

Toronto ON: *Large Sites Policy*

The basis for an inclusionary housing program in Toronto has been established by policy 9 of its Official Plan – its so-called ‘large sites policy’. Toronto’s Official Plan was approved by Council in 2002, but part of this policy was appealed by the development industry to the Ontario Municipal Board (OMB), and did not come into effect until mid-2006 after mutually-agreed clarifications were made. This policy has not been used, 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 generally greater than 5 ha in size. A minimum of 30% of the new housing – presumably, all market-rate – must be provided in attached and multiple housing forms.

In addition, when an increase in height and/or density is sought, the provision of 20% of the additional residential units as affordable housing will be the city’s “first priority community benefit”.

The affordable housing may take these forms:

- the construction of units on or near the site, or elsewhere in the city;
- the conveyance of land on or near the site; and
- the provision of cash-in-lieu for developing affordable housing on or near the site.

The off-site and cash-in-lieu options are allowed only at the discretion of the city.

The OP establishes a way to set eligible income levels through its definition of ‘affordable housing’. The income levels are pegged to the average market rent according to the number of bedrooms in the unit, as determined annually by CMHC for the Toronto area.

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 but not affordable ownership. The city’s subsequent s37 implementation guidelines adopted in 2007, however, identify new affordable ownership housing as an alternative to affordable rental housing when provided on large sites.

Under s37, the community benefits can be made subject to an agreement registered on title of the land. That has the important consequence of binding all subsequent owners to the agreement.

Authority

The city, like other local governments in Ontario, lacks the authority to impose a mandatory affordable housing obligation on all housing developments.

The last attempt by a local government in Ontario to establish something like a mandatory inclusionary housing policy occurred in 1991. The city of Burlington passed a policy imposing a 25% affordable housing requirement on all developments, along with related basic controls on income-eligibility and occupancy.

These provisions were established in response to the provincial housing framework set out in the 1989 Provincial Policy Statement. That statement called upon municipalities to establish planning policies and standards that would enable at least 25% of new housing to be affordable. (The 25% obligation was removed in 2005 when the current statement was released).

The policy was challenged by a local development to the OMB. The board ruled that the Planning Act did not authorize this imposition, and at best, the city could only facilitate the provision of this housing but not make it mandatory.

Since that time, in light of this decision, municipal governments have been reluctant to consider mandatory inclusionary policies without having explicit authority from the province.

The 'large site policy' appears to have been sanctioned because the affordable housing obligation only falls upon developments receiving additional development rights as a consequence of re-zoning or other approvals.

Observations

In the absence of any actual experience with this policy, and even specific regulations or guidelines, its effectiveness clearly cannot be determined. Nevertheless, there are many aspects that would appear to seriously limit its potential productivity.

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 probably no more than a dozen such sites in Toronto.
2. The housing obligation can be imposed only on the additional development rights approved beyond the existing permitted density and height limits. As a consequence, the policy will be productive only on those sites receiving an approval for 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 will continue to compete with the other permitted community benefits. Because these other benefits have been favoured by local councillors as well as developers, very little affordable housing has been generated to date through s37. Giving it first priority falls short of guaranteeing that the full 20% quota will be fulfilled before any other community benefits are considered.
4. When providing for affordable housing, the developers have the choice of two on-site options: constructing the affordable units or dedicating a development parcel. (The other options are only available to the developer at the discretion of the city.) Whenever given such a choice, developers almost invariably give land. While this no doubt is a useful contribution, it anticipates that government funding will be available for its development. It also means that affordable ownership is unlikely to be built by the private developers.
5. The income ceilings established for the different unit sizes are based on market rental data. These income ceilings are inappropriate for affordable ownership housing, which operates under different market conditions. At best, these ceilings will encourage developers to provide small affordable ownership units (which the city does not particularly want) and discourage affordable family units (which it does).

Overall, the large site policy (consistent with other policies in the OP) supports a conventional and narrow mix of affordable housing – namely, social housing and affordable rental housing – both reliant on some form of government funding for construction. It does not support a broader and more complete mix of housing that would come out of leveraging the regulatory and approval process to produce affordable ownership housing.

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