

March 31, 2025

Our File No.: 250940

Via Email

The Council of the City of Guelph
City of Guelph
City Hall
1 Carden Street
Guelph, ON N1H 3A1

Attention: Dylan McMahon, Acting General Manager / City Clerk

Dear Ms. Charles:

**Re: 601 Scottsdale Drive, City of Guelph
Phase 2 Student Residence for University of Guelph Students
Development Charge Complaint Pursuant to Subsections 20(1)(a) and (c) of the
Development Charges Act, 1997, S.O. 1997, c. 27
City File No. 2024 006489**

We are counsel to 601 Scottsdale GP Inc. and Forum 601 Scottsdale LP (collectively referred to as “**Forum**”) in respect of the property known municipally as 601 Scottsdale Drive in the City of Guelph (the “**Property**”). On behalf of Forum, we are writing to file a complaint to City Council pursuant to Subsections 20(1)(a) and (c) of the *Development Charges Act*, 1997, S.O. 1997, c. 27 (the “**DC Act**”).

The Property is owned by the University of Guelph (the “**University**”) and is planned to be redeveloped by Forum as a student residence for the exclusive use of University of Guelph students (the “**Student Residence**”). The Student Residence has been secured through a land lease between the University and Forum (the “**Lease**”). The Lease only permits a student residence on the Property and requires Forum to lease to University students only (the “**Student Residence**”). The Lease implements the University’s housing strategy to provide University Students with much needed housing.

The Property is Phase 2 of a multi-phase development by Forum in conjunction with the University of Guelph to provide student housing to University of Guelph students. Phase 1 was completed in 2023. A similar structure, where Forum enters into a lands lease with the University of Guelph to development student housing for the exclusive use of University students, was been employed for Phase 1. Development Charges did not apply to Phase 1 because it met the exemption found in the City’s 2022 DC By-law.

For the reasons that follow, which may be expanded on at a hearing for this matter, the Phase 2 Student Residence is also clearly exempt from Development Charges pursuant to the *Ministry of Training, Colleges and Universities Act*, R.S.O. C. M.19 (the “**Act**”) and the City of Guelph Development Charges By-law (2024)-20866, as amended by By-law (2024)-20997 (the “**DC By-Law**”). Through this Development Charges Complaint, we ask City Council to make a determination that Development Charges do not apply to the Student Residence.

The Facts

Student housing is critically undersupplied in the City of Guelph. For the 2024 academic school year, the University had a 1,300 student waitlist for residence. This student housing crisis is coupled with a 1.3 percent rental vacancy rate in the City, which is one of the lowest rates in Ontario. Building student housing will not only provide much needed housing for students, but it will also free up other forms of housing in the City for people who need it.

The University of Guelph requires additional temporary living accommodations for its students. Within the next 10 years, the University of Guelph has stated publicly it is looking to ensure over 9,000 beds are available for students studying at the school. As part of its housing strategy, the University of Guelph has sought arrangements with the private sector to meet its student housing needs.

Forum has expertise as a developer of student housing projects in Canada and, as noted above, has entered into an arrangement with the University of Guelph that will result in Forum constructing and operating the Student Residence in order to implement the University of Guelph’s student housing strategy.

In respect of the Student Residence, the University of Guelph owns the Property and it has entered into the Lease with Forum to build student housing for the exclusive use of the University of Guelph students. Of note, Section 9.1 of the Lease provides:

The Property shall be used, operated and maintained by the Tenant and any permitted subtenant (as hereinafter provide for) solely for the Use in a first class and reputable manner. For clarity, the permitted use of the Property is for a student residence and ancillary uses operated by the Tenant for the sole benefit of the students of the Landlord. The Property may not be used for any other purpose whatsoever without the prior written approval of the Landlord, which approval may be unreasonably withheld. [emphasis added]

Use is defined in Section 1.1 of the Lease as “A student residence and ancillary uses operated by the Tenant for the sole benefit of students of the Landlord.” [emphasis added]

Further, the Lease provides that the University has approval rights with respect to the Student Residence, including approval of design drawings, to ensure the Student Residence is built in a manner that appropriately accommodates its students, which is often designed and constructed

differently than purpose built rental for the general public. The architectural plans for the Student Residence have been clearly designed with unit sizes, unit layouts and floor layouts intended to cater to University of Guelph students.

Exemption Pursuant to The Act and the DC By-law

Section 6.1(1) of the Act provides an exemption for Development Charges as follows:

Land vested in or leased to a publicly-assisted university is exempt from development charges imposed under the Development Charges Act, 1997 if the development in respect of which development charges would otherwise be payable is intended to be occupied and used by the university. [emphasis added]

The DC By-law exempts “Development of University Land or Buildings” from Development Charges. In particular Section 3.5.1 of the DC By-law provides: “Notwithstanding the provisions of this By-law, Development Charges shall not be imposed with respect to (a) Development of University Land or Buildings”. Section 1 of the DC By-law defines “Development” as:

“the construction, erection, or placing of one (1) or more Buildings on land or the making of an addition or alteration to a Building that has the effect of increasing the size or usability thereof or any development requiring any of the actions described in section 3.4(a), and includes Redevelopment”

And defines “University Land” as:

“land vested in or leased to a publicly-assisted University which is intended to be occupied and used by the university”

The test to meet the exemption under the DC By-law is the same as the test under the Act. For the Student Residence to be exempt from Development Charges, it must meet a two-part test: (a) the land must be vested in the University and (b) the development must be intended to be occupied and used by the university. For the Student Residence, it is clear both parts of this test are met.

Land Vested in University

The Property is clearly vested in the University. The Student Residence will be constructed on land that is owned by the University of Guelph. The University will remain, at all times, the freehold owner of the land. The University does not stop having a vested interest in the land simply because it has leased the land to Forum to construct and operate the Student Residence for the

exclusive use of University students. This is clearly supported by the case law, including *University of Victoria v. City of Victoria*¹ and *Simon Fraser University v. Burnaby (District)*.²

Development Intended to be Occupied and Used by the University

It is also clear part two of the test is met, being the Student Residence is intended to be occupied and used by the University. Through the lease, the only permitted use is a student residence use which is for the exclusive use and occupation of University of Guelph students.

However, through discussions with the City we understand the City's view is that because of the Lease the Property is intended to be occupied and used by Forum, as tenant, and not by the University, and therefore the second part of the test is not met and the exemption in the Act does not apply. This view is not correct and confuses "use" and "occupation" with the corporate structure both the University and Forum thought best to facilitate the realization of this critical student residence project for the University.

For example, the City would clearly agree that if the University owned the land and financed and built a student residence itself, the student residence would be exempt from Development Charges under the Act. It therefore logically follows that this Student Residence is also exempt from Development Charges. In both circumstances, the use and occupation remain the same. The building is being used and occupied by the same University students. Forum may operating the Student Residence, through the arrangement secured by the Lease entered into with the University, but Forum is not using and occupying the building. This is being done by the University students only.

In further support of this position, "uses" are governed by Official Plans and Zoning By-laws governed by the *Planning Act*, R.S.O. 1990, C. P.13 (the "**Planning Act**"). Here, the use is a student residence. It is not Forum, as tenant. Neither the City's Official Plan nor Zoning By-law speak to nor can regulate in any way Forum as tenant. Corporate structure is not governed by planning instruments under the *Planning Act*. Rather, the use is the Student Residence, which pursuant to the Lease, is for the exclusive use and occupation of University of Guelph students.

Strong Policy Reasons to Support Exemption of Development Charges Meeting Intent and Purpose of the Act

The University should be free to conduct its business to advance the purposes and objects of the University, with one object being the delivery of student housing for its students, in a flexible manner. By taking the position that the University cannot enter into the Lease with Forum and still take advantage of the Development Charge exemption pursuant to the Act, the City is wrongfully interpreting the exemption and unnecessarily restricting the University's ability to deliver student

¹ 1969 CarswellBC 307, 9 D.L.R. (3d) 221.

² 1968 CarswellBC 192, 1 D.L.R. (3d) 427, 66 W.W.R. 684.

housing. This is in direct contrast to the intent and purpose behind the exemption found in the Act and the DC By-law, which is to facilitate and better enable publicly-assisted universities to carry out their mandates.

In this case, if Development Charges are applied the Student Residence, the project will not be viable and much needed housing which has been secured for the exclusive use of the University of Guelph students will not be developed. This is not in the interest of the City, the University of Guelph, Forum nor the public.

Lastly, it has been suggested that Forum is a private entity and therefore should not be entitled the Development Charge exemption because it would amount to a windfall. This a fundamental misunderstanding on how the Lease is structured and more generally how the University enters into business relationships with the private sector. The exemption of Development Charges is taken into account by the University when finalizing any such business arrangement and allows for fundamental projects, such as student housing at the University, to advance when they otherwise may not be able to so, as is the case here where the application of Development Charges would cause the project to be no longer viable.

Timing for Hearing of the Complaint

We ask that this Development Charges Complaint be heard by City Council at its earliest opportunity. The reason for the urgency of this request is because construction needs to commence by April 2025 or shortly thereafter for the Student Residence to be open for the 2027 academic school year. City Planning and Building Permit staff are aware of this timeline and have been working cooperatively with Forum to meet this timeline. Because this is a student residence project, the project cannot open anytime but the beginning of an academic school year when students are in need of securing housing for the year. If the commencement of construction is delayed, even by a few months, an entire calendar year may be missed before the building can be occupied and used by University students.

Conclusion

Exempting the Student Residence from Development Charges would not only meet the plain reading of the exemptions in the Act and DC By-law, but it would also be in keeping with the purpose of these exemptions to build more student housing. The legislative purpose of the exemption must be kept in mind and the exemptions should be interpreted to be consistent with the purpose of the exemptions.

We require certainty now that Development Charges are not applicable. The project cannot proceed until such confirmation is provided because the project is not viable should Development Charges be imposed.

Given the specific facts for the case at hand, which include: (a) the land is owned by the University; (b) the building design must be approved by the University; (c) the plans have been clearly

designed to house University students; (d) the Lease only permits a student residence and ancillary uses on the Property; (e) the Lease requires the Student Residence to be used and occupied for the exclusive use of University students; and (f) the Student Residence is implementing the University of Guelph's student housing strategy; we submit it is clear that the exemption in the Act and DC By-law apply and Development Charges should not be imposed and we ask City Council to confirm same.

The reasons in this letter in support of the Student Residence being exempt from Development Charges may be expanded upon at the hearing before City Council and we look forward to being given an opportunity to present to City Council at such a hearing, which, for the reasons stated above, we ask be scheduled at the earliest possible opportunity.

Yours truly,

Goodmans LLP



Joe Hoffman

JH/rr

1397-1230-3124

CC :

601 Scottsdale GP Inc. and Forum 601 Scottsdale LP

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