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STAFF REPORT: Finance & IT Services



REPORT TO: Council
MEETING DATE: July 15, 2013
REPORT NO.: FIT.13.41
SUBJECT: Update to Staff Report FIT.12.30
 Windfall Development – Request for
 Development Charge Relief
PREPARED BY: Robert Cummings, Director of Finance

A. Recommendations

THAT Council receive Staff Report FIT.13.41, “Update to Staff Report FIT.12.30 Windfall Development – Request for Development Charge Relief” for information purposes; and

WHEREAS Council at its meeting of May 14, 2012 adopted the following resolution within Staff Report FIT.12.30:

THAT Council authorize funding any sewer development charge costs attributable to the Craigleith Service Area greater than the developers prepaid development charge contribution from existing and future Craigleith Area Sewer Development Charge Reserve Funds.;

AND WHEREAS recent cost estimates from C. C. Tatham & Associates for Grey Road 21 Sanitary Pipe Construction exceeds the recoverable estimates within the Town’s Development Charge Background Study; and

THAT Council revisit the financing of any sewer development charge costs based on actual tender results with a view to potentially cap the level of financing, updating the Town’s Development Charge Background Study, or consider other options that would mitigate the Town’s level of risk.

B. Background

Purpose

The purpose of this Staff Report is to update Council on the revised estimated cost for the Grey Road 21 Sanitary Pipe Construction that will service the proposed Windfall Development and the possible increase to the Town financed portion of the works. The sanitary pipe extension includes the construction of 2,600 meters of pipe, mainly within the road base of Grey Road 21. There have been recent changes that will impact the Town’s financing portion.

Council, at its meeting of May 14, 2012 adopted the following resolution within Staff Report FIT.12.30 (Attachment 1):

“THAT Council authorize funding any sewer development charge costs attributable to the Craigleith Service Area greater than the developers prepaid development charge contribution from existing and future Craigleith Area Sewer Development Charge Reserve Funds.”

Staff Report FIT.12.30, referenced in the resolution, estimated the Town’s financial obligation as follows:

| | |
|---------------------------------|-------------------|
| Craigleith Portion of Works | \$ 1,005,628 |
| Windfall Prepayment | \$ 761,000 |
| Potential Town Financing | \$ 244,628 |

The Town’s current Craigleith Area Development Charge (DC) Reserve Fund balance at the end of 2011 was \$130,826. The remaining \$113,802 was to be internally financed until the specific DC’s had been collected through other developments or local servicing projects. Based on the recalculated rate, that would mean approximately 90-100 units. There is a reasonable expectation that through service extensions and other development within the Craigleith area, this liability would be reimbursed within a 3-5 year period. Given that the Town is in a relatively good financial position, the risk to this option is considered low.

Since May 2012, there has been an update to the Town’s Development Charge Background Study (DCBS) and an update on the estimated cost of the sanitary pipe construction. A summary of the impact of these changes follows.

2010 Development Charge Background Study - Amendment

The sanitary pipe extension includes the construction of 2,600 meters of pipe, mainly within the road base of Grey Road 21. The 2010 DCBS was amended so as to update the costs of the sanitary pipe works on Grey Road 21 as well as to update the growth forecast. The costs were updated based on estimates provided to the Town in May of 2012. These changes reduced the Development Charge for Sanitary Pipe Works in the Craigleith service area.

The amendment also identified a small change in the growth of units in the Osler area and therefore; has slightly modified the cost sharing split of sanitary sewer works servicing the Craigleith, Osler and Castle Glen service areas, as shown in the following table.

| | Amended Share | Former Share/Split |
|-------------|----------------------|---------------------------|
| Craigleith | 60.41% | 60.58% |
| Osler | 6.03% | 5.76% |
| Castle Glen | 33.57% | 33.66% |
| | <hr/> 100.00% | <hr/> 100.00% |

Revised Grey Road 21 Sanitary Pipe Construction Estimate

In April 2013, the Town received an updated Engineer's Construction Cost Estimate for the Grey Road 21 Sanitary Sewer construction from C. C. Tatham & Associates. This updated estimate will affect the aforementioned Town financing amount.

The April 2013 estimate is \$3,240,135. This includes almost \$350,000 in provisional items, including \$225,000 of road surface work and \$300,000 in contingency allowances. If we adjust for these amounts and add in the engineering costs, the estimate is about \$2.77M, almost \$400,000 greater than the Town's \$2.4M estimate provided in late 2011.

Although this is only an estimate and we will not know the costs until the project is tendered later this summer, Council needs to be made aware of the financing implications, should the bids received be significantly higher than expected.

The breakdown of the latest estimate plus engineering costs is as follows:

| | Sanitary Sewer (Sewer & Site Works only) | Sanitary Sewer with Contingencies & Provisional Work |
|-----------------------------------|---|---|
| Engineering | \$ 115,000 | \$ 115,000 |
| Site Work | \$ 234,500 | \$ 234,500 |
| Construction | \$ 1,897,260 | \$ 2,104,260 |
| Contingencies & Provisional Items | \$ 0 | \$ 319,125 |
| Totals | \$ 2,246,760 | \$ 2,772,885 |

Financing Consideration – Revised

The current expected estimate of the pipe works is \$2.247M. However, the complete upset estimate of the works is \$2.77M. The breakdown of the proportionate costs to each service area (as amended) is as follows:

| | Sanitary Sewer (Sewer & Site Works only) | Sanitary Sewer with Contingencies & Provisional Work | Prior Allocation from FIT.12.30 |
|-------------------|---|---|--|
| Craigleith | \$ 1,357,178 | \$ 1,674,989 | \$ 1,005,628 |
| Osler | \$ 135,395 | \$ 167,100 | \$ 95,616 |
| Castle Glen | \$ 754,187 | \$ 930,796 | \$ 558,756 |
| | \$ 2,246,760 | \$ 2,772,885 | \$ 1,660,000 |

The current estimated prepaid DC Credit by Windfall is in the magnitude of \$746,025 (609 units x \$1,225). The Town could fund the shortfall of the Craigleith portion with current and future DC's collected. The financial obligation options are illustrated below.

| | Sanitary Sewer (Sewer & Site Works only) | Sanitary Sewer with Contingencies & Provisional Work |
|---------------------------------|---|---|
| Craigleith Portion of Works | \$ 1,357,178 | \$ 1,674,989 |
| Windfall Prepayment | \$ 746,025 | \$ 746,025 |
| Potential Town Financing | \$ 611,153 | \$ 928,964 |
| Years of Financing | 8-12 | 17-25 |

The Town's current Craigleith Area DC Reserve Fund balance at the end of 2012 was \$319,312. The remaining \$291,841 (\$611,153 – \$319,312) that results from the "sewer works only" estimate would be internally financed until the specific DC's have been collected through other developments or local servicing projects. Based on the recalculated rate, this would mean approximately 220-250 units. There is a reasonable expectation that through service extensions and other development within the Craigleith area, this liability would be reimbursed within an 8-12 year period. Given that the Town is in a relatively good financial position, the risk to this option is considered relatively low to moderate.

Using the full burdened estimate that includes provisional items and contingencies, internal financing is not presently a viable option given the Town's long-term financial outlook and current DCBS. The Town would be financing \$610,000 which, based the same assumptions above, would require about 500 units. That would take between 17-25 years to generate the required development charges. This time frame increases the Town's risk level to moderate-high.

The full estimate is almost \$800,000 higher than the DCBS update from only 12 months ago. The Town's DCBS and related By-law is not representative of these most recent cost estimates and would fall short in recovering costs for growth works.

C. The Blue Mountains' Strategic Plan

Providing a strong, well-managed municipal government.

D. Environmental Impacts

Supporting environmentally sound decisions.

E. Financial Impact

There is an overall increased chance of risk and future liability given potential costs and certain options that may be exercised by Council, as explained within this report.

This is a report for information only and an update to Council will follow tender results.

F. In Consultation With

Mike Campbell, Construction Coordinator
David Finbow, Director of Planning & Building Services
John Metras, Town Solicitor
Reg Russwurm, Director of Engineering & Public Works
Troy Speck, Chief Administrative Officer

G. Attached

1. Staff Report FIT.12.30, "Windfall Development – Request for Development Charge Relief"

Respectfully submitted,

Robert Cummings, CMA
Director of Finance & IT Services

For more information, please contact:

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STAFF REPORT: Finance & IT Services



REPORT TO: Council
MEETING DATE: May 14, 2012
REPORT NO.: FIT.12.30
SUBJECT: Windfall Development – Request for Development Charge Relief
PREPARED BY: Darcy Chapman, Capital Accountant

A. Recommendations

THAT Council receive Staff Report FIT.12.30, “Windfall Development – Request for Development Charge Relief” for information purposes.

AND THAT Council authorize Prepaid Development Charge credits to be maximized through the front-ending agreement with Windfall GP Inc.

AND THAT Council authorize a timeline of 40 years from the current draft of 20 years for the use of prepayments and recovery of financing through the front-ending agreement with Windfall GP Inc.

AND THAT Council authorize the use of an annual inflationary clause in the front-ending agreement with Windfall GP Inc to be tied directly to the Stats Canada Construction Price Index as used in the Town’s Development Charges By-law.

AND THAT Council authorize funding any sewer development charge costs attributable to the Craigeith Service Area greater than the developers prepaid development charge contribution from existing and future Craigeith Area Sewer Development Charge Reserve Funds.

B. Background

At the April 23, 2012 Council Meeting, Paul Peterson of HGR Graham Partners made a deputation to Council on behalf of the Windfall Development. An accompanying letter from Mr. Peterson can be found as attachment #2 to this report. Both the letter and the subsequent deputation outlined issues that the developer would like rectified in order to finalize the upfront payment agreement for the sanitary trunk extension and subsequent master development agreement which requires the provision of the sanitary servicing to initiate construction.

Town Staff have been in consultation with proponents of the Windfall Development in order to establish an agreement for the upfront financing of the sanitary trunk extension on Grey Road 21 estimated to cost \$1.66M. The current process that staff is applying has utilized the Town’s current best practices, existing policies and procedures. Through consultation with the developer, a number of issues have arisen that require Council guidance and approval as they are beyond the scope of current policy or practices.

Description of Project & Current Consultation

The sanitary trunk extension includes the construction of 2600 m of pipe mainly within the road base of Grey Road 21. The costs were captured in the last Town Wide Development Charge (DC) Background Study and subsequent DC By-law passed in March 2010. In accordance with the *Development Charges Act, 1997* (DCA), the current draft agreements have been structure by utilizing relevant section in the DCA legislation. The financing of the project involves the establishment of prepaid DC credits through Section 27 of the DCA. Secondary to this, any amount greater than the prepaid DC credits are required to be established through the agreement as a form of liability owed to the developer. This “loan” will be repaid to the developer through the use of Section 35 of the DCA in accordance with the provisions of the upfront financing agreement.

Issue #1 - Limit on Development Charge Prepayment Credits

Developer Request

Windfall request that sewer DC credits should be permitted up to the total eligible DC costs of the sanitary trunk extension financed by Windfall. If the eligible DC related costs are the same as the estimated sanitary project currently at \$1.66M then Windfall should be entitled to sewer DC credits up to that amount.

Town Position

Staff has calculated the eligible DC related costs at \$1M. Staff concurs that the prepaid DC credit should be permitted up to 100% of the total eligible DC costs (to the maximum of \$1M).

Potential Risk

As this relates specifically to the prepayment of DC's through the use of Section 27 of the DCA, the Town would be in contravention of the DCA should Council provide relief above the eligible costs.

Background

The December 8, 2011 memo as attached outlines a process whereby the current Craigeith DC (\$2,505) would restrict the developer to a maximum credit of 400 +/- units without any flexibility for units above that up to the maximum 609 unit potential of the development. During discussions, it has come to staff's attention that an error in calculating the Craigeith Area Sanitary DC was made in the 2010 Background Study. In an effort to correct this issue, staff has contacted Hemson Consulting in order to rectify the situation. By the end of June, a joint report to Council between staff and Hemson will outline the changes to the DC study that should be adopted. At that time, a public meeting must be held in accordance with the DCA to allow the public and development community the ability to comment on the proposed changes. After the public meeting is held, the new rate can be adopted by Council. Preliminary work to this point would suggest that the current 2012 rate of \$2,505 per Residential “B” unit will be reduced to something in the magnitude of \$1,250. Based on the estimated recalculated sewer DC rate, Windfall would have a total prepaid DC credit of approximately \$761,000

(609 units x \$1,250). This prepaid DC credit will be finalized when the new DC rate is passed as per the requirements as stated above.

Issue #2 – Eligible DC Reimbursement (\$650,000 Deferral)

Developer Request

Windfall be entitled to reimbursement from sewer service DC's should be 100% available from the respective DC's collected by the Town in the Craigleith service area and not limited to the percentage split between the three service areas. Council is being requested to grant further Craigleith DC credits to Windfall above the 60.58% originally calculated.

Town Position

DC reimbursement over the prepaid DC credit amount will be handled using section 35 of the DCA. This section stipulates that “money in a reserve fund established for a service may be spent only for capital costs determined through”... the establishment of the background study and subsequent DC By-law. The 2010 study established the costs of the works in question to benefit the three service areas as follows;

| | |
|-------------|----------------|
| Craigleith | 60.58% |
| Osler | 5.76% |
| Castle Glen | 33.66% |
| | <u>100.00%</u> |

As such, the Town is not in a position to allow a split of the costs in any other manner than currently illustrated without undergoing a full review of the background study.

Potential Risk

As this relates specifically to the repayment of the liability for financing the works, the use of DC's through Section 35 allows for only specific uses of DC reserves and as such should Council provide reimbursement in some other form of a percentage split the Town would be in contravention of the DCA.

Issue #3 – Reimbursement Timing

Developer Request

Reimbursement from sewer service DC's should be available from the respective DC's collected by the Town in any of the Craigleith, Osler or Castle Glen service areas whichever first occurs.

Town Position

The attributable DC breakdown of prepayment or developer contributions is established through The Town's DC Background Study as illustrated above and subsequently incorporated into the agreements relating to the upfront financing. Simultaneous repayment from the three service areas is possible up to a specific maximum established in the agreement. The request for a “whichever first occurs” approach up to those maximums is possible. Prepaid DC credits and developer repayments will need

to be established through the agreement relating to the upfront payment of funds to construct the Grey Road 21 extension. A final statement will be prepared utilizing final construction costs and will ultimately illustrate the amounts for each service area and the method of recapture by the developer based on the initial agreements.

Potential Risk

The Town must ensure that it remains compliant with Section 35 of the DCA in repaying any liability to the developer. As this relates specifically to the repayment of the liability for financing the works, the use of DC's through Section 35 allows for only specific uses of DC reserves and as such should Council provide reimbursement in some other form of a percentage split the Town would be in contravention of the DCA.

Issue #4 – Simultaneous Cost Recovery

Developer Request

In the December 8, 2011 memo, staff had identified three possible sources of cost recovery, being prepaid DC credits (#1 above), transfer of future sewer service DC payments received by the Town (#3 above) and payments from existing un-serviced properties that may connect to this service.

Windfall requests that cost recovery be available from all of these sources simultaneously on a first come, first serve basis provided the total combined amount of cost recovery from all three sources not exceed the actual total DC eligible cost of sewer service works financed by Windfall.

Town Position

Windfall would be eligible to receive repayment of funds through flow-through payments or existing benefitting payments, whichever should come first from each of the three service areas affected up to the maximum repayable amount. As previously noted, the final statement will illustrate the total liability for each service area and the method in which Windfall will receive monies back.

Potential Risk

As this relates specifically to the repayment of the liability for financing the works, the use of DC's through Section 35 allows for only specific uses of DC reserves and as such should Council provide reimbursement in some other form of a percentage split the Town would be in contravention of the DCA.

Background

Discussions with Windfall regarding the cost recovery of up front financed monies have been based on previous agreements with the Camperdown and Lora Bay servicing projects. Past agreements have stipulated that the first method of payment is through the use of prepaid DC credits. This option is maximized by the number of development units. The agreements then stipulate that both collection of monies from other developers through DC payments and existing units through local servicing by-laws will be flowed through to the developer. Upon completion of the construction, a final

statement is prepared outlining the prepaid DC credits, DC flow-throughs and existing benefitting units involved.

Issue #5 – Agreement Length

Developer Request

The current draft of the upfront financing agreement stipulates a 20 year “sunset” for the use of prepaid DC credits or repayment of outstanding funds collected from other developers or service extension projects. Windfall is doubtful that a 20 year period will ensure an adequate time frame to recover costs, specifically those from Osler and Castle Glen.

Town Position

Staff agree that the time limit should be extended to 40 years to allow adequate time for the developer to recover costs.

Potential Risk

The ability for the Town to repay the liability for financing the works will remain in place so long as the DCA or its successor is in effect. As such, there is minimal risk to the Town to allow for a longer agreement timeframe.

Background

This time horizon was established as a baseline from past practices with both the Camperdown and Lora Bay developments. The 20 years was a mandated timeframe through OMB rulings relating to those developments. The establishment of the agreement could have a longer timeline should Council deem it appropriate. This would provide Windfall a longer timeframe to recoup up-fronted costs that provide benefit for more than their 609 units.

Issue #6 – Interest on Repayments

Developer Request

The current draft of the agreement stipulates a zero percent (0%) interest rate on all up-fronted costs. Windfall is requesting that the agreement have an interest or inflationary adjustment clause included.

Town Position

Staff agree that the inclusion of an inflationary clause is fair and justifiable.

Potential Risk

The annual inflationary factor used should be the same as stipulated in the indexing of the Town’s DC By-law being the previous year’s 3rd Quarter Canadian Construction Price Index. This will ensure that any inflationary increases to the liability will be directly offset by the annual increase in the service area DC. This poses minimal financial risk to the Town.

Background

Again, this was based on OMB rulings from the Camperdown and Lora Bay developments. The reasoning through the OMB was that the project provided benefit for the developers but affected many existing residential units. The ruling stipulated a “no interest clause” as a way of providing some public benefit to those affected units. In the case of this extension, the vast majority of the benefit comes in the form of future development lands (more than 95%). In the sense of fairness it would not seem reasonable to impede the current developer at the benefit of a future developer not having to pay interest on constructed works.

Further Consideration

In an effort to reduce the overall burden on the developer, the Town could use existing and anticipated future Craigleith Area Sewer DC's to offset costs above Windfall's prepaid DC credit.

The current estimated cost of the works is \$1.66M. The breakdown of attributable costs to each service area is as follows;

| | |
|-------------|--------------|
| Craigleith | \$ 1,005,628 |
| Osler | \$ 95,616 |
| Castle Glen | \$ 558,756 |
| | <hr/> |
| | \$ 1,660,000 |

The current estimated prepaid DC credit by Windfall is in the magnitude of \$761,000 (609 units x \$1,250). The Town could fund the shortfall of the Craigleith portion with current and future DC's collected. The financial obligation is illustrated below;

| | |
|-----------------------------|--------------|
| Craigleith Portion of Works | \$ 1,005,628 |
| Windfall Prepayment | \$ 761,000 |
| Potential Town Funded | <hr/> |
| | \$ 244,628 |

The Town's current Craigleith Area DC Reserve Fund balance at the end of 2011 was \$130,826. The remaining \$113,802 would be internally financed until the specific DC's had been collected through other developments or local servicing projects. Based on the recalculated rate, that would mean approximately 90-100 units. There is a reasonable expectation that through service extensions and other development within the Craigleith area, this liability would be reimbursed within a 3-5 year period. Given that the Town is in a relatively good financial position, the risk to this option is considered low.

C. The Blue Mountains' Strategic Plan

Providing a strong, well managed municipal government

D. Environmental Impacts

Supporting environmentally sound decisions

E. Financial Impact

There is an overall increased chance of risk and future liability should certain options be exercised by Council as explained within the report.

F. In Consultation With

Troy Speck, CAO
David Finbow, Director of Planning & Building Services
Reg Russwurm, Director of Engineering
Shawn Everitt, Director of Recreation
John Metras, Solicitor

G. Attached

1. GR21 Sanitary Extension Memo dated December 8, 2011
2. HGR Graham Partners letter dated April 17, 2012

Respectfully submitted,

Darcy Chapman, Capital Accountant

Robert Cummings, CMA
Director of Finance & IT Services

For more information, please contact:

Darcy Chapman
dchapman@thebluemountains.ca
519-599-3131 x274

MEMORANDUM – DRAFT (without Prejudice)



DATE: December 8, 2011
TO: Rob Cummings, Troy Speck, David Finbow, John Metras, Reg Russwurm
FROM: Darcy Chapman
SUBJECT: GR21 Sanitary Extension / Windfall Development Front-ending Agreement

TBM Development Charges Background Study

The DC Study includes costs for sanitary extension effectively from the Craigleith STP on Brophy's Lane along GR21 to GR19. This extension was determined to benefit multiple future development lands in three distinct service areas. The 2008 DC Study contemplated the servicing to benefit the Craigleith Area (3779 units), Osler (359 units) and Castle Glen (2100 units). Based on this, the overall costs associated with the sanitary extensions from the STP to the southern limit of the Craigleith Service Area along both GR21 and GR19 up to the 12th SR/Sixth Street intersection were to be shared proportionately within the total units for the servicing areas. As such the share of works is split as a percentage below;

| | | |
|-------------|-------------|----------------|
| Craigleith | 3779 | 60.58% |
| Osler | 359 | 5.76% |
| Castle Glen | 2100 | 33.66% |
| | <u>6238</u> | <u>100.00%</u> |

In regards to the overall costs for the current works planned for 2012 the sanitary has been budgeted at \$1,660,000 based on EPW.11.101 and will be distributed to the areas as follows;

| | |
|-------------|-------------------|
| Craigleith | \$ 1,005,628 |
| Osler | \$ 95,616 |
| Castle Glen | <u>\$ 558,756</u> |
| | \$ 1,660,000 |

How does this relate to the front-ending agreement?

The front-ending agreement (FEG) should reference the split in costs and Georgian Gate (GG) will see return on their money in the following manner;

- The Craigleith portion will be attributed to the costs associated with their development and will be considered as prepaid development charge credits. GG has a total potential of 609 units. The 2012 Craigleith Wastewater Collection DC relating to trunk infrastructure is \$2505 per "Residential B" unit. Based on this, GG will be able to utilize the full credit within the planned development ($\$1,005,628 / \$2,505 = 401.5$ units).

- In relation to the Osler and Castle Glen monies, the FEG will stipulate that the Town will reimburse GG as the first payor for any monies collected within either of these service areas for DC or DC equivalent charges (in the case of existing units) relating to the collection portion of the Wastewater DC. In the case of Castle Glen, the 2012 rate is \$2833/unit). The Osler charge will be calculated through a Local Servicing By-law when or if the lands are serviced. GG needs to be made aware that the current draft of the FEG has a 20 year sunset and in this regard, there is a very likely chance that these monies may never filter back to them.

Road Costs

EPW.11.101 provides a budget of \$751,000 for road restoration costs to be paid by the developer. With regards to the roads related costs for re-establishing GR21 after the sanitary extension has been constructed, the TBM DC Study did not contemplate road related costs within either sanitary or water works. The benchmarking costs utilized were provided by the Town’s Engineering department and were separated for each distinct area of work including roads, water, sewer, streetlights, sidewalks, and storm sewers.

As well, the road is under Simcoe/Grey County jurisdiction and is contemplated within the new Grey County DC Study. TBM does not own the road or control its maintenance or use. We are required to have an easement to place the sewer and that is as far as our responsibility will stretch. Staff does understand that the County will not provide DC credits for the road due to the fact that this is restoration works and not improvements related to the four-lane upgrading of CR21 as is shown in the DC Study.

We cannot provide DC credits for the work as it was not shown in the Town’s DC Study. In order to get it in the study, we would have to reopen it. This would entail a process that would most likely last 12-18 months, cost \$50,000 and not provide any guarantees. Another developer could challenge the Town in the need to have road rehab costs included in the project, being that all other projects do not and have not since at least before the Town’s 2001 DC Study.

It must be made known to GG that the road related cost are effectively “price of doing business” costs and need to be built into their business plan.

Conclusion

It is anticipated that along with the original \$161,000 required to undertake the engineering, GG will be required to upfront \$2.25M for construction costs. The costs will be broken down in the following manner for possible future recovery by GG;

| | | |
|------------------------|--------------|-------------------------------------|
| Sanitary - Craigleith | \$ 1,005,628 | Recoverable Through DC Credits |
| Sanitary - Osler | \$ 95,616 | Recoverable through DC Flow-through |
| Sanitary - Castle Glen | \$ 558,756 | Recoverable through DC Flow-through |
| Road Reconstruction | \$ 751,000 | Non-Recoverable |

April 17, 2012

Mayor Ellen Anderson and Members of Council
The Town of the Blue Mountains
P.O.Box 310
26 Bridge Street East
Thornbury, Ontario N0H 2P0

Mayor Anderson and Members of Council:

**Re: Windfall Development –
Front-End Finance of Town Trunk Sewer on Grey Road 21**

This letter is written on behalf of our client, Windfall GP Inc. (“Windfall”), the owner of the development site formerly known as Georgian Gate. With draft plan approval for 609 residential units Windfall hopes to proceed as soon as possible with the first phase of that development and with related site servicing. The purpose of this letter is to ask Council to exercise its discretion, including its discretion under the *Development Charges Act, 1997*, to authorize the preparation of an agreement for financing and cost recovery related to the trunk sewer works proposed for County Road 21.

Grey Road 21 Sanitary Trunk Sewer

The proposed Grey Road 21 Trunk Sanitary Sewer would run from Highway 26 to the Scandinave Spa (the “Project”). The location of the Windfall lands and the trunk sewer are illustrated on the Attachment # 3 (taken from the Staff Report below).

In the December 12, 2011 Report EPW.11.101 Town staff set out the requirement that the developer finance 100 % of the estimated \$2.41 million trunk sewer Project costs. That Report also described the methods of cost recovery available to Windfall including development charge credits, transfer of sewer service development charge payments received by the Town and payments from existing un-serviced properties that may connect to this sewer service.

Limitations on Cost Recovery

The concern of our client is with limitations on the amount and timing of cost recovery recommended by Town staff. The December 12, 2011 Staff Report suggested that the road re-surfacing costs (estimated at \$750,000) should not be treated as a development charge item and should not be recoverable. This would reduce the amount recoverable by Windfall from \$ 2.41 million to approximately \$1.66 million. Our client understands that the Town is not currently prepared to recognize this cost as a recoverable development charge item.

Limit on Development Charge Credits

In another Town Staff Report dated December 8, 2011, it is recommended that development charge credits available to development on the Windfall site should be limited to approximately \$1 million. For convenient reference the estimated costs and staff proposed limitations on cost recovery are summarized in Attachment # 1 to this letter.

Section 38 of the *Development Charges Act, 1997* provides that where the municipality allows development charge works, such as the trunk sewer Project, to be completed by the developer, then the municipality shall provide a credit for the reasonable cost of that work. The credits are a matter of basic fairness and provide that if a developer pays once to finance or install services then the developer should not be obliged to pay again for those same services through the development charges. The December 8, 2011 recommendation of staff would limit the amount of development charge credits available to Windfall to \$1 million on the first 400 Windfall units. Since Windfall will have already paid an estimated \$1.66 million toward that service, we believe that additional credits, beyond the \$ 1 million recommended by staff should be available. Otherwise the remaining 209 Windfall units could be paying again through development charges for a sewer service that the developer had already financed.

Deferral of \$650,000

Staff had also suggested that \$650,000 (approximately 40%) of the recoverable amount should be deferred until the Castle Glen and Osler service areas are developed. If the Town was financing the Project itself, the Town would be able to pay for that work or reimburse itself from the ongoing payment of sewer development charges from any of the Craigleith, Castle Glen or Osler service areas. Currently, the Town is in a position to collect at least \$2.7 million from development charges directly related to the current sewer service Project. The Town would not be obliged to make itself or its contractors wait for reimbursement from development charges from Castle Glen and Osler. Similarly, we are requesting that Windfall be entitled to reimbursement from other builders and developers who will be paying sewer service development charges to the Town whether those charges are paid from the Craigleith, Osler or Castle Glen service areas.

Please note that under the terms of the proposed servicing agreement, our client will not be entitled to an interest or inflation adjustment on the recoverable amount. In addition, Windfall will be limited to that cost recovery which accrues to it in the next twenty years and will not be entitled to cost recovery beyond that time frame. In these circumstances, we believe it is reasonable to request that the Town allow Windfall to be reimbursed with the next available development charge credits or transfer of development charge dollars whether those payments come from the Craigleith, the Osler or the Castle Glen service areas.

Request for Exercise of Discretion

We appreciate that staff have taken the time to review these matters with us. We understand that staff may feel constrained by the provisions of the *Development Charges Act, 1997* which direct staff to establish separate reserve funds and credits for separate services. However, the Act also provides for discretion and a more flexible approach at the Council level. We are requesting that such discretion be exercised here to provide for appropriate reimbursement of Project financing by Windfall.

Note that Windfall is not seeking and will not be entitled to an accumulation of credits and reimbursement payments that would exceed the total costs of construction. In fact, and as noted above, there are some significant Project costs, such as road reinstatement, for which cost recovery may not be available.

Benefits to Municipality

Windfall will front end the entire cost of the Project construction. The Town will have and control the Project construction contract. The servicing agreement will call for initial security and for payment of the final, actual costs of construction by Windfall.

The Grey Road 21 trunk sewer is an essential first phase of sewer servicing not just for Windfall but for other development lands located both upstream and downstream from the Windfall site. The Project will also benefit existing development that may require municipal sewer service. An example is the Prices Subdivision that may eventually be serviced (subject to its own contribution to Project cost recovery) with sewer pipes to be located within the Windfall development site.

Addressing municipal concerns.

Town staff had identified a concern that allowing the requested cost recovery to Windfall might mean that development charge funds would not be available to finance other required sewer works, including in particular a proposed pump station at the Craigleith treatment plant. In response and in cooperation with Town staff we had the project consulting engineers undertake a review of capacity and the need for a proposed sewage pump station. In brief, that review concluded that the existing infrastructure could accommodate between 765 and 1185 additional residential units and that the new pumping station will not be required in the near future. In addition to this confirmation of existing capacity, our clients offered to assist with a monitoring program that would establish the timing for pump station construction.

The ability of the Town to require developer front end financing is also an important measure to protect the Town from the risk of underfunding for sewer services in the Craigleith, Osler and Castle Glen service areas. As in the present case, the Town will not be obliged to undertake the major sewer works itself and can require that these works be financed or front-ended by the developments that will create the need for them.

Current Need – Sanitary sewer trunk – Grey Road 21

Our client, Windfall GP Inc., is prepared to enter an agreement to finance the construction of the Grey Road 21 trunk sewer described above. However, they are asking Council for the opportunity to achieve a timely and reasonable level of cost recovery for all of the estimated \$1.66 million identified by the Town as a recoverable cost. We hope to secure that recovery from a flexible combination of credits, development charge payments and reimbursement from existing residential areas, whichever first occurs.

Please note that all dollar values used in this letter are approximations and best current estimates used to illustrate the proposed finance and cost recovery principles. It is understood that final costs will be based upon the actual costs of Project construction.

Thank you for your attention to this request made on behalf of Windfall GP Inc. We hope to attend as a delegation before Council on April 23, 2012 and will be pleased to provide any clarification required at that time.

Yours very truly,

HGR Graham Partners LLP



Paul Peterson

PJP:lm

attachments

Copy: Windfall GP Inc.

**Attachment No. 1 to the Letter to Mayor and Members of Council,
 Town of the Blue Mountains
 on behalf of Windfall GP Inc. April 17, 2012.**

| | Sewer Trunk works on County Road 21 sewer trunk from Hwy 26 south to Scandinave Spa proposed for construction at cost of Windfall GP Inc. (the "Project") | Cost all figures approximate |
|---|---|------------------------------------|
| 1 | Estimated total Project cost derived from Town DC Background Study - Appendix D - Table 6 (\$1150 per meter) | \$2.7 million |
| 2 | Estimated total Project cost from December 2011 Town staff Report EPW.11.101 | \$2.41 million |
| 3 | Deduction for road reinstatement costs (Staff Reports December 8, 2011 identify this item as non-recoverable by Windfall) | \$750,000 |
| 4 | Total potential cost recovery by Windfall (identified by staff ... line 2 minus line 3 =) | \$1.66 million |
| 5 | Deferred cost recovery (Suggestion by staff that this amount should only be recoverable by Windfall when and if fully serviced development proceeds in Castle Glen and Osler service areas.) | \$ 650,000 |
| 6 | Cap on cost recovery and on DC credits Staff recommended cost recovery from credits or development charges in Craighleith service area be limited and capped at (line 4 minus line 5 = \$ 1 million) (Despite estimated \$ 2.4 million Project costs) | \$ 1 million. |

**Attachment No. 2 to Letter to Mayor and Members of Council
Town of the Blue Mountains**

**Excerpt from *Development Charges Act, 1997*
(may be referred to in deputation to Council)**

38. (1) If a municipality agrees to allow a person to perform work that relates to a service to which a development charge by-law relates, the municipality shall give the person a credit towards the development charge in accordance with the agreement. 1997, c. 27, s. 38 (1).

Amount of credits

(2) The amount of the credit is the reasonable cost of doing the work as agreed by the municipality and the person who is to be given the credit. 1997, c. 27, s. 38 (2).

Limitation: above average level of service

(3) No credit may be given for any part of the cost of work that relates to an increase in the level of service that exceeds the average level of service described in paragraph 4 of subsection 5 (1). 1997, c. 27, s. 38 (3).

Credit can be given before work completed

(4) A credit, or any part of it, may be given before the work for which the credit is given is completed. 1997, c. 27, s. 38 (4).

Credit relates to service for which work done

39. (1) A credit given in exchange for work done is a credit only in relation to the service to which the work relates. 1997, c. 27, s. 39 (1).

Credits can be divided among services

(2) If the work relates to more than one service, the credit for the work must be allocated, in the manner agreed by the municipality, among the services to which the work relates. 1997, c. 27, s. 39 (2).

Exception by agreement

(3) The municipality may agree that a credit given be in relation to another service to which the development charge by-law relates. 1997, c. 27, s. 39 (3).

Changes after credit given

(4) The municipality may agree to change a credit so that it relates to another service to which the development charge by-law relates. 1997, c. 27, s. 39 (4).

LETTER
ATTACHMENT #3

