

Toronto ON: *Large Sites Policy*

Background

Toronto's inclusionary housing policy is found in housing policy 9 of its Official Plan (OP). The policy is commonly called the 'large sites policy' because it applies only to sites greater than 5 ha in size.

The OP was approved by Council in 2002, but this particular policy was appealed by the development industry to the Ontario Municipal Board (OMB), and did not come into effect until mid-2006 only after modifications acceptable to the industry were made. These modifications substantially re-wrote the policy, changing it from one that was clear and demanding, into one made ambiguous by convoluted language and giving the developers considerable latitude.

To date, this policy has not been used to provide affordable housing, nor have any implementing regulations or guidelines been prepared to augment the basic requirements found in the OP.

Provisions

The policy is directed at providing a mix of housing in terms of type and affordability on sites greater than 5 ha in size. The affordable housing obligation is imposed on these sites only when they are re-zoned to allow for increased density or height. In these cases, 20% of the resulting additional units potentially must be provided as affordable housing.

As stated in the policy, "the first priority community benefit" will be the provision of 20% of the additional residential units as affordable housing". This term does not actually guarantee the provision of affordable housing; it only seems to indicate that it must be considered first among the very many other possible community benefits.

There is also wide latitude in how the affordable housing obligation can be met. These include the following:

- The developers have these outright choices:
 - constructing the affordable units on site, or
 - conveying land on the development site for the affordable housing.
- The developers can also negotiate with the City to do these additional options:
 - constructing the affordable housing elsewhere in the City,
 - conveying land near the development site, and
 - paying cash-in-lieu for the construction of affordable housing on or near the development site.

The policy also contains provisions regarding the mix of housing, but these provisions need not be considered here because they are out-of-date and unnecessary in Toronto's current market.

The OP defines 'affordable housing' as housing affordable to households earning at or below the average market rent by unit size, as determined annually by CMHC for the Toronto area. This means that the eligible incomes for this housing are close to those being served by conventional social housing.

The policy has been designed to make use of the regulatory tools provided by section 37 of the Ontario Planning Act. Under this legislation, the City is able to offer an increase in the otherwise permitted height and/or density in return for the provision of "facilities, services or matters", otherwise generally called 'community benefits'.

The OP identifies a long list of permitted s37 community benefits that can be obtained in return for the increased development rights, including purpose-built affordable rental housing. The City's subsequent s37 implementation guidelines added new affordable ownership housing as an approved option for large sites only.

The s37 provisions contain another important feature. The community benefits secured under s37 can be made subject to an agreement registered on title of the land. These agreements are important because they can be used to bind all subsequent owners to the conditions set out in that agreement.

Observations

In the absence of any actual experience, and even specific regulations or guidelines, the effectiveness of the policy cannot be assessed. Nevertheless, there are many aspects that appear seriously to undermine its potential productivity, at least when compared with inclusionary practices in the US.

- 1) The policy will apply only to sites of a relatively large size of 5 ha or more. No justification has been reported for setting this particular threshold. It will limit the application of the policy; as there are not many of these sites in Toronto.
- 2) The housing obligation can be imposed only on the additional development rights approved through a re-zoning for additional density and/or height. As a consequence, the policy will be only really productive on those sites involving a change of use, or a very significant increase in the permitted density.
- 3) Referring to affordable housing as the "first priority community benefit" indicates that it could continue to compete with a slew of other permitted community benefits. Because these other benefits are often favoured by local councillors as well as developers, very little affordable housing has been generated to date through other s37 transactions generally.

- 4) When providing for the affordable housing, the developers have two outright choices; constructing the affordable units or dedicating a development parcel. Developers elsewhere when given this choice almost invariably give land. While this no doubt is a useful contribution, it anticipates that government funding will be available for its development.
- 5) There are no rules regarding the size of the affordable housing units that must be provided. This opens the possibility that the developers will argue for providing more smaller units because they are cheaper to build, and fewer family and larger units that the City really needs.

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