



GEORGIAN TRIANGLE DEVELOPMENT INSTITUTE

September 4, 2024

Mr. Adam Smith
Director, Planning & Development Services
Town of the Blue Mountains
32 Mill Street,
Thornbury, ON N0H 2P0

Subject: TOBM Allocation Policy

Director Smith,

As per the Committee of the Whole (COW) meeting on August 27th, we are pleased to submit our list of questions regarding the proposed policy.

The GTDI understands the potential need for an Allocation Policy when the demand for Allocation from development units exceed the Town's water and wastewater capacity. Accordingly, **the allocation scoring system should be activated exclusively when the Town is distributing the final tranche of resources and the demand from competing developments outstrips the available allocation**

We look forward to collaborating with you on this pioneering Policy and seek guidance on our questions below, which are categorized as follows:

Our questions address the following Categories:

Policy Objectives and Clarifications

- Questions related to "First come, First served," "Greatest Benefit to the Town," and clarifying how decisions about categories and benefits are made.

Regulatory Framework and Legal Authority

- Questions examining the statutory authority for the policy, implications of recent legislative changes, and compliance with existing laws and town by-laws.

Resource Management and Capacity Issues

- Questions concerning the management of finite resources, capacity issues, and the need for a shift from current practices.

Strategic Planning and Implementation

- Questions about the implementation timing, strategic planning alignment, and the role of the policy in planning processes.

Decision-Making and Administration

- Questions regarding the decision-making process, the authority of the decision-makers, and the finality of decisions.

Policy Impact and Future Adjustments

- Questions addressing how the policy impacts existing approvals, how it will be adjusted as strategic goals shift, and what happens in cases of scoring ties or re-submissions.

In the Public Meeting Notice and the Request for Consultant Quotation, the Town stated that the purpose of this Policy is to "de-couple" allocation from the Planning Act and move away from a "first come, first served" policy, instead providing allocation to "those projects that provide the greatest benefit to the Town." "It will also serve as a communication tool for the Town, clarifying for the development community and the public that a finite resource is managed sustainably and supports the delivery of strategic goals, such as attainable and affordable housing." - 2023-31-Q-PDS Request for Quotation for the Development of a Water and Wastewater Allocation Policy

"The Corporation of the Town of The Blue Mountains ('the Town') is currently facing challenges in reconciling the demands of various development projects and the interests of developers regarding water and wastewater servicing." – Proposed By-Law

"Coupled with prudent infrastructure planning, the Town uses a number of regulatory instruments to mitigate risk related to development approvals and servicing capacity. Currently, the Town has a suite of tools to manage constraints through the Official Plan, Zoning By-law, and Development Agreements." - Staff report PDS.23.131

"Currently, there is no risk of exceeding capacity. However, the Town and the South Georgian Bay region have experienced significant growth in recent years, accelerating the need for increased capacity in the Town's water system." - The Town's Water and Sewer Capacity Webpage

"The Town is continuing to strategically plan infrastructure projects to align with planned and designated development. Proactive infrastructure planning, such as the early approval of the Thornbury Wastewater Treatment Plant Phase 1A expansion, will continue. The Town will also monitor and manage new connections to the T-WWTP to ensure the remaining built capacity keeps pace with development until the expansion is commissioned." - The Town's Water and Sewer Capacity Webpage

"First come, First Served"

1. The Town has stated that there are a number of regulatory instruments used to address developments and servicing capacity. The current Official Plan includes numerous Council

approvals on Planning Applications prior to achieving Allocation. Can you clarify what is meant by “First come, First served”?

2. Can you provide the reasons the Town needs to move away from “first come, first served” (aka the current regulatory instruments)?

“Greatest Benefit to the Town”

3. Can you provide how categories and sub-categories were created for Schedule B-1 of the proposed by-law? Specifically, can you add a column with the specific Council-approved Strategic Plan & Category? (see town website <https://www.thebluemountains.ca/town-hall/laws-maps-strategies/strategic-plans-documents>)
 1. Alternatively, who or what was used to determine these Categories and Sub-Categories as the “Greatest benefit to the Town”?
 2. How would these categories/sub-categories be amended with shifting Council strategic goals?

“Finite Resource”

4. Does the Town have a Water and Waste Water Capacity issue?
5. What are the specific “challenges in reconciling the demands of various developments”?
 1. a. Why are the current “prudent infrastructure planning and regulatory controls” (i.e., Planning Act/ Development Charge Act) insufficient to address these challenges?
6. Is it the intent of this Policy to be applied when there is no risk of the current development applications exceeding water and sewer capacity?
7. Will the Town potentially refuse servicing capacity to a development with all Planning Act approvals on the basis that it does not score high enough, if there is capacity in the overall system to service it?
8. How will the Town decide how many units of allocation are going to be assigned in any year, especially if there are no current servicing capacity constraints?

“De-Couple” from Planning Act

9. The Town’s current Allocation Policy is in the Town’s Official Plan. Is it the Town’s intention to “de-couple” this policy from the Planning Act?
 1. If so, why?
 2. If not, will the Town be using this policy to update its Official Plan currently underway?

Bill 185 with changes to the Municipal Act passed on June 20, 2024. The Public Meeting for this By-Law was on May 14, 2024. The Town’s procedural by-law reads:

The Public Meeting was held before the Statutory Authority (in the Town’s opinion) was given to implement this policy. To clarify, the Notice of Public Meeting does not reference Bill 185 or the Municipal Act.

10. Does the Public Meeting held on May 14, 2024, meet the requirements of TOBM Procedural By-Law 2022-76?
11. Prior to the changes to the Municipal Act Section 86.1(1) under Bill 185 passed on June 20, 2024, what was the Statutory Authority the Town was relying upon to enact this policy?

The Planning Act Ontario Section 24 states:

“Public works and by-laws to conform with plan 24 (1) Despite any other general or special Act, where an official plan is in effect, no public work shall be undertaken and, except as provided in subsections (2) and (4), no by-law shall be passed for any purpose that does not conform therewith. R.S.O. 1990, c. P.13, s. 24 (1); 1999, c. 12, Sched. M, s. 24.”

In the meeting minutes with the development industry, the Director States:

“It is not intended that the Policy and Evaluation Criteria go beyond the Official Plan and/or the Planning Act. This Policy is intended to amplify policies and directions prescribed by the Official Plan. This Policy is not intended to evaluate the merits of a development or application, as that is conducted pursuant to the Planning Act. This Policy may facilitate enhancements to an approved development at the time of Evaluation Criteria review. The allocation decision rests with administration.”

The Staff Report States:

“While the Policy is not regulated by the Planning Act, its application will be throughout the planning and development process. This includes being incorporated into the conditions of approval and identified during the course of pre-consultation on relevant applications to ensure developments are aligned with the evaluation criteria at the conceptual stage.”

The Planning Act and Development Charges Act do not entitle the Town to require developers to:

- Implement energy conservation measures or green building techniques in development
- Provide affordable housing, absent inclusionary zoning
- Control the tenure of development (requiring rental buildings)
- Upgrade roads that are not a local service and required for the purposes of the development
- Upgrade transit stations
- Provide facilities such as parks, recreational amenities, active transit systems, Hospitals, LTC Facilities

Based on the above, the Town will use this Policy at the very earliest Planning Application to measure the merits of approval up to and including Draft Plan Conditions. As stated, the Policy seeks “enhancements” (increases) to Official Plan Policies. However, The Planning Act and Development Act specifically exclude the Town from requiring specific increases.

12. Can the Town please remove the specific excluded enhancements/increases from the Proposed By-Law Appendix B-1?

Section 86.1.3 of the Municipal Act States:

“Determination to be made by officer, etc. (3) If a municipality has passed a by-law described in subsection (1), the administration of the policy must be assigned to an officer, employee or agent of the municipality, and any decision made by that person under the policy must be final. 2024, c. 16, Sched. 9, s. 1.”

In meetings with the GTDI and at the Committee of the Whole, staff proposed that the decisions would be made by a committee. It has also been suggested that a consultant would also be retained to make these decisions.

13. For clarity, can you please confirm that the Director of Planning Services is the assigned decision maker?
14. Please confirm that the decisions made by the Director of Planning Services is unappealable, including by Council, who may not agree to the decision made?

Despite the earlier statement that the Policy will not be used to evaluate planning applications, the Staff Report States:

“While the Policy is not regulated by the Planning Act, its application will be throughout the planning and development process. This includes being incorporated into the conditions of approval and identified during the course of pre-consultation on relevant applications to ensure developments are aligned with the evaluation criteria at the conceptual stage.”

This seems to conflict with the prescribed process in the By-law which states:

“Request for Development Agreement Form is sent to the proponent based on the decision by Engineering Reviewer as to whether the project is eligible for AFC stamp.”

15. Can the Town clarify if the application of this policy starts at Pre-Consult or upon completion of the AFC Drawings?

The proposed Policy By-Law Section 8 States:

“Existing Approvals All lands subject to existing Draft Approved Plans of Subdivision, Consents, Site Plans or Vacant Land Condominium, but have not been subject to a development agreement confirming allocation prior to the implementation of this policy, will be subject to the requirements in this policy.”

16. If the Policy is to start at the time of pre-consultation to “ensure developments are aligned with the evaluation criteria at the conceptual stage” and this criteria is to be “incorporated into Draft

Plan Conditions,” how does the Town propose to retroactively impose these conditions on Draft Plan Approved Developments as stated in Section 8 of the Proposed By-Law?

The Proposed By-Law states:

“7(b) Based on available ERU units set aside for allocation, those development applications that score the highest during the intake period review will receive allocation.”

17. How and who determines what is “set aside for allocation?” For example, if the Town’s Engineering Department determines that there are 1,500 units of water Allocation available, is it the Town’s intention to “set aside” 500 units “available” for allocation? Or are all 1,500 units available?
18. In the absence of a minimum scoring number to receive allocation, can the Town confirm it is their intent to create a competition between developments to receive allocation?
19. Does the Town envision or intend that development with all approvals under the Planning Act may be prevented from proceeding, even where servicing capacity is available in the Town’s system, because it would not achieve a high enough score under the policy?
20. Can the Town explain why there is an exemption for two units if the policy only applies for 11 or more units?

The Proposed By-Law is silent on what happens when competing developments score the same number of points.

21. Can the Town provide direction?

The Proposed By-law States:

7(c) “Should an applicant wish to resubmit an application if not granted allocation, they must do so within two (2) months of being notified by the Town in order to have the application expedited.”

22. What does expedited mean? How would this work in practice if a decision on annual allocation has already been made?

Schedule B-1

23. Is changing this matrix considered an administrative matter under the Municipal Act? Or, is the Director delegated this authority?
24. What is the minimum number of points required to receive allocation?
 1. In the alternative, is the Town proposing a competition amongst developments?
25. What does the Column “Relevance” mean?
 1. What does “Compliance Level” mean?
26. Is it the intention that Allocation in ERU’s be set aside for Residential or Non-Residential? Or is it the intention to have Residential and Non-Residential compete for the same number of ERU’s?
27. Sub-Categories

1. 1.1 what is the definition of settlement area? (Town, County Province)
 1. Why is it weighted with 5 points?
2. 1.2 Presumably Developments are within close proximity to service areas as they are seeking allocation. Can you provide an example of a project that would not score these points?
3. 1.3 If the OP Density Targets change. Specifically. Towns OP Update is proposing such a change. Would these points be retroactively adjusted? As example, there exists OMB ordered developments with required Density Targets that will be inconsistent to the new Town OP. Would these developments be eligible for these points once the new OP is adopted?
 1. The OP Density requirement is binary (yes or no). Can the Town explain why three points exist when it ought be 0 or 1?
4. 1.4 What is the definition of mixed-use? How does a development score Mixed-Use points if the Official Plan for the project doesn't allow it?
5. 2.1 What water technologies are being referred to? Water, Waste water, Storm? Are these building technologies? How does staff determine the applicability of the technologies and the application of such?
6. 2.2 What certification is being referred to? How can a score be addressed by a proponent when it is not know what is being scored against?
7. 2.3 Is this not a continuation of 2.2?
8. 2.4 Surrounding environment conservation -What does this mean? Is there a Town document or OP policy that can provide guidance? This is extremely broad and subjective.
9. Category 3 – Economic –
 1. Has the Town done an analysis on Category 2 and the impacts on delivering Affordable Housing?
 2. Why is residential being penalized by not being able to achieve any points?
 3. Can the Town please explain the conflict between being an Administrative Procedure under the Municipal Act and the need to go back to Council to determine points under categories 3.2 and 3.3?
10. 4.1 Affordable Housing – What is meant by “Compliance Level”?
11. 4.2 Rental Housing – Is the Town speaking to purpose built rentals or properties that could be rented out?
12. 4.4 Is this based on a Project wide basis or on a phase by phase basis?
13. 5.1 Why are development being penalized if there is no land use conflicts?
14. 5.3 Improvements to Infrastructure – Is this the infrastructure that this Policy is limiting access to? If a development enters into a front ending agreement is it exempt from this policy?
15. 5.5 These items are already included in the Planning Process or specifically prohibited. How are these points determined?
28. Has the Town determined the staff resources needed to administer this policy?
29. What is the proposed fee schedule for this policy?
30. As requested by Council, we request a list of Draft Plan Approved Developments that would be subject to this policy including number of residential units.

We look forward to your reply to these questions, so that we can better inform our members and build a strong community.

Regards

GTDI