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CITY OF KELOWNA

MEMORANDUM

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**Date:** February 17, 2009  
**File No.:** 5040-20

**To:** City Manager

**From:** Community Planning Manager

**Subject:** Council Policies for Contributions Towards Affordable Housing, Amenities or Cash-in-Lieu Thereof in Return for Increases in Density

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**RECOMMENDATION:**

THAT Council adopt Council Policy 344 for contributions towards affordable housing, including cash-in-lieu thereof, in return for increased density within the provisions of the Zoning Bylaw;

AND THAT Council adopt Council Policy 345 for contributions towards affordable housing or other amenities, including cash-in-lieu of such amenities, when density is increased through amendments to the OCP.

**BACKGROUND:**

Density bonusing is used extensively and successfully in many municipalities to help augment the supply of affordable housing and provide community amenities. The concept is based on providing more density than would ordinarily be permitted in return for amenities which often consist of affordable housing. Aside from being one of the ways to increase the supply of affordable housing, it has proven to be an effective means of creating better neighbourhoods, which can be critical when accommodating growth with greater density.

Kelowna has had OCP policies and zoning density bonuses for the purpose of securing affordable housing and other amenities in return for increased density since the mid 1990s. The issue has always been that there is no clear direction on how much affordable housing is appropriate in exchange for the increases in density. In addition there has been no policy on how cash-in-lieu of affordable housing or amenities should work. This was brought to the forefront with the recommendations of the Affordable and Special Needs Housing Task Force in 2006. The Task Force had some specific recommendations as to how much of a contribution should be made and also recommended the hiring of a Land Economist. At Council's direction, the Land Economist was hired in 2007 and recommendations have been brought to Council. The history on this issue is outlined in Appendix 1 attached to this report.

Staff acknowledge that the development industry is presently in a holding pattern due to the current economic climate and the intent of these proposed policies is not to create an impediment to development in a form and location desirable by the City. Regardless of economic conditions the City has a mandate to provide for community needs to the best of its ability, using all available means. There are several development applications in stream that are waiting on the City to define an appropriate contribution to affordable housing in return for the increased density requested. The issue



has not been whether or not to make a contribution, but more pointedly, how to reach agreement on what works best for the City and the applicant.

Contributions to amenities such as affordable housing are not a requirement of development that meets the land use and policy direction of the OCP. At this time, based on the input from the local development industry<sup>1</sup>, Staff are recommending that contributions, as defined in this report, in return for density only apply to the existing, very modest, voluntary affordable housing bonus densities offered in the current zoning by-law, or in situations where density is proposed to exceed what is set out in the OCP.

Every application that proposes to increase density beyond the parameters of the OCP impacts the development potential of land elsewhere that has been designated and is serviceable for higher densities. Therefore, a thorough and careful consideration of each of these applications is paramount. That contributions to affordable housing might be achieved in considering such changes to the OCP must be secondary to whether the density increase and the resulting impacts can be sustained in the immediate neighbourhood and across the city, in terms of where development may NOT happen as a result. The importance of this issue is the reason why density bonusing on a broader level will not be explored further until the outcome of the OCP review becomes much clearer. This is why staff is not addressing Recommendations 2 and 4 (recommendations attached) of the Land Economist's report at this time.

The City has undertaken many initiatives to encourage and augment the supply of affordable housing, based on its policy direction. Among these are a commitment to about 300 rental homes on City-owned land at no land cost, partnerships with other levels of government, the creation and funding of the Housing Opportunities Reserve Fund and grants for rental housing. The need for affordable housing that meets the income limitations of Kelowna households continues to be critical and exists in a wide variety of living situations from working, low income families, to people with disabilities and the homeless. Every effort is needed to address this need from all sectors of government, as well as the private and non-profit sectors. The proposed policies in this report are only two of many opportunities Staff continue to work on to achieve this goal.

This report deals with Recommendations 1 and 3 in the Land Economist's report that was presented to Council on June 23, 2008<sup>2</sup> (recommendations are attached).

Staff has brought interim policies for housing and cash-in-lieu contributions in return for existing density bonuses and for OCP amendments that increase density to Council in February, October and November of 2008. Each time, no decision was made partly because Council directed staff to address UDI input and each time, changes were made accordingly.

Council last discussed this matter on November 24, 2008, and passed the following resolution:

**R1043/08/11/24** THAT Council defer consideration of the draft Council Policy which sets out provision of amenities, affordable housing or cash-in-lieu thereof pending receipt of a supplemental report from staff that addresses the Urban Development Institute's concerns.

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<sup>1</sup> represented by the Kelowna Chapter of the Urban Development Institute (UDI)

<sup>2</sup> The Land Economists report was item 8.1 on the agenda of the June 23<sup>rd</sup>, 2008 agenda . Link to document: <http://www.kelowna.ca/CityPage/Docs/PDFs/%5CCouncil%5CMeetings%5CCouncil%20Meetings%202008%5C2008-06-23/Item%208.1%20-%20Land%20Economist%20Report.pdf>

This February, 2009 report from the Community Sustainability Division is the supplemental report requested above.

The UDI concerns referenced in the above resolution are noted in a letter dated November 21, 2008. (see attached).

UDI's primary concern in the November letter was that use of the land lift approach to determine contributions towards affordable housing for OCP amendment applications that increase density would create hardship when land has already been acquired because land has historically sold at a higher price than its market value at present densities, based on the OCP. In the UDI letter this was expressed as follows: *"The policy, as proposed by Staff (without the phase-in formula) will unfairly tax developers that have acquired land at higher values, land that may have been valued based on OCP precedents set on adjoining or nearby properties."* UDI offered an alternative which involved a lower contribution from developers who had acquired land prior to the introduction of a policy for OCP amendment situations.

#### **DISCUSSION:**

As directed by Council, the draft Council Policies 344 and 345, attached, respond to the November concerns of UDI for cases requiring an OCP amendment where the land was purchased prior to adoption of a Council policy.

Under the proposed policies, the contributions in return for density increases are determined based on the land value of the increase in density granted by the City (not the profit to the developer, or the market value of the additional dwellings). Density bonusing is an exchange of an increase in existing development potential in return for some community benefit (amenities, including affordable housing, or cash-in-lieu of these). If the developer does not want to make a contribution, then development can proceed at the existing density set out in the OCP and/or zoning bylaw. In other words, the contribution is voluntary.

The attached policies set out the following:

(1) Policy 344, for Existing Density Bonuses in the Zoning By-Law:

- o In return for existing density bonuses for affordable housing in the current zoning by-law:
  - o 50% of the increase in net floor area resulting from the density bonus should be returned as affordable housing registered by a housing agreement to meet the City's definition of affordability;
  - o Cash-in-lieu payments would be available for small projects of less than 10 units or when a report is provided giving compelling reasons acceptable to the City as to why affordable housing cannot be provided on site;
  - o Cash-in-lieu would be calculated based on the land value that would correspond to 75 % of the additional net floor area resulting from the bonus, as determined by an appraisal report

(2) Policy 345, for OCP amendments requesting an increase in density

In return for the increase in density:

- o a contribution of the equivalent value of 75% of the value of the "land lift", which is the difference in value of the land based on the existing OCP designation versus the requested new OCP designation.
- o Value is based on an appraiser's report provided by the developer to the satisfaction of the City.



- Cash in-lieu may be paid on the basis of a report that provides compelling reasons to the satisfaction of the City as to why affordable housing or amenities cannot be provided on site.
- For lands purchased prior to the introduction of policy 345, the contribution may be based on 50% of value of the land lift (added at the request of UDI).
- For on site affordable housing or amenities, the amount of the contribution would be equivalent to 75% or 50% of the net floor area increase, based on whether land was purchased following or prior to adoption of the policy.

It is recommended that Council adopt both the attached draft policies as an interim approach to guiding contributions to affordable housing and/or community amenities, including cash-in-lieu thereof, in return for increased density offered by existing density bonuses set out in the zoning by-law or resulting from amendments to the OCP. A re-examination of these Council policies would be undertaken once the OCP review is complete and at such time as the City's Zoning By-law is updated.

#### **EXTERNAL AGENCY/PUBLIC COMMENTS:**

The City has worked with UDI and its members since the Land Economist was hired in 2007 in order to arrive at the fairest and most locally workable way to help define how to quantify contributions in return for density. Prior to 2007 and up to the present, contributions in return for density have been generally determined based on a laborious negotiation process. Staff is proposing change that is consistent with the UDI proposal.

The following changes to the policies have been made in response to UDI input since October, 2008:

Draft Policy 344 for Existing Zoning By-law Bonuses Offered in Return for Affordable Housing:

- Cash- in- lieu payments will be based on and appraiser's report, instead of a defined value/sq. ft. provided in the policy.
- Cash in lieu payments will be based on 75% of increase in floor area value, not 100% as was recommended in the Land Economist's Report
- Cash can be paid at occupancy, instead of building permit at the developer's request.

Draft Policy 345 for OCP Amendments that Increase Density:

- For land purchased prior to approval of policy 345, contributions will be based on 50% value of land lift, instead of 75% for land purchased prior to policy;
- For proposals where land is purchased following approval of the draft policy 345 contributions would be based on 75% of the land lift value.
- Payments can be made at occupancy instead of building permit at the developer's request.

Following the discussion and information sharing that occurred at the January meeting, UDI has since submitted correspondence (dated February 2, 2009, attached) that essentially indicates non support of *any* approach that involves seeking a contribution to affordable housing or amenities in return for increases in density, on the basis that this resembles a land tax. This is clearly a shift in position since the November input and essentially leaves the City with the choices of moving forward without full UDI support on the whole issue of density bonusing, taking no action and operating without guidance as before, or abandoning this tool altogether, which has been in place, in some form, since the mid 1990s. For local government, density bonusing is a tool that the provincial legislation



provides (LGA) to enable cities to grant greater densities than are currently permitted in return for community benefits, including affordable housing, that are not funded from other sources.

**INTERNAL CIRCULATION TO:**

Planning and Policy  
Real Estate and Building Services

**LEGAL/STATUTORY AUTHORITY:**

Section 904 of the Local Government Act enables municipalities to obtain amenities and affordable housing, or contributions thereto, in return for increases in density resulting from new development. This legal framework is parallel to most policies that seek amenities or affordable housing contributions from new development throughout North America. It is the legal mechanism to obtain contributions to community needs that cannot be addressed through development cost charges. Inclusionary zoning or policy is the term often used to describe this practice. However, in every jurisdiction, inclusionary policies or zoning cannot legally exist without a return, usually in the form of increased density, to the developer.

**LEGAL/STATUTORY PROCEDURAL REQUIREMENTS:**

Housing Opportunities Reserve Fund By-law 8593 sets out funding sources for affordable housing and the use of these funds. Council Policies are proposed to define developer contributions to this Fund and other Funds that the City may be established by by-law for the purpose of providing community amenities.

**EXISTING POLICY:**

Strategic Plan:

**Goal #3** - To foster the social and physical well-being of residents and visitors.

**Objective #4** – Realize construction of housing forms and prices that meet the needs of Kelowna residents.

**3.4.1** Work in partnership with housing organizations and finance institutions to monitor the range of housing options required in the City.

**3.4.2** Identify ways to establish partnerships with builders, developers and other levels of government in an effort to use targeted City owned land, existing resources and legislative tools to influence the supply and diversity of housing and to increase the supply of affordable housing.

**FINANCIAL/BUDGETARY CONSIDERATIONS:**

Adoption of the attached policies will provide a revenue source for the City's Housing Opportunities Reserve Fund and for any other amenity reserve funds established by Council. The Housing Opportunities Reserve Fund was established in 2000 with the primary purpose of acquiring land to help leverage partnerships to achieve affordable housing.

**COMMUNICATIONS CONSIDERATIONS:**

Adoption of the attached policies will require communicating the changes to the community at large and development community using existing communications and marketing channels.

**PERSONNEL IMPLICATIONS:**

Council has been directing staff to provide a policy framework for defining contributions resulting from density bonus and OCP amendments to increase density for a number of years. There has been an

unwritten standard of 50% of the increase in net floor area of a Zoning By-law affordable housing bonus to be returned in the form of affordable housing. With no written policy in place, all other contributions have been received on the basis of a time-consuming, and often inconsistent process of negotiating with the developer for a reasonable contribution that staff can support. This is not recommended by Staff.

**ALTERNATE RECOMMENDATION:**

If Council does not wish to proceed with the attached policies 344 and 345, the following alternate recommendation is submitted for consideration:

**THAT** based on the staff report of February 17, 2009, staff not be directed to investigate the issue further for a period of at least one year.

**Considerations that were not applicable to this report:**

**TECHNICAL REQUIREMENTS:**

Submitted by:



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Theresa Eichler, Community Planning Manager



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Doug Gilchrist, Director, Real Estate & Building Services / Citizen Services

Approved for Inclusion:



cc: Doug Gilchrist  
Director Real Estate & Building Services / Citizen Services

Attachments:

UDI letter of November 21, 2008

Appendix 1 - Timeline for Contributions to Affordable Housing

Appendix 2: Recommendations From the Coriolis Report of June, 2008:

UDI letter of February 2, 2009

Proposed Council Policy 344

Proposed Council Policy 345



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Friday, November 21, 2008

Her Worship Mayor Sharon Shepherd  
City of Kelowna  
1435 Water Street  
Kelowna, BC V1Y 1J4

Dear Mayor and Council:

**Re: Affordable Housing Policy: Cash-in-Lieu and Interim Policy for Increased Density**

The Urban Development Institute (UDI) wishes to thank the City for continuing to engage the development industry in discussions regarding the proposed Interim Affordable Housing Policy, and specifically Theresa Eichler for meeting with members of our Board on Nov. 19<sup>th</sup>. While it is important to provide our rationale to council in light of the fact we could not come to consensus with staff, after reading the Nov. 19<sup>th</sup> Staff Report when it was posted on Friday, it is possible that consensus was not reached largely because of a misunderstanding of aspects of what we are proposing. The following information will make UDI's position very clear:

**Bonus Density Created Within Current Zones**

For bonus density to be successful as one means to create affordable housing, the contribution levels needed to be structured such that they are an INCENTIVE to the development community. While UDI was somewhat willing to agree to a 75% contribution for cash-in-lieu, this concession was being made in the context of the other amendments we were recommending, and it is not something we believe, ultimately, will be successful. In order to be an incentive, we still believe that 50% of the market land value of the increased floor area should be the maximum contribution for bonus density within current zones, regardless of whether the contribution be in units or cash-in-lieu.

Although the Coriolis report indicates that the increase in developers' profit resulting from the increased density is sufficient motivation for a developer to participate in an amenity contribution, we feel that the examples found within the Coriolis report are based on ideal scenarios that do not consider the additional burden of the increased density on the developer. With manipulation of the examples that take into consideration commonplace realities of development such as increased holding cost and increased risk associated with building and selling the additional units, we can cause the Coriolis report examples to show scenarios that DO NOT support the recommendation of the Staff report that the



amenity contribution be equal to 75% of the market value of the increased density. In fact, it is possible to show that the underlying land values in the Coriolis examples are lower with the additional density than they are without it, something often found in the marketplace as a result of longer absorption periods and higher risks associated with larger developments. Although the bonus density proposed within zones is relatively small at this time (prior to review of the OCP), the theory is still applicable. We believe that, structured appropriately, density bonus within zones can be a positive way to create funding for affordable units if it is something sought through INCENTIVE, not additional COST.

If it is the City's goal is to create an Affordable Housing Policy that will encourage greater participation by the development community, rather than ask for 75 % of the market value of the increased density and possibly get little or no participation, it would be more productive to set a policy that asks for 50% and get participation from the development community on a broader basis.

### **Housing Contributions from OCP Amendments**

We would like to express again that, with the OCP under review, this component of the policy should be postponed until after the review is complete. However, understanding that council wishes to put some form of interim policy in place, we feel very strongly that a “phase-in” formula must be added in order to mitigate against unintended negative consequences. If, through policy, economic viability is lost, this will, in effect, stop all OCP amendments, even if from a planning perspective they might have been desirable.

**The phase-in formula defined:** For properties that have been acquired **prior** to the implementation of this policy, the land lift value must be calculated as the lesser of two values determined by the following methodology:

Method 1 subtracts the appraised land value according to the OCP from the increased land value achieved by the OCP amendment.

Method 2 subtracts the actual cost of acquiring the land from the increased land value achieved by the OCP amendment.

The policy, as proposed by Staff (without the phase-in formula) will unfairly tax developers that have acquired land at higher values, land that may have been valued based on OCP precedents set on adjoining or nearby properties. Even Jay Wollenberg, in his Report to council, saw the need for adopting a phasing-in approach.

Due to the comments noted below from the November 19<sup>th</sup> Staff Report, we believe Staff may have misunderstood that we did NOT intend this formula to apply to purchases made AFTER adoption of the policy:

The phase-in policy will not reduce incentive to pay an appropriate price for land because we are NOT suggesting it be used for future land purchases. Rather, the phase-in formula recognizes the realities of land purchases made PRIOR to the policy and attempts to safeguard economic viability for proposed OCP amendments that may make sense. Further, Staff, in their Report, have recognized that, in some cases, the past purchase price of land could mean an inability to provide a further contribution to amenities or affordable housing. This is exactly our point. If the land lift has already been paid, it is

not economically viable to pay it twice --- which means that the developer cannot possibly request a density higher than the current OCP allows, even if it is something desired by the City. The phase-in formula acknowledges this reality and attempts to make the economic playing field level for all developers.

With regard to the percentage level of contribution, 75% is onerous, but it does recognize that it is not council or Staff's intention to provide incentives for densities higher than anticipated in the OCP. Unfortunately, with a marketplace that has changed dramatically, and with no end of uncertainty in sight, a 75% contribution is likely economically unviable unless the safeguard of the phase-in formula is included. Without the phase-in formula, any required contribution over 50% will likely bring an immediate end to OCP amendments.

Based on our experience with the economics of our industry, UDI respectfully requests that council consider the following amendments to the proposed Interim Affordable Housing Policy:

**For Cash-In-Lieu for Bonus Density Within Current Zones: That the proposed 75% of the market land value of the bonus density cash-in-lieu contribution be amended to 50%.**

**For Housing Contributions for OCP Amendments: That a phase-in formula (as described above) be added to the policy. Alternatively, if council chooses not to incorporate the phase-in formula, that the proposed contribution be changed from 75% to 50%.**

Our other minor amendment suggestions (for example, time of payment) have been incorporated by Staff, and we appreciate their response to our feedback. We hope council will consider the additional amendments we have proposed. We also trust that this Interim Policy, if adopted, will be fully reviewed for its effectiveness as part of the OCP Review process.

Respectfully,  
UDI Kelowna Chapter President

***Gail Temple***

cc: Theresa Eichler, Doug Gilchrist, Signe Bagh, Jim Paterson, Ron Mattiussi, Stephen Fleming

### Appendix 1: - Timeline for Contributions to Affordable Housing

1996	<ul style="list-style-type: none"> <li>o OCP policy for contributions to affordable housing when dealing with OCP amendments that increase density – no indication provided of how to determine the size of the contribution</li> </ul>
1996	<ul style="list-style-type: none"> <li>o OCP policy for density bonuses in the zoning by-law for affordable housing</li> </ul>
1998	<ul style="list-style-type: none"> <li>o Zoning by-law re-written and includes density bonuses for affordable housing with an un-written understanding that 50% of the increase in net floor area should be affordable housing in return for applicable bonuses</li> </ul>
Nov. 20, 2006	<ul style="list-style-type: none"> <li>o Report from the Affordable and Special Needs Task Force was presented to Council and provided 8 Recommendations. Recommendation 2, included the following:  <p><i>THAT Council authorize staff to hire a land economist<sup>1</sup>, at an estimated cost of \$30,000 from Council Contingency to assist the Task Force in analyzing the practical application, effectiveness, and cost to the city and development of the following potential OCP policy changes:</i></p> <ul style="list-style-type: none"> <li>2.1 <i>Where development applications increase density over the existing zoning, either by increasing height and/or rezoning, or under current density bonuses:</i> <ul style="list-style-type: none"> <li>2.1.1 <i>50% of the increase in floor area resulting from the change be provided as affordable housing, registered by a housing agreement with the City; OR</i></li> <li>2.1.2 <i>20% of all the proposed development's floor area must meet the City's definition of affordable housing, secured by a housing agreement registered on title; OR</i></li> <li>2.1.3 <i>A cash in lieu equivalent to the floor area in affordable housing of option 1, or 2, above (calculated as the difference between the average building permit value for that zone and average market value of the subject floor area).</i></li> <li>2.1.4 <i>The above requirements would apply to residential, commercial zones or any other zone that permits residential development.</i></li> <li>2.1.5 <i>A further alternative in the form of a levy on all density increases as is being proposed for Penticton.</i></li> </ul> </li> </ul> </li> </ul>
March 8, 2007	<ul style="list-style-type: none"> <li>o Council approved the hiring of a consultant to determine appropriate means of calculating contributions from developers towards affordable housing and amenities</li> </ul>
August 2007	<ul style="list-style-type: none"> <li>o Consultant begins work</li> </ul>
October 15, 2007	<ul style="list-style-type: none"> <li>o Workshop with Council and consultant</li> </ul>
December 5, 2007	<ul style="list-style-type: none"> <li>o Workshop with UDI developers and consultant</li> </ul>
February 25, 2008	<ul style="list-style-type: none"> <li>o Interim Council policy for contributions towards affordable housing presented</li> <li>o Council defeated motion to adopt Interim policy</li> </ul>
May 9, 2008	<ul style="list-style-type: none"> <li>o 2<sup>nd</sup> workshop with UDI developers &amp; consultant; followed by workshop with Council Committees (APC &amp; Housing)</li> </ul>



June 23, 2008	<ul style="list-style-type: none"> <li>o final report from consultant with recommendations presented to Council and received for information; item 8.1, 23/6/08: Link to document: <a href="http://www.kelowna.ca/CityPage/Docs/PDFs/%5CCouncil%5CMeetings%5CCouncil%20Meetings%202008%5C2008-06-23/Item%208.1%20-%20Land%20Economist%20Report.pdf">http://www.kelowna.ca/CityPage/Docs/PDFs/%5CCouncil%5CMeetings%5CCouncil%20Meetings%202008%5C2008-06-23/Item%208.1%20-%20Land%20Economist%20Report.pdf</a></li> <li>o staff directed to bring policy recommendations back to Council based on consultant's recommendations (recommendations attached to the February, 2009 staff report as Appendix 2)</li> </ul>
November 10, 2008	<ul style="list-style-type: none"> <li>o interim cash-in-lieu Council policy presented;</li> <li>o report link: <a href="http://www.kelowna.ca/CityPage/Docs/PDFs/%5CCouncil%5CMeetings%5CCouncil%20Meetings%202008%5C2008-11-10/Item%206.6%20-%20Report%20from%20Land%20Economist.pdf">http://www.kelowna.ca/CityPage/Docs/PDFs/%5CCouncil%5CMeetings%5CCouncil%20Meetings%202008%5C2008-11-10/Item%206.6%20-%20Report%20from%20Land%20Economist.pdf</a></li> <li>o Council deferred decision due to UDI letter of concern;</li> </ul>
November 24, 2008	<ul style="list-style-type: none"> <li>o amended (change shown in italics) interim policy presented to Council</li> <li>o report link: <a href="http://www.kelowna.ca/CityPage/Docs/PDFs/%5CCouncil%5CMeetings%5CCouncil%20Meetings%202008%5C2008-11-24/Item%205.2%20-%20Report%20from%20Land%20Economist.pdf">http://www.kelowna.ca/CityPage/Docs/PDFs/%5CCouncil%5CMeetings%5CCouncil%20Meetings%202008%5C2008-11-24/Item%205.2%20-%20Report%20from%20Land%20Economist.pdf</a></li> <li>o Council deferred decision asking for a report on UDI concerns, on the basis of an additional letter from UDI (dated November 21, 2008), attached to the February 4, 2009 staff report.</li> </ul>

## Appendix 2: Recommendations From the Coriolis Report of June, 2008:

How can the City improve its current approach to obtaining amenity contributions?

We have a series of suggestions, some of which can be implemented immediately and some of which will take time.

1. The City should immediately adopt a policy allowing a cash-in-lieu option under the existing density bonus for affordable housing. The City can leave the current approach in place (i.e. 50% of the bonus is market housing and 50% is affordable housing), but the City should provide a cash-in-lieu alternative for developers, along these lines:

- The value of the bonus density should be determined on a project-by-project basis.
- The cash-in-lieu contribution should be equal to 100% of the market value of the additional density.
- The payment should be made at time of building permit issuance or (at the developer's option) deferred to substantial completion if the developer provides acceptable security such as an irrevocable letter of credit.

The City will need to develop a policy for what to do with the funds collected. The City could use the money to fund the construction of affordable housing (e.g. rental housing), although this means the City must own and operate residential projects. Alternatively, the City could use the money to provide grants (using an RFP process) to non-profit organizations or government agencies that are involved in affordable housing projects.

2. The City should amend some of the multifamily zoning districts to increase the amount of the density bonus. At present, the bonus districts allow increase in FAR of only 0.05 or 0.1. These are very small increases, on top of base densities that are already low. In our view, the City should consider increasing the allowable density in its townhouse, low-rise apartment, and high-rise zones up to the limits that are achievable in attractive, livable projects with urban character. These density increases should all be structured as density bonuses achievable in exchange for making the required amenity contribution. Developers (and land sellers) must understand that these increases are only achievable by making the amenity contribution, so the added value should not be capitalized into land purchase prices.

Increasing the allowable densities in selected zones does not necessarily have to wait for a full review of the OCP. The City could consider these rezonings on a neighbourhood basis, looking for locations in which marginal increases in density are appropriate in community planning and urban design terms and can readily be achieved. When changing the allowable density, the City should assume that the structure type must stay the same (i.e. low-rise apartment sites are still low-rise apartment sites, but at a slightly higher density) and should make all of the consequential changes in the bylaw that are necessary to allow the increased zoning to be achieved. This may mean revising maximum height (e.g. increasing low-rise apartment sites from 3 storeys to 4), reducing setback requirements, and reducing parking requirements.

3. The City should seek voluntary amenity contributions for all rezonings that involve a significant change in land use or density not already contemplated in the OCP. The City should adopt an approach that involves estimating the net lift in land value (after allowing for all land development costs) associated with the rezoning and then setting a general target that the amenity contribution (including on-site amenities, off-site amenities, and any cash-in-lieu portion) has a total value equal to about 75% of the lift. This 75% level is somewhat arbitrary, but it acknowledges that a portion of the land lift should be available to provide incentive to the land seller and incentive to the developer to undertake the rezoning. The 75% target is

consistent with the expectation of a variety of urban communities in BC.

4. The City is planning to review and update its OCP. As part of this process, the City should look for appropriate locations for additional density (beyond that already contemplated in the existing OCP), based on location, neighbourhood character, transit service, and other factors. Where there are sound opportunities for additional density (i.e. that make sense in terms of community planning, infrastructure, urban design, sustainability, and market trends), the new OCP should make it very clear that the City's policy will be to rezone to match new OCP designations if there is an appropriate voluntary amenity contribution. In this way, the City can avoid continuation of the current situation in which OCP policy has become (in the land market) the basis for land price. In effect, the City should acknowledge that the land market has already captured the value associated with existing OCP policies, but the City should ensure that the new plan makes it clear that new density will be viewed as an opportunity to achieve public benefits.





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February 2, 2009

City of Kelowna  
1435 Water Street,  
Kelowna, B.C. V1Y 1J4  
Attention: Mr. Gilchrist, Ms. Eichler, Ms. Bagh

Dear Doug, Theresa and Signe,

**Re: Interim Affordable Housing Policy**

UDI is very appreciative of the sharing of information and collaborative discussion we have had with you regarding the proposed Interim Affordable Housing Policy. The due diligence we, and you, have undertaken over the last few weeks has provided us all with a lot more insight into the impact of the proposed policy. In light of the fact that new councilors have now entered the discussion, we provide the following overview of UDI's feedback:

- The underlying premise of the Affordable Housing Policy is that bonus density applied for under this policy has **not** been factored into the purchase price of land.
- In UDI's letter (November 10, 2008) we recommended an appraisal-based phase-in formula to provide fairness to land purchasers who made buying decisions prior to the "rule change" because we had great concerns about financial viability of projects when a policy is applied "retroactively" to lands already purchased.
- On Nov. 21, 2008 we again advocated for the formula, but in an effort to contribute to a consensus result, we suggested an alternative recommendation of a contribution equal simply to 50% of the net land lift.
- Subsequent verbal discussions between UDI and City Staff led UDI to believe that the phase-in formula would be proposed to Council.
- After further due diligence by City Staff, it was determined that, under the formula, some of the current OCP applications would make little or no financial contribution. This is because of the high purchase price of land, oftentimes higher than the current OCP value, and it is this market reality that causes UDI to advocate for fairness to people who made buying decisions prior to creation of this policy.
- As a result of their due diligence, City Staff informed UDI they could no longer support the formula, but rather, would recommend UDI's Nov 21st alternate recommendation of 50% of the net land lift.
- UDI appreciates the effort City staff has made to strive for consensus, and the effort to acknowledge the need to provide fairness to people who purchased land

prior to this policy, but unfortunately this further due diligence has now only further proven that anything other than the formula will **not** provide fairness. Land purchases made prior to this policy COULD NOT have factored this contribution into the land purchase because the policy didn't exist, and the situation is even further exacerbated by the fact that land was selling at the peak of a very hot market. It has become very clear that any policy applied to current OCP amendment applications will have very significant impact indeed.

Based on the discussions and events leading up to the current Affordable Housing Policy debate, UDI submits the following recommendations regarding OCP Amendments:

1. Since the Interim Affordable Housing Policy depends on land purchase in its premise, if it is to be applied to lands purchased prior to its creation, the appraisal phase-in formula must be used to ensure fairness to buying decisions made "pre-policy." For land purchased after adoption of the proposed policy, it is expected that the contribution amount will be factored into the land price and the OCP amendment development decision.
2. Since future land use densities are being reviewed in the next few months, UDI strongly recommends that any OCP amendment policy be delayed until AFTER the land use review is complete. Decisions about changes to densities within the OCP should be driven by good planning principles, not the anticipation of "contributions" to be gained through OCP amendments.
3. Further, although it is not part of this particular discussion, it is critical that amenity or affordable housing contributions NOT be tied to revised densities reflected in the new OCP for the following two major reasons:
  - o If higher density is desired for reasons of good planning and sustainability, an "extraction" policy tied to density will greatly lessen the probability of the new densities being achieved. The Coriolis Report, in making the recommendation to consider an amenity contribution tied to the new OCP, used idealistic scenarios that developers would not prudently use when making development decisions. The constructive feedback from UDI is that the development choice would be to build to the "old" density because financial reality would force that decision.
  - o And secondly, even assuming that, in principle, Mr. Wallenberg is correct and ALL of the contribution amount could come out of the land because purchase prices would be lowered by the appropriate amount, this is essentially a "tax" on land. If the City of Kelowna chooses to tax land as a means to address a social or community need, the citizens of Kelowna need to be fully informed and consulted prior to adopting that housing strategy or new form of revenue generation. Lack of affordable housing in Kelowna is not created by landowners, and nor is it their responsibility to address. Rather, this social problem needs to be addressed by the much larger community of municipal and provincial citizens.

As stated previously, the development industry would like to be part of the overall solution by participating in partnerships with non-for-profit groups and the municipality. We also believe that current economic conditions will lead to many more "attainable" housing units coming into the marketplace than have been seen in recent years.

Respectfully,

UDI Kelowna Chapter

Gail Temple, Chapter President

Cc: Jim Paterson, Ron Mattiussi, Mayor and Council





# CITY OF KELOWNA

POLICY: 344  
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## COUNCIL POLICY MANUAL

APPROVAL DATE:  
RESOLUTION #:  
REPLACING #:  
DATE OF LAST REVIEW:

SUBJECT: Affordable Housing or Cash-in-Lieu of Affordable Housing – Interim Policy for Zoning By-law Bonuses for Affordable Housing

1. The provisions outlined in this section will be applied only in situations where bonuses defined in the zoning by-law are available within the following zones:
  - RM2- Low Density Row Housing
  - RM3- Low Density Multiple Housing
  - RM4 – Transitional Low Density Housing
  - RM5 – Medium Density Multiple Housing
  - RM6 – High Rise Apartment Housing
  - C4 – Urban Centre Commercial
2. In cases where a site is to be developed for housing with the increase in FAR defined in the Zoning By-law as being available in return for affordable housing registered by a housing agreement, the priority (over and above a cash payment) will be to require 50% of the increase in net floor area resulting from the bonus to be returned in the form of affordable housing units, meeting the City's definition of affordability set out in the OCP, and secured by a housing agreement;
3. The City may accept a cash-in-lieu donation to the Housing Opportunities Reserve Fund, for developments of 10 units or less; as follows:
  - 3.1. the contribution will be determined based on 75% of the market land value of the increased net floor area where value is confirmed by a professional appraiser paid for by the applicant and meeting the approval of the City;
  - 3.2. The payment will be made at building permit or (at the developer's option) deferred to occupancy permit if the developer provides acceptable security such as an irrevocable letter of credit.
4. For developments of more than 10 dwellings, the following will be required in order to consider a cash-in-lieu payment to the Housing Opportunities Reserve Fund:
  - 4.1. a report from a qualified professional providing compelling reasons why the provision of affordable housing on site is not feasible;
  - 4.2. the contribution will be determined based on 75% of the market land value of the increased net floor area where value is confirmed by a professional appraiser paid for by the applicant and meeting the approval of the City;
  - 4.3. The payment will be made at building permit or (at the developer's option) deferred to occupancy permit if the developer provides acceptable security such as an irrevocable letter of credit.



# CITY OF KELOWNA

POLICY: 344  
PAGE: 2 of 2

## COUNCIL POLICY MANUAL

APPROVAL DATE:  
RESOLUTION #:  
REPLACING #:  
DATE OF LAST REVIEW:

SUBJECT: Affordable Housing or Cash-in-Lieu of Affordable Housing – Interim Policy for Zoning By-law Bonuses for Affordable Housing

5. Any funds collected as cash-in-lieu of affordable housing will be directed to the Housing Opportunities Reserve Fund governed by By-law 8593.
6. This policy is an **interim policy** to be applied until such time as the City conducts a review of the Zoning By-law.

REASON FOR POLICY: There is a need for a clear policy to guide the amount affordable housing or of cash-in-lieu thereof required in return for the density bonuses in the Zoning By-law that pertain to affordable housing.

LEGISLATIVE AUTHORITY: Council Resolution: Local Government Act S. 904; Community Charter S. 188, 189

PROCEDURE FOR IMPLEMENTATION: Implementing density bonus provisions in the Zoning By-law for new development.





# CITY OF KELOWNA

POLICY:345  
PAGE: 1 of 2

## COUNCIL POLICY MANUAL

APPROVAL DATE:  
RESOLUTION #:  
REPLACING #:  
DATE OF LAST REVIEW:

SUBJECT: Affordable Housing and Amenities or Cash-in-Lieu of Thereof – Interim Policy for Increased Density Resulting From Official Community Plan Amendment

1. In cases where an amendment to the Official Community Plan (OCP) is required in order to permit an increase in density the City will require a contribution to affordable housing and / or public amenities, to be defined in negotiation between the City and the developer (amenities should be defined in the OCP) based on the following:
  - 1.1. Net lift in land value is the market value increase, based on the value of the property at its current OCP designation, compared to the market value that would result from re-designating the property to a higher density designation in the OCP.
  - 1.2. Total value of the contribution will be equivalent to 75% of the net lift in land value (after allowing for all land development costs associated with the rezoning) as determined by a professional analyst paid for by the applicant and meeting the approval of the City;
  - 1.3. The City's priority will be to require that the contribution would be in the form of affordable housing or public amenities provided on site representing the equivalent of 75% of the net lift in land value.
  - 1.4. Notwithstanding the above, where land is purchased by the applicant prior to the date of initial adoption of this Policy, the value of the contribution will be based on 50% of the net lift in land value, as set out in 1.1 and 1.2, above.**
  - 1.5. When determining the corresponding housing or amenity (as to be determined) is to be provided on site, 75 % of the increase in net floor area resulting from the bonus must be returned in the form of affordable housing units, meeting the City's definition of affordability set out in the OCP, and secured by a housing agreement;
  - 1.6. Notwithstanding 1.5, above, where land is purchased by the applicant prior to the date of initial adoption of this Policy, the area of the affordable housing or amenity contribution to be provided on site will equal 50% of the increase in net floor area.**
  - 1.7. Acceptance of cash-in-lieu of affordable housing or other amenities will be based on a report from a qualified professional providing compelling reasons why the provision of affordable housing and/or amenities on site is not feasible.
  - 1.8. The payment will be made at building permit or (at the developer's option) deferred to occupancy permit if the developer provides acceptable security such as an irrevocable letter of credit.
2. Any funds collected as cash-in-lieu of affordable housing will be directed to the Housing Opportunities Reserve Fund governed by By-law 8593.



# CITY OF KELOWNA

POLICY:345

PAGE: @ 2 of 2

## COUNCIL POLICY MANUAL

APPROVAL DATE:  
RESOLUTION #:  
REPLACING #:  
DATE OF LAST REVIEW:

SUBJECT: Affordable Housing and Amenities or Cash-in-Lieu of Thereof – Interim Policy for Increased Density Resulting From Official Community Plan Amendment

3. Any funds collected as cash-in-lieu of any other amenities be placed in a reserve fund governed by a By-law that defines the amenities and guides the use of the funds.
4. This policy is an **interim policy** to be applied until such time as Council has completed its review of the Official Community Plan.

REASON FOR POLICY: There is a need for a clear policy to guide the amount affordable housing or of cash-in-lieu thereof, in return for increases in density by amendment to the OCP. Council is frequently faced with development proposals for housing whereby there is an increase in density and a contribution of affordable housing is recommended in policy. However, there is no guidance for the amount of the contribution. In some cases the developer does not wish to provide affordable housing on the same site in return for the density bonus. There is a need for a clear policy to guide the amount of cash that should be contributed in lieu of providing affordable housing on site. The issue of affordable housing or other amenities, or cash-in-lieu thereof provided when density is increased is presently under review as part of the review of the Official Community Plan.

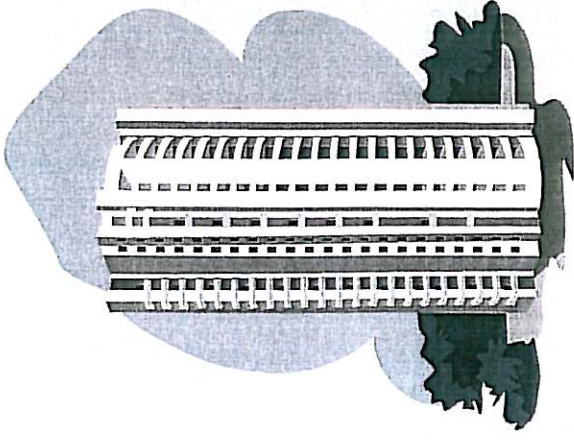
LEGISLATIVE AUTHORITY: Council Resolution: Local Government Act S. 904; Community Charter S. 188, 189

PROCEDURE FOR IMPLEMENTATION: Implemented as a return for increased density at the re-zoning stage when an Official Community Plan amendment is also needed to increase the density.



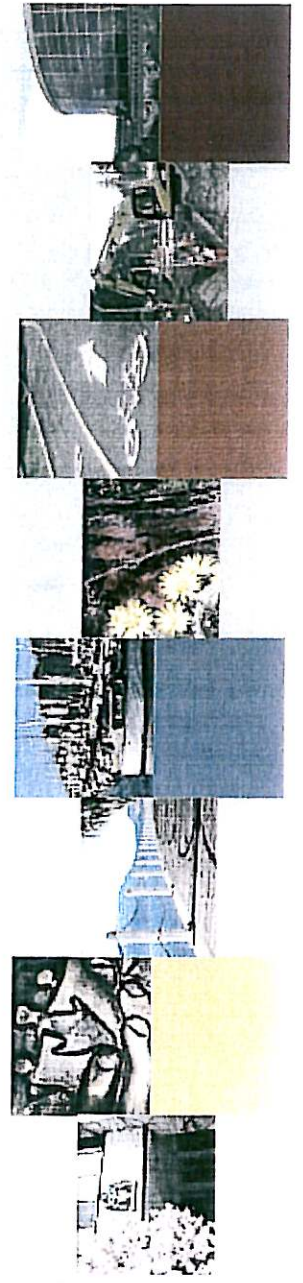


Community Sustainability



# Density Bonusing

## Interim policies February, 2009





# The Concept of Density Bonusing

- *Legal tool to obtain amenities not funded by DCCs by granting additional density*
- *Used widely & successfully across N. America*
- *Not the only tool in the box, but:*
  - *Like a hammer, you can't build a house with only this tool, but try building it without one.*
  - *Other tools: zoning, process, grants*



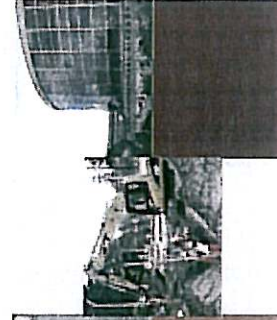
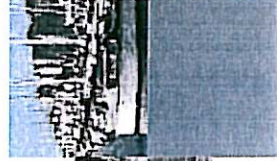


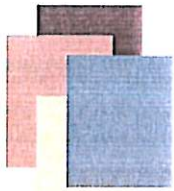


# Density Bonusing in Kelowna

Governed by Section 904 of Local Government Act

- *If a city wishes to gain contributions from new development, the developer must realize a benefit in return.*
- *The benefit is increased density*
- *Development can still occur at designated densities with no contribution*



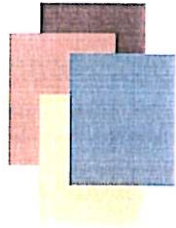


# Density Bonusing in Kelowna

- 1996 OCP amendments that increase density should contribute affordable housing
- 1998 Density bonuses for affordable housing were written into the Zoning By-law:
- 2006 Affordable & Special Needs Housing Task Force
- 2007 Land Economist is hired

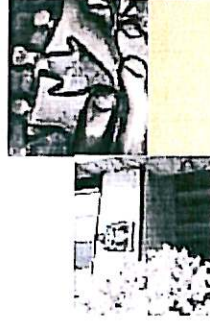


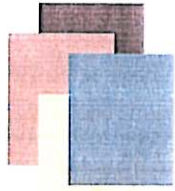




## Kelowna – continued:

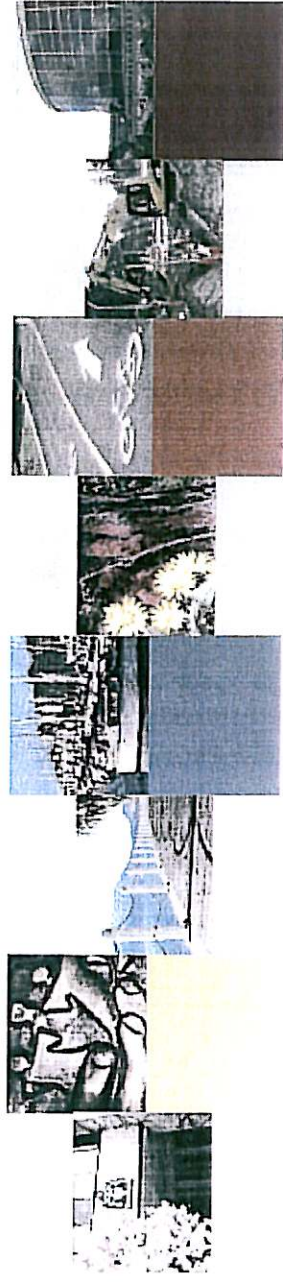
- 2007-2010 OCP review underway
  - Recommendations 2 & 4 of Land Economist need to wait for this
- Council requested interim policy for **existing** density bonuses & OCP policy
  - = Recommendations 1 & 3 of Land Economist
- Interim policy has been brought to Council:
  - Feb/08; Oct/08; Nov/08; & Feb/09
  - Incremental adjustments based on UDI input



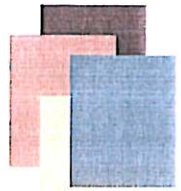


# Affordable Housing

- Kelowna Need in ALL sectors based on **Kelowna Incomes & lack of corresponding housing supply**
- The City has taken **many** actions to increase the affordable housing supply;
  - e.g. Commitment to 300 affordable rentals on City-owned land
- OCP policies in Chapter 8 for Affordable Housing
- “Morph” into Affordable Housing Strategy
- Density bonusing = 50 starter homes, 20 rentals & \$539,000 cash-in-lieu of affordable housing **so far**

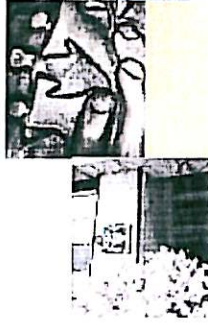




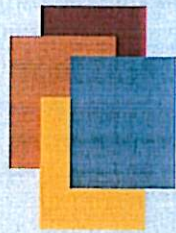


## Kelowna's Development Climate

- Economic downturn has put development in a holding pattern
- Even so, several developments are in stream waiting for guidance on contributing to affordable housing in return for density
- The City has a mandate to ensure a sustainable future







# Value of a Density Increase = Land

Net Building area allowed.

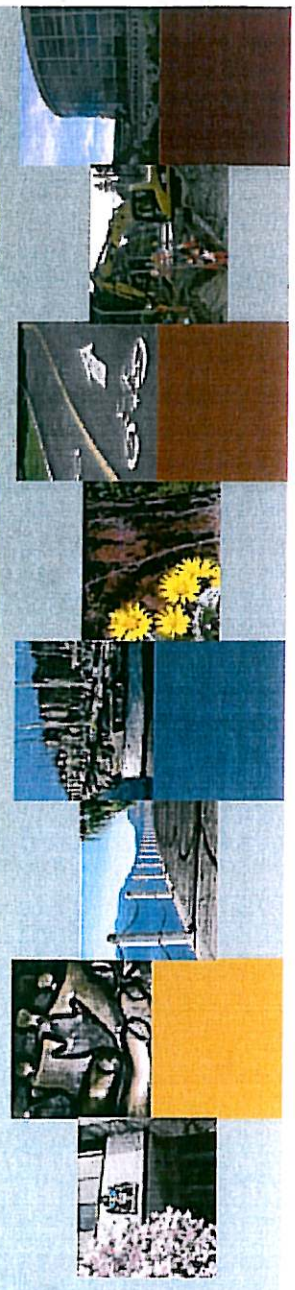
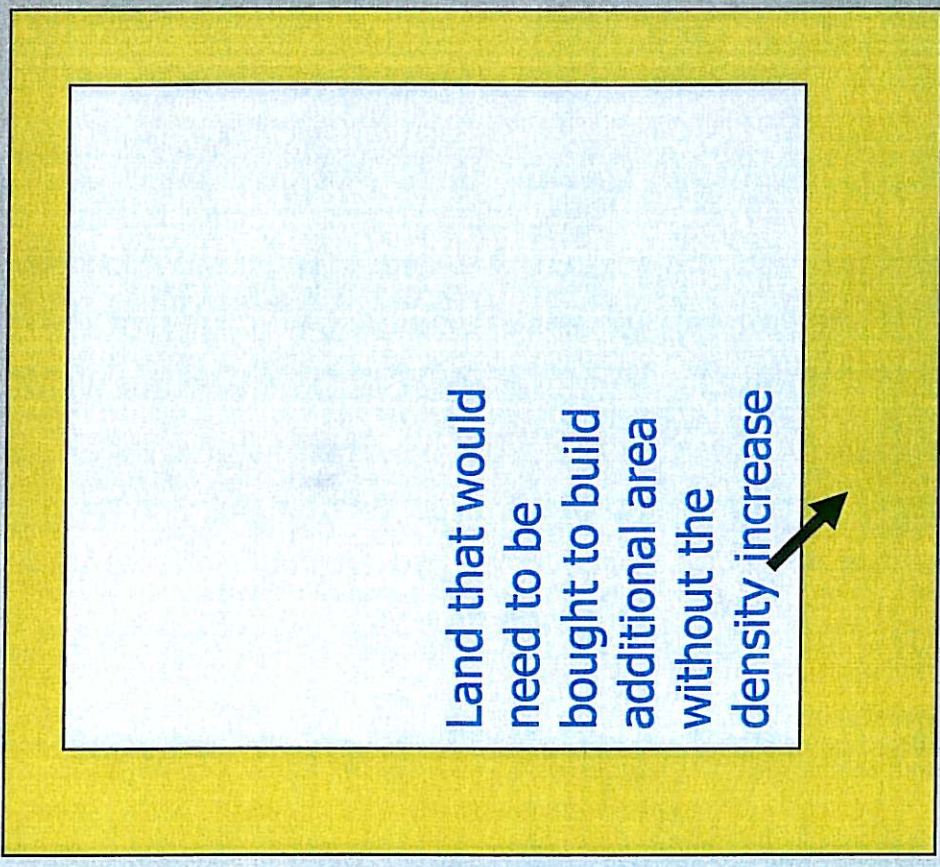
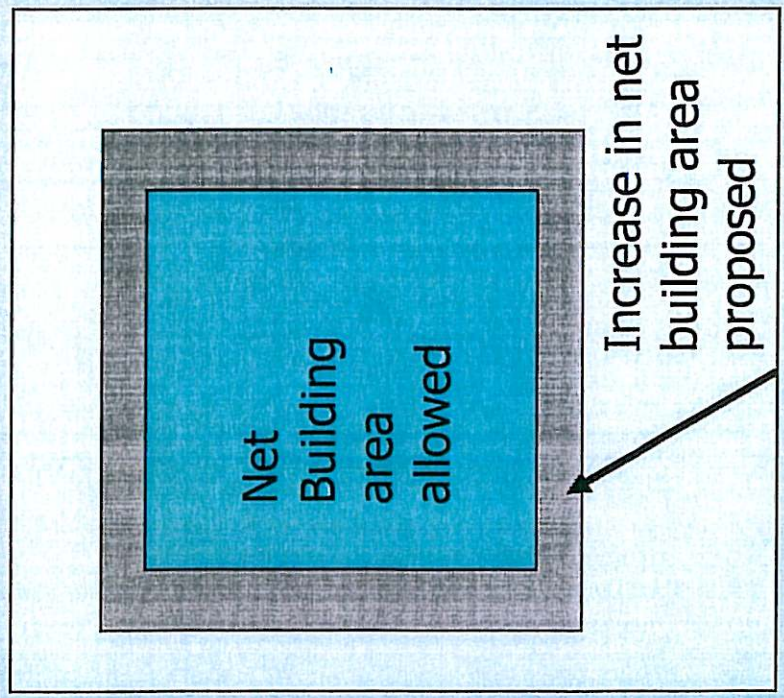
Increase in net building area proposed

Land that would need to be bought to build additional area without the density increase

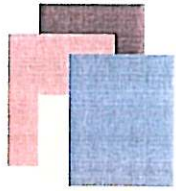




# Value of a Density Increase = Land

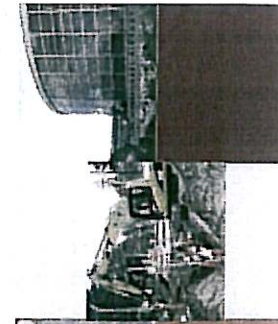
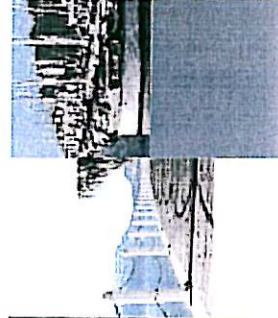






# Considerations

- Increased density impacts:
  - Neighbourhoods, services; &
  - Ability to develop lands designated for higher density elsewhere
- Amenities/affordable housing are not funded by DCCs
- Alternatives are
  - more government funding = more taxation;
  - private partnerships / need is not always met
- City has sought local approach

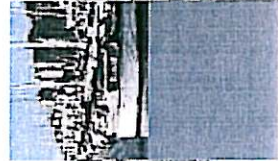




## 2 Policies – One for Zoning

For existing density bonuses offered in the zoning by-law in return for affordable housing:

- 1/2 of the net floor area increase resulting from the bonus must be built as affordable housing or:
- 75% of the land value of the floor area increase could be paid as cash-in-lieu;
- Note: Market value of floor area is MUCH higher than land value

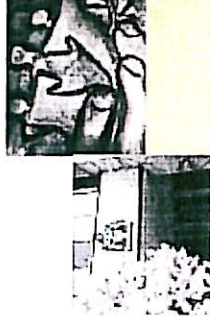






## Policy 2: OCP Amendments for Density

- 75% of the increase in net residential floor area = affordable housing or amenities;
  - **50% for land bought prior to policy;** or
- Cash-in-lieu payment based on 75 % of land lift value
  - **50% for land bought prior to policy**
- ***In all cases, cash-in-lieu is acceptable based on a report to address why amenity/affordable housing can't be provided on site***

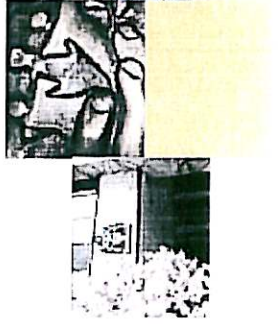






## Changes Based on UDI Input

- Cash in lieu based on appraisal for zoning bonuses, not set value/sq. ft.
- 75% of increase in NFA value for zoning by-law bonus cash in lieu, not 100%
- Cash can be paid at occupancy, instead of building permit
- 50% of land lift for OCP amendment, instead of 75% for land purchased prior to policy





# The Bottom Line

- Consultation with UDI has concluded with **no support** for density bonusing
- City Council has the following choices:
  - **Approve policies for contributions in return for existing density bonuses & policy**
  - **Continue to negotiate for contributions on a case by case basis (inconsistent / fairness)**
  - **Abandon policies & deal only with the impacts of increased density, without benefits of amenities or affordable housing (or cash-in-lieu)**
  - **No longer support** increases in density

