



**City of Kingston
Information Report to Planning Committee
Report Number PC-16-041**

To: Chair and Members of Planning Committee
From: Lanie Hurdle, Commissioner, Community Services
Resource Staff: Paige Agnew, Director, Planning, Building & Licensing Services
Date of Meeting: April 21, 2016
Subject: Community Benefits under Section 37 of the *Planning Act*
City-initiated Official Plan Amendment and Guidelines

Executive Summary:

The exchange of increased height and/or density in return for Community Benefits, otherwise referred to as “density bonusing”, is a powerful planning instrument available to municipalities. The process is regulated by Section 37 of the *Planning Act* and allows the City to approve site specific rezoning applications that request an increase in height and/or density, in exchange for the provision of “facilities, services or matters” (Community Benefits).

In order to take advantage of Section 37, municipalities must have enabling policies in their Official Plan to allow increases in height and/or density in exchange for Community Benefits. The City of Kingston Official Plan contains the requisite enabling policies. The City has used the enabling policies three times and would like to continue to secure Community Benefits in a fair, clear, transparent and predictable manner.

Staff are about to undertake a City-initiated Official Plan amendment and prepare guidelines in order to improve clarity, consistency and transparency in the process of negotiating and securing Community Benefits for all stakeholders. The City-initiated Official Plan amendment will undergo a full public process in accordance with the requirements of the *Planning Act*. While guidelines do not have any statutory consultation requirements, they will undergo the same consultation as the proposed Official Plan amendment to ensure the policies and guidelines are complementary. The guidelines will provide a framework for the use of Section 37 in a consistent and transparent manner.

Recommendation:

This report is for information purposes only.

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Authorizing Signatures:

ORIGINAL SIGNED BY COMMISSIONER

Lanie Hurdle, Commissioner, Community Services

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

Gerard Hunt, Chief Administrative Officer

Consultation with the following Members of the Corporate Management Team:

Cynthia Beach, Corporate & Strategic Initiatives	Not required
Denis Leger, Transportation, Facilities & Emergency Services	Not required
Jim Keech, President and CEO, Utilities Kingston	Not required
Desiree Kennedy, Chief Financial Officer & City Treasurer	Not required

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Options/Discussion:**Section 37 of the *Planning Act***

Section 37 of the *Planning Act* (referred to as “Section 37”) allows municipalities to authorize increases in height and density of a development, in a by-law passed under Section 34 of the *Planning Act*, in return for the provision of facilities, services or other matters (referred to as “Community Benefits”) if the municipality has an Official Plan that contains provisions relating to the authorization of increases in height and density of development.

City of Kingston Official Plan

The City of Kingston Official Plan contains the requisite policies which allow increases in height and/or density of development in exchange for Community Benefits, subject to specific requirements and conditions. The existing policies are included under the “Height and Density Bonus” section and are also referenced in the Major Open Space/Environmental Area, Affordable Housing, Conservation of Cultural Heritage Resources and City Hall sections of the Official Plan (Exhibit A - Official Plan Excerpts).

Kingston’s Use of Section 37

In 2013, the City utilized the existing Height and Density Bonus policies three times:

1. 363, 365 and 367 Johnson Street (By-Law Number 2013-151):
A density bonus may be applied to permit a density increase to 122 units per net hectare. The bonus is subject to the property owner entering into a development agreement with the City, which will establish a high quality of architectural design and human scale development consistent with the City’s long term vision for the area.
2. 637 to 655 Johnson Street (By-Law Number 2013-152):
A density bonus may be applied to permit a density increase to 118 units per net hectare. The bonus is subject to the property owner entering into a development agreement with the City, which will establish a high quality of architectural design and human scale development consistent with the City’s long term vision for the area.
3. 653 to 663 Princess Street and 582-604 Victoria Street (By-Law Number 2013-219):
The maximum permitted density may be increased to 235 units per hectare for a contribution towards the upgrading and improvement of Victoria Park in an amount equivalent to the required cash-in-lieu of parkland dedication contribution calculated for the approved development. The bonus is subject to the property owner entering into a development agreement with the City, which will establish a high quality of architectural design and human scale development consistent with the City’s long term vision for the Williamsville Main Street Study area.

Since 2013, Planning, Building & Licensing Services have received comments and questions from the public, land owners, applicants, developers, other staff and Council Members surrounding the use of Section 37.

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Ontario Municipal Board

The underlying idea that has been applied by the Ontario Municipal Board is that the use of Section 37 must be grounded in fair, clear, transparent, predictable and specific requirements that are outlined in an Official Plan and are not arbitrary in their application. Applicants should know what will be expected if increases in height and density are approved. If the request for Community Benefits meets these tests, then it is fair and reasonable for the Ontario Municipal Board to impose the requirement if increases in height and density are approved. When the Community Benefits do not meet these tests, then any agreement should be voluntary and will not be imposed by the Ontario Municipal Board.

Key Components

In order to ensure that the use of Section 37 is grounded in fair, clear, transparent, predictable and specific requirements, staff are about to undertake a City-initiated Official Plan amendment and prepare complementary implementation guidelines. The Official Plan amendment is expected to improve and clarify the intent of the existing Section 37 policies.

A number of other municipalities in Ontario have the requisite enabling policies in their Official Plans to allow for the use of Section 37, however, Toronto, Mississauga, Vaughan, Ottawa, Markham and Burlington have also prepared guidelines to provide additional clarification and detail which establishes more transparent and predictable requirements for the use of Section 37. A guideline is not a requirement of the *Planning Act*, but is a good tool for providing clarification with respect to process and the expectations of the City.

It is anticipated that the Community Benefits guidelines will include a set of governing principles to ensure that the use of Section 37 meets the intent of the Official Plan policies. The guidelines may establish a qualifying threshold that a development must meet to be subject to the use of Section 37 and provide guidance to ensure that Community Benefits have a relationship to the subject property and/or development proposal.

Section 9.5.25 of the Official Plan (Exhibit A - Official Plan Excerpts) provides a list of potential Community Benefits that may be requested from an applicant and the guidelines are expected to elaborate on the list of appropriate Community Benefits. If Community Benefits are to be provided in an off-site location, the guidelines may also provide direction to ensure that the selected location will benefit the area experiencing the increased height and/or density provision.

The guidelines will provide a framework to establish an appropriate value to ensure that there is an equitable relationship between the established value of the increased height and/or density and its value to the community. The guidelines may establish a general procedure and outline the method to legally secure the Community Benefits to ensure that all stakeholders can participate in a fair, clear, transparent and meaningful way.

Finally, it should be noted that increases in height and/or density must represent good planning on their own merits. Community Benefits should not be used as a means to achieve "good planning" by making a bad application good, but might validly make a good application better.

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There may be instances where community benefits are required to comply with the intent of the Official Plan policies.

Next Steps

Staff are about to undertake a City-initiated Official Plan amendment and prepare guidelines in order to improve the process of negotiating and securing Community Benefits for all stakeholders. The City-initiated Official Plan amendment will undergo a full public process in accordance with the requirements of the *Planning Act*. While guidelines do not have any statutory consultation requirements, they will be reviewed, presented and discussed at the same time as the proposed Official Plan amendment to ensure the policies and guidelines are complementary.

In addition to the statutory Public Meeting that will be held at a future Planning Committee meeting, staff will also hold an open house and attend meetings with interested stakeholders. It is anticipated that the proposed Official Plan amendment and draft guidelines will be presented in a separate comprehensive report to the Planning Committee for consideration following the consultation process. The ultimate goal is for Council to adopt an Official Plan amendment and endorse the guidelines for use with all qualifying rezoning applications.

Existing Policy/By-Law:

Planning Act, R.S.O. 1990, c. P.13

Provincial Policy Statement, 2014

City of Kingston Official Plan

Notice Provisions:

Not applicable

Accessibility Considerations:

Not applicable

Financial Considerations:

Not applicable

Contacts:

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Other City of Kingston Staff Consulted:

Not applicable

Exhibits Attached:

Exhibit A Official Plan Excerpts

- a. municipal roads, services and utilities have been extended or improved, or servicing capacity has been added or allocated to enable *development*;
- b. satisfactory financial arrangements have been made to enable *development*;
- c. phasing of the *development* has been determined;
- d. studies have been completed (and may also be peer reviewed) to the satisfaction of the municipality to justify or support initiation of *development*; or,
- e. conditions arising from any study, or conditions which address any other impediment to *development* have been satisfactorily met, or are deemed by the City to be no longer relevant.

9.5.22. The City will pass an amending by-law to remove the “H” when the circumstances have been achieved or conditions set out in the holding by-law have been fulfilled.

Interim Control

9.5.23. Where the City has by resolution or by-law determined that a study or review of land use policies in a certain area is necessary, it may pass an interim control by-law for a period of time as specified in the by-law prohibiting uses of land (or buildings and structures) except for uses specified in the interim control by-law. Notice of an interim control by-law is not required to be given prior to its passage but notice must be given within 30 days after its passage.

Extension of Interim Control By-law

9.5.24. The City may amend the interim control by-law to extend the period of time provided that the total period does not exceed two years from the date of passage of the original by-law and notice is provided as stated above. However, in accordance with the *Planning Act*, an interim control by-law will remain in effect where there has been an appeal of the land use by-law which has been adopted by the City after completion of the study.

Height and Density Bonus

9.5.25. The City may approve a by-law authorizing an increase in height or density beyond that allowed in the zoning by-law pursuant to the *Planning Act*, in return for facilities, services or matters benefiting the public, including the following:

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Kingston Official Plan

- a. providing a wide range of clearly specified and designed housing types, including *affordable* housing and housing for seniors and individuals with special needs;
- b. providing parkland dedication beyond what is already required by this Plan;
- c. protecting features of the *natural heritage system*, such as *woodlands*, beyond the parkland dedication requirements of the *Planning Act*;
- d. improving access to public transit facilities;
- e. providing public areas, pathways, and connections to external public pathways/trail systems;
- f. providing public and/or underground parking;
- g. providing community and open space facilities such as small parks, day care centres, community centres, *recreation* facilities, cultural facilities;
- h. *conserving cultural heritage resources*;
- i. protecting or enhancing *significant views*;
- j. providing public art;
- k. providing green technology and sustainable architecture and alternative construction methods such as “green roofs” and LEED^R certified buildings;
- l. providing streetscape improvements in accordance with Council-endorsed documents such as the Downtown Action Plan; and,
- m. including local improvements identified in community design plans, *community improvement plans*, secondary plans, capital budgets or other implementing plans or studies.

9.5.26. Each proposal for an increase in height and density must be assessed on a case by case basis, and be supported by such additional information and studies as deemed appropriate by the City, in order that Council ensures that:

- a. the *development* resulting from the application of increased height and density does not impose *adverse effects* on neighbouring uses, and meets the general intent and purpose of the land use

compatibility principles in Section 2.7 and the urban design principles as outlined in Section 8 of this Plan;

- b. the proposed increased height and density provision supports the strategic planning approach to guide and respond to *development* applications for change in areas of the City, as outlined in the policies of Section 2.6 of this Plan regarding stable areas and areas in transition;
- c. there are adequate municipal services including water, sanitary sewers, stormwater management facilities and community services;
- d. the transportation system can accommodate the increase in density;
- e. the site is suitable in terms of size and shape, to accommodate the necessary on-site functions such as parking, landscaping and *recreational* facilities;
- f. there is a reasonable planning relationship between the community benefits and the proposed *development*;
- g. the value of the increased height and density is appraised by the developer and the value of the benefit to be provided is assessed compared to the increased value to the developer, so that there is an equitable relationship between the established value of the increased height and density and its value to the community; and,
- h. the *development* must constitute good planning and be consistent with the policies of this Plan.

- 9.5.27.** Community benefits may be provided off-site, if they are located in close geographic proximity to the subject property. It must be demonstrated that the community benefits will have a positive impact on the immediate area experiencing the increased height or density provision.
- 9.5.28.** Community groups will be consulted on the *development* application and the proposed benefit as part of the statutory public consultation process.
- 9.5.29.** The owner will be required to enter into an agreement relating to the provision of facilities, land, or matters for which the bonus has been established in the by-law.
- 9.5.30.** The increase in density or height will be approved through an amendment to the zoning by-law.

employment and retail uses. It is a priority transit route and will be the focus of *intensification* involving higher building heights and densities.

Major Open Space/ Environmental Area

- 2.2.11.** The Major Open Space/Environmental Areas within the City that are shown on Schedule 2 encompass environmental areas and functions and *recreation* and trail resources. It contributes to the *sustainability* of the ecosystem by including areas that provide a respite from urban forms of *development*. The City will preserve this resource and augment its open space inventory in newly-developing areas, in *redevelopment* areas and particularly along the waterfront. Linkage areas will be of particular strategic importance in enabling the maximum use of Open Space areas as trails and walkways. The City may employ special measures including height and density bonus zoning to secure such areas for the benefit of the public.

Area Specific Phasing

- 2.2.12.** The Area Specific Phasing is applied to the areas that have been included within the *Urban Boundary*, but require further study before *development* can commence. The studies required are set out in Sections 2.4.6, 2.5.6 and 2.5.7 of this Plan.

Special Planning Areas

- 2.2.13.** The Special Planning Area lands include the Collins Bay Penitentiary property and a portion of Canadian Forces Base Kingston. Both of these areas could be subject to further *development* in the future, but are currently being used for Federal Government purposes. As a result, they are unavailable for *development* or *redevelopment* in the foreseeable future. Should these lands become available for *development*, the policies of Section 2.4.6 of this Plan would apply. The studies required are set out in Sections 2.4.10 and 2.4.11 of this Plan.

Future Development Areas

- 2.2.14.** Future Development Areas are areas within the City where *development* is anticipated in the long term. These areas may proceed to develop after an evaluation report as required by Sections 2.4.10 and 2.4.11 is completed and approved by the City, and only when transportation and servicing *infrastructure* resources are able to be economically extended. *Development* within these Areas must demonstrate principles of *sustainability*, achieve the density targets of Section 2.4.3 of this Plan, and proceed only after approval of a secondary plan.

- provisions of the zoning by-law respecting the number, size and location of spaces;
- e. the size of any addition may be limited through zoning standards that address the maximum length of a building, maximum size of an addition, extent of attic conversions, or other matters as deemed appropriate by the City;
 - f. the amenity area must be large enough to be useful to residents of all residential units;
 - g. the privacy of adjoining residential properties will be assured by means of adequate screening, and any proposed addition will minimize impacts on overview or shadowing of adjacent residences;
 - h. cash-in-lieu of parkland may be taken by the City for new *residential units* created in accordance with the provisions of the parkland conveyance by-law;
 - i. provision of adequate full municipal services; except in the case of a second residential unit, where the provision of adequate municipal services or individual on-site water and sewage services must be met; and
 - j. any other issues that the City requires must be satisfied to ensure that the proposed conversion will provide a safe, healthy and convenient living environment for all residents over the long term.

(Amended by By-Law Number 2013-41, OPA Number 19)

Affordable Housing

- 3.3.10.** The City's *affordable* housing initiatives are designed to provide a full range of housing, in terms of tenure and affordability within all urban residential neighbourhoods, with a specific focus to produce housing for low income residents of the City. Such initiatives include:
- a. private housing initiatives that provide for a wide range of housing types and affordability, with a target of 25% of all new housing units to be in the form of row housing, triplexes and multi-unit residential buildings, that are to be *affordable* in the City;
 - b. in accordance with Section 9.5.25 of this Plan, where an increase in height, density or both, is requested, a high priority community benefit will be the provision of additional *residential units* requested as *affordable* housing. This *affordable* housing contribution may take the form of *affordable* housing construction on-site, the

- conveyance of land near the proposed *development* site, or cash-in-lieu for the purpose of constructing *affordable* housing, with each site negotiated on an individual basis;
- c. a Municipal Non-Profit Housing Corporation or other non-profit housing associations that may acquire, assemble, rehabilitate or dispose of lands, buildings or structures for the purpose of providing *residential units*;
 - d. the use of surplus lands owned by the municipality and other governmental agencies be considered for “Housing First” as promoted in Section 9.9.4 of this Plan;
 - e. promoting the *development* of non-profit housing projects by cooperative and non-profit housing organizations;
 - f. the use of upper storey space within the Central Business District and Main Street Commercial areas for housing, particularly within buildings that have heritage value, through such mechanisms as reduced parking or *amenity area* requirements, financial incentives, or other programs;
 - g. participation in programs of higher levels of government, and conformity with legislation of higher levels of government; and,
 - h. the development of a Municipal Housing Statement that will:
 - identify and monitor demographic changes and housing needs within the City;
 - provide an analysis of where the City needs to promote additional *affordable* housing in the City;
 - establish and monitor housing targets for *affordable* housing for *low and moderate income households* with a specific emphasis on methods of providing housing for the low-income residents of the City;
 - assess different forms of housing design which make housing more *affordable*; and,
 - investigate alternative dwelling design standards that may contribute to more *affordable* housing.

Conservation of Cultural Heritage Resources

- 7.1.10.** *Conserving cultural heritage resources* forms an integral part of the City's planning and decision-making. The City uses the power and tools provided by legislation, policies and programs, particularly the *Ontario Heritage Act*, the *Planning Act*, the *Environmental Assessment Act* and the *Municipal Act* in implementing and enforcing the policies of this Section. This may include the following:
- a. designating real property under Part IV, V, or VI of the *Ontario Heritage Act*;
 - b. requiring, as a condition of any approval, the retention of any *cultural heritage resources* found within a plan of subdivision, a plan of condominium, or on a retained parcel created by consent, or other land division approval;
 - c. using zoning by-law provisions as appropriate, to preserve identified significant *cultural heritage resources*;
 - d. using the bonus provisions of Section 37 of the *Planning Act* in order to maintain the integrity of identified *cultural heritage resources*;
 - e. using site plan control provisions to ensure that new *development* on adjacent properties is *compatible* with the adjacent identified *cultural heritage resources*;
 - f. using design guidelines to provide for sympathetic *development* of *adjacent lands* that are not designated, but which could impact the site of the *cultural heritage resource*;
 - g. creating an Aboriginal Protocol to ensure meaningful consultation with appropriate First Nations groups; and
 - h. using heritage easements as a means to protect significant *cultural heritage resources*, where appropriate.

City Programs

- 7.1.11.** The City will *conserve* and protect *cultural heritage resources* and implement and enforce the policies of this Section by undertaking the following:
- a. designing and constructing, in conformity with policies of this Section, any public, capital and maintenance works involving or adjacent to designated and other *cultural heritage resources*;

- a. restricting or not allowing *development* of buildings and structures that would interrupt sightlines;
- b. requiring that the siting, massing and design of buildings and structures in areas adjacent to protected views maintain the views;
- c. encouraging the *development* of facilities, amenities, signage and design themes at locations where the Waterfront Pathway or the Lake Ontario Waterfront Trail meets the protected views, which will enhance the use of this area and appreciation of the view; and,
- d. ensuring that any installation of structures or facilities in public open space areas adjacent to the protected views complements the view.

City Hall

8.7. City Hall is the landmark and symbol of Kingston which is protected by identifying a series of viewpoints and viewplanes as shown on Schedule DH-4 of the Downtown and Harbour Special Policy Area and as set out in the following policies. The City will ensure that *development* will:

- a. maintain and support the scale and character of City Hall Square and be *compatible* with the heritage buildings within the Downtown area east of Bagot Street when new *development* and *redevelopment* is permitted;
- b. protect the silhouette of City Hall, having particular regard for the protection of the dome from incompatible building heights that would mask the silhouette;
- c. prevent shadowing of City Hall Square, particularly the area of Market Square and Confederation Park;
- d. protect the viewplanes shown on Schedule DH-4 in accordance with the policies of Section 10A, the Downtown and Harbour Special Policy Area, by ensuring that new *development* does not obscure or overpower the dome of City Hall; and,
- e. protect the viewplanes or silhouette of City Hall with the use of by-laws allowing bonusing under Section 37 of the *Planning Act* as set out in Section 9.5.25 of this Plan.

Multiple Building Projects

8.8. New multiple building *development* projects involve a number of separate buildings being built either at one time or in phases on an initial single landholding. It is the intent of Council to review multiple building projects in accordance with the following policies: