

REPORT TO COUNCIL



Date: November 2, 2012
File: 0610-51
To: City Manager
From: Policy and Planning Director
Subject: Council Workshop - Community Amenity Discussion

Recommendation:

THAT Council receives, for information, the report from the Policy and Planning Director dated November 2, 2012 with respect to community amenity contribution provisions;

AND THAT Council direct staff to identify amenities to be provided when development exceeds Zoning Bylaw provisions and to obtain stakeholder input on proposed amenities;

AND FURTHER THAT, subsequent to consultation, staff advance policy, guideline or zoning changes necessary to implement Council's directions provided at the November 19, 2012 Council meeting.

Purpose:

To provide information in support of a Council workshop on OCP community amenity policy in response to the following January 16, 2012 Council resolution:

THAT Council directs staff to hold a workshop with Council in order to discuss the community (amenity) benefits policy contained within the Kelowna 2030 Official Community Plan (SR # 215914).

The desire for the above-noted workshop was re-iterated by Council on October 1, 2012.

Background:

Current Practise

Currently the OCP does not contain any language with respect to the requirement of or the provision of affordable housing or community amenities in return for increased density through a land use designation change. However there is policy (OCP Policy 5.5.1 - Building Height) that provides the potential in the Downtown area to consider height variances beyond the 12-16 storeys allowed in the Zoning Bylaw, provided that the additional height results in

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the creation of affordable housing or other significant community benefits. At present, the community benefits are negotiated on a case-by-case basis.

Zoning Bylaw 8000 provides potential density bonuses within most multiple unit residential zones and within the C4 Urban Centre Commercial zone:

Zoning Bylaw 8000 - Amenities Yielding Bonuses, by Zone:

Zone	Affordable Housing	Under Building / Underground Parking	Increased Open Space	Co-op /Car Share Program	Public Courtyard	Green Roof
RM2	✓	✓				
RM3	✓	✓				
RM4	✓	✓				
RM5	✓	✓				
RM6	✓	✓	✓			
C4	✓	✓		✓	✓	✓

Approaches Used Elsewhere

Staff have conducted research on the approach taken by 17 BC municipalities⁽¹⁾, primarily in the Lower Mainland, with respect to the type of community amenities sought, how they are implemented, and how they are calculated and administered. Some of the local government amenity programs have been in place since the early / mid 90's but the majority have been amended or instituted in the last 10 years. Attachment 1 contains a summary of the information gathered from surveyed municipalities.

In addition to density bonuses available *within* individual zones (as is done in Kelowna), it is also possible to require amenity contributions when rezoning to allow a higher density. This is not currently the practice in Kelowna, but it is the practice in almost all BC jurisdictions that currently require amenity contributions and is consistent with Local Government Act Section 904 (*Zoning for Amenities and Affordable Housing*).

Most local governments use existing zoning or rezoning rather than a Development Variance Permit (DVP) to achieve community benefits, primarily because the associated process is clear, transparent and on legislatively solid ground. A DVP is typically used to provide minor variances to existing regulations. The use of a DVP to allow major variances to building height (in return for voluntary community amenities or a voluntary cash contribution) is unusual and the City of Kelowna is, to staff's knowledge, the only local government using a DVP to negotiate community amenities.

⁽¹⁾ **Municipalities Surveyed:** Belcarra, Burnaby, Coquitlam, Langley (City), Langley (Township), Mission, New Westminister, North Vancouver (City), North Vancouver (District), Pitt Meadows, Port Coquitlam, Port Moody, Richmond, Saanich, Surrey, West Vancouver, White Rock

Options

Should Council desire to continue the practice of negotiating amenities through the variance process, Council can do so either:

- A. On a case-by-case basis without guidelines, as is currently done (pros and cons of this approach are detailed in Appendix 2, Option 2); or
- B. In the context of guidelines that establish the type and scope of amenities that would be considered suitable in particular circumstances (pros and cons of this approach are detailed in Appendix 2, Option 3). The type and scope of amenities to be sought could vary by geographic area.

A. Obtaining amenities through the DVP process without guidelines

Should Council wish to continue to have amenities negotiated on a case-by-case basis (without guidelines), through the DVP process, staff could attempt to relate the impact of additional height to the type of amenity provided (for example, shadowing might be offset with an open space amenity). This approach may, however, put staff in an untenable position. When staff provides recommendations on the appropriateness of amenities, a situation is created wherein the public and/or development businesses may perceive a conflict. A positive staff recommendation could be seen as having been 'bought' with an amenity package, at the expense of appropriate design or bylaw/policy compliance. This scenario is particularly challenging in the context of staff dealing with a variance. With no guidelines in place, there is potential for inconsistent contributions which, if not fully and clearly explained or rationalized may lead to mistrust and could contribute to allegations of favouritism. Although this dynamic may exist for Council, it is not present to the same extent since Council can, as a political body, cite a wider range of reasons (including any rationale relating to amenities) as the basis for supporting or not supporting a variance.

The first few projects to get approved will be precedent setting, especially in the absence of established amenity guidelines. Future developers will be looking to Council for an indication of what will be considered acceptable and will shape proposals accordingly. Decisions will also be under public scrutiny. Expectations have been created through the Downtown Plan process that there will be community benefits resulting from height variances.

B. Obtaining amenities through the DVP process in the context of guidelines

Council indicated through their discussion on October 1st, 2012 that they wish to have firmer criteria (guidelines) in place. For guidelines to be most effectively deployed, it is suggested that they be endorsed by Council. This approach would allow staff to reference the guidelines in discussions with applicants and to make recommendations to Council on the basis of the extent to which submissions comply with the guidelines. This would set clear expectations of developers, may reduce the incidences of elected officials being individually lobbied by developers, and would make more efficient use of staff time.

Whether having guidelines in place is the best choice will largely be a function of the degree of flexibility that Council wishes to retain in the context of reviewing applications. In the context of guidelines, Council would retain the option to depart from the provisions, but the

more frequent and substantial such departures, the less effective the provisions would become. The greater the flexibility desired, the less suitable it would be to have guidelines. The reason for this is that if the guidelines are vague enough to accommodate a great deal of flexibility, they essentially become meaningless (e.g. equivalent to having no guidelines). Guidelines with a lot of flexibility still leave both Council and staff in the position of having to negotiate application-by-application.

For guidelines to be developed, there will need to be discussion as to what constitutes an amenity. Some may feel that any development, or that development in certain areas, or that the first few developments in the downtown would, by virtue of adding space² to the downtown be of sufficient community benefit. If the interpretation is taken that development is, in and of itself (for all or most projects over a specified period of time), sufficient to qualify as a "community amenity", then it is suggested that, for the sake of managing public expectations, it would be appropriate to amend the OCP building height policy accordingly. The OCP amendment would require a public hearing and that could re-open public debate on building height. Alternatively, Council could, upon endorsing amenity guidelines, specifically state the situations³ in which development being added would be considered sufficient benefit. This would ensure transparency.

While most of the above discussion to date has related to height variances in the downtown area, similar practises could easily be applied to other areas of the city

When amenities are negotiated through the DVP process, both the height granted and the associated amenities will have a 'best before' date. DVPs tied to Development Permits, are valid for a maximum of 2 years (with the option for two 1 year extensions). If the building resulting from approval of a DVP is not constructed within that timeframe, then the developer would have to re-commence the negotiation process prior to erecting a building exceeding zoning height provisions.

C. Obtaining amenities through the rezoning process

An alternative to the above process would be to create a new zone that guarantees certain heights in exchange for certain amenities. If the City wants to obtain amenities through the zoning (rather than the DVP) process, then it would be necessary to move towards a state where desired height (generally in excess of 44 metres) is not achievable without a rezoning. The advantage to the developer would be that once a property is rezoned, the ability to achieve a certain height would be guaranteed (no variance required) as long as the developer provides the stipulated amenities - in other words, the granted height does not 'expire'.

Should Council wish to set out areas where variances would be granted without a rezoning, Council could do so either by noting that intention through an OCP policy or through a Council Policy.

The pros and cons of this approach are detailed in Appendix 2, Option 4.

² The added space, provided that it is occupied year round, would be of benefit by adding people and therefore vitality.

³ For example, development within the Lawrence/Leon area (between Abbott and Water) might be considered to be of sufficient community benefit, even without the provision of community amenities.

Next Steps

Given Council's expressed interest in continuing to obtain amenities and in having guidelines in place for what those amenities could/should be, it is suggested that there are two potential courses of action:

1. Developing guidelines to be used in association with height variances (Option B above);
or
2. Entrenching amenity provisions in the Zoning Bylaw (Option C above).

It is suggested that staff identify amenities that could be sought and obtain community and business stakeholder input. It is suggested that the amenity requirements be developed in such a way that they:

1. Set out a variety of possible amenities (thereby providing developers with choice);
2. Set out, very specifically, the height that can be achieved as a result of the provision of various amenities;
3. Respond to the development challenges/hurdles present in various parts of the community (i.e. the extent of amenities to be provided may be higher in some areas than in others); and
4. Provide direction for amenities to be provided as a result of height variances throughout the city (not just the downtown).

Once endorsed as guidelines or adopted as bylaw, the amenity list would serve as the basis for developer/staff discussions and for staff's recommendations to Council.

External Agency/Public Comments (Historical):

Previous discussions with developers regarding community amenities have revealed a preference for the city not to require that amenities be provided when developers are seeking additional height. If amenities are sought, developers would prefer a system that provides certainty, flexibility, transparency and retention of existing zoning "entitlements".

Many among the public that was consulted during the Downtown Plan process expressed a desire for the city to, in order to offset development impacts, require amenities when developers are seeking height above what has been provided for in the Zoning Bylaw. The provision of amenities was part of the compromise that was put forward to achieve policy support for increased height.

Internal Circulation:

General Manager of Community Sustainability
Director of Land Use Management
Director of Real Estate and Building Services
Director of Communications
City Clerk

Legal / Statutory Authority:

Local Government Act Part 26: Division 7 - Zoning and Other Development Regulation, Sections 903 - 905.

Section 904 of the LGA provides local government the authority to establish conditions that will entitle an owner to a higher density, including conditions related to the provision of amenities, including the number, kind and extent of amenities. Section 904 also provides for the establishment of conditions relating to the provision of affordable and special needs housing, including the number, kind and extent of the housing and a condition that an owner enter into a housing agreement.

Existing Policy:

OCP Policy 5.5.1 Building Height - City Centre

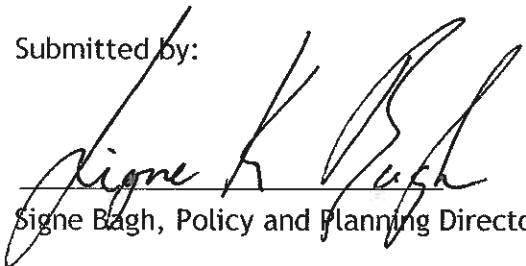
CITY CENTRE: For the Downtown area, building heights shall, at a maximum, be as noted on the "Downtown Building Heights" map. To achieve those heights, Council may consider variances for the heights set out in the Zoning Bylaw, provide that the additional height (beyond that provided in the Zoning Bylaw) results in the creation of affordable housing or yields other significant benefits.

Zoning Bylaw 8000 - RM2, RM3, RM4, RM5, RM6, C4 & C7 zones.

Considerations not applicable to this report:

- Legal/Statutory Procedural Requirements:
- Financial/Budgetary Considerations:
- Communications Comments:
- Personnel Implications:
- Alternate Recommendation:

Submitted by:



Signe Bagh, Policy and Planning Director

Approved for inclusion:

Doug Gilchrist, GM Community Sustainability



- cc: Director of Land Use Management
- Director of Real Estate and Building Services
- Director of Communications
- City Clerk

Attachment 1

Research on Other Local Governments in B.C.

Types of Amenities

The most frequently cited amenities sought by local governments are as follows (out of 17 surveyed):

Parks / trails	- 14 (82%)
Affordable / special needs housing	- 11 (65%)
Transportation upgrades	- 11 (roads, transit, ped/bike, streetscaping) (65%)
Community facilities / recreation centre	- 11 / 10 respectively (65% / 59%)
Child care	- 9 (53%)
Library / cultural facilities	- 8 / 9 respectively (47% / 53%)
Heritage upgrades	- 8 (47%)
Public art	- 6 (35%)

Several local governments also consider cash donations to an endowment fund for the operation and maintenance of community amenities. In addition there are numerous other amenities that were considered on a case by case basis or as identified in neighbourhood or community plans such as non-profit office / program space; sustainable building features; district energy compliant; accessible design; environmental or sustainability measures; public plaza; public realm linkages; beautification; artist studios; public community hall; convention space; observation deck; waterfront access; seismic upgrades; park improvements (lighting, bleachers, playground, landscaping, artificial turf, synthetic track), fire hall & equipment and seniors centre.

Implementation

Of the 17 local governments researched, the majority (10) of them seek to achieve community amenities as a result of a density bonus available in a zoning bylaw. Only 1 local government relied strictly on policy, although 2 provided both policy and zoning bylaw measures to achieve amenities. Other local governments (6) used 'ad hoc' implementation mechanisms based on council resolution or negotiations through rezoning on a site specific or case by case basis.

Burnaby and Coquitlam have advised that zoning density bonuses are used only in town centres or in higher density mixed-use areas. They feel their methodology is clear and transparent and they have reported good success, with no legal issues.

Calculation / Administration

Of the 17 local governments researched there were eight (8) that set per m² / per sq. ft. / per unit costs and nine (9) that set a target as a percentage of land lift or density achieved. Most often that percentage was between 25% and 75%, depending on the increase in land value or density.

Twelve (12) of the local governments focused on rezoning for residential use and five (5) focused on rezoning for commercial use, although three (3) consider amenity contributions on rezoning for any use.

Six (6) of the local governments would consider the contribution of cash-in-lieu only, while nine (9) would consider either cash-in-lieu or a contribution in kind. The other two (2) did not specify.

Calculation of the value or cash-in-lieu was done in a variety of ways such as per sq. ft. / per unit, negotiated market value, land lift value or capital cost of a particular amenity.

The methodology to determine the form of amenity to be provided was most often (8) on a case by case basis, with other methods such as council policy, plans and staff recommendations providing the balance.

Attachment 2

Assessing Options Relating to Community Amenities

Should we require amenities?

If no,

Option	Description	Pros	Cons
1 Don't Seek Amenities	Support building height variances to achieve maximum building heights spelled out in the Downtown Plan without seeking amenities.	<ul style="list-style-type: none">• Would not further discourage downtown development (the inference being that any development approved within downtown would be considered beneficial).• Would remove pressure to come up with amenity list	<ul style="list-style-type: none">• Would compromise public expectation of amenities• Would re-open building height debate (as this change would require public consultation and a public hearing)

If yes,

Option	Description	Pros	Cons
2 Status Quo	Ask for amenities when height variances are sought in the downtown (without guidelines providing parameters on what is expected)	<ul style="list-style-type: none"> • Would not require us to make any changes to existing practise • The DVP granting height expires after 2 years, allowing height to later be re-negotiated to reflect prevailing opinions • Extremely flexible -- Staff could recommend and Council could approve a project with very minimal amenities or could require significant amenities 	<ul style="list-style-type: none"> • No precedents in other communities • Not predictable • Not necessarily transparent • Potential to be applied inconsistently, leading to criticism of lack of fairness • The DVP granting height expires after 2 years, creating longer term uncertainty • Negotiating without any endorsed parameters requires significant staff time • Council might be placed in an uncomfortable position having to assess whether the amenities being offered are appropriate
3 Create Guidelines	Create guidelines for amenities that would be expected for various heights sought through the DVP process	<ul style="list-style-type: none"> • Would create more certainty for Council and staff • Would build on existing practise • The DVP granting height expires after 2 years, allowing height to later be re-negotiated to reflect prevailing opinions 	<ul style="list-style-type: none"> • No precedents in other communities • Would not resolve tenuousness of seeking amenities through variances • The DVP granting height expires after 2 years, creating longer term uncertainty
4 Explore Alternative to C7 Zone	Create a new zone that would provide an alternative to the C7 zone. Those wanting height in excess of what is currently permitted in the C7 zone would be asked to rezone to the new zone, which would have a lower FAR than the C7 zone, but which would allow the FAR to be increased to match the heights provided in the Downtown Plan, in line with amenities provided. The zone would spell out the extent of FAR gain that could be achieved in return for various amenities.	<ul style="list-style-type: none"> • Would provide certainty for developers • Could accommodate desire for flexibility (developers could choose which amenities to provide from a pick list) • Would provide certainty for developers (extent of amenities required for a project could be factored into land acquisition) • All developers would be treated equally • Very transparent • Precedent exists elsewhere (New Westminster) • Would be more efficient for staff (less time spent in negotiation) • Would leave Council on more solid footing in terms of knowing what to expect from developers 	<ul style="list-style-type: none"> • Developers would likely resist fact that they couldn't achieve full height potential of 9.0 FAR in the C7 zone without rezoning (but effect of status quo would be the same in that in both cases amenities would have to be provided in order to achieve full height). Developers may be inclined to retain their existing C7 zoning until they are ready to develop and hope that they can eventually convince Council to allow additional height without a rezoning and without providing amenities • Would only achieve amenities if Council consistently declines requests for height variances within the C7 zone • Would require additional staff effort and community consultation to achieve • Would be less flexible than status quo

COMMUNITY AMENITY POLICY WORKSHOP

October 2012



That Council directs staff to hold a **workshop** with Council to discuss the **community (amenity) benefits policy** in the OCP.

January 12, 2012
SR# 215914

Today's Presentation

1. What does the policy say?
2. How did we get to the policy?
3. What are the implications?
4. What are the alternatives?

Council Discussion: Where to now?

What does the policy say?

- 
1. Design well
 2. Space appropriately
 3. Provide community benefit


 Existing Park

Building Heights up to:*

 76.5m (Approx. 26 Storeys)

(To be reviewed after January 1, 2015)

 76.5m (Approx. 26 Storeys)

 58m (Approx. 19 Storeys)

 37m (Approx. 12 Storeys)

 22m (Approx. 6 Storeys)

 18.5m (Approx. 5 Storeys)

 15m (Approx. 4 Storeys)

 13m (Approx. 3 Storeys)

 CD5 Comprehensive Development

*The legend above indicates maximum permissible heights. This height will not always be achievable. OCP Policy 5.5.1 identifies conditions to be satisfied to achieve noted heights, and also provides direction related to tower separation distances (100 feet or 120 feet depending on the floor plate size)



What does the policy say?

Height greater than 44 m (approx. 12-14 storeys) **ONLY** allowed **IF** Council grants a height variance.

CAUTION

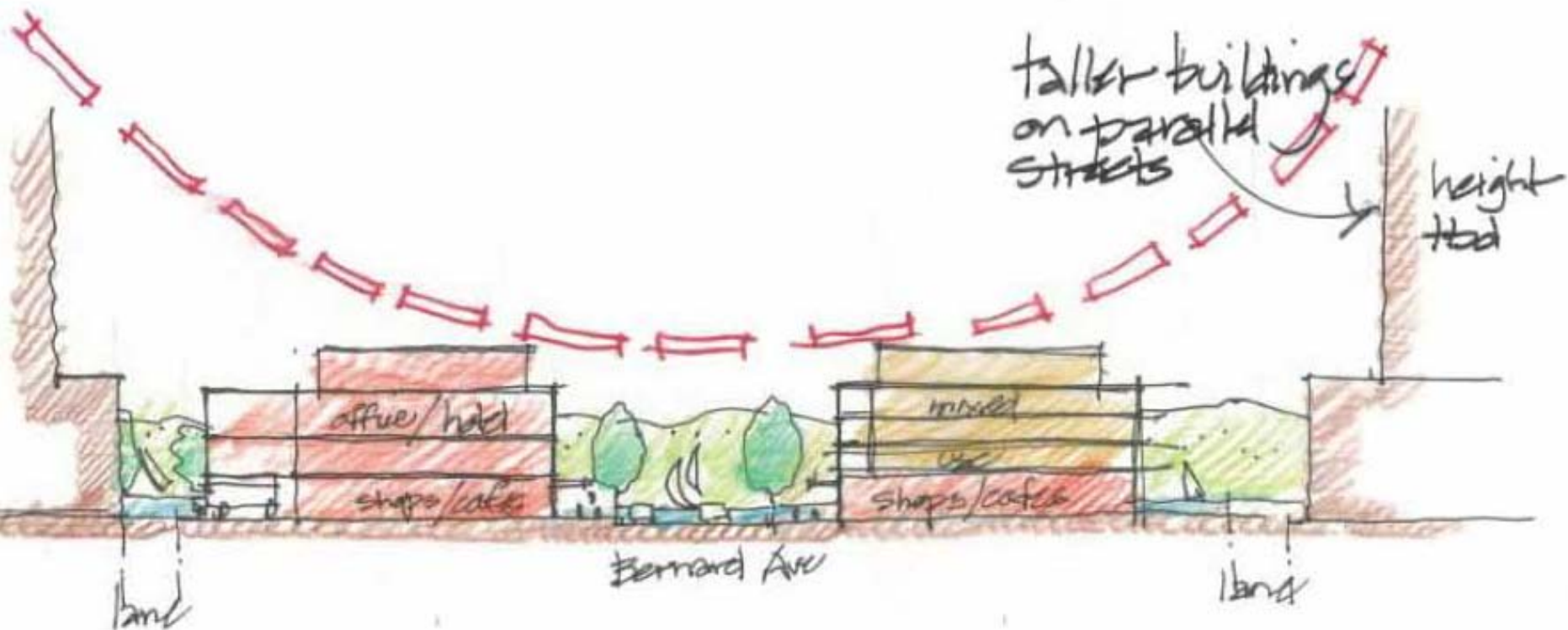
HEIGHT IS A
PRIVILEGE

ENSURE SUITABLE FIT AND
COMMUNITY BENEFIT

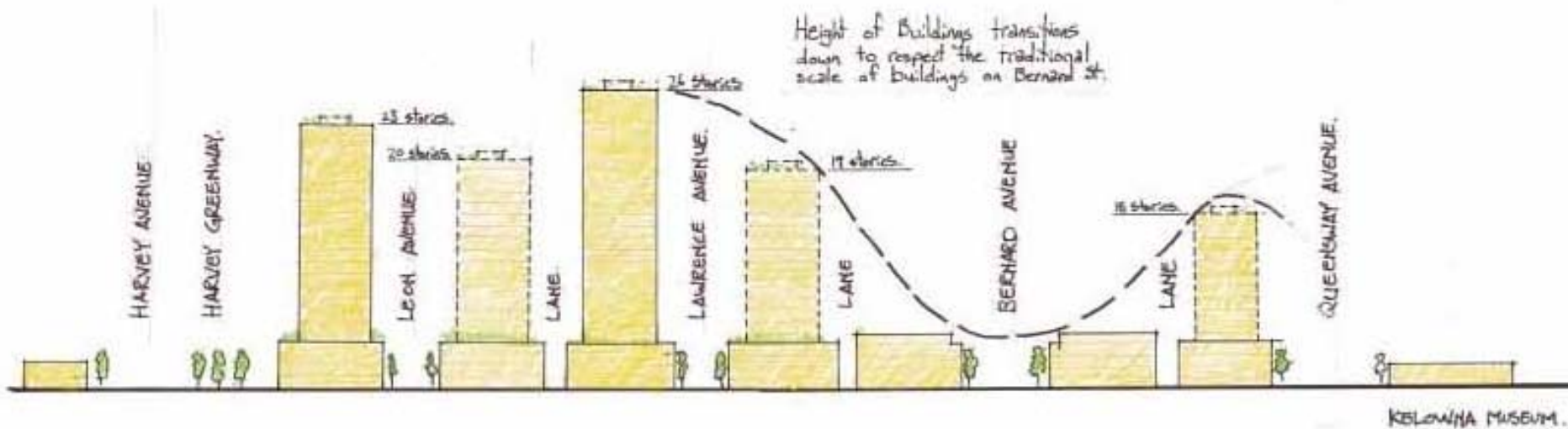


Height Profile Principles

Keep **historical scale** of Bernard Avenue



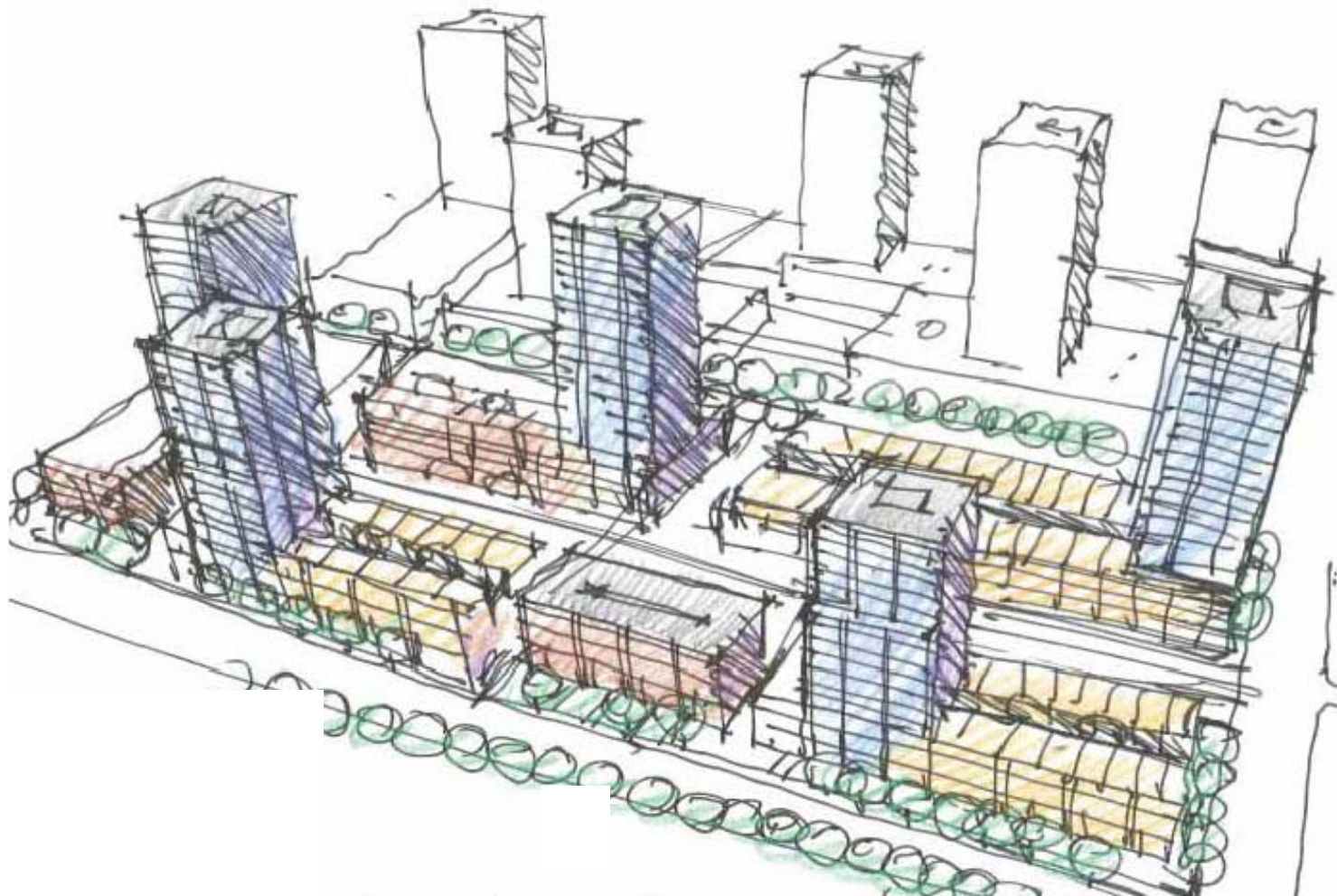
Transition to lower height areas



Keep heights **low** close to the **lake**



Separate towers



How did we get to this point?



- CD21 discussions
- Downtown Plan consultation process
- Development application review
- Council direction to hold workshop

What is done now?

- Developer submits **application**
- **Staff reviews** application and assesses bylaw compliance and urban design
- **Staff negotiates** amenities and provides recommendation to Council
- **Council** determines whether development and offered amenities are appropriate and **makes decision**
- **Developer** determines if/when to **build**

What are the implications?

Advantages of
current approach:

- Extremely flexible
- Allows for re-negotiation
when DVP expires



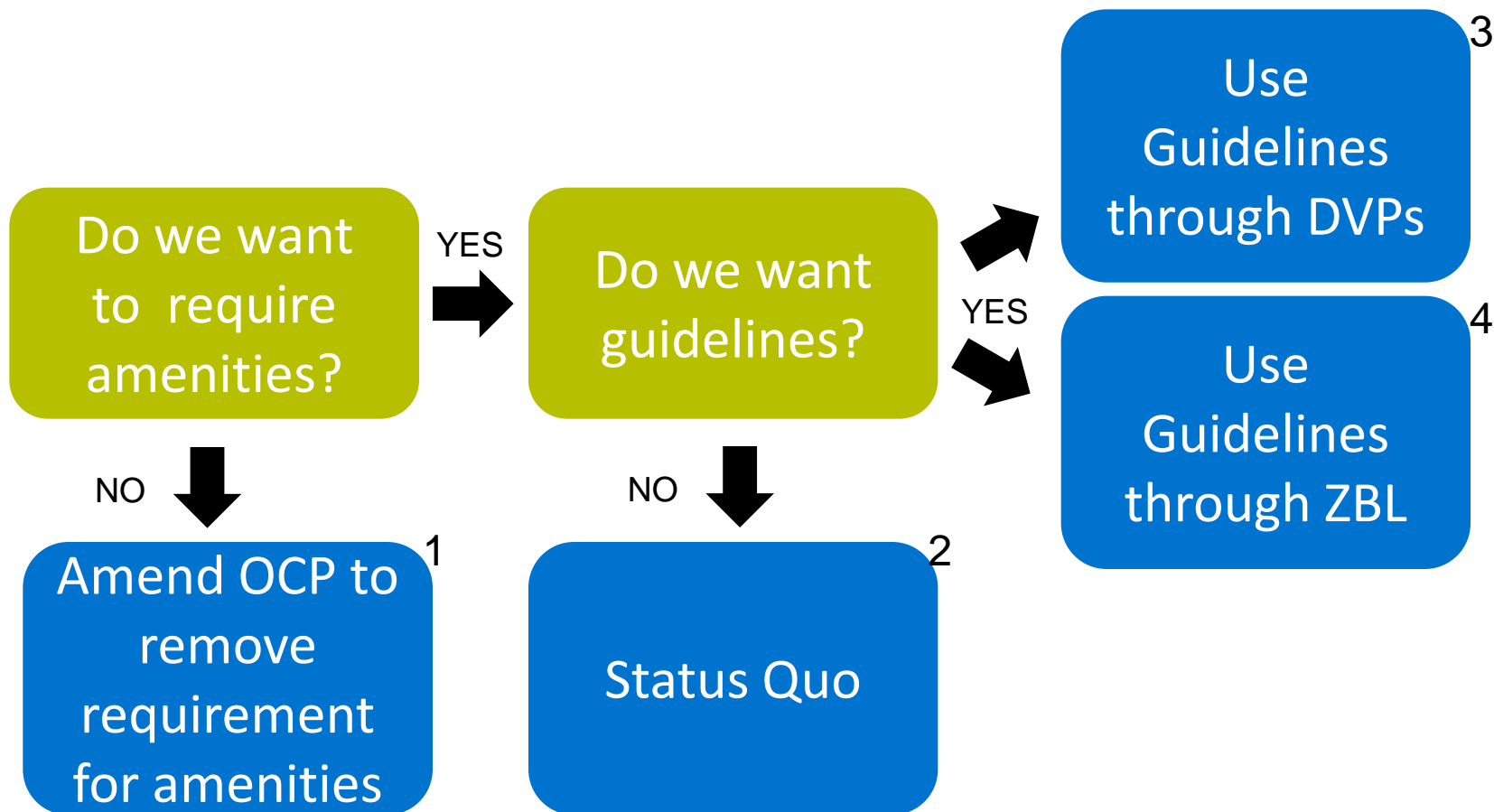
What are the implications?

Disadvantages of current approach:

- Not predictable
- Potential to be applied inconsistently
- Not done in other communities
- Time consuming
- Creates long term uncertainty



What are the alternatives?



Council Discussion

	Options	Pros	Cons
1.	Don't seek amenities		
2.	Status Quo		
3.	Guidelines through DVPs		
4.	Guidelines through ZBL		