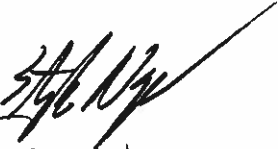



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TO: GENERAL COMMITTEE

SUBJECT: EXTENSION OF TEMPORARY USE BY-LAW – KEMPENFELT BAY SCHOOL, 576 BRYNE DRIVE

PREPARED BY AND KEY CONTACT: A. HILL, DEVELOPMENT PLANNER  
EXT. #4719

SUBMITTED BY: S. NAYLOR, MES, M.C.I.P., R.P.P., DIRECTOR OF PLANNING 

GENERAL MANAGER APPROVAL: R. FORWARD, MBA, M.Sc., P. ENG.  
GENERAL MANAGER OF INFRASTRUCTURE, DEVELOPMENT & CULTURE 

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

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**RECOMMENDED MOTION**

1. That the application by Glen Lucas Associates on behalf of 1255560 Ontario Inc. (BIN Management) to extend a Temporary Use By-law for lands known municipally as 576 Bryne Drive and 111 Commerce Park Drive, (currently occupied by Kempenfelt Bay School), to permit a school and playing field, be extended for a period of 3 years from the date of passage of the implementing Temporary Use By-Law. (Attached as Appendix "A" to Staff Report PLN007-13.)
2. That in accordance with Section 34(17) of the Planning Act, Council has determined that no further public notification is required.

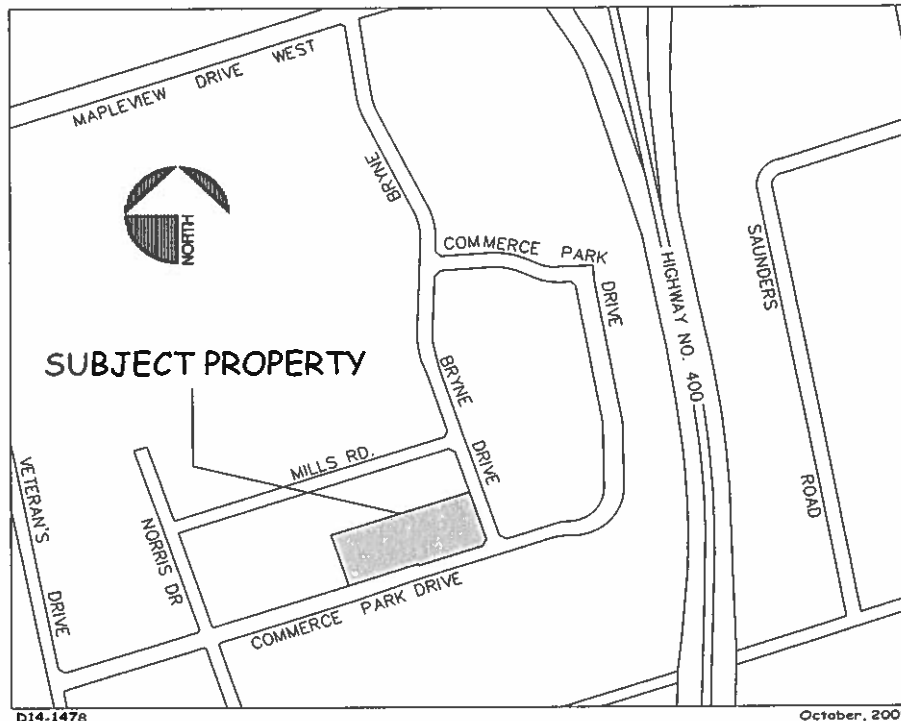
**PURPOSE & BACKGROUND**

Purpose

3. The purpose of this report is to recommend the extension of a Temporary Use By-law for a period of 3 years to permit the operation of an elementary school and associated playfield on the subject lands, currently zoned Service Industrial EM3 in accordance with By-Law 2009-141 as amended by By-Law 2010-047.

Location

4. The subject property is located on the northwest corner of Bryne Drive and Commerce Park Drive and is situated in the 400 West Planning Area and is known municipally as 576 Bryne Drive. Kempenfelt Bay School is currently located on 576 Bryne Drive and an associated temporary playing field is located on abutting lands known municipally as 111 Commerce Park Drive.



Existing Policy

5. The subject property is designated General Industrial Area in the Official Plan. The predominant use of lands designated General Industrial include manufacturing, processing, servicing, storage of goods and materials, warehousing and similar such uses. Commercial uses which serve the Industrial area or which are ancillary to the industrial uses may also be permitted, which may include banks, restaurants, automotive repair establishments and business and provision offices. A school use is not permitted within the General Industrial designation.
6. The subject property is zoned Service Industrial EM3 by Zoning By-law 2009-141. Uses permitted in the EM3 Zone include certain industrial, commercial and institutional uses including a commercial school, day nursery and industrial school, but do not include a private or public school.

Surrounding Land Use

7. The surrounding lands uses are as follows:
  - North & South: Lands zoned service industrial including mixed use industrial commercial office services including an electrical supply, furniture supply, daycare, heating, ventilating and air conditioning and place of worship.
  - West: Lands zoned Service Industrial EM3 with mixed use industrial commercial buildings including a sign and display store, employment resources and engineering consulting services.
  - East: A storm water management facility.
  - Northeast: Mixed use service industrial building including a daycare and fitness centre.

## ANALYSIS

8. Kempenfelt Bay School is an independent, co-education school with a current enrolment of approximately 120 students from Junior Kindergarten to Grade 8 and currently occupies 2,175m<sup>2</sup> (23,408ft<sup>2</sup>) within a multi-use building located at 576 Bryne Drive. A temporary playfield is located on the adjacent site at 111 Commerce Park Drive, being a vacant lot on the Industrial plan of subdivision, Plan 51M-845. 1255560 Ontario Inc. (BIN Management) originally applied for a temporary use by-law to permit the location of this school within an industrial zone in 2002.
9. A Temporary Use By-law is intended to allow land and buildings to be zoned to permit temporary uses for renewable periods of up to 3 years. Upon the expiry of the time period authorized by the Temporary Use By-law, the uses permitted under the Temporary Use By-law are intended to cease unless an extension is applied for and granted. These uses cannot seek protection under Section 34(9) of the Planning Act as a legally non-conforming use. A Temporary Use By-Law is subject to the same public notice, approval and appeal process as other zoning amendments under Section 34 of the Planning Act.
10. In accordance with Section 39(3) of the Planning Act a public meeting, according to the solicitor, is not required for an extension providing the by-law is passed by Council prior to the expiry date. The public would still be provided notice of the passing of the by-law and would have the opportunity to appeal following Council approval of the by-law.
11. The intention of temporary use by-laws in the Planning Act and in the City's Official Plan is to allow uses that would otherwise be prohibited under the zoning by-law to operate for a limited time period.
12. The application before Council is the third application for an extension to a temporary use sought by the Kempenfelt Bay School. The school has been in operation at its current location for a period of 10 years. A further 3 year extension would allow the school to continue its operation within this industrial area for a period totalling 13 years or longer.
13. Kempenfelt Bay School currently has an enrolment of approximately 120 students. When the first extension was sought in 2006, the school also requested permission to extend an outdoor amenity area to the adjacent property at 111 Commerce Park Drive. The two occupied multi-unit buildings and playfield represent approximately 2.45 hectares of industrial land.

### Public Meeting

14. As noted above, a public meeting is not required providing the Temporary Use By-law is approved by Council prior to the expiry date. The last public meeting held with regard to an application from Kempenfelt Bay School on behalf of the owner 1255560 Ontario Inc., for approval to extend the temporary use of lands for the private elementary school and playing field was on November 16, 2009. No comments or concerns were received. The by-law permitting the last extension of this temporary use, passed in March of 2010, will lapse on March 7, 2013.
15. A public meeting is not suggested given the opportunity to have Council approve the temporary use by-law on March 4, 2013, prior to the expiration of the current by-law.

### OPA 100 and By-law 2005-275

16. Since the approval of the initial Temporary Use By-law permitting a non-industrial use on these Industrially designated and zoned lands, the City of Barrie has revised a number of policy documents associated with protecting its employment lands. These changes have occurred under the framework of the Official Plan, as amended by (OPA 100) and the update to the Industrial Section of the Zoning By-law as amended by By-Law 2005-275. These planning

documents embodied a concerted strategy to protect employment lands from incursions of non-employment uses. When the update to the Industrial Section of the Zoning By-law was under consideration, Council heard from a number of interest groups including those from the traditional industrial sector. These industries indicated they want an environment where they are confident that they will be able to conduct their business and expand if possible.

17. One of the primary issues was that industrial uses do not want to have their operations constrained because of potential complaints from adjoining land uses. They are interested in having a suitably sized and located supply of industrial lands for the long term, allowing for predominantly traditional industrial uses and the restriction or elimination of those uses that detract from the primary industrial function of industrially designated and zoned lands. It was also observed that many of the uses which are most incompatible with traditional industrial uses have the option of locating in a variety of other zoning categories, and they simply choose to locate on industrial lands because of the relative low cost of these lands. By comparison, traditional Industrial uses have limited options on suitably zoned lands.

#### Analysis

18. When the temporary use was initially permitted, and extended, much of the land to the west was still being developed. Since it was expected that the use would be temporary, the short term impact on lands to be developed in the future was not of concern. However, since then, the industrial subdivision and vacant land to the west have started to develop and vacant properties are being occupied with industrial uses. In addition, Commerce Park Drive has been extended westerly to Veteran's Drive.
19. Policies in Section 6.8 of the Official Plan support the adoption of a Temporary Use By-Law where the effect on the surrounding area would be minimal in the short term and the nature of the proposed uses is considered appropriate and compatible with adjacent uses. In addition, services such as water, sewage disposal and roads are to be sufficient. Items such as noise, fumes, smoke, dust, odours, light and traffic generating capacity are to be considered to ensure that the impact of any such use would not be detrimental in regard to adjacent uses or the wider community.
20. Some of the incompatibilities in the day to day operations of service industrial uses may include activities that generate noise, dust or fumes. The potential impacts of truck traffic alone on a school include noise, emissions, and safety related considerations on roads that are not designed with pedestrian needs of school children in mind. Non-industrial uses such as schools encourage non-industrial vehicular and pedestrian traffic into the industrial areas which can impede truck traffic. The Building Services Department have advised that no complaints are on record from industrial/commercial users in the area concerning the operation of Kempenfelt Bay School.
21. While the school has indicated they are not ready to relocate yet, a further 3 year extension may serve to entrench them more permanently. This is becoming more of an issue now that the surrounding industrial lands have and are continuing to develop in accordance with their planned function. The presence of a "pre-existing" school site in an area intended to attract industrial uses may be a deterrent to prospective industries from locating in the area.
22. The Kempenfelt Bay School has had ten years to find an alternative site, and has to date not done so. The applicant has advised through correspondence that it is still their intension to find a permanent location for the school. Glen Lucas, the applicant's planning consultant, also advised that there has been limited opportunity to grow at the current location and that they are unable to accommodate a high school at the current location, which remains to be one of the school's objectives. Thus the long term intent is to relocate to a purpose built permanent facility elsewhere in the City. In part, a permanent site has not been pursued in the past three years due to the uncertain economic conditions, according to the applicant.

23. Staff recognizes the value of the Kempenfelt Bay School to the broader community. The issue relates to the location of this school as a "temporary" use within an area predominantly intended for industrial employment uses. Schools are more appropriately located in closer proximity to residential areas. Section 4.5.2.5 of the City's Official Plan states that:

4.5.2.5 EDUCATION FACILITIES

- (a) Where mutually beneficial, elementary and secondary schools may be located adjacent to public parks but central to the neighbourhood populations they serve. Their location should reinforce their role as a vital part of the community and minimize the hazards associated with children crossing major roads or rail lines.
- (c) Private School facilities as defined by the Zoning By-law shall be considered as institutional uses and shall be subject to all the appropriate policies of this Plan.

Previous Council Direction

24. When considering the previous extension in 2010, Council directed staff (Motion 10-G-020) to determine *"as part of the Municipal Comprehensive Review and Boundary Expansion Work Program to determine the merits of an application to re-designate the employment lands upon which the school is currently located or the opportunity for an alternative location to be designated and zoned as Institutional in the planning and development of the annexed lands."*
25. The Municipal Comprehensive Review (MCR) was undertaken with respect to the City's existing supply and future demand for employment lands. The MCR is a prerequisite to the consideration of the conversion of employment (Industrial) lands to a non-employment land use category. This study completed by Watson & Associates Economists Ltd. also examined 11 sites that had requested conversion from an employment to a non-employment land use category. The subject property was not part of that evaluation as the lands were already developed and centrally located within the City's primary industrial area.
26. The Boundary Expansion Work Program approved by Council which commenced in 2010 is expected to be completed by the middle to end of 2013, will also be assessing the need and opportunity for the creation of additional employment lands in the annexed area.
27. The lands annexed by the City are expected to be phased in and available for development by early 2014. The availability of these lands may provide a greater opportunity for the Kempenfelt Bay school to secure a suitable site that is outside of the City's industrial area and in closer proximity to either existing or future residential development.
28. Planning staff are currently conducting a review of industrial lands within the City which is referenced as an Industrial Rationalization Review/Study. This review is intended to examine all industrial zoned land and the permitted uses and determine if there is an opportunity to further define the permitted uses within these designated and zoned lands.
29. Based on the analysis above, staff is recommending that in order to provide an opportunity for the school to find other suitable accommodations, the Temporary Use By-law be extended for an additional period of 3 years from the date of the passage of the extending by-law. If approved this would give Kempenfelt Bay School until March of 2016, to seek another more suitable location.
30. It should be noted that staff are reluctant to recommend approval of a further 3 year period, as staff is concerned that eventually the use will eventually cease to be considered temporary despite that there have been no concerns expressed with the operation of the school in the area. However, the additional time will provide the opportunity for the Rationalization Industrial

Review/Study to be completed and some of the lands within the annexed area phased in and considered for development. One or both of these matters may assist in providing greater opportunity for the school to find a more suitable location.

### **ENVIRONMENTAL MATTERS**

31. There are no environmental matters related to the recommendation.

### **ALTERNATIVES**

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

**Alternative #1** General Committee could refuse to extend the by-law. This alternative is not recommended as the school would be in contravention of the Zoning By-law and they have no alternative at this time. In addition they would likely need to submit a new application for temporary use and engage in a more formal and elongated process.

**Alternative #2** General Committee could extend the by-law for a reduced period of time. This alternative could reduce the opportunity for the school to find alternate accommodation and affect their ability to continue operation.

### **FINANCIAL**

33. As long as the building and lands are occupied by the school, the current use presents a lost opportunity in terms of net potential tax revenue and costs in terms of applicable tax rebates. The financial implications based on review of 2012 taxation data are outlined for two scenarios as follows:
34. If the temporary use by-law were extended to permit the school and playing field, the annual taxes received for these components would be in the order of \$56,991. However, a 40% charity rebate applies to the school, thus the net annual yield from this use would be approximately \$34,194. The 2012 actual net for the school components is \$22,796 because the playing field has heretofore been assessed as vacant industrial instead of occupied commercial.
35. If the playing field was developed in a similar manner to the school building property, the taxes generated (2012) would be approximately \$107,225.
36. If the school building and playing field were used for permitted industrial uses, the approximate total tax revenue generated (2012) would be in the order of \$164,216.

### **LINKAGE TO COUNCIL STRATEGIC PRIORITIES**

37. The recommendations included in this Staff Report support the following City Council's Strategic Priority:
- Attract, Retain and Expand Business for Barrie
38. The recommendation proposes to extend the temporary use for a limited time period in recognition that the use is not permitted in industrial employment areas. Limiting the approval to a Temporary Use is directed at protecting our industrial employment lands from having incompatible uses that may be in conflict with the types of industries and uses that are permitted and more appropriately located in existing industrial areas.

39. Allowing the school to remain at this time provides a balance between accommodating the school while allowing a review at the City's industrial zoning categories, planning for the annexed lands and additional time for the school to consider alternate locations.

Attachment: Appendix A – Proposed Temporary Use By-law

APPENDIX "A"

Temporary Use By-law for Kempenfelt Bay School

BY-LAW NUMBER 2013-

**A By-law of The Corporation of the City of Barrie to amend By-law 2009-141, a land use control by-law to regulate the use of land, and the erection, use, bulk, height, location and spacing of buildings and structures in the City of Barrie.**

**WHEREAS** the Council of The Corporation of the City of Barrie deems it expedient to amend By-law 2009-141 to permit a school on certain lands being Lot 3, Plan 51M-634, City of Barrie, County of Simcoe municipally known as 576 Bryne Drive and permit playing fields on certain lands being Lot 6, Plan 51M-845, City of Barrie, County of Simcoe and municipally known as 111 Commerce Park Drive, Barrie;

**AND WHEREAS** the Council of The Corporation of the City of Barrie adopted Motion 13-G-XXX.

**NOW THEREFORE** the Council of The Corporation of the City of Barrie enacts the following:

1. **THAT** Section 1.4 of By-law 2009-141 be amended by removing the reference to By-law 2010-047 and replacing it by reference to this Temporary Use By-law 2013-XXX and by removing the expiry date of March 7, 2013 and replacing it with an expiry date of March 7, 2016.
2. **THAT** the remaining provisions of By-law 2009-141, applicable to the above described lands as shown in Schedule "A" to this By-law shall apply to the said lands except as varied by sections 1 and 2 of this By-law.
3. **THAT** this By-law shall come into force and effect immediately upon the final passing thereof.

**READ** a first and second time this 4<sup>th</sup> day of March, 2013.

**READ** a third time and finally passed this 4<sup>th</sup> day of March, 2013.

**THE CORPORATION OF THE CITY OF BARRIE**

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**MAYOR – J. R. LEHMAN**

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**CITY CLERK – DAWN A. MCALPINE**



SCHEDULE A to BY-LAW 2013-XXX



D14-1478

November 17, 2009