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Subject: **Recommendation Report - Implementation of Section 37 (Density Bonusing) within the Transition Period of Section 37**

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Recommendations:

1. **THAT** the report titled **Recommendation Report - Implementation of Section 37 (Density Bonusing) within the Transition Period of Section 37** to the Planning and Development Committee meeting of October 18, 2021, be received;
2. **THAT** staff be directed to initiate implementation of the Section 37 (Density Bonusing) policy for applications that meet the relevant criteria as established in the Implementation Plan within this report;
3. **THAT** staff monitor uptake on density bonusing and report to Council as to the success of the implementation, prior to the earlier of September 18, 2022 or the establishment of a Community Benefits Charges By-law; and
4. **THAT** staff utilize learnings from the implementation of this policy in ongoing work related to the new Section 37 (Community Benefits Charges).

Overview:

- **Brampton is receiving a high number of zoning applications that seek considerable increases in the zoned heights and/or densities.**
- **Brampton's Housing Strategy and Action Plan ("Housing Brampton") was approved by City Council on May 19, 2021. Its recommendations include**

the timely advancement of various regulatory tools to support the provision of affordable housing, such as Section 37 (Density Bonusing and/or Community Benefit Charge) (“S.37”)

- **S.37 of the Planning Act in its original version provides that a municipality can allow increases in planned height and/or density of development in return for the provision of certain facilities or services. This is commonly referred to as "density bonusing".**
- **S.37 in its updated version provides that a municipality may establish a Community Benefits Charges (CBC) By-law to require a fixed percentage of land value for high density applications, to fund community benefits.**
- **Brampton can and plans to pursue density bonusing until the earlier of September 18, 2022 or the establishment of a Community Benefits Charges Strategy and By-law. Brampton also plans to allow developers to pay a cash contribution in lieu of in-kind community benefits.**
- **A Council Workshop was conducted on June 28, 2021 to share with Council, Brampton’s proposed approach to implementation of S.37.**
- **An Official Plan Amendment to pursue density bonusing is not required.**
- **A Reserve #33 - Community Benefits, to receive cash contributions as negotiated with the developers to provide for community benefits under S.37 density bonusing was established on July 7, 2021 by Council approval.**
- **Staff have completed implementation related background work such as a Terms of Reference for an Appraisal Report, a City-preferred List of Appraisers and Implementation Process Guidelines.**
- **A meeting with the development industry was held on September 16, 2021.**
- **This report and accompanying Implementation Plan will enable the City to officially initiate density bonusing from the date of Council endorsement of the Implementation Plan. Implementation will continue until the earlier of September 18, 2022 or the establishment of a Community Benefits Charges By-law (CBC) (as per the updated S.37), which is considered as the transition period of S.37.**
- **Staff will monitor uptake on the policy and report to Council as to the success of the policy. Staff will also utilize learnings from the implementation of this policy in ongoing work related to the updated S.37 (Community Benefits Charges).**

Background:

Housing Brampton and its recommendations that were endorsed by Council direct staff to advance the timely implementation of regulatory tools identified in Housing Brampton, such as inclusionary zoning and S.37 (density bonusing and/or a Community Benefits Charge By-law), to facilitate affordable housing in appropriate development applications.

With respect to Inclusionary Zoning, staff continue to work on the assessment and policy analysis in collaboration with the Region of Peel. Regarding S.37 of the Planning Act, Brampton can pursue density bonusing (as per the original S.37) until the earlier of September 18, 2022 or the establishment of a Community Benefits Charges By-law ((hereinafter referred to as a “CBC”) (as per the updated S.37), considered as the “transition period” of S.37.

Following Council direction on Housing Brampton, staff prepared process parameters to implement S.37 density bonusing in the transition period. On June 28, 2021, staff brought forward a presentation to a Council Workshop regarding S.37, and a simplified approach to density bonusing during the transition period.

Staff have initiated the assessment for S.37 CBC, and the feasibility of implementing CBC in Brampton will be determined upon completion of the initial assessment.

Brampton’s Official Plan policy on density bonusing reflects the original provisions of S.37 prior to the CBC and allows the City to develop bonusing policies on a City wide, area specific or site specific basis. City legal staff have advised that an Official Plan amendment is not required in order to implement density bonusing in Brampton. This report outlines how the City intends to pursue density bonusing during the transition period mentioned above.

The Brampton 2040 Vision underscores thoughtful densification while ensuring that quality of life and provision of community amenities match with planned densification. Density bonusing is a tool that can support this goal, and help the City obtain not just affordable housing, but many other community benefits such as public art, improved parkland and enhanced urban spaces, public institutional space (daycare, community centres, etc.), improved streetscaping, heritage building preservation and others.

Current Situation:

Transition of S.37

Bill 197: The COVID-19 Economic Recovery Act, 2020 repealed and replaced S.37 of the Planning Act, which allowed municipalities to accept cash or in-kind contributions in exchange for increases in height and density. The newly enacted S.37 permits the Council of a local municipality to impose, by by-law, CBCs, a financial contribution that is required to be paid when land is developed to contribute to the “capital costs of facilities, services and matters” incurred from development and population growth. Unlike density

bonusing, CBCs are no longer restricted to zoning and minor variance applications proposing height and/or density beyond the as-of-right planning permissions. CBCs may not be imposed for development or redevelopment with fewer than five storeys and development or redevelopment that adds fewer than 10 residential units.

The new CBC regime under S.37 is permissive, not mandatory. As such, municipalities can choose whether or not to avail themselves of a CBC By-law and, by the operation of s. 37.1(2)1, are even permitted to continue enacting by-laws under the original/old S.37 density bonusing until the earlier of September 18, 2022 or the date the municipality enacts a CBC by-law. During this transition phase, there is an opportunity for Brampton to use density bonusing to obtain community benefits such as public art, affordable housing, etc. in exchange for higher than permitted densities and/or heights; while ensuring that technical and public concerns are addressed, and the developments make good planning sense.

In September 2021, Brampton has initiated an initial assessment study to gain an understanding of the viability of a CBC strategy in Brampton. The CBC strategy, if deemed feasible, is expected to be in place by September 2022.

Based on the direction from Council in relation to Housing Brampton, and the fact that a CBC regime will need a strategy to be approved first, staff propose to pursue density bonusing as originally prescribed under S.37 of the Planning Act, as an interim measure until the establishment of a CBC Strategy and By-law.

Benchmarking of S.37 (Density Bonusing) Implementation Plans

Many Ontario municipalities have taken advantage of S.37 of the Planning Act. Staff have completed a benchmarking of five municipalities to understand their implementation approach and criteria (see Appendix 4). There are varied approaches and parameters applied by these municipalities, including detailed standards, geography based application and additional studies or assessments required from developers.

Implementation Approach Presented at Council Workshop (June, 2021)

Since density bonusing is available to Brampton for a short duration, staff's approach is to facilitate a simplified implementation plan that does not require additional studies from developers and does not extend the development review process. Further, it is a plan that takes into account the City's priorities and needs.

At a Council workshop on June 28, 2021, staff brought forward a presentation (See Appendix 3) with benchmarking, principles of use in Brampton, along with a draft process chart. Staff presented to Council that Brampton is currently receiving numerous development applications requesting an increase to the in-force height and/or density, where the City can pursue obtaining community benefits through density bonusing provisions of S.37.

As per the Implementation Plan in this report, Brampton will accept two forms of community benefits under density bonusing:

1. In-kind services –include park improvements (above and beyond the requirements under section 42 and 51.1 of the Planning Act) or the construction of facilities which are completed by a developer as part of the development of their site (i.e community space or day care space in the ground floor of a mixed-use development, affordable housing units or the installation of public art); and/or
2. Cash-in-lieu - Many of these development applications may propose a payment of cash contribution instead of in-kind contribution of benefits. The City will accept cash contributions to be deposited in a special S.37 related Reserve Fund.

The provision of in-kind benefits or payment of cash will be to an amount equivalent to a percentage of the uplift to be realized as a result of the additional height and/or density of a project. The uplift will be determined by an appraiser. The percentage or general contribution of this uplift will range from 20% at the low end to 60% at the higher end. The final benefit amount secured through a S.37 Agreement, will be through a process of negotiation.

Supporting Work Completed after the Council Workshop

Establishment of a Reserve Fund:

S.37 of the Planning Act in its original version provides that a municipality can increase the height and density of approved development in return for the provision of facilities, services or matters specified in the site-specific zoning by-law. Bill 73 (the Smart Growth for our Community Act) amended S.37 of the Planning Act by adding the following new subsections:

- (5) Special Account- All money received by the municipality under this Section shall be paid into a special account and spent only for facilities, services and other matters specified in the By-law;
- (6) Investments- The money in the special account may be invested in securities in which the municipality is permitted to invest under the Municipal Act, 2001; or the City of Toronto Act, 2006, as the case may be, and the earnings derived from the investment of the money shall be paid into the special account, and the auditor in the auditor's annual report shall report on the activities and status of the account.

These changes require that municipalities maintain a special account (reserve) for funds collected under S.37 of the Planning Act. On an annual basis, the Treasurer is required to provide a financial statement on this reserve.

Staff brought forward a report to Council on July 7, 2021 and a Reserve #33 - Community Benefits, to receive cash contributions as negotiated with the developers to provide for community benefits under S.37 density bonusing was established by Council approval.

Terms of Reference for Appraisal Reports and City-approved List of Appraisers:

Staff have finalised a Terms of Reference for the appraisal reports that will be required to establish the uplift amount, which will then assist the City and the developer to negotiate a contribution amount. Appraisals will be paid for and be prepared by the developers and submitted to the City's Realty Services for review (for a fee). Staff have also finalised a List of Appraisers that are experts in the appraisal report work, and have established a process for payment of fees for the appraisal report review.

Implementation Plan:

Recommendation 2 of this report asks for Council direction to initiate implementation of the S.37 (Density Bonusing) policy for applications that meet the relevant criteria as established in the Implementation Plan as below:

Implementation Plan

Project Eligibility

All rezoning applications for mid to high density residential development across Brampton, that are deemed complete after Council approval of the Recommendations of this Report, and that propose an increase in density and/or heights from the existing zoning permissions, will be eligible for S.37 density bonusing within the transition period of S.37.

Principles

1. The development must represent good planning.
 - a) Amenities/features that are required in a development application are not considered to be eligible density bonusing community benefits, and should be provided by the developer anyways.
 - b) The City should not approve inappropriately high density or height increases for developments simply to get community benefits and any owner/developer should not obtain inappropriately high density or height increases by offering community benefits.
2. There should be a reasonable planning relationship between the secured community benefits and the contributing development.
 - a) Location Priority: As S.37 is intended to address the needs created by growth, the Planning Act requires benefits to have a reasonable geographic relationship with a proposed development. Brampton will prioritise:

- I. In-kind contribution: On-site or in the vicinity of the site
 - II. Cash contribution: May be used for local or city-wide capital projects
- b) Benefit Priority: To align with Housing Brampton, affordable housing has been established as a priority by Council and City staff. Other benefits can include park improvements, public art, etc.
- I. In-kind contribution: Affordable (ownership and rental) housing units
 - II. Cash contribution: Used towards the Brampton Housing Catalyst Capital Project

Process (See Appendix 1 for a visual chart)

The following steps will generally be followed in the development review process:

1. *Statutory Public Meeting for the Zoning By-law Amendment Application:* Information Report: Facts of the application presented including eligibility for S.37 density bonusing
2. *Technical Review:* An initial scan of identified benefits and any public input on local S.37 density bonusing benefits, while the application is under technical review and being analyzed as being 'good planning'
3. *Real Estate Review of an Appraisal Report and Valuation of Uplift*
4. *Community Benefits:* Development and Policy Planning staff meeting with Ward Councilors to discuss community benefits, followed by negotiations with the applicant (benefits in the range of 20%-60% of the uplift value)
5. *Preparation of Draft Zoning By-Law:* The By-law to include wording on S.37 density bonusing against the regulations for height and/or density
6. *Recommendation Report at Planning & Development Committee:* To include a complete analysis and rationale supporting the recommendation; and a general range of benefits negotiated
7. *Option of Full Cash Contribution Payment:* Optional, prior to execution of Zoning By-law to avoid a S.37 agreement
8. *Execution of Zoning By-law at City Council meeting*
9. *Execution of S.37 Agreement and Registration on title:* Will detail exact S.37 density bonusing community benefits including any cash contribution commitments
10. *Completion of Requirements as per the S.37 Agreement.*

Considerations for Uplift Contribution

Staff and area Councillors will consider, on a case by case basis, the contribution amount based on the following general parameters:

- Proportion of proposed bonus density and/or height in relation to existing regulations in the Zoning By-law;
- Proportion of proposed bonus density and/or height in relation to existing higher order policy (Official Plan/Secondary Plan);
- Neighbourhood planning components identified in the policy documents;
- Identified or projected gap in local services such as daycare centres, public transit infrastructure (e.g. bus shelters), park equipment, etc.;
- Planned community infrastructure capital projects;
- Employment area conversion;
- Location if the proposal within an intensification area, Community Improvement Plan area, etc.;
- Tenure and proposed housing or unit mix;
- Proposed partnerships with the non-profit sector; and
- Proposed on-site amenities beyond the normal requirements.

Recommendation 3 of this report asks for direction to monitor uptake on the S.37 density bonusing and report to Council as to the success of the policy, prior to the earlier of September 18, 2022 or the establishment of a CBC By-law. Recommendation 4 of this report asks for direction to utilize learnings from the implementation of this policy in ongoing work related to the new S.37 (CBC). This is necessary to determine if there are any growth-related needs in excess of associated funding that could be included in a CBC strategy and to measure any fiscal impacts on the City's finances.

Partnership with the Development Industry:

The Brampton 2040 Vision depicts a more sustainable, urban, and innovative direction for the City. Brampton is on a transformational trajectory towards a modern, urban, walkable, affordable and transit-friendly city. The City is proactively taking a lead and undertaking significant city-building projects such as improving regional connections through the Hurontario-Main Street Light Rail Transit and the Queen Street Rapid Transit projects; moving forward with the downtown flood mitigation project – Riverwalk- which is expected to unlock massive re-development; planning for transit oriented communities such as Uptown Brampton; advocating for post-secondary expansion projects in downtown Brampton; incentive programs targeting office investment in strategic areas; and a sustainable and smart greenfield expansion in Heritage Heights. As a partner in growth, the development industry also benefits from the City's investment and has an important role to play in improving the quality of life of residents.

City staff presented the proposed approach to S.37 at a BILD meeting on September 16, 2021. The City looks forward to working with BILD to ensure that community benefits

from increased densities help support the Brampton 2040 Vision and its goals of equity and livability.

Corporate Implications:

Financial Implications:

There are no direct financial implications associated with this report. Any cash contributions from applications subject to S.37 will be discussed in future reports to Council.

Other Implications:

There are no other implications in this report. The implementation of S.37 density benefits during the transition period of S.37 will support the City in offsetting the impacts of greater density by securing a range of community benefits such as: improved parkland and enhanced urban spaces, public institutional space (daycare, community centres, etc.), affordable housing, public art, improved streetscaping, heritage building preservation and others.

Term of Council Priorities:

This report directly aligns with the Council Priority to Create Complete Communities.

Conclusion:

Brampton is receiving a high number of zoning applications that seek significant increases in the zoned heights and/or densities. Pursuing the approach of smart intensification, Brampton seeks to offset the impacts of greater density by securing a range of community benefits such as: improved parkland and enhanced urban spaces, public institutional space (daycare, community centres), affordable housing, public art, improved streetscaping, heritage building preservation etc. S.37 is a tool that can help the City achieve the goals of a balanced localized community infrastructure. At the same time, the development industry also benefits by increased values of the developments through the approvals of bonus densities, when deemed feasible.

Staff have prepared a simplified Implementation Plan, based on the fact that density bonusing is available for a short duration. This report recommends that Council endorse the implementation plan for S.37 density benefits in the transition period of S.37 (until the earlier of September 18, 2022 or the establishment of a Community Benefits Charges Strategy and By-law).

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Attachments:

1. Brampton S.37 Density Bonusing Process Flow Chart
2. Brampton Terms of Reference for Appraisal Report for S.37 Density Bonusing
3. Council Workshop Presentation (Section 37) June 28, 2021
4. Benchmarking of S.37 Density Bonusing Implementation Plans