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**TO:** GENERAL COMMITTEE

**SUBJECT:** BONUSING POLICIES

**PREPARED BY AND KEY CONTACT:** M. KALYANIWALLA, MANAGER OF POLICY PLANNING  
EXT. 4314

**SUBMITTED BY:** M. KALYANIWALLA, M.C.I.P., R.P.P., DIRECTOR OF PLANNING  
(ACTING) 

**GENERAL MANAGER APPROVAL:** R. FORWARD, MBA, M.Sc., P. ENG.  
GENERAL MANAGER OF INFRASTRUCTURE & GROWTH  
MANAGEMENT 

**CHIEF ADMINISTRATIVE OFFICER APPROVAL:** C. LADD, CHIEF ADMINISTRATIVE OFFICER 

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**RECOMMENDED MOTION**

1. That Section 6.8 of the City of Barrie Official Plan be amended by deleting the Section in its entirety and replacing it with the following:

***6.8 Height and Density Bonusing***

- (a) *Upon the City determining that an application that would have the effect of permitting an increase in height and/or density that exceed the maximum height and/or density permitted in the Zoning By-law is appropriate, City Staff shall also recommend for the provision of community benefits pursuant to Section 37 of the Planning Act provided that:*
- i. The development constitutes good planning and is consistent with the goals, objectives and policies of this Plan;*
  - ii. The community benefit provided bears a reasonable planning relationship to the increase in the height and/or density of the proposed development including having an appropriate geographic relationship to the development; and*
  - iii. Adequate infrastructure exists or will be provided by the developer to support the proposed development.*
- (b) *Without limiting the authority of the foregoing, the City will seek to secure any of the following community benefits above and beyond those that would otherwise be provided under the provisions of the Planning Act (including parkland dedication and cash-in-lieu of parking) or the Development Charges Act or any other statute.*

*The community benefits that may be secured include, but are not limited to, the following:*

- Provision of affordable housing units;*
- Community facilities/services;*
- Arts and Cultural facilities;*
- Public Art;*
- Parks facilities and equipment;*
- Protection of cultural heritage resources;*
- Public access to facilities;*
- Streetscape improvements on the public boulevard not abutting the site;*

- *Local improvements to transit facilities including pedestrian connections to transit facilities;*
  - *Amenities for active transportation such as pedestrian or cycling facilities;*
  - *Land for other municipal purposes;*
  - *Preservation and enhancement of the Natural Heritage System;*
  - *Enhanced on-site tree planting or landscaping;*
  - *Public parking facilities (at-grade and/or structures);*
  - *Local improvements identified through Community Improvement Plans;*
  - *Sustainable energy works and facilities; and*
  - *Any public work, initiative or matter in compliance with this Plan.*
- (c) *Development proposals in the R1, R2, R3, R4 and RM1 zones are not subject to this section of the Plan. Non-Profit housing proposals are also not subject to this requirement.*
- (d) *Where community benefits are to be provided in return for increased height and/or density pursuant to Section 37 of the Act, these benefits will be set out in the zoning by-law amendment along with the increased height and/or density.*
- (e) *Where community benefits are to be provided, they may be secured by letter of credit and/or in one or more agreements, which may be registered on title to the lands.*
2. That the Implementation Guidelines attached to Staff Report PLN004-15 be adopted as the implementation protocol for negotiating Community Benefits under Section 37 of the Planning Act and Section 6.8 of the City of Barrie Official Plan.
3. That staff be directed to start implementing this initiative for all new complete planning applications within the UGC and the Intensification Nodes and Corridors identified on Schedule I of the Official Plan for which a decision has not yet been made and that the following types of community benefits be made a priority in negotiating on benefits;
- Provision of Affordable Housing
  - Community facilities/services
  - Public Art
  - Protection of Cultural Heritage Resources
  - Amenities for active transportation such as pedestrian or cycling facilities
  - Preservation and Enhancement of the Natural Heritage System
  - Local Improvements identified through Community Improvement Plans
  - Sustainable energy works and facilities
4. That City Council request the Province of Ontario to introduce new language under Section 37 of the Planning Act that enables municipalities to establish a value-based formula or quantum approach for the implementation of Section 37.

## **PURPOSE & BACKGROUND**

### **Report Overview**

5. The purpose of this staff report is to recommend amendments to Section 6.8 of the City of Barrie Official Plan relating to Bonus Policies and to establish a procedure to implement these policies to achieve municipal benefits associated with community interests.

Background

6. The Planning Act of Ontario authorizes municipalities with appropriate Official Plan provisions to secure community benefits when and if it is considering passing a zoning by-law increasing the height and density as a result of a development application beyond what would otherwise be permitted by the current standard. The community benefits must be set out in the authorizing zoning by-law amendment and may be secured in an agreement registered on title.
7. The City of Barrie Official Plan has contained provisions for securing these community benefits since 1997, but these provisions have rarely been exercised through the development process notwithstanding the increases in height and densities that have been approved particularly in the City Centre Planning Area.
8. This report is intended to recommend amendments to Section 6.8 of the Official Plan to update the existing Bonusing Policies with the intent of increasing clarity and transparency.

Policy Framework

9. Section 37 of the Planning Act of Ontario provides the enabling legislation for the process of height and density Bonusing. Section 37 states the following:
  37. (1) *The council of a local municipality may, in a by-law passed under section 34, authorize increases in the height and density of development otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law.*

*Condition*

- (2) *A by-law shall not contain the provisions mentioned in subsection (1) unless there is an official plan in effect in the local municipality that contains provisions relating to the authorization of increases in height and density of development.*

*Agreements*

- (3) *Where an owner of land elects to provide facilities, services or matters in return for an increase in the height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services or matters.*

*Registration of agreement*

- (4) *Any agreement entered into under subsection (3) may be registered against the land to which it applies and the municipality is entitled to enforce the provisions thereof against the owner and, subject to the provisions of the Registry Act and the Land Titles Act, any and all subsequent owners of the land. R.S.O. 1990, c. P.13, s. 37.*
10. Currently, Section 6.8 of the City's Official Plan addresses Section 37(2) of the Act by including the following:
    - 6.8 BONUSING POLICIES**
      - (a) *The City may pass a zoning by-law authorizing increases in the height and density of a development beyond what is otherwise permitted by the by-law, in return for the provision of such facilities, services or matters as set out in the Zoning By-law.*

- (b) *The City will consider negotiating for the provision of facilities, services or matters set out in a site specific by-law in exchange for increased height or density, only in situations where the need for such facilities, services or matters has been identified by the City.*
- (c) *The City may increase the height of buildings permitted in the Zoning By-law subject to fulfilment of the policies contained within the Urban Design Guidelines of this Plan. In evaluating the merits of such applications, the City shall also have regard for the impact of onsite constraints to development such as soil conditions, drainage and topography.*
11. These policies provide Council the legislative authority to acquire community benefits in consideration of increased height and density. The term "community benefits" is intended to reflect the City's priority on providing public benefits within the local community in which the contributing development project is located. These benefits can include the provision of affordable housing, day care facilities, public art, parks or recreation facilities, transit improvements, protection of cultural heritage resources or other items identified by Council as a public or community benefit.

### **ANALYSIS**

12. It is important to distinguish these community benefits from other matters required for good planning. In other words, conditions, amendments or alterations, such as the requirement for traffic improvements or enhanced landscaping to a development project intended to address issues arising from that project or to mitigate the impact of the project on the surrounding area, should not be considered as community benefits. These requirements should and would apply to a development whether Section 37 benefits were engaged or not.
13. The exercise of Council's authority under Section 37 of the Act and Section 6.8 of the Official Plan will allow the City to realize benefits addressing matters which are typically outside the normal scope of a development project but which have been identified by Council either through its Strategic Priorities or its Official Plan as matters of interest to the Community.

### **Municipal Survey**

14. In preparation of the revised policies, staff contacted or surveyed a variety of municipalities currently using Section 37 Bonusing tools. These included the City of Toronto, the City of Burlington, the Town of Markham, the City of Hamilton, the City of Ottawa and others.
15. The majority of these municipalities have more detailed Bonusing Policies in their Official Plans than the City of Barrie and the revised policies being recommended by this report more closely resemble the policies in these other municipalities. A brief summary of the policies in some of these other municipalities is included in Appendix B of this report.
16. Staff are therefore recommending that Council consider amendments to Section 6.8 of the City's Official Plan in accordance with paragraph 1 of this report to enhance the existing Bonusing Policies for clarity and consistency with similar policies in municipal official plans throughout the Province.
17. Although some jurisdictions restrict the application of Section 37 Bonusing Policies to specific geographic areas, for example, their downtowns, staff are recommending that the policies apply on a City wide basis as the need for community benefits is not restricted to any one area of the City. It is anticipated that the majority of instances where these policies will apply will likely be within the Urban Growth Centre as this area generally attracts the most significant number of applications for increased height or density. Consequently, staff are recommending that the application of these policies be functionally restricted to the UGC, Intensification Nodes and

Corridors at this time however the policies themselves allow for Bonusing to be extended on a city wide basis to ensure that no future amendments to this section will become necessary.

18. The cost of providing capital facilities and services has been steadily increasing over the past decade and the City has provided a number of community based benefits which are intended to improve the liveability of the City, but which have largely been required because of the increase in growth that the City has experienced.

Public Meeting.

19. A public meeting was held on April 14, 2014 to review the proposed revisions to the Official Plan. The only written comments received prior to the public meeting were from Mr. Frank Palka, Development Services Manager with the City of Barrie requesting that the list of proposed community benefits be expanded to include infrastructure renewal. Staff concur and will amend the proposed policies to include infrastructure renewal with the caveat that any renewal projects that can be secured through other legislative tools such as the Planning Act or the Development Charges Act cannot be considered under these provisions.
20. The only member of the public that spoke at the public meeting on April 14, 2014 was Mr. Greg Stephenson of 5 Tomlin Court who posed three questions regarding this matter as follows:
  - a) Why Bonusing would be implemented if a development proposal represents good planning;
  - b) What controls would be put in place to ensure that benefits received would be utilized for the desired outcome; and
  - c) What lessons have been learned from other municipalities that have implemented Section 37 provisions.
21. In response to Mr Stephenson's comments, Bonusing is not a mechanism to negotiate the approval or denial of a zoning application, but a tool to secure those works or facilities that are essential for community building. The controls that would be put in place to ensure that these benefits or contributions towards these benefits are used to achieve the desired outcome are outlined in the implementation guidelines and the proposed policies. Finally, as indicated at the public meeting and earlier in this report, staff have consulted with a variety of other municipalities in preparing these policies and have attempted to formulate policies that incorporate the lessons learned.
22. There were a number of questions from members of Council which staff have attempted to group together in summary form and provide responses for below.
  - a) **Will negotiated benefits stay within the Ward in which the development proposal is located?**

*Benefits must bear a reasonable planning relationship to the development and in most cases that would be a geographic relationship however, the proposed policies do give Council the authority to negotiate benefits which would improve the liveability of the community as a whole including significant capital facilities such as performing arts centres or community centres which may be more centrally located within the City.*
  - b) **Would all zones within the City be subject to the proposed Section 37 Bonusing provisions?**

*The proposed Official Plan policies will allow Bonusing to apply on a City wide basis.*



However, staff are recommending that at this time the implementation of these policies be restricted to the Urban Growth Centre and the Intensification Nodes and Corridors identified on schedule I of the Official Plan. At this time staff are recommending that all lands within this area be subject to Bonusing Provisions with the exception of lands which are proposed to be zoned low density residential development including semi-detached duplexes and other forms of two unit houses.

c) **Who decides which properties are “eligible” for Bonusing provisions and is “the sky is the limit” with regard to increased height and density?**

There seems to be a misconception that the proposed policies if implemented will provide as-of-right development approvals for increased height and density. The fault lies with the title of this provision of the Planning Act which refers to these matters as bonuses. Any application for increased height and/or density will continue to require the same level of review, public scrutiny and Council approval as it always has. If the application does not meet the principles of good planning, and is contrary to the policies of the OP, the Provincial Policy Statement and the Provincial Growth Plan then staff will not be recommending it for approval under any circumstances, notwithstanding what community benefits are offered. If Council is of the opinion that the proposal does not meet the tests of good planning or will have too significant an impact on the surrounding neighbourhood then Council is under no obligation to approve the application no matter what benefits are offered.

Development applications within the City will also be subject to the recently approved Tall Buildings policies and approval of any applications for increased height and density must also conform to these policies.

However, if an application for increased height and density does represent good planning and Council is inclined to approve it, then and only then will these policies be implemented. Council can then require that the development offset any impacts of the increased height and density by providing those works, services or facilities which will help to minimize the impact of the additional population within that area. In many cases these will be community benefits which Council currently provides anyway but which are currently funded through general tax revenues.

d) **Who determines the value of the proposed negotiated benefit?**

In staffs' review of how these policies are implemented in other municipalities, it has been determined that generally speaking most municipalities undertake an appraisal of the incremental increase in the value of the property prior to rezoning and an estimation of the value of the property if the rezoning were to be approved. This is usually undertaken by municipal real estate staff in the larger municipalities and by an external appraiser in the smaller ones. The incremental increase, referred to as the “uplift” is then used as the basis for negotiations in a variety of different ways.

For example, the City of Toronto and the City of Burlington uses average land valuations as the basis for their negotiations but both municipalities do not establish a quantum or a city wide formula on the basis that “a rigid, value-based formula, or quantum, across the entire City, would likely be challenged in court, and might not survive the challenge on the basis that it constitutes an illegal tax” (City of Toronto Implementation Guidelines) whereas the City of Ottawa does establish a value-based system. In the case of Toronto and Burlington, the value increase is used as a guideline to begin negotiations. In the case of Ottawa, a set dollar value has been calculated by the City's Realty Services Branch, in consultation with key stakeholders, for different parts of the City

referred to as the "Inner Urban Zone" and the "Outer Urban Zone". For the remainder of the city, individual appraisals are undertaken on a case by case basis (See Appendix B).

Staff have reviewed this process with the City's Real Estate Department and recommend that a similar process be implemented in Barrie as outlined in the attached Implementation Guidelines however staff are recommending a percentage based valuation rather than a specific dollar value which would need to be updated at least on an annual basis.

Staff note that on February 27, 2014, the City of Toronto's Planning Committee received a report from the Chief Planner recommending revisions to the City's Section 37 Implementation Guidelines based on a study conducted by Gladki Planning Associates for the City completed in January 2014. Based on this report the Committee made specific recommendations to Council including a recommendation that the City explore alternative approaches to valuation of Section 37 contributions including, adoption of a standardized valuation approach. This would replace the current case by case negotiation process that can lead to inconsistent outcomes. The consultation revealed that the current process often leaves parties to the negotiation unclear of what is expected from them.

One such approach would be a per square metre charge applied to the increase in buildable area, differentiated for different parts of the City, based on land appraisals updated annually virtually identical to the approach adopted by the City of Ottawa.

The Report did express concern that absent express statutory authority, standardized valuation approaches could be interpreted as constituting an illegal tax. Recommendation 6 seeks legislative changes to the Planning Act to ensure standardized approaches are not found to be an illegal tax in future litigation.

Such changes have already been suggested by the City of Barrie as part of its response to the Provincial Review of Land Use and Appeal System consultation where it requested that the Province amend the Planning Act to allow municipalities to establish a value-based formula under Section 37 and staff reiterate this recommendation as part of this report.

e) **At what point in the process does the Ward Councillor get involved and when will the public be involved?**

Section 1.10 of the attached implementation guidelines states that the Ward Councillor should always be consulted by City Planning staff prior to any negotiation of Section 37 community benefits. The Ward Councillor can also, in consultation with his or her constituents establish a general list of needs within his/her ward in advance of any development application. Staff also recommend that a list of benefits be established through the strategic planning process at the start of Council's term.

Staff are recommending that public input should remain as is currently stipulated in the Planning Act for consideration of any re-zoning application and that no specific additional public input is required to address Section 37 benefits.

- f) **What incentive or requirement is there for a developer to negotiate Section 37 benefits if the basis for approval of a rezoning is sound land use planning principles anyway?**

*The legislative authority to secure Community Benefits derives from Section 37 of the Planning Act of Ontario and carries with it as much weight as any other provision of the Planning Act or any other Provincial statute.*

23. On October 31, 2014, staff met with the Simcoe chapter of BILD to present the proposed policies to them and seek their feedback. The presentation was well received and BILD followed up with written correspondence dated November 18, 2014 outlining their comments (see attached).

24. In general BILD were supportive of the proposed revisions to Section of the Official Plan but provided some comments and recommendations which are summarized below:

- a) **BILD recommends that the guidelines clearly set out the role of each stakeholder.**

*Staff are of the opinion that the guidelines provide sufficient clarity with regard to the role of each stakeholder, however, if issues arise the guidelines can be modified or expanded to address this concern.*

- b) **BILD recommends that a Community Needs Assessment be completed by the City to identify capital projects that are needed**

*The guidelines recommend that a general determination of community benefits be undertaken by Councils during their strategic planning sessions. The guidelines also establish the framework for pre-determining benefits but do not require this step as priorities may change or community benefits projects may be completed.*

- c) **BILD recommends that boundaries be delineated to ensure that community improvements are at least within the Ward of the development site.**

*Staff do not disagree with this recommendation. The guidelines already require that the community benefit bear some reasonable geographic relationship to the contributing development and ward boundaries are as reasonable as any other measurement. The option continues to exist for community benefits to be secured for City wide projects.*

- d) **BILD recommends that if a community benefits project for which cash-in-lieu payments are secured does not proceed, that those funds be re-paid to the developer/future owner.**

*Staff do not concur with this recommendation as many projects may get delayed due to budgetary constraints. Also community priorities in an area may change. The guidelines do make provision of the potential by requiring that any change to the use of the funds would have to be authorized by all parties to the original agreement or their successors in title.*

- e) **BILD also recommends that a transition period be put in place once the policies are approved to allow projects in the pipeline which have not taken community benefits into account as part of their pro forma to proceed.**

*This is an administrative matter which will be a one-time exemption. It is not unreasonable to provide a transition period and staff will certainly take the stage of a project into consideration.*



Summary

25. The authority to negotiate community benefits if Council is considering approving an application for increased height and/or density has existed in the City's Official Plan since 1997. This section of the Plan has rarely been used and as a result the City has not taken advantage of opportunities to secure benefits that may have served to enhance the community as a whole and offset the impact of the increased height and density.
26. In these times of fiscal constraints many municipalities in Ontario are using their authority under the Planning Act to ensure that where the value of a property is increased through a rezoning application, the community as a whole derives some benefits from this added value and that benefits which maintain or enhance the liveability of that community are secured.
27. These policies would serve to allow Council to secure facilities and/or contributions towards facilities that would enhance and contribute to ensuring that the City of Barrie continues to be a vibrant, active and healthy place to live for current and future residents.
28. As part of the implementation of these policies, staff have prepared a draft protocol to help guide negotiation of community benefits to ensure transparency and consistency in implementing these policies (see Appendix "A"). These implementation guidelines do not form part of the amendment and may be subject to change in the future as the City implements this process.

**ENVIRONMENTAL MATTERS**

29. There are no environmental matters specifically related to the recommendation. However, community benefits can be negotiated to enhance or strengthen environmental features and functions. Community benefits under this section of the Official Plan are not intended to be used to preserve environmental features that should be protected through the normal course of development but they can be used to enhance that feature.

**ALTERNATIVES**

30. There are two alternatives available for consideration by General Committee:

**Alternative #1**

General Committee could maintain the existing policy/procedure/by-law with respect to Section 6.8 of the Official Plan (i.e. Status Quo).

This alternative is not recommended. The existing policies have been part of the City's Official Plan for more than a decade and staff are of the opinion that the policies should be revised to more specifically state Council's intention with regard to this matter.

**Alternative #2**

General Committee could alter the proposed recommendation by specifically including additional matters which might be considered for community benefits.

Although this alternative is available, staff have circulated the recommendations of this report to all departments which are likely to be impacted and have included matters which were proposed and in keeping with the spirit and intent of these policies.

**FINANCIAL**

31. There are no direct financial implications for the Corporation resulting from the proposed recommendation to amend the City's Official Plan to update the Bonusing Policies. Indirectly the amendment to the Official Plan has the potential to help the Corporation to avoid costs that may otherwise be required for assets that would be subject to the Bonusing Policies.
32. These policies will enhance Council's existing authority to secure community based benefits under the provisions of the Planning Act, which will serve to ensure that new development in excess of the minimum standards of the Zoning By-law contributes towards the ongoing health and vitality of the City.
33. Cash contributions accepted in lieu of the provision of specific capital facilities or services must be provided for specific projects and directed to accounts created for that project. Section 37 benefits cannot be used to supplement the general tax revenue.

**LINKAGE TO 2010-2014 COUNCIL STRATEGIC PLAN**

34. The recommendations included in this Staff Report support the following goals identified in the 2010-2014 City Council Strategic Plan:

Direct and Manage Economic Development

These policies if implemented will encourage the attraction of new jobs in the City by creating an environment and fosters lifestyle amenities that will attract employers to Barrie.

Manage Growth and Protect the Environment

These policies can help secure and enhance the City's Natural Heritage System and provide opportunities for increased tree planting and landscaping.

Strengthen Barrie's Financial Condition

These policies will help ensure that the financial burden of providing the types of community benefits which are necessary to maintain Barrie as a great place to live are shared by property owners and developers who are benefitting from the increased planning permissions that they are already receiving from Council.

Create a Vibrant and Healthy City Centre

These policies will allow the City to continue to provide the types of facilities and services in the City Centre which will make it an attractive and desirable place for residents and employers alike including the provision of cultural facilities, public art and affordable housing.

- Attachments: Appendix "A" – Section 37 Implementation Guidelines  
Appendix "B" – Bonusing Policies from Other Municipalities  
Appendix "C" – Excerpt from City of Ottawa Implementation Guidelines  
Appendix "D" – Comments from BILD

APPENDIX "A"

**Section 37 Implementation Guidelines**

**Introduction**

These Guidelines are intended to assist in the implementation of the Height and Density Bonusing Policies of the Official Plan contained in Section 6.8. Facilities, services or matters (community benefits) obtained through increased height and/or density approvals are secured pursuant to Section 37 of the *Planning Act*.

Section 37 authorizes a municipality with appropriate Official Plan provisions to pass zoning by-laws involving increases in the height or density otherwise permitted by the Zoning By-law, in return for the provision by the owner of community benefits. The community benefits must be set out in the zoning by-law amendment related to the development to which the community benefits pertain. The community benefits may be secured in an agreement which may be registered on title.

The term "community benefits" reflects the City's priority on providing public benefits within the local community in which the contributing development project is located.

The principles below are to be followed when using Section 37 of the Planning Act:

- 1.1 *The proposed development must represent good planning.*
- 1.2 *Community benefits and the increase in height and/or density must be set out in the amending zoning by-law.*
- 1.3 *Section 37 community benefits should be specific capital facilities, or cash contributions to achieve specific capital facilities.*

Cash-in-lieu of capital facilities is only acceptable where the cash is secured for specific local capital facilities in lieu of the developer being required to actually construct or provide those specific facilities. It is expected that cash contributions will be required for the majority of Bonusing requirements. A cash contribution from one development project may be used for more than one community benefit as long as the community benefits and the percentage of the cash contribution is clearly set out in the implementing by-law and agreement. Section 37 is not a vehicle to generate general revenue within a local community for non-specific or indeterminate purposes.

- 1.4 *There should be a reasonable planning relationship between the secured community benefits and the increase in height and/or density in the contributing development.*

Generally this shall mean a geographic relationship but may go beyond consideration of matters necessary to support that particular development, and which may be important in maintaining the quality of life in the City while accommodating intensification. For example, cash contributions towards the development of a cultural facility may not be directly necessary to support a specific development proposal but may be required to enhance the quality of life in the City.

- 1.5 *The rate for calculating the 'value uplift' shall be established by the municipality. In order to ensure an orderly and consistent approach to the calculation of the 'value uplift' the following steps shall be taken:*

- i. The developer or applicant shall be responsible for the provision of an appraisal to the satisfaction of the City which will identify the "uplift" being the difference in the value of the property under the current zoning and the increase in the value of the property if the rezoning were to be approved. The appraisal will be undertaken by a qualified appraiser and maybe selected from a list of approved appraisers to be provided by the City. If the developer/applicant wishes to use another appraiser not on the approved list, the City reserves the right to have the appraisal peer reviewed at the developer/applicant's cost.
- ii. The value of the community benefit shall be approximately 25% of this difference.

1.6 *The community benefits which are listed in the Official Plan are not intended to be exhaustive.*

Other benefits not specifically listed in the Official Plan may also be secured, provided these have been identified through a Council approved assessment and the City and the owner have agreed to such community benefits.

The City will establish as a priority the following types of benefits in accordance with strategic priorities established by Council;

- Provision of Affordable Housing units
- Community facilities/services
- Public Art
- Protection of Cultural Heritage Resources
- Amenities for active transportation such as pedestrian or cycling facilities
- Preservation and Enhancement of the Natural Heritage System
- Local Improvements identified through Community Improvement Plans
- Sustainable energy works and facilities

1.7 *Good design is expected of all developments, as a matter of course, and is not an eligible Section 37 benefit.*

1.8 *Section 37 cash contributions toward capital facilities should be over and above the parkland dedication or cash in lieu thereof as provided by Section 42 of the Planning Act.*

1.9 *Section 37 cash contributions toward capital facilities should be over and above the facility costs that will be funded through Development Charges (DC's).*

Section 37 community benefits in the form of cash contributions may be secured toward services and facilities that:

- address service needs or deficiencies existing currently and exacerbated by the development or created by the development in the community where a reasonable planning relationship exists between the contributing development and the community benefits. (Development charges fund only the portion of certain capital services required for new growth, and not capital services for existing development);
- cannot be, or are not, funded by the DC By-law;
- represent the municipal share of providing services for new growth that are only partly funded through DC's; or
- represent that portion of service levels for new growth above the maximum levels funded by DC's.

- 1.10 *The Ward Councillor should always be consulted by City Planning staff prior to any negotiation of Section 37 community benefits. As part of its strategic planning sessions, Council will approve a list of Community Benefits at the start of its term which will guide individual Councillors in establishing benefits for individual projects.*
- 1.11 *City Planning staff should always be involved in discussing or negotiating Section 37 community benefits with developers/owners.*

City Planning staff has a particular responsibility to ensure that the Official Plan policies are being complied with, and must be involved in discussing or negotiating Section 37 benefits.

### **General Considerations**

#### **1. Use of Section 37**

Section 37 agreements are appropriate only where the proposed development constitutes good planning in accordance with the objectives and policies of the Official Plan, including the built form policies and all applicable urban design policies.

#### **2. Determination of Appropriate Types of Community Benefits**

A general determination of community benefit priorities in an area anticipating potential intensification can be undertaken prior to the receipt by the City of a planning application. The purpose of such analysis is to assist in setting the determination of appropriate type(s) of community benefits.

The determination of appropriate type(s) of community benefits for a specific application should bear a reasonable planning relationship to the increase in the height and/or density of a proposed development including, at a minimum, having an appropriate geographic relationship to the development except in those cases where the benefit is provided to enhance the quality of life in the overall City.

Determination of municipal benefits will not consist of infrastructure improvements which can otherwise be secured through other legislation such as the Planning Act or the Development Charges Act.

#### **3. Timing of Agreement Execution**

The Section 37 agreement shall generally be executed prior to the passage of the by-law that implements the rezoning for the increased density and/or height. The timing of payment or provision of benefits would be stated in the agreement provisions.

#### **4. Timing of Cash Payments**

The payment of community benefits secured as cash as a condition of the Section 37 agreement, should at the latest be paid prior to the issuing of an above-grade building permit. Where a community facility is needed sooner rather than later for good planning reasons, the payment(s) may be secured at an earlier appropriate trigger point which should be included in the zoning by-law amendment and/or the agreement. In a phased development, the phasing of payments may occur unless the benefit is required prior to the completion of all phases.



5. Change in Previously Secured Community Benefits

A change to an existing agreement to reallocate funds or change the community benefits must be authorized by all parties to the original agreement, or their successors in title. Where a condominium has been registered, all unit owners are considered parties to the agreement. Because specific Section 37 community benefits are set out in the site-specific zoning by-law, amendments to those provisions may also be required. A minor variance process may be an option, but Council authority is still required to amend the agreement.

6. No Section 37 Exemptions for Development Charges or Section 42 Park Levies

Section 37 agreements shall not provide for exemptions from, or reductions in, development charges under the Development Charge By-law or parks contribution requirements under Section 42 of the Planning Act.

7. Indexing of Cash Contributions Secured

Where cash contributions are secured in Section 37 agreements, the amount of such funds should generally be indexed to the Statistics Canada Construction Price Index for Barrie that would pertain to the type of community benefit secured. Indexing may not be appropriate in every situation involving cash contributions.

8. Community Benefits Summary in Financial Impact Section of Final Reports

The Financial Impact section of planning reports on applications involving Section 37 should contain a summary of the community benefits secured, the estimated cost or value of each community benefit where possible, and the timing of their provision, especially the payment timing for cash contributions secured. There are some community benefits, such as preservation of heritage resources or existing rental housing, for which a value is usually not possible to estimate, in which case a qualitative benefit would be described.

9. Consultation with Ward Councillor

The Ward Councillor will be consulted by City Planning staff prior to any discussions or negotiations regarding Section 37 benefits with the applicant.

City Planning staff will provide the Ward Councillor with the following information as soon as it is available:

- Advice as to whether Section 37 benefits are appropriate and desirable;
- Appropriate types of benefits, based on any information previously assembled, as noted above;
- Advice regarding the implications for community benefits of Official Plan policies and other relevant considerations in the context of the specific application.

10. Recommendation

Staff will include a recommendation of community benefit in the staff report recommending approval of the height density increase for a proposed development.

11. Other Issues

City Planning staff should coordinate Section 37 negotiations:

- City Planning staff are responsible for compliance with Official Plan policy and for recommending an appropriate decision on the application.

- Where the Ward Councillor independently pursues discussions with an applicant on Section 37 benefits, staff member handling the application should be consulted prior to such discussions.

12. Timing of Section 37 negotiations in relation to discussion of other planning issues:

- The possibility of pursuing Section 37 negotiations should be raised as early as possible in discussions of an application without committing in principle or otherwise to any increase in height or density or both. This includes at the time of the mandatory pre-consultation application.

**City Planning staff should ensure, in every case where Section 37 may be utilized, that a review that is consistent with past decisions has been undertaken. Each determination should be recorded. A suggested template with examples is:**

<u>Municipal address</u>	<u>Deficiency anticipated to be created / exacerbated by the proposed development</u>	<u>Deficiency (general)</u>	<u>Remedy</u>	<u>Implementation</u>	<u>Notes</u>
1.	Loss of view to water because of increased height	Loss of public aesthetic in the area	Improve public art in the area	Value the loss. This determines the cash value to be put towards public art/ the public art donated.	
2.	Increase in density causes transit restrictions	Traffic	Dedication of funds to be put towards public transit / bike lanes	Value the deficiency created. This determines the cash value to be put towards public bus system and/or bike lanes	
3.	Increase in density causes need for daycare in the area				
4.	Increase in density raises public expectation as to cultural services provided in the City	Perceived deficiency in culture in Barrie	Dedication of funds to be put towards local theatre / art exhibitions	Public expectation determined, then cost to deliver valued. The developer to pay a portion, based on contributions from other developments throughout the City that also contribute to the expectation	

APPENDIX "B"

**BONUSING POLICES IN OTHER MUNICIPALITIES**

1. There are other municipalities in Ontario as well as some in British Columbia which have implemented policies for Bonusing provisions to ensure that this planning tool is appropriately implemented in a fair and transparent manner.
2. The City of Toronto has incorporated Height and/or Density Incentives as policies under Section 5.1.1 of its Official Plan. These policies are fairly comprehensive and are implemented at the zoning by-law amendment stage of a development approval subject to a set of implementation guidelines and a protocol for negotiating community benefits approved by City Council in November and December of 2007 respectively.
3. The Toronto Official Plan states that capital facilities secured through Section 37 to permit increased height and/or density must bear a reasonable planning relationship to the increase, must constitute good planning and must be contingent on adequate infrastructure to support the development. These community benefits are secured by agreements registered on title to the lands.
4. The Toronto Official Plan establishes that, Section 37 may be used for any developments with more than 10,000 square metres gross floor area where the proposal to increase height and/or density would increase the density by at least 1,500 square meters and/or significantly increases the permitted height. Non-profit developments are exempted from this provision and Section 37 may be used to secure certain benefits outlined in the Plan regardless of the size of the development or proposed increase.
5. The Toronto Official Plan then goes on to list approximately 13 types of benefits which the City will seek to secure under a Section 37 agreement and indicates that these benefits will be selected on the basis of local community needs, intensification issues in the area, the nature of the development applications and the strategic objectives of the Official Plan.
6. The City of Burlington also incorporates provisions for Community Benefits in its Official Plan. These policies are somewhat simpler than those found in the Toronto Official Plan and simply state that the City may permit increases in height and density in exchange for the provision of facilities, services or other matters indicated in the Plan. The Burlington Plan also identifies approximately 14 types of benefits and requires an agreement between the landowner to secure these benefits. The Plan also stipulates that any increase in height and density still has to conform with the intent of the Plan and be considered compatible with surrounding lands.
7. Similarly, the Town of Markham incorporates height and density Bonusing provisions. Markham's policies are less specific than either Toronto's or Burlington's, although they do list a few types of benefits which may be considered and still require an agreement to secure these benefits. Markham's policies do, however, state that these "facilities, services and other matters" may be of benefit to a specific area, or the Town at large. It should be noted that the Town is currently in the process of updating its Official Plan and the revised height and density Bonusing Policies are much more similar to Toronto's and Burlington's than the current policies.
8. The City of Hamilton Official Plan also contains similar policies. Hamilton refers to these policies as Bonusing Provisions and Transfer of Development Rights policies and they too follow the pattern established in the previous examples by listing the type and nature of the benefits being sought and requiring that they be secured through a development agreement. Hamilton, however, states that the community benefit provided be directly related to the increased height and density proposal. Hamilton also includes a provision in their Plan to permit the transfer of

density potential from one property to another for the protection of cultural heritage resources or other purposes specified in secondary plans or area specific policies.

9. There are other examples of similar policies in municipal Official Plans in Ontario and other jurisdictions but rather than provide a summary of all the examples available, staff are of the opinion that the examples provided above are sufficient to indicate the necessity of updating the City's own Bonusing Policies.

APPENDIX "C"

Excerpt from City of Ottawa Implementation Guidelines

- 2.6 The rate for calculating the 'value uplift' shall be established annually by the municipality. In order to ensure an orderly and consistent approach to the calculation of the 'value uplift' the following steps shall be taken:
- i. To provide a level of certainty to all stakeholders, the City shall establish annually a 'value uplift' rate based geographically on two zones - inner urban and outer urban - as shown in Figure 1. The two zones represent the area of the city where Section 37 agreements are most likely to be negotiated.
  - ii. The City's Realty Services Branch, in consultation with key stakeholders, shall be responsible for providing the yearly values for the two zones, on the basis of an agreed upon fair market value. The values shall be expressed in dollars per square metre.
  - iii. Any properties outside these zones (the remainder of the City) will have individual appraisals undertaken.
  - iv. Should the owner/developer challenge the total uplift based on the rate, the City will hire a Land Evaluator to undertake an individual land appraisal at the developer's expense on the basis of a mutually agreed upon Terms of Reference.
- 2.7 The value of the uplift shall be determined by calculating the increase of the Gross Floor Area (GFA) between the base zoning and the approved zoning. The 'uplift value' is defined as the increased land value calculated on the basis of the increased GFA as a result of an approved zoning change. The quantum of the uplift will first be calculated on the basis of the entire uplift and then drawn down by the following factors:
- i. Relevance of zoning to Official Plan, Secondary Plan, and/or Community Design policy
  - ii. Retention or rehabilitation of built heritage
  - iii. Implementation of public benefits in the proposed development (e.g. plaza, pathways, exceptional sustainability measures).



**APPENDIX "D"**

**Comments from BILD**



November 18, 2014

Merwan Kalyaniwalla, MCIP, RPP  
Manager of Policy Planning  
Planning Services Department  
City of Barrie  
70 Collier Street  
P.O. Box 400  
Barrie ON, L4M 4T5

Dear Mr. Kalyaniwalla,

**RE: City of Barrie – Bonusing Policies**

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On behalf of the Simcoe Chapter of the Building Industry and Land Development Association (BILD), I would like to thank you for meeting with our membership on October 31st to present the proposed revisions to City's Section 37 Bonusing Policies.

The topic of s.37 Bonusing is of the utmost importance to our membership and as such we greatly appreciate the consultation with our industry. In our experience s.37 is a tool that is not readily understood, with a high degree of variability in its application. When implemented, Section 37 policies must be fair, transparent, predictable and relevant.

The Simcoe Chapter of BILD has had an opportunity to review the City's proposed Bonusing Policies and corresponding Section 37 Implementation Guidelines and provide the following set of consolidated comments:

- **Section 37 Contributions Toward Infrastructure Renewal:**

It is noted within the Guidelines that "determination of municipal benefits will not consist of infrastructure improvements which can otherwise be secured through other legislation such as the Planning Act or the Development Charges Act." *BILD agrees and requests that the City ensure that there is not a duplication or 'double-dipping' of funds.*

- **Draft Section 37 Implementation Guidelines:**

*BILD recommends that the Guideline clearly outline the role of each stakeholder.* In order to ensure that each stakeholder understands its role in the s.37 agreement process, the City should consider modifying the Guidelmes to clearly describe the role of the Councillor, Council, City staff, the community and the applicant (builder and/or developer), if it is not already set out.

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- **Amendments to Section 37 Implementation Guidelines:**

As the Section 37 Implementation Guidelines are simply guidelines and are not entrenched as part of the Bonusing Policies in the City of Barrie's Official Plan, staff and Council have the ability to make changes without a formal amendment process.

*BILD requests that changes the City proposes to make to the Implementation Guidelines be circulated to stakeholders well in advance of implementation and that BILD is also provided an opportunity to review and comment on any changes proposed.*

- **Acknowledging Conflicts of Interest and Creating Consistency in the Application of Section 37:**

While the Ward Councillor has the closest relationship to his/her community, and with that a greater understanding of its capital community needs, this also puts Ward Councillors in an inherent and unavoidable conflict of interest in negotiating s.37 agreements.

*BILD agrees and supports Guideline 1.10: That "the Ward Councillor should always be consulted by City Planning staff prior to any negotiation of s.37 community benefits." In addition, BILD agrees and supports Guidelines 1.11: That "City Planning staff should always be involved in discussing or negotiating s.37 community benefits with developers/owners." This would institute some form of arbitration if/when disagreement arises between stakeholders and help to ensure consistency and fairness in the application of s.37.*

- **Early Consultation:**

Early consultation is an essential component of the process. *BILD supports and requests that a mandatory early consultation meeting be scheduled with City staff and the Ward Councillor to discuss a reasonable s.37 negotiation package, well in advance of a final staff report being finalized.* This will ensure that "no surprise" additional costs are incurred very late in the development approval process without a clear rationale. Last minute decisions/negotiations on the floor of Council, to "broker a deal" should not be permitted.

- **Understanding the Community Improvement Needs:**

*BILD recommends that a Community Needs Assessment be completed by the City to identify capital projects that are needed within a community.* This will promote transparency and accountability and reduce uncertainty for all stakeholders.

- **Planning Community Improvements within the Ward of the Development Site:**

Geographical proximity of the proposed community improvements must be taken into account to ensure that those who are paying for the new improvements (the new homeowners), have appropriate access to the improvement. BILD recognizes that "a geographic relationship" can be interpreted in various ways. Therefore, *BILD would recommend that geographical boundaries be delineated in order to ensure that community improvements are in fact in the Ward of the development site.* In circumstances where the community improvement and/or cash contribution will not be used in the Ward of the development, the s.37 must only be permitted

for community benefits that are verified to "enhance the quality of life in the City" for all residents.

- **Accountability:**

Oftentimes, our membership hears in from the community in public consultation meetings, that the community is not realizing the benefit of s.37 contributions: that is, the municipality is not completing the s.37 capital projects, or arguably not initiating them at all.

The community and the industry should be provided assurance that the funds collected will be expended on the agreed upon community improvement projects. *BILD supports the inclusion of a Community Benefits Summary in the financial impact section in the final report to Council for an application. It is BILD's request that if the project(s) does not proceed, the funds set out in the reports be returned to the developer and/or builder, and in turn be reimbursed to the new homeowners of the development.*

Additionally, in situations where the height or density of the building has been reduced from a pre-determined s.37 negotiation, a correlating reduction in amount of s.37 monies payable should apply.

*We further recommend that staff provide regular reporting to Council on the status of s.37 projects.*

- **Housing Affordability:**

The industry supports the principle that growth must pay for growth. It is important, however, to also consider the effects that s.37 Bonusing Policies will have on the affordability of housing in the City and the associated economic impact. All development costs impact on the affordability of new home ownership. Particular consideration should be given for the most "affordable" unit types, which are often apartment units.

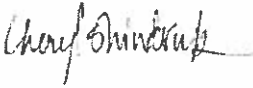
It has been in the experience of our members that adding the financial burden of s.37 to a project targeted towards first time home owners, has the potential to severely hinder the success of the project, to the extent that s.37 obligations can add substantially to the cost of the apartment unit. *BILD recommends that s.37 be waived in areas where the City would like to encourage development and promote revitalization.*

- **Transition:**

Projects that are already in the pipeline have not set aside s.37 dedication in the project pro forma. If the proposed bonusing policies are implemented for "all new complete planning applications for which a decision has not yet been made," this may severely hinder the feasibility of projects in the pipeline. *BILD recommends that a reasonable transition be considered and that the new bonusing policies be applied only to new applications submitted after the date of the enactment of the bonusing policies.*

Again, we thank you for the opportunity to provide our comments and trust they will be taken into consideration as you finalize the policies. As partners in building complete communities, we look forward to our continued dialogue and consultation. In the meantime, if you have any questions, please don't hesitate to contact us.

Sincerely,



Cheryl Shindruk, MCP, MCIP, RPP  
Chair, Simcoe Chapter

cc: *Stephen Naylor, Director of Planning Services, City of Barrie*  
*Paula Tennant, Vice President, Policy & Government Relations, BILD*  
*BILD Simcoe Chapter Members*