

DEALING WITH DENSITY

AN EVALUATION OF DENSITY BENEFIT INCENTIVES IN THE METRO VANCOUVER
REGION

by

Adam James Mattinson

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Abstract

With increased demand for higher density development a key challenge for local governments is determining how to accommodate this growth while also addressing the pressure it places on local amenities and services. Density Benefit Incentives (DBIs) are a category of policy tools which address this issue by encouraging developers to provide much needed community benefits in exchange for increased density permissions. Due to flexible legislation pertaining to their use, however, the form and function of DBIs in practice can vary significantly.

In order to understand the impacts of these policy tools this study investigates the use of three archetypical DBI frameworks commonly employed by municipalities within the Metro Vancouver region. A review of literature and policy in conjunction with case study analysis of three municipalities in the region identifies best practices for DBI implementation based on local context. The report culminates in a list of recommendations for local governments looking to implement their own DBI policy.

Key words: amenities, Community Amenity Contribution, density bonus, incentive zoning

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List of Acronyms

B.C.	British Columbia
CBB	Community Benefit Bonus
CDA	Comprehensive Development Area
DBI	Density Benefit Incentive
DCC	Development Cost Charge
DCL	Development Cost Levy
FAR	Floor Area Ratio
LGA	Local Government Act
MCSCD	Ministry of Community, Sport and Cultural Development
MMA	Ministry of Municipal Affairs
OCP	Official Community Plan
TDS	Transit-oriented Development Strategy

1. Introduction

1.1 The Challenge for Contemporary Urban Municipalities

Canada's urban cities are evolving. Once viewed as congested and crime infested, our dense urban cores have now become desirable for their connectivity and vibrant experience, particularly amongst millennial residents and skilled young professionals (Florida, 2005; Glaeser, 2011). Acting as economic drivers, our cities provide the infrastructure, employment, services, and opportunities that attract both lifelong citizens and newcomers alike. Over 80% of Canadians now live within our core metropolitan areas, with more people flocking to these same communities year over year (Federation of Canadian Municipalities, 2006). The growth pressure only appears to be continuing, with over half of Canada's national annual housing starts occurring in the country's most populous regions of Toronto, Vancouver, Calgary, and Montreal (CMHC, 2014).

With this resurgent popularity, so too are Canada's urban cities finding themselves increasingly strained. The relentless demand for housing coupled with the finite developable land base within municipal borders creates a new set of challenges for many of our core municipalities and their surrounding neighbours. As the supply of greenfield land continues to diminish our ability to sprawl outward is curbed by physical limitations, all while coming to the realization that such practices are both fiscally and environmentally unsustainable (Burchell, Downs, McCann, & Mukherji, 2005). In response many of our communities now are focusing on building up rather than out. Yet while the modern paradigm of urban planning theory and literature expounds the virtues of increasing densities in order to support complete, transport-supportive and walkable neighbourhoods¹, facilitating such growth in a balanced and sustainable way is becoming increasingly difficult for Canada's fiscally constrained municipal governments.

¹ There is a plethora of academic literature which speaks to the needs of modern municipalities and urban regions to limit their outward sprawl for a variety of reasons, be they economic, environmental or health related (Bento, Franco, & Kaffine, 2006; Blais, 2010; Burchell, Downs, McCann, & Mukherji, 2005). Though not the focus of this paper it is important to understand their arguments as critical for balancing the need for increased densification against the challenges faced by contemporary municipalities in facilitating urban growth.

Ensuring an adequate level of service provision in line with the expectations of local residents has long been identified as one of the primary roles of local government (Tiebout, 1956), but balancing these needs against urban market realities has only become more difficult. As the residential population increases, so too does the demand for local services and amenities, placing strain on the existing physical and social infrastructure. Parks become overcrowded, daycare and community facilities reach their capacity, and streetscapes become cramped and unwelcoming. The increased demand for land to provide housing on will also inevitably raise the price of land for these other uses as well, making it even more difficult for local municipalities to finance their acquisition, provision and improvement.

This problem has only become more complicated in recent years as the same municipalities have become increasingly burdened by the downloading of services from upper levels of government. While local governments are now being tasked with redistributive services which traditionally were the responsibility of the provincial and federal governments, the funding tools granted to municipal governments have remained relatively static (Kitchen, 2002; Slack, 2002). With only limited fiscal capacity and increased pressure to deal with growth related demand, municipal governments are now being forced to employ new means to address the growing amenity gap.

One of the more interesting municipal tools being used to this effect is the practice of leveraging the demand for increased densities against the rising value of land through the process of using Density Benefit Incentives (DBI)² (Moore, 2013). Unlike the more traditional models of raising funds through property taxes and user fees or the more regulated practice of implementing Development Cost Charges (DCCs), DBIs tend to take a variety of different forms with a certain degree of both flexibility and

² In his report for the IMFG (2013) author Alan Moore coined the term 'Density Benefit Agreement' to refer to the practices seen in Vancouver and Toronto in which developers and municipalities negotiate additional density permissions in exchange for amenity and affordable housing provisions through the process of rezoning. While Moore's term is accurate for similar terms which are discussed in this report, it fails to encompass the use of as-of-right density bonus zoning built into municipal bylaws as seen in some examples. As such, this report chooses to use the term 'Density Benefit Incentive' (DBI) as a more inclusive term for use when referring to broad the range of tools which allow local governments to incentivize developers with additional density in exchange for specific community benefits, including but not limited to Community Amenity Contributions, Density Bonus Zoning, and Community Benefit Bonuses.

ambiguity. Unlike most other municipal fiscal tools, DBIs cannot be levied as if they were a tax, instead relying upon the voluntary cooperation of developers in exchange for increased development rights (BC MCSCD, 2014). By this very nature, the process of implementing a framework to collect DBI funding is a subjective and complex affair for many municipalities. The process of using DBIs to fund amenity space played a crucial role in the provision of some of Canada's most celebrated urban public spaces and emerging communities (Punter, 2003; Hodyl, 2014), but at the same time the practice has been sharply criticized for issues of transparency, overreach, and unpredictability resulting in the suppression of local development (Rubin & Seneca, 1991; Moore, 2013).

While originally only applied by core municipalities where market demand for higher densities was sufficient to leverage the provision of development rights for amenities, the increased growth pressure throughout our metropolitan regions is resulting in other local governments turning to DBI frameworks in order to address the needs of their own communities. With a considerable amount of variation and context sensitivity, however, choosing which type of specific DBI framework to use is a crucial decision for these local governments.

1.2 Purpose and Objectives

The purpose of this report is to conduct an assessment of DBI policies based on an evaluative criteria analysis with the intent of assisting municipal governments in identifying the framework(s) that will best meet their policy objectives. The objectives of this report are threefold: (1) to provide a list of the relevant factors which must be considered when evaluating the potential impacts of a DBI framework; (2) to identify best practices in the application of municipal DBIs; and (3) to provide a list of recommendations to municipal governments that are considering implementing DBI policy in their communities. In order to achieve these three objectives the report will investigate the following questions:

- What factors must be considered when seeking to evaluate density benefit incentive policies?
- What are some examples of successful DBI frameworks and what makes them better than other examples?

- How can other municipal governments identify which DBI framework will best meet their needs and how can it be implemented in an equitable manner?

In addressing these questions this report should prove a valuable guide for municipal governments seeking to implement their own DBIs, while also informing other members of the development community and the community at large in order to better assess the impacts of DBI policy across a variety of scenarios.

1.3 What are Density Benefit Incentives and how do they vary?

Given the broadly defined legislation which enables and prescribes their use, combined with their contextually diverse application, DBIs tend to vary significantly in both form and implementation. Certain frameworks rely on negotiations as part of the rezoning process while others are built into existing zoning bylaws, providing additional density as-of-right if certain conditions are met. Some frameworks set specific targets for developers to meet while others attempt to tap into the value “lift” created by increased development potential.

At the core of all DBIs, however, is the concept of allowing higher density than what is currently permitted in the current zoning bylaw in exchange for a contribution to the nearby community. These contributions may be in the form of amenities provided on site, or may alternatively be provided as cash in-kind to fund either specific community projects, or general community initiatives (BC MCSCD, 2014). In this regard, DBIs are viewed as financial incentives for developers, allowing them to achieve even greater uses from their land while assisting cash-strapped municipalities (BC MMA, 1994). According to Taves (2002, p. 5), DBIs also “send a price signal to the market, motivating developers to account for environmental and social values that otherwise have little or no immediate market value.” Alternatively, the contributions exacted from development may be viewed as offsetting the negative or undesirable consequences that are tied to increased densification (Moore, 2013).

In a practical sense, a DBI will typically permit the owner of a property to develop above what is permitted under the current zoning bylaw. This may constitute an increase in the allowable Floor Area

Ratio (FAR) on the site or in other cases may permit a greater number of units on a given site. Typically the value of the amenities sought by the municipality will be relative to the increase in developable space or number of units, though individual municipalities differ on how specifically they value this increased development potential. How much of this total value a municipality will attempt to capture will also vary on a case by case basis depending on a number of factors including market demand, political will, and public perception.

The type of benefits sought via DBI policies also varies between Canadian municipalities, largely restricted by provincial legislation. Some of the more commonly observed amenities acquired through DBI practices include child care facilities, community centres, preservation of heritage assets, streetscape improvements, and affordable housing (Center for Land Use Education, 2005). Municipalities may set specific targets for how the value captured through DBIs is divvied up based on the scale of the extra density being permitted (as illustrated in Figure 1) or may be more flexible in the allocation of funding and provision initiatives (Moore, 2013).

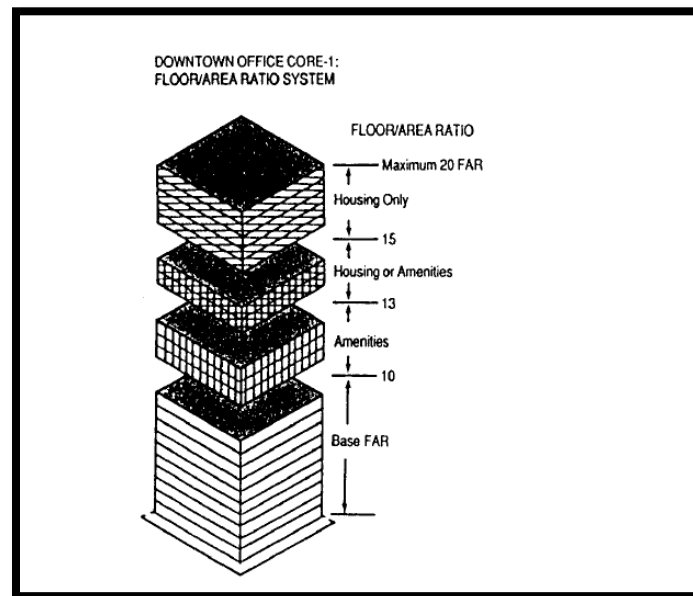


Figure 1: Density for Amenity Visualization: A conceptual illustration of how additional density may be permitted in exchange for the provision of specific public benefits. Source: Lassar (1989, p. 21)

While there are numerous examples of DBI frameworks in practice, previous research on the topic (Mattinson, 2014) revealed three archetypical formats which offer considerably different ways of

calculating and acquiring benefits in exchange for additional density. Each of these archetypes is present in one or more of the case study examples which follow in the analysis of this report. An assessment of the advantages and challenges inherent to each of the three framework archetypes, as informed by the case study examples and academic literature review, will provide the basis of this report's recommendations to municipalities moving forward.

1.3.1 Target Rate Amenity Contributions

These relatively straightforward frameworks rely on a stated expected contribution rate from developers as the basis of density increases through rezoning. The target rates are commonly calculated on a per square foot or per unit increase as compared to the existing permissions under the current zoning bylaw. The rates may apply across the entire city, may be applied to only one specific neighbourhood, or may consider different targets for different neighbourhoods as determined by need and market demand (Vancouver Planning and Development, 1999). Developers are expected to provide either amenities on site or a cash-in-lieu equivalent to the rate set by the municipality as part of the approval process for the rezoning, with the agreed upon contributions typically registered on the title of the property at the time of the rezoning to ensure the developer follows through. It should be kept in mind that while these rates provide targets for contribution, they are not absolute requirements lest they be considered a tax. Setting a targeted rate for contributions provides a starting point and market signal to developers wishing to rezone, but legally cannot be considered a set rate cost for rezoning to be approved (BC MCSD, 2014).

1.3.2 Uplift Based Amenity Contributions

A more flexible form of land value capture compared to target rate amenity contributions, uplift based DBI frameworks tend to target amenity provision rates based on how much the increased density provisions granted through rezoning will increase the value of the land over its current form. This format has the potential to capture market changes in land value without requiring policy changes to target rates but may also require more negotiation and resources (Holden, 2014). Complexities arise from this format

based on the conflicting measures municipalities and developers use to calculate the aforementioned “lift” in land value (Moore, 2013; BC MCSD, 2014). Municipalities may attempt to target a certain percentage, or potentially all of this land value lift but difficulties in negotiation may occur due to vague concepts of how to specifically quantify this value.

1.3.3 Density Bonus Provisions built into Zoning Bylaws

A structured DBI framework which is built right into specific zones of a municipal zoning bylaw, density bonus zoning allows developers to build a project to a “base” density, with the option to achieve a higher level of density so long as the developer agrees to provide certain amenities or meet other specified conditions (BC MCSCD, 2014). This model often will provide targeted rates for amenity contributions based on sequential increases in the developable FAR. Through this framework, the developer always has the right to develop to the base level of density, but also has the incentive to consider higher densities. Unlike the previous two archetypes, density bonuses are explicitly legislated in British Columbia under the *Local Government Act* (1996), granting them a clearer degree of legal mandate without the negotiated ambiguity surrounding rezoning based practices. It also means developers can achieve the additional densities as-of-right so long as the prescribed conditions are met.

1.4 Potential Outcomes

At the very least this report should provide the reader with a better idea of what DBIs are in the general sense, along with a broad understanding of the complexities which accompany their application. By analysing the issues and impacts against the nuance and benefits of the three major DBI archetypes however, this report also has the potential to provide a critical guide for municipal governments looking to implement or adjust their own density incentive programs. Though the analysis from case studies is confined to the Metro Vancouver region of British Columbia, the findings from this study have the potential to be applied to other jurisdictions with comparable legislation, creating the opportunity for

municipalities across Canada to balance their demand for growth with the provision of sufficient community amenities.

2. Methodology

2.1 Study Technique and Structure

The analysis of this report is informed by three parts: an academic literature review, a case study review of three municipalities in the Metro Vancouver region, and a general policy review as informed by the previous two parts and complemented by key informant interviews. The three sections of this analysis will culminate in a list of general recommendations for municipalities to consider when looking to implement or change their own DBI frameworks.

The literature review portion will cover the rationale which guides DBIs as well as a brief history of said practices in action. A modest amount of academically peer reviewed material was researched and included to form the basis of the literature review, stemming from multiple eras with a weighted focus on more recent studies, particularly amongst those that focus on the Canadian context (Amborski, 2014; Moore, 2013; Taves, 2002). The historical review will provide both a contextual background on DBI frameworks while also informing the initial list of factors to be considered when a municipality is looking to implement its own DBI policy. These factors were also used as a lens for the initial identification of municipalities using what might be considered best practices for the case study analysis.

The case study review portion focuses on the DBI frameworks employed by three municipalities (The City of Vancouver, the City of Burnaby and the City of Coquitlam) within the geo-political and provincial policy constraints of the Metro Vancouver region. An overview of the regulatory restrictions imposed on municipalities and their attempts to use DBI frameworks informs the factors and limitations which shaped each case study municipalities' approach to their respective DBI policy. Each case study summary is informed by a mix of policy research and review as garnered from council reports, municipal publications, analyst reports and interviews with key municipal staff. The municipalities selected for the

case study were selected to represent a spectrum of factors including population size, regional role, and experience using different DBI frameworks. While a larger sample of municipalities was originally considered for analysis, timeframe feasibility and a lack of available resources for both research documents and in-depth interviews limited the study to the three primary examples. While these three case studies form the core of the research and assessment, ancillary findings from other Metro Vancouver municipalities are used at times to supplement and provide context to the core case study examples where relevant (Coriolis Consulting & Toderian Urban Works, 2013).

Key informant interview subjects were contacted as part of the research process. These individuals were identified based on their role and experience as subject experts representing either municipal staff tied to the implementation and operation of DBI policy, or developers experienced in dealing with different DBI frameworks across multiple Metro Vancouver municipalities. Interviews were divided into ten questions for municipal staff and ten questions for development representatives. Both municipal and developers interviews were structured to begin with broad policy based questions before focusing on more specific questions pertaining to operation of DBIs and potential for change based on the interviewee's professional opinion. Given the sensitive nature surrounding DBI frameworks and their negotiation process interviewees requested that their identities remain confidential while also specifying that the opinions stated were their own and not specifically the stance of their respective organization.

The policy review section of this report details the use of the one or more DBI frameworks used in each of the three case study municipalities, as informed by policy documents and interview feedback. Each of the DBI models within the case studies are discussed in terms of their respective strengths and potential shortfalls as related to the key elements identified earlier in the literature review. Given the limited amount of hard data that is publicly available on the quantitative factors surrounding the various municipal DBIs, the majority of analysis and comparison is limited to a qualitative nature. It is important to keep in mind that DBIs tend to be quite context sensitive, and what may work in one case may not be best suited for another. As such the findings from this report should not be viewed as a measure to judge

which form of DBI framework is intrinsically better than another, but instead which might be better used to address different circumstances being faced by today's local governments on a case by case basis.

2.2 Why Metro Vancouver?

The Metro Vancouver region was selected as the focal point of this research project due to the diversity of DBI frameworks applied across its member municipalities. The region has a substantial history of working with DBIs in various forms, seen as far back as the 1970s in the cities of Vancouver and Burnaby, before specific legislation even existed to permit the use of such tools (Taves, 2002). Vancouver eventually formalized this process through its municipal charter into the Community Amenity Contribution (CAC) program (Punter, 2003). The CAC program is lauded as one of the first truly successful density benefit programs in the country, gaining international recognition (ibid) and helping to blaze a trail for surrounding municipalities to follow suit. With a relatively constrained land supply suitable for development due to natural terrain of the Fraser Valley, an explosion of regional growth in the past census period (Metro Vancouver, 2011) and a steady property market driving both demand and price for development across the region (CMHC, 2014) Metro Vancouver's other municipalities also found themselves in a situation favourable for instituting their own DBI programs.

Limiting the study to this one local market brings with it a number of benefits for comparison's sake. With the exception of the City of Vancouver, which operates under its own municipal charter, all of the municipalities observed are subject to the same provincial legislation regarding what they can and cannot do in terms of instituting DBI's. In this regard, all of the municipalities are informed by the same restriction set forth by the provincial government under the *Local Government Act*. At the same time, however, the legislation pertaining to the acquisition of community benefits in exchange for additional density provisions is not so prescriptive as to limit variation, resulting in numerous frameworks representing each municipality's unique approach to the issue at hand.

Geographically restricting the comparator case studies to one region has the added benefit of ensuring that all of the municipalities observed will be affected by many of the same market and economic forces. While each municipality has its own localized property market issues such as land prices, density rates and neighbourhood demographics, the observed cases are affected by many of the same macro-regional forces including overall growth pressure, employment trends, and shared infrastructure demands. Pressure to grow in one area will likely have spillover effects on nearby municipal neighbours. Though not identical, these forces may be considerably more comparable in-region as opposed to comparing cases across different regional jurisdictions with disparate regional economic forces and development trends.

The proximate nature of the case studies and their neighbouring relations with one another also results in the municipalities being that much more cognizant of the push and pull factors their DBI policies might have in relation to the rest of the local market. Local governments in the Metro Vancouver region tend to be acutely aware of the frameworks used by their neighbours, observing closely who is able to extract the most value from their respective development processes. Municipal reports to council on both the implementation of new DBI mechanisms and the success of established frameworks tend to take notice of the practices employed by neighbouring municipalities, often comparing policies for their own interpretation of best practices and market efficiencies (Coriolis Consulting & Toderian Urban Works, 2013).

That said, municipalities must also remain aware of the preference of the development community in their region. Creating legislation which may be viewed as too inflexible, too time consuming or too costly may ultimately drive developers to pursue development opportunities in neighbouring municipalities (Holden, 2015). The development community is sensitive to factors which affect their bottom lines, and developers with the means to work in different municipalities may develop a preference for working with municipalities which use a certain type of density benefit incentive framework over another. The Metro Vancouver region is ideal in this manner as there are a number of

developers with portfolios which include projects in multiple case study municipalities and beyond.

Interviews with representatives of these developers regarding their experience and preference with the myriad DBI frameworks used across the region informed much of the analysis found later in this report.

2.3 Potential Limitations

Given the complex and context sensitive nature of DBIs the report attempts to provide as thorough an analysis as possible, but the reader must keep in mind that different frameworks may not prove universally applicable depending on circumstance and political environment. As such, any recommendations provided at the end of the report should be considered as general guidelines and not absolute rules. The research that follows is subject to the jurisdiction of the case studies from which the examples were drawn, as are the findings from key informant interviews. Interviewees were selected based on their role and experience working with DBIs from both municipal and development standpoints. While interview questions were designed to focus on practical experience and professional opinion, it is difficult to ascertain the effect, if any, bias may have had played on individual responses. Case studies were selected from within the Metro Vancouver region in order to maximize comparability between examples, but this also potentially limits the applicability of any subsequent findings beyond the regional and provincial context.

3. A Brief History of Density Benefit Incentives

3.1 Capturing Unearned Increments

The concept of capturing the value created by rezoning properties for community use is by no means a new phenomenon. The theoretical justification for taxing such value increases traces back all the way to the early 19th century in the work of economic theorist David Ricardo, *On the Principles of Political Economy and Taxation* (1821). Observing the increases in rents for wheat producing lands as the result of population increases and the subsequent increased demand for bread, Ricardo identified that land owners were profiting from the increased value of their wheat producing farmland through no effort or

investment of their own. John Stuart Mill and economist Henry George would later refer to this increase in land value as the ‘unearned increment’, advocating the taxation of this increase in wealth for redistributive purposes (George, 1879; Mill, 1885).

This concept of tapping into the unearned value that real property accumulates from the actions and investments of governments likewise provided the theoretical core to many of the practices which predate current density benefit incentive policies. When considering that a significant portion of the market value of land is tied to the concept of whatever the ‘highest and best use’ permitted on that land is as restricted by a zoning bylaw, it becomes easy to recognize the impact municipal regulations have on the value of a property.

3.2 The Emergence of DBI Policies

The first major implementation of a DBI policy framework took place in New York City as part of its 1961 zoning resolution which rewrote the City’s original zoning ordinance from 1916. Part of the resolution allowed for “incentive zoning” provisions, providing the means for developers to negotiate the permission to surpass the density limits of the existing zoning bylaw, a practice which would soon be emulated by other jurisdictions around the country (Getzels & Jaffe, 1988). Throughout the 1970s this incentive zoning practice was used as the engine to create inclusionary zoning measures in many cities across the United States, before gradually spreading to Canada, Western Europe and other countries around the world (Calavita & Mallach, 2010). While primarily used to secure affordable housing provisions as part of development agreements, some jurisdictions used the incentive to secure a broader range of amenities for the community, particularly amongst Canadian municipalities (Moore, 2013). Originally found in Canada’s more urban metropolitan cores, more and more municipal governments are now implementing their own DBI frameworks across the country in order to address the needs of their rapidly growing communities.

3.3 Academic Review and Criticism

In the years following its first introduction, the practice of using incentive zoning and DBIs was reviewed by a number of academic sources, with many discussing the merits of the practice as a tool for inclusionary zoning and affordable housing (Johnston, Schwartz, Wandesforde-Smith, & Caplan, 1986; Rubin & Seneca, 1991; Calavita & Mallach, 2010; BC MCSCD, 2014). A common concern voiced by these authors regards the impact DBI policies have on the market price of land, potentially distorting market values by increasing the cost of development and, as a result, restricting the overall supply of housing. This argument worries that municipalities which implement aggressive or unrealistic expectations for value capture from developers may actually end up increasing the cost of housing, counter intuitive to the goal of providing affordable housing.

In addition to this argument, Holden (2014) states that DBI frameworks which increase the application time for a development through inefficient negotiation processes also run the risk of stifling development. According to Holden, developers are sensitive to the time value of money, especially when dealing with debt financing and investors seeking a reasonable rate of return. As such, any unpredictable increases in the time between application for rezoning and the approval to break ground on a project runs the risk of making a project unfeasible or too risky to consider. This has the potential to force developers to look elsewhere for more predictable development timelines while limiting the provision of new housing stock within the municipality.

Others have tackled the issue from a legal standpoint, particularly with regards to the interpretation of the ‘voluntary’ nature of DBIs (Kayden, 1991; Moore, 2013; BC MCSCD, 2014). Municipalities are granted powers and responsibilities that may be either *mandatory*, meaning that they are legally required to perform a service, or *discretionary*, which grants the local government some degree of leeway in choosing to do something or not. The power to approve zoning is recognized by most courts to be a discretionary power, which permits elected councils or local boards to choose whether or not to approve a rezoning request (BC MCSCD, 2014).

When making such considerations the local board or council may examine a number of considerations before exercising their discretion to approve a rezoning, including considerations for planning and servicing as well as the public interest. While planning and servicing issues generally pertain to infrastructural needs as related to the impact of the proposed redevelopment, the public interest may include a number of factors for consideration including if the development will positively or negatively affect the nearby neighbourhood and broader community including the expected demand increases for nearby amenities and the supply of affordable housing (ibid). Items to be sought through DBI negotiations generally fall into the latter category for consideration.

While these considerations will affect the local government's decision, their discretionary power is limited to their ability to choose whether or not to approve the proposed rezoning application. They do not have the legal authority to arbitrarily impose conditions as part of rezoning. If the municipal government wishes to acquire amenities to offset any potential impacts of the proposed rezoning they must instead either create provisions in their zoning bylaw to permit density bonuses at a set rate of contribution or engage in negotiations with the developer to voluntarily contribute amenities when the rezoning application is brought forward. This distinction between a voluntary contribution on the part of the developer and arbitrary requirement on the part of the municipality is a key factor in avoiding legal overstep when considering DBIs (ibid.).

These steps were created with the intent of protecting municipalities from overstepping their legal mandate but at the same time the process remains open to its own inherent conflicts. As Kayden notes, "criticism alleges that incentive zoning [and by extension, DBIs] corrupts orthodox planning and zoning models by persuading planners to greenlight otherwise undesirable projects solely to obtain the privately financed amenities" (1991, p. 7). Based on the concept that zoning regulations represent objective planning principles with regards to public safety and compatibility between new development and the existing neighbourhood, any deviations from the zoning bylaw undermine the legitimacy of the entire regulatory system. While zoning bylaws have been the de-facto tool for managing land use for the almost

a century (Getzels & Jaffe, 1988), this argument is somewhat blunted by the changing role zoning has in relation to Official Community Plans (OCPs).

OCPs are enacted to provide a long term vision for the community, and are usually general in nature, designed to permit a degree of flexibility as a guiding document for policy makers rather than a regulatory index (BC MCSCD, 2014). The zoning bylaw, in turn, regulates how land owners can use their land, and as such is used as the tool for implementing the vision of the OCP. Because of their regulatory nature zoning bylaws must be specific, preventing the sort of flexibility necessary for long term growth in the larger community, particularly in the face of rapid growth. In this regard, the OCP sets the path and public expectation for how zoning bylaws might change over time in anticipation of said growth and should diffuse the perception that DBIs are permitting developers to undermine the long term planning goals of the community.

At the same time, however, if the zoning bylaw is seen as the tool to implement the OCP there are some concerns that DBIs result in the intentional underzoning of certain communities, creating a discord between the OCP and zoning bylaw (Moore, 2013; Getzels & Jaffe, 1988). If the disparity between the OCP and zoning bylaw is too broad it may create the perception that the municipality is undermining its own zoning bylaws in order to leverage greater contributions from developers. This perception has the potential to undermine public trust in the municipality's land use plans while also being seen as a cash grab.

3.4 Nexus and Proportionality

In addition to these criticisms is the concern that municipalities may not be using the amenities gained through DBI negotiations in a manner which offsets the impacts of the development for which the amenities were contributed (Moore, 2013; Kayden, 1991). The issue largely pertains to cases where municipalities collect cash-in-lieu of on-site amenity provisions but fail to transparently account for where the funding will be spent. Originally brought to light through a ruling by the US supreme court in

1987³, the relationship between the amenity provided and the rezoning application has become a critical consideration when looking to enact DBI policies (Kayden, 1991). The court ruling dictated that any conditions placed on land use permits must require a “nexus”, a demonstratable link between the impact of the development in question and the amenity benefits being provided, most commonly judged in terms of the physical proximity. The concept of a nexus requirement has become standard practice when considering DBI policy around the world, yet remains a topic of debate, particularly when the policy is used in an attempt to provide an amenity that the community may legitimately need but may not be proximately related to a development (e.g. a community centre on the opposite end of town) (Moore, 2013; BC MCSCD, 2014). Local governments must be careful to ensure that there is sufficient transparency in both the process of choosing amenities to be funded and how those funds are disbursed in order to maintain both public confidence and the confidence of the applicant developers who will also want to see a positive result tied to their proposal.

Related to the issue of nexus is the principle of “proportionality”. Also defined through a US Supreme Court ruling⁴ followed by widespread adoption and use, the concept of proportionality applies to DBI provisions in that the requested amenities must be proportional to the impact of the development in question. In practice this means that an applicant for rezoning should not be asked to support more than is reasonable given the scope of their proposed project while also remaining consistent with the provisions made by other applicants or developers for similar proposals (BC MCSCD, 2014). Asking an applicant to pay for the majority of a park space in exchange for a development from which only a small portion of residents would be users is one such example of proportionality being misused. Requiring unrealistic or inflexible target rates for a given area may result in unproportional contribution requests which ultimately may discourage development in that area.

³ The case in question, Nollan v. California Coastal Commission, 483 U.S. 825 (1987), was the first to set national legal precedent pertaining to a requirement of “nexus” between the permit conditions (the provision of amenities) and a legitimate regulatory interest (the offset of any negative impacts pertaining to that specific development) (Kayden, 1991).

⁴ Dolan v. City of Tigard, 512 U.S. 374 (1994) –the Court held that when governments impose permit conditions, there must be “rough proportionality” between the condition’s requirements and the impacts of the development (Kayden, 1991).

3.5 Who Shoulders the Burden of DBIs?

Considering their typical policy goals to provide amenities and/or affordable housing, the question of who ultimately bears the burden of the cost in the DBI process is a key concern.

Unfortunately it is not a particularly clear cut issue.

Given that most DBI frameworks require the developer to provide the negotiated amenities through contractual assurances at a point either prior to the rezoning being approved or at the time a building permit is issued, it is commonly assumed that the developer is the one to bear the cost (BC MCSCD, 2014). This notion is certainly in line with the sentiment that development “pay its own way” (Slack, 2002) and from a technical standpoint is true, but at the same time the argument ignores other market factors which weigh into the fiscal equation. There are arguments that these costs are passed down to consumers (Mascarin, 2013; Moore, 2013; Rubin & Seneca, 1991) but traditional economic and real estate analysis shows that developers are normally not able to raise their asking price as the selling price is generally set by the market itself (BC MCSCD, 2014; Kayden, 1991). If the property market is particularly hot, developers may be able to pass on some of the price to the end purchaser, though in most cases it is more likely that unprepared developers will have to absorb these costs into their own profit margins.

Developers who are prepared and have sufficient skill at negotiating, however, should be able to incorporate the anticipated DBI costs into the purchase price of the land from the original property owners. With the market value of land set by highest and best use and that level of use limited by costs associated to DBI provisions, savvy developers can make the case that the price of providing these benefits should be reduced from the market value of the land. If applied successfully, this will shift the burden onto property owners and the “unearned increment” their property has gained through increased development potential through no improvement or effort of their own.

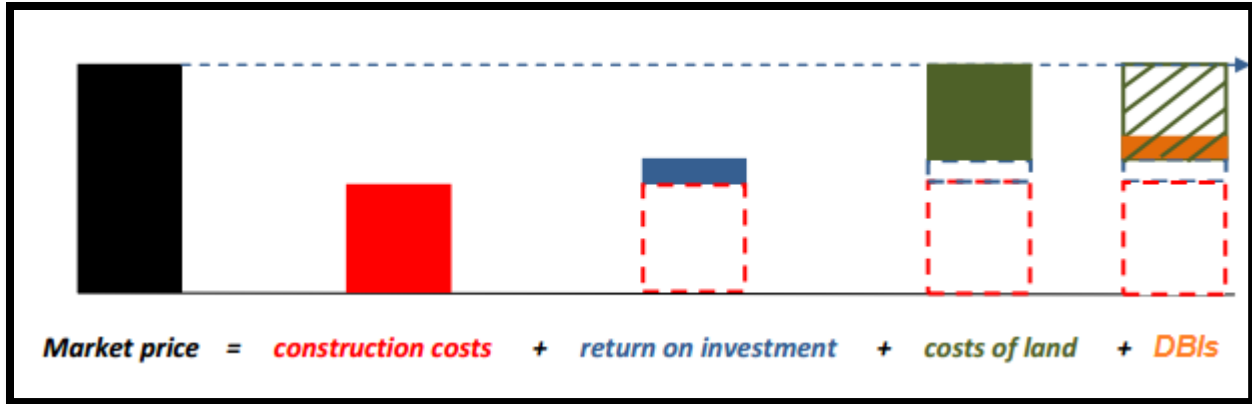


Figure 2: The impact of DBIs on the price developers might pay for the land – A hypothetical breakdown of the cost of development and how DBIs should be negotiated into the land price. Adapted from Source: BC Ministry of Community, Sport and Cultural Development (2014, p. 15).

In practice, incorporating the impact of DBIs into the cost of the land may be more difficult. A number of complications may arise if local governments do not do a sufficient job informing both developers and landowners of the DBI process. Developers working across municipal borders may be caught off guard by the extra costs associated with rezonings, forcing them to absorb the costs of amenity provisions into their profit margins (*personal correspondence*, 2014). The same may be an issue for smaller developers who are less familiar with or less capable of anticipating the price of complex DBI provisions.

Other issues may arise depending on the type of land being purchased and the supply available for development. Land owners within rapidly growing urban areas are in a strong bargaining position and they may be unwilling to accept a significantly lowered price for their property (BC MCSCD, 2014). Further complications may emerge where a developer is looking to assemble a number of properties from different owners, likely having to pay a premium to convince the owners to sell while also making it more difficult to negotiate the DBI costs into the multiple land purchases (*ibid.*).

If developers are unable to find viable development options as a result of restrictive or overly demanding DBI standards then they may choose not to enter the local market. As a result the number of housing starts within a local municipality may decline. As a factor of market economics, if supply for

housing is unable to keep pace with demand then the market cost of housing will ultimately increase, placing the ultimate impact of overly aggressive DBI frameworks onto the end user home buyers (ibid.). Any framework which places undue downward pressure on the supply of housing has the potential to have this effect. As such, local governments should be careful when considering implementing their own DBI policies to ensure that the framework is efficient and that their amenity goal is modest enough so that the policy will not discourage development in the community.

4. The Legal Framework in British Columbia

4.1 *The Local Government Act and the Vancouver Charter*

As per the *Constitution Act* (Canada, 1982), the regulation of private property is primarily the responsibility of the provincial government, barring a few instances where the federal government retains control (e.g. airports, railways, harbours and Indian reserves). Like most of its provincial peers, the Province of British Columbia (B.C.) chooses to delegate most of this responsibility and power to local governments. Throughout the province, most of this power is delegated through the *Local Government Act* (1996) (formerly the *Municipal Act*), with the exception of the City of Vancouver which is governed by its own mandate under the *Vancouver Charter* (1953). These two pieces of legislation provide Vancouver and other B.C. municipalities with the power to control land use, subdivision of parcels, and the regulation of density and built form of structures built thereon. They also provide local governments with the means to recover servicing costs from those who develop the land (Taves, 2002).

While the province has delegated considerable planning powers to local governments in this regard, they still must conform to provincially mandated policies and regulations which burden local governments with mandatory duties while also limiting the use of planning and financing tools necessary to realizing those goals (Slack, 2002). The traditional municipal financial tools such as property taxation and user fees are often insufficient to keep up with the rapid rate of urbanization occurring in many of B.C.'s more populous municipalities. Other tools have been introduced through the years to help local

governments ensure that growth “pays for itself” (ibid.) though many of these tools are prescriptively legislated so that they *cannot* be used to offset many of the social impacts of increased density and urbanization⁵.

Though the provision of community amenities is seen as a key planning goal in the creation of healthy neighbourhoods (BC MCSCD, 2014), the tools which grant local governments the means to provide these goods are decidedly limited. Subdivision control bylaws, for example, could be used by a municipality to require up to five percent of an application for subdivision be allocated for parkland (British Columbia, 1996), but as communities begin to build inwards and upwards instead of sprawling outwards, subdivision applications become far less likely, with developers instead building multi-unit buildings on smaller parcels of land.

Historically, the *Vancouver Charter* granted the City of Vancouver increased planning and land use authorization on account of the challenges it faced dealing with rapid urban growth during the 1950s (Punter, 2003). Compared to other municipalities at the time, which were governed by the then *Municipal Act*, Vancouver was able to use a much more robust set of land use tools such as conditional zoning, comprehensive development zoning, and detailed site plan controls. These tools proved instrumental in the redevelopment of some of the City’s most renowned urban projects, including the False Creek Community and Granville Island (BC MMA, 1994). Municipalities outside of Vancouver, by comparison, often struggled with urbanization given their limited land management capacity. It wasn’t until 1996, when the *Municipal Act* was overhauled and renamed to the *Local Government Act*, that the provincial government would provide comparable land management tools to the other local governments of the province.

One tool which emerged from the period of disparity between the *Vancouver Charter* and the original *Municipal Act* was the negotiation of land use contracts. Originally introduced as an attempt to

⁵ A list of provincially legislated tools to be used to collect fees and/or obtain land from new development in order to address growth impacts is provided under Appendix A.

bridge the gap between the two governing pieces of legislation, land use contracts allowed municipalities and developers high unrestrained negotiating power to bypass zoning regulations in exchange for a wide range of amenity contributions including cash exactions (ibid). Though quite popular in parts of the province where growth and development pressure were high, a broad range of abuses including rampant under-zoning and using land use contracts for revenue generation rather than capital investment resulted in the Province eventually repealing their use in the late 1970s (Taves, 2002). While municipalities were no longer officially allowed to use land use contracts through legislative means, the practice of negotiating with developers for amenities would continue to be a popular tool for municipalities in the decades to come, laying the foundations for modern DBI practices.

4.2 Legislative Provisions for DBIs

Under B.C.'s current legislation DBIs fall into one of two camps: density bonus zoning and amenity negotiations sought through rezoning applications, most commonly referred to as Community Amenity Contributions (CACs)⁶ (BC MCSCD, 2014). Both seek to offset the impacts of increased density on surrounding community amenities and are legislated under the same sections of the *Local Government Act* and *Vancouver Charter*, though the interpretation and implementation of the two practices varies significantly.

Density bonus zoning legislation was first introduced to both the *Vancouver Charter* and the *Local Government Act* in response to growing demand from local governments and the findings of a provincial commission on housing options (Taves, 2002). Seeking to address the demand for affordable housing while providing sufficient flexibility in order to address emerging community needs, the B.C. Ministry of Municipal Affairs (MMA) consulted with developers and local governments, determining that incentives would better serve the issue of affordable housing, rather than outright regulation. This led to the drafting of Bill 57, the *Municipal Affairs, Recreation and Housing Statute Amendment Act*, which was

⁶ Community Amenity Contribution programs take after the original program spearheaded by the City of Vancouver (Punter, 2003). They tend to include either target rate amenity negotiations and uplift based amenity contributions, depending on the municipality, scope and location of the rezoning in question.

passed into law in 1993. With its passing Bill 57 added a key provision to both the current *Local Government Act* (Section 904)⁷ and the *Vancouver Charter* (Section 565.1) which would permit the legislative means to enact density bonus zoning. While Appendix B contains a reprint of the Section 904 in its entirety, a summary of what the legislation allows local governments to do is as follows (As per Taves (2002, p. 33)):

1. Establish a density regulation for a particular zone that is generally applicable, as well as one or more or more other density regulations that apply if particular conditions set out in the bylaw are met.
2. Establish in the bylaw, conditions entitling an owner to a higher density:
 - Relating to the provision of affordable and special needs housing, as such housing is defined in the bylaw, including the number, kind, and extent of housing, and a condition that an owner enter into a housing agreement with the local government; and
 - Relating to the provision of amenities; including the number, kind, and extent of amenities.

In effect, the legislation allows municipalities to set zoning bylaws that permit property owners to develop property as-of-right up to a base density, with the right to additional density above the base rate if prescribed amenity requirements are provided to the municipality. This practice provides a balance of sorts between the “conflicting objectives of certainty and predictability, on one hand, and flexibility and discretion on the other” (BC MMA, 1994, p. 1).

It is important to note that the legislation provides no specific definition as to what is included under the title of an “amenity”. This vague terminology leaves the concept open to a broad range of interpretation on the part of local governments and developers. The B.C. MMA would eventually release a best practices guide for understanding the use of density bonus provisions built into Section 904 (1997) but it too failed to provide any sort of definitive list of what exactly constituted an amenity. According to the MMA’s own reports, the original intent of the legislation was not to allow for cash exactions, but as

⁷ At the time of its passing, Bill 57 (1993) amended what was then the *Municipal Act*, adding Section 963.1. With the overhaul of the *Municipal Act* into the *Local Government Act* in 1996, Section 963.1 became verbatim what is now Section 904. The report refers to Section 904 for clarity’s sake as it is the current in-force bylaw which permits density bonus zoning.

written it permits sufficient flexibility to allow for cash-in-lieu of the provision of an amenity where said amenity could not be provided for by a single development or developer (Taves, 2002; BC MMA, 1994). This is commonly the case for large amenity investments, such as a community centre, though such cases must still demonstrate a nexus between the bonus being granted and the cash-in-lieu contribution.

The other camp of DBI pertains to the rezoning process, and often takes the form of either targeted amenity rate or uplift based amenity contribution negotiations. While there is no specific provision in the *Local Government Act* or the *Vancouver Charter* which directly legislates the use of such practices it is the general understanding in the province that such practices are part of the discretionary power granted to local governments as related to land use zoning (BC MCSCD, 2014), while also being informed by the density bonus provisions of Section 904 of the *LGA* and Section 565.1 of the *Vancouver Charter* (Gurstein & Young, 2014). This discretionary power has been recognized by the B.C. Supreme Court through a number of rulings over the years, reasoning that the ability to negotiate such agreements are permitted under considerations which pertain to planning and servicing, as well as the public interest (BC MCSCD, 2014). This discretion does not, however, permit local governments to unilaterally impose conditions, meaning that to stay on a solid legal footing municipalities must negotiate with developers regarding the extent of the amenities to be provided while also receiving expressed consent from the developer that such provisions are being made on a voluntary basis (ibid.).

4.3 The Provincial Guide to Community Amenity Contributions

While the legal definition permitting their use remains somewhat fuzzy, negotiated DBIs have become quite prevalent amongst Metro Vancouver municipalities. Originally only used in the City of Vancouver under their Community Amenity Contribution (CAC) program, the success and popularity of the CAC program resulted in a wide number of neighbouring municipal governments seeking to implement their own programs in recent years (Gurstein & Young, 2014).

However, with so much flexibility and uncertainty tied to the use of these emerging tools, critics in the development community around the province raised their concerns over such rapid proliferation of the rezoning policy (Sherlock, 2013). In response, the B.C. Ministry of Community, Sport and Cultural Development (MCSCD)⁸ published a new set of guidelines for local governments looking to use CACs and similar DBI frameworks. The guide provides local governments with a primer on the legal implications of using CACs, details the impacts the tool might have on housing market and lists a number of recommended practices for implementing policy on a local scale. A summary of the Ministry's recommendations from the guide is as follows:

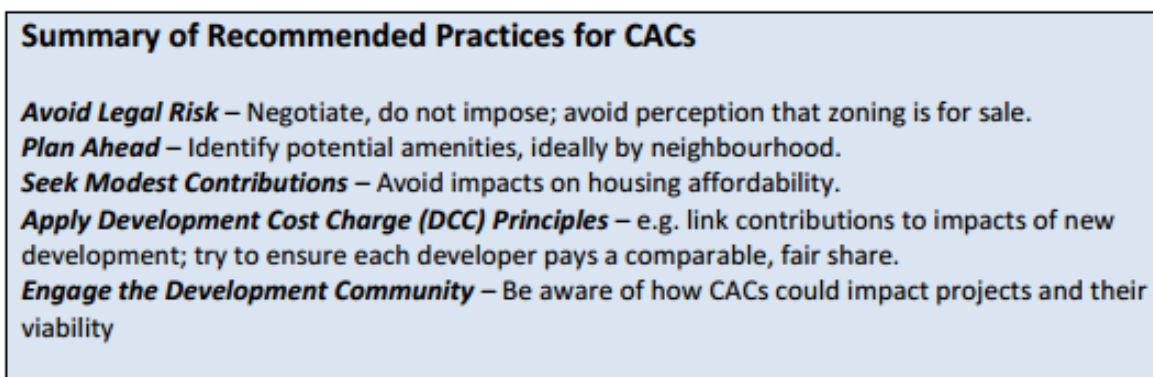


Figure 3: Summary of the MCSCD's Recommended Practices for CACs – Source: BC Ministry of Community, Sport and Cultural Development (2014, p. 2).

4.4 DCCs vs. DBIs

Discussion surrounding the practice of having development pay for the costs of its own impacts occasionally touches on the argument that Development Cost Charges (DCCs) and Development Cost Levies (DCLs)⁹ are a better planning tool than DBIs in terms of maintaining the integrity of land use plans (Condon, 2014). The argument, which is critical of the effect Vancouver's CACs have on the city's character and design, claims that CACs are more prone to political corruption while DCCs are better regulated and more transparent. While using DCCs could limit the practice of spot zoning properties on a

⁸ The Ministry of Municipal Affairs was folded into a much broader organization with the creation of the Ministry of Community, Sport and Cultural Development under then Premier Gordon Campbell in the early 2010s.

⁹ DCCs and DCLs are effectively the same tool, differing only in name within the City of Vancouver's jurisdiction as a result of the *Vancouver Charter*. For clarity of argument's sake, references to DCCs in this section will also refer to DCLs.

case by case basis, the argument fails to take into account the legislated limitations on DCCs. In the Vancouver context, while it is true that there is a degree of overlap in terms of what DCCs and CACs are able to provide for, there are still key provisions which only CACs are able to address, such as fire halls, community centres, and libraries (BC MCSCDD, 2014). A breakdown of the differences between the two tools from the City of Vancouver is provided in Appendix C.

From a theoretical standpoint, DCCs are technically charging for something different than DBIs. While the former are a required charge to specifically offset the cost of development, particularly offsite infrastructure and related amenities, the latter seek to tap into the unearned increment of increased land values that occur through no effort or improvement by the land owner. DCCs are a charge placed on developers, while DBIs, if done right, attempt to capture some of that unearned land value increase of the original property owner. Whether or not developers are able to incorporate this cost into the sale price when acquiring land, however, remains a factor of the developers negotiating skill, the supply of marketable land, the property owner's willingness to absorb the cost, and the local government's ability to convey this principle to all involved.

5. Evaluative Criteria for DBI Framework Analysis

Based on issues identified in the literature review, suggestions by the governing ministry (BC MCSCD, 2014) and previous work conducted by the author (Mattinson, 2014), this section of the report provides a general list of key factors which should be considered when evaluating the implementation of a density benefit incentive framework. These factors will later be applied against the archetypical DBI models as informed by the case studies which follow in Section 6 in an effort to identify critical dynamics related to each framework.

5.1 Acceptability

First and foremost, as both a tool for municipal fundraising and a land use tool with the means to alter other publically informed policy documents, DBIs frameworks must maintain a level of confidence

amongst the public *and* the development community. The rationale of ensuring development pays its way may be a popular argument in our current political climate (Slack, 2002) and the cooptation of value from unearned increments in private property may also provide persuasive theoretical backing, but local governments must be wary that the process is implemented and managed as to not irreparably undermine public trust in the planning process as a whole (Mattinson, 2014). DBI frameworks can be complicated by nature of both their impact and structure. With their ability to diverge from the established plans set forth by the existing OCP and zoning bylaws the public may perceive the process as a cash grab in exchange for the sale of zoning rights to wealthy developers.

When it comes to evaluating proposed rezoning applications local government boards and councils should expect a careful degree of public scrutiny regarding changes to the OCP. According to the BC MCSCD “the public is looking for confidence that the community plan they were consulted on is being followed, both in law and in spirit” (2014, p. 9). Continued alterations to the existing plan on a case by case basis, alternatively referred to as “spot zoning”, runs the risk of eroding the public’s trust if they believe the plan will be changed any time a developer can afford to placate local residents with a handful of shiny new amenities (Condon, 2014). The structure of a DBI framework should demonstrate that the tool is being used to work with the OCP and existing zoning instead of using them as a means for revenue generation. When implementing a DBI framework it should be made clear that the policy is being used towards a planned goal in conjunction with the OCP, which should be updated and revised on a reasonably regular basis to reflect the changing urbanization and character of the community (BC MCSCD, 2014). Local governments must ultimately be able to convey to the public, in as clear and simple terms as possible, the goal of the policy and how it plays a key role in building the community.

Likewise, the process must be acceptable to developers. If developers are to be expected to negotiate in good faith for these incentives local governments must be forthright and reasonable in their expectations. The framework must be perceived as a win-win opportunity rather than a development risk.

Developers will be hesitant to seek out an incentive program if they perceive it to be too demanding, or the process too unreasonable (Seyfried, 1991).

The legal interpretation of DBI practices also weighs into this criteria, as the concepts of both nexus and proportionality must be respected to ensure a solid legal footing for any framework (BC MCSCD, 2014). Developers will want to see that the amenities they provide will be feasibly linked to the development they are proposing, while the value of what they are being asked to provide for should be reasonably representative of the impact their development will have on the surrounding community. In the same vein, the amount of amenity value sought from developers should be comparable across different projects with similar community impacts to ensure fairness and equality between different applicants (ibid.).

5.2 Predictability

Unpredictable timeframes and costs make projects difficult to evaluate for both developers and their investors. With many projects being financed through borrowing, developers tend to be quite sensitive to the time value of money. The longer it takes to get shovels into the ground, the harder it becomes for developers to achieve a reasonable rate of return (Holden, 2014). If the negotiation process for a municipality's DBI framework results in unpredictable application time frame increases or amenity requests which are difficult to anticipate developers will be more hesitant to invest in that municipality.

In order to minimize this risk and encourage development the DBI should be structured to be as straightforward and predictable as possible (BC MCSCD, 2014). Municipal expectations for amenity contribution rates should be easily understood by newcomers to the area, providing a clear and predictable cost for developers to incorporate into their project pro-forma, while also providing a reasonable price indication so that they might negotiate the cost into the original purchase of the land. Setting modest target rates for amenity provision should also help to limit the time spent in the negotiation period, reducing application times and staffing hours directed towards the process.

5.3 Flexibility

Local governments must remain vigilant that their DBI policy is not so restrictive that it limits their ability to react to changes in the local housing market. Explicitly stated target rates help developers predict costs but also may miss out on market upswings in property value, failing to maximize opportunities to provide for the community. The inverse is also true, as a rigid cost structure may do more harm than good if the market dips for any reason. The policy must remain flexible enough to prevent it from having too much negative distortion on the market, while still being able to sufficiently provide the amenities for which it was designed. Negotiated policies help to address this policy, but the amenity provision targets and goals should be revisited with sufficient frequency to remain representative of the current market forces in the community, while also addressing changing local needs.

5.4 Transparency

DBIs are designed to provide a win-win situation for both the community and developers, but the fine line between providing much needed amenities and ‘buying’ zoning rights leaves the practice vulnerable to abuse if not regulated properly. The sensitive nature of negotiated agreements limits public involvement in the process and also may result in mistrust if the general public does not understand how the process works or what they are receiving in return (Moore, 2013). In order to alleviate this risk DBI policies should be structured in a way which is easy to comprehend with a process that is as transparent as possible, limiting the opportunity for political interference or erosion of the vision provided in the OCP.

A clear set of goals should be provided with the implementation of a DBI framework, such as a list of desired community amenities for a given neighbourhood, which can be tracked on a regular or semi-regular basis through reports issued by the municipality. Local governments should maintain public records of the types of amenities being provided both for public interest and developers looking to anticipate financial impacts in order to assess if their own projects will be fiscally feasible (BC MCSCD, 2014).

6. The Case Studies

While a sizeable majority of Metro Vancouver's twenty-two municipal authorities employ the use of some form of DBI framework as part of their development process, this paper focuses primarily on three specific municipalities for the sake of a more thorough analysis of the archetypical frameworks used by each. The three chosen municipalities, the City of Vancouver, the City of Burnaby and the City of Coquitlam, were selected based on a criteria involving (1) the representation of the three major forms of DBI frameworks in the region (target rate rezoning, land lift rezoning, and density bonus zoning), (2) the different sizes of their populations, (3) the different roles each municipality plays geographically in the region (core municipality, established suburb, transitioning suburb), and (4) the varied history each has experienced in terms of implementing and operating their DBI framework. In researching the variations of DBI practices through both report analysis and speaking to development industry representatives these case study municipalities were also commonly highlighted as more preferable examples of local best practices. The goal of this selection process is to showcase both the varied forms DBI frameworks can assume and how they serve the interests of distinctly different municipalities.

It should be kept in mind that these three case studies provide only a brief snapshot of the region as a whole, and should not be considered as representative of the state of all municipalities and their respective density benefit programs. Each municipality is unique and as such is faced with distinctly different economic, political, and administrative factors to consider when seeking to manage development within their borders. Given the scope and time constraints of this project report, however, the primary analysis will focus on the three selected case studies for the sake of both clarity and feasibility. A more comprehensive analysis of all of the Metro Vancouver region's municipalities DBI practices could be considered at a later date, should interest warrant.

6.1 The City of Vancouver

The City of Vancouver is the urban heart of the Metro Vancouver region and the primary case study based on its extensive history of using DBIs in various forms over time. The City is home to 603,502 residents as of the 2011 census, with 25,461 new residents since the previous census period. While this only represents a growth rate of 4.4% it accounts for 12.9% of all population growth in the Metro Vancouver region. As the first municipality to become highly urbanized, Vancouver directed most of its density towards its downtown core during the late twentieth century. With the pressure for growth continuing as the core built out, however, the City soon had to explore other areas for densification within its borders (Condon, 2014; Punter, 2003).

Vancouver already had a considerable history of using DBI policies for development around the downtown core and the False Creek area, but it wasn't until 1999 when they would formally introduce their *Community Amenity Contributions – Through Rezoning* policy on a city-wide basis (Vancouver Planning and Development, 1999). The policy permits a hybridized model of both 'standard' targeted target rate and 'non-standard' land-lift based negotiated rate rezoning land value capture. The standardized rate applies to any residential rezoning above an FAR of 1.35, or in any case where commercial property is being converted into residential, with a target rate set at \$3 per square foot (\$32.29 per square metre) of increased floor space, unless the site is located in a defined neighbourhood area. A total of thirteen unique neighbourhood areas are identified in the CAC policy which have different target rates based on local community need and development pressure, with some requiring rates as high as \$55 per square foot (\$592 per square meter) of density increase (ibid.). The City set these standardized target rates in part due to pressure from the development community to provide certainty in the rezoning process, though representatives of the development community worry that some of the specific community rates are so high that they have scared local developers away from priority development areas such as the Cambie Street Corridor (*personal correspondence*, 2015).

Rezoning applications which are looking to convert industrial use to residential use, are located in the downtown core area, or are above two hectares in size anywhere else in the city are subject to a non-standard negotiated process. Instead of using a targeted rate these negotiations attempt to determine the increase in land value attributed to the rezoning permissions, with the City staff looking to secure approximately seventy to eighty percent of this uplift¹⁰. Planning staff direct the negotiations with developers, requiring applicants provide their development pro-forma in order to help determine the value of the potential uplift. This practice helps to provide some clarity on costs but is also criticized by some development interests who claim it has the potential to break down into line-by-line debates over pro-forma lists which may be hundreds of items long (*personal correspondence*, 2015).

Using this two tier system Vancouver is able to provide both a degree of certainty for smaller developments while also taking advantage of the opportunity for significant community development which comes along with major rezoning proposals. Where traditionally the negotiated rezoning applications were the norm, Vancouver has seen a steady shift towards fixed rate CACs, having increased in prominence from 15% of all applications in 2012 to over 50% in 2014 (Duggan, 2014). This is strongly indicative of the development industry's preference for certainty and efficiency in the rezoning process. Between the two combined processes a total of 45 rezoning applications provided CACs in 2013, providing a total contribution value estimated at \$133 million, split between affordable housing, parks and open space, heritage conservation, community facilities, and other uses yet to be determined. Since Vancouver's Council began requiring staff to report on the distribution of CAC provisions in 2010 the program has accounted for an estimated \$408 million worth of amenity and housing provisions in exchange for 11.4 million square feet of additional density¹¹ (Vancouver, 2014).

¹⁰ Staff at the City of Vancouver recognize that there is a degree of risk associated with rezoning and redevelopment, and as such do not seek to capture 100% of the value uplift (*personal correspondence*, 2015). This is still a considerably higher rate than that sought in municipalities with similar DBI frameworks such as the City of Toronto which only targets roughly 30 to 40% (Moore, 2013).

¹¹ Only years 2010 through to 2013 have been reported on at the time of this report's publication.

It should be noted that Vancouver is the only municipality in B.C. which does not require an OCP due to its unique status under the *Vancouver Charter*. While this charter status has granted Vancouver many of the tools which have allowed it to innovate with capital financing initiatives such as the CAC program, it also spurs criticism that such practices are resulting in situational “spot zoning” which lacks the cohesive vision that should be set forward by an OCP (Condon, 2014). Vancouver instead is focused on a patchwork of community plans which help to guide individual neighbourhoods on a more local scale, with each updated on an individual scale.

In a recent update of one such plan update in Vancouver’s Marpole neighbourhood, new permissions for density bonus zoning were added into two existing zoning classifications for multi-unit residential apartments. This new tool in the Vancouver tool box allows these existing zones to increase their as-of-right densities in exchange for amenity provisions or cash-in-kind contributions as set out by the zoning bylaw. The density bonus seeks to provide the community with more confidence in the permitted uses which might be allowed in the neighbourhood while also indicating clearly to developers what would be expected in order to maximize the use of that land. The rates are designed to escalate with the increase in density, requiring more from developers if they wish to see larger density increases. A sample of the density and contribution requirements is as follows:

Density	Density bonus contribution rate (calculated on a net additional floor area)
Up to 0.75 FAR	\$0 per square foot (\$0 per square metre)
Over 0.75 FAR to 1.2 FAR	\$10 per square foot (\$108 per square metre)
Over 1.2 FAR to 2.0 FAR	\$55 per square foot (\$592 per square metre)

Table 1: Marpole Density Bonus Rates – Adapted from Source: City of Vancouver (2014, p. 2).

Contributions raised from density bonus zones are to be maintained in a specific reserve account and allocated according to the Marpole Community Plan’s Public Benefit Strategy. Interviews with City staff suggest that the public and development community reaction to the density bonus zoning use in the area has been quite positive, indicating that it could see much wider adoption across the city as a whole (*personal correspondence, 2015*).

6.2 The City of Burnaby

Located directly adjacent to Vancouver's eastern border, the City of Burnaby is home to 223,218 residents as of the 2011 census, making it the third most populous city in B.C. behind Vancouver and Surrey. In the period between the two most recent census periods Burnaby saw a population growth rate of 10.1% (Metro Vancouver, 2011A). Over its history Burnaby has made the shift from rural community, to bedroom suburb of Vancouver, to an urban city in its own right, featuring three municipal town centres and a one regional town centre under Metro Vancouver's regional land use plan¹² (Metro Vancouver, 2011B). With a strong focus on operating debt free while providing great public services, the City of Burnaby was recognized as the best-run city in Canada as part of a study by the Atlantic Institute for Market Studies (2009). Policy review and interviews with representatives of the development community frequently pointed to Burnaby as an example of a DBI framework which is both efficient and equitable, while also remaining highly successful in achieving policy goals.

Though Burnaby's experience with DBI frameworks traces all the way back to well before the *LGA* legislated such policy tools (Taves, 2002), it was in 1997 that its current model, the Community Benefit Bonus (CBB) program, was first officially implemented. Since then the program has been reviewed and amended to permit an additional expansion of powers in order to meet emerging community needs, while also ensuring the contribution of a cumulative \$115,000,000 worth of amenities and affordable housing options (Burnaby, 2014).

The program identifies a number of zoning designations in the municipal zoning bylaw that may increase their maximum permitted FAR according to limits attached to the zoning bylaw itself, in some cases allowing more than double the original density, so long as the applicant provides an amenity contribution as prescribed by the City's density bonus bylaw (Burnaby, 2012). The bylaw explicitly

¹² Municipal and regional centres are identified as nodes for community development and urban densification under Metro Vancouver's long term regional growth plan (2014B). Their characteristics include a mix of residential and employment uses, access to major transit infrastructure, high and medium density housing including affordable housing choices, and access to community activities and services targeted towards the needs of the surrounding communities.

requires that the site for rezoning be located within the boundaries one of the city’s four core Town Centre development areas as identified by Burnaby’s OCP, while also providing a list of acceptable amenities and housing options which will be considered in exchange for the density increase. The list is as follows:

Burnaby Zoning Bylaw Section 6.22	
(2) - Eligible Amenities	(3) - Eligible Affordable and Special Needs Housing
<ul style="list-style-type: none"> • Major public open space or plaza; • Public facilities, including library, community or recreation centre, arts facility, youth centre; • Space for community or non-profit groups that serve the community; • Public art; • Extraordinary public realm improvements including landscaping treatment and special street furniture; • Improvements to park land or other public facilities; • Extraordinary environmental enhancements; or • Child care facilities. 	<ul style="list-style-type: none"> • Units developed under senior government non-profit housing programs; • Price controlled limited-equity market units; • Units controlled or managed or owned by non-profit housing groups providing affordable housing; • Guaranteed rental units; • Housing for people with special needs such as those with physical or mental disabilities or victims of violence.

Table 2: Provisions to be considered for density bonus in Burnaby – Adapted from Source: Burnaby Zoning Bylaw, 1965 as amended (Burnaby, 2012).

Amenity contributions can be either a physical amenity provided on-site or off-site, or be a cash-in-lieu payment. Cash-in-lieu payments have the option of being designated towards a specific off-site project or put into an undesignated fund for general projects in the local area. The City provides a list of priority amenity needs for each neighbourhood as part of their respective local community plans, which in turn allow developers to anticipate which provisions could be requested as part of the CBB negotiation. Interviews with municipal staff revealed that there has been a shift in recent years towards cash-in-lieu contributions over on-site provisions, placing focus on much larger priority amenity provisions which would not be feasible for one developer to provide alone (*personal correspondence, 2015*). Up until recently, the benefits provided by cash-in-lieu payments would be redirected to the Town Centre region in which the project took place to ensure that the development supported the community which it impacted. Recent changes to Burnaby’s CBB program, however, have now expanded the program to allow a share of funding be redistributed into the much broader quadrant of the city in which the development took

place, allowing for a broader distribution of benefits beyond the defined Town Centre area (Burnaby, 2014).

Perhaps most interesting about the CBB program is the method by which provision values are calculated; instead of setting a fixed dollar value target rate like Vancouver's CAC rezoning Burnaby bases its targeted rate off of market land prices at the time of rezoning. This rate is calculated in house by the municipality's lands and legal department on a price per square foot of buildable space basis which can easily be estimated by developers and built into their own development pro-forma. While the developer may negotiate with the City regarding the value of the land or specific off-site amenity to be provided, staff familiar with the practice note that there are very few instances where developers do not take advantage of the bonus density potential to its fullest (*personal correspondence*, 2015). By tying the target value capture rate to easy to identify market conditions Burnaby has been able to create a framework with is both flexible and predictable while also requiring minimal resources be tied up in the negotiation process.

6.3 The City of Coquitlam

Bordering the City of Burnaby to the east, the City of Coquitlam is home to 126,456 residents as of the most recent census count after seeing a 10.4% population bump over the previous census period (Metro Vancouver, 2011A). This rapid growth is only expected to increase as the municipality will be home to portions of the soon to be opened Evergreen SkyTrain rapid transit line in 2016, including four new stations within Coquitlam's borders. Forecasts for the region anticipate Coquitlam's population to jump to 224,000 by the year 2041, with roughly 41,000 new residents settling in close proximity to the Evergreen Line during that time (Coquitlam, 2014A). In anticipation of this increased growth pressure the City of Coquitlam, which has traditionally been viewed as a bedroom community, implemented a number of unique programs which work in conjunction with each other to both address the explosive demand for growth and amenity needs while also remaining faithful to the City's OCP and land use principles.

Coquitlam was selected as a case study municipality in large part due to the recent implementation of its own CAC program which is being used on a trial basis in conjunction with established density bonus zoning provisions already built into its zoning bylaw. While Coquitlam uses density bonus zoning to finance a variety of amenities for key growth areas around the City, the Local Council also saw fit to implement its CAC policy in order to provide funding specifically for a much needed community centre through local rezoning applications (*personal correspondence*, 2015).

The trial area in question pertains to the Burquitlam and Lougheed neighbourhoods, which are both expected to see significant growth in line with the arrival of the rapid transit route. Guided by the City's Transit-Oriented Development Strategy (TDS), a high level guiding document under Coquitlam's OCP, the traditionally low rise and residential neighbourhoods anticipate increased densification in the immediate vicinity of the Evergreen Line, with heights and densities dropping off in the areas just beyond creating a conscientious transition into the surrounding established residential neighbourhood (Coquitlam, 2012). Existing neighbourhood plans for the area recognized that the area along the predicted path for the SkyTrain should be targeted for the highest growth, with the OCP's designated land uses permitting rezoning to some of the highest permitted zoning designations in the City's bylaw, which also include additional density bonuses. However, given the sheer scale of growth expected, particularly around the new SkyTrain station area, both staff and Council recognized that density bonus zoning may not be enough to provide for the strategic community goals they were hoping to achieve (Coquitlam, 2013).

To address this issue the City of Coquitlam, in careful consultation with the local development community, implemented its own CAC program which would work in concert with the existing density bonus zoning system in order to help meet the needs of the growing Burquitlam-Lougheed community. Coquitlam's CAC pilot program is similar to Vancouver's general CAC rezoning framework, targeting voluntary contributions from developers with the goal of achieving \$3 per square foot (\$32.29 per square metre) of FAR increase over existing zoning, but differs significantly from there.

For starters, Coquitlam's CAC program is being used to assist in funding only one specific amenity; a community centre that will serve the core of the Burquitlam-Lougheed neighbourhood. To alleviate developer concerns that the CAC policy would be used in perpetuity beyond this initial goal the City included a sunset clause which states that "once the City has collected sufficient CAC money to cover the cost of facility, or if another method is found for having the centre and associated facilities constructed, such as through a public-private partnership, the CAC program will cease or be modified accordingly" (Coquitlam, 2013, p. 3), terminating the program with Council approval.

Additionally, Coquitlam's CAC framework only allows rezoning to other zoning designations already present in the City's zoning bylaw. This rezoning must also be in conformity with the City's OCP, thus maintaining a consistency between the increase in density and the broader plan for the neighbourhood. It is at this point that the CAC provisions top out and the City's density bonus zoning framework kicks in (Coquitlam, 2014).

The highest zoning designations in Coquitlam's zoning bylaw which are allowed in the Burquitlam-Lougheed neighbourhood area permit a base density of 2.5 FAR, but given special considerations they may be increased significantly further (Coquitlam, 2012). Both residential and mixed-use commercial zones may be permitted in the area surrounding the neighbourhood cores which will permit developers additional density in 0.5 FAR increments based on prescribed amenity and affordable-housing contributions. For example, Coquitlam's C-7 Transit Village Commercial zoning, the highest designation attainable within the Burquitlam-Lougheed neighbourhoods, allows permissions up to a 4.5 FAR based on the following schedule:

Density Step	Condition of Additional Density	Additional FAR	Maximum Total FAR
Step 1	A financial contribution of 75% of the land value of the additional density towards amenities as identified in the OCP	Up to 0.5 times the lot area	3.0 times the lot area
Step 2	A financial contribution of 65% of the land value of the additional density towards amenities as identified in the OCP	Up to 0.5 times the lot area	3.5 times the lot area
Step 3	A financial contribution of 50% of the land value of the additional density, of which 50% will be towards amenities, and 50% towards affordable housing as identified in the OCP	Up to 0.5 times the lot area	4.0 times the lot area
Step 4	A financial contribution of 35% of the land value of the additional density towards amenities as identified in the OCP	Up to 0.5 times the lot area	4.5 times the lot area

Table 3: Density bonus schedule for C-7 Transit Village Commercial zoning – Adapted from Source: Coquitlam Zoning Bylaw 3000, 1996 as amended (Coquitlam, 2012).

This second DBI framework allows Coquitlam to capture additional value from development which can then be applied to a number of other amenities beyond the restrictions of its CAC bylaw. The structure of conditions for additional density also is designed to encourage developers to seek the highest permitted use as the relative cost of amenities decreases with each additional density step. City staff are able to calculate the land value of the additional density based on surrounding market indicators, with the current rate based at \$60 per square foot (Coquitlam, 2014). Developers have the option to either provide the conditional amenities on site, or may provide cash-in-lieu to the city which is stored in a specific account for amenities earmarked for the local neighbourhood.

While Coquitlam's CAC program is still relatively new it has already managed to collect \$650,000 from two completed development applications since it was originally implemented, with an anticipated additional \$2,077,000 to be contributed from eleven additional applications in stream up till 2016. The density bonus contributions received to date have totalled \$11,400,000 with an additional \$16,500,000 estimated to be collected by 2016 (ibid), though specific data on how these amenities have been divvied up is unavailable.

7. Analysis of the Frameworks

Based on information gathered from the literature review and practices observed in the case studies from the cities of Vancouver, Burnaby and Coquitlam, this section of the report provides a qualitative analysis of the three archetypical DBI frameworks. Each framework is evaluated in terms of the four key factors identified in Section 5 and is accompanied by a general recommendation for how and when other municipalities might choose to implement similar frameworks of their own. A summary of the overall findings for comparison's sake is listed in *Table 4*¹³.

DBI Framework	Lift Based Rezoning Negotiations	Target Rate Rezoning Negotiations	Density Bonus Zoning
Acceptability	Low	Medium	High
Predictability	Low	High	High
Flexibility	High	Medium	Medium - Low
Transparency	Low	Medium	High
Recommended Use	Major keystone development proposals and areas facing extreme growth pressure	On a neighbourhood by neighbourhood basis in areas expected to facilitate growth	In core areas of neighbourhoods expected to facilitate growth

Table 4: Summary of DBI Archetype Framework Analysis

7.1 Lift based rezoning negotiations

7.1.1 Acceptability

Of the three frameworks observed, lift based rezoning negotiations tend to be the most problematic when it comes to public acceptability, in large part due to their ambiguity in terms of costs and limits. These rezoning negotiations are most commonly seen in cases which allow significant changes over the existing zoning bylaw. While this may be advantageous when dealing with proposals for major projects, its overuse runs the risk of undermining public trust that existing land use plans will be respected

¹³ Please note that the values assigned to each archetypical framework in the analysis summary (High, Medium and Low) are based on qualitative evaluation of policy impacts. These designations were assigned by the author as informed by the key informant interviews, literature review and relevant municipal reports.

(Condon, 2014). The City of Vancouver arguably does a better job than comparable Canadian municipalities using similar frameworks by providing a narrower scope for when these negotiations are required and illustrating a more coherent connection between development and contribution, though it still remains vulnerable to criticism (Moore, 2013). Municipalities using lift based negotiations should remain cognizant of the broader community context when considering rezoning applications, while attempting to update community and neighbourhood plans in advance of development pressure whenever possible. Cities which rely heavily on lift based rezoning negotiations run the risk of being viewed as overly reactive, which can translate into the perception that wealthy developers are able to buy density instead of contributing to the larger community vision (Kayden, 1991).

7.1.2 Predictability

The ambiguous concept of “lift” created through rezoning leaves the process open to considerable debate during the negotiation process. Developers, particularly those new to the market, may find it difficult to anticipate exactly how much the municipality will be seeking in exchange for additional density. Even though Vancouver does a better job than other municipalities by requiring developers to submit their pro-forma as part of the negotiations, the process is still subject to considerable differences of opinion regarding how much lift is being created (Moore, 2013). The more uncertain the contribution requirements, the more difficulty developers will have in both evaluating projects and negotiating land purchases. Developer concerns regarding the issue of predictability formed the impetus of Vancouver’s recent shift towards target rate CAC policies in recent years (Duggan, 2014).

7.1.3 Flexibility

One benefit lift based negotiations tend to have over the other DBIs is the ability to adjust to changing market conditions without requiring significant policy change. Where target rate policies and density bonuses with explicit rates identify maximum rates that developers would be expected to contribute these policies may be sluggish in reacting to the rapidly changing prices of some Canadian

property markets, according to some municipal staff members (*personal correspondence*, 2015).

Considering the sizeable undertaking that is required for neighbourhood and community plan updates under provincial legislation, lift based rezoning applications also allow rapidly growing municipalities with a quick means to address market pressure, though this should only be used sparingly. Vancouver planning staff also note that the flexibility of negotiated CACs make them better suited for dealing with major planning projects which will act as the catalyst for neighbourhood redevelopment. According to staff, negotiations are necessary when dealing with these projects where the sheer scale of change may not be adequately addressed via target rate rezoning (*personal correspondence*, 2015).

7.1.4 Transparency

Lift based negotiations also suffer from issues of transparency by nature of their process and uncertainty. Depending on who is conducting the negotiations and the sort of contributions that are acquired in return members of the public may be wary of the actual motives for allowing the increased density. If each developer is allowed to add ten additional stories to their tower developments in exchange for a few million dollars which disappear into some municipal account, public trust in the system will eventually erode. Likewise, developers will be hesitant to participate in the process if they don't believe their contributions are being spent in a reasonable manner (Moore, 2013). The broad scope of lift based negotiations tends to make them even more vulnerable to this criticism than other programs.

Municipalities using this framework must make extra effort to illuminate the process as much as possible by providing reasonable expectations for community contributions ahead of time. Vancouver tends to do a good job in this regard by requiring its planning department to publish an annual report on how CAC funds have been collected and disbursed over the calendar year, allowing the public and developers to see for themselves where the collected contributions are going (Vancouver, 2014).

7.1.5 Recommended Use

Lift based negotiations permit the greatest degree of flexibility for a municipality to address rapidly changing market demands, but also suffer from the largest number of issues. The strength of the framework's flexibility is generally at odds with concerns regarding transparency and unpredictability. Over reliance on the framework will likely undermine public acceptance of the planning system in general. Local governments which are faced with extreme growth pressure beyond what their zoning bylaw is adequately structured to handle may wish to consider using lift based rezoning negotiations under limited circumstances, though it is highly recommended that they use this tool sparingly and not as the norm. Negotiated rezoning may also better address major keystone planning projects where issues of scale and impact are not adequately addressed by target rate negotiations.

7.2 Target rate rezoning negotiations

7.2.1 Acceptability

Unlike their lift based cousin, target rate rezoning negotiations tend to avoid many of the acceptability issues amongst the public and development community on account of their improved clarity and more limited scale. Most of the examples of target rate amenities observed during the research phase for this report tended to work in concert with existing community plans, rather than seeking major deviations. In particular, the CAC plan in Coquitlam's Burquitlam-Lougheed neighbourhood demonstrates a positive example of how CAC policies can help to finance much needed amenity provisions through rezoning while working in concert with other DBI tools, all while respecting the local neighbourhood plan. Coquitlam's policy is also interesting in its specific goal of only achieving one specific amenity, with the program set to conclude once the planned community centre has been fully funded (Coquitlam, 2013).

Crafting target rate CAC polices based on individual community needs also creates a much clearer expectation for developers while also supporting the concepts of nexus and proportionality. So

long as the rates sought by the policy are modest, developers will likely find this DCI framework agreeable. That said, if a policy is too ambitious with its targeted rate it still runs the risk of being seen as too burdensome to be an incentive, stifling development in the area, limiting the housing stock and negatively affecting affordability (B.C. MCSCD, 2014).

7.2.2 Predictability

Target rate rezoning negotiations offer a very high degree of predictability which makes them a preferred option amongst the development community (*personal correspondence*, 2015). Policies which provide targets on a per square foot or per unit basis make it very easy for developers to predict how much they will likely be asked to contribute with a high degree of accuracy. Municipalities are also able to forecast anticipated contributions from future development, allowing them to more accurately predict how much additional development will be needed to finance key amenity provisions in the community (*personal correspondence*, 2015).

7.2.3 Flexibility

The prescriptive nature of target rate negotiations provides a higher degree of predictability but limits the tool's ability to react to shifts in the market should property values spike over a short period of time without legislating changes to the policy itself. If a municipality sets a target rate through policy and the market continues to increase developers will be reluctant to pay more than the stated rate. Much like DCCs, municipalities should revisit their targeted rates for amenity contributions on a fairly regular basis in order to ensure they accurately reflect market conditions.

In cases where the market slows, the negotiated nature of target rate rezoning allows developers to argue for lower rates, though this is uncommon according to municipal experts as these sort of market downturns tend to slow the pace of development, regardless of the DBI policy in place (*personal correspondence*, 2015). Nevertheless, representatives of the development community claim that policy

rates which are seen as too demanding may ultimately slow the rate of development in neighbourhoods which would otherwise be prime investment opportunities (*personal correspondence*, 2015).

7.2.4 Transparency

For the most part the predictability and local focus of target rate rezoning DBIs provide a much higher degree of transparency than their more ambitious lift based counterparts. While negotiation is still a necessary part of the procedure, the explicitly stated rates tend to move the process along quickly with few developers choosing to contest the rate unless it is arbitrarily steep (*ibid.*). The neighbourhood level focus of most target rate DBIs also allows municipalities to focus on much more localized issues, detailing the specific needs of each neighbourhood and how specifically developer contributions should be allocated to address these needs (Vancouver, 2014; Coquitlam, 2013). This local nexus tends to diminish when applied on a community wide basis however, when it becomes much harder to trace how amenity funds are distributed (Moore, 2013). As with lift based negotiated rezoning municipalities should endeavour to provide reports on the status of amenities and benefits acquired through rezoning, detailing where the contributions are coming from and where they are being distributed to at reasonable intervals.

7.2.5 Recommended Use

If applied modestly, efficiently, and on a local basis, target rate rezoning DBIs have the potential to offer greater acceptability, predictability, and transparency when compared to their lift based alternative. Municipalities facing increased development around key nodes or in specific neighbourhoods should consider target rate rezoning policies as an effective means to tap into the potential of redevelopment in the area while still working in tandem with other land use planning documents. In order to keep the DBI efficient and its impact low the policy should be updated at regular intervals to ensure the targeted rates reflect the market realities of the area over which it applies. To ensure that the policy is not abused it should also be limited in accordance to the OCP or local neighbourhood plan, or used in conjunction with another DBI such as density bonus zoning.

7.3 Density bonus zoning

7.3.1 Acceptability

As a policy tool density bonus zoning tends to address a number of the issues which plague the acceptability of the previous two DBIs by offering a density incentive to developers while also respecting OCPs and other in force land use planning documents. Building bonus rates into specific zones of the municipal bylaw allows local governments to create an incentive that provides benefit to the community while still providing firm regulation on just how much density can be expected. The prescriptive legislation of a zoning bylaw removes the ambiguity of scope seen in other DBIs, allowing both the public and interested developers a clear understanding of what is permitted between the base FAR maximum, and the bonus density available in exchange for contributions. The legal footing for these benefit increment is also much more clearly defined, removing the process from much of the speculation and mistrust which is seen in cases of discretionary zoning negotiations.

7.3.2 Predictability

In order to build a DBI provision into a zoning bylaw it must be prescriptive enough as to be legally enforceable. As such the language and permissions built into the bylaw tend to be explicit, granting a high degree of predictability. Interviews with municipal staff and development experts across the Metro Vancouver region identified density bonus zoning as being very efficient in this regard. Very little time is spent negotiating between staff and developers; either the applicant chooses to build to the bonus density by providing the required benefits, or simply does not. Staff Burnaby in particular, with its well established CBB program, indicated that it was rare for developers to choose not to take full advantage of the available density permitted via the bonus (*personal correspondence*, 2015).

7.3.3 Flexibility

The one downside to the prescriptive nature of density bonus zoning is that it tends to be much more rigid than the other DBI options. The enforceable nature of the bylaw means that it must be explicit

in both its permissions and prices. This may result in many of the same issues that target rate negotiated rezoning frameworks experience when adapting to rapidly changing markets, though the land value costing model used in both Burnaby's CBB program and Coquitlam's density bonus zoning appears to sidestep this issue while still remaining relatively predictable. Any other changes regarding issues such as increasing maximum permitted densities or restructuring the incremental bonus steps will still require full zoning bylaw amendments, a cumbersome process which may need to be repeated for each zoning designation with a density bonus built in.

7.3.4 Transparency

The explicit provision of the intents and limits built into density bonus zoning bylaws make the process generally much more transparent than other DBI frameworks. Some negotiation with developers may be required as to what amenities will be provided on site and which will be provided at large through cash-in-lieu contributions, but for the most part the process remains free of variation or opportunities for obscurity. As with the other DBI frameworks, municipalities should do their best to report on the distribution of benefit provisions through the bonus program, particularly with regards to funding which is collected in-lieu of on-site amenities to be spent in other parts of the neighbourhood or City.

7.3.5 Recommended Use

Density bonus zoning should be considered by municipalities seeking to provide flexible density-for-benefit development options in specific areas while still explicitly adhering to the vision put forward in the OCP and supporting neighbourhood plans for that community. The process must be done proactively, legislating the permissions into the zoning bylaw and identifying where these specific zones might be permitted *before* developers approach the City looking for a rezoning. This DBI cannot be used reactively, requiring a certain degree of foresight on the part of the planning department and local municipal council. The as-of-right provisions of the bylaw mean that once it has been implemented on a

property a developer may build to the maximum density stated so long as they provide the requisite benefits stated therein.

Density bonus zoning can also be used in conjunction with rezoning based DBIs in order to maximize the benefit to the community, as is seen in the Coquitlam case study, though municipalities should be careful to consult with the development industry and the community at large to ensure that such measures are not deemed an overreach of municipal expectation.

8. Conclusions and Recommendations

The implementation of a density benefit incentive framework can be a major boon for local governments struggling to provide for their rapidly developing communities, but the practice remains very much a subjective affair based on the needs, goals, and preferences of the community and the market. The use of DBIs played a significant role in shaping the fabric of the community to make the Vancouver region one of the most livable and desirable urban regions in the world (EIU, 2014), yet even in case study examples which were identified as leaders in the practice, their policies still faced noteworthy issues. Analysis from these examples highlights that no one framework can best address all of the key factors of acceptability, predictability, flexibility and transparency. It is up to local municipal governments to determine which of these factors are most critical to addressing the realities of their local development market, selecting a framework, or combination of frameworks, to best realize their policy goals.

Regardless of the framework a municipality chooses, there are also a number of general considerations which should be taken into account. As a result of the research and analysis conducted for this report, the following recommendations are proposed for any municipality considering implementing or updating their own DBI frameworks, regardless of the archetype they chose to model it on.

8.1 Ensure DBI policies work in tandem with the OCP

DBIs must fill two roles as tools for both land use planning and capital fundraising (Taves, 2002), but while the latter is crucial for the provision of much needed amenities and community benefits it is the former that must take precedent in conflicts between the two. By offering additional density to developers in exchange for community goods DBIs walk a fine line between an incentive and a means for wealthy developers to sidestep previously established land use regulation. At their core, land use management policies such as OCPs and zoning bylaws are enacted under the principle that they protect the interests of the community to which they apply. Communities are consulted and provide input during the formation and adjustment of these same plans to ensure that their interests are represented and reflected in the finished product. Allowing a density incentive to undermine the intent of publicly informed community plans undermines the principles of land use planning and erodes public confidence in the system as a whole.

In order to avoid this scenario DBIs should be structured and implemented in a way that works within the vision of local community plans and the broader OCP. As noted by the B.C. MCSCD (2014), local governments should make every effort to plan ahead, ensuring that the bonuses offered by the DBI do not compromise the vision presented by the OCP and local plans. These plans should be updated at reasonable intervals in order to reflect the changing face of the community while the DBIs should be used as tools for developers and the local government to reach the highest and best use for a property, as identified by those official plans. Though DBIs do offer a degree of flexibility in order to adjust to changing market demands, local governments should avoid using the tool as a reactionary measure.

8.2 Set clear goals for the policy

In order to address the ambiguities which sometimes are tied to DBIs local governments should be explicit in defining the purpose and process of the policy. The legislation which permits their use remains relatively flexible through its broad definition of amenities, but local governments should make clear their expectations of what constitutes a fair contribution and how it is to serve the community.

Identifying priority needs through local neighbourhood studies can go a long way in this regard, providing a policy rationale while also indicating which benefits should be provided to prospective developers. Articulating a specific goal for the policy will provide it with direction and utility beyond the notion that it simply allows developers to buy development rights, while also indicating to the development community the reason for these additional initiatives they are expected to support.

8.3 Keep the focus local

Addressing the issues related to the perception of unchecked growth across the city, as well as the requirement of nexus between development and benefit, DBIs should be employed on a local or neighbourhood basis. Building specific DBI policies into neighbourhood plans creates a clear link between the needs of the community and how local development is helping to address those issues. Early identification of local neighbourhood deficiencies will help to inform developers as to what kind of amenities or benefits should be offered. As part of the planning process the community may also provide input into the formation of these “wish lists”, fostering a higher degree of understanding and acceptance between development pressure and community development.

Restricting the provision of off-site amenities to areas in the vicinity may tend to result in what some critics describe as an inequitable distribution of public goods (Moore, 2013), but it is important to remember that DBIs are only one of numerous funding tools to provide for communities. While other tools are designed for redistributive purposes, the rationale behind DBIs is to specifically address the local impact of development. If a municipality wishes to disburse general funds gathered from DBI contributions, they should set standards for how much funding will be diverted to other uses while ensuring the majority is still directed towards local needs. The City of Burnaby’s recent shifts in distribution policy through the expanding of their amenity provision from Town Centre areas to broader surrounding quadrants is an example of one such way to manage this process (Burnaby, 2014).

8.4 Work with the development community when creating policy

DBIs are designed to be an incentive carrot more so than a regulatory stick. To ensure that the policies are seen as a win-win rather than just another cost to bear municipalities should actively engage with their local development community representatives during the formative stage of developing their policy. Active engagement with the development community has the potential to help identify the most effective structure and target rates to ensure that developers will want to take advantage of the incentive, while also granting them a degree of ownership in the program itself. Examples from the implementation of Coquitlam's CAC program (2013) and the recent shift in Vancouver's CAC policy towards target rates (Duggan, 2014) indicate the role the development community can have in shaping incentive policy.

8.5 Report, educate, and inform

In order to address potential misperceptions regarding DBI programs local governments should make extra effort to educate both the public and development community on the process, goals, and expectations when implementing new policy. In order to track the progress and highlight the value of the program, however, it is crucial that the municipality also report on the status of the program at regular intervals. These reports should identify the number of DBI agreements which have been entered into by the City, detailing how much density has been permitted alongside a list of the benefits secured through these agreements. Accurate reporting on the form and value of benefits secured must be provided in the spirit of transparency, both to educate the public how local development has provided for the community, while also tracking where general amenity funds have gone. This is especially crucial for tracking cash-in-lieu contributions to large ticket items for the community which may be funded over time via multiple development contributions. Large municipalities like Vancouver may be able to produce these reports on an annual basis, but depending on development rates and staffing capacity smaller municipalities may not require reports as frequently (*personal correspondence*, 2015).

8.6 Update the policy at reasonable intervals

The preferences and needs of the development community and local neighbourhoods are not static. Issues shaped by changing market conditions and shifting demographics will inevitably require adjustments to the focus and targets of any DBI framework. To ensure efficiency and effectiveness these policies should be reviewed at reasonably scheduled intervals, confirming that the program is achieving its goals while also determining if those same goals should be changed to suit the community's changing needs. The B.C. MCSCD (2014) recommends that municipalities using DBI policies emulate the best practices proposed for DCC bylaws, suggesting a required major review of the program every five years (B.C. MCS, 2005). These reviews should include meaningful consultation with the public and development community, ensuring that the policy represents the changing dynamics and preferences of the community as a whole. Depending on how frequently they are able to track and report on their DBI program, a municipality may also be able to make minor changes to their policy as need dictates, but a thorough review should still be conducted regardless at set period intervals to ensure proper consultation and review.

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Appendices:

Appendix A – British Columbia’s Legislated Tools for the Collection of Fees and/or Acquisition of Land from New Development to Address Certain Impacts of New Growth.

Tool	Section of LGA	Use
DCCs for off-site servicing	s. 933	<ul style="list-style-type: none"> Charged on any development building permit to help offset costs of additional servicing required, primarily engineering and infrastructure needs, but also parks, replacement housing, and child care needs. Must be set in a local DCC bylaw and should be reviewed every five years.
Money towards acquiring school sites	s. 937.3	<ul style="list-style-type: none"> Collect funding from subdivision and new development applications to contribute to capital needs of local educational boards.
On-site services related to subdivision	s. 938	<ul style="list-style-type: none"> Recovery of municipally services provided on site as part of a plan of subdivision.
Excess capacity or extended services	s. 939	<ul style="list-style-type: none"> Collect funding from subdivision and new development which will be serviced by highways or sewer/drainage systems provided offsite which are to be provided or funded by the local government levying the fee.
Parkland dedication from subdivision	s. 941	<ul style="list-style-type: none"> May require up to 5% of plan of subdivision be set aside for parkland dedication, or provide cash-in-lieu.
Land for road right of ways	s. 945	<ul style="list-style-type: none"> May require as part of plan of subdivision to provide access to site.

As adapted from the Ministry of Community, Sport and Cultural Development (2014)

Appendix B – Local Government Act Section 904¹⁴

Zoning for amenities and affordable housing

904 (1) A zoning bylaw may

(a) establish different density regulations for a zone, one generally applicable for the zone and the other or others to apply if the applicable conditions under paragraph (b) are met, and

(b) establish conditions in accordance with subsection (2) that will entitle an owner to a higher density under paragraph (a).

(2) The following are conditions that may be included under subsection (1) (b):

(a) conditions relating to the conservation or provision of amenities, including the number, kind and extent of amenities;

(b) conditions relating to the provision of affordable and special needs housing, as such housing is defined in the bylaw, including the number, kind and extent of the housing;

(c) a condition that the owner enter into a housing agreement under section 905 before a building permit is issued in relation to property to which the condition applies.

(3) A zoning bylaw may designate an area within a zone for affordable or special needs housing, as such housing is defined in the bylaw, if the owners of the property covered by the designation consent to the designation.

Source: The Local Government Act (1996)

¹⁴ The language found in Section 904 of the *LGA* is identical to the language found in Section 565.1 of the *Vancouver Charter*.

Appendix C – Comparison of DCLs and CACs

Contribution	Applies To	Due Date	Allocation	Rate Approach
Development Cost Levy	All developments including those being rezoned	When the building permit is issued	DCL money will partially fund parks, childcare facilities, replacement housing, and engineering infrastructure	Flat rate, per square foot of floor space to be built
Community Amenity Contributions	Only developments that are being rezoned	Before rezoning enactment	CACs contribute to community centres, libraries, daycares, park improvements, neighbourhood houses, fire halls, and more	Various approaches are used, including fixed rate targets and site-specific negotiation

As adapted from the City of Vancouver (2014).