



**Office of the Auditor General: Follow-up to the
2014 Review of City Funding to Ottawa School of
Speech and Drama, Tabled at Audit Committee –
November 9, 2017**

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Executive summary

The Follow-up to the 2014 Review of City Funding to Ottawa School of Speech and Drama (OSSD) was included in the Auditor General's 2015 Audit Work Plan.

The original review was conducted as a result of a 2014 Fraud and Waste Hotline report regarding the City's funding to OSSD which ceased operations in February 2014.

The key findings of the 2014 review included:

- A site plan control application for 99 Parkdale approved by the City in April 2013 included the reference to a donation¹ in the amount of \$50,000 to be paid to OSSD by the developer.
- Management indicated they were only made aware in early 2014 that the community benefit contribution had already been paid by the developer to OSSD. While the Site Plan application was approved, management did not know the timing of the developer's payment as it was not made through the City's standard procedures for posting securities and making payments through the site plan approval process.
- Separately, the City also provided \$60,000 in loans/advances to OSSD, of which there was an outstanding balance of \$15,000 that was uncollectible. Despite OSSD having an outstanding loan and a significant deficit, more frequent interim progress reports towards achieving their deficit reduction plans and heightened review of their operations were not in place.

¹ The Planning Act provides the authority for Municipalities to pass zoning by-laws to authorize an increase in the height and/or density of development in return for provision of community benefits. At the time the City handled these community benefits under Section 41 of the Planning Act as a Site Plan Approval. Such transactions are now handled under Section 37.

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Table 1: Summary of status of completion of recommendations

Recommendations	Total	Complete	Partially complete	Not started	No longer applicable
Number	3	2	1	-	-
Percentage	100%	67%	33%	-	-

Conclusion

Management has been proactive in addressing the recommendations as two out of three recommendations are complete and the other recommendation is partially complete.

Acknowledgement

We wish to express our appreciation for the cooperation and assistance afforded the audit team by management.

Detailed report – Assessment of implementation status

The detailed section of this report is currently available in English only. The French version will be available shortly. For more information, please contact Ines Santoro at 613-580-2424, extension 26052.

La partie détaillée de ce rapport n'existe qu'en anglais. Elle sera disponible en français sous peu. Pour tout renseignement, veuillez communiquer avec Ines Santoro, 613-580-2424, poste 26052.

The following information outlines management's assessment of the implementation status of each recommendation as of November 30, 2016 and the Office of the Auditor General's (OAG) assessment as of July 28, 2017.

Recommendation #1

Status	Management update	OAG assessment
	Complete	Complete

Audit recommendation:

That Management ensure there are appropriate policies, procedures, and processes around Section 37 and 41 agreements and that they address the eligibility and timing of payments relating to community benefits.

Original management response:

Management agrees with this recommendation and it has already been implemented.

Policies, procedures and processes for Section 41 agreements have been long established, and for Section 37 agreements have been put in place through the Guidelines and Protocols approved by Council in March 2012. (Ref No: ACS2012-ICS-PGM-0010).

The specifics of ensuring that payments are made appropriately to the right authority at the right time in accordance with these controls have been addressed in the Management Response to Recommendation 2 (improvements to City tracking systems and the introduction of an audit mechanism).

Section 41 Agreements: With the March 28, 2012 City Council approval of guidelines and protocols for the implementation of Section 37 agreements, Planning and Growth Management is no longer securing community benefits through Section 41 agreements. For existing Section 41 agreements, the Department has processes in place for registering these prior to the issuance of permits, and for the inspection and release of securities to ensure obligations set out in Section 41 agreements are fulfilled. As these agreements are registered on title, the City also has the ability to enforce the provisions of Section 41 agreements through legal channels with the City Solicitor.

Section 37 Agreements: Section 37 of the Planning Act, provides the legislative authority for municipalities to share in the increased value that may result from a request for increased height and/or density of a development project. It provides for the enactment of by-laws to set out the community benefits to be provided, the timing for the provision of these benefits and authorizes the municipality to secure the obligations for the provision of community benefits through an agreement that would be registered on title. These agreements run with the land, bind future owners and are enforceable.

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The timing for the provision of the community benefit can also vary significantly based on the community benefit that is to be provided. This is clearly set out in the Section 37 Agreement that is registered on title.

The City has a policy in its Official Plan, as required by the Planning Act, to enable agreements to be negotiated for community benefits through the development review process in consultation with the Ward Councillor and the local community.

Management update:

Implementation of this recommendation is complete as per the original management response.

OAG assessment:

Management has confirmed that community benefits have no longer been included in Section 41 agreements since 2012. These benefits are now negotiated through Section 37 agreements. OAG reviewed the Guidelines and Protocols for Section 37 agreements approved by Council in March 2012 and found that they address eligibility and general parameters for the timing of payment to the community benefit project.

The 2012 guidelines were superseded by revised guidelines which were approved by Council in May 2017. The revised guidelines clarify when funds for community benefit should be disbursed by the developer based on the type of benefit being provided.

Recommendation #2

Status	Management update	OAG assessment
	Partially complete	Partially complete

Audit recommendation:

That management ensure that the Section 37 and Section 41 agreements are properly executed, tracked, monitored, followed-up and reported to Committee and Council. This should include consideration of an appropriate audit clause.

Original management response:

Management agrees with this recommendation.

Planning and Growth Management has developed a tracking system for identifying the community benefits that are to be provided related to sites where approvals have been granted for increased density and height that are subject to Section 37 and the Section 41 approvals that pre-date the March 2012 Section 37 Guidelines. The Finance Department has also set up a tracking system for cash contributions to be made to the City for various community benefits.

The Planning and Growth Management and Finance Departments are currently in the process of amalgamating the two tracking systems to have one system that would cover all aspects of Section 37 approvals and agreements, identifying the benefits to be provided and whether they are cash contributions or benefits to be provided as part of a development, indicate when benefits would be required and when they have been provided and note the instrument number and date for the agreements that are registered on title. This system will be maintained by Planning and Growth Management and Finance and will be in place by the end of Q4 2014.

Planning and Growth Management will develop an audit mechanism to demonstrate that community benefits approved through Section 37 agreements are achieved. This mechanism will be developed by end of Q4 2014.

Planning and Growth Management will be reporting back to Council in early 2015 on an evaluation of the Section 37 process. This report will identify all existing agreements identifying community benefits and their status pursuant to Section 37.

With respect to Section 41 agreements, the Ward Councillor and the appropriate Manager of Development Review through delegated authority, concur with an

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application's conditions which are then implemented through a Section 41 Site Plan Agreement which is then registered on title. The volume of Site Plan Control applications is reported out annually in the Planning and Growth Management Department's Annual Delegated Authority report.

Management update:

Implementation of this recommendation is partially complete.

Planning, Infrastructure and Economic Development (PIED) and Finance have developed an amalgamated tracking spreadsheet to identify community benefits approvals that have been granted for increased density and height, cash contributions made to the City, and the value of community benefits approved through Section 37 and Section 41 agreements. This tracking document is reviewed quarterly by PIED and Finance staff and is updated as needed.

A report will be provided to Council by the end of Q2 2017 on an evaluation of the Section 37 process including recommended changes. Originally this report was to be provided to Council in Q4 2015, but was deferred to increase the sample size of developments where Section 37 agreements would have been negotiated.

With the implementation of the Section 37 process for determining community benefits, the use of Section 41 of the *Planning Act* to obtain such benefits is no longer needed and has ceased.

OAG assessment:

OAG reviewed three sample files to confirm that agreements for community benefits are being properly executed, tracked, monitored, followed-up and reported to Committee and Council. Two of the files examined related to Section 37 agreements and one was for a Section 41 agreement.

We found that the three agreements had been executed and funds expected and received for the related community benefits were accurately documented in the City's internal tracking spreadsheet. We did however note an error on the spreadsheet which related to another agreement. This error resulted in an overstatement on the spreadsheet in the amount of cash expected for community benefits. This error did not however affect the Council report which only presents funds that have been received.

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In July 2017 Council was provided with the 2016 report on the community benefit payments received for Section 37 agreements. This report also included the status of community benefit payments received for Section 41 agreements. The payments reported for the agreements that we reviewed were accurate.

None of the Section 37 and Section 41 agreements that we reviewed had an audit clause. Legal Services confirmed that current Section 37 agreements do not include an audit clause. Due to the absence of this clause, we consider this recommendation partially complete.

Recommendation #3

Status	Management update	OAG assessment
	Complete	Complete

Audit recommendation:

That management ensure that for groups with loans/grants that the agreements are properly executed, tracked, monitored, followed-up and reported to Committee and Council. For groups with significant accumulated deficits or in default of payments or provision of services, this would include heightened review, more frequent interim progress reports, and appropriate steps to recover or write-off amounts.

Original management response:

Management agrees with this recommendation.

Grants are currently reported to Committee and Council through Delegated Authority reports. Moving forward, Management will now include short-term loans in future reporting. In addition, groups with deficits greater than 10% of the organization’s total budget will be flagged and notified of their requirement to develop a deficit–reduction plan. They will also be required to submit mandatory quarterly progress reports on their deficit-reduction plan.

The guidelines and application form published for the Partnership Cultural Funding programs for Project Funding and Annual Operating Funding have been amended to include the following provision dealing with deficits:

“Applicants carrying an accumulated deficit greater than 10% of total operating revenue must submit a realistic deficit reduction plan. This plan must include targets, timelines and responsibilities. Please contact your Funding Officer to request a Deficit Reduction Plan template.”

Cultural Funding staff have been made aware of this amendment and the expectation that groups with deficits be tracked closely on a quarterly basis. As well, the standard template used by staff to instruct groups on deficit reduction plans will be modified by Q4 2014 to include the requirement for quarterly progress reports.

To address the issue of recovering or writing off amounts owed to the City, Management will continue to include provisions for reducing annual funding amounts paid to any group by amounts owing to the City, and will work with Legal Services and

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Finance to identify and collect amounts owing that are at risk in order to initiate earlier requests for payment or to initiate claims against bankrupt organizations in the event that some recoveries may be possible from a bankruptcy trustee. Lastly, Management will identify amounts owing where options for recovery have been exhausted and work with Finance to write these off. Cultural Funding guideline documents will be amended to incorporate provisions dealing with groups owing amounts to the City and, Cultural Funding staff will be provided with instructions on these new provisions by Q4 2014.

Management update:

Implementation of this recommendation is complete.

Long-term loans are not part of Cultural Funding's mandate. They are only given under special circumstances when directed and approved by Council to do so. Short-term loans will be included under the Delegated Authority Report only if we exercise the option in a given year.

Program guidelines, application processes and forms for the Partnership Cultural Funding programs have been amended to include requirements for more regular reporting, deficit-reduction plans where applicable, and provisions to reduce the risk of default in payment and to ensure recoveries.

OAG assessment:

OAG examined three sample files for organizations with grants provided through the Cultural Funding and Support section to confirm that oversight processes are being applied for these grants. We found that the three agreements were properly executed, monitored, followed up and reported to Committee and Council.

We also reviewed one file related to an organization that received a short-term loan in 2015 and found a properly executed agreement. The debt was repaid on a timely basis as it was deducted from the grant awarded to the organization three months later. While the total grant was reported to Committee, the short-term loan, which was a separate agreement, was not reported as required by the Delegation of Authority By-Law. We note that this loan was issued prior to management's November 2016 update in which Management stated that short-term loans would be included under the Delegated Authority Report. Further, management has reconfirmed to us their intent to report on awarded short-term loans going forward as indicated in the update.

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In addition, we examined files for three other groups with significant accumulated deficits in the 2016 funding period, and found that progress on their deficit situation was monitored through deficit reduction plans as required by funding guidelines.

While funding for the groups that we reviewed were properly followed up, we found that the central tracking spreadsheet used to monitor issues across groups that receive funding through the City's Cultural Funding program was not up to date. This increases the risk that an organization with operational difficulty may be overlooked by management.

Table 2: Status legend

Status	Definition
Not started	No significant progress has been made. Generating informal plans is regarded as insignificant progress.
Partially complete	The City has begun implementation; however, it is not yet complete.
Complete	Action is complete, and/or structures and processes are operating as intended and implemented fully in all intended areas of the City.
No longer applicable	The recommendation is obsolete due to time lapses, new policies, etc.