



Staff Report

Planning & Development Services

Report To: COW-Operations_Planning_and_Development_Services
Meeting Date: November 19, 2024
Report Number: PDS.24.143
Title: Allocation Policy By-Law Update
Prepared by: Adam Smith, Director of Planning & Development Services

A. Recommendations

THAT Council receive Staff Report PDS.24.143, entitled "Allocation Policy By-Law Update";

AND THAT Council enact a revised by-law implementing a Water and Sewage Allocation Policy for the purpose of allocating water and wastewater services to new developments;

AND THAT 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;

AND THAT Council direct staff to review the by-law 18 months following its enactment and recommend further revisions to the Water and Sewage Allocation Policy and associated Evaluation Framework.

B. Overview

The purpose of this report is to respond to the correspondence received by Great Gulf and Goodmans LLP representing Great Gulf regarding the proposed Water and Sewer Allocation By-law. Based on reviewing the materials submitted, a revision is suggested to the proposed by-law

C. Background

At the September 30, 2024 Council meeting, two letters were received from Great Gulf and Goodmans LLP expressing concerns on the legality of the proposed by-law and potential impacts to Great Gulf's Lora Bay Phase 4b development. Town staff subsequently reviewed the correspondence in conjunction with the Town's solicitor.

The issues include but are not limited to the ambiguities associated with implementation of the policy, conflicts with Planning Act approvals and perceived lack of fairness. Specifically, to the Great Gulf lands in Lora Bay, there is concern around applicability of the by-law recognizing the agreements in place including the Master Development Agreement and Municipal Infrastructure Agreement specific to drainage works in Lora Bay.

D. Analysis

Based on the input received by the Town's solicitor and further review by staff, there remains confidence in the applicability of the by-law in governing allocation decisions at the Town including Great Gulf lands in Lora Bay.

The only substantial change recommended since the correspondence has been received is to expand the definition of development agreement to include Development Charge (DC) Front-Ending Agreements. This amendment is reflective of the expense associated with constructing external works and the risk that comes with committing to these improvements in the absence of water and sewage allocation.

In reviewing both the Lora Bay MDA and Municipal Infrastructure Agreement neither deal with matters of allocation and thus, do not form sufficient basis for providing an exemption under the by-law.

Despite the claims by Goodmans LLP questioning the legality of the by-law, there continues to be confidence in the Town's statutory authority to proceed with enactment. Staff do not believe there is sufficient rationale to warrant additional investigation and consultation regarding the by-law.

E. Strategic Priorities

1. Communication and Engagement

We will enhance communications and engagement between Town Staff, Town residents and stakeholders

2. Organizational Excellence

We will continually seek out ways to improve the internal organization of Town Staff and the management of Town assets.

F. Environmental Impacts

N/A

G. Financial Impacts

N/A

H. In Consultation With

Corrina Giles, Town Clerk

I. Public Engagement

The topic of this Staff Report has not been the subject of a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required. However, any comments regarding this report should be submitted to Adam Smith, directorplanningdevelopment@thebluemountains.ca

J. Attached

1. Revised Water and Sewage Allocation By-law
2. Great Gulf Deputation
3. Resolution B.9.2

Respectfully submitted,

Adam Smith
Director of Planning & Development Services

For more information, please contact:
Adam Smith, Director of Planning & Development Services
directorplanningdevelopment@thebluemountains.ca
519-599-3131 extension 246

Report Approval Details

Document Title:	PDS.24.143 Allocation Policy By-Law Update.docx
Attachments:	- Attachment 1 - Revised Water and Sewage Allocation By-Law.pdf - Attachment 2 - Great Gulf Deputation.pdf - Attachment 3 - Resolution B.9.2.pdf
Final Approval Date:	Nov 13, 2024

This report and all of its attachments were approved and signed as outlined below:

Adam Smith - Nov 13, 2024 - 12:52 PM

The Corporation of the Town of The Blue Mountains

By-Law Number 2024 –

Being a By-law to Manage the Allocation of Municipal Water Supply and Sewage Capacity

Whereas Section 11 of the *Municipal Act*, 2001, S.O.2001, c.25 (hereinafter referred to as the “Act”) authorizes The Corporation of the Town of The Blue Mountains (hereinafter the “Town”) to pass by-laws respecting public utilities;

And Whereas sub-section 86.1(1) of the Act permits municipality to adopt a policy providing for the allocation of water supply and sewage capacity;

And Whereas there are policies in section D1.5 of the Town’s Official Plan which provides direction in the monitoring of servicing capacity and regard for competing demands for servicing capacity;

And Whereas the Town’s water and sewage supply and distribution system has limited capacity available for allocation to new development;

And Whereas the Council of the Town wishes to manage the reserved capacity of the water and sewage supply and distribution system in a sustainable and logical manner;

Now therefore Council of The Corporation of the Town of The Blue Mountains enacts as follows:

1. In order to properly manage the Town’s uncommitted reserve capacity of its sewage treatment system and water supply system, protect the health and safety of the public , and in order to ensure that servicing capacity can be provided to those projects that provide the greatest benefit to the Municipality and that are most likely to proceed in the immediate future, The Corporation of the Town of The Blue Mountains hereby adopts the "Water and Sewage Allocation Policy" as set out in Schedule "A-1" and “Water and Sewage Allocation Policy Evaluation Framework” as set out in Schedule “B-1” which are attached hereto and which form part of this By-law.
2. In accordance with Section 86.1(3) of the Act, the administration of the policy is hereby delegated to the Director of Planning and Building Services, with all decisions made by the Director to be final.
3. This By-law shall take effect on the date of passing.
4. Schedule "A-1" and Schedule “B-1” constitutes part of this By-law.

And Further that this By-law shall come into force and take effect upon the enactment thereof. Enacted and passed this ____ day of _____, 2024

Andrea Matrosovs, Mayor

Corrina Giles, Town Clerk

Town of The Blue Mountains

Schedule A-1

By-law No. 2024-_____

Water and Sewage Allocation Policy

1. Policy Statement

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. In response to these challenges, the Town must adhere to the directives set forth by the Province and the County, emphasizing the need for economic and efficient service provision.

In alignment with these directives, this Water and Sewage Allocation Policy, (the “Policy”) has been prepared to address the escalating pressures on water and sewage infrastructure and to ensure the prioritization of projects while considering:

- complete communities and best planning practices;
- limiting sprawl and associated maintenance costs;
- community benefit, affordable housing and sustainability; and,
- supporting the growth of the community’s population and economy.

In essence, this policy serves as a strategic guide for the Town to facilitate accountable, and prudent decision-making in the face of increasing and competing development pressures, and available capacity. The policy framework serves as a systematic, objective, measurable, and effective tool to assess and evaluate development applications consistently.

By implementing this Policy, the Town aims to strike a delicate balance between accommodating competing developments within existing infrastructure constraints or planned project capacities and, safeguarding the Town’s long-term provision of water and sewage capacity, while advancing and considering community objectives. This proactive approach is not only complementary to the existing development controls but also promotes transparency and fairness in the decision-making process for development applications. While the Town may not always face constraints with respect to water and sewage capacity, the establishment of a thoughtful and objective allocation framework demonstrates that the Town is committed to fostering a resilient and efficient approach to water and sewage capacity.

Moreover, the allocation framework outlined in this Policy is designed to consider various factors, such as:

- environmental impact;
- infrastructure capacity; and
- community needs.

By incorporating these considerations into the evaluation process, the Town endeavors to make informed decisions that prioritize responsible and sustainable growth.

On June 6, 2024, Bill 185, *Cutting Red Tape to Build More Homes Act, 2024*, received Royal Assent. This Act introduced an amendment (86.1) to the *Municipal Act* which enables municipalities to adopt policies that allow for a system for tracking the water supply and sewage capacity available to support approved developments, through the establishment of allocation criteria. This policy conforms to this amendment.

2. Purpose

This Policy aims to provide a clear and cohesive set of guidelines that will govern the equitable evaluation and allocation of resources to meet the evolving needs of the Town in the most beneficial manner possible.

3. Definitions

Additional Residential Units or ARU

An additional residential unit within an existing primary detached, semi-detached or row dwelling or commercial/institutional building or within a structure that is detached and accessory to a primary detached, semi-detached or row dwelling or commercial/institutional building.

Affordable Housing

Residential housing products that meet the definition of “affordable” based on applicable policy such as the Provincial Policy Statement (PPS) as well as criteria and parameters described in the Town of The Blue Mountains Housing Needs Assessment, 2023.

Allocated/Allocation

The action of apportioning water/sewage capacity in the Town's existing treatment plants, sewers, pumping stations, booster stations and other water and sewage infrastructure.

Allocation Policy

The policy adopted by Town Council to provide guidance, direction, and procedures to allocate water and sewage capacity.

Development Agreement

A legally binding contract between a municipality and a developer that outlines the terms and conditions for the development of a parcel of land. This includes but is not limited to pre-servicing agreements (basic services), Development Charge Front-Ending Agreements, subdivision agreements, and site plan agreements.

Equivalent Residential Unit or “ERU”

The conversion of water and/or sewage reserve capacity into a unit of measurement for the purposes of the allocation of uncommitted hydraulic reserve capacity.

Uncommitted Water and/or Sewage Reserve Capacity

This capacity is determined through subtracting any committed water and sewage allocation, including through draft approved and registered plans and site plan approvals, plus a safety factor and any capacity reserved for government projects, projects that do not require a *Planning Act* application or the treatment of hauled sewage if applicable, from the existing water and/or sewage reserve capacity.

Water and/or Sewage Reserve Capacity

The design capacity of the existing Town of The Blue Mountains water and/or sewage treatment plants, minus the actual existing recorded maximum day demand of water (for water) and the actual existing recorded annual average day sewage flow (for sewage).

4. Measuring the Allocation Capacity

The Town’s Engineering Division in consultation with the Water and Wastewater Division shall be responsible for identifying the Water and/or Sewage Reserve Capacity available for allocation as well as converting the amount of Uncommitted Water and/or Sewage Reserve Capacity to ERUs. Capacities are to be based on design flows as calculated per the Town Engineering Standards.

The Town may request a report from a qualified professional engineer confirming the maximum demand and ERUs for site-specific mixed-use, industrial, commercial, and institutional proposals.

5. Development Applications

This Policy applies to the following developments throughout the whole of the Town:

- a) Any development where an extension and/or provision of new main line water supply and/or sewage collection infrastructure is required (i.e. excludes simple

service connections where development application does not represent an increase to the designed sewage flow generation or water demand identified for that property during the design of the main line or as otherwise accommodated in higher level planning reports);

- b) The creation of any number of new lots or units through a Plan of Subdivision or Vacant Land Condominium Description; or by way of a Consent application that exceeds 11 or more ERU units.
- c) Any development requiring Site Plan Control approval that exceeds 11 or more ERU units.

6. Development Exclusions

This Policy does not apply to the following:

- a) The addition of up to two (2) additional residential units on a lot which is in compliance with applicable zoning regulations.
- b) Changes from one permitted use to another permitted use provided the applicable zoning requirements are met;
- c) The construction of a patio, deck, porch, boathouse, dock, shoreline structure, accessory building or structure with no water or sewage connection to the Town system, temporary building, or structure, or interior or exterior renovation to an existing building or structure;
- d) The repair, re-build or restoration of a legally existing building or structure, or part thereof, provided that the building or structure continues to be used for the same purpose;
- e) Minor adjustments to site plan agreements and subdivision/condominium/site plan amendments that do not meet the criteria of Section 8; and
- f) The development of existing vacant lots where no approval under the *Planning Act* is required.

7. Procedures & Criteria

The following apply to the applicable development applications:

- a) Allocation of water and sewer capacity (“allocation”) shall be determined on a criteria basis. Each development requesting allocation will be evaluated in accordance with the Evaluation Framework (**Schedule B-1**).
- 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.
- c) If developments score the same, the Town may request supplemental information from applicants to make a decision.
- d) If not granted allocation, the Town will notify the applicant and outline the reasons for the decision to support resubmission in the next intake period.
- e) Allocation requests are to be made through the completion of the relevant form and will be considered by staff annually or at the discretion of the Director of Planning and Building Services, subject to available water and sewage capacity.
- f) Mixed-use developments will be categorized as either residential or non-residential on a case-by-case basis.
- g) Staff will evaluate each application for development in conjunction with the relevant and submitted materials and applicable reports provided through a Request for a Development Agreement Form and against the criteria identified in **Schedule B-1**.

The Town may retain an independent consultant to help assist in the review of development applications and supporting studies using **Schedule B-1**.

8. 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.

9. Review Cycle

Town staff will create development tracking tables to oversee allocated capacity and provide annual reports to Council. Through ongoing monitoring and assessment, potential adjustments to this policy will be evaluated in the best interest of the Town and the public. If Council deems that necessary amendments are required, excluding clerical or technical changes, based on monitoring outcomes, these modifications will be undertaken in a transparent fashion, involving consultations with both the development community and the public. A thorough review of this policy will be conducted within eighteen (18) months of Council approval to ensure its continued effectiveness.

10. Timing, Expiration of Allocation, Reallocation, & Non-Compliance

If capacity is allocated, the substantial works as set out in the Development Agreement must be completed within a year of the date of execution of the Development Agreement with the Town. If the works are not complete and/or other terms of the Development Agreement have not been met, allocation may be withdrawn, at the Town's sole and unfettered discretion.

An extension may be granted for one (1) additional year, which can be granted at the discretion of the Director of Planning and Building Services based on the following criteria:

- Unforeseen circumstances which have caused delays in carrying out the works;
- New legislation, regulations, policies and/or by-laws have not precluded construction of the approved works and would not significantly impact the development's viability.

Reallocation of water and sewerage capacity for those developments that have had their allocation withdrawn will be subject to the requirements of Section 7 of this Policy.

11. References and Related Policies

The following is a list highlighting key plans and reports that may be relevant to the Water and Sewage Allocation Policy.

- Town of The Blue Mountains Official Plan (June 2016)
- Town of The Blue Mountains Housing Needs Assessment (November 2023)
- Town of The Blue Mountains Corporate Strategic Plan 2020 – 2024
- Town of The Blue Mountains 2021-2025 Economic Development Strategy
- Town of The Blue Mountains Community Improvement Plan: Town Wide Revitalization (January 2021)
- Town of The Blue Mountains Community Design Guidelines (2012)
- Town of The Blue Mountains Integrated Community Sustainability Plan (2022)
- Town of The Blue Mountains Transportation Master Plan (2022)

Town of The Blue Mountains

Schedule B-1

By-law No. 2024-_____

Water and Sewage Allocation Policy Evaluation Framework

See framework on the following pages

Category	Sub-Category	Relevance	Residential Max	Non-Residential Max	Point Rationale
1. Land Efficiency and Feasibility	1.1 Subject lands are within the Settlement Area or Secondary Plan Area	Yes / No	2	2	2 point if development meets targets, 0 If not
	1.2 Development is in close proximity to existing servicing infrastructure	Compliance Level	3	3	3 points if development meets targets (subsequent phase of approved development), 0 If not
	1.3 Development follows to Official Plan density targets	Yes / No	1	1	1 point if development meets targets, 0 If not
	1.4 Mixed-use development	Yes / No	1	1	1 point if development is mixed-use, 0 if not
	Total Points		7	7	
2. Overall Sustainability	2.1 Development integrates water, wastewater and/or stormwater efficiency and flow reduction technology	Compliance Level	3	3	Town staff to determine compliance level based on technologies proposed. Up to 3 points.
	2.2 Development achieves energy conservation certification (determined by Town)	Compliance Level	3	3	Town staff to determine compliance through development integration of LEED, Energy Star, BOMA BEST, EnerGuide, etc. Up to 3 points.
	2.3 Green building techniques and standards	Compliance Level	3	3	Town staff to determine compliance through development integration of high performance insulation, sustainable materials, green roofs/walls, solar/passive solar designs, green stormwater design, etc. Up to 3 points

Category	Sub-Category	Relevance	Residential Max	Non-Residential Max	Point Rationale
	2.4 Surrounding environment conservation including, but not limited to, tree canopy enhancement and on-site tree preservation.	Compliance Level	3	3	Town staff to determine compliance through development's commitment to environmental conservation such as tree canopy enhancement, tree preservation on site, greenspace dedication, etc. Up to 3 points
	Total Points		12	12	
3. Economic	3.1 New Jobs created	Compliance	0	5	1 point per 5 jobs (up to 5 points)
	3.2 Development follows goals from the Economic Development Strategy	Compliance Level	0	4	Town staff to determine compliance through development's commitment to economic development goals (financial and economic prosperity, community wellbeing, environmental resiliency). Up to 4 points
	3.3 Development Contributes to emerging and high growth industries	Compliance Level	0	3	Town staff to determine compliance through development integrating industries such as technology, advanced manufacturing, natural resources, entertainment and media, agribusiness, cleantech, life sciences. Up to 3 points.
	Total Points		0	12	
4. Housing / Affordability	4.1 Development includes affordable housing units as defined in the Policy.	Compliance Level	10	0	1 point per 5% of units dedicated to affordable/attainable housing (up to 10 points).
	4.2 Development includes rental housing units	Yes / No	5	0	1 point per 5% of units dedicated to rental units (up to 5 points).

Category	Sub-Category	Relevance	Residential Max	Non-Residential Max	Point Rationale
	4.3 Development includes specialty housing (senior, community, special-needs)	Yes / No	1	0	1 point if yes, 0 if no.
	4.4 Development includes a mix of housing types with one type comprising no less than 10% of total units (for example: single-detached, semi-detached, townhouses, apartments)	Yes / No	5	0	1 point per housing type comprising no less than 10% of total units. Up to 5 points.
Total Points			21	0	
5. Community Considerations	5.1 Development integrates aspects of the Community Design Guidelines	Compliance Level	3	3	Community Design Guideline Characteristics are integrated with 1 point per design characteristic integrated (up to 3 points).
	5.2 Development improves the state of required infrastructure (road connections, transit stations etc.)	Compliance Level	3	3	Town staff to determine compliance level based on development's inclusion of the completion, upgrade or construction of required key infrastructure (up to 3 points).
	5.3 Received Community Infrastructure and Housing Accelerator Order (CIHA) or Ministerial Zoning Order based upon Council Resolution	Yes / No	1	1	1 point if development received a Community Infrastructure and Housing Accelerator Order (CIHA) or subject to a Council supported MZO, 0 if not.

Category	Sub-Category	Relevance	Residential Max	Non-Residential Max	Point Rationale
	5.4 Development includes community beneficial facilities (parks, recreational amenities, active transit systems, etc. Hospitals, LTC Facilities, Employment, Campus of Care, projects identified in the Housing Needs Assessment report.)	Compliance Level	3	3	Town staff to determine compliance level based on development inclusion of the completion, upgrade or reconstruction of active transportation infrastructure and networks, park improvements, new park construction. (up to 3 points).
	Total Points		10	10	
Overall Points			50	41	
Points Available			50	41	



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



**The Town of The Blue Mountains
Council Meeting**

Title: B.9.2 Follow up Report for the Allocation Policy, PDS.24.122
Date: September 30, 2024

Moved by: Councillor Porter
Seconded by: Councillor McKinlay

THAT Council receives Staff Report PDS.24.122 entitles "Follow up Report for the Allocation Policy" and defers consideration of the Water and Wastewater Allocation Bylaw until Council has received a legal opinion on the September 25, 2024 correspondence from Goodmans, Barrister and Solicitor, received at the September 30, 2024 Council Meeting in the deputation from Kathleen Schofield, President Low Rise Residential, Great Gulf.

The motion is Carried