Community Benefit Guideline

A framework for the negotiation of Community Benefits pursuant to Section 37 of the Planning Act

City of Kingston

Planning, Building, Licensing & Enforcement Services
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1. Introduction

1.1. Policy Framework

1.1.1. Section 37 of Planning Act

Section 37 of the Planning Act allows municipalities to authorize increases in the 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 Benefit(s)” or the “Benefit”). In order to seek out a Benefit, the municipality must have provisions in its Official Plan relating to the authorization of increases in the height and density of development. The City of Kingston Official Plan (the “Official Plan” or the “Plan”) contains policies to allow increases in the height or density of development in exchange for Community Benefits thereby satisfying Section 37 of the Planning Act.

1.1.2. Official Plan

Sections 9.5.25 to 9.5.30 of the 2010 Official Plan identify the considerations to be made when pursuing a community benefit under Section 37 of the Planning Act. The policies identify the type of facilities, services or matters that may be considered as community benefits. Proposals that seek height and/or density in excess of what is permitted by the zoning by-law must seek approval through a Planning Act process and, in doing so, demonstrate conformity to all of the policies of the Official Plan. A proposal that cannot satisfy an explicit policy, or policies, of the Official Plan will require an Official Plan amendment. Applications for amendment to the zoning by-law and the Official Plan, where required, will be reviewed for consistency with provincial policy and will be subject to a public approvals process in accordance with the requirements of the Planning Act.

1.1.3. Guideline

The Community Benefit Guideline (the “Guideline”) must be read in conjunction with the policies of the Official Plan and in no way replaces the planning review process to determine the appropriateness of a proposal. The Guideline has been prepared to improve the clarity, consistency and transparency of Section 37 negotiations for all of those with an interest in the matter. City staff will use the Guideline when reviewing proposals that seek additional height and/or density in accordance with the policies of the Plan and the framework established herein.

2. Qualifying Factors

A community benefit negotiation will be considered when a proposal seeks, through a zoning by-law amendment, additional height and/or density and when the project has a gross floor area greater than 3,000 square metres; note that this may include multiple building projects which collectively have a gross floor area in excess of 3,000 square metres. Community benefits will be considered primarily for residential developments but may also be applied to commercial and mixed use projects. They are not intended to be requested from non-profit developments, industrial developments, or development projects that do not exceed the 3,000
square metre threshold. Notwithstanding the gross floor area and land use limitations noted, there may be circumstances where the proposed development may still be a suitable candidate to provide community benefits. In such instances, there may be circumstances where a development that does not meet the limitations is Planning Staff will advise the applicant early in the review of a development proposal that community benefits may be requested as part of the approvals process.

3. Selection of Benefits

Section 9.5.25 of the Official Plan lists the community benefits that may be sought in the review of a proposal that seeks additional height and/or density. Benefits may include a specific facility, service or matter as listed in the policies of the Plan (e.g., affordable housing, additional parkland, public art, etc.), and may also include local improvements identified through the completion of planning projects having broader application (e.g., community improvement plans, secondary plans, etc.).

The selection of a specific community benefit(s) will be guided by the decision-making framework outlined below. Community benefits may be in the form of in-kind benefits or cash-in-lieu payments that are allocated towards specific facilities, services, or matters. Community benefits may be located on or off-site. Priority will be given to in-kind benefits or cash-in-lieu contributions that result in a tangible benefit being established within a reasonable distance of the development. Benefits that address a City-wide need (e.g., affordable housing) may also be sought where justified by a related City-wide study of the matter.

3.1. Decision-Making Framework

The facility, service or matter (benefit) sought through a Section 37 negotiation must be within the clear limits of established policy, address an identified community need, and bear a reasonable planning relationship to the development. In evaluating a potential community benefit, consideration will be given to:

- the objectives and policies of the City’s Official Plan as well as any other Council-endorsed plan (e.g., Waterfront Master Plan, Active Transportation Master Plan, etc.) that recognizes the need for a specific facility, service or matter having an appropriate geographic relationship to the development;
- the ability of a proposed benefit to satisfy a community need as evidenced through the completion of a Community Services and Facilities Study, as set out in Appendix A to this Guideline, when required by the City; and
- the ability of a proposed benefit to satisfy the interests of the public as identified through the statutory Planning Act process provided it can be demonstrated that there is a direct relationship (i.e., a "nexus") between the facility, service or matter sought and the proposal;

In all cases, the acquisition of a community benefit through Section 37 of the Planning Act will be contingent on the adequacy of the infrastructure necessary to support the benefit. Further, a legal agreement will be used to ensure benefits are realized in tandem with the implementation of the project to which they are connected. The legal agreement will set out a
timeline for the delivery of the agreed-upon benefit and may require the provision of financial securities. Securities will be used to ensure that the delivery of a community benefit occurs within a reasonable timeline of the introduction of the additional height and/or density tied to the project.

4. Valuation Procedure

The additional height and/or density sought by the proponent of a zoning by-law amendment will presumably increase the value of land associated with the project. This increased value of land is commonly referred to as the “land lift” or “uplift” value. Through a Section 37 negotiation, the City will seek a community benefit that is equal to a reasonable proportion of the uplift value. The following sections outline how the City will determine this reasonable proportion so that a proponent is able to ascertain, with some degree of certainty, the value of the benefit to be sought.

4.1. Determining Uplift Value

The City of Kingston will use a project-specific approach to determine uplift value. This approach requires the completion of a real estate appraisal to define the fair market value of the land subject to development. The proponent will be required to provide a real estate appraisal, completed in accordance with the Terms of Reference included in Appendix B to this Guideline. The City will obtain quotes from qualified appraisers for the completion of the appraisal. The applicant will then select the consultant to be retained by the City and provide compensation to the City for the completion of the appraisal prior to commencement of the work. The City will provide the applicant with a copy of the final appraisal upon its completion.

Alternative to the proponent being required to undertake an appraisal, at their cost, the City may be able to provide the proponent with a cost per square metre based on the availability of reliable market data as presented in previously-received and accepted appraisals. Where a proponent disagrees with the cost per square metre presented in an appraisal, offered by the City, they will be required to undertake their own appraisal, as outlined above.

Once the market value of the land has been determined through an appraisal, the proponent is able to determine the uplift value associated with the proposal. The following sections provide the method that will be used to determine the uplift value of proposals seeking additional height, and those seeking additional density. In the event that a proposal seeks additional height and density, both methods of calculating uplift value will be applied and the higher of the resultant values will be used to support subsequent community benefit negotiations.
4.1.1. Calculating Uplift: Proposal Seeking Additional Height

In the event that a community benefit negotiation pertains solely to a request for additional height, the uplift value will be determined as follows:

Step 1. Determine the gross floor area (GFA) of construction that could be established under the existing zone provisions (i.e., “permitted GFA”).

Step 2. Divide the fair market value (FMV) of the land, as determined through the appraisal, by the permitted GFA in order to identify a value per square metre of permitted floor area.

Step 3. Determine the gross floor area (GFA) of construction proposed above the maximum permitted height in the zone (i.e., “proposed GFA”).

Step 4. Multiply the value per square metre of permitted floor area by the proposed GFA to identify the uplift value.

Example:

The fair market value of a 1.6 hectare parcel of land along a major arterial roadway is determined through an appraisal to be $800,000. The existing zoning would allow for the construction of a 6,400 square metre building (see Figure 1). The value per square metre of permitted gross floor area is accordingly determined to be $125. Total GFA proposed above the maximum permitted height is 1,200 square metres (see Figure 2). Accordingly, the uplift value is $150,000.

4.1.2. Calculating Uplift: Proposal Seeking Additional Density

In the event that a community benefit negotiation pertains solely to a request for additional density (i.e., additional dwelling units), the uplift value will be determined as follows:

Step 1. Determine the total number of dwelling units that could be constructed at the maximum permitted density as defined by the applicable zone (i.e., “permitted density”).

Step 2. Divide the fair market value (FMV) of the land, as determined through the appraisal, by the total number of permitted dwelling units to define the value of each unit permitted under existing zoning conditions.
Step 3  Identify the total number of units proposed above the total number of units permitted by the existing zoning by-law.

Step 4  Multiply the value per unit by the total number of units proposed above the permitted density to identify the uplift value.

Example:
The fair market value of a 1.1 hectare parcel of land in the downtown core is determined through an appraisal to be $1,200,000. The existing zoning would allow for the construction of approximately 135 units at a maximum permitted density of 123 units per net hectare. The land value per unit is accordingly $8,888. The total number of units proposed above the maximum permitted density is 53. Accordingly, the uplift value is $471,064.

4.2. Reasonable Proportion

The value of any community benefit sought by the City must be reasonably proportioned to the increased value of land arising as a result of an increase in height or density permissions, or both. The proportion of this increased value must accommodate reasonable developer profit while being substantial enough to address an identified community need that can be related to the development. The minimum value of any community benefit to be sought by the City of Kingston will be proportional to 30 percent of the uplift value.

In some instances it may be more desirable for the City to consider a taller, more slender building, over one which presents an overbearing mass of construction, largely compliant with applicable zoning standards, within a property or group of consolidated properties. Recognizing this, the City may consider a reduction in the proportion of the uplift value sought through a Section 37 negotiation. The reduction would recognize the potential transfer of development rights from one portion of the building to another, being situated at a greater height.

5. Steps in a Section 37 Negotiation

5.1. Communication of Intent

For any application that satisfies the qualifying factors identified in Section 2 of this guideline, Planning Staff will advise that community benefits may be sought under Section 37 of the Planning Act. Communication of this intent will be outlined through the City’s mandatory pre-application process. In the event that a project changes following a pre-application meeting, and in doing so satisfies the qualifying factors outlined in this guideline, Planning Staff will confirm whether or not community benefits will be sought.

5.2. Identification of Candidate Benefits

Section 9.5.25 of the Official Plan provides a list of potential community benefits that may be sought by way of a Section 37 negotiation. Other Council-endorsed plans (e.g., Waterfront Master Plan, Parks and Recreation Master Plan, etc.) specifically identify facilities, services and matters and the locations within the City where such items are sought. The Official Plan
and these other community plans will be used to identify a candidate list of community benefits early in the review of a development proposal. This list will be presented during the statutory public meeting that accompanies the Planning Act application seeking additional height and/or density. The feedback received from the public through the Planning Act process will be used to inform the identification and evaluation of community benefit options.

As community plans and other area-specific plans are undertaken by the City, Planning Staff will seek out input on the facilities, services and matters which are needed in the area subject to review. The resultant plan will identify potential community benefits which may form the basis upon which to further future Section 37 negotiations.

5.3.  Refinement of Candidate Benefits

The Planning Act application and potential community benefits will be assessed through the City’s technical review process. As part of this review, Planning Staff will work with the applicant to determine the uplift value in accordance with the method described in this Guideline. The candidate list of potential community benefits introduced in Section 5.2 above will be refined based on a review of the estimated costs of delivering a benefit, or benefits, relative to the value of the contribution to be made by the proponent. Applicants may be asked to provide preliminary cost estimates for one or more of the potential community benefits as part of the technical review process. The City will similarly offer cost estimates where reliable information pertaining to a specific facility, service or matter is available. If the full cost of a potential benefit cannot be covered by the contribution of the proponent alone, the City may seek a cash-in-lieu contribution for a portion of one or more benefits. The determination of when the City will seek cash-in-lieu contribution will be informed by the decision-making considerations outlined in Section 3.1 of this Guideline and other factors that Council may deem appropriate.

5.4.  Recommended Benefit(s) and Agreements

Upon completion of the refinement of community benefit options, Planning Staff will identify one or more community benefits, or cash-in-lieu thereof, to be sought through Section 37 of the Planning Act. The benefit(s) recommended by Staff will be presented to Planning Committee by way of the Comprehensive Report that accompanies the development application. Within this Report, Staff will offer a rationale for the selection of the community benefit(s) as it relates to the policies of the Official Plan and other Council-endorsed plans, as applicable. The rationale will also include a summary of how input received from the public has informed the selection of the community benefit(s).

The Comprehensive Report will present a by-law, passed under Section 34 (zoning) of the Act, outlining the additional height and/or density to be authorized by way of Section 37. As outlined in the by-law, the proponent will be required to execute a legal agreement dealing with the facilities, services or matters to be provided as a community benefit(s). The legal agreement will need to be prepared to the satisfaction of the City’s solicitor and may require financial securities commensurate with the value, or a portion of the value, of the community benefit(s) sought. The legal agreement may be registered on title.
5.5. Agreement & Timing of Contribution

The agreement will specify the timing of the provision of the related community benefit(s). The benefit may be secured within a defined number of days of the site specific by-law becoming final and binding, prior to the issuance of the first building permit, prior to the issuance of the first above-grade building permit, prior to the first occupancy permit for the development, or on a phase-by-phase basis if the development will be constructed in phases. The timing of the provision of the benefit in-kind or as a cash-in-lieu payment will be assessed on a case-by-case basis and will be dependent on the type of community benefit(s) required. Securities may be sought by the City as required.

6. Administration

6.1. Cash-in-lieu Payments

Cash-in-lieu payments received from a Section 37 Agreement will be collected by the Planning, Building, Licensing and Enforcement Services Department and held in a Section 37 Reserve Fund set up for that specific purpose. This fund will be managed by the City’s Financial Services Department who will work with other City departments to oversee related expenditures in accordance with an executed Section 37 agreement. The funds will be spent only on the community benefit(s) specified in the Section 37 agreement and the associated by-law.

The Financial Services Department may invest the money in the Section 37 Reserve Fund in securities in which the City of Kingston is permitted to invest under the Municipal Act, 2001, and earnings derived from the investment shall be paid into the Section 37 Reserve Fund. The activities and status of the Section 37 Reserve Fund will be audited and reported out annually, as required.

The Treasurer of the City of Kingston shall each year, on or before the date specified by Council, give Council a financial statement relating to the Section 37 Reserve Fund. The statement shall include all matters identified in Section 37(8) of the Planning Act, a copy of the statement shall be given to the Minister on request and Council shall ensure the statement is made available to the public.

6.2. Provisions for Agreement Modifications

Agreements entered into for the purposes of securing a community benefit(s) will include a clause to allow for changes to previously secured benefits or unspent or unallocated funds. In circumstances where the previously secured benefits is no longer fulfilling a community need (e.g., similar work has been done in the interim), changes to an existing agreement can be made to modify the selected community benefit. The City and all parties to the agreement, or their successors on title, must approve the change and execute an amending agreement.

In circumstances where allocated funds have not been spent within a three-year period after receipt of the funds, changes to an existing agreement can be made to modify the allocation of funds to be redirected to a different community benefit(s). The City and all parties to the
agreement, or their successors on title, must approve the change and execute an amending agreement.

6.3. Other Legal Requirements

The value of the community benefit(s) achieved through Section 37 of the Planning Act will be over and above what could otherwise be achieved through other legislation. For example, a community benefit may be sought in addition to parkland contributions made under Section 42 of the Planning Act as well as development charges and impost fees required under the Development Charges Act and the Municipal Act, respectively.

6.4. Appeal to LPAT

In the event that an application is appealed to, and may be approved by, the Local Planning Appeals Tribunal (LPAT), Planning Staff, at the direction of Council, may request community benefits to be applied by the LPAT in accordance with the policies of the Official Plan and this Guideline.
Appendix A

Terms of Reference: Community Services and Facilities Study

Description

A Community Services and Facilities Study (CSFS) may be required by an applicant to assist in the identification of current and required levels of social infrastructure required to support the health, safety and well-being of local residents (matters pertinent to good planning). Accessible, high quality community services and facilities are essential to promote community interaction, engagement in community life and opportunities for education and recreation. CSFS Studies are essential tools in determining the general health of local community infrastructure. They are also important in identifying necessary improvements or reallocation of services and facilities brought about by changing or growing demand within a community.

CSFS’s serve the needs of the local population, and for the purposes of CSFS studies generally include are review of the supply of, and demand for:

- elementary and secondary schools;
- public libraries;
- child care centres;
- community and recreation centres;
- arenas;
- swimming pools;
- public transit and active transit infrastructure
- social services;
- community space;
- affordable housing;
- cultural facilities; and
- parks and park equipment

Rationale

A CSFS will review social, economic and demographic information in light of the existing and projected supply and demand of community services and facilities. CSFS’s will provide a detailed inventory of all community services and facilities within a prescribed study area. They will additionally review deficiencies and available capacities within those services and facilities in light of planned development or anticipated growth in the service catchment area.

When Required

Planning staff will work with the applicant and/or their consultant to determine the specific requirements of the CSFS based on the nature of the proposed application and the context of the study area. Community Services and Facilities Studies may be required in relation to applications for:

- Official Plan amendments
- Zoning By-law amendments
• Minor Variance
• Plans of Condominium or Subdivision
• Section 37 community benefits applications

In cases of a Section 37 application, a CSFS Study will only be required in the event that City-approved plans have not identified community benefit needs within the immediate vicinity or when an analysis of community benefits identified in City-approved plans is needed to inform the decision-making process.

Applicable Legislation

The *Provincial Policy Statement* (2014) contains policies that outline matters of provincial interest, several of which include the development of community services and facilities:

1.5.1 *Healthy, active communities should be promoted by:*

   a) *planning public streets, spaces and facilities to be safe, meet the needs of pedestrians, foster social interaction and facilitate active transportation and community connectivity;*
   
   b) *planning and providing for a full range and equitable distribution of publicly-accessible built and natural settings for recreation, including facilities, parklands, public spaces, open space areas, trails and linkages, and, where practical, water-based resources;*
   
   c) *providing opportunities for public access to shorelines; and*
   
   d) *recognizing provincial parks, conservation reserves, and other protected areas, and minimizing negative impacts on these areas.*

1.6.5 *Public service facilities should be co-located in community hubs, where appropriate, to promote cost-effectiveness and facilitate service integration, access to transit and active transportation.*

Furthermore, Section 9.12.3 of the Official Plan empowers the City to request a CSFS:

9.12.3. *Development Applications: Additional Information – Studies and Assessments*

   *In addition to the requirements of Section 9.12.2, additional information in the form of the studies or assessments listed in this Section may be required in order to consider a planning application complete.*

Finally, Section 9.12.3.f) of the Plan provides:

**Qualified Persons and Peer Reviews**

All required reports and technical studies will be carried out by qualified persons retained by and at the expense of the proponent. *The City may require a peer review of any report or study by an appropriate public agency or a professional consultant retained by the City at the proponent’s expense.*

**Qualified Persons**
CSFS’s will be prepared by a Registered Professional Planner (RPP) and may be combined with a Planning Rationale submitted with a Planning Act application.

**Required Contents**

A CFSC must contain the following items unless the City determines, through the mandatory pre-application process, that the scope of the CFSC warrants refinement:

- Demographic profile of the localized study area, compared to the City as a whole, based on data from the most recent Statistics Canada Census including:
  - Population data, including current distribution by age and sex, population change from the last Census, population projections;
  - Family composition, including families by type, number of children; private households by type and size; marital status of residents in the study area;
  - Housing, including: occupied private dwellings by structural type, period of construction and tenure;
  - Immigrant population, including population by period of immigration, recent immigrants by selected countries of birth for the most recent census period, number of immigrants in neighbourhoods in the study area and number and type of languages spoken, population mobility status;
  - Labour force, including labour force by occupation and labour force by industry; and
  - Socio-economic characteristics (highest and lowest level of education attained by residents in the study area, labour force participants, average income and income range).
- Level of development activity in the study area listing type of development, tenure, GFA, height, number of units, type of bedrooms, phase of development (data available through DASH).
- Inventory of services and facilities that exist in the study area, for example:
  - elementary and secondary schools;
  - public libraries;
  - child care centres;
  - community and recreation centres;
  - arenas;
  - swimming pools;
  - places of worship;
  - public transit and active transit infrastructure (walkways, trails, bike paths, etc.)
  - social services;
  - community space;
  - affordable housing;
cultural facilities; and
parks and park equipment

Maps of services and facilities serving the study area in which the development application is located.

Profiles of services and facilities, for example, programs offered, size of facilities, demand and capacity of facilities and programs, and who is served by the service or facility (age groups, gender), as well as contact information for all services and facility staff contacted in the course of the study. This information can then be used to determine gaps in service provision for the study area.

The study should analyze the ability of the service or facility to accommodate growth, identify barriers, and list any new services that may be required as a result of the proposed development.

Additional information from City departments and other agencies as may be required, including highlights of existing studies and reports that may be available for the area.

Subsection Requirements

All development applications and accompanying studies and reports should be submitted through the City of Kingston’s DASH Development and Services Hub which can be accessed online at: DASH link

Additional Information

For additional information, please contact the City of Kingston Planning, Building and Licensing Services Department at:
1211 John Counter Boulevard, Kingston
613-546-4291 ext. 3180
planning@cityofkingston.ca
Appendix B

Terms of Reference: Real Estate Appraisal

Description

The real estate appraisal is intended to provide a comprehensive evaluation of a development proposal demonstrating the increase in land value between the as-of-right height and density permission on a property and the land value of the height and density of a development proposal. The real estate appraisal will be used in the negotiation process related to community benefits under Section 37 of the Planning Act.

When Required

A real estate appraisal is required in conjunction with an application for a Zoning By-law Amendment, only where Staff have identified that a proposal will be subject to community benefits under Section 37 of the Planning Act, and where Staff have specifically requested a real estate appraisal from the applicant.

Applicable Legislation

Section 37 of the Planning Act gives a municipality the ability to authorize increases in height and density of development otherwise permitted by the by-law in return for the provision of such facilities, services or matters as are set out in the by-law, referred to as community benefits. In order to use this authority, the municipality’s official plan must contain provisions relating to the authorization of increases in height and density of development.

Qualified Persons

A real estate appraisal must be completed by an appraiser with AACI designation granted by the Appraisal Institute of Canada (AIC).

Required Contents

A real estate appraisal shall be a narrative report based on Real Property Appraisal Standards of the Canadian Uniform Standards of Professional Appraisal Practice (“CUSPAP”). A real estate appraisal must include and/or address all points listed below:

1. Executive summary;
2. Identification of the subject property and its ownership;
3. Statement that client is the “City of Kingston” with instructions only to come from the City;
4. Purpose and intended use of the appraisal which is to estimate the increase in land value resulting from an increase in development density and/or height which may be permitted through a Zoning By-law Amendment in accordance with the provisions of Section 37 of the Planning Act, the City’s Official Plan and the City’s Community Benefits Guideline;
5. Increase in Land Value shall be defined as:
   a) Land value based on “as of right” maximum height and density;
   b) Land value based on “proposed” height and density;
   c) Differential between the “as of right” and “as proposed” is the “Increase in Land Value”;

6. City staff will provide appraiser with the “as of right” maximum height/density and the “as proposed” height/density as provided by the applicant and methodology to assist appraiser to determine equivalent numbers for comparable sales;

7. Effective date of the appraisal as provided by City Staff;

8. Definition of market value;

9. History of property including last conveyance. If the property was acquired in the past year and there is a difference between the purchase price and the appraised value resulting from the appraisal, appraiser must provide comments on differential;

10. Analysis of building conditions, Official Plan designation and Zoning permissions;

11. Assume that property is clean relative to environmental conditions;

12. Description of the proposed development including site plan, development statistics and schematics and zoning and/or official plan amendments required to achieve “proposed” height/density;

13. Discussion of methods of valuation used included discussion of methods not used and why;

14. Analysis of the neighbourhood and comparable properties;

15. For comparable properties, include narrative analysis of each. Include confirmation for source of sales information, adjustments for time, size and location and other influences as appropriate, zoning designation and permitted height and density at time of purchase and any zoning amendments post purchase;

16. Include location maps, site plans, and photographs of subject property and comparable properties;

17. Statement that highest and best use analysis not applicable for this real estate appraisal;

18. Analysis and statement of limiting conditions and assumptions;

19. Reconciliation is required when estimate of value is derived from using two or more approaches to valuation;
20. Reconciliation should include clear explanation of how final estimate was achieved including discussion of which method of valuation is more appropriate/carries more weight and why;

21. Reconciliation should include other comparables found that were not included and why so that City can be assured that appraiser has considered all sales found; and

22. Appraisal to be signed by AACI appraiser confirming that he/she has inspected subject property and comparables personally and is not just a reviewer of the work.

Submission Requirements

Three (3) hard copies and one electronic PDF copy of the real estate appraisal shall be provided directly to the contact in the Planning Division who requested the appraisal.

Additional Information

For additional information, please contact the City of Kingston Planning, Building and Licensing Services Department at:
1211 John Counter Boulevard, Kingston
613-546-4291 ext. 3180
planning@cityofkingston.ca