

April 29, 2021

Our File No.: 190347

Via Email

Mayor and Members of Council
City of Barrie
70 Collier Street
Barrie, ON L4M 4T5

Dear Mayor and Members of Council:

Re: Development Charge By-law Update May 3, 2021 Public Meeting

We are solicitors for the Salem Landowners Group (“SLG”), who are developing lands within the Salem Secondary Plan Area. The purpose of this letter is to provide comments respecting the proposed update to the City’s Development Charge By-law (the “Update”), as set out in the *Development Charges Update Study*, dated April 9, 2021, by Watson & Associates Economists Ltd. (the “Background Study”).

The purpose of the Update is to revise the development charge (“DC”) calculation for certain “soft” services to reflect amendments to the *Development Charges Act, 1997* (the “Act”), that came into effect in September 2020. Subject to the comments below, the SLG is generally not concerned with the manner in which the Update proposes to implement the amendments to the Act.

We note that the SLG has an outstanding appeal of the City’s current Development Charge By-law No. 2019-055 (the “2019 By-law”), which raises concerns with the calculation of the DCs for several services, including some that are proposed to be amended by the Update. The Update does not affect SLG’s outstanding concerns with the 2019 By-law. We intend to provide correspondence to City staff shortly regarding our appeal.

Overlapping Historic Service Level Inventory and Capital Program

For the most part the Update is based on the same estimates and assumptions used to calculate the DC rates in the 2019 By-law, including the growth forecast and capital programs. However, the Update uses a different time period to calculate the 10-year historic service level standard. For soft services the 2019 By-law used a 2019 base year, with a capital program period of 2019-2028, and a historic service level period of 2008-2018 (i.e., the preceding 10 years). The Update

also uses a 2019 base year, with a capital program period of 2019-2028, but then uses an overlapping historic service level period of 2011-2020.

The Act requires that the 10-year period immediately preceding the growth forecast and capital program period be used to calculate the historic level standard. It would not comply with the Act to use a historic service level standard that overlaps with the capital program and growth forecast period. This approach could result in inflating service level standards, and improperly including infrastructure in the historic level standard that are funded DCs. While in this instance the approach does not appear to affect the quantum of the DC calculations in the Update, we are raising it to go on the record that the use of historic service level periods that overlap with capital program periods is improper, in case the approach is used in subsequent DC reviews.

Interest Rates Applied to Development Charge Rates Set at Site Plan or Rezoning Application

Recent amendments to the Act introduce a new section 26.2 that provides for DC rates to be fixed on the date an application for site plan or rezoning is filed, provided certain conditions are met. Where rates are fixed, the Act also allows a municipality to charge interest on the DCs owing as of the date the relevant application is made.

The draft by law implementing the Update included in the Background Study provides that the interest rate to be applied by the Town in these circumstances will be based on the interest rate calculated as per the City's DC Interest Policy, as amended from time to time. It is our understanding that the Interest Policy adopted by the City in February 2021 provides for interest to be charged based on the City's weighted average cost of capital rate ("WACC"). We note that typically during the life of a particular DC by-law, rates are increased in accordance with the Construction Price Index. The February 3, 2020 staff report regarding the Interest Policy indicates that the WACC at the end of 2019 was 4.78%, and is typically higher than the Construction Price Index which for the same period was about 3% annually.

The problem with applying the WACC rate to any application where DC rates are fixed on the date of site plan or rezoning application is that where the application is made and a building permit is drawn within the lifetime of a single by-law, the landowner ends up paying higher DCs than would otherwise be the case (since the WACC rate is higher than Construction Price Index). The SLG believes this is unfair, and certainly was not the intention of the legislation, which was to enhance housing affordability and DC predictability.

Accordingly, the SLG is requesting a revision to the interest rate applied such that for developments where a site plan or rezoning application is filed that fixes the rate under a DC by-law pursuant to section 26.2 of the Act:

- if a building permit is issued for the development before a new DC by-law comes into affect, then the interest rate applied will be equivalent to the indexing rate (as opposed to the WACC rate), and
- if a new DC by-law is passed before a building permit is issued for the development, the interest rate applied will be WACC rate, but the total DC paid is capped at the amount that would be payable under the new by-law.

The above changes would ensure that landowners whose DCs are fixed by new section 26.2 of the Act are not penalized by having to pay higher DCs than landowners whose DCs are not fixed by section 26.2.

Capital Contribution Calculation

We are raising one additional issue that does not affect the quantum of the DCs proposed through the Update, but will be impacted by the Update. Development within the Salem Secondary Plan Area is subject to the 2014 Memorandum of Understanding (“MOU”) entered into between the City and the Landowners in the Salem and Hewitt Secondary Plan Areas. The MOU requires the payment of a capital contribution to the City for Phase I development in an amount equal to \$4,500 per single detached unit.

The MOU provides that if amendments to the Act increase DCs by removing historic service level limits on transit DCs or removing the 10% statutory reduction for soft service DCs, the amount of the capital contribution shall be reduced to reflect the increased DC funding the City will collect. The Update implements amendments to the Act that remove the 10% reduction for soft services, and a previous amendment to the Act lifted applicable restrictions on transit DCs. Accordingly, we note that the capital contribution owing under the MOU will be required to be adjusted downward to reflect these changes.

Yours truly,

Goodmans LLP



Rob Howe

cc: Marc Villeneuve

Salem Landowners Group

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May 3, 2021

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Our Matter Number: 1193025

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Sent By Electronic Mail

Ottawa

Mayor and Members of Council
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Vancouver

New York

Attention: City Clerk

Dear Mayor and Members of Council:

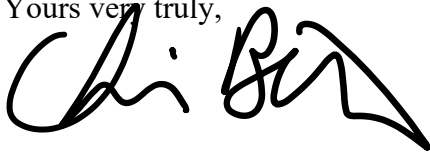
2021 Development Charges By-law Update - Statutory public meeting

We act on behalf of the Hewitts Creek Landowners Group Inc. We write to provide comment on the Development Charge By-law Update being considered at the statutory public meeting. We understand that the purpose of this update is to take into consideration the amendments to the development charges regime which came into force in September, 2020.

We note that our client is an appellant to the City's existing development charges by-law 2019-55. One of the grounds of that appeal is that the by-law inappropriately included costs associated with Municipal Parking Services and for Airport facilities vehicles and equipment. Based on the statutory changes, these costs are no longer recoverable through development charges. The City proposes to remove these costs effective September 18, 2022, being two years from the date on which the statutory changes came into effect. It would be more appropriate to remove those charges from the by-law as part of this update, as it is our client's position that these charges should never have been included in the by-law. Our client's appeal of By-law 2019-55 remains outstanding.

We have had the opportunity to review the letter dated April 29, 2021, filed by Goodmans LLP on behalf of the Salem Landowners Group. We echo their submissions, and in particular note that many members of our client Group are signatories to the 2014 Memorandum of Understanding, and agree that the MOU requires the capital contribution calculation to be adjusted as a result of the statutory changes to the development charges regime.

Yours very truly,

A handwritten signature in black ink, appearing to read "Chris Barnett". The signature is fluid and cursive, with the first name "Chris" and the last name "Barnett" clearly distinguishable.

Chris Barnett
Partner

CB:s