue delays in the development application review process, it is preferred that a Section 37 list of potential benefits for the Central wards is completed in advance of any development application. These lists can then be provided as a resource to the Development Review staff as well as applicants during the pre-application consultation stage so that there may be an opportunity to provide requested community benefits when a development application is made.

Councillors in these wards are encouraged to contact the Section 37 Coordinator to determine a process to identify potential Section 37 benefits for the Term of Council. If a Ward Councillor chooses not to lead the community consultation, the Coordinator can assume this responsibility.

6.2 Involvement of other City Departments

Staff in other departments may be required to assist in estimating the cost or value of community benefits. Staff in other departments may also be required to help implement the benefit and assist in estimating the cost or value of ongoing operations and maintenance.

6.3 Ward Boundaries

Along with the circulation requirements of a development application, when such an application straddles a ward boundary, is adjacent to or in close proximity of a ward boundary, Development Review staff will inform any affected Ward Councillors of the applicability of Section 37 and ensure that both Ward Councillors are involved in the process.

Section 7.0 How is Section 37 applied and implemented

The type of community benefit, timing of payment or contribution, oversight of any cash payments and financial requirements must be clearly set out in the by-law and legal agreement, which is registered on title. Reporting on the Section 37 funds by the City will be done in accordance with the requirements of the *Planning Act*.

7.1 Reports to Planning Committee

Reports to Planning Committee involving Section 37 will contain a summary of the community benefits, the estimated cost or value of each community benefit and the timing of their provision, including the payment timing for cash payments and where possible, the anticipated timing of the use of the funds.

7.2 Community benefits set out in the Zoning By-law

Section 37 is implemented through a site-specific Zoning By-law amendment. Such a by-law will include a section that requires the Owner to enter into an agreement under Section 37 to secure the facilities, services and matters outlined in the by-law.

7.3 Timing of execution of Section 37 agreement

The Section 37 agreement will be executed prior to the passing of the by-law that implements the Zoning By-law amendment. Development Review staff will advise Legal Services that a Section 37 agreement is required and request that the agreement be drafted for signing prior to the passing of the by-law.

7.4 Timing of the Provision of the Benefit

Regardless of the circumstances, the timing of the cash payment or provision of the community benefit will be clearly outlined in the Section 37 agreement and:

- a. Cash payments will be required no later than at the time of issuance of an above-grade building permit. If the cash payment is for part of a community benefit that has a set schedule for completion, then this schedule may be used as a basis for negotiation for the timing of payment earlier than an above-grade building permit.
- b. If the community benefit is being provided on-site as part of the development, such as day care space the timing may be determined on the basis of the development's construction schedule and clearly stated in the Section 37 agreement. Further details and securities for this type of community benefit will be secured through the Site Plan agreement.

- c. If the community benefit is off-site and constructed by the Owner, such as improvements on City-owned lands or rights-of-ways, the timing may be determined based on both the development's construction schedule and the City's timelines and clearly stated in the Section 37 agreement. Further details and securities for this type of community benefit will be secured through the Site Plan agreement.

7.5 Indexing of funds

Where cash payments are secured through a Section 37 agreement, the funds will be indexed using the Statistics Canada Construction Price Index for Ottawa that applies to the type of community benefit being secured (residential or non-residential) and will be outlined in the Section 37 agreement. This indexing will be calculated from the time the agreement was executed to the time the cash payment is due.

7.6 Financial reporting and tracking requirements

The use, tracking and reporting of all funds will be done by the Corporate Services department, with support by the Planning, Infrastructure and Economic Development department and any other department involved in the use of the funds. All financial reporting requirements of the *Planning Act* will be included in the the annual Treasurer's Report on Growth-Related Revenues.

7.7 Affordable Housing

Any cash payments towards an affordable housing project will be clearly stated in the Section 37 agreement and the timing of the use of the funds will help to determine the timing of the cash payment. If there is no specific timing for the use of the funds, the latest a cash payment will be required is prior to the issuance of an above-grade building permit. The use of any cash payments towards affordable housing will be under the discretion of the General Manager of Community and Social Services.

Section 8.0 How can an existing agreement be changed?

From time to time, it may be appropriate to modify existing Section 37 agreements. In most circumstances, the community benefit or cash payment is required prior to the issuance of an above-grade building permit. Since some developments may not be built for years after a Section 37 by-law is passed and the legal agreement is executed, it may be necessary to modify the community benefit for a variety of reasons.

8.1 Changes to previously secured community benefits

Any changes to an existing Section 37 agreement, such as to reallocate funds or modify the community benefit must be open with agreement from the Ward Councillor.

Modifications to the community benefit may be redirected to a different community benefit without requiring an amendment to the site specific by-law, provided that:

- a. a clause to this effect is included in the original by-law and the Section 37 agreement;
- b. the funds are redirected to a purpose that represents a reasonable planning relationship to the original development application; and
- c. concurrence is received by the Ward Councillor.

The City and all parties to the agreement or their successors on title, must approve the change and execute an amending agreement.

8.2 Unspent or Unallocated Funds

Any changes to an existing Section 37 agreement, such as to reallocate funds or modify the community benefit must be open with agreement from the Ward Councillor. If there are unspent or unallocated funds from a cash payment for a period of three-years after the receipt of the funds, the funds may be redirected to a different community benefit without requiring an amendment to the site specific by-law, provided that:

- a. a clause to this effect is included in the original by-law and the Section 37 agreement;
- b. the funds are redirected to a purpose that represents a reasonable planning relationship to the original development application; and
- c. concurrence is received by the Ward Councillor.

Notwithstanding the above, cash payments towards affordable housing are likely to be held for a number of years in order to accumulate enough funds to be used as effectively as possible. As a result, funds may be allocated but not spent within the above noted three-year timeframe. Affordable housing funds will only be reallocated if recommended by General Manager of Community and Social Services and the above-noted requirements are satisfied.

The City and all parties to the agreement or their successors on title, must approve the change and execute an amending agreement.

8.3 Secondary increase in GFA

Secondary increases in GFA is defined in Section 2.0 of these guidelines. Secondary increases in GFA:

- a) do not need to meet the thresholds identified in Section 4.0 because the original application requested an increase in GFA that met the requirements of Section 37;
- b) will be calculated using the current annual uplift value rate determined for that year of the proposed GFA increase;
- c) will require an amendment to the original agreement to reflect the additional Section 37 benefit or a new agreement;
- d) will require an amendment to the original by-law; and
- e) concurrence is received by the Ward Councillor.

The City and all parties to the agreement or their successors on title, must approve the change and execute an amending agreement.

8.4 Secondary decrease in GFA

Secondary decreases in GFA is defined in Section 2.0 of these guidelines. Secondary decreases in GFA will need to be re-evaluated to determine if the development threshold for Section 37 is met.

If it is determined that the Section 37 development threshold is still met but the density is less than the previously proposed density at the time of Zoning By-law amendment approval:

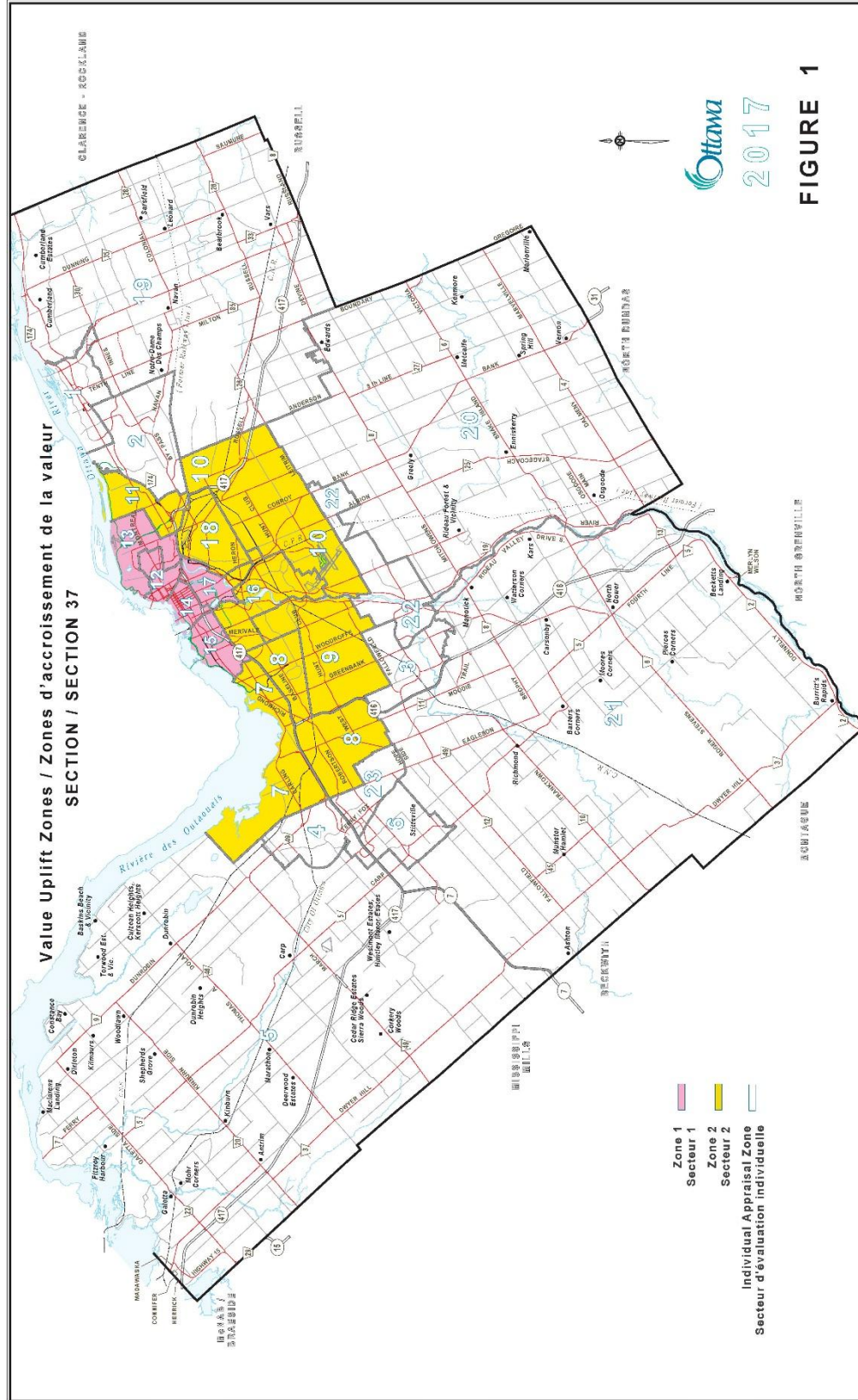
- a) the original agreement will remain in effect, unless the zoning is amended reducing the density on the site;
- a) a new uplift value will be calculated using the current annual uplift value rate determined for that year for the proposed GFA;
- b) an amendment will be made to the original agreement to reflect the reduced Section 37 benefit;

- c) an amendment to the original Section 37 by-law may be required; and
- d) concurrence is received by the Ward Councillor.

If it is determined that the Section 37 development threshold is not met:

- e) the original agreement will remain in effect, unless the zoning is amended reducing the density on the site;
- f) an amendment to the original agreement will be made to indicate that the reduced density is not subject to a Section 37 benefit;
- g) an amendment to the original Section 37 by-law may be required; and
- h) concurrence is received by the Ward Councillor.

In either case, the City and all parties to the agreement or their successors on title, must approve the changes and execute an amending agreement.



Document 2 – Consultation Details

Community associations, the Federation of Community Associations (FCA), the Greater Ottawa Home Builders Association (GOHBA), Ward Councillors, developers, consultants and City staff from a variety of departments who all had experience with Section 37 were consulted during the review and included individual interviews to discuss the current process and identify areas for improvements.

A draft of the updated Guidelines was circulated to the participating community groups, FCA, GOHBA, developers and consultants on March 3, 2017 for comment. The following summarizes, in no particular order, comments and questions received:

Development Threshold

Comment: Why is the development threshold not proposed to be changed? The development threshold should be lowered to include more development applications.

Response:

The Guidelines apply on a city-wide basis. Modifying the threshold could impact different areas of the city in different ways. As noted in the report, the development of the threshold in 2012 was determined based on a meaningful potential community benefit proportional to time and resources directed at negotiating and fulfilling the agreement requirements of Section 37. A fulsome review of the threshold could be undertaken in the future; however, staff determined early on in the process that the threshold is one of the most contentious and debated issues around the use of Section 37. As a result, any future review of the threshold should be completed independent of a comprehensive review of the guidelines and would take a significant period of time to determine the implications of lowering the threshold on a city-wide basis.

For purposes of this review, staff have concluded that the threshold continues to represent an appropriate threshold for determining the application of Section 37

Draw Down Factors

The draw down factors should include LEED certified developments and other types of sustainable or environmentally friendly construction or design techniques.

Response:

With the emphasis on more environmentally sustainable design and future anticipated changes to the *Ontario Building Code* (OBC) that may require more sustainable

construction elements, staff are of the opinion that sustainable measures such as LEED certification should not qualify as a draw down factor for Section 37.

GOHBA Comments:

Minimum Threshold:

GOHBA does not agree with leaving uncertainty with the minimum threshold for Section 37 uplift. As written, the minimum threshold “generally” targets high-rise projects. We believe more clarity is required to avoid inconsistency and political pressures on a case-by-case basis. The City of Ottawa should support low-rise and mid-rise projects to help housing affordability and they should be exempt from Section 37 fees. Section 37 should be implemented solely for high-rise buildings.

Response:

The 2012 Guidelines did not restrict Section 37 to only high-rise buildings but rather a proposed building of at least 7000 m² along with a 25 per cent increase in height/density. To add additional wording that would restrict the application of Section 37 to high-rise buildings only would be a modification of the development threshold as it has been used since 2012. As noted above, modifying the threshold could impact different areas of the city in different ways. The development of the threshold in 2012 was determined based on a meaningful potential community benefit proportional to time and resources directed at negotiating and fulfilling the agreement requirements of Section 37 and not in relation to the type of building that is proposed.

Draw Down Factors:

We would like a clear, consistent and pre-established list of draw down factors. As presented, the City of Ottawa is exposing itself to criticism as there are no benefits for housing that is affordable or social benefits for the community, such as a grocery store. As such, if a high-rise project incorporates affordable dwelling units, it should be supported by the City of Ottawa as a form of affordable housing and there should be Section 37 draw downs. We believe that Section 37 draw down factors should be transparent and open to all parties.

Response:

When affordable housing or multi-bedroom units are proposed as part of a development subject to Section 37, these units would be part of the Section 37 contribution and secured through the Section 37 agreement between the City and the Owner, rather than

as a draw down factor. Staff are of the opinion that securing this type of community benefit through the Section 37 agreement is more appropriate as it is a clear and transparent way to ensure that the units will be provided. If the City were to use these units as draw down factors, then a holding zone would be required to ensure that these units are secured through a future Site Plan agreement. The City has been flexible in the Section 37 agreements by providing options to the Owner for alternate community benefits if, at the time of construction it is determined that multi-bedroom units are not marketable or if an affordable housing provider is not willing to take ownership of the affordable units.

While certain commercial elements such as grocery store may be needed elements for a neighbourhood, they are not applicable draw down factors under the lens of Section 37. Uses such as grocery stores may be considered a community benefit in certain neighbourhoods and under specific circumstances, which could be secured through a Section 37 agreement. Similar to housing, this type of community benefit would require alternate options in an agreement, if, at the time of construction it is determined that a grocery store is not feasible.

Inclusionary Zoning:

As we are entering a period when Inclusionary Zoning will be a topic of much debate, we feel that Section 37 should be considered as a tool to support affordable housing. Our industry will not support any proposal that is requesting Section 37 fees and Inclusionary Zoning fees on the same project. We would like clarity on the Section 37 by-law as it relates to Inclusionary Zoning.

Response:

During this review, staff considered the upcoming Inclusionary Zoning issue. As the regulations have not yet been released by the Province, it is difficult to determine how municipalities will be required to implement Inclusionary Zoning. Staff estimate that once the regulations are released, implementing Inclusionary Zoning will take a significant amount of time. Staff also acknowledge that there is a direct community benefit with Inclusionary Zoning, and its affects on the use of Section 37 for affordable housing will be considered during the review of the Inclusionary Zoning regulations. If at that time, modifications to the Section 37 Guidelines are warranted, staff will ensure that all stakeholders are consulted before changes are made.

Non-designated Cultural Heritage Resource:

What is this and how is this a draw down factor? Please add clarity in the definition section.

Response:

A definition has been added to the guidelines which states:

Non-designated Cultural Heritage Resource means a cultural heritage resource that is not designated under the *Ontario Heritage Act* but that may be listed on the City's Heritage Register or identified by another level of government as having cultural heritage value.

If a proposed development includes the restoration or preservation of a non-designated cultural heritage resource based on the definition above, it would be considered a draw down factor.

Consultation:

All potential Section 37 benefits for the ward should be presented to the applicant at the pre-consultation. If the Section 37 negotiation begins after the application is deemed complete, there is no way possible for the community benefits to be included in the first submission. To expedite the approval process, we request that any related information must be provided to the applicant at the pre-consultation stage.

Response:

Additional wording has been added in Section 6.0 of the Guidelines that encourages community benefit ward lists to be provided to Development Review staff and the applicant at the pre-application consultation stage to avoid delays in the development application review process.

With the designation of a Section 37 Coordinator role, the management of community benefit ward lists and ensuring regular communication between Ward Councillors, community associations, staff and applicants is expected to improve.

Accountability of Funds:

The revised guidelines specify that if there are unspent or unallocated funds from a cash payment for a period of three years after the receipt of the funds, the funds may be redirected to a different community benefit without requiring an amendment to the site

specific by-law. Several members have expressed this issue with development agreements and we feel that the City of Ottawa needs more accountability for the Section 37 funds. Demanding an uplift in the form of a cash payment is a serious hardship for the applicant to absorb and it is not reasonable for the City not to use these funds for the benefits they are supposed to support. GOHBA strongly believes that if the funds are not properly allocated and used as per the legal agreement, the funds should be returned to the applicant due to negligence.

Response:

The purpose of adding Guideline 8.2 was to address the past Section 37 agreements where cash payments are required over a series of stages such as before a building permit is issued, six months after a building permits is issued, two-years after a building permit is issued or at the time of occupancy permit of the building. In some cases, these payments being made towards the same community benefit (such as affordable housing or large infrastructure projects) but at different times. As a result, there may be a significant time lags between the receipt of cash payments by one Owner and then by another Owner. The guideline provides the flexibility after three-years if there are delays in cash payments or if the project has been modified in some way then the payment could be put towards a different community benefit. In any scenario where cash payments are proposed to be modified agreement amongst all parties, including the Owner, must occur to amend the Section 37 agreement prior to any changes taking place.

This fluctuation in cash payments has been addressed in Guideline 7.4, which requires cash payments to be provided at the time of above grade building permit issuance. In addition, one of the primary responsibilities of the Section 37 Coordinator will be the implementation of the cash payments once they are received which will ensure that the funds are spent as quickly as possible.

Secondary Decrease to GFA:

At the time of a rezoning application, an applicant would not have started the detailed design of a project. As a building evolves from a concept to a built form, it will go through many phases that could have an impact on the final design: site plan approval, building code review, building technology, a sales program and economic volatility. For circumstances that are not foreseen, it is possible and common that a building is reduced in area to accommodate mechanical equipment, Ontario Building Code (OBC) requirements or to respond to market conditions. As the City of Ottawa is

introducing a new condition for an increase to GFA, it would be reasonable to include a Secondary Decrease to a GFA definition in the by-law to facilitate a Section 37 credit if the applicant chooses to build a reduced area as a result of market conditions. Further, an applicant should not be penalized if they choose to build below the permitted building envelope.

Response:

The wording for Guideline 8.3 has been modified based on these comments as the intent of the guideline was not to obtain more uplift value for minor modifications to the GFA of a building because of OBC requirements or detailed design features at the building permit stage. The purpose of this guideline was to address significant changes to a building, such as a height increase that would result in an amendment to the approved zoning or an increase to the number of storeys within the permitted height in the recently approved Zoning By-law amendment. Guideline 8.4 has been added that provides direction for the noted concern regarding a decrease in GFA for a proposed building requiring a recalculation of Section 37 benefits and how to implement this potential change.

Centretown Citizens Ottawa Corporation (CCOC) comments

Comment:

Under Section 4.1, an increase in zoning *height* is preferable to *density* as the measure for whether Section 37 applies. City of Ottawa zoning is based on height not density and Section 37 guidelines should be in accordance with zoning.

Whether density or height are used, the following suggestions apply:

- Amend Section 4.1 from an area **and** density threshold, to an area **or** density threshold. Section 37 should be applied when either the building area minimum or the density increase is met, not both of them. Requiring both criteria to be met sets a high threshold for Section 37 to apply and we have seen in the past number of years that many rezoning projects have proceeded with any application of the Section 37 policy because the threshold is too high. The City should decrease the threshold for building area to 3,000 m² from 7,000 m².
- The threshold for density increase should be 10% not 25% increase above zoning.

Response:

As noted in the report, the reason for removing the reference to height is that the current practice exempts increases in height over 25 per cent if the density is redistributed in a way that is consistent with the City's guidelines and does not exceed a 25 per cent increase. This means that any development proposals that are not requesting an increase in density above 25 per cent but are increasing the height by at least 25 per cent through a redistribution of the permitted density have not been subject to Section 37. As noted above, the Guidelines apply on a city-wide basis and modifying the threshold could impact different areas of the city in different ways. A fulsome review of the threshold could be undertaken in the future; however, any future review of the threshold should be completed independent of a comprehensive review of the guidelines and would take a significant period of time to determine the implications of lowering the threshold on a city-wide basis. For purposes of this review, staff have concluded that the threshold continues to represent an appropriate threshold for determining the application of Section 37.

Comment:

Where there is a community design plan (CDP) or secondary plan in place, the lesser of the current zoning or the CDP should apply.

Response:

In most cases, if an area was subject to a secondary planning study it was done so because the area is anticipated to undergo redevelopment and an increase of density. As a result, through these studies the results are an increase to the development potential for an area as opposed to a decrease. There may be a rare circumstance where a property is zoned higher than what a CDP or Secondary Plan provides direction for, however; this would be a rare case.

Comment:

Draw down factors should be more objective. Drawdowns based things like internal pathways and plaza spaces add value directly to the housing development and should not be considered community benefits. The value of drawdowns due to other proposed amenities should be calculated based on a 1:1 relationship with the actual cost of installing the amenity. This should be reflected in the guideline.

Response:

The draw down factors related to features internal to sites was raised as an issue during the review and it was also recognized that many of these features may be connections to existing off-site pedestrian and cycling networks. Additional wording has been added to Guideline 5.6 to ensure that these internal features are accessible and remain accessible via a public easement granted to the City.

Comment:

The City should prioritize affordable housing among Section 37 community benefits: A minimum of 50% of funds derived from Section 37 should go towards affordable housing. Density increases impact land value, which can have a negative effect on housing affordability and on the viability of future non-profit housing projects. There is a logical connection between allowing the density increases and offsetting the negative community impact by dedicating a portion of funds to affordable housing development.

The definition of Non-Profit Housing should be amended to read “low *and modest* income”: this better reflects the definitions of affordability in other City policies.

Under Section 7.7 which outlines the possible use of Section 37 funds for affordable housing, there should be some effort to associate community benefits with the impacted community. We suggest adding: “priority will be given to affordable housing projects in the local area or with an appropriate geographic relationship to the site”.

In Section 7.7 and 8.2 the General Manager of Community and Social Services is given discretion for the use of affordable housing funds. This is inconsistent with other Section 37 benefits where Ward Councillors and local communities have input. We suggest amending these sections to read “under the discretion of the General Manager of Community and Social Services, *with concurrence of the Ward Councillor or any relevant Community Design Plan.*”

Response:

The use of Section 37 through the development review process is implemented on a case-by-case basis, in that each proposed development is evaluated on its own merits in terms of draw down factors and where the community benefit is most appropriate. The community benefit must have a reasonable planning relationship to the subject property and as these Guidelines are applicable on a City-wide basis. Having a rigid requirement for a certain amount of Section 37 funds being committed to affordable

housing, or any other community benefit, may not be considered necessary depending on the area of the City. If affordable housing is identified as a need in a neighbourhood, a Ward Councillor or community group can request a standard percentage of Section 37 funds to go towards affordable housing for each applicable development application.

With respect to the use of the funds for affordable housing, when a cash payment is made to the City, these funds are deposited into a Ward-specific account for affordable housing. If there is a desire to assign the funds to a specific affordable housing project or for a smaller geographic area than the ward, this could be achieved on a case-by-case basis and stipulated in the Section 37 by-law and associated agreement.

The definition of Non-profit Housing was carried forward from the 2012 Guidelines and states that it is "...*primarily* to persons or families of low income..." and so may include other levels of income.

The addition of Guidelines 7.7 and 8.2 with the General Manager of Community and Social Services overseeing the use of the affordable housing funds was added to the Guidelines to ensure that the funds are not used without the knowledge and approval of the General Manager. With the addition of the Section 37 Coordinator role, this will also help to ensure that there will be notification to departments and Ward Councillors of when cash payments are received and status updates on the use of the funds.

Document 3 – Municipal thresholds for Section 37

Municipality	Development Threshold	Percentage of Value Increase for community benefit
City of Toronto	Greater than 10,000 m ² ; density increase exceeds 1,500 m ²	Not specified
City of Mississauga	Greater than 5,000 m ² ; density increase exceeds 1,500 m ²	20 to 40 per cent of the increase in land value
City of Markham	Greater than 5,000 m ² ; density increase exceeds 1,500 m ²	Not specified
City of Burlington	No threshold specified	Not specified
City of Vaughan	Greater than 4,000 m ² ; density increase of 1,000 m ²	20 to 35 per cent increase in land value