



Office of the Auditor General

Review of City Funding to Ottawa School of Speech and Drama

Tabled at Audit Committee – March 12, 2015



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1.1 Introduction

This review was conducted as a result of a complaint to the Fraud and Waste Hotline in February 2014 regarding the City's funding to the Ottawa School of Speech and Drama (OSSD).

1.2 Background

The OSSD has received funding of grants and loans from the City over the past several years. On February 7, 2014 OSSD ceased operations, according to a notice of closure on their website. OSSD also had a subsidiary, the Ottawa Theatre School (OTS), which we understand offered a Provincial accredited college program and which had previously closed on January 6, 2014 citing financial difficulties.

1.3 Objectives and Scope

The objective was to assess if the City processes for grants and loans were properly followed in the case of OSSD. The scope focussed on City processes exclusively.

1.4 Findings

1.4.1 Grants and Loans through the City's Cultural Services

Table 1 shows the breakdown of the amount of \$287,202 of City grant and contribution funding paid OSSD for the period since 2010 to February 2014 through Council-approved funding programs.

Table 1: City Funding to OSSD from 2010 to February 2014

Year	Arts Funding Program – 3 year Operating	Other Cultural funding	Other City funding (Non-renewable Community Funding programs)	Total grants and contribution funding
2010	\$53,500	\$12,021	0	\$65,521
2011	65,000	3,689	10,780	79,469
2012	66,300	1,200	886	68,386
2013	67,626	6,200	0	73,826
2014	0	0	0	0
Total	\$252,426	\$23,110	\$11,666	\$287,202

In August 2010 and again in January 2011, the OSSD was provided (through the Cultural Funding Support Section) with short-term loans of \$10,000 through the Council-approved Short-Term Loan Program. Both loans were repaid within the required three months.

Table 2 shows that funds were also loaned to OSSD as an advance, which was reported and received by City Council on May 24, 2011 (ASC2011-CMR-CPS-0009). There remains a \$15,000 outstanding loan balance relating to the portion due to be repaid in 2014.

Table 2: Loan /Advance Transactions between the City and OSSD from 2011 to February 2014

Year	Loan/Advance to OSSD	Loan / Advance Repayment by OSSD	Net Loan/Advance Balance Payable to the City
2011	40,000	0	40,000
2012	0	(10,000)	30,000
2013	0	(15,000)	15,000
2014	0	0	\$15,000
Total	\$40,000	(\$25,000)	

The loan agreement identified that the final \$15,000 repayment was to be deducted from OSSD’s 2014 annual Arts Funding allocation and would be due to be repaid by July 31, 2014.

Cultural Funding indicated they were not aware that by July 2013 most of the Board resigned as the group didn’t advise the City. Cultural Funding indicated they only became aware in October 2013 that OSSD was unable to pay the teachers and indicated they spoke to Legal Services who indicated that the City cannot interfere in these disputes. Additional emergency funding requested by OSSD in October 2013 was declined by Management. Management indicated this was not brought forward to Council.

The audited financial statements as at August 31, 2012 provided by OSSD to the City as part of the 2013 application for funding submission showed that OSSD had an accumulated deficit as a percentage of their total budget of 17%. The City requires a deficit reduction plan where the accumulated deficit is greater than 10% of the organization’s total budget. OSSD provided a deficit reduction plan in response to the City’s Cultural Funding staff request. OSSD management indicated that other funders (eg. Ontario Trillium Fund and Ottawa Community Foundation) do not provide any funds where the accumulated deficit is greater than 10% of the total budget.

OSSD has not submitted an application for funding for 2014 and has not submitted financial statements for 2013. The Terms and Conditions for the Arts Operating Funding requires that, “The Recipient shall submit a final or interim report in the form required by the City after 12 months of receipt of funds or upon subsequent application, whichever is sooner. This report shall provide all details required by the City.”

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On February 7, 2014 newspaper articles reported that OSSD abruptly closed its doors referencing the notice of immediate closure on their website.

OSSD had an outstanding loan with the City and a significant accumulated deficit. Heightened review and interim progress reports throughout the year on the deficit reduction plan may have highlighted the severity to the City sooner.

The City would need to take appropriate action to collect the \$15,000 outstanding loan and if not collectible would need to take appropriate action to write the amount off as uncollectible including reporting the matter to Council.

1.4.2 Payment provided to OSSD under Section 41 of the Planning Act

The *Planning Act* provides the authority for municipalities to pass a zoning by-law which will authorize an increase in the height and/or density of development in return for the provision of such facilities, services or matters as are set out in the by-law. These are typically referred to as “Community Benefits” or “Section 37 Agreements” and are addressed in the City’s Zoning By-law 2008-250 under Part 19.

Prior to implementing the Section 37 requirements starting in or around September 2012, Planning and Growth Management transitioned some larger development proposals through the negotiation of community benefits as a condition of Site Plan Approval. Conditions of Site Plan Approval are set out under Section 41 of the *Planning Act*. Management indicated that although community benefits are not set out in Section 41 of the *Planning Act* as an item that municipalities can require a developer to provide through a Site Plan Agreement, if the Parties negotiate such benefits, and agree to their inclusion, these conditions may form part of the Site Plan Agreement.

Planning Committee Report 32A approved by Council June 27, 2012 related to a zoning amendment for 99 Parkdale with respect to height and density. The report noted that the Department recommended a holding zone be placed on the property which would also ensure that a community benefit is provided at the time of the Site Plan Control Approval. At the time the City handled this transaction under Section 41 of the *Planning Act* as a Site Plan Approval prior to the implementation of Section 37.

The site plan control approval application was approved by the City in April 2013 under delegated authority with a condition that the required agreement be entered into by April 2014 otherwise the agreement would lapse unless extended. Management has indicated that an application to extend the time period for entering into the Site Plan agreement and to update and/or modify certain conditions was submitted in March 2014 prior to the approval lapsing and is being processed for approval. The approved Site Plan Conditions to be incorporated into the agreement included a section entitled

“Public Benefits” which refers to five items (monetary and non-monetary) including a donation to be paid to OSSD in the amount of \$50,000.

Management indicated that “once the conditions are satisfied, which also includes securities taken for the community benefits, and the agreement is executed, the Site Plan Agreement is registered on title. While approved, the Site Plan Application for 99 Parkdale was not executed by the developer and securities have not been posted. As a result, the Agreement is not registered. Once the developer wishes to proceed, it will have to clear the conditions in the Agreement, post securities, and have the Agreement registered. At that time, if the developer has cleared certain conditions, such as payment of its community benefit obligations, it will have to provide evidence to the City that those conditions have been satisfied”. During the course of this review, the Manager, Development Review – Urban was unable to respond to our request for confirmation of the timing of the \$50,000 payment by the developer to the OSSD. Both he and the Planner III assigned to this file indicated that they were not aware until the Planner III was advised in early 2014 by the developer and the City Councillor that the developer had paid \$50,000 directly to OSSD. Management indicated that they were not aware of the timing of the \$50,000 payment made directly from the developer to the OSSD as this was not handled through the City’s standard procedures in respect of securities posted and payments made through the site plan approval process. As the developer has not yet executed the Agreement, it has not provided evidence that it has cleared those conditions, but it will have to as the Agreement moves through the City’s process. Management has provided a site list entitled, “Section 37 Tracking” updated to February 10, 2014 that they indicated they are in the process of finalizing in order to monitor, track and follow-up community benefits amounts provided through Section 37 and Site Plan Agreements. The amount of community benefits related to the 99 Parkdale site plan approval application was \$203,800 which was a mix of money and benefits.

The overall Section 37 tracking list included 18 agreements (two not approved at the time) representing a total contribution amount of \$6,668,462 which includes both money and other public benefits. Values of contributions ranged from no contribution in two cases to \$1,150,700 in one case. During the course of the review, Management indicated that a staff member from Development Review and one from Finance would be involved in tracking these items.

The OAG has not audited the Section 37 Tracking listing list at this time and has not determined the completeness and accuracy of the Section 37 and Site Plan transactions listed. The City would need to take appropriate action to ensure that all aspects of these transactions are properly handled including consideration of an appropriate audit clause in the agreements.

1.5 Conclusion

A site plan control application for 99 Parkdale approved by the City in April 2013 included a section entitled “Public Benefits” which refers to a total donation to be directly paid to OSSD by a developer in the amount of \$50,000. Management indicated that they had only been made aware in early 2014 that the payment had already been made to this group by the developer when the Planner was advised by the developer and the City Councillor during a meeting. Management indicated they were not aware of the timing of the \$50,000 payment as the contribution was made directly from the developer to the OSSD and not handled through the City’s standard procedures in respect of securities posted and payments made through the site plan approval process.

Separately, the City has also provided loans/advances to OSSD of \$60,000 of which there is an outstanding balance of \$15,000 owed by OSSD to the City. Therefore, the City would need to take appropriate action with respect to recovery or write-off of outstanding amounts.

Even though there was an outstanding loan and a significant deficit, more frequent interim reports on progress towards achieving the deficit reduction plan and more heightened review were not in place.

1.6 Recommendations and Management Responses

Recommendation 1

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.

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. 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.

Recommendation 2

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.

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 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.

Recommendation 3

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.

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 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.

1.7 Acknowledgement

We wish to express our appreciation for the cooperation and assistance of management.