INCLUSIONARY HOUSING

Incentives, Regulations and Mechanisms

This document outlines the requirements, incentives, regulations and mechanisms for implementing inclusionary housing in the City of Johannesburg

Approved by Council on 21 Feb 2019

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1. Definitions

Inclusionary Housing: A housing programme that, through conditions attached to land use rights approvals, requires private developers to dedicate a certain percentage[1] of new housing developments to low income and low middle income households, or to households that may not otherwise afford to live in those developments.

Council: means the municipal council and legislative authority of the City as contemplated in section 157 of the Constitution.

Development: As defined in the City of Johannesburg Municipal Planning By-law, 2016.

Dwelling Unit: As per the Johannesburg Land Use Scheme 2018. Also referred to as "unit" or "units" in this framework. Can also include "dwelling house" as per the Johannesburg Land Use Scheme 2018, in this document.

Floor Area Ratio (FAR): As per the Johannesburg Land Use Scheme 2018.

Floor Area: As per the Johannesburg Land Use Scheme 2018.

Land Development Application: As defined in the City of Johannesburg Municipal Planning By-law, 2016. Also referred to as "application" in this Framework.

Low-Middle Income: Households earning R7000 per month or less.

Market Units: Dwelling units that a developer would ordinarily build to sell or rent out on the open market. Market units are the units in a development that are not part of the inclusionary housing component.

Property: As per the Johannesburg Land Use Scheme 2018.

Residential Floor Area: The portion of floor area in a development used for residential dwelling units.

Rezoning: As defined in the City of Johannesburg Municipal Planning By-law, 2016.

Township Establishment: As defined in the City of Johannesburg Municipal Planning By-law, 2016.

Township: As defined in the City of Johannesburg Municipal Planning By-law, 2016.

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[1] In this document, a minimum of 30% of inclusionary units is required in each option provided.

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2. Introduction

This Framework gets its legislative and policy impetus from a number of legal frameworks, including the Spatial Planning and Land Use Management Act, 2013 (No. 16 of 2013), the National Development Plan (National Planning Commission, 2012), and the City of Johannesburg Spatial Development Framework 2040 (City of Johannesburg, 2016) and the Integrated Urban Development Framework (IUDF) which states "An inclusionary housing policy should be developed that incentivises property developers to include a level of affordable housing in their developments (COGTA, 2016, p. 66).

The Johannesburg SDF 2040 took a bold step to call for inclusionary housing while the framework of implementation was being drafted stating:

"Until such time as the Gauteng Inclusionary Housing Bill is adopted or the proposed City of Johannesburg Inclusionary Housing Policy is drafted and adopted by council, all new residential or mixed use developments of 10 residential units or more must include at least 20% affordable inclusionary housing." (City of Johannesburg, 2016, p. 141)

The City has identified a critical need for this framework; this is based on a number of objectives that have been identified which are linked to the City's legislative mandate.

Firstly, the Framework presents one of the many tools aimed at addressing the stark inequalities in Johannesburg. These inequalities are engrained in space and to a large extent still represent the apartheid spatial design of the City. There is a significant backlog of housing for low income households, with this demand often in inadequate informal housing. Many of the city's poor residents still live in predominantly residential areas on the edges of the City (formerly segregated 'townships'), far from economic opportunities and social amenities. The post-apartheid era has seen very limited mixing of households across the city, both in terms of race and income. Thus, this framework aims to increase the supply of lower income housing, create more of a mix of income groups across new developments in the city, and create more affordable housing in areas that are well located in terms of access to jobs and amenities.

Secondly, the framework will serve as a mechanism for land value capture in favour of the City and its residents. Council is mandated to administer and award development rights within the City. The awarding of such rights usually results in an increase in value. This increase in value should not only be enjoyed by the property owner, but should benefit the wider City and its residents, as per the principles outlined in SPLUMA.

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Linked to inequalities that prevail in Johannesburg, the Framework aims to create more of a mix of income groups in private housing developments. This is informed by its role as articulated in the Section 9 (1) (f) of the Housing Act 1997 (Act No. 107 of 1997) cited below as:

(1) Every municipality must, as part of the municipality's process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to-

(f) Initiate plan, co-ordinate, facilitate, promote and enable appropriate housing development in its area of jurisdiction.

In order for Council to achieve this desired outcome, strong partnerships with the private sector are needed. This Framework therefore aims to facilitate and grow those partnerships in terms of the delivery of more affordable housing. Supporting mixed-income housing development can serve as an effective means of improving the quality of the affordable housing stock and can play an important role in re-stitching the city's social fabric.

Thirdly, the Framework aims to enable the City to leverage on infrastructure investments it and other spheres of government make to ensure that such investments benefit large and diverse portions of the population, effecting spatial transformation. This is in line with outcome 2 of the City's 2018/19 Integrated Development Plan: An inclusive society with enhanced quality of life that provides meaningful redress through pro-poor development (City of Johannesburg, 2018).

In essence, Inclusionary Housing as introduced in this framework of implementation is seen as a mechanism that would facilitate a move towards a more inclusive, efficient and effective City. The Framework thus provides requirements and conditions for inclusionary housing and details the different options available for implementing inclusionary housing. Importantly, a calculator has been developed to provide a basis for inclusionary housing proposals and negotiations between the Council and the private sector.

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3. Requirements and Conditions for Inclusionary Housing

3.1. General Requirements and Conditions

3.1.1. Inclusionary housing is mandatory for any development application under the jurisdiction of the City of Johannesburg Metropolitan Municipality that includes 20 dwelling units or more. Different options (and associated incentives) are given for inclusionary housing that developers may choose from. **In each option, a minimum of 30% of the total units must be for inclusionary housing.**

3.1.2. Inclusionary housing requirements are triggered by land development applications. As such, the Framework does not affect existing, approved land use rights.

3.1.3. When inclusionary housing is applicable, it will be implemented as a condition for development (in land use/development approvals) by the City of Johannesburg. The City may take action against developers/owners who do not comply with the conditions for inclusionary housing outlined in land use/development approvals, as with any condition of approval.

3.1.4. This inclusionary housing framework is designed to provide accommodation for rental or ownership. It is intended for dwelling units, not residential buildings (as per the Johannesburg Land Use Scheme 2018).

3.1.5. All conditions for inclusionary housing will be in place for perpetuity, or until repealed by a Council resolution.

3.1.6. Any development control bonus contemplated in this document, will be over and above the allowable development controls as per the prevailing and relevant spatial policy. As such, development controls as per prevailing spatial policies must be determined first, with bonus controls added to that determination.

3.2. Voluntary Implementation

3.2.1. A developer developing below the threshold of 20 units, but who meets the criteria for one of the inclusionary housing options in this framework, may still benefit from the incentives associated with the option chosen.

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3.3. <u>Starting Date and Review Period of this Framework of Implementation</u>

3.3.1. The mandatory part of this Framework will come into effect 90 days from its adoption by Council. Developers who would like to voluntarily participate, may submit inclusionary housing applications before the 90 days have lapsed.

3.3.2. The Framework will be reviewed as and when Council deems it appropriate. The review will assess the success of the Framework and make relevant changes if any. Reviews shall follow due process.

3.4. <u>Location of Inclusionary Housing</u>

3.4.1. Inclusionary housing requirements and incentives are applicable across the whole area of the City of Johannesburg Metropolitan Municipality. Developments with inclusionary housing are subject to normal land development policy and processes in the City (including the Spatial Development Framework and the Municipal Planning By-Law 2016) other than the bonuses and incentives outlined in this document.

3.4.2. Inclusionary housing units must be built on the same site or in the same township (in the case of a township establishment) as the market units being provided.

3.4.3. Besides the incentives outlined in this document, incentives from other policies and/or legislation, where applicable, can be applied.

3.5. <u>Conditions associated with Inclusionary Housing Incentives</u>

3.5.1. Incentives or requirements for inclusionary housing laid out in this framework may not be retrospectively applied to land use/development applications that were approved before the adoption of this framework by Council.

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3.5.2. If any density or development control bonus is sought that was not included in the initial land development application and advertisement, then re-advertisement will be required. All inclusionary housing land development applications (and any accompanying technical reports and advertisement) should thus include the full development controls and densities (including bonuses and the inclusionary housing component). Applications should indicate the full development controls and density applied for, and a breakdown of the market and inclusionary units, and their respective development controls and FAR (See section 6 for examples).

3.5.3. Advertisements need only include the full controls (including bonuses and total units[2]) applied for.

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[2] Total units are market and inclusionary units added together.

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4. Options for inclusionary housing

A number of options for inclusionary housing are available to developers. In any application for 20 dwelling units or more, one of the following inclusionary housing options must be included.

Table 1 below is a summary of options, and details are given later in the document.

Table 1: Inclusionary Housing options

Option	Description	Details	Incentives (summary)
Option 1	**30% of Dwelling Units are:**	Social Housing; or FLISP Housing; or Housing with a rental cap: R2100 per month (2018 prices).	Increase in FAR equal to the total % of inclusionary housing (max 50% increase). Increase in density (in du/ha) to accommodate the extra units. Parking reduction for inclusionary units.
Option 2	10% of the total residential floor area is made up of small units. **At least 30% of total units in the development must be inclusionary housing.**	Minimum: 18m2 Maximum: 30m2 Average: 24m2	Increase in FAR to accommodate the 10% floor area for IH. Increase in density (in du/ha) to accommodate the extra units. Parking reduction for inclusionary units.
Option 3	20% of the total residential floor area is made up of units that are 50% of the average market unit size. **At least 30% of total units in the development must be inclusionary housing.**	Maximum: 150m2 Minimum: 18m2	Increase in FAR to accommodate the 20% floor area for IH. Increase in density (in du/ha) to accommodate the extra units.
Option 4	To the satisfaction (in writing) of City Transformation and Spatial Planning, City of Johannesburg		

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4.1. Option 1: 30% Social Housing, FLISP, or Capped Rent

For this option, 30% of total units in the development must be Social Housing, Finance Linked Individual Subsidy Programme (FLISP) housing or housing with rentals capped at R2100 a month in 2018 prices. A mix of these three types of units will also be allowed, as long as they add up to 30% of units across the entire development. Details on each of these is included under relevant headings below.

4.1.1. Incentives for Option 1

At least 30% of the total units in the development must be inclusionary housing to benefit from the incentives below (e.g. 14 market units, 6 inclusionary housing units, and total 20 units)

    a) An increase in the allowable residential floor area (through an increase in the floor area ratio) equal to the percentage of inclusionary housing in the development. The maximum increase in floor area is 50%. The FAR bonus may be used for an increase in height or coverage, or a combination of the two. For example, in a development of 70 market units and 30 inclusionary units (total of 100) a 30% increase in FAR will be awarded.

    b) Density (in dwelling units per hectare) must be increased so that the inclusionary housing units included are over and above the allowable density in the relevant, prevailing spatial policy for the area (to a maximum of 50% increase).

    c) Inclusionary housing units will be subject to half of the parking requirements indicated by the applicable town planning/land use scheme or prevailing spatial policy for the area; unless stated otherwise by the relevant roads authority.

4.1.2. Social Housing

    a) Social Housing that complies with the Social Housing Act (No. 16 of 2008) and the Social Housing Regulatory Authority as a part of a development containing or not containing market units, will be considered inclusionary housing under Option 1.

    b) Minimum design requirements:

        i. As per the Social Housing Act (No. 16 of 2008) and the Social Housing Regulatory Authority.

        ii. Must have the same outward appearance as market units on the same property, or in the same development.

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   iii. Must share common spaces, such as entrances, lifts, communal spaces, shared amenities, with market units in the same development or property. Access to these common facilities must be unconstrained for all residents.

c) Once built, inclusionary housing units must remain inclusionary for perpetuity, or until repealed by a Council resolution.

4.1.3. FLISP Housing

a) Dwelling units that qualify under the Finance Linked Individual Subsidy Program (FLISP), and are sold to recipients of a FLISP subsidy, will be considered inclusionary housing under Option 1.

b) Developers must provide proof, to the Director City Transformation and Spatial Planning, within 3 months of transfer of ownership taking place that the inclusionary units were sold to a recipient of the FLISP. This proof must be provided for each inclusionary unit sold.

c) Minimum design requirements for FLISP housing:

   i. Must include a private bathroom (within the unit, with access only from within that unit) with a minimum of a toilet, shower and basin.

   ii. Must meet the size requirements in the Johannesburg Land Use Scheme 2018 (7 square metres of habitable space per person) and be a minimum of 18 square metres per unit.

   iii. Must have the same outward appearance as market units on the same property, or in the same development.

   iv. Must share common spaces, such as entrances, lifts, communal spaces, shared amenities, with market units in the same development or property. Access to these common facilities must be unconstrained for all residents.

4.1.4. Private ownership with capped rentals

a) Units where rentals, including levees but excluding utility bills, do not exceed R2100 a month[3] (for 2018) will be considered as inclusionary housing under Option 1. Prices may be corrected for inflation using yearly consumer price inflation rates for housing in urban areas, published annually by Statistics South Africa.

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[3] This is based on 30% of R7000 household income. This amount is from the Johannesburg Spatial Development Framework 2040, section 8.1.2.

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b) In the case of private ownership and rentals, annual audited reports (with personal details of tenants excluded) must be provided to the Director, City Transformation and Spatial Planning, City of Johannesburg, and made publically available, showing that the rental amounts charged (for inclusionary housing units) are in line with the price brackets defined above. Annual Reports must be published on the 1st of July each year. These reports need only contain the inclusionary component of the development, and not market units. Documents that are publically available must be placed on an online repository that is openly accessible to any party who may be interested in the information.

c) Once built, inclusionary housing units must remain inclusionary for perpetuity, or until repealed by a Council resolution.

d) Minimum design requirements for rent capped housing:

    i. Must include a private bathroom (within the unit, with access only from within that unit) with a minimum of a toilet, shower and basin.

    ii. Must meet the size requirements in the Johannesburg Land Use Scheme 2018 (7 square metres of habitable space per person) and be a minimum of 18 square metres per unit.

    iii. Must have the same outward appearance as market units on the same property, or in the same development.

    iv. Must share common spaces, such as entrances, lifts, communal spaces, shared amenities, with market units in the same development or property. Access to these common facilities must be unconstrained for all residents.

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4.2. Option 2: 10% of Residential Floor Area for Units Averaging 24m^2

4.2.1. Option 2 only applies to areas in the City where a density of 60 dwelling units per hectare or more is supported in the prevailing spatial policy before inclusionary bonuses are applied.

4.2.2. In this option, in developments of 20 units or more, 10% of the total residential floor area must be made up of units that are a minimum of 18m^2, a maximum of 30m^2 and average 24m^2.These are the inclusionary units under option 2.

4.2.3. At least 30% of total units in the development must be for inclusionary housing as defined immediately above.

4.2.4. Inclusionary units in option 2 may be rented out or sold on the open market.

4.2.5. Inclusionary units in option 2 may not be consolidated or subdivided. This condition must be added to the title deed of each inclusionary unit, in the case of sectional title or freehold development.

4.2.6. Incentives for Option 2

a) To qualify for these incentives, at least 10% of the total residential floor area in the development must be made up of units that are minimum of 18m^2, a maximum of 30m^2 and average 24m^2, and at least 30% of units across the development should be inclusionary units.

b) An increase in FAR which would allow the 10% inclusionary housing floor area to be over and above the floor area as allowed by the prevailing spatial policy. The FAR bonus may be used for an increase in height or coverage, or a combination of the two. To allow for this, the allowable floor area (as per prevailing spatial policy) must be multiplied by 1.111.[4]

c) Density (in dwelling units per hectare) must be increased so that the inclusionary housing units included are over and above the allowable density in the relevant, prevailing spatial policy for the area.

d) Inclusionary housing units will be subject to half of the parking requirements indicated by the applicable town planning/land use scheme or prevailing spatial policy for the area; unless stated otherwise by the relevant roads authority.

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[4] *Multiplier to ensure the added FAR makes up* 10% *of the new total* $= \frac{1}{(1-10\%)}$

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4.2.7. Minimum Design Requirements for Option 2

a) Must include a private bathroom (within the unit, with access only from within that unit) with a minimum of a toilet, shower and basin.

b) Must meet the size requirements in the Johannesburg Land Use Scheme 2018 (7 square metres of habitable space per person) and be a minimum of 18 square metres per unit.

c) Must have the same outward appearance as market units on the same property, or in the same development.

d) Must share common spaces, such as entrances, lifts, communal spaces, shared amenities, with market units in the same development or property. Access to these common facilities must be unconstrained for all residents.

4.3. Option 3: 20% of Residential Floor Area for Smaller Units

4.3.1. In this option, in developments of 20 units or more, 20% of the total residential floor area must be made up of units that are 50% of the average size of market units in the same development, with a maximum of 150m² and a minimum of 18m² per inclusionary unit. These are the inclusionary housing units under option 3.

4.3.2. At least 30% of total units in the development must be for inclusionary housing as defined immediately above.

4.3.3. Inclusionary units in Option 3 may be rented out or sold on the open market.

4.3.4. Inclusionary units in Option 3 may not be consolidated or subdivided. This condition must be added to the title deed of each inclusionary unit, in the case of sectional title or freehold development.

4.3.5. Incentives for Option 3

a) To qualify for these incentives, at least 20% of the total residential floor area in the development must be made up of units that are 50% of the size of market units in the same development, with a maximum of 150m² and a minimum of 18m² per inclusionary unit, and at least 30% of units across the development should be inclusionary units.

b) An increase in FAR which would allow the 20% inclusionary housing floor area to be over and above the floor area as allowed by the prevailing spatial policy. The FAR bonus may be used for an increase in height or coverage, or a combination of the two. To achieve this, the allowable floor area (as per the prevailing spatial policy) must be multiplied by 1.25.[5]

c) Density (in dwelling units per hectare) must be increased so that the inclusionary housing units included, are over and above the allowable density in the relevant, prevailing spatial policy for the area.

d) No specific parking reduction is given for Option 3. If a parking reduction is sought, it should be motivated and applied for in the relevant development application.

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[5] $Multiplier\ to\ ensure\ the\ added\ FAR\ makes\ up\ 20\%\ of\ the\ new\ total = \frac{1}{(1-20\%)}$

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4.3.6. Minimum Design Requirements for Option 3

a) Must include a private bathroom (within the unit, with access only from within that unit) with a minimum of a toilet, shower and basin.

b) Must meet the size requirements in the Johannesburg Land Use Scheme 2018 (7 square metres of habitable space per person) and be a minimum of 18 square metres per unit.

c) Must have the same outward appearance as market units on the same property, or in the same development.

d) Must share common spaces, such as entrances, lifts, communal spaces, shared amenities, with market units in the same development or property. Access to these common facilities must be unconstrained for all residents.

4.4. Option 4: To the Satisfaction of Council

4.4.1. Applicants may request a negotiated outcome for inclusionary housing that deviates slightly from the options 1 to 3. This request must be made in writing to the Director, City Transformation and Spatial Planning. The request must include:

a) Particulars of the application including erf description, current land use rights and applied for rights.

b) Reasons why options 1, 2 or 3 are not desirable/suitable/possible in the application.

c) Proposal for how inclusionary housing will be accommodated.

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4.4.2. The Director, City Transformation and Spatial Planning (or a delegated representative from the directorate) shall then, in writing, accept, reject or propose an amendment to the Inclusionary Housing proposal put forward. If necessary, a meeting may be requested by the Director or their delegated representative.

4.4.3. Once agreed, the Director (or delegated official) shall, in writing, provide the agreed upon parameters for inclusionary housing in the development, to the applicant and Land Use Management.

4.4.4. The letter shall refer to the inclusionary housing component of the application only, and not the merits of the application. As such, it will not guarantee approval from Land Use Management, who must assess the merits of the application as normal.

4.4.5. No incentives or development bonuses, other than those contained in this or any other relevant Council-approved policy or legislation, may be awarded under Option 4 by City Transformation and Spatial Planning.

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5. Works Cited

City of Johannesburg. (2016, June 23). *Spatial Development Framework 2040.* Retrieved from City of Johannesburg: http://bit.ly/joburg-sdf-16

City of Johannesburg. (2018). *2018/19 IDP.* Retrieved from City of Johannesburg: http://bit.ly/CoJ-IDP-18-19

COGTA. (2016). *Integrated Urban Development Framework.* Retrieved November 26, 2016, from The Ministry of Cooperative Governance and Traditional Affairs: http://bit.ly/IUDF_SA

National Planning Commission. (2012). *National Development Plan 2030: Our future - make it work.* Retrieved from South African Government: http://bit.ly/NDP_2030

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6. Example of options 1, 2 and 3

The example below takes place in the following setting, with the following example controls applied for:

1. Example Controls Sought by Applicant		
Application Site Size	0.2	ha
	2 000	**m2**
Non-Res Floor Area	%	
Ancillary use to res	% **or**	**m2**
Proposed Units	20	**units**
Proposed Inclusionary Units (option 1 only)	9	**units**
Minimum Inclusionary Units (option 1 only)	9	
Percentage Inclusionary (option 1)	**31.03%**	
Height Sought	3	**Floors**
Coverage Sought	50%	**%**
FAR Applied For	**1.50**	
Total Units Proposed	29	**total units**
Density Market Units	100.0	**du per ha**
Total Density	145.0	**du per ha**
FAR bonus (option 1)	**31.03%**	

Then, suppose the allowable controls per the prevailing policy in the area would support: 100 du/ha, 3 floors and 40% coverage, giving 1.2 FAR. The following would apply per spatial policy (without inclusionary housing).

2. Example Allowable Controls per Spatial Policy (without inclusionary housing)		
Density	100	**du per ha**
Units Allowed	20	**units**
Height	3	**floors**
Coverage	40%	
FAR	1.20	
Floor Area	2 400	**square metres**
Parking (res)	1.333	**bays per unit**
Parking (non-Res)		**bays per 100m2**

Then the following three options could be chosen from with the requirements for inclusionary housing, and associated bonuses in FAR, density and parking:

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Options for Inclusionary Housing

	Option 1			Option 2			Option 3		
Density	145		du/ha	145		du/ha	145		du/ha
Units	29 total	20	market	29 total	18	market	29 total	19	market
		9	inclusionary		11	inclusionary		10	inclusionary
		31%	IH Units		38%	IH Units		34%	IH Units
Height	3		floors	3		floors	3		floors
Coverage	50		%	44		%	50		%
FAR	1.50			1.33			1.50		
Floor Area	**3 000**		Total m2	**2 667**		Total m2	**3 000**		Total m2
	0		m2 non-res	0		m2 non-res	0		m2 non-res
	3 000		m2 total res	2 667		m2 total res	3 000		m2 total res
				2 400		m2 market	2 400		m2 market
				267		m2 IH	600		m2 IH
			m2 ancillary			m2 ancillary			m2 ancillary
	103		m2 average per unit	133		m2 avg. per market unit	126		m2 avg. per market unit
				24 avg. (min. 18 max. 30)		m2 per unit inclusionary	60 max. 18 min.		m2 per unit inclusionary
Parking	33		bays (res)	31		bays (res)	39		bays (res)
	0		(non-res)	0		(non-res)	0		(non-res)

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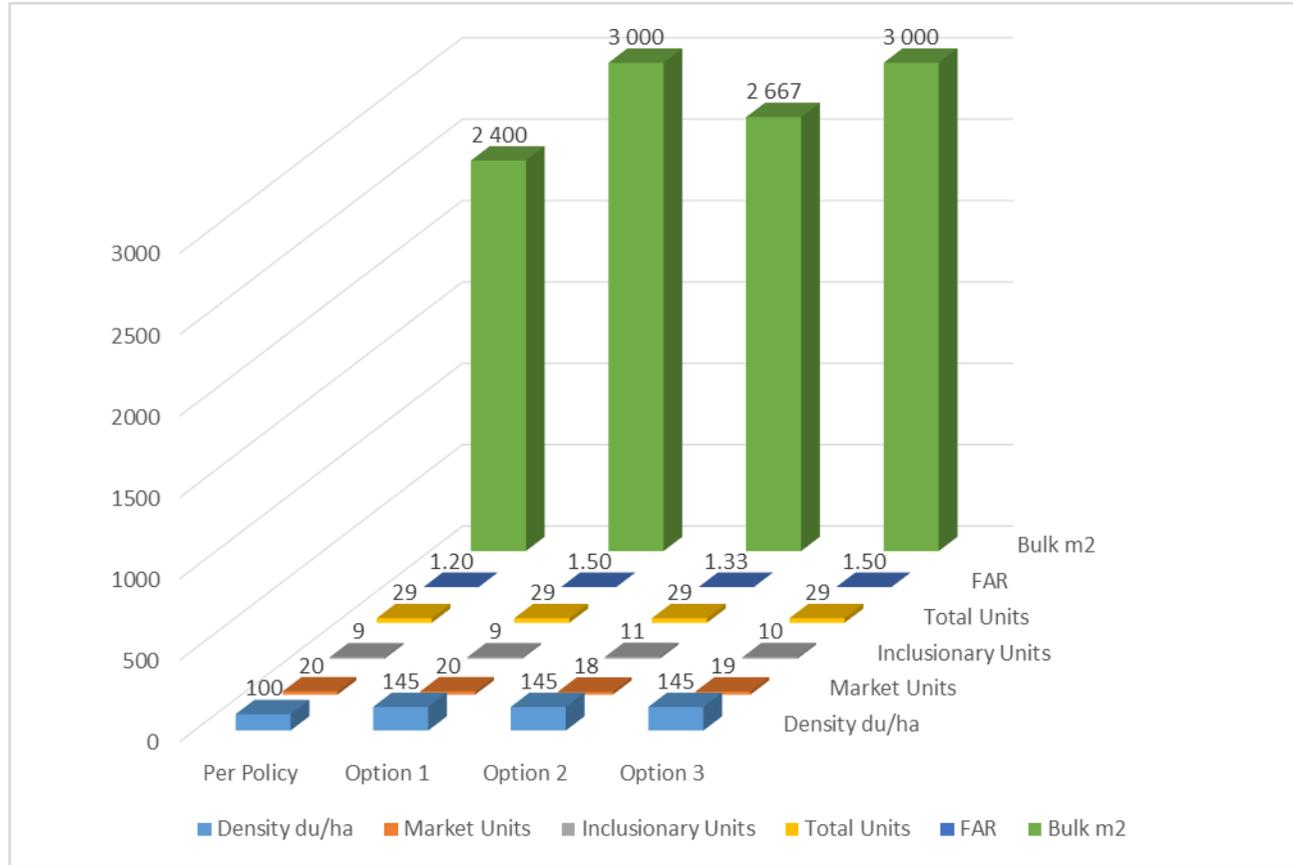|	Option 1	Option 2	Option 3
General Conditions	At least 9 units (the inclusionary units) must be Social Housing, FLISP housing, or rent capped housing as per the Inclusionary Housing Policy 2019.	A maximum of 18 market units may be built. The total combined extent of the market units may not exceed 2400 square metres giving an average of 133 square metres per unit.	A maximum of 19 market units may be built. The total combined extent of the market units may not exceed 2400 square metres giving an average of 126 square metres per unit.
		11 inclusionary housing units must be built. These units must meet the following size requirements: 24 avg. (min. 18 max. 30) square metres. The combined extent of the inclusionary housing units may not exceed 267 square metres.	10 inclusionary housing units must be built. These units must meet the following size requirements: 60 max. 18 min. square metres per unit. The combined extent of the inclusionary housing units may not exceed 600 square metres.

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Figure 1: Comparison of Examples

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