



Honorable Mayor and Members of Council,
Town of The Blue Mountains
32 Mill Street
Thornbury, ON, L9Y 1T3

Dear Mayor Matrosovs and Council Members,

Re: Deputation to the Town of the Blue Mountains Council Regarding the Proposed Allocation By-law: Request for Deferral, Revisions and Exemptions

I am here today on behalf of Great Gulf to speak to concerns regarding the implementation of the proposed Allocation Policy and Bylaw. I have three asks of you today.

- 1) Given the continued outstanding concerns raised by the industry regarding the structure of the policy and bylaw we respectfully request a deferral of the Allocation Policy
- 2) In addition if council chooses to approve the policy we respectfully request an amendment for an exemption for our Lora Bay Phase 4B Draft Plan approved subdivision from the proposed allocation by-law and
- 3) further an amendment to the policy and bylaw to permit an exemption for any development that enters into a front ending agreement with the Town for the design and construction of municipal services.

To support our request, we kindly submit the attached letter from Goodmans LLP outlining the fundamental flaws to the structure and implementation of the policy and bylaw that should be referred back to staff for review and discussion.

With respect to the exemption requests, we offer the following context. Over the past two years, we have worked closely with the community, Town Council, and staff to ensure that Phase 4B complies with all required zoning and planning approvals. This process has included open houses, public meetings, staff reports, and several studies, ultimately culminating in zoning approval and draft plan approval by this Council and certification from Grey County. As a result, we are now in the final stages of submitting our engineering drawings in pursuit of our phase specific development agreement for Phase 4B, with the goal of commencing construction in May of next year and delivering new homes by 2026. We have worked with the Town as well

over the past year to construct and repair pre-existing stormwater overland flow issues in the Lora Bay community resulting from external overland flows and expended significant capital.

We were made aware of the current capacity issues at the Mill Street pump station only recently and have been working with town staff and our engineering consultant to investigate interim solutions. We are pleased that the provincial government has recently provided funding for the necessary upgrades to the pump station and look forward to working closely with Town staff to monitor the progress of the related capital works project, which is well into the design phase including any interim solutions to advance developments

Phase 4B is fully compliant with the Town's Official Plan, has received the necessary zoning approvals, and is draft plan approved. Despite all the progress made, there is a very real concern that the proposed allocation by-law scoring matrix may withhold servicing allocation. Such an outcome would be detrimental to the investment Great Gulf has made in this community.

It is important to note that all of Lora Bay is subject to a Master Development Agreement signed in 2005 as part of a settlement with the Ontario Municipal Board. This agreement allows for the development of up to 1,050 residential units throughout the Lora Bay community, of which only 350 have been developed to date. Phase 4B represents the next 58 units under this agreement. Furthermore, the Master Development Agreement provided for substantial infrastructure investments by Lora Bay, including completed infrastructure works that benefit both the community and the development.

The By-Law applies exemptions for developments subject to development agreements, and we ask that the Council recognize the Master Development Agreement as such and provide this exemption. If not, we must also emphasize that Lora Bay recently entered into a Municipal Infrastructure Agreement to address existing stormwater drainage issues and improve municipal infrastructure at an approximate cost of \$1.5 million dollars which we have now completed these works. If we cannot secure allocation and proceed with our development agreement, the credits and reimbursements outlined in that agreement will be at risk, leaving Lora Bay without a means to recover the expenditure as committed by the Town.

Additionally, Lora Bay has been collaborating with the Town on several infrastructure projects, including upgrades to the booster pump station on 10th Sideroad. These improvements are essential for the overall development in Thornbury West and Lora Bay. To facilitate the development of these areas, it is essential to establish front-ending agreements with the Town for the design and construction of the necessary services. Great Gulf has been actively working with the Town to finalize such an agreement, which is now ready for execution. However, without the assurance of securing servicing allocations for the actual services we are designing and building, continuing this investment becomes exceedingly challenging. Our extensive experience with Allocation agreements across the GTA whereby developers are required and expected to front end services, the allocation is committed at the time of those front ending agreements in order to provide certainty and insure feasibility of the development.

It is important to note, as the Collingwood policy continues to be used as a comparison, there were exemptions provided for projects with the same status as our Phase 4B lands,

For these reasons, we respectfully request;

- 1) a deferral of the policy to address the fundamental structural issues with the policy and bylaw as identified by the Goodmans letter,
- 2) request an exemption from the policy and/or an amendment to the policy to permit an exemption for our Lora Bay 4B plan of subdivision,
- 3) request an amendment to the policy to allow an exemption from the policy and/or an amendment to the policy to commit to allocation in front ending agreements for those developments that require front ending.

Thank you for your time and consideration, we look forward to working with the Town to develop our communities.

Sincerely,

Kathleen Schofield,
President Low Rise Residential

September 25, 2024

Our File No.: 232630

Via Email

Mayor and Members of Council
Town of the Blue Mountains
32 Mill Street, Box 310
Thornbury, ON N0H 2P0

Dear Madam Mayor and Members of Council:

**Re: Town of the Blue Mountains Proposed Servicing Allocation By-law
Committee of the Whole Report September 17, 2024, Item B.9.2
Follow up Report for the Allocation Policy, PDS.24.122**

We are solicitors for NG Lora Bay Limited and Great Dale Manor Limited, the owners of the Lora Bay and Castle Glen developments, respectively, in the Town of the Blue Mountains (the "Town"). We are writing to express our client's serious concern with the proposed Allocation By-law and Policy that is on the agenda for Council's September 30, 2024 meeting. Our client's two main concerns are:

1. The purpose of the Allocation By-law and Policy appears to be to allow the Town to extract infrastructure and benefits from developers that the Town has no legal jurisdiction to require, as opposed to its stated purpose of governing the equitable evaluation and allocation of services and managing the allocation of servicing capacity in the event of a constrained supply.
2. The Allocation By-law and Policy appear to ensure that the Town can prevent certain developments that have all required approvals under the *Planning Act* from proceeding, by denying them an allocation of servicing capacity.

The Nature of the Allocation Policy By-law

At the outset, it is essential the Council understand that it is proposing to adopt the proposed Allocation Policy by By-law pursuant to section 86.1 of the *Municipal Act, 2001*. As a legal document enacted by By-law, the Council will be establishing a set of rules that the Town must follow when making decisions on servicing allocation. This is not simply a guideline that the

Council or staff will have the discretion to apply or adjust depending on the circumstances of a particular development. Based on our clients' discussions with staff, this appears to be an unintended consequence of this By-law.

All Decisions Allocated to Staff

The *Municipal Act* provision under which the By-law is proposed provides that the administration of the policy must be delegated to a staff member, and any decision made by that staff member must be final. The By-law will delegate that authority to the Director of Planning and Building Services. This means that by enacting the proposed By-law, Council is delegating all discretion regarding the allocation of capacity in the Town to the Director. Council will have no further say in respect of how servicing capacity is allocated in the Town through the By-law and Policy.

The Effect of the Allocation Policy

Under the Allocation Policy the Director determines the number of units of allocation (ERUs) to be allocated every year, from the available reserve capacity. As confirmed in the Staff Report, the number of ERUs "set aside" to be allocated each year will not necessarily reflect the total amount of available reserve capacity, but rather a number determined at the discretion of the Director.

The Allocation Policy provides that the criteria set out in Schedule B-1 will be used to create a competition among developments for the allocation of the ERUs set aside. Developments that score the highest based on the criteria will receive allocation. It follows that developments that do not score the highest will not receive any allocation. However, the Policy is entirely unclear with respect to how the number of ERUs are to be determined, and the score required to achieve allocation.

The "criteria" set out in Schedule B-1 include a long list of services and other benefits that the Town is not entitled to require from developers.¹ By denying allocation to development that

¹ The *Planning Act* has a strict rule regarding the amount of parkland a municipality can require from development, and allows affordable housing to only be required through inclusionary zoning if certain specific requirements are met. Contributions to parkland and affordable housing cannot otherwise be required. Otherwise, the *Planning Act* only authorizes the provision of community benefits through the imposition of community benefits charges. Municipalities are also not entitled to require green building techniques through site plan approval.

Section 59 of the *Development Charges Act, 1997* ("DCA") provides that conditions of subdivision approval can only require the provision of local services that are related to the plan of subdivision or within the area to which the plan relates. Required contributions to broader municipal services are not allowed. Moreover, s.59.1 of the DCA provides that "a municipality shall not impose, directly **or indirectly**, a charge related to a development or a requirement to construct a service related to development, except as permitted by this Act or another Act." A municipality cannot

does not meet the criteria, the Town will be indirectly imposing a requirement on development to provide these services or other benefits that it is not legally entitled to. Those services and benefits that the Town cannot require from development include:

- transit stations or facilities such as parks, recreational amenities, active transit systems, Hospitals, and LTC Facilities;
- affordable housing (absent inclusionary zoning);
- rental units (absent rental replacement);
- roads that are not a local service; and
- energy conservation measures and green building techniques.

Moreover, every development that does not receive an allocation of capacity in a given year must enter the competition for allocation again the next year. Where the development does not accede to the Town's requirements to provide services and other benefits in order to achieve a higher point score, the Town can simply refuse an allocation of capacity to that development year after year. This means that development that fully conforms to the Town's Official Plan and zoning, and which has draft plan of subdivision approval, may never be permitted to develop.

Front-Ending Works and Timing

As the development industry has made clear to staff, one of the fundamental issues with the proposed Allocation Policy is timing. Decisions on allocation under the Allocation Policy are not made until a developer is expected to have spent the money to complete all of their detailed engineering drawings, and is ready to sign a development agreement. That is far too late in the process and is entirely unworkable from a developer's perspective.

A very practical issue for the Town is that developers will also not be prepared to make commitments to front-end any infrastructure before the execution of a final subdivision agreement if there is uncertainty regarding their ability to obtain allocations of capacity. Under the Allocation Policy as proposed, a developer could not agree to front-end any infrastructure because the Town could not give assurances that allocations of capacity will be available to that developer when they are needed.

We would note that in other municipalities, such as Halton Region, York Region and East Gwillimbury, allocation policies, together with front-ending agreements, are actually used to

require developers to make financial contributions to or to provide improvements to broader municipal services such as transit stations, parks, recreational amenities, active transit systems, hospitals, and long-term care facilities.

secure commitments from developers to front-end critical infrastructure. The Town's Allocation Policy ensures the opposite.

For example, the Lora Bay and Castle Glen developments both require considerable infrastructure to be front-ended in order to for these communities to develop. Our clients will not be able to agree to spend the many millions of dollars required to front-end that infrastructure without assurances that allocations of capacity will be available when needed.

The Allocation Policy jeopardizes the development of these communities, and the Town's ability to meet its housing targets, which in turn may tend to make housing in the Town more expensive.

Lack of Transition

The Allocation Policy provides for inadequate transition. The Allocation Policy should, at the very least, provide for transition for development that has already been draft plan approved. Such development has been processed based on the existing rules, without regard for the new Allocation Policy or the proposed criteria. It is entirely unfair for the new criteria to now be applied retroactively to development that has already gone through the entire planning process.

There are also proposed developments in the Town that have already provided extensive infrastructure that benefits the Town. This applies directly to Lora Bay, for which extensive infrastructure and other benefits have been provided to the Town pursuant to a Master Development Agreement.

The Staff Report recommends Council "approve the transitional provisions identified in PDS.24.081 for the purpose of implementing the Water and Sewage Allocation Policy in a fair and transparent manner." This appears to include a provision that the new policy not apply to development proposing to provide important works where it may create delays that negatively impact the municipality or create legal risk. However, the By-law, which is what would govern, provides that it takes effect on the date it is passed. Because this transition is not included in the Allocation Policy itself, we do not see how it could be applied by the Town.

Legality of the Allocation By-law and Policy

We do not believe that the Allocation By-law and Policy are authorized by the provisions of the *Municipal Act, 1997*. The applicable provisions allow a municipality to establish the criteria to be used to determine the circumstances where development is assigned an allocation of capacity. The purpose is to provide certainty to developers and municipalities as to the stage of the development approval process at which allocations of capacity would be granted, and when allocations could be removed if not used.

It was not the purpose of the legislation to allow a municipality to create a competition between development as proposed by the Town, that will allow the Town to refuse allocations of capacity if services and other benefits the Town is not entitled to are not provided.

We also believe that the Allocation By-law and Policy do not conform to policies D1.4 to D1.5 of the Town's Official Plan, which actually do set out criteria for when allocations of capacity are to be reserved and allocated to development, based on priority allocated based on development moving through the various stages of the development approvals process. There is absolutely nothing in these policies to suggest that allocations of capacity will instead be based on a scoring system, using criteria that are not mentioned in the policies. Moreover, there is nothing in the policies that suggests that approved development may never receive an allocation of capacity, unless that development provides community benefits or other matters that the Town could not otherwise secure through the land use planning process.


Subsection 24(1) of the Planning Act provides that "despite any other general or special Act, where an official plan is in effect, . . . no by-law shall be passed for any purpose that does not conform therewith. The Allocation By-law cannot be enacted by Council if it does not conform to its Official Plan.

Conclusion

Our clients believe the proposed Allocation Policy By-law is fundamentally flawed. We urge Council to refer the Allocation Policy back to staff for further review and discussion with the development community.

If the Allocation Policy is approved, then we at least request that Lora Bay's current draft approved plan of subdivision (Phase 4B), which is proposed to be developed within the next year, be exempt from the policy, as it is already subject to a front-ending agreement our client completed to benefit the Town. It is also requested that if Council chooses to enact the By-law, the Allocation Policy be amended to exempt developments that enter into front-ending agreements with the Town in order to deliver infrastructure required to provide housing in the Town.

Yours truly,
Goodmans LLP



Robert Howe
cc: client