601 Scottsdale Drive, City of Guelph

Development Charge Complaint Pursuant to Subsections 20(1)(a) and (c) of the Development Charges Act

Document Book of the City of Guelph

April 25, 2025

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Peter Gross
Tel: 416-862-4459
peter.gross@ca.gowlingwlg.com

Graham Reeder
Tel: 416-369-7322
graham.reeder@ca.gowlingwlg.com

Lawyers for the City of Guelph

INDEX

TAB	DATE	DOCUMENT
		Subject Property
1.	2023	Aerial Photograph of Property at 601 Scottsdale Drive
2.	undated	Figure 1 – Proposed Conceptual Site Plan and Renderings, and Figure 2 – Rendering of Phase 1 and Phase 2
		Development Charges & Zoning By-Laws, Official Plan
3.	2019	City of Guelph Development Charges By-law Number (2019) - 20372
4.	2023	City of Guelph Zoning By-law Number (2023) - 20790
5.	2024	City of Guelph Development Charges By-law Number (2024) – 20866, as amended by (2024) - 20997
6.	February 2024	City of Guelph Official Plan – 2024 Consolidation
		Key Correspondence and Other Documents
7.	March 2, 2022	Email from City of Guelph to Forum Equity Partners regarding Phase 1 exemption
8.	February 7, 2024	Forum Real Estate Income and Impact Fund Offering Memorandum – Bonus Offering
9.	June 2024	CMHC Research Insight – Understanding Filtering: A Long-Term Strategy to New Supply and Housing Affordability
10.	August 7, 2024	Forum Real Estate Income and Impact Fund Reports Q2 2024 Results
11.	Fall 2024	CMHC Housing Market Information - Rental Market Report
12.	November 13, 2024	City of Guelph Staff Report to City Council dated November 13, 2024 regarding Development Charges By-Law Update for Bill 185
13.	November 18, 2024	Letter from Ministry of Municipal Affairs and Housing to City of Guelph Mayor Cam Guthrie re: *Planning Act* exemptions
14.	February 7, 2025	Meckelborg Financial Group - Forum Real Estate Income and Impact Fund – Press Release

TAB	DATE	DOCUMENT
15.	February 21, 2025	Email from Wood Bull with attached letter dated February 20, 2025 to Acting Treasurer, City of Guelph, regarding application of development charges on Phase 2 development
16.	March 17, 2025	Letter from City of Guelph to Forum Asset Management advising that development charges are not exempt
17.	March 21, 2025	Letter from Goodmans LLP to City of Guelph providing further reasons why student residence should be exempt from development charges
18.	March 31, 2025	Email and letter from Goodmans LLP to The Council, City of Guelph to launch Forum's Development Charge Complaint
19.	March 31, 2025	Email from City of Guelph to Goodmans acknowledging receipt of Development Charge Complaint
20.	March 31, 2025	Responding letter from City of Guelph to Goodmans LLP regarding Forum's Development Charges Complaint
21.	April 8, 2025	Article from GuelphToday.com "City development fees threaten future of major student housing project"
22.	April 21, 2025	University of Guelph News – Housing Demand Study Finds University-Operated Housing is Meeting Student Residence Demand (posted March 11, 2024, updated April 21, 2025)
		Case Law
23.		*Ontario Cancer Treatment and Research Foundation v. Ottawa (City of)*, 1998 CanLII 1255 (ON CA)
24.		*McMaster University and City of Hamilton et al*., (1975), 1 O.R. (2d) 378
25.		*R. v. Bell*, [1979] 2 S.C.R. 212
26.		*Assessors of Areas #1 and #10 v. University of Victoria*, 2010 BCSC 133
27.		*Re University of Ottawa v City of Ottawa/Re Carleton University v City of Ottawa*, [1967] O.J. No. 1154 | [1969] 2 O.R. 382
		Excerpts from Legislation
28.		*Development Charges Act*, S.O. 1997, c. 27

TAB	DATE	DOCUMENT
29.		Section 6.1 of the *Ministry of Training, Colleges and Universities Act*, R.S.O. 1990, c. M.19
30.		Sections 3 and 19 of *An Act to incorporate the University of Guelph*, S.O. 1964, c. 120
31.		Section 62.0.2 of the *Planning Act*, R.S.O. 1990, C. P. 13
32.		*More Homes Built Faster Act, 2022,* S.O. 2022, c.21 – Bill 23
33.		*Cutting Red Tape to Build More Homes Act, 2024*, S.O. 2024, c.16 – Bill 185

DC HEARING COMPLAINT – 601 SCOTTSDALE DRIVE, GUELPH
THE CORPORATION OF THE CITY OF GUELPH
WRITTEN SUBMISSION

I. OVERVIEW

1. The Responding Party, The Corporation of the City of Guelph (the "**City**"), makes these submissions in response to the complaint of 601 Scottsdale GP Inc. and Forum 601 Scottsdale LP, affiliates of Forum Asset Management Inc., relating to development charges for re-development of 601 Scottsdale Drive, Guelph (the "**Subject Property**"), pursuant to section 20(1)(a) and (c) of the *Development Charges Act, 1997*, S.O. 1997, c. 27 (the "**DC Act**").

2. The Subject Property is owned by, and vested in, the University of Guelph (the "**University**"). Forum Asset Management Inc. is an investment fund manager and portfolio manager, which seeks "to acquire cash-flowing, resilient residential real estate assets (including equity interests and direct ownership) with opportunities for capital appreciation, underpinned by strong market fundamentals, with a focus on purpose-built student accommodation, multi-family apartments and furnished rentals" in its capacity as manager of Forum Real Estate Income and Impact Fund (the "**Fund**"). The Fund is "a $2.4 billion institutional quality, private REIT that is the leading owner and investor of purpose-built student accommodations across Canada".[1] The Fund's investment and risk-mitigation strategy is, in part, "to invest

[1] Forum Real Estate Income & Impact Fund – Press Release, February 7, 2025: https://mfgltd.com/forum-real-estate-income-impact-fund-press-release/

in inflation-hedged residential real estate (naturally elevated turnover in purpose-built student accommodations and co-living communities), [with] higher expected future rental rates".[2] 601 Scottsdale GP Inc. and Forum 601 Scottsdale LP (together, "**Forum**") are property investment/holding entities. The Fund's organizational structure is depicted in the Offering Memorandum.[3]

3. Forum-affiliated entities have entered into lease agreements with the University to re-develop the Subject Property as a privately owned and operated, for-profit, student residential complex in two phases.

4. Phase 1 involved the redevelopment of a former hotel on the Subject Property. Phase 1 is built and occupied and was determined by the City to be exempt from payment of development charges under the City's then in force Development Charges By-law Number (2019) – 20372 (the "**2019 DC By-law**"). However, the 2019 Development Charges By-law was repealed when City Council passed a new Development Charges By-law in 2024 (the "**2024 DC By-law**").

5. Phase 2 on the Subject Property is a separate development application for a new purpose-built rental building. Forum has entered into a lease agreement with the University for Phase 2 (a separate lease from Phase 1). Phase 2 should be subject to development charges under the 2024 DC By-law.

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[2] Offering Memorandum https://www.forumreiif.ca/wp-content/uploads/2024/03/REIIF-Offering-Memorandum-Bonus-Offering.pdf at page 31.
[3] Offering Memorandum https://www.forumreiif.ca/wp-content/uploads/2024/03/REIIF-Offering-Memorandum-Bonus-Offering.pdf at page 44.

6. The only issue to be determined by Council is whether the Phase 2 development is intended to be occupied and used for University purposes.

7. The City should dismiss this complaint for four reasons:

   (a) First, the lease between the University and Forum makes it clear that it is Forum who will use and occupy the Subject Property and buildings over the long term for its own purposes.

   (b) Second, the *Planning Act* and instruments under it do not support Forum's position that the Subject Property will be used and occupied by the University or used and occupied for University purposes.

   (c) Third, providing an exemption for a private development of above-market rental units with high turnover, for the predominant purpose of investor returns, is contrary to the objects and purpose of the DC Act and City's Policy Goals. Exemption of this development would result in a windfall to a private party and investors at the expense of the City's taxpayers which is against the public interest and the overarching purpose of the statutory exemptions.

   (d) Fourth, the Phase 2 development is contrary to the University's purposes of providing affordable and inclusive housing options for its students in order to contribute to "the intellectual, social, moral and physical development" of the University's members or the betterment of society. The University's own

housing study has found that it is University-operated housing that is needed to meet student residence demand.

II. BACKGROUND

8. The Subject Property is approximately 2.2 hectares in size with approximately 122 metres of frontage along Scottsdale Drive. The Subject Property is partially re-developed, with the eastern portion occupied by a former hotel building that was converted by Forum into a residential building containing 164 residential suites geared to students as part of the Phase 1 re-development. Phase 1 was approved through previous planning applications, was completed in 2023, and is currently occupied.

9. Phase 1 was exempt from development charges under the 2019 DC By-law, a now repealed DC By-law that provided the following exemption for land owned by the University that was developed for University Related Purposes:

> 3.5.1 Notwithstanding the provisions of this By-law, Development Charges shall not be imposed with respect to:
>
> (a) Development of land, buildings or structures for <u>University Related Purposes</u> within the University defined area as set out in Schedule C; [emphasis added]
>
> (b) land, buildings or structures outside the defined area as set out in Schedule C, which are now owned directly or indirectly by the University or on behalf of the University or which may be acquired by the University and which are developed or occupied for University Related Purposes, provided that, where only a part of such land, buildings or structures are so developed, then only that part shall be exempt from the Development Charges specified under this By-law;

10. The 2019 DC By-law defined "University Related Purposes" by reference to section 3 of *An Act to incorporate the University of Guelph*, S.O. 1964, c. 120 (the "**University of Guelph Act**"):

> 3. The objects and purposes of the University are,
>
> (a) the advancement of learning and the dissemination of knowledge, including, without limiting the generality of the foregoing, the advancement of learning and the dissemination of knowledge respecting agriculture; and
>
> (b) the intellectual, social, moral and physical development of its members and the betterment of society.

11. In contrast, the 2024 DC By-law passed by City Council on January 16, 2024, includes a revised definition of "University Land". Section 1 defines "University Land" as:

> "University Land" means land vested in or leased to a publicly-assisted University which is intended to be <u>occupied and used by the university</u>. [emphasis added]

12. Section 3.5.1 exempts Development of University Land or Buildings:

> Notwithstanding the provisions of this By-law, Development Charges shall not be imposed with respect to:
>
> (a) Development of University Land or Buildings;

13. The 2019 DC By-law does not apply to Phase 2; the 2024 DC By-law applies to Phase 2.

14. The Phase 2 development proposes two, 7-storey residential rental buildings with a combined total of 489 units connected by a single storey indoor amenity area.

Together, Phases 1 and 2 will result in a student residential complex with a total of 665 units.

15. The University owns the Subject Property and has entered into a 99-year land lease (the "**Lease**") with Forum that allows Forum to build, use, operate and maintain student housing for students at the University, per Article 9.1:

> The Property shall be used, operated and maintained by the Tenant and any permitted subtenant (as hereinafter provided 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 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]

16. The Lease expressly declares at Article 15.9 that the University and Forum are not partners, joint venturers or agents for each other:

> 15.9 No Partnership
>
> The Landlord and the Tenant hereby expressly declare that it is neither their intention nor their agreement that this Lease or any arrangements between them shall constitute or be deemed to constitute the parties as partners, joint venturers or agents for each other.

17. The Lease goes on to further declare at Article 15.12 that the University is not a partner, co-venturer, operator, or manager with respect to the student residences:

> Notwithstanding anything else contained in this Lease, at no time shall the Landlord be considered to be a partner, co-venturer, operator, manager, etc., of or with Forum or with respect to the operation of the student residences. [emphasis added]

18. The Lease assigns responsibility for the development to Forum. The University is not assigned responsibility and only maintains rights to review the development plans as Landlord. Articles 3.3, 5.1, and 7.1 specify:

> 3.3 Completion of Improvements
>
> All Improvements and all additions, changes or alterations thereto, shall be constructed:
>
> > (a) at the sole expense of the Tenant; […]
> >
> > (f) under the proper and diligent supervision of the Tenant's architect or other qualified professional or contractor; and
> >
> > (g) subject to the reasonable regulation, supervision, control and inspection of the Landlord.
>
> 5.1 Payment of Impositions
>
> During the Term hereof the Tenant will pay promptly when due the Impositions to the taxing authorities or other entities or Persons to whom the same must be paid.
>
> 7.1 Operation of the Property
>
> <u>The Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Property</u>. [emphasis added]

19. A November 13, 2024, Staff Report to City Council supporting Forum's proposed Official Plan and Zoning By-law Amendments reported that the estimated development charge revenue would be between $15,586,875 and $20,655,360.

20. Counsel for Forum wrote letters to the City on February 20 and March 21, 2025, explaining its position that development charges do not apply to Phase 2.

21. The City responded to Forum's letters on March 17 and 31, 2025 explaining that it will be the City's position that development charges would be payable in respect of Forum's Phase 2 development on the Subject Property at the applicable time. According to section 3.12 of the 2024 DC By-law, development charges are calculated, payable, and collected upon issuance of a building permit for the Development, which has not yet occurred. As such, Forum's complaint may be premature, because it was filed before the City imposed the development charge and before it was due and payable.

22. Forum has alleged that if its DC complaint is not heard and decided by the end of April 2025, Phase 2 will not be ready for occupancy by September 2027. Forum has also stated that if Phase 2 is not exempt from development charges, Phase 2 will not proceed at all.

23. However, on April 8, 2025, an article in GuelphToday reported that Sydney MacDougal, the Associate Director, Real Estate Marketing and Communications for Forum Asset Management, stated via email that "Unfortunately, we have now missed the window to complete the project in time for the September 2027 school year." Based on Forum's own assertions, regardless of Council's decision regarding this DC complaint, Phase 2 will not be ready to house students for the 2027-2028 academic year. Therefore, the outcome of these proceedings will have no impact on the timing of the Phase 2 development. Even if Forum appeals Council's decision to the Ontario Land Tribunal ("**OLT**"), there will be ample time for the OLT to consider the merits any such appeal and render its decision without compromising occupancy for the 2028-2029 academic year.

III. LEGAL FRAMEWORK

24. There is no dispute between Forum and the City about the appropriate test that must be applied to determine if Phase 2 qualifies for an exemption to development charges.

25. Forum agrees with the City that the 2019 DC By-law does not apply to Phase 2. The applicable by-law is the 2024 DC By-law.

26. Section 6.1(1) of the *Ministry of Training, College and Universities Act*, R.S.O. C. M. 19 (the "**Universities Act**") states:

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

27. The 2024 DC By-law mirrors the Universities Act exemption, providing at Section 3.5.1:

> Notwithstanding the provisions of this By-law, Development Charges shall not be imposed with respect to:
>
> (a) Development of University Land or Buildings;

28. Section 1 of the 2024 DC By-law defines "Development" as:

> "Development" means 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.

29. Section 1 defines "University Land" as:

> "University Land" means land vested in or leased to a publicly-assisted University which is intended to be occupied and <u>used by the university</u>. [emphasis added]

30. Section 1 defines "Building" but does not define "University Building":

> "Building" means any structure or building as defined in the Building Code (O. Reg. 332/12 made under the Building Code Act, as amended, or any successor thereof) but does not include a vehicle.

31. The City agrees with Forum that the two-part test to meet the Universities Act exemption is the same as the test under the 2024 DC By-law: (a) the land must be vested in the University; and (b) the development must be intended to be occupied and used by the University.

32. In the City's letter to Forum dated March 31, 2025, the City stated that it has at all times taken the position that the Subject Property is owned by, and is vested in, the University.

33. Section 19 of the University of Guelph Act exempts real property vested in the University from taxation as long as it is actually used and occupied for the purposes of the University:

> The property vested in the University and any lands and premises leased to and occupied by the University are not liable to taxation for provincial, municipal or school purposes, and are exempt from every description of taxation so long as the same are actually used and occupied for the purposes of the University.

34. The Ontario Court of Appeal has determined that development charges are taxes.[4]

[4] *Ontario Cancer Treatment and Research Foundation v. Ottawa (City of)*, 1998 CanLII 1255 (ON CA).

35. The only issue to be determined by Council is whether the development is intended to be occupied and used for the purposes of the University. This is a factual determination that depends on terms of the lease as well as the control and management of the property, and the identified purpose(s) that are fulfilled, supported, or advanced.

IV. FORUM IS THE USER AND OCCUPANT OF THE SUBJECT PROPERTY

36. The Lease specifies the permitted use of the Subject Property. This permitted use is “for a student residence and ancillary uses operated by the Tenant for the sole benefit of students of the Landlord.” The Subject Property is to be “used, operated and maintained by the Tenant.” The Lease goes to great lengths to emphasize that the University has not undertaken to partner with, or enter into, a joint venture with Forum for this development and is strictly a landlord.

37. Any landlord may limit or specify the uses for which it leases its property in accordance with applicable legislation. Such limits, which may be to a landlord’s benefit, do not make the landlord the occupant or user of a property.

38. By the terms of the Lease, the University will not occupy or use the buildings, collect or set rents, determine tenancy periods, address tenant issues or complaints, provide University services such as Resident Advisors or teaching and research facilities, or administer the operation of the Phase 2 building directly or indirectly. Forum will not undertake any of these activities on the University’s behalf. The University’s role with respect to the Subject Property is limited to that of a landlord. Forum will be responsible for managing the property, staffing,

maintenance, tenant selection, tenant complaints, and rent collection. Forum is operating independently of the University to develop and operate Phase 2 within the scope of the Lease terms, which assign no responsibility for the development to the University. Forum is not acting as an agent of the University or occupying the property or buildings on its behalf.

39. In determining that McMaster University was actually using and occupying a student residence in *McMaster University v City of Hamilton et al*, the Ontario Court of Appeal relied on the fact that the residence was owned and operated by the University, wherein the University administered housing admissions, rental collection, management, staffing, and regulation.[5] The activities and ownership structure that were determinative for the Court in *McMaster University* contrast with the facts of this case where the same activities are all to be undertaken by Forum, a private, for-profit developer and investment fund manager lacking any corporate, joint venture, partnership, agency or other relationship with the University through which the development could be said to be occupied and used, directly or indirectly, by the University. Forum advanced an alternative argument in its February 20, 2025, letter that Phase 2 constitutes the “Development of University Buildings” and is thereby exempt from the 2024 DC By-law. Under the Lease, the Phase 2 development is a tenant improvement that is the separate property of Forum as tenant during the term of the lease, which is for 99-years. At the operative

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[5] *McMaster University v City of Hamilton et al*, (1975), 1 O.R. (2d) 378.

time for the purpose of development charges, the Phase 2 building is not vested in the University and cannot be a University Building.

V. THE PLANNING ACT DOES NOT SUPPORT FORUM'S COMPLAINT

40. In its Complaint, Forum argues that because Official Plans and Zoning By-laws governed by the *Planning Act*, R.S.O. 1990, C. P. 13 (the "**Planning Act**") establish permitted "uses" of the Subject Property, it is not Forum as tenant that uses the student residence use but instead the students at the University. This argument is illogical for three reasons:

41. First, neither Guelph's Zoning By-law nor its Official Plan or the Planning Act define "occupy". The University Act requires that a development be "occupied and used by the University." Importing a definition of "use" from the Planning Act regime where there is no definition of "occupy" cannot satisfy the requirements of the University Act exemption.

42. Second, the regulation of "use" under the Planning Act regime is a regulation of land use, or "use as". It is a well-established principle of planning law that the regulation of who can use a property ("use by") rather than the regulation of how the property is used ("use as") is not permitted under the zoning provisions of the Planning Act.[6] The Guelph Zoning By-law allows the Subject Property to be used as a student residence, it does not speak to who the user of the Subject Property is or can be.

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[6] *Bell v. R*., [1979] 2 SCR 212 at p. 3 and 5.

43. Third, at the decision meeting for planning approvals of Phase 2, Forum publicly took the position that the Planning Act does not apply to the Subject Property because of an exemption for undertakings of publicly assisted universities. Forum cannot simultaneously argue that the Planning Act does not apply to the Subject Property but that the Official Plan and Zoning By-law under the Planning Act determine the user of the Subject Property.

VI. EXTENDING THE EXEMPTION TO FORUM IS CONTRARY TO THE PURPOSE OF THE DC ACT AND CITY'S POLICY GOALS

44. The DC Act's overarching purpose is to allow a municipality to impose development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the by-law applies. The basic principle is that the cost of servicing new development should be borne by the developer and not by the existing taxpayers.

45. While there has been public debate about whether this principle should remain, neither the Ontario legislature nor this City Council has altered this principle in the DC Act or the 2024 DC By-law.

46. Public disclosures made by Forum indicate that the naturally elevated turnover rate in purpose-built student accommodations ensure higher expected rental yields. 98% of Forum's portfolio is "focused on high-turnover rental housing, allowing investors to benefit from long-term supply shortfalls in Canadian housing."[7] Rent

[7] News Release: "Forum real Estate Income and Impact Fund Reports Q2 2024 Results" August 7, 2024, available at : https://www.forumreiif.ca/news-media/forum-real-estate-income-and-impact-fund-reports-q2-2024-results

hikes on turnover units accounted for more than 40% of overall rent increases in Canada in 2024, which higher rents make it both harder for new renters to enter the market and limit mobility for existing tenants.[8]

47. Forum stands to minimize risk and make significant profits from Phase 2, by shifting the cost of public services and infrastructure required by developing the Subject Lands to existing City taxpayers. The burden of approximately $17 million would result in a subsidy to the private sector at the expense of the public, contrary to the purpose of the DC Act and 2024 DC By-law and not in the public interest.

48. Forum suggests that completing Phase 2 will free up other forms of housing in the City for people who need it. Building above-market residential units is an unproven strategy to address housing availability and affordability in Canada, with some research indicating that the effect could be an overall increase in rents for local low-income renters.[9]

49. The Ontario government has implemented several legislative changes as part of its long-term strategy to address the housing shortage. In 2022, the DC Act was amended by the *More Homes Built Faster Act, 2022* to provide a detailed scheme of mandatory exemptions for certain housing developments, including the addition

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[8] CMHC, Fall 2024 Rental Market Report, p. 5, available at: https://www.cmhc-schl.gc.ca/professionals/housing-markets-data-and-research/market-reports/rental-market-reports-major-centres

[9] CMHC, Understanding Filtering: A Long-Term Strategy to New Supply and Housing Affordability, June 2024, p. 4, available at: https://assets.cmhc-schl.gc.ca/sites/cmhc/professional/housing-markets-data-and-research/housing-research/research-reports/2024/understanding-filtering-long-term-strategy-new-supply-housing-affordability-en.pdf?rev=0b29bf99-eac2-4404-a416-e59d570e34d4&_gl=1*daexuk*_gcl_au*MTcxNDU1NzIyMC4xNzQ1MjYzNzk0*_ga*MTA1MzYwNzcwNC4xNzQ1MjYzNzk2*_ga_CY7T7RT5C4*MTc0NTI2Mzc5NS4xLjEuMTc0NTI2NDA4Ny42MC4wLjA.

of secondary residential units on single-home lots, affordable housing units, non-profit housing developments, and inclusionary zoning residential units. A mandatory discount was also provided for rental housing developments. In 2024, the *Cutting Red Tape to Build More Homes Act*, 2024, S.O. 2024, c. 16 amended the Planning Act to provide broad exemptions to Planning Act approvals for universities. Neither of these legislative changes addressed the Universities Act exemption, which has existed since 2020. Had the Legislature intended to include an exemption for privately owned and operated student residential developments on university land, it could have easily done so but chose not to.

50. If Forum wishes to address the City's housing affordability issues and the University community's need for affordable student housing and make use of the exemptions under the 2024 DC By-law, it can do so by entering into an agreement with the City to provide Affordable Residential Units as defined in section 4.1 of the DC Act and which are exempt from development charges under section 3.5.4 of the 2024 DC By-law:

> (2) A residential unit intended for use as a rented residential premises shall be considered to be an affordable residential unit if it meets the following criteria:
>
> 1. The rent is no greater than the lesser of,
>
>   i. the income-based affordable rent for the residential unit set out in the Affordable Residential Units bulletin, as identified by the Minister of Municipal Affairs and Housing in accordance with subsection (5), and

ii. the average market rent identified for the residential unit set out in the Affordable Residential Units bulletin.

2. The tenant is dealing at arm's length with the landlord.

51. The City wrote to Forum on March 31, 2025, encouraging it to consider entering into such an agreement to address its stated aim of addressing the student housing shortage while avoiding the cost of development charges. The letter cited the University of Guelph's Housing Demand Study, which was completed in November 2024 and found that "existing and planned purpose-built student housing in the City was mostly at the higher end of the rental price range, which is not aligned with student needs, and that it will be important to ensure that purpose-built student housing meets students' needs in terms of affordability."[10] To date, Forum has not responded to this proposal.

VII. EXTENDING THE EXEMPTION TO FORUM IS CONTRARY TO THE PURPOSE OF THE UNIVERSITY

52. University purposes are not limited to education. They can include a wide range of ancillary services that universities legitimately provide including housing, transportation, food services, and health care clinics to "reasonably attend to the needs of their students and faculty."[11] Courts have interpreted this and similar terms broadly to include student residences but have cautioned that privately

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[10] March 31, 2025 letter from Jennifer Charles to Joe Hoffman Re: 601 Scottsdale Drive, City of Guelph (the "Subject Property") Development Charges – Phase 2, City File No. 2024 006489, Goodmans File No. 250940; "Housing Demand Study Finds University-Operated Housing is Meeting Student Residence Demand", posted Mar 11, 2024, updated April 21, 2025: https://news.uoguelph.ca/2024/03/u-of-g-housing-demand-study-finds-university-operated-housing-is-meeting-student-residence-demand/

[11] *Assessors of Areas #1 and #10 v. University of Victoria*, 2010 BCSC 133 at para 68.

owned student residences on campus may not qualify.[12] While university purposes can include for-profit commercial enterprises, a commercial enterprise's mere presence on university property is insufficient to meet the test. If the mere location of a retail, commercial or other third-party service or amenity on university property was enough, the requirement for "university purposes" would be redundant.

53. The University of Guelph Act defines the objects and purposes of the University as:

> (a) the advancement of learning and the dissemination of knowledge, including, without limiting the generality of the foregoing, the advancement of learning and the dissemination of knowledge respecting agriculture; and
>
> (b) the intellectual, social, moral and physical development of its members and the betterment of society. [13]

54. The University's own housing study has found that it is University-operated housing that is needed to meet student residence demand. The study specifically found that for-profit purpose-build student housing in the City was not aligned with student needs.[14] Forum's Phase 2 development is part of an investment portfolio designed to enhance yields and returns, "focused on high-turnover rental housing, allowing investors to benefit from long-term supply shortfalls in Canadian housing, with more frequent mark-to-market of rental income".[15] Purpose-built student

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[12] *Re University of Ottawa v City of Ottawa/Re Carleton University v City of Ottawa*, [1967] O.J. No. 1154, | [1969] 2 O.R. 382 at para 4.
[13] *An Act to incorporate the University of Guelph*, S.O. 1964, c. 120, s. 3.
[14] "Housing Demand Study Finds University-Operated Housing is Meeting Student Residence Demand", posted Mar 11, 2024, updated April 21, 2025: https://news.uoguelph.ca/2024/03/u-of-g-housing-demand-study-finds-university-operated-housing-is-meeting-student-residence-demand/
[15] Forum Real Estate Income and Impact Fund Reports Q2 2024 Results, August 8, 2024: https://www.accessnewswire.com/newsroom/en/real-estate/forum-real-estate-income-and-impact-fund-reports-q2-2024-results-897843

accommodation "is specifically designed and constructed as student housing with a view towards targeting the unique characteristics of the student tenant" [16], with environment, social and governance (ESG) plans designed to drive rents:

> "Key to REIIF's impact and environmental, social, and governance (ESG) initiatives is driving sustainable value to residents and investors. Offering an unparalleled and well-designed resident experience is central to REIIF's strategy. ALMA @ Guelph, the inaugural property under REIIF's ALMA brand, exemplifies the Fund's commitment to tenant engagement. The property hosted 20 resident events year-to-date, boasts high-value amenities, and an enhanced sense of community which has contributed to its top-performing Net Promoter Score, and correspondingly, market-leading rents."[17]

55. The Phase 2 development provides student housing as a strategy to an ultimate objective which does not contribute to "the intellectual, social, moral and physical development" of the University's members or the betterment of society and is contrary to the University's purpose of providing affordable and inclusive housing options for its students.

VIII. CONCLUSION

56. Development charges are the revenue tool provided to municipalities by the province to fund the capital costs of enabling and servicing growth. Improving housing supply requires all parties to participate in delivering infrastructure. Arbitrary exemptions from development charges shifts the burden of growth capital

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[16] Offering Memorandum https://www.forumreiif.ca/wp-content/uploads/2024/03/REIIF-Offering-Memorandum-Bonus-Offering.pdf at page 34.
[17] Forum Real Estate Income and Impact Fund Reports Q2 2024 Results, August 8, 2024: https://www.accessnewswire.com/newsroom/en/real-estate/forum-real-estate-income-and-impact-fund-reports-q2-2024-results-897843

costs on to property tax and utility ratepayers and is detrimental to overall housing affordability.

57. Exemptions from development charges should be narrowly scoped so that only those projects that provide the most needed interventions for affordable housing supply are subsidized by the City. In this case, Forum is a private sector developer and investment manager building above-market housing and stands to make considerable profits, with a view to driving return on investment for unitholders of the Fund. The lease between the University and Forum makes it clear that Phase 2 is not a University project, and that Forum will use and occupy the Subject Property to earn profits for 99 years, aligned with its stated investment focus on high-turnover student housing for more frequent mark-to-market rent increases, providing a stable and growing income stream for investors.

58. For these reasons, City Council should dismiss Forum's complaint under the DC Act.

April 25, 2025

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Peter Gross (LSO# 59811V)
Tel: 416-862-4459
Email: peter.gross@gowlingwlg.com

Graham Reeder (LSO# 82894U)
Tel: 416-369-7322
Email: graham.reeder@gowlingwlg.com

Lawyers for The Corporation of The City of Guelph

Attachment-2 Aerial Photograph

Figure 1: 2023 Aerial photograph (601 Scottsdale Drive)

Attachment-8 Proposed Conceptual Site Plan and Renderings

Figure 1: Proposed Site Plan

Figure 2: Rendering of Phase 1 and Phase 2

THE CORPORATION OF THE CITY OF GUELPH

By-law Number (2019)-20372

A by-law for the imposition of Development Charges and to repeal By-law Number (2014) – 19692

WHEREAS the City of Guelph will experience growth through development and re-development;

AND WHEREAS development and redevelopment require the provision of physical and other services by the City of Guelph;

AND WHEREAS Council desires to ensure that the capital cost of meeting growth-related demands for, or burden on, municipal services does not place an undue financial burden on the City of Guelph or its taxpayers;

AND WHEREAS subsection 2(1) of the *Development Charges Act, 1997* (the "Act") provides that the council of a municipality may by by-law impose development charges against land to pay for increased Capital Costs required because of increased needs for services arising from development of the area to which the by-law applies;

AND WHEREAS a development charges background study has been completed in accordance with the Act;

AND WHEREAS Council has given notice of and held public meetings on the 21st day of January, 2019 in accordance with the Act and the regulations made under it;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF GUELPH ENACTS AS FOLLOWS:

1. INTERPRETATION

In this By-law, the following items shall have the corresponding meanings:

"Act" means the *Development Charges Act, 1997,* S.O. 1997, c. 27, as amended, or any successor thereto;

"Accessory Apartment" see the definition of "Dwelling Unit";

"Accessory Use" means a use that is subordinate, incidental and exclusively devoted to another use located on the same lot;

"Apartment" see the definition of "Dwelling Unit";

"Back-to-Back Townhouse Dwelling" see the definition of "Dwelling Unit";

"Board of Education" has the same meaning as "board" as set out in the *Education Act*, RSO 1990, c E.2, as amended, or any successor thereof;

"Building" means any structure or building as defined in the *Building Code* (O. Reg. 332/12 made under the Building Code Act, as amended, or any successor thereto) but does not include a vehicle;

"Building Code Act" means the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended, or any successor thereto;

"Capital Costs" means costs incurred or proposed to be incurred by the City or a Local Board thereof directly or by others on behalf of, and as authorized by, the City or Local Board,

(a) to acquire land or an interest in land, including a leasehold interest,

(b) to improve land,

(c) to acquire, lease, construct or improve buildings and structures,

(d) to acquire, construct or improve facilities including,

(i) furniture and equipment other than computer equipment,
(ii) materials acquired for circulation, reference or information purposes by a library board as defined in the *Public Libraries Act*, R.S.O. 1990, c. P.44, as amended, or any successor thereto, and
(iii) rolling stock with an estimated useful life of seven years or more, and

(e) to undertake studies in connection with any of the matters referred to in clauses (a) to (d) above, including the development charge background study,

required for the provision of Services designated in this By-law within or outside the City, including interest on borrowing for those expenditures under clauses (a) to (e) above that are growth-related;

"City" means The Corporation of the City of Guelph or the geographic area of the municipality, as the context requires;

"Computer Establishment" means a building or structure used or designed or intended for use as a computer establishment as this term is defined in the Zoning By-Law and located in the B.1 (Industrial) Zone, B.2 (Industrial) Zone, or B.5 (Corporate Business Park) Zone or in any specialized B.1, B.2 or B.5 Zone under the Zoning By-Law;

"Council" means the Council of The Corporation of the City of Guelph;

"Development" means the construction, erection, or placing of one (1) or more buildings or structures on land or the making of an addition or alteration to a building or structure 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;

"Development Charge" means a charge imposed with respect to this By-law;

"Discounted Services" means those Services described in section 2.1(b);

"Dwelling Unit" means a room or group of rooms occupied or designed to be occupied exclusively as an independent and separate self-contained housekeeping unit including a house;

(a) "Accessory Apartment" means a Dwelling Unit located within and subordinate to an existing Single Detached Dwelling, Semi-Detached Dwelling, Townhouse and a Multiple Attached Dwelling;

(b) "Apartment Building" means a Building consisting of three (3) or more Dwelling Units, where access to each unit is obtained through a common entrance or entrances from the street level and subsequently through a common hall or halls, and "Apartment" means a Dwelling Unit in an Apartment Building;

(c) "Garden Suite" means a Dwelling Unit which may be designed to be portable, and which is located on the same lot of, and fully detached from, an existing Dwelling Unit, such Garden Suite is clearly ancillary to the existing dwelling and shall be independently serviced with municipal water and sanitary services;

(d) "Link Dwelling" means two (2) Single Detached Dwellings sharing a common foundation wall below ground level, but does not include a Semi-Detached Dwelling;

(e) "Semi-Detached Dwelling" means a Building that is divided vertically into two (2) separate Dwelling Units;

(f) "Single Detached Dwelling" means a free-standing, separate, detached Building consisting of one (1) Dwelling Unit;

(g) "Townhouse" means a Building that is divided vertically into three (3) or more separate Dwelling Units and includes a row house;

a. "Back-to-Back Townhouse Dwelling" means a Building where each Dwelling Unit is divided vertically by common walls, including a common rear wall and common side wall, and has an independent entrance to the Dwelling Unit from

the outside accessed through the front yard, side yard or exterior side yard and does not have a rear yard;

b. "Cluster Townhouse" means a Townhouse situated on a Lot in such a way that at least one (1) Dwelling Unit does not have legal frontage on a public street;
c. "On-Street Townhouse" means a Townhouse where each Dwelling Unit is located on a separate lot and has legal frontage on a public street;

"Existing Industrial Building" means a Building used for or in connection with,

(a) manufacturing, producing, processing, storing or distributing something;

(b) research or development in connection with manufacturing, producing or processing something if the research or development is at the site where the manufacturing, production or processing takes place;

(c) retail sales by a manufacturer, producer or processor of something they manufactured, if the retail sales are at the site where the manufacturing, production or processing takes place;

(d) storage by a manufacturer, producer or processor of something they manufactured, , if the storage is at the site where the manufacturing, production, or processing takes place;

(e) office or administrative purposes, if they are,

(i) carried out with respect to manufacturing, producing, processing, storage or the distributing of something; and
(ii) in or attached to the building or structure used for that manufacturing, producing, or processing, storage or distribution;

provided that: (A) such industrial Building or Buildings existed on a lot in the City of Guelph on March 1, 1998, or are industrial Building or Buildings constructed and occupied pursuant to site plan approval under section 41 of the Planning Act subsequent to March 1, 1998, for which full Development Charges were paid; and (B) an Existing Industrial Building shall not include a Retail Warehouse;

"Garden Suite" see the definition of "Dwelling Unit";

"Grade" means the average level of finished ground adjoining a Building or structure at all exterior walls;

"Gross Floor Area" means:

(a) in the case of a Non-Residential Use Building, the total area of all Building floors above or below Grade measured between the outside surfaces of the exterior walls or between the outside surfaces of exterior walls, and includes the floor area of a Mezzanine; or
(b) in the case of a mixed-use Building including both Residential Uses and Non-Residential Uses, the total area of the non-residential portion thereof including all building floors above or below Grade measured between the outside surfaces of the exterior walls or between the outside surfaces of exterior walls and the centre line of party walls dividing a Non-Residential Use and a Residential Use, and includes the floor area of a Mezzanine;

"Live/Work Unit" means a Building or part of a Building which contains both a Dwelling Unit and a Non-Residential Use which share a common wall or floor, and allows for direct access between the Dwelling Unit and Non-Residential Use;

"Lodging House" means a Residential Use Building that is used or designed to provide five (5) or more Lodging Units, which may share common areas of the Building but do not appear to function as a single housekeeping unit, for hire or gain directly or indirectly to persons.

"Lodging Unit" means a room or suite of rooms in a Building designed or intended to be used for sleeping and living accommodation which is not normally accessible to all residents of the Building, and which does not have the exclusive use of both a kitchen and a bathroom, and does not include an Apartment, Accessory Apartment, or a room or suite of rooms within a Special Care/Special Dwelling;

"Local Board" has the same definition as "local board" as defined in the Act;

"Mezzanine" means a storey that forms a partial level of a building, such as a balcony

"Multiple Attached Dwelling" shall mean a Building other than a Single Detached Unit, Semi-Detached Unit, Apartment Building, Stacked Townhouse and Special Care/Special Dwelling/Lodging Unit

"Non-Discounted Services" means those Services described in section 2.1(a);

"Non-Residential Use" means land, Buildings or structures of any kind whatsoever used or designed or intended for a use other than a Residential Use;

"Owner" means the owner of land or a person who has made application for an approval for the Development of land for which a Development Charge may be imposed;

"Parking Structure" means a Building intended primarily for the temporary parking of vehicles as an Accessory Use to a Non-Residential Use or a Building intended to provide parking as a commercial enterprise.

"Place of Worship" means that part of a Building or structure that is exempt from taxation as a place of worship under the *Assessment Act*, R.S.O. 1990, c. A.31, as amended, or any successor thereto;

"Planning Act" means the *Planning Act,* R.S.O. 1990, c. P.13, as amended, or any successor thereto;

"Prescribed" means prescribed pursuant to the regulations made under the Act;

"Redevelopment" means the construction, erection or placing of one or more Buildings on land where all or part of a Building has previously been demolished on such land, or changing the use of a Building from a Residential Use to a Non-Residential Use or from a Non-Residential Use to a Residential Use, or changing a Building from one form of Residential Use to another form of Residential Use or from one form of Non-Residential Use to another form of Non-Residential Use and including any development or redevelopment requiring any of the actions described in section 3.4(a);

"Research Establishment means land, Building or Buildings which is/are used for scientific research, tests or investigations, data collection and manipulation or technical development of information, products or devices for scientific application;

"Residential Use" means land, Buildings or structures of any kind whatsoever used or designed or intended for use as living accommodations for one or more individuals, but does not include land, Buildings, or structures used or designed or intended for use as Short Term Accommodation;

"Retail Warehouse" means a Building used exclusively for the storage and/or distribution of goods destined for a retail or commercial market, and also includes self-storage facilities.

"Semi Detached Unit" see the definition of "Dwelling Unit"

"Service" means a service designated in section 2.1, and "Services" shall have a corresponding meaning;

"Short Term Accommodation" means a Building used or designed or intended for use as a hotel or bed and breakfast as these terms are defined in the Zoning By-Law;

"Single Detached Unit" see the definition of Dwelling Unit

"Special Care/Special Dwelling" means a Residential Use Building containing two (2) or more rooms or suites of rooms designed or intended to be used for sleeping and living accommodation that have a common entrance from street level:

a. Where the occupants have the right to use, in common, halls, stairs, yards, common rooms and accessory buildings;
b. Which may or may not have exclusive sanitary and/or culinary facilities;
c. That is designed to accommodate persons with specific needs, including, but not limited to, independent permanent living arrangements; and

d. Where support services such as meal preparation, grocery shopping, laundry, housekeeping, nursing, respite care and attendant services may be provided at various levels,

and includes, but is not limited to, retirement houses, nursing homes, group homes (including correctional group homes) and hospices;

"Stacked Townhouse" means one (1) Building or Structure containing two (2) Townhouses divided horizontally; one atop the other; in a building that is divided vertically into three (3) or more separate Dwelling Units.

"Townhouse" see the definition of "Dwelling Unit";

"University" means the University of Guelph established by *An Act to incorporate the University of Guelph*, S.O., 1964, c. 120, as amended, or any successor thereto;

"University Related Purposes" means those objects and purposes set out in section 3 of *An Act to incorporate the University of Guelph*, S.O. 1964, c. 120, as amended, or any successor thereto;

"Zoning By-Law" means City of Guelph By-law Number (1995)-14864, as amended, or any successor thereof.

2. DESIGNATION OF SERVICES

2.1 The two (2) categories of Services for which Development Charges are imposed under this By-law are as follows:

(a) Non-Discounted Services:

i. Water Services;
ii. Wastewater Services;
iii. Stormwater Services;
iv. Services related to a Highway and related (Facility and Vehicle/Equipment) Services;
v. Fire Protection Services;
vi. Police Services; and
vii. Transit Services

(b) Discounted Services:

i. Library Services;
ii. Indoor Recreation Services;
iii. Outdoor Recreation Services;
iv. Administration;
v. Ambulance Services;
vi. Provincial Offences Act Services;
vii. Health Services;
viii. Municipal Parking; and
ix. Waste Diversion Services

2.2 The components of the Services designated in section 2.1 are described in Schedule A.

3. APPLICATION OF BY-LAW RULES

3.1 Development Charges shall be payable in the amounts set out in this By-law where:

(a) the lands are located in the area described in section 3.2; and

(b) the Development requires any of the approvals set out in section 3.4(a).

Area to Which By-law Applies

3.2 Subject to section 3.3, this By-law applies to all lands in the City.

3.3. This By-law shall not apply to lands that are owned by and used for the purposes of:

(a) the City or a Local Board thereof;

(b) a Board of Education; or

(c) a municipality, or a Local Board of the County of Wellington.

Approvals for Development

3.4 (a) Development Charges shall be imposed in accordance with this By-law on all Development which requires:

(i) the passing of a Zoning By-Law or of an amendment to a Zoning By-Law under section 34 of the *Planning Act*;
(ii) the approval of a minor variance under section 45 of the *Planning Act*;
(iii) a conveyance of land to which a by-law passed under subsection 50(7) of the *Planning Act* applies;
(iv) the approval of a plan of subdivision under section 51 of the *Planning Act*;
(v) a consent under section 53 of the *Planning Act*;
(vi) the approval of a description under section 9 of the *Condominium Act, 1998,* SO 1998, c 19, as amended, or any successor thereto; or
(vii) the issuing of a permit under the *Building Code Act* in relation to a building or structure.

(b) Despite section 3.4(a) of this By-law, Development Charges shall not be imposed on Development that requires one of the actions described in section 3.4(a) if the only effect of the action is to:

(i) permit the enlargement of an existing Dwelling Unit;
(ii) permit the creation of up to two (2) additional Dwelling Units as Prescribed under section 2(3) of the Act, subject to the Prescribed restrictions, in Prescribed classes of existing residential buildings; or
(iii) permit the creation of a second dwelling, subject to the Prescribed restrictions, in Prescribed classes of new residential buildings.

(c) No more than one (1) Development Charge for each Service shall be imposed upon any Development to which this By-law applies even though two (2) or more of the actions described in section 3.4(a) are required for the Development.

(c) Despite section 3.4(c), if two (2) or more of the actions described in section 3.4(a) occur at different times, additional Development Charges shall be imposed if the subsequent action has the effect of increasing the need for Services.

Exemptions

3.5.1 Notwithstanding the provisions of this By-law, Development Charges shall not be imposed with respect to:

(a) Development of land, buildings or structures for University Related Purposes within the University defined area as set out in Schedule C;

(b) land, buildings or structures outside the defined area as set out in Schedule C, which are now owned directly or indirectly by the University or on behalf of the University or which may be acquired by the University and which are developed or occupied for University Related Purposes, provided that, where only a part of such land, buildings or structures are so developed, then only that part shall be exempt from the Development Charges specified under this By-law;

(c) Development for a Place of Worship or for the purposes of a cemetery or burial site exempt from taxation under the Assessment Act;

(d) Development by a college established under the *Ontario Colleges of Applied Arts and Technology Act, 2002,* S.O. 2002, c.8, Sched. F, as amended, or any successor thereto;

(e) Development for temporary Non-Residential Uses permitted pursuant to section 39 of the Planning Act;

(f) Development, solely for the purposes of creating or adding an Accessory Use or accessory structure not exceeding 10 square metres of Gross Floor Area;

Appeal Status Interpretation Document

The Comprehensive Zoning By-law (2023) – 20790 is now in force, as of February 6, 2024, except for the lands, areas, and sections associated with the appeals of the Comprehensive Zoning By-law.

Regulations of this By-law that are under appeal before the Ontario Land Tribunal are identified as part of this Interpretation Document. Of the sixteen total appeals filed to the Ontario Land Tribunal, fifteen are currently considered to be specific to the site for which the appeal is filed. The remaining appeal is considered to apply to specific provisions. For convenience purposes, the subject of appeal is noted and is annotated throughout the By-law.

The City has marked those sections and/or provisions under appeal within the Comprehensive Zoning By-law. Continued reference should be made to this Interpretation Document when reading through the Comprehensive Zoning By-law.

All regulations of this By-law not under site-specific appeal or as part of the global appeal before the Ontario Land Tribunal shall be interpreted to apply to lands described under "Subject Lands".

Written Appeal Index Reference:

This written appeal index reference contains an updated list of all provisions and regulations under city-wide appeal separated by parts in the Comprehensive Zoning By-law. They are listed in the manner they appear or by the heading that they are under in the Comprehensive Zoning By-law. Before each part of the Comprehensive Zoning By-law will be their relevant list and a short visual reference guide.

The following definitions in Part B: Definitions of the Comprehensive Zoning By-law remain under appeal:

- Active Entrance;
- Balcony;
- Buffer Strip;
- Common Amenity Area;
- Apartment Building;

The City of Guelph

Zoning By-law

(2023)-20790
April 18, 2023

Table of Contents

Table of Contents ii

Part A: Administration and Interpretation A-1

1. Administration A-2
2. Establishment of zones and uses A-6

Part B: Definitions B-1

3. Definitions B-7

Part C: General Provisions and Parking C-1

4. General Provisions C-3
5. Parking C-25

Part D: Land Use Zones D-1

6. Residential Zones D-3
7. Mixed-Use Zones D-33
8. Commercial Zones D-49
9. Downtown Zones D-57
10. Employment Zones D-72
11. Institutional Zones D-81
12. Open Space, Golf Course and Park Zones D-88
13. Natural Heritage System Zone D-92
14. Major Utility Zone D-94
15. Urban Reserve Zones D-96

Part E: Site-specific Provisions and Zones E-1

16. Overlays E-2
17. Holding provisions E-9
18. Site-specific zones E-23

Part F: Zoning Schedules F-1

station, a **vehicle sales establishment** or a **taxi establishment**.

Trucking operation means a **premises** where trucks, trailers or containers are loaded, unloaded, stored or parked for remuneration, trucks or containers are dispatched as common carriers, goods are stored temporarily for further shipment, or buses and other fleet **vehicles** are stored or parked, but does not include a **transportation depot**.

U

University of Guelph means a **premises used** as a **school, post-secondary** as defined in the Ministry of Training, Colleges and Universities Act and University of Guelph Act and any directly related operations.

Urban agriculture means the growing of crops for food at a small scale, including community gardens and backyard chickens and includes small-scale sales of urban agricultural products, and does not include **agriculture, livestock based** and **agriculture, vegetation based**.

Use means the arrangement of, design of or the intended **use** or actual **use** of any **premises**.

Utilities means an essential commodity or service such as water, sewer, electricity, gas, oil, television, or communications/telecommunications that is provided to the public by a regulated company or government agency.

V

Vehicle means an automobile, truck or any other **vehicle**, including motorized construction equipment or farm equipment, motor home, motorcycle, snowmobile, boat, **vehicle, recreational,** a trailer or farm implement or any other device which is capable of being driven, propelled or drawn by any kind of power, but does not include a bicycle or any other device powered solely by means of human effort.

Vehicle, accessible means a motor **vehicle** designed and manufactured, or converted, for the purpose of transporting persons who use mobility aids.

Vehicle, **commercial** means any **vehicle** on which is displayed commercial lettering or commercial licence plates and includes construction equipment which is designed to be towed.

Vehicle, recreational means a **vehicle** which is **used** for temporary recreational travel or accommodation including a motor home, camper trailer, converted bus or the like.

Vehicle body shop means a **premises** where the body of **vehicles** are repaired or body work is conducted and includes the painting of **vehicles**.

Vehicle parts establishment means a **premises** where retail and **wholesale** sales occur of equipment and parts **used** to repair, service or customize **vehicles**, but does not include any other **vehicle establishment**.

Vehicle rental establishment means a **premises** where **vehicles** are stored and rented to the public, but does not include **vehicle**, **commercial,** farm equipment, **vehicle, recreational**, trailer, snowmobile, motorized boat or a **vehicle sales establishment.**

Vehicle repair establishment means a **premises** where the general repair or service of **vehicles** is conducted.

Vehicle sales establishment means a **premises** where new or used **vehicles** are leased, rented, displayed for sale or sold.

THE CORPORATION OF THE CITY OF GUELPH

By-law Number (2024) – 20866, as amended by (2024) – 20997

A by-law for the imposition of Development Charges and to repeal By-law Number (2019) – 20372, as amended

This document represents a consolidation of By-laws (2024) – 20866 and (2024) – 20997, the originals, as filed with the City Clerk, are at all times to be regarded as binding and any differences here in are to be overruled by said originals

WHEREAS the City of Guelph will experience growth through development and re-development;

AND WHEREAS development and redevelopment require the provision of physical and other services by the City of Guelph;

AND WHEREAS Council desires to ensure that the capital cost of meeting growth-related demands for, or burden on, municipal services does not place an undue financial burden on the City of Guelph, its taxpayers, or its ratepayers;

AND WHEREAS subsection 2(1) of the *Development Charges Act, 1997* (the "Act") provides that the council of a municipality may by by-law impose development charges against land to pay for increased Capital Costs required because of increased needs for services arising from the development and redevelopment of land;

AND WHEREAS a development charges background study has been completed in accordance with the Act;

AND WHEREAS the Council of the Corporation of the City of Guelph has given notice of and held public meetings on the 17th day of October, 2023 in accordance with the Act and the regulations thereto;

AND WHEREAS Section 19 of the Act provides for amendments to be made to Development Charges by-laws;

AND WHEREAS subsections 19 (1.2) and 19 (1.3) of the Act permit a municipality to amend a Development Charges by-law, subject to conditions being met,

and exempt such amendments from the process for by-law amendments under subsection 19 (1) of the Act;

AND WHEREAS the Council of the City of Guelph, hereinafter referred to as the "City", enacted and passed By-law (2024)-20866 on January 16, 2024; and

AND WHEREAS on November 13, 2024, Council approved Staff Report 2024-410 thereby indicating that it intends to include the growth-related costs of studies, pursuant to paragraphs 5 and 6 of subsection 5 (3) of the Act, within the Development Charge calculation.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF GUELPH ENACTS AS FOLLOWS:

1. INTERPRETATION

In this By-law, the following items shall have the corresponding meanings:

"Accessory Use" means a use that is naturally and normally incidental, subordinate in purpose or floor area, or both, to the principal use in a Building, but is not an Ancillary Dwelling.

"Act" means the *Development Charges Act, 1997,* S.O. 1997, c. 27, as amended, or any successor thereto;

"Additional Residential Dwelling Unit" means a Dwelling Unit that is self-contained, subordinate to and located within the same Building or on the same Lot as a primary Dwelling Unit.

"Affordable Residential Unit" has the meaning ascribed to this term in the Act and its regulations;

"Ancillary" means a use, Building that is incidental and/or subordinate to a main use, and is located on the same Lot as a main use;

"Apartment Building" means a Building consisting of three (3) or more Dwelling Units, where access to each unit is obtained through a common entrance or entrances from the street level and subsequently through a common hall or halls, includes Triplex and Fourplex dwellings, and "Apartment" means a Dwelling Unit in an Apartment Building;

"Attainable Residential Unit" has the meaning ascribed to this term in the Act and its regulations;

"Bedroom" means a habitable room larger than seven square metres, including a den, study or other similar area, but does not include a living room, dining room or kitchen;

"Board of Education" has the same meaning as "board" as set out in the *Education Act*, RSO 1990, c E.2, as amended, or any successor thereof;

"Building" means any structure or building as defined in the *Building Code* (O. Reg. 332/12 made under the *Building Code Act*, as amended, or any successor thereof) but does not include a vehicle;

"Building Code Act" means the *Building Code Act, 1992*, S.O. 1992, c 23, as amended, or any successor thereto;

"Cannabis" means:

(a) a cannabis plant;

(b) any part of a cannabis plant, including the phytocannabinoids produced by, or found in, such a plant regardless of whether that part has been processed or not;

(c) any substance or mixture of substances that contains or has on it any part of such a plant; and

(d) any substance that is identical to any phytocannabinoid produced by, or found in, such a plant, regardless of how the substance was obtained.

"Cannabis Plant" means a plant that belongs to the genus Cannabis.

"Cannabis Production Facilities" means a Building, or part thereof, designed, used, or intended to be used for one or more of the following: growing, production, processing, harvesting, testing, alteration, destruction, storage, packaging, shipment, or distribution of Cannabis where a license, permit or authorization has been issued under applicable federal law and does not include such Buildings as a greenhouse and agricultural Building associated with the use. It includes but is not limited to a Building or part thereof solely designed, used, or intended to be used for retail sales of Cannabis.

“Capital Costs” means the eligible inclusions as set out in Subsection 5(3) of the Act;

“City” means The Corporation of the City of Guelph or the geographic area of the municipality, as the context requires;

“Class” means a grouping of services combined to create a single service for the purposes of this By-law and as provided in Section 7 of the Act;

“Computer Establishment” means a Building used or designed or intended for use as a computer establishment as this term is defined in the Zoning By-law;

“Council” means the Council of The Corporation of the City of Guelph;

“Development” means 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;

“Development Charge” means a charge imposed with respect to this By-law;

“Dwelling Unit” means a room or group of rooms occupied or designed to be occupied exclusively as an independent and separate self-contained housekeeping unit including a house;

“Duplex Dwelling” means a Building that is used for the purpose of two principal Dwelling Units functioning independently and configured in such a manner that the Dwelling Units are divided horizontally from one another, each of which has an independent entrance either directly to the outside or through a common vestibule, and does not include an attached Additional Residential Dwelling Unit;

“Existing Industrial Building” means a Building used for or in connection with,

(a) manufacturing, producing, processing, storing or distributing something;

(b) research or development in connection with manufacturing, producing or processing something if the research or development is at the site where the manufacturing, production or processing takes place;

(c) retail sales by a manufacturer, producer or processor of something they manufactured, if the retail sales are at the site where the manufacturing, production or processing takes place;

(d) storage by a manufacturer, producer or processor of something they manufactured, if the storage is at the site where the manufacturing, production, or processing takes place;

(e) office or administrative purposes, if they are,

  (i) carried out with respect to manufacturing, producing, processing, storage or the distributing of something; and
  (ii) in or attached to the Building used for that manufacturing, producing, or processing, storage or distribution;

provided that: (A) such Industrial Building or Buildings existed on a lot in the City of Guelph on March 1, 1998, or are industrial Building or Buildings constructed and occupied pursuant to site plan approval under section 41 of the Planning Act subsequent to March 1, 1998, for which full Development Charges were paid; and (B) an Existing Industrial Building shall not include a Retail Warehouse;

"Fourplex dwelling" means a Building consisting of four (4) Dwelling Units functioning independently, which are horizontally and/or vertically attached, which are entered from an independent entrance directly from the outdoors or from an internal entry vestibule and which share common facilities such as common amenity area, parking and driveways;

"Grade" means the average level of finished ground adjoining a Building at all exterior walls;

"Gross Floor Area" means:

(a) in the case of a Non-Residential Use Building, the total area of all Building floors above or below Grade measured between the outside surfaces of the exterior walls, and includes the floor area of a Mezzanine; or
(b) in the case of a mixed-use Building including both Residential Uses and Non-Residential Uses, the total area of the non-residential portion thereof including all Building floors above or below Grade measured between the outside surfaces of the exterior walls or between the outside surfaces of

exterior walls and the centre line of party walls dividing a Non-Residential Use and a Residential Use, and includes the floor area of a Mezzanine;

“Hospice” means a Building or portion of a mixed-use Building designed and intended to provide palliative care and emotional support to the terminally ill in a home or homelike setting so that quality of life is maintained, and family members may be active participants in care;

“Industrial Building” means lands, Buildings, or portions thereof, used, designed or intended for use for production, compounding, processing, packaging, crating, bottling, or assembly ("manufacturing") of raw goods or semi-processed goods or materials, research and development relating thereto, warehousing or bulk storage of goods, and includes office uses and the sale of commodities to the general public (if the retail sales are at the site where the manufacturing takes place) where such uses are accessory to an industrial use, and includes cannabis production facilities, but does not include the sale of commodities to the general public through a warehouse club or Retail Warehouse and does not include self-storage or mini-storage facilities;

“Institutional Development” means development of a Building deemed institutional as defined in the Act and/or the regulations thereunder;

“Interest Rate” means the annual rate of interest as set out in section 26.3 of the Act.

“Live/Work Unit” means a Building or part of a Building which contains both a Dwelling Unit and a Non-Residential Use which share a common wall or floor, and allows for direct access between the Dwelling Unit and Non-Residential Use;

“Local Board” has the same definition as “local board” as defined in the Act;

“Local Services” mean those services, facilities or things which are under the jurisdiction of the City that are related to a plan of subdivision or within the area to which the plan relates in respect of the lands under Sections 41, 51 or 53 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended;

“Lodging House” means a Residential Use Building that is used or designed to provide five (5) or more Lodging Units, which may share common areas of the Building but do not function as a single housekeeping unit, for hire or gain directly or indirectly to persons.

"Lodging Unit" means a room or suite of rooms in a Building designed or intended to be used for sleeping and living accommodation which is not normally accessible to all residents of the Building, and which does not have the exclusive use of both a kitchen and a bathroom, and does not include an Apartment, Accessory Apartment, or a room or suite of rooms within a Special Care/Special Dwelling;

"Lot" means a parcel of land capable of being conveyed lawfully without any approval under the Planning Act or successor thereto which meets the minimum lot area requirements under the Zoning By-law;

"Mezzanine" means a storey that forms a partial level of a Building, such as a balcony;

"Multiple Dwelling" shall mean a Residential Use Building other than a Single Detached Unit, Semi-Detached Unit, Apartment Building, Stacked Townhouse and Special Care/Special Dwelling/Lodging Unit;

"Non-profit Housing Development" means development of a Building intended for use as residential premises as defined under the Act;

"Non-Residential Use" means land or Buildings of any kind whatsoever used or designed or intended for a use other than a Residential Use;

"Owner" means the owner of land or a person who has made application for an approval for the Development of land for which a Development Charge may be imposed;

"Parking Structure" means a Building intended primarily for the temporary parking of vehicles as an Accessory Use to a Non-Residential Use or a Building intended to provide parking as a commercial enterprise;

"Place of Worship" means that part of a Building that is exempt from taxation as a place of worship under the *Assessment Act*, R.S.O. 1990, c A.31, as amended, or any successor thereto;

"*Planning Act*" means the *Planning Act*, R.S.O. 1990, c. P.13, as amended, or any successor thereto;

"Prescribed" means prescribed pursuant to the regulations made under the Act;

“Redevelopment” means the construction, erection or placing of one or more Buildings on land where all or part of a Building has previously been demolished on such land, or changing the use of a Building from a Residential Use to a Non-Residential Use or from a Non-Residential Use to a Residential Use, or changing a Building from one form of Residential Use to another form of Residential Use or from one form of Non-Residential Use to another form of Non-Residential Use and including any development or redevelopment requiring any of the actions described in subsection 3.4(a) of this By-law;

“Rental Housing Development” means the residential housing development of a Building on a Lot with four or more Dwelling Units all of which are intended for use as rented residential premises;

“Research Establishment means land, Building or Buildings which is/are used for scientific research, tests or investigations, data collection and manipulation or technical development of information, products or devices for scientific application;

“Residential” or “Residential Use” means land or Buildings of any kind whatsoever used or designed or intended for use as living accommodations for one or more individuals, but does not include land or Buildings used or designed or intended for use as Short Term Accommodation;

“Retail Warehouse” means a Building used exclusively for the storage and/or distribution of goods destined for a retail or commercial market, and also includes self-storage facilities;

“Row Dwelling” means a Dwelling Unit within a Building containing three or more attached Dwelling Units in a single row, each of which Dwelling Unit has an independent entrance from the outside and is vertically separated from any abutting Dwelling Unit;

“Semi Detached Unit” means a Building that is divided vertically into two (2) separate Dwelling Units;

“Service” means a service designated in section 2.1, and “Services” shall have a corresponding meaning;

“Short Term Accommodation” means a Building used or designed or intended for use as a hotel or bed and breakfast as these terms are defined in the Zoning By-Law, and shall be classified as a Non-Residential Use;

“Single Detached Unit” means a free-standing, separate, detached Building consisting of one (1) Dwelling Unit;

“Special Care/Special Dwelling” means a Residential Use Building containing two (2) or more rooms or suites of rooms designed or intended to be used for sleeping and living accommodation that have a common entrance from street level:

a. Where the occupants have the right to use in common, halls, stairs, yards, common rooms and accessory Buildings;
b. Which may or may not have exclusive sanitary and/or culinary facilities;
c. That is designed to accommodate persons with specific needs, including, but not limited to, independent permanent living arrangements; and
d. Where support services such as meal preparation, grocery shopping, laundry, housekeeping, nursing, respite care and attendant services may be provided at various levels, and includes, but is not limited to, retirement houses, nursing homes, group homes (including correctional group homes) and hospices;

“Stacked Townhouse” means one (1) Building containing two (2) Townhouses divided horizontally; one atop the other; in a Building that is divided vertically into three (3) or more separate Dwelling Units;

“Townhouse” means a Dwelling Unit that is within a Building that is divided vertically into three (3) or more separate Dwelling Units and includes a Row Dwelling;

(a) “Back-to-Back Townhouse Dwelling” means a Building where each Dwelling Unit is divided vertically by common walls, including a common rear wall and common side wall, and has an independent entrance to the Dwelling Unit from the outside accessed through the front yard, side yard or exterior side yard and does not have a rear yard;

(b) “Cluster Townhouse” means a Townhouse situated on a Lot in such a way that at least one (1) Dwelling Unit does not have legal frontage on a public street;

(c) “On-Street Townhouse” means a Townhouse where each Dwelling Unit has legal frontage on a public street;

“Triplex dwelling” means a Building consisting of 3 Dwelling Units functioning independently, which are horizontally and/or vertically attached, which are entered from an independent entrance directly from the outdoors or from an internal entry vestibule and which share common facilities such as common amenity area, parking and driveways;

“University” means the University of Guelph established by *An Act to Incorporate the University of Guelph*, S.O, 1964, c. 120, as amended, or any successor thereto;

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

“Zoning By-Law” means City of Guelph By-law Number (1995)-14864, as amended, or any successor thereto.

2. DESIGNATION OF SERVICES/CLASS OF SERVICES

2.1 The categories of Services for which Development Charges are imposed under this By-law and related By-laws which provide the Schedule of Charges, are as follows:

i. Water Services;
ii. Wastewater Services;
iii. Stormwater Services;
iv. Services Related to a Highway;
v. Public Works (Facilities and Fleet);
vi. Fire Protection Services;
vii. Policing Services;
viii. Transit Services;
ix. Library Services;
x. Parks and Recreation Services;
xi. Ambulance Services;
xii. Public Health Services;
xiii. Long-Term Care Services; and

xiv. Waste Diversion Services.

2.2 The components of the Services/Class of Services designated in section 2.1 are described in Schedule A.

3. APPLICATION OF BY-LAW RULES

3.1 Development Charges shall be payable in the amounts set out in this By-law where:

(a) the lands are located in the area described in section 3.2; and

(b) the Development requires any of the approvals set out in section 3.4(a).

Area to Which By-law Applies:

3.2 Subject to section 3.3, this By-law applies to all lands in the City.

3.3. This By-law shall not apply to lands that are owned by and used for the purposes of:

(a) the City or a Local Board thereof;

(b) a Board of Education;

(c) a municipality, or a Local Board of the County of Wellington; or

(d) land vested in or leased to a university that receives regular and ongoing operating funds from the government for the purposes of post-secondary education 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.

Approvals for Development:

3.4.1 (a) Development Charges shall be imposed in accordance with this By-law on all Development which requires:

(i) the passing of a Zoning By-Law or of an amendment to a Zoning By-Law under section 34 of the *Planning Act*;

(ii) the approval of a minor variance under section 45 of the *Planning Act*;

(iii) a conveyance of land to which a by-law passed under subsection 50(7) of the *Planning Act* applies;

(iv) the approval of a plan of subdivision under section 51 of the *Planning Act*;

(v) a consent under section 53 of the *Planning Act*;

(vi) the approval of a description under section 9 of the *Condominium Act*, *1998,* SO 1998, c 19, as amended, or any successor thereto; or

(vii) the issuing of a permit under the *Building Code Act* in relation to a Building.

Rules with Respect to Exemptions for Intensification of Existing Housing or New Housing

3.4.2 (a) Notwithstanding the provisions of this By-law, Development Charges shall not be imposed with respect to:

(i) an enlargement to an existing Dwelling Unit;

(ii) the creation of additional Dwelling Units equal to the greater of one or 1% of the existing Dwelling Units in an existing Rental Housing Development containing four or more Dwelling Units or a prescribed Ancillary structure to the existing Residential Building;

(b) Notwithstanding the provisions of this By-law, Development Charges shall not be imposed with respect to the creation of any of the following in existing residential Dwelling Units:

(i) A second residential Dwelling Uit in an existing detached house, Semi-detached Unit or Rowhouse on a parcel of land on which Residential Use, other than an Ancillary Residential Use, is permitted, if all Buildings Ancillary to the existing detached house, Semi-detached house or Rowhouse cumulatively contain no more than one Dwelling Unit.

(i) A third residential Dwelling Unit in an existing detached house, Semi-detached house or Rowhouse on a parcel of land on which Residential

Use, other than an Ancillary Residential Use, is permitted, if no Building Ancillary to the existing detached house, semi-detached house or rowhouse contains any residential Dwelling Units.

(i) One Residential Unit in a Building Ancillary to an existing detached house, Semi-detached House or Rrowhouse on a parcel of urban residential land, if the existing detached house, semi-detached house or rowhouse contains no more than two residential Dwelling Units and no other Building ancillary to the existing detached house, semi-detached house or rowhouse contains any residential Dwelling Units.

(c) Notwithstanding the provisions of this By-law, Development Charges shall not be imposed with respect to the creation of any of the following in new residential Buildings:

(i) A second residential Dwelling Unit in a new detached house, Semi-detached house or Rowhouse on a parcel of land on which Residential Use, other than Ancillary Residential Use, is permitted, if all Buildings Ancillary to the new detached house, Semi-detached house or Rowhouse cumulatively will contain no more than one residential Dwelling Unit

(ii) A third residential Dwelling Unit in a new detached house, Semi-detached house or Rowhouse on a parcel of land on which Residential Use, other than Ancillary Residential Use, is permitted, if no Building Ancillary to the new detached house, Semi-detached house or Rowhouse contains any Residential Units

(iii) One Residential Dwelling Unit in a Building Ancillary to a new detached house, semi-detached house or rowhouse on a parcel of urban Residential land, if the new detached house, Semi-detached house or Rowhouse contains no more than two Residential Dwelling Units and no other Building Ancillary to the new detached house, Semi-detached house or Rowhouse contains any Rresidential Dwelling Units

(d) No more than one (1) Development Charge for each Service shall be imposed upon any Development to which this By-law applies even though two (2) or more of the actions described in section 3.4.1(a) are required for the Development.

(e) Despite section 3.4.2(c), if two (2) or more of the actions described in section 3.4.1(a) occur at different times, additional Development Charges shall be imposed if the subsequent action has the effect of increasing the need for Services.

Exemptions:

3.5.1 Notwithstanding the provisions of this By-law, Development Charges shall not be imposed with respect to:

(a) Development of University Land or Buildings;

(b) University Land if the development in respect of which development charges would otherwise be payable is intended to be occupied and used by the University, provided that, where only a part of such land, Buildings are so developed, then only that part shall be exempt from the Development Charges specified under this By-law;

(c) Development for a Place of Worship or for the purposes of a cemetery or burial site exempt from taxation under the *Assessment Act*;

(d) Development by a college established under the *Ontario Colleges of Applied Arts and Technology Act, 2002, S.O. 2002, c.8, Sched. F, as amended, or any successor thereto*;

(e) Development for temporary Non-Residential Uses permitted pursuant to section 39 of the *Planning Act* except that Development Charges shall be imposed in the event that the temporary Building becomes protracted by remaining erected or placed for a continuous period exceeding three years from the date that the Building permit is issued. The development charges required to be paid under this By-law shall become payable on the date the temporary Building becomes protracted;

(f) Development, solely for the purposes of creating or adding an Accessory Use or accessory structure not exceeding 10 square metres of Gross Floor Area;

(g) Development of or by a hospital receiving aid under the *Public Hospitals Act*, R.S.O. 1990, c P.40, as amended, or any successor thereto;

(h) The exempt portion of an enlargement of the Gross Floor Area of an Existing Industrial Building in accordance with section 4 of the Act, subject to section 3.5.2 of this by-law;

(i) Development of a Parking Structure

3.5.2 For the purposes of the exemption for the enlargement of Existing Industrial Buildings set out in section 3.5.1(h) of this By-law, the following provisions shall apply:

(a) there shall be an exemption from the payment of Development Charges for one or more enlargements of an Existing Industrial Building, up to a maximum of fifty per cent (50%) of the Gross Floor Area before the first enlargement for which an exemption from the payment of Development Charges was granted pursuant to the Act or under this section of the By-law or any predecessor hereto;

(b) Development Charges shall be imposed in the amounts set out in this By-law with respect to the amount of floor area of an enlargement that results in the Gross Floor Area of the Industrial Building being increased by greater than fifty per cent (50%) of the Gross Floor Area of the Existing Industrial Building; and,

(c) for greater clarity, Research Establishments and Computer Establishments are not industrial uses of land, Buildings under this By-law and do not qualify for the exemption under section 3.5.1(h).

Discounts for Rental Housing (for profit):

3.5.3 The Development Charges payable for Rental Housing Developments, where the Residential Dwelling Units are intended to be used as a rented residential premises will be reduced based on the number of bedrooms in each Dwelling Unit as follows:

(a) Three or more bedrooms – 25% reduction;

(b) Two bedrooms – 20% reduction; and

(c) All other bedroom quantities – 15% reduction

Other Exemptions (Upon Proclamation):

The City of Guelph Official Plan

February 2024

Consolidation

guelph.ca/officialplan

2024 Consolidation

The City of Guelph Official Plan was initially adopted by Council November 1, 1994 and has been comprehensively updated. This consolidation includes OPA 80 as approved by the Minister through Bill 150, Planning Statute Law Amendment Act, 2023 and in effect as of April 11, 2023 and OPA 81 through 87, OPA 89, 91 and 92.

a) Site/servicing development models for priority areas including the extension of College Avenue East;
b) Development of Research and Development Clusters in partnership with the Post-Secondary Institutions;
c) Redevelopment of the Guelph Correctional Facility for uses permitted by the Adaptive Re-use designation, including assessing the feasibility for the possible extension of College Avenue East over the Eramosa River to provide pedestrian and transit connections to such development; and
d) Coordination of marketing and business development efforts targeting knowledge-based innovation sector businesses and other related users within mixed-use employment areas.

11.2.7.7 Definitions

In addition to definitions of the Official Plan, the following definitions are applicable in the Guelph Innovation District Secondary Plan:

Active Transportation means:

Modes of transportation, such as walking and cycling that: provide the personal benefits of fitness and recreation; are environmentally friendly; contribute to the personal and social health of neighbourhoods; and are readily available to a wide range of age groups within the community.

Adaptive Reuse means:

The alteration of *built heritage resources* to fit new uses or circumstances while retaining their heritage value and attributes.

Available Roof Area means:

The total roof area minus the area for mechanical equipment, roof top terraces and perimeter access restrictions.

Carbon Neutral means:

For the purpose of the GID, *carbon neutrality* refers to the indirect and direct carbon emissions emitted from the new buildings that will be developed within the GID boundary. Net zero carbon emissions will be achieved by balancing the annual amount of carbon released (by burning fossil fuels) with the equivalent amount that is sequestered and/or offset from on-site or off-site renewable energy.

The carbon emissions associated with transportation, waste, water and food generation/production will be addressed and reduced as a result of the "complete community" design of the GID. That said, these related emissions will not be included in the *carbon neutral* definition for the GID.

Compatibility means:

Development or *redevelopment* which may not necessarily be the same as, or similar to, the existing development, but can co-exist with the surrounding area without unacceptable adverse impact.

District Energy means:

A system that ties together distributed thermal energy generation and users through a local supply loop.

Guelph Agri-Innovation Cluster means:

The *Guelph Agri-Innovation Cluster* consists of two main subsectors, food and wellness and agri-business, which afford many niche opportunities for value creation that align **strongly with the infrastructural strengths of the region. The report "Strategic Plan for the** *Guelph Agri-Innovation Cluster***", dated March 3, 2010, completed by Hickling Arthur Low** and Urban Strategies Inc. further defines the *Guelph Agri-Innovation Cluster*.

Public Realm means:

Public spaces such as public streets and rights of way, urban squares, parks, community trails, and open spaces.

Public View means:

A view toward important public and historic buildings, natural heritage and open space features, landmarks and skylines when viewed from *the public realm*.

Public Vista means:

Views that are framed through built form or between rows of trees when viewed from the *public realm*.

Redevelopment means:

The creation of new units, uses or lots on previously developed land in existing communities, including *brownfield* and *greyfield* sites.

11.2.8 Schedules

Schedule A	Mobility Plan
Schedule B	Land Use
Schedule C	Built Form Elements
Schedule D	Block Plan Areas
Appendix A	Heritage

12 Glossary

The terms as listed in the Glossary have a specific technical meaning as used in the Plan text. They are *italicized* in the body of the Plan in instances where this technical meaning applies. The terms are listed in alphabetical order.

100 Year Flood means:

the *flood* which has a return period of 100 years, on average, or which has a 1% chance of occurring or being exceeded in any given year, as determined by the Grand River Conservation Authority.

Active Transportation means:

Modes of transportation, such as walking and cycling that: provide the personal benefits of fitness and recreation; are environmentally friendly; contribute to the personal and social health of neighbourhoods; and are readily available to a wide range of age groups within the community.

Additional Residential Dwelling Unit Apartment means:

a *dwelling unit* that is self-contained, subordinate to and located within the same building or on the same lot of a primary *dwelling unit*.

Adjacent Lands means:

For the purpose of *designated property* or *protected heritage property*, any parcel of land that:

i) shares a boundary with a parcel containing a *designated property* or *protected heritage property*;

ii) is separated from a *designated property* or *protected heritage property* by a right–of-way (e.g., road) and within the span of the extended lot lines of the parcel containing a *designated property* or *protected heritage property* or is located at a corner opposite a corner property that is a *designated heritage property* or *protected heritage property;*

iii) is within 30 metres of a *designated heritage property* or *protected heritage property* in instances where a *designated heritage property* or *protected heritage property* is within a right-of-way (e.g. bridge) or located on a parcel 2.5 hectares in area or greater.

Adjacent Lands means:

for the purpose of the Natural Heritage System, those lands contiguous to specific *natural heritage features or areas*, where it is likely that *development* or *site alteration* would have a *negative impact* on the *feature*, area or *ecological functions*. The extent of the *adjacent lands* are defined in Table 6.1 of this Plan.

Adverse Effects as defined in the *Environmental Protection Act* means one or more of:

- Impairment of the quality of the natural environment for any use that can be made of it;
- Injury or damage to property or plant and animal life;
- Harm or material discomfort to any person;
- An adverse effect on the health of any person;
- Impairment of the safety of any person;
- Rendering any property or plant or animal life unfit for use by humans;
- Loss of enjoyment of normal use of property; and
- Interference with normal conduct of business.

Affordable Housing means:

a) in the case of ownership housing, the least expensive of:

   i) housing for which the purchase price results in annual accommodation costs which do not exceed 30 per cent of gross annual household income for *low and moderate income households*; or

   ii) housing for which the purchase price is at least 10 percent below the average purchase price of a resale unit in the City of Guelph;

b) in the case of rental housing, the least expensive of:

   i) a unit for which the rent does not exceed 30 per cent of gross annual household income for *low and moderate income households*; or

   ii) a unit for which the rent is at or below the average market rent of a unit in the City of Guelph.

Affordable Housing Benchmark means:

The maximum *affordable housing* price as defined for the City of Guelph for ownership and rental housing. The benchmark is adjusted on an annual basis to be reflective of changing market conditions within the city.

Agricultural Use means:

the growing of crops, including nursery and horticultural crops; raising of livestock and other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agroforestry; maple syrup production; and associated on-farm building and structures.

Alter (and *alteration*) means:

A change in any manner, and includes to restore, renovate, repair or disturb.

Alternative energy systems means:

sources of energy or energy conversion processes that significantly reduce the amount of harmful emissions to the environment (air, earth and water) when compared to conventional energy systems.

Ancillary Use means:

A use that is incidental to, but associated with the principle use or a primary function of a site.

Aquifer means:

a subsurface geological material which yields significant amounts of water.

Archaeological Assessment means:

For a defined project area or property, a survey undertaken by a licensed archaeologist within those areas determined to have areas of potential *archaeological resources* in order to identify *archaeological sites*, followed by evaluation of their *cultural heritage value or interest*, and determination of their characteristics. Based on this information, recommendations are made regarding the need for *mitigation* of impacts and the appropriate means for mitigating those impacts.

Archaeological Resources means:

Includes *artifacts*, *archaeological sites* and marine *archaeological sites,* as defined under the *Ontario Heritage Act*. The identification and evaluation of such resources are based upon archaeological fieldwork undertaken in accordance with the *Ontario Heritage Act.*

Archaeological Site means:

Any property that contains an artifact, or any other physical evidence of past human use or activity that is of *cultural heritage value or interest*.

Area of Natural and Scientific Interest (ANSI) means:

areas of land and water containing natural landscapes or *features* which have been identified by the Province as having science or earth science values related to protection, scientific study or education.

Areas of Potential Archaeological Resources means:

means areas with the likelihood to contain archaeological resources. Criteria to identify archaeological potential are established by the Province. The *Ontario Heritage Act* requires archaeological potential to be confirmed by a licensed archaeologist.

Artifact means:

Any object, material or substance that is made, modified, used, deposited, or affected by human action and is of *cultural heritage value or interest*.

Bankful Channel means:

The usual or average level to which a body of water rises at its highest point and remains for sufficient time so as to change the characteristics of the land (also known as the ordinary High Water Mark – HWM). In flowing waters (rivers, streams) this refers to the active channel which is often the 1:2 year *flood* flow return level (Department of Fisheries and Oceans, 2010).

Brownfield sites means:

undeveloped or previously developed properties that may be contaminated. They are usually, but not exclusively, former industrial or commercial properties that may be underutilized, derelict or vacant.

Buffers means:

areas identified *adjacent* to some *natural heritage features or areas* that are intended to be protected and provide a separation between the protected *feature* or area and the adjacent *development*, and mitigate against negative impacts to the *natural heritage feature or area* and/or its *ecological function(s).*

Built Heritage Resource means:

a building, structure, monument, installation or any manufactured or constructed part or remnant that contributes to a property's cultural heritage value or interest as identified by a community, including Indigenous communities. Built heritage resources are located on property that may be designated under Parts IV or V of the *Ontario Heritage Act*, or that may be included on local, provincial, federal and/or international registers.

Child Care Centre (see *Day Care Centre* definition*).*

Committee of Adjustment means:

a quasi-judicial body, appointed by City Council in accordance with the *Planning Act,* authorized to rule on applications for minor variances to *zoning by-laws*, for enlargements and extensions to non-conforming buildings, for conversions of non-conforming uses and buildings to other non-conforming uses, to interpret general clauses in by-laws, and for *consents* in accordance with the provisions of the *Planning Act*.

Community Infrastructure means:

lands, buildings, and structures that support the quality of life for people and communities by providing public services for health, education, recreation, socio-cultural activities, security and safety and the provision of programs and services provided or subsidized by a government or other body, such as social assistance and affordable housing. *Community infrastructure* does not include *infrastructure* or *municipal services*.

Compact Urban Form means:

a land-use pattern that encourages efficient use of land, walkable communities, mixed land uses (residential, retail, workplace and institutional all within one neighbourhood), is

in proximity to transit and reduces need for *infrastructure*. *Compact urban form* can include detached and semi-detached houses on small lots as well as townhouses and walk-up apartments, multi-storey commercial developments, and apartments or offices above retail. Walkable neighbourhoods can be characterized by roads laid out in a well connected network, destinations that are easily accessible by transit and active transportation, sidewalks with minimal interruptions for vehicle access, and a pedestrian-friendly environment along roads to encourage active transportation.

Compatibility/compatible means:

Development or *redevelopment* which may not necessarily be the same as, or similar to, the existing development, but can co-exist with the surrounding area without unacceptable adverse impact.

Complete Communities means:

places such as mixed-use neighbourhoods or other areas within cities, towns, and *settlement areas* that offer and support opportunities for people of all ages and abilities to conveniently access most of the necessities for daily living, including an appropriate mix of jobs, local stores, and services, a full range of housing, transportation options and *public service facilities*. *Complete communities* are age-friendly and may take different shapes and forms appropriate to their contexts.

Condominium means:

a form of property ownership in which title to a unit, such as an individual apartment or townhouse unit is held by an individual together with a share of the rest of the property, which is common to all of the owners.

Consent means:

the authorization granted by the Committee of Adjustment in accordance with the *Planning Act*, to deal with land severance, lot additions, *easements*, rights-of-way, validation of title, charge/discharge of mortgages and long term leases of land for more than 21 years. A *consent* is not needed to convey, mortgage, grant or lease an entire lot, or a whole lot on a *registered plan of subdivision*.

Conserved means:

In regard to *cultural heritage resources*, the identification, protection, management and use of *built heritage resources*, *cultural heritage landscapes* and *archaeological resources* in a manner that ensures their cultural heritage value or interest is retained. This may be achieved by the implementation of recommendations set out in a conservation plan, archaeological assessment, and/or heritage impact assessment that has been approved, accepted or adopted by the relevant planning authority and/or decision-maker. Mitigative measures and/or alternative development approaches can be included in these plans and assessments.

Consolidated Municipal Service Manager (Service Manger) means:

The legislated agency appointed by the Province that is responsible for the delivery of *social housing* services within Guelph and Wellington County. The County of Wellington is responsible for this service within the City and the County.

Convenience Commercial means:

a small-scale commercial operation and personal service that has a planning function of serving the day-to-day convenience shopping needs of an immediately surrounding residential population. Examples of uses include a convenience food store, a dry cleaner or a small-scale restaurant.

Conversion means:

the alteration or change of use of an existing building or structure to some other use.

Co-ownership means:

a form of property possession in which a person has a joint interest in a co-operative or as a member of a corporation with the stated right to a present or future exclusive possession to a *dwelling unit* within a multiple unit residential building.

Cultural Heritage Conservation Easement Agreement means:

A voluntary legal agreement between the heritage property owner, the municipality and/or the Ontario Heritage Trust, establishing mutually accepted conditions that will ensure the *conservation* of a heritage property in perpetuity.

Cultural Heritage Conservation Plan means:

A plan developed to demonstrate how *heritage attributes* will be *conserved*, protected or enhanced such that the integrity of the *heritage attributes* is retained. Such plans will include descriptions of repairs, stabilization and preservation techniques as well as short and long term conservation and maintenance measures and including how the *heritage attributes* will be integrated or commemorated.

Cultural Heritage Landscape means:

a defined geographical area that may have been modified by human activities and is identified as having cultural heritage value or interest by a community, including Indigenous communities. The area may include features such as buildings, structures, spaces, views, *archaeological sites* or natural elements that are valued together for their interrelationship, meaning or association. Cultural heritage landscapes may be properties that have been determined to have cultural heritage value or interest under the *Ontario Heritage Act*, or have been included on federal and/or international registers, and/or protected through official plan, zoning by-law, or other land use planning mechanisms.

Cultural Heritage Resource means:

built heritage resources, cultural heritage landscapes and *archaeological resources* that have been determined to have cultural heritage value or interest for the important contribution they make to our understanding of the history of a place, an event, or a people. While some cultural heritage resources may already be identified and inventoried by official sources, the significance of others can only be determined after evaluation.

Cultural Heritage Resource Impact Assessment means:

a study conducted prior to *development/redevelopment* to investigate the potential impact of *development* on *cultural heritage resources.* This type of study will determine how a particular development should proceed and what actions or measures are required to minimize *negative impacts* on cultural heritage resources.

Cultural Heritage Review means:

An assessment conducted to accompany a request to modify a description of non-*designated properties listed* in the *Heritage Register* or to *list* or remove non-*designated properties* from the *Heritage Register*.

Cultural Heritage Value or Interest means:

A *property* is of *cultural heritage value or interest* if, where criteria for whether the property is of *cultural heritage value or interest* has been prescribed by regulation, the property meets the criteria.

Cultural Resources (see *Cultural Heritage Resource* definition).

Cultural Woodland means:

a *woodland* with tree cover between 35% and 60% originating from, or maintained by, anthropogenic, influences and culturally based disturbances (e.g., planting or agriculture, clearing, recreation, grazing or mowing); often having a large proportion of introduced (i.e., non-indigenous) species (as per the Ecological land Classification System for southern Ontario) and with shrubs, grasses, and/or herbaceous ground cover. These may be second or third growth *woodlands* that occur on land that has been significantly altered by human disturbance where the original forest was completely or mostly removed at various points in time (e.g., from agriculture, grazing, gravel extraction) and may include a small proportion of planted trees but has undergone natural succession to the point where tree cover is between 35% and 60%, with grass and herbaceous ground covers, and possibly shrubs as well.

Day Care Centre means:

a premise licensed under the *Day Nurseries Act*, that receives more than five children who are not of common parentage primarily for the purpose of providing temporary care or guidance, or both temporary care or guidance, for a continuous period not exceeding twenty-four hours, when the children are under eighteen years of age in the case of a day

nursery for children with a developmental handicap and under ten years of age in all other cases.

Delineated Built Boundary means:

The limits of the developed urban area as defined by the Minister in consultation with affected municipalities for the purpose of measuring the minimum intensification target in this Plan.

Delineated Built-up area (or built-up area) means:

All land within the *delineated built boundary* and as identified on Schedule 1a.

Density Targets means:

the targets for the *Urban Growth Centre* density contained in policy 3.8.4 of this Plan and for designated *greenfield areas* density targets contained in policy 3.12.2.

Deposits of mineral aggregate resources means:

An area of identified *mineral aggregate resources*, as delineated in Aggregate Resource Inventory Papers or comprehensive studies prepared using evaluation procedures established by the Province for surficial and bedrock resources, as amended from time to time, that has a sufficient quantity and quality to warrant present or future extraction.

Designated and Available means:

with respect to housing supply, lands designated in the Official Plan for urban residential use. Where more detailed official plan policies (e.g., secondary plans) are required before *development* applications can be considered for approval, only lands that have commenced the more detailed planning process are considered to be designated for the purpose of this definition.

Designated Greenfield area (or *greenfield area*) means:

the area within settlement areas but outside of delineated built-up areas that have been designated in this Plan for development and are required to accommodate forecasted growth to the horizon of this Plan. Designated greenfield areas do not include excess lands.

Designated Property means:

For the purpose of cultural heritage, *property* designated by a municipality under Part IV of the *Ontario Heritage Act* or within a *Heritage Conservation District* designated under Part V of the *Ontario Heritage Act*.

Designated vulnerable area means:

Areas defined as vulnerable, in accordance with provincial standards, by virtue of their importance as a drinking water source.

Development means:

a) The creation of a new lot, a change in land use, or the construction of buildings and structures requiring approval under the *Planning Act*;

b) Site alteration activities such as fill, grading and excavation that would change the landform and natural vegetative characteristics of a site; and

c) Various forms of intensification, infill development and redevelopment.

Development does not include activities that create or maintain *infrastructure* authorized under an environmental assessment process or works subject to the Drainage Act.

In spite of the above definition, for the Special Policy Area Flood Plain of this Plan, development means the construction, erection or placing of one or more buildings or structures on lands, or an addition or alteration to a building or structure which adds more than 50% of the existing ground floor space area to the building or structure.

District Energy means:

A system that ties together distributed thermal energy generation and users through a local supply loop.

Dwelling Unit means:

a room or group of rooms occupied or designed to be occupied as an independent and separate self-contained housekeeping unit.

Easement means:

the permission to use a part of an individual's property, usually for services that are either overhead (as wires) or underground (i.e. pipes) and, furthermore, to service such installations.

Ecological Functions means:

the natural processes, products or services that living and non-living environments provide or perform within or between species, ecosystems and landscapes. These may include biological, physical, chemical and socio-economic interactions.

With respect to wetlands, *ecological functions* mean the biological, physical and socio-economic interactions that occur in an environment because of the properties of the wetlands that are present, including, but not limited to *groundwater* recharge and discharge; *flood* damage reduction; shoreline stabilization; sediment trapping; nutrient retention and removal; food chain support; habitat for fish and wildlife; and attendant social and economic benefits.

Ecological Linkage means:

areas identified based on the principles of conservation biology that connect Significant Natural Areas and/or protected Habitat for Significant Species and along which wildlife can forage, genetic interchange can occur, and populations can move from one habitat to

another in response to life cycle requirements. *Ecological Linkages* provide or enhance connectivity where it is otherwise lacking, ensuring a systems based approach, and supporting natural connections between Significant Natural Areas and/or protected Habitat for Significant Species. *Ecological Linkages* can also include those areas currently performing, or with the potential to perform linkage functions through *restoration* measures. Although linkages help to maintain and improve the Natural Heritage System and related *ecological functions*, they can also serve as habitat in their own right.

Ecosystem Services means:

the broad range of services provided by *natural heritage features and areas* within a given jurisdiction. These services include contributions to: surface and groundwater protection, air quality improvement, erosion and flood control, localized temperature moderation, noise attenuation, visual barriers, soil and wildlife protection and regeneration, and pollination of crops and natural vegetation. A number of these services can also be attributed to trees and treed areas outside natural areas but within the urban matrix (e.g., trees on boulevards, in yards and parks, etc.)

Employment Area means:

those areas designated in the Official Plan for clusters of businesses and economic activities including, but not limited to:

i) manufacturing uses;

ii) warehousing uses;

iii) office uses;

iv) retail uses that are associated with the uses mentioned in clauses i) to iii); and

v) Facilities that are ancillary to the uses mentioned in clauses i) to iv).

Endangered Species means:

a species that is classified as an 'Endangered Species' on the official Species at Risk in Ontario list as updated and amended from time to time by the *Endangered Species Act, 2007*.

Environmental Assessment (EA) means:

a planning process to determine the potential impacts of an infrastructure project as determined by the *Environmental Assessment Act*.

Environmental Corridor means:

a linear biophysical feature usually associated with natural topographic, surface water and vegetation features such as wetlands, rivers and creeks, valleylands and wooded areas. These corridors serve as essential passageways for native plant and animal species and communities including: migratory routes; passage between different habitat types for animals requiring a variety of habitat types to survive and; pathways for movement and

reproductive interchange between different populations of the same plant or animal species. In addition, where these corridors are associated with streams, these natural corridors also serve as essential buffers to protecting the integrity of the stream's ecosystem.

Environmental Impact Study (EIS) means:

the form or product a study used in the context of *natural heritage features and areas* where *development* provisions on or adjacent to a *natural heritage feature* have been established through a rigorous ecosystems-analysis approach. This will usually take the form of a (sub) watershed study or environmental overview based on a landscape scale review of a natural features and *functions* of an area.

Erosion Hazard means:

The loss of land, due to human or natural processes, that poses a threat to life and property. The *erosion hazard* limit is determined using considerations that include the 100 year erosion rate (the average annual rate of recession extended over a one hundred year time span), an allowance for slope stability and an erosion/erosion access allowance.

Essential means:

that (1) there is a demonstrated need, and (2) it has been demonstrated that no other reasonable alternatives exist.

Established Buffers means:

the *buffers* established and approved by the City following the *adjacent lands* analysis carried out through the required site specific study (e.g. *EIS* or *EA*).

Exempt means:

In regard to energy projects, an energy project that is exempt from *Planning Act* approvals as outlined in Section 62 of the *Planning Act*. (see also *non-exempt*)

Extirpation means:

a wildlife species no longer existing in a given jurisdiction where it formerly occurred, but still occurring elsewhere.

*Feature (*see *Natural Heritage Features and Areas* definition).

Federally Significant Species means:

species that are listed by the *Federal Species at Risk Act* as i) endangered or threatened or *Special Concern*, but are not listed provincially (i.e., *Endangered* or *Threatened Species* as defined in this Plan).

Fish means:

fish, shellfish, crustaceans, and marine animals, at all stages of their life cycles.

Fish Habitat means:

spawning grounds and any other areas, including nursery, rearing, food supply and migration areas on which *fish* depend directly or indirectly in order to carry out their life processes.

Flood means:

a temporary rise in the water level resulting in the inundation of areas in the *floodplain* not ordinarily covered by water.

Flood Lines (see *Regulatory Flood Lines* definition).

Flood Fringe means:

the outer portion of the *floodplain* between the *floodway* and the *flooding hazard* limit.

Flooding Hazard means:
The inundation, under the conditions specified below, of areas adjacent to a shoreline or a river or stream system and not ordinarily covered by water.

i) **Along the shorelines of the Great Lakes - St. Lawrence River System and large inland lakes, the *flooding hazard* limit is based on the *one hundred year flood* level plus an allowance for wave uprush and other water-related hazards;**

ii) **Along river, stream and small inland lake systems, the *flooding hazard* limit is the greater of:**

   a) the flood resulting from the rainfall actually experienced during a major storm such as the Hurricane Hazel storm (1954), transposed over a specific watershed and combined with the local conditions, where evidence suggests that the storm event could have potentially occurred over watersheds in the general area;
   b) the one hundred year flood; and
   c) a flood which is greater than a. or b. which was actually experienced in a particular watershed or portion thereof as a result of ice jams and which has been approved as the standard for that specific area by the Minister of Northern Development, Mines, Natural Resources and Forestry;
   d) except where the use of the one hundred year flood or the actually experienced event has been approved by the Minister of Northern Development, Mines, Natural Resources and Forestry as the standard for a specific watershed (where the past history of flooding supports the lowering of the standard).

Floodplain means:

the area, usually low lands, adjoining a watercourse, which has been, or may be subject to *flooding hazards*. The *regulatory floodline* delimits the boundaries of the *floodplain*.

Floodproofing (and *floodproof* and *floodproofed*) means:

a combination of structural changes and/or adjustments incorporated into the basic design and/or construction or alteration of individual buildings, structures or properties subject to flooding so as to reduce or eliminate *flood* damages.

Floodway means:

a portion of the *floodplain* where *development* and *site alteration* would cause a danger to public health or safety or property damage.

Where the one zone concept is applied, the *floodway* is the entire contiguous *floodplain*.

Where the two zone or Special Policy Area concept are applied, the *floodway* is the contiguous inner portion of the *floodplain*, representing that area required for the safe passage of *flood* flow/or that area where *flood* depths and/or velocities are considered to be such that they pose a potential threat to life or property damage. Where the two zone or Special Policy Area concept are applied, the outer portion of the *floodplain* is called the *flood fringe*.

Forest Management means:

the sustainable management of the woodland to maintain, restore or enhance environmental conditions for wildlife, and for the protection of water supplies and may include the removal or pruning of dead, diseased, and hazard trees, and *invasive species*. Management may also include the judicious removal of selected tree(s) to improve the diversity and health of the *woodland* e.g., selective cutting of plantations to permit natural succession to occur. However, *forest management* does not include the removal of trees solely for commercial purposes.

Frequent Transit means:
A public transit service that runs at least every 15 minutes in both directions throughout the day and into the evening every day of the week.

Functions (see *Ecological Functions* definition).

Garden Suite means:

a one-unit detached dwelling unit containing bathroom and kitchen facilities that is separate from and subordinate to a primary *dwelling unit* and that is designed to be portable and temporary.

Globally Significant Species means:

species that are considered globally significant (i.e., ranked as G1, G2 or G3) by the Nature Conservancy, as listed by the Ontario Ministry of Natural Resource's Natural Heritage Information Centre.

Greater Golden Horseshoe (GGH) means:

The geographic area identified as the Greater Golden Horseshoe growth plan area in Ontario Regulation 416/05 under the *Places to Grow Act*, 2005.

Green infrastructure means:

natural and human-made elements that provide ecological and hydrological functions and processes. Green infrastructure can include components such as natural heritage features and systems, street trees, urban forests, natural channels, permeable surfaces and green roofs.

Greyfield means:

previously developed properties that are not contaminated. They are usually, but not exclusively, former commercial properties that may be underutilized, derelict or vacant.

Gross Floor Area means:

the total floor area of a building that is designed and intended for exclusive use and occupancy by a tenant or owner measured from the centre line of partition walls and from the exterior face of outside walls.

Groundwater means:

the water held beneath the earth's surface, especially water that flows or seeps downward and saturates the soil. The upper level of this saturated zone is called the water table.

Groundwater Feature means:

water-related features in the earth's subsurface, including recharge/discharge areas, water tables, *aquifers* and unsaturated zones that can be defined by surface and subsurface hydrogeologic investigations.

Group Home means:

a single housekeeping unit in a *dwelling unit* licensed, approved or supervised by the Province of Ontario under any general or specialized or group accommodation with responsible 24 hour supervision consistent with the requirements of its residents. Without limiting the generality of the foregoing, a group home does not include a *day care centre,* a crisis care centre or a halfway house.

Growth Plan means:

A Place to Grow: Growth Plan for the Greater Golden Horseshoe as amended from time to time, prepared and approved under the *Places to Grow Act* (2005).

Habitable Floor Space means:

any room or space in a *dwelling unit* designed for living, sleeping, the preparation of food and sanitary facilities; and also includes hotels and motels for overnight accommodation.

Habitat Conservation means:

management practices that aim to conserve, protect and restore wildlife habitat in order to increase biodiversity, including but not limited to: introduction of indigenous species and removal of non-indigenous *invasive species*.

Habitat of Endangered Species and Threatened Species means:

a) with respect to a species of animal, plant or other organism for which a regulation made under the *Endangered Species Act, 2007* is in force, the area prescribed by that regulation as the habitat of the species, or
b) with respect to any other species of animal, plant or other organism, an area on which the species depends, directly or indirectly, to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding,

and includes places in the area described in clause (a) or (b), whichever is applicable, that are used by members of the species as dens, nests, hibernacula or other residences.

*Hazards or Hazardous (*see *Hazard Lands* definition).

Hazardous forest types for wildland fire means:

Forest types assessed as being associated with the risk of high to extreme wildland fire using risk assessment tools established by the Ontario Ministry of Northern Development, Mines, Natural Resources and Forestry, as amended from time to time.

Hazard(ous) Lands means:

property or land that could be unsafe for development due to naturally occurring processes. This means land, including that covered by water, to the furthest landward limit of the flooding hazard or erosion hazard limits.

Hazardous Site means:

Property or land that could be unsafe for *development* and *site alteration* due to naturally occurring hazards. These may include unstable soils, organic soils or unstable bedrock (karst topography).

Hazardous substances means:

Substances which, individually, or in combination with other substances, are normally considered to pose a danger to public health, safety and the environment. These substances generally include a wide array of materials that are toxic, ignitable, corrosive, reactive, radioactive or pathological.

Hedgerow means:

trees left standing or planted along the edge of a former or existing agricultural field or laneway to create a physical and/or visual barrier. Hedgerows also typically include trees remaining along former fence lines.

Heritage attributes means:

In relation to real property, and to the buildings and structures on the real property, the attributes of the property, buildings and structures that contribute to their cultural heritage value or interest.

Heritage Conservation District means:

An area with a group or complex of buildings, or a larger area with many buildings and properties, with a concentration of *cultural heritage resources* with special character or historical association that distinguishes it from its surroundings.

Heritage Conservation District Plan means:

A document adopted by the City to manage and guide future change in a *Heritage Conservation District*, through the adoption of a district plan with policies and guidelines for *conservation*, protection and enhancement of the *Heritage Conservation District*'s special character.

Heritage Register (see: *Municipal Register of Cultural Heritage Properties)*

Heritage Tree means:

A single tree (or group of trees) which has *cultural heritage value or interest. Heritage trees* may be located on private and/or public property or form part of a *cultural heritage landscape. Heritage trees* may be identified as a *heritage attribute* of a non-*designated property listed* in the *Municipal Register of Cultural Heritage Properties* under the *Ontario Heritage Act*.

Heritage trees may be identified as part of a *Cultural Heritage Resource Impact Assessment, Cultural Heritage Conservation Easement Agreement, Cultural Heritage Review, Environmental Impact Statement*, *Environmental Assessment* Study or through a specific tree study.

Higher Order Transit means:

Transit that generally operates in partially or completely dedicated rights-of-way, outside of mixed traffic, and therefore can achieve levels of speed and reliability greater than mixed-traffic transit. Higher order transit can include heavy rail (such as subways and inter-city rail), light rail, and buses in dedicated rights-of-way.

Highly Vulnerable Aquifer means:

Aquifers, including lands above the aquifers, on which external sources have or are likely to have a significant adverse effect.

Highway-Oriented Service Commercial means:

service commercial uses that are particularly well suited to a highway location. These uses usually comprise business activities that require expansive storage components to their operation or are activities catering to tourists and inter-urban traffic.

Housing Options means:

a range of housing types such as, but not limited to single detached, semi-detached, rowhouses, townhouses, stacked townhouses, multiplexes, additional residential units, tiny homes, multi-residential buildings. The term can also refer to a variety of housing arrangements and forms such as, but not limited to life lease housing, co-ownership housing, co-operative housing, community land trusts, land lease community homes, *affordable housing*, housing for people with special needs, and housing related to employment, institutional or educational uses.

Hummocky Topography means:

the character of land as displayed by the *Paris Galt Moraine* consisting of a topography highlighted by concave and convex slopes connecting a high diversity of slope classes. (i.e., more than one of the following: <5%, >=5% to <10%, >=10% to <15%, >=15% to <20%, and >=209%) and generally incorporating closed depressions, ridges and/or hilltops.

Hydrologic Function means:

the functions of the hydrological cycle that include the occurrence, circulation, distribution and chemical and physical properties of water on the surface of the land, in the soil and underlying rocks, and in the atmosphere, and water's interaction with the environment including its relation to living things.

Impact (see *Negative Impact* definition).

Impacts of a changing climate means:

The present and future consequences from changes in weather patterns at local and regional levels including extreme weather events and increased climate variability.

Individual On-Site Sewage Services means:

Individual, autonomous sewage disposal systems within the meaning of s.8.1.2, O Reg. 403/97, under the *Building Code Act* that are owned, operated and managed by the owner of the property upon which the system is located.

Individual On-Site Water Services means:

Individual, autonomous water supply systems that are owned, operated and managed by the owner of the property upon which the system is located.

Industrial Park means:

a planned or organized industrial district with a comprehensive plan which is designed to insure compatibility between the industrial operations therein and the existing activities and character of the community in which the park is located. The plan must provide for streets designed to facilitate truck and other traffic, proper setbacks, lot size minimums, land use ratio minimums, architectural provisions, landscaping requirements, and specific use requirements.

Infill Development means:

a form of *development* within an older established area of the city on land that has not previously been built on.

Infrastructure means:

physical structures and services (facilities and corridors) that form the foundation for development. *Infrastructure* includes: sewage and water systems, stormwater management facilities, septage treatment systems, waste management systems, electric power generation and transmission, communications/telecommunications, transit and transportation corridors and facilities, and oil and gas pipelines and associated facilities.

Intensification means:

the development of a property, site or area at a higher density than currently exists through:

a) redevelopment, including the reuse of brownfield sites;

b) the development of vacant and/or underutilized lots within previously developed areas;

c) infill development; and

d) the expansion or conversion of existing buildings.

Intensification Area means:

lands identified by municipalities within a *settlement area* that are to be the focus for accommodating *intensification*. *Intensification areas* include Downtown Guelph, *intensification corridors*, *major transit station areas*, and other major opportunities that may include *infill*, *redevelopment*, *brownfield sites*, the expansion or conversion of existing buildings and *greyfields*.

Intensification Corridors means:

intensification areas identified along major roads, arterials or higher order transit corridors that have the potential to provide a focus for higher density mixed-use development consistent with planned transit service levels.

Intensification Target means:

the target as established in Section 3.7 of the Official Plan in accordance with section 2.2.2 of the *Growth Plan*.

Intermittent Stream means:

stream-related watercourses that contain water or are dry at times of the year that are more or less predictable, generally flowing during wet seasons of the year but not the entire year, and where the water table is above the stream bottom during parts of the year.

Invasive Species means:

species of plants, animals and microorganisms introduced by human action outside their natural past or present distribution whose introduction or spread threatens the environment. An invasive plant is one that has been moved from its indigenous habitat to a new area (possibly for garden/domestic use), and reproduces so aggressively that it displaces species within indigenous plant communities.

Key Hydrologic Areas means:

Significant groundwater recharge areas, highly vulnerable aquifers, and *significant surface water contribution areas* that are necessary for the ecological and hydrologic integrity of a *watershed.*

Key Hydrologic Features means:

Permanent streams, *intermittent streams*, inland lakes and their littoral zones, *seepage areas and springs*, and *wetlands*.

Land Severance (see Consent definition).

Landfill Site means:

a site used for the disposal of waste by deposit, under controlled conditions, on land.

LEED means:

Leadership in Energy and Environmental Design: a system for rating buildings based on their environmental performance including energy and water use.

Legal non-conforming means:

A use of land, building or structure that is not recognized in the *Zoning By-law* but which lawfully existed on the day the *Zoning By-law* was passed.

Linear Infrastructure means:

corridors that include *infrastructure* such as the pipes necessary for the transmission and distribution of sewage (including stormwater) and water, communication, hydro, oil, and gas lines, but does not include *transportation infrastructure*.

List (*Listed* or *Listing*) means:

For the purposes of identifying *cultural heritage resources*, the addition of a *designated property* or non-*designated property* to the *Municipal Register of Cultural Heritage Properties*.

Live/work means:

a *dwelling unit* that may be partially used for the operation of a small scale business.

Livestock-based Agricultural Operation means:

a place where the grazing, breeding, raising, boarding or training of animals or birds occurs for commercial purposes.

Living Community Centre means:

Programming and/or improved 'animation' of parks that strengthen community cohesion and pride through the introduction of activities such as, but not limited to, movie nights, walking clubs, family pick-up games and activities, neighbourhood picnics, community gardens, brick bake ovens, markets and talent nights.

Locally Significant Species means:

species that are not *Endangered* or *Threatened Species* but that are considered locally significant at the regional level (i.e., as identified in the Significant Plant List and the Significant Wildlife List for Wellington County, and any City-approved updates to these lists). Such species may also be considered *Globally*, *Federally* and/or *Provincially Significant*.

Locally Significant Wetlands means:

evaluated *wetland* (including *wetland complexes*) of at least two (2) hectares in size which are not identified as provincially significant, and unevaluated *wetlands* of at least 0.5 hectares in size.

Lodging House means:

any place, including but not limited to a *dwelling unit*, that is used to provide 5 or more lodging units for hire or gain directly or indirectly to persons.

Low and Moderate Income Households means:

i) In the case of ownership housing, households with incomes in the lowest 60 percent of the income distribution within the city; or

ii) In the case of rental housing, households with incomes in the lowest 60 percent of the income distribution for households renting within the city.

Low Impact Development means:

a stormwater management strategy that seeks to mitigate the impacts of increased runoff and stormwater pollution by managing runoff as close to its source as possible. LID comprises a set of site design strategies that minimize runoff and distributed, small scale structural practices that mimic natural or pre-*development* hydrology through the processes of infiltration, evapotranspiration, harvesting, filtration and detention of stormwater. Site specific designs that can be used to control stormwater include, but are not limited to, rainwater harvesting, green roofs, bio-retention, permeable pavers, infiltration facilities and vegetated swales. These practices can effectively remove nutrients, pathogens and metals from runoff, and they reduce the volume and intensity of stormwater flows.

Main Street Area means:

A pedestrian oriented commercial or mixed-use area centred on a public street, private road or internal driveway that provides a focal point for surrounding neighbourhoods.

Major Office generally means:

freestanding office buildings of approximately 4,000 square metres of floor space or greater, or with approximately 200 jobs or more.

Major Retail Uses means:

retail uses that are greater than 3,250 sq.m. (34,982.7 sq.ft.).

Major Transit Station Area means:

the area including and around Guelph Central Station as identified on Schedule 1a.

Mineral Aggregate Operation means:

i) lands under license or permit, other than for a wayside pit or quarry, issued in accordance with the *Aggregate Resources Act*, or successors thereto.

ii) for lands not designated under the *Aggregate Resources Act*, established pits and quarries that are not in contravention of municipal *Zoning By-laws* and including adjacent land under agreement with or owned by the operator, to permit continuation of the operation; and

iii) associated facilities used in extraction, transport, beneficiation, processing or recycling of *mineral aggregate resources* and derived products such as asphalt and concrete, or the production of secondary related products.

Mineral Aggregate Resources means:

gravel, sand, clay, earth, shale, stone, limestone, dolostone, sandstone, marble, granite, rock or other material prescribed under the *Aggregate Resources Act* suitable for construction, industrial, manufacturing and maintenance purposes but does not include

metallic ores, asbestos, graphite, kyanite, mica, nepheline syenite, salt, talc, wollastonite, mine tailings or other material prescribed under the *Mining Act*.

Mitigation or Avoidance means:

In regard to *cultural heritage resources*, methods of minimizing or avoiding a *negative impact* on a *cultural heritage resource*. These methods include, but are not limited to:

i) alternative development approaches;

ii) isolating *development* and *site alteration* from significant built and natural features and vistas;

iii) design guidelines that harmonize mass, setback, setting, and materials;

iv) limiting height and density;

v) allowing only compatible infill and additions;

vi) reversible alterations; and

vii) buffer zones, site plan control, and other planning mechanisms.

Minimum Buffer means:

the *minimum buffers* identified on Table 6.1 of this Plan.

Mode Share or Modal Share means:

the percentage of person trips or of freight movements made by one travel mode relative to the total number of such trips made by all modes.

Multi-modal means:

the availability or use of more than one form of transportation, such as automobiles, buses, rail (commuter, light rail and freight), walking, and cycling.

Municipal Comprehensive Review means:

an Official Plan review, or an Official Plan amendment, initiated by a municipality that comprehensively applies the policies and schedules of this Plan.

Municipal Register of Cultural Heritage Properties or Heritage Register means:

A register established pursuant to Section 27 of the *Ontario Heritage Act* and filed with the Clerk which identifies properties of *cultural heritage value or interest* within the city. *Designated properties* are *listed* in the *Municipal Register of Cultural Heritage Properties*. Non-*designated properties* may also be listed in the *Municipal Register of Cultural Heritage Properties*.

Municipal Sewage Services means:

a sewage works within the meaning of Section 1 of the *Ontario Water Resources Act*, as amended from time to time, that is owned or operated by a municipality, including centralized and decentralized systems.

Municipal Water Services means:

A municipal drinking water system within the meaning of Section 2 of the *Safe Drinking Water Act*, as amended from time to time, including centralized and decentralized systems.

Natural Areas (see *Natural Heritage Features* definition).

Natural Hazards (see *Hazard Lands* definition).

Natural Heritage Features and Areas means:

features and areas, including *significant wetlands* and *other wetlands*, *Habitat of Endangered Species and Threatened Species*, *significant Areas of Natural and Scientific Interest*, *fish habitat* and permanent and *intermittent streams*, *significant woodlands*, *significant landform*, *significant valleylands*, *ecological linkages* and *significant wildlife habitat*, Restoration Areas, *habitat of significant species* and *cultural woodlands* as defined by the criteria in this Plan.

Naturalization means:

a process whereby an area that has been previously disturbed by humans or from natural events, is allowed to regenerate naturally with input of seeds and other propagules from the existing soil and/or adjacent natural areas.

Negative Impacts means:

i) In regard to sewage and water services, potential risks to human health and safety and degradation to the *quality and quantity of water*, *sensitive surface water features* and *sensitive ground water features*, and their related *hydrologic functions*, due to single, multiple or successive *development*. *Negative impacts* should be assessed through environmental studies including hydrogeological or water quality impact assessments, in accordance with provincial standards;

ii) In regard to water, degradation to the quality and quantity of surface or groundwater*, key hydrologic features* or vulnerable areas and their related *hydrologic functions*, due to single, multiple or successive *development*;

iii) In regard to *fish habitat*, any permanent alteration to, or destruction of *Fish Habitat*, except where, in conjunction with the appropriate authorities, it has been authorized under the *Fisheries Act*; and

iv) In regard to other *natural heritage features and areas*, degradation that threatens the health and integrity of the natural features or *ecological functions* for which an area is identified due to single, multiple or successive *development* or *site alteration* activities.

Negative Impacts means:

In regard to *cultural heritage resources*, *negative impacts* include, but are not limited to:

a) Destruction of any, or part of any, significant *heritage attributes* or features;

b) Alteration that is not sympathetic, or is incompatible, with the historic fabric and appearance;

c) Shadows created that alter the appearance of a *heritage attribute* or change the viability of a natural feature or plantings, such as a garden;

d) Isolation of a *heritage attribute* from its surrounding environment, context or a significant relationship;

e) Direct or indirect obstruction of significant views or vistas within, from, or of built and natural features;

f) A change in land use such as rezoning a battlefield from open space to residential use, allowing new *development* or *site alteration* to fill in the formerly open spaces;

g) Land disturbances such as a change in grade that alters soils, and drainage patterns that adversely affect an *archaeological resource*.

Net Density means:

the concentration of residential *development*, calculated by dividing the total number of dwellings by the net area of the site developed for residential purposes. This term excludes roads and road rights-of-way and areas that have been dedicated to the City or another public agency.

Non-exempt means:

In regard to energy projects, an energy project that is subject to approval under the *Planning Act*. (see also *exempt*)

Normal Maintenance means:

activities undertaken in conjunction with *infrastructure* including energy, communication, waste water, roads, railways, trails, water supply and storage, water management and stormwater management to ensure regular operation parameters and public safety in accordance with the associated guidelines, regulations and maintenance policies, procedures and risk mitigation strategies for the *infrastructure*.

Nursing Home means:

any premises, licensed under the *Nursing Homes Act*, maintained and operated for persons requiring nursing care.

One Hundred Year Flood (see *100 Year Flood* definition at beginning of Glossary).

Ontario Heritage Act means:

Ontario Heritage Act, R.S.O. 1990, c. 0.18 as amended.

Other Wetlands means:

unevaluated *wetlands* of at least 0.2 hectares and no more than 0.5 hectares.

Paris Galt Moraine means:

the geomorphic feature referred to as the *Paris Galt Moraine* Complex with is a 6.4 to 8 km wide belt that extends over most of the city's south end (south of Clair Road) and occurs in a few more isolated patches in the central portion of the city. The Paris and Galt Moraines were both deposited by the Ontario ice lob during the Port Bruce Stadial (15,000 – 14,000 yr. B.P.)

Partial Services means:

i) Municipal sewage services or private communal sewage services combined with *individual on-site water services*; or

ii) Municipal water services or private communal water services combined with *individual on-site sewage services*.

Passive Recreational Activities means:

a range of outdoor activities and passive uses compatible with protecting the *Natural Heritage features and areas* including, but not limited to, *wildlife habitat*, *wetlands* and *woodlands*. Activities and uses include bird watching, hiking, photography, snowshoeing, and may require the construction of a trail, benches or boardwalks in accordance with the Guelph Trail Master Plan or are integral to the scientific, educational or passive recreational use of a property.

Performance Labelling means:

a transparent energy benchmarking process whereby the energy efficiency of a building is documented.

Planning Act means:

The Planning Act, R.S.O. 1990, chapter P.13, as amended.

Plans of Subdivision (see *Registered Plan of Subdivision* definition).

Plantations means:

where tree cover is greater than 60% and dominated by canopy trees that have been planted:

i) managed for production of fruits, nuts, Christmas trees or nursery stock; or

ii) managed for tree products with an average rotation of less than 20 years (e.g. hybrid willow or poplar); or

iii) established and continuously managed for the sole purpose of tree removal at rotation, as demonstrated with documentation acceptable to the planning authority or the MNDMNRF, without a forest *restoration* objective.

Pollinator Habitat means:

natural areas within the landscape that contain indigenous plants, shrubs, and trees that provide pollen, nectar, and other floral resources for pollinating insects and other animal

pollinators. In addition, these areas may provide appropriate nesting sites, such as exposed soil, rotting logs, cavity trees, hollow-stemmed plants, and host plants specific to local pollinators.

Portable Asphalt Plant means a facility:

a) With equipment designed to heat and dry *aggregate* and to mix *aggregate* with bituminous asphalt to produce asphalt paving material, and includes stockpiling and storage of bulk materials used in the process;

b) Which is not of permanent construction, but which is to be dismantled at the completion of the construction project.

Portable Concrete Plant means:

a building or structure:

i) with equipment designed to mix cementing materials, aggregate, water and admixtures to produce concrete, and includes stockpiling and storage of bulk materials used in the process; and

ii) which is not of permanent construction, but which is designed to be dismantled at the completion of the construction project.

Primary Rental means:

Units in structures with three or more units, composed of self-contained units where the primary purpose of the structure is to house rental tenants.

Property, as defined in Parts IV and V of the *Ontario Heritage Act*, means:

real property and includes all buildings and structures thereon. This includes anything fixed to the *property* "fixture" but excludes anything portable "chattel". Generally, a fixture is something affixed to the property by means other than its own weight, which cannot be removed without causing damage to the building. A chattel is a moveable item of property not permanently attached to land or a building.

Property Standards By-law means:

a municipal by-law, passed in accordance with the provisions of the *Ontario Building Code* which prescribes the standards for the maintenance and occupancy of property.

Protected Heritage Property means:

Real property designated under Parts IV, V, or VI of the *Ontario Heritage Act*; *heritage conservation easement* property under Parts II or IV of the *Ontario Heritage Act*; and property that is the subject of a covenant or agreement between the owner of the property and a conservation body or level of government, registered on title and executed with primary purpose of preserving, conserving and maintaining a cultural heritage feature or resource, or preventing its destruction, demolition or loss.

Provincial and Federal Requirements means:

i) in regard to policy 4.1.3.5, legislation and policies administered by the federal or provincial governments for the purpose of fisheries protection (including fish and *Fish Habitat*), and related, scientifically established standards such as water quality criteria for protecting lake trout populations; and

ii) in regard to policy 4.1.3.3, legislation and policies administered by the provincial government or federal government, where applicable, for the purpose of protecting species at risk and their habitat.

Provincial Plan means:

Means a provincial plan within the meaning of section 1 of the *Planning Act*.

Provincially Significant Employment Zone means:

Areas defined by the Minister in consultation with affected municipalities for the purpose of long-term planning for job creation and economic development. Provincially significant employment zones can consist of employment areas as well as mixed-use areas that contain a significant number of jobs.

Provincially Significant Species means:

species that are not Endangered Species or Threatened Species but that are considered provincially significant by the Ministry of Northern Development, Mines, Natural Resources and Forestry's Natural Heritage Information Centre (i.e., ranked as S1, S2 or S3) and/or listed as Special Concern at the provincial level by the Committee on the Status of Species at Risk in Ontario.

Provincially Significant Wetlands means:

wetlands or a wetland complex identified by the Ministry of Northern Development, Mines, Natural Resources and Forestry as being of provincial significance as determined through the Ontario Wetland Evaluation System.

Public Realm means:

Public spaces such as public streets and rights-of-way, urban squares, parks, community trails, and open spaces.

Public Service Facilities means:

Land, buildings and structures for the provision of programs and services provided or subsidized by a government or other body, such as social assistance, recreation, police and fire protection, health and educational programs, long-term care services and cultural services. *Public service facilities* do not include *infrastructure*.

Public View means:

A view toward important public and historic buildings, natural heritage and open space features, landmarks and skylines when viewed from the *public realm*.

Public Vista means:

Views that are framed through built form or between rows of trees when viewed from the *public realm*.

Quality and quantity of water is:

Measured by indicators associated with hydrologic function such as minimum base flow, depth to water table, aquifer pressure, oxygen levels, suspended solids, temperature, bacteria, nutrients and hazardous contaminants, and hydrologic regime.

Redevelopment means:

the creation of new units, uses or lots on previously developed land in existing communities, including *brownfield* and *greyfield* sites.

In spite of the above definition, for the lands within the Special Policy Area Floodplain of this Plan, *redevelopment* shall include an addition which is larger than 50% of the total ground floor area of the original or existing building or structure.

Registered Plan of Subdivision means:

a plan showing lots, streets and blocks of land, approved by the City of Guelph, in accordance with the *Planning Act*, and registered under the *Registry Act*, or the *Land Titles Act*.

Regulatory Flood means:

the flood resulting from the Hurricane Hazel Regional Storm, as determined by the Grand River Conservation Authority.

Regulatory or *Regional Flood Level* means:

a set of lines on either side of river or stream showing the highest water level which may be reached in the event of a regional storm as defined and calculated by the Grand River Conservation Authority. In Guelph, the regional flood is defined as the rainfall experience during the Hurricane Hazel storm of 1954 superimposed over the Grand River watershed.

Renewable Energy means:

the production of heat or energy from a renewable source such as, the sun, wind, water, biomass, biogas or geothermal.

Renewable Energy Systems means:

the production of power or heat from an energy source that is renewable by natural processes including, but not limited to, wind, water, a biomass resource or product, solar and geothermal energy.

Renovation shall mean:

for the Special Policy Area Flood Plain of this Plan, a form of *development* involving the improvement, alteration or addition under 50% of total ground floor area to an existing building or structure.

Residential Intensification means:

Intensification of a property, site or area which results in a net increase in residential units or accommodation and includes:

a) redevelopment, including the redevelopment of brownfield sites;

b) the *development* of vacant or underutilized lots within previously developed areas;

c) infill development;

d) development and introduction of new *housing options* within previously developed areas;

e) the conversion or expansion of existing industrial, commercial and institutional buildings for residential use; and

f) the conversion or expansion of existing residential buildings to create new residential units or accommodation, including *additional residential dwelling units,* rooming houses, and other *housing options.*

Restoration means:

active management of an area that results in accelerated regeneration and recovery of a desired vegetation community or habitat, typically one that once occurred naturally in the area. This may include the creation or re-creation of *wetlands*, *woodlands* or meadows/grasslands.

Retail Commercial means:

an enterprise whose purpose is to sell a commodity to the end user.

S-Ranks or Provincial Ranks means:

Provincial (or Subnational) ranks are used by the NHIC to set protection priorities for rare species and natural communities. These ranks are not legal designation. Provincial Ranks are assigned in a manner similar to that described for global ranks, but consider only those factors within the political boundaries of Ontario. By comparing the global and provincial ranks, the status, rarity, and the urgency of conservation needs can be

ascertained. The NHIC evaluates provincial ranks on a continual basis and produces updated lists at least annually.

i) S1 Critically Imperiled – Critically imperiled in the nation or state/province because of extreme rarity (often 5 or fewer occurrences) or because of some factor(s) such as very steep declines making it especially vulnerable to *extirpation* from the state/province.

ii) S2 Imperiled – Imperiled in the nation or state/province because of rarity due to very restricted range, very few populations (often 20 or fewer), steep declines, or other factors making it very vulnerable to *extirpation* from the nation or state/province.

iii) S3 Vulnerable – Vulnerable in the nation or state/province due to a restricted range, relatively few populations (often 80 or fewer), recent and widespread declines, or other factors making it vulnerable to *extirpation*.

Safe Access means:

Locations where, during the *Regulatory Flood*:

i) the flow velocity does not exceed 1.0 m/sec.;

ii) the product of depth and velocity does not exceed 0.4 metres squared/sec.;

iii) the depth of flooding along access routes to residential units does not exceed 0.8 metres;

iv) the depth of flooding along access routes to commercial or industrial buildings or structures does not exceed or 2.0 metres;

v) the depth of flooding adjacent to residential units does not exceed 1.2 metres; and

vi) the depth of flooding adjacent to commercial or industrial buildings or structures does not exceed 2.0 metres.

Scoped Cultural Heritage Resource Impact Assessment means:

a reduced scope of study conducted prior to *development/redevelopment* to investigate the potential impact of *development* on *cultural heritage resources*, including *development* proposals on lands adjacent to *designated property* or other *protected heritage property.*

Scoped Environmental Impact Study (EIS) means:

the form of study used in the context of assessing impact on *natural heritage features* where *development* within or adjacent to a natural heritage feature or area is contemplated and a comprehensive study (*EIS/EA/Subwatershed Plan*) has been completed. In this instance an area or site specific study that addresses the issues of particular concern not previously addressed in sufficient detail in the comprehensive studies will be examined for the site specific *development* proposal.

Alternatively, this form of EIS may be used in instances where a *Comprehensive EIS* has not been undertaken, but the City, via its *development* approval process, requires a study to be conducted to assess impact on the *features* and *adjacent lands* thereto.

Seepage Areas and Springs means:

Sites of emergence of groundwater where the water table is present at the ground surface.

Senior Citizen means:

any person 60 years of age or older.

Sensitive Land Use means:

buildings, amenity areas or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more *adverse effects* from contaminant discharges generated by a nearby facility. *Sensitive land uses* may be a part of the natural or built environment. Examples may include, but not be limited to residences, *day care centres*, and educational and health facilities.

Service Manager means:

(see *Consolidated Municipal Service Manager* definition)

Service Commercial means:

uses that support *highway-oriented* or service-oriented commercial activities that cannot be readily located within the downtown area or within a shopping centre location. The following list characterizes the main features of a *service commercial* use:

a) A use that requires a large site area and outdoor display area to accommodate the sale of large commodities such as cars, recreational vehicles, building supplies;

b) A use that primarily relies on business from tourists and inter-urban traffic such as a hotel, gas bar, fast-food restaurant;

c) A use that supplies goods and services that are not normally found within the downtown or a shopping centre such as auto repair and service facilities;

d) A use that requires a location convenient to industry as it primarily provides service to industry such as machinery sales and service, electrical supplies; or

e) A use that requires substantial showroom area because of the bulky or large size nature of the principal commodities that are being marketed, and the requirement for a large showroom makes it economically difficult to provide the space in the downtown or shopping centre location.

Settlement area means:

all lands identified in the Official Plan for *development* or *redevelopment* up to the year 2051 as shown on Schedule 1a.

*Significance (*see *Significant* definition).

Significant means:

1. in regard to landform, means the portions of the *Paris Galt Moraine* containing concentrations of 20% slopes, and closed depressions located in close proximity to other Significant Natural Areas of the NHS.
2. in regard to *wetlands* means:
   a) provincially significant wetlands
   b) locally significant wetlands
3. in regard to *woodlands* means *woodlands* that are ecologically important in terms of features such as species composition, age of trees and stand history, functionally important due its contribution to the broader landscape because of its location, size or due to the amount of remaining forest cover in the city;
4. in regard to valleylands means a protected natural heritage feature or area that occurs in a valley or other landform depression that has water flowing through or standing for some period of the year. This includes regulatory floodplains/riverine flooding hazards, riverine erosion hazards and apparent/other valleylands ecologically important in terms of features, functions, representativeness, or amount, and contributing to the quality and diversity of the Natural Heritage System; and

v) in regard to cultural heritage and archaeology, resources that have been determined to have cultural heritage value or interest. Processes and criteria for determining cultural heritage value or interest are established by the Province under the authority of the Ontario Heritage Act.

Significant Groundwater Recharge Area means:

An area that has been identified:

a) as a *significant groundwater recharge area* by any public body for the purposes of implementing the PPS, 2020;

b) as a *significant groundwater recharge area* in the assessment report required under the Clean Water Act, 2006; or

c) as an ecologically *significant groundwater recharge area* delineated in a *subwatershed plan* or equivalent in accordance with provincial guidelines.

For the purposes of this definition, ecologically *significant groundwater recharge areas* are areas of land that are responsible for replenishing groundwater systems that directly support sensitive areas like cold water streams and *wetlands*.

Significant Surface Water Contribution Area means:

Areas, generally associated with headwater catchments, that contribute to baseflow volumes which are significant to the overall surface water flow volumes within a

watershed.

Site Alteration means:

activities such as grading, excavation and the placement of fill that would change the landform and natural vegetative characteristics of a site.

Social Housing means:

sometimes referred to as 'assisted', 'subsidized' or 'rent-geared-to income' housing, housing that is a sub-set of *affordable housing*. It refers to housing units provided under a variety of federal and provincial housing program by the municipal non-profit housing corporation and private non-profit and co-operative non-profit housing corporations. Residents in rent-geared-to income units in *social housing* portfolios pay no more than 30% of their annual gross household income in rent. It also refers to housing units within the private rental sector, where rent-geared-to-income subsidy is provided through a rent supplement agreement to the landlord.

Special Concern means:

a species with characteristics resulting in sensitivity to human activities or natural events which may cause it to become *endangered* or *threatened species*.

Special Needs Housing means:

any housing, including dedicated facilities, in whole or in part, that is used by people who have specific needs beyond economic needs, including but not limited to, needs such as mobility requirements or support functions required for daily living. Examples of *special needs housing* may include, but are not limited to, long-term care homes, adaptable and accessible housing, and housing for persons with disabilities such as physical, sensory or mental health disabilities, and housing for older persons. For the purposes of this Plan, it also includes *group homes*, emergency shelters, special care facilities for persons with disabilities and housing for seniors (rest homes, palliative care, *nursing homes*).

Strategic Growth Areas means:

within settlement areas, nodes, corridors, and other areas that have been identified by municipalities or the Province to be the focus for accommodating intensification and higher-density mixed uses in a more compact built form. Strategic growth areas include urban growth centres, major transit station areas, and other major opportunities that may include infill, redevelopment, brownfield sites, the expansion or conversion of existing buildings, or greyfields. Lands along major roads, arterials, or other areas with existing or planned *frequent transit* service or higher order transit corridors may also be identified as strategic growth areas.

Strategic growth areas are identified in this Plan on Schedule 1a.

Subwatershed Study means:

a study that reflects and refines the goals, objectives, targets, and assessments of *watershed planning*, as available at the time a *subwatershed study* is completed, for smaller drainage areas, is tailored to subwatershed needs and addresses local issues.

A *subwatershed study* should consider existing development and evaluate impacts of any potential or proposed land uses and development; identify hydrologic features, areas, linkages, and functions; identify natural features, areas, and related *hydrologic functions*; and provide for protecting, improving, or restoring the *quality and quantity of water* within a subwatershed.

A *subwatershed study* is based on pre-development monitoring and evaluation; is integrated with natural heritage protection; and identifies specific criteria, objectives, actions, thresholds, targets, and best management practices for development, for water and wastewater servicing, for stormwater management, for managing and minimizing impacts related to severe weather events, and to support ecological needs.

Surface Water Features means:

water related features on the earth's surface, including headwaters, rivers, stream channels, inland lakes and ponds, seepage areas, recharge/discharge areas, springs, *wetlands*, and associated riparian lands that can be defined by their soil moisture, soil type, vegetation and topographic characteristics.

Threatened Species means:

species that is listed or categorized as a "Threatened" species on the official Species at Risk in Ontario list, as updated and amended from time to time by the *Endangered Species Act, 2007*.

Transit-supportive means:

In regard to land use patterns, means development that makes transit viable, optimizes investments in transit infrastructure, and improves the quality of the experience of using transit. It often refers to compact, mixed-use development that has a high level of employment and residential densities, including air rights development, in proximity to transit stations, corridors and associated elements within the transportation system. When used in reference to urban design, it often refers to design principles that make development more accessible for transit users, such as roads laid out in a grid network rather than a discontinuous network; pedestrian-friendly built environment along roads to encourage walking to transit; reduced setbacks and placing parking at the sides/rear of buildings; and improved access between arterial roads and interior blocks in residential areas.

Transportation Corridor means:

a thoroughfare and its associated buffer zone for passage or conveyance of vehicles or people. A transportation corridor includes any or all of the following:

a) Major roads, arterial roads, and highways for moving people and goods;

b) Rail lines/railways for moving people and goods;

c) Transit rights-of-way/transitways including buses and light rail for moving people.

Transportation Demand Management (TDM) means:

A set of strategies that result in more efficient use of the transportation system by influencing travel behaviour by mode, time of day, frequency, trip length, regulation, route, or cost.

Transportation infrastructure means:

Works such as maintenance, repair or installation of roads or bridges/overpasses as well as underpasses and culverts, and rail lines, but does not include buildings or parking that may be associated with these *infrastructure* components with the exception of small-scale bus/rail boarding platforms and associated structures.

Tree Canopy Cover means:

the proportion of land area occupied by tree crowns when visualized from above. It is the two-dimensional horizontal extent of the combined canopies of all the trees on a given land area.

Urban Agriculture means:

The growing of crops or raising of animals for food at a small scale that is compatible with the surrounding neighbourhood. It may also include small-scale sales of urban agricultural products subject to zoning and other applicable regulations.

Urban Forest means:

for the purposes of this Plan, plantations, woodlands, hedgerows, treed areas and **individual trees outside the City's Natural Heritage System.**

Urban Growth Centre means:

Downtown Guelph as identified on Schedule 1a and defined in accordance with the policies of *A Place to Grow: Growth Plan for the Greater Golden Horseshoe*.

Vacancy Rate means:

the percentage of *dwelling units* that are vacant in relation to the total number of *dwelling units* of that type. A vacant *dwelling unit* is one that is available for immediate rental and is physically unoccupied at the time of enumeration.

Valleylands means:

a natural area that occurs in a valley or other landform depression that has water flowing through or standing for some period of the year.

Vulnerable in regards to surface or groundwater means:

surface and groundwater that can be easily changed or impacted by activities or events, either by virtue of their vicinity to such activities or events or by permissive pathways between such activities and the surface and/or groundwater.

Walkable Communities means:

well-designed, compact communities where people can walk to school or work, to stores, parks, restaurants and entertainment destinations thereby providing opportunities for exercise and significantly reducing the need to drive.

Water resource system means:

A system consisting of *groundwater features* and areas and *surface water features*, and *hydrologic functions*, which provide the water resources necessary to sustain healthy aquatic and terrestrial ecosystems and human water consumption. The *water resource system is* comprised of *key hydrologic features* and *key hydrologic areas*.

Watershed means:

all land drained by a river or stream and its tributaries.

Watershed planning means:

Planning that provides a framework for establishing goals, objectives and direction for the protection of water resources, the management of human activities, land, water, aquatic life, and resources within a *watershed* and for the assessment of cumulative, cross-jurisdictional, and cross-*watershed* impacts.

Watershed planning typically includes: *watershed* characterization, a water budget, and conservation plan; nutrient loading assessments; consideration of the *impacts of a changing climate* and severe weather events; land and water use management objectives and strategies; scenario modelling to evaluate the impacts of forecasted growth and servicing options, and mitigation measures; an environmental monitoring plan; requirements for the use of environmental best management practices, programs, and performance measures; criteria for evaluating the protection of *quality and quantity of water;* the identification and protection of hydrologic features, areas, and functions and their interrelationships between or among them; and targets for the protection and restoration of riparian areas.

Watershed planning is undertaken at many scales and considers cross-jurisdictional and cross-*watershed* impacts. The level of analysis and specificity generally increases for smaller geographic areas such as subwatersheds and tributaries.

Wayside Pit and Quarry means:

a temporary pit or quarry opened and used by or for a public authority solely for the purpose of a particular project or contract of road construction and not located on the road right-of-way.

Wetland Evaluation means:

evaluation of wetland carried out in accordance with the MNDMNRF Wetland Evaluation Manual, as amended from time to time.

Wetlands mean:

lands that are seasonally or permanently covered by shallow water, as well as lands where the water table is close to or at the surface. In either case the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic plants or water tolerant plants. The four major types of wetlands are swamps, marshes, bogs and fens.

Wildland fire assessment and mitigation standards means:

The combination of risk assessment tools and environmentally appropriate mitigation measures identified by the Ontario Ministry of Northern Development, Mines, Natural Resources and Forestry to be incorporated into the design, construction and/or modification of buildings, structures, properties and/or communities to reduce the risk to public safety, infrastructure and property from wildland fire.

Wildlife Habitat means:

areas where plants, animals and other organisms live and find adequate amounts of food, water, shelter and space needed to sustain their populations. Specific wildlife habitats of concern may include areas where species concentrate at a vulnerable point in their annual or life cycle; and areas, which are important to migratory or non-migratory species.

Woodlands means:

treed areas that provides environmental and economic benefits to both the private land owner and the general public, such as erosion prevention, hydrological and nutrient cycling, provision of clean air and the long-term storage of carbon, provision of clean air and the long-term storage of carbon, provision of wildlife habitat, outdoor recreational opportunities, and the sustainable harvest of a wide range of woodland products. Woodlands include treed areas, woodlots or forested areas and vary in their level of significance at the local, regional and Provincial levels.

This includes an area of land at least 0.2 hectares in size with at least:

i) 1000 trees of any size, per hectare;

ii) 750 trees measuring over 5 centimetres diameter at breast height, per hectare;

iii) 500 trees measuring over 12 centimetres diameter at breast height, per hectare;

iv) 250 trees measuring over 20 centimetres diameter at breast height, per hectare,

But does not include a cultivated fruit or nut orchard, a plantation established for the purpose of producing Christmas trees or nursery stock. For the purposes of defining woodland, treed areas separated by more than 20 metres will be considered a separate woodland.

Zoning By-law means:

a municipal by-law prepared in accordance with the *Planning Act*, that restricts the use of land and the manner in which buildings or structures are located on a property. A *zoning by-law* implements the intent of the Official Plan by specifically regulating what may or may not be done on individual parcels of land.

Glossary of Acronyms

ANSI Area of Natural and Scientific Interest

EIR Environmental Implementation Report

EIS Environmental Impact Study

EA Environmental Assessment (under the Environmental Assessment Act)

COSEWIC Committee on the Status of Endangered Wildlife in Canada

COSSARO Committee on the Status of Species at Risk in Ontario

dbh Diameter at breast height (for trees)

DFO Department of Fisheries and Ocean

GIS Geographic Information System

GRCA Grand River Conservation Authority

MNR Ministry of Natural Resources

NHS Natural Heritage System

NHIC Natural Heritage Information Centre (Ontario Ministry of Natural Resources)

OMB Ontario Municipal Board

PSW Provincially Significant Wetland

SAR Species at Risk

S1 Critically Imperiled (see definition under S-Ranks)

S2 Imperiled (see definition under S-Ranks)

S3 Vulnerable (see definition under S-Ranks)

S4 Apparently Secure

S5 Secure

Schedules

Schedule 1a Urban Structure

Schedule 1b Urban Structure (Employment Areas)

Schedule 2 Land Use Plan

Schedule 3 Development Constraints

Schedule 4 Natural Heritage System

Schedule 4A Natural Heritage System- ANSIs and Wetlands

Schedule 4B Natural Heritage System- Surface Water and Fish Habitat

Schedule 4C Natural Heritage System- Significant Woodlands

Schedule 4D Natural Heritage System- Significant Valleylands & Significant Landform

Schedule 4E Natural Heritage System- Significant Wildlife Habitat & Habitat for Significant Species

Schedule 5 Road & Rail Network

Schedule 6 Open Space System: Trail Network

Schedule 7 Wellhead Protection Areas

Cecy, Cindy

From:	Dayna Gilbert <daynag@forumam.com>
Sent:	Monday, April 25, 2022 12:35 PM
To:	Steven Pink
Subject:	FW: Holiday Inn estimated Development Charges

See below

Dayna Gilbert
Forum Equity Partners
M: 416-587-7283
daynag@forumequitypartners.com

From: Rajni Rao
Sent: Wednesday, March 2, 2022 12:24 PM
To: Dayna Gilbert
Subject: RE: Holiday Inn estimated Development Charges

Hi Dayna,

Based on the terms of lease agreement, we agree to **Exempt** you from Development Charges.

Regards,

Rajni

Rajni Rao, Account Analyst I
Corporate Services, **Finance**
City of Guelph
519-822-1260 extension 2307
Rajni.rao@guelph.ca

guelph.ca
Facebook.com/cityofguelph
@cityofguelph

From: Dayna Gilbert <daynag@forumequitypartners.com>
Sent: Wednesday, February 23, 2022 1:37 PM
To: Rajni Rao <Rajni.Rao@guelph.ca>
Subject: RE: Holiday Inn estimated Development Charges

Hi Rajni,

Page 1 Section 1.1 Subsection (a) as well as page 6 defines the University of Guelph as the “Landlord” in the definitions. We are the tenant as defined on page 6 and further on page 1, Section 1.1 subsection (b) 601 Scottsdale GP Inc.

Further, page Section 1.1 subsection (e)

(e) Use: A student residence and ancillary uses operated by the Tenant for the sole benefit of students of the Landlord.

Page 6 further contains the definition of Use of the property

Use

“Use” means a student residence and ancillary uses operated by the Tenant for the sole benefit of students of the Landlord

Page 22 contains Section 9.1

9.1 Use

The Property shall be used, operated, and maintained by the Tenant (Forum) *and any permitted subtenant (as hereinafter provided 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 students of the Landlord.*

These are the excerpts I provided in my first email.

Does this assist?
Thank you
Dayna

Dayna Gilbert
Forum Equity Partners
M: 416-587-7283
daynag@forumequitypartners.com

From: Rajni Rao <Rajni.Rao@guelph.ca>
Sent: February 23, 2022 12:18 PM
To: Dayna Gilbert <daynag@forumequitypartners.com>
Subject: FW: Holiday Inn estimated Development Charges

Hi Dayna,

Can you point to the paragraph about the lease to UOG. I am extremely busy and don’t want to go through 44 pages ☺

Regards,

Rajni

Rajni Rao, Account Analyst I
Corporate Services, **Finance**
City of Guelph
519-822-1260 extension 2307
Rajni.rao@guelph.ca

guelph.ca
Facebook.com/cityofguelph

@cityofguelph

From: Dayna Gilbert <daynag@forumequitypartners.com>
Sent: Wednesday, February 23, 2022 10:26 AM
To: Rajni Rao <Rajni.Rao@guelph.ca>
Subject: RE: Holiday Inn estimated Development Charges

Hi Rajni,

As per you request, please find attached our ground lease that demonstrates that we are a tenant of the landlord and property owner (University of Guelph) and can only lease to University of Guelph students.

We have redacted only a few sections that contain private company and financial information.

Please get back me as soon as you can,
Dayna

Dayna Gilbert
Forum Equity Partners
M: 416-587-7283
daynag@forumequitypartners.com

From: Dayna Gilbert
Sent: February 7, 2022 12:07 PM
To: Rajni.Rao@guelph.ca
Subject: RE: Holiday Inn estimated Development Charges

Hi Rajni,

I hope you are doing well.

I am reaching out to you to discuss the previously indicated requirement of DCs that we had at the end of last year. I have done a deeper dive and sought expert opinion into Guelph's DC By-Law and where it applies. As you may or may not be aware, the University of Guelph owns this land. We are the tenant with a ground lease with the University whereby we are required to only house and provide programs, support, and development etc to University of Guelph students, ONLY. We are adding a use for student residence on university owned land. DCs should not apply.

Our ground lease explicitly requires that the permitted use with the university (Landlord) is for University of Guelph students (please see excerpts from the Ground Lease below):

> *Use*
> *"Use" means a student residence and ancillary uses operated by the Tenant for the sole benefit of students of the Landlord*
> *9.1 Use*
> *The Property shall be used, operated, and maintained by the Tenant* (Forum) *and any permitted subtenant (as hereinafter provided 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 students of the Landlord.

As such, it is our opinion that DC's do not apply to our site as per the sections below:

Section 3.5.1
Notwithstanding the provisions of this By-law, Development Charges shall not be imposed with respect to:

(a) Development of land, buildings or structures for University Related Purposes within the University defined area as set out in Schedule C;
(b) land, buildings or structures outside the defined area as set out in Schedule C, **which are now owned directly or indirectly by the University or on behalf of the University** or which may be acquired by the University and which are developed or occupied for University Related Purposes, provided that, where only a part of such land, buildings or structures are so developed, then only that part **shall be exempt from the Development Charges specified under this By-law**

"University Related Purposes" means those objects and purposes set out in section 3 of An Act to incorporate the University of Guelph, S.O. 1964, c. 120, as amended, or any successor thereto.
Section 3 of that Act states as follows:
The objects and purposes of the University are:

(a) the advancement of learning and the dissemination of knowledge, including, without limiting the generality of the foregoing, the advancement of learning and the dissemination of knowledge respecting agriculture; and
(b) the intellectual, social, moral and physical development of its members and the betterment of society.

I am happy to schedule a call to discuss the above with you. I am also happy to provide a copy of the Ground Lease on a confidential basis if it assists further in your review.

Thank you in advance,
Dayna

Dayna Gilbert
Forum Equity Partners
O: **416-947-1463** | M: **416-587-7283**
daynag@forumequitypartners.com

From: Rajni Rao <Rajni.Rao@guelph.ca>
Sent: Friday, November 5, 2021 2:15 PM
To: Dayna Gilbert <daynag@forumequitypartners.com>; Hoa Nguyen <hoan@forumequitypartners.com>
Subject: RE: Holiday Inn estimated Development Charges

Hi Dayna & Hoa,

Please see revised estimates. We agree with your point of view and have considered the GFA of the entire building for Reductions.

Regards,

Rajni

Rajni Rao, Account Analyst I
Corporate Services, **Finance**
City of Guelph

519-822-1260 extension 2307
Rajni.rao@guelph.ca

guelph.ca
Facebook.com/cityofguelph
@cityofguelph

From: Dayna Gilbert <daynag@forumequitypartners.com>
Sent: Wednesday, November 3, 2021 1:59 PM
To: Hoa Nguyen <hoan@forumequitypartners.com>; Rajni Rao <Rajni.Rao@guelph.ca>
Subject: RE: Holiday Inn estimated Development Charges

Hi Rajni,

I also want to clarify that although this will be rented only to students, it will be students in their 2, 3rd, 4th and grad students where the leases will be on an annual basis not by semester like traditional student housing. We are targeting a student population that wants that sense of community but can rent on an annual basis without finding an apartment for bedroom in a house.

Thank you and let me know if you have any questions,
Dayna

Dayna Gilbert
Forum Equity Partners
O: **416-947-1463** | M: **416-587-7283**
daynag@forumequitypartners.com

From: Hoa Nguyen <hoan@forumequitypartners.com>
Sent: November 3, 2021 1:39 PM
To: Rajni Rao <Rajni.Rao@guelph.ca>
Cc: Dayna Gilbert <daynag@forumequitypartners.com>
Subject: RE: Holiday Inn estimated Development Charges

Hi Rajni,

It will be rented only to students from Guelph.

Hoa Nguyen
Forum Equity Partners
O: **416-947-3510** | M: **647-217-3616**
hoan@forumequitypartners.com

From: Rajni Rao <Rajni.Rao@guelph.ca>
Sent: Wednesday, November 3, 2021 12:58 PM
To: Hoa Nguyen <hoan@forumequitypartners.com>
Cc: Dayna Gilbert <daynag@forumequitypartners.com>
Subject: RE: Holiday Inn estimated Development Charges

Hi Hoa,

Thanks for this. One more quick question. Are the units rented to only University students or any one in general? From our initial discussion I gather that tenants are not restricted to only university students. Please confirm.

Rajni

From: Hoa Nguyen <hoan@forumequitypartners.com>
Sent: Tuesday, November 2, 2021 5:30 PM
To: Rajni Rao <Rajni.Rao@guelph.ca>
Cc: Dayna Gilbert <daynag@forumequitypartners.com>
Subject: RE: Holiday Inn estimated Development Charges

Hi Rajni - Please see the attached site plan which was submitted as part of our Zoning By-law Amendment application. Let us know if you require anything else.

Thanks

Hoa Nguyen
Forum Equity Partners
O: **416-947-3510** | M: **647-217-3616**
hoan@forumequitypartners.com

From: Rajni Rao <Rajni.Rao@guelph.ca>
Sent: Tuesday, November 2, 2021 4:06 PM
To: Dayna Gilbert <daynag@forumequitypartners.com>
Cc: Hoa Nguyen <hoan@forumequitypartners.com>
Subject: RE: Holiday Inn estimated Development Charges

Hi Dayna,

Could you please provide the break down of 8,641.6 Sq. M. Please add GFA of Basements and/or Mezzanine floors if not already included in this calculation.

Thanks,
Rajni

From: Dayna Gilbert <daynag@forumequitypartners.com>
Sent: Monday, November 1, 2021 2:51 PM
To: Rajni Rao <Rajni.Rao@guelph.ca>
Cc: Hoa Nguyen <hoan@forumequitypartners.com>
Subject: RE: Holiday Inn estimated Development Charges

Hi Rajni,

Thank you. I understand what you are describing about the DC By-Law but when the DCs were paid that we are getting a credit for it was for a non-residential use which is a blanket per square foot dollar amount on the entirety of the GFA.

If the credit is for just what is being converted it means that DCs were paid for areas in the building on a non-res basis that is not being credited but now we are also required to pay residential DCs.

Should not the entirety of the historical DCs be credited now that this building will no longer be a non-res use and when we file our building permit we pay residential DCs as they today apply?

Please give me a call if its easier to chat,
Thank you very much,
Dayna

Dayna Gilbert
Forum Equity Partners
O: **416-947-1463** | M: **416-587-7283**
daynag@forumequitypartners.com

From: Rajni Rao <Rajni.Rao@guelph.ca>
Sent: November 1, 2021 2:15 PM
To: Dayna Gilbert <daynag@forumequitypartners.com>; Hoa Nguyen <hoan@forumequitypartners.com>
Subject: RE: Holiday Inn estimated Development Charges

Hi Dayna,

That's a good point. However, per our DC By-Law the calculation for residential is per dwelling unit and we do not charge separately for Gym or other amenities that go with the Residential Units. The redevelopment credit is for the GFA that is being converted. Please also note that DC Act came into effect in 1997 and before that Municipalities collected something called Impost Charges, the calculations were different and are not compared exactly to the Development Charges.

Attached is our DC By-Law for your reference.

Regards,

Rajni

Rajni Rao, Account Analyst I
Corporate Services, **Finance**
City of Guelph
519-822-1260 extension 2307
Rajni.rao@guelph.ca

guelph.ca
Facebook.com/cityofguelph
@cityofguelph

From: Dayna Gilbert <daynag@forumequitypartners.com>
Sent: Monday, November 1, 2021 1:52 PM
To: Rajni Rao <Rajni.Rao@guelph.ca>; Hoa Nguyen <hoan@forumequitypartners.com>
Subject: RE: Holiday Inn estimated Development Charges

Hi Rajni.

From what I understand, the DCs that were paid historically were on the entirety of the buildings GFA as a hotel. Would the credit not also then be for the entirety of the GFA?
Then we will be paying our DCs in full for the new use.

Thank you in advance for clarification
Dayna

Dayna Gilbert
Forum Equity Partners
O: **416-947-1463** | M: **416-587-7283**
daynag@forumequitypartners.com

From: Rajni Rao <Rajni.Rao@guelph.ca>
Sent: November 1, 2021 12:14 PM
To: Hoa Nguyen <hoan@forumequitypartners.com>
Cc: Dayna Gilbert <daynag@forumequitypartners.com>
Subject: RE: Holiday Inn estimated Development Charges

Hi Hoa,

For our purposes I need the total GFA of the area that is being converted from Non-Res use to Res use as below. Please confirm if you have excluded areas for Gym room, party room and other common rooms like Kitchen, Lounge and of course parking area from 8,641.6 Sq. M

- 14 bachelors (no kitchen, 1 bathroom)
- 1 one bedroom (with kitchen and bathroom)
- 13 two bedrooms (with kitchens and bathroom)
- 136 Bachelor Units

Regards,

Rajni

Rajni Rao, Account Analyst I
Corporate Services, **Finance**
City of Guelph
519-822-1260 extension 2307
Rajni.rao@guelph.ca

guelph.ca
Facebook.com/cityofguelph
@cityofguelph

From: Hoa Nguyen <hoan@forumequitypartners.com>
Sent: Thursday, October 28, 2021 1:36 PM
To: Rajni Rao <Rajni.Rao@guelph.ca>
Cc: Dayna Gilbert <daynag@forumequitypartners.com>
Subject: RE: Holiday Inn estimated Development Charges

Hi Rajni, the GFA of the building is 8,641.6 m^2 / 93,017 ft^2

We took the GFA definition from the Guelph zoning bylaw:

> "Gross Floor Area" means the total floor area of a Building measured from the centre line of partition walls and the exterior face of outside walls, but does not include any floor area of a basement, cellar, Attic, Garage, Porch or any floor area Used for parking, or any floor area which does not have a clear floor to ceiling height of 2.15 metres"

Regards

Hoa Nguyen
Forum Equity Partners
O: **416-947-3510** | M: **647-217-3616**
hoan@forumequitypartners.com

From: Rajni Rao <Rajni.Rao@guelph.ca>
Sent: Wednesday, October 27, 2021 8:36 AM
To: Hoa Nguyen <hoan@forumequitypartners.com>
Cc: Dayna Gilbert <daynag@forumequitypartners.com>
Subject: RE: Holiday Inn estimated Development Charges

Hi Hoa,

Not required as there are no DCs for Amenity space even though they are used as a common space which is considered as part of the entire building just like Parking space.

Thanks,
Rajni

From: Hoa Nguyen <hoan@forumequitypartners.com>
Sent: Tuesday, October 26, 2021 5:42 PM
To: Rajni Rao <Rajni.Rao@guelph.ca>
Cc: Dayna Gilbert <daynag@forumequitypartners.com>
Subject: RE: Holiday Inn estimated Development Charges

Hi Rajni - Can you please advise if the residential GFA should include the amenity space which the tenants will be utilizing such as common kitchen, gym, study room, lounge area? We will be re-developing a portion of the building to include these amenity spaces.

Hoa Nguyen

Forum Equity Partners
O: **416-947-3510** | M: **647-217-3616**
hoan@forumequitypartners.com

From: Rajni Rao <Rajni.Rao@guelph.ca>
Sent: Monday, October 25, 2021 4:12 PM
To: Hoa Nguyen <hoan@forumequitypartners.com>
Cc: Dayna Gilbert <daynag@forumequitypartners.com>
Subject: RE: Holiday Inn estimated Development Charges

Hi Hoa,

Yes please provide GFA of the residential area for the following.

- 14 bachelors (no kitchen, 1 bathroom)
- 1 one bedroom (with kitchen and bathroom)
- 13 two bedrooms (with kitchens and bathroom)

Regards,

Rajni

Rajni Rao, Account Analyst I
Corporate Services, **Finance**
City of Guelph
519-822-1260 extension 2307
Rajni.rao@guelph.ca

guelph.ca
Facebook.com/cityofguelph
@cityofguelph

From: Hoa Nguyen <hoan@forumequitypartners.com>
Sent: Monday, October 25, 2021 4:03 PM
To: Rajni Rao <Rajni.Rao@guelph.ca>
Cc: Dayna Gilbert <daynag@forumequitypartners.com>
Subject: RE: Holiday Inn estimated Development Charges

Hi Rajni – the 43,317 sf was only the area for the *existing* 136 hotel rooms, it does not include the new GFA which we are converting from the common area space. Can you confirm exactly which GFA you need to calculate the DC credit. Does it include the new residential area and the common area / amenity space?

Thank you

Hoa Nguyen
Forum Equity Partners

O: **416-947-3510** | M: **647-217-3616**
hoan@forumequitypartners.com

From: Rajni Rao <Rajni.Rao@guelph.ca>
Sent: Monday, October 25, 2021 3:48 PM
To: Hoa Nguyen <hoan@forumequitypartners.com>
Cc: Dayna Gilbert <daynag@forumequitypartners.com>
Subject: RE: Holiday Inn estimated Development Charges

Hi Hoa,

The original GFA you provided- 43,317 Sft - is it not the existing GFA for the entire building including the ground floor?

Thanks,
Rajni

From: Hoa Nguyen <hoan@forumequitypartners.com>
Sent: Monday, October 25, 2021 3:44 PM
To: Rajni Rao <Rajni.Rao@guelph.ca>
Cc: Dayna Gilbert <daynag@forumequitypartners.com>
Subject: RE: Holiday Inn estimated Development Charges

Hi Rajni,

Thanks a lot for sending this over.

As per the Guelph website (https://guelph.ca/city-hall/budget-and-finance/development-charges/current-development-charges/) the development charges are based on the amount **of *gross floor area being developed***. Shouldn't our DC credit be applied on that basis? In the spreadsheet only the existing residential GFA was applied for the credit, however we are developing 28 new units on the ground floor and the west conference wing (I will get the GFA of the new residential area for you). Please advise.

Thank you

Hoa Nguyen
Forum Equity Partners
O: **416-947-3510** | M: **647-217-3616**
hoan@forumequitypartners.com

From: Rajni Rao <Rajni.Rao@guelph.ca>
Sent: Monday, October 25, 2021 10:00 AM
To: Hoa Nguyen <hoan@forumequitypartners.com>
Subject: FW: Holiday Inn estimated Development Charges

Hi Hoa,

Just to let you know that I have sent the calculations to my Manager for review. Per my calculations, DC amount owing is a lot and add interest, it comes to close to $2M. Anyways, I would wait for my Manager to confirm the calculations and interest rates etc. He is off today. I'll remind him again tomorrow.

Thanks,
Rajni

From: Rajni Rao
Sent: Thursday, October 21, 2021 2:08 PM
To: Greg Clark <Greg.Clark@guelph.ca>
Subject: Holiday Inn estimated Development Charges

Hi Greg,

Please review.

Thanks,
Rajni

From: Hoa Nguyen <hoan@forumequitypartners.com>
Sent: Tuesday, October 19, 2021 3:17 PM
To: Rajni Rao <Rajni.Rao@guelph.ca>
Cc: Dayna Gilbert <daynag@forumequitypartners.com>
Subject: RE: Guelph Development Charges

Hi Rajni,

Hope you had a great weekend. Upon speaking internally, we would most likely proceed with the 5 year installment option for the payment of the DCs. Could you let us know the interest rate applicable?

Also, when do you think we can get an estimate of the DCs?

Thank you,

Hoa Nguyen
Forum Equity Partners
O: 416-947-3510 | M: 647-217-3616
hoan@forumequitypartners.com

From: Hoa Nguyen
Sent: Friday, October 15, 2021 11:24 AM
To: Rajni Rao <Rajni.Rao@guelph.ca>
Cc: Dayna Gilbert <daynag@forumequitypartners.com>
Subject: RE: Guelph Development Charges

Hi Rajni,

Thanks a lot for the call yesterday. Please find the below project information as requested so we can get an estimate of the development charges, the credit for previous DCs paid and overall timing of when we need to pay the DCs.

Could you also let us know who can provide us an estimate for the parkland dedication?

Plan:

Forum Equity Partners proposes to reconfigure the existing building, largely through internal renovations and modifications to permit a quasi-residential use intended for students. The building would contain one or more centralized dining areas for the students to obtain and eat their meals. There are other components of the existing hotel, such as board and meeting rooms, that will also be converted to future units.

Timing:
We will be submitting our renovation building permits mid-November. We will be submitting a minor ZBA end of next week and have a pre-consultation for Site Plan on Oct 20th. We are hoping to get approvals for zoning and site plan by Spring of 2022.

Existing (43,317 SF):

- 136 bachelor units (no kitchen, 1 bathroom) - this will remain as-is with upgrades to existing finishes

Proposed Suites (through the conversion of existing common area / amenity space):

- 14 bachelors (no kitchen, 1 bathroom)
- 1 one bedroom (with kitchen and bathroom)
- 13 two bedrooms (with kitchens and bathroom)

There will be a total of 164 units (136 existing, 28 new)

Let me know if you have any questions.

Have a great weekend.

Regards,

Hoa Nguyen
Forum Equity Partners
O: 416-947-3510 | M: 647-217-3616
hoan@forumequitypartners.com

From: Rajni Rao <Rajni.Rao@guelph.ca>
Sent: Monday, October 4, 2021 2:51 PM
To: Hoa Nguyen <hoan@forumequitypartners.com>
Subject: RE: Guelph Development Charges

Hi Hoa,

I am off Tue & Wed next week. Monday is a stat holiday.

I am available until 1 on Thursday and Friday.

Thanks,

Regards,

Rajni

Rajni Rao, Account Analyst I
Corporate Services, **Finance**
City of Guelph

519-822-1260 extension 2307
Rajni.rao@guelph.ca

guelph.ca
Facebook.com/cityofguelph
@cityofguelph

From: Hoa Nguyen <hoan@forumequitypartners.com>
Sent: Monday, October 4, 2021 2:27 PM
To: Rajni Rao <Rajni.Rao@guelph.ca>
Cc: Dayna Gilbert <daynag@forumequitypartners.com>
Subject: RE: Guelph Development Charges

Hi Rajni – hope you are doing well.

Dayna (cc'd) and I work in the development team at Forum Equity Partners.

We wanted to follow-up on the previous discussion you had with our colleague Tobias regarding the development charges for the former Holiday Inn Guelph site (601 Scottsdale Dr) based on a conversion from hotel use to residential. Do you have some time over the next week for a call to discuss?

Thanks,

Hoa Nguyen
Forum Equity Partners
O: 416-947-3510 | M: 647-217-3616
hoan@forumequitypartners.com

From: Rajni Rao <Rajni.Rao@guelph.ca>
Sent: Wednesday, March 31, 2021 4:32 PM
To: Tobias Oriwol <tobiaso@forumequitypartners.com>
Cc: Matt Cornell <mattc@forumequitypartners.com>
Subject: RE: Guelph Development Charges

Hi Tobias,

In consultation with internal staff members, we will need some more information. Could we have another meeting sometime after April 5th.

Let me know your available times, I can set up a WEBEX meeting.

Thanks,
Rajni Rao, Account Analyst I
Corporate Services, **Finance**
City of Guelph
519-822-1260 extension 2307
Rajni.rao@guelph.ca

guelph.ca
Facebook.com/cityofguelph

@cityofguelph

From: Tobias Oriwol <tobiaso@forumequitypartners.com>
Sent: March 9, 2021 12:33 PM
To: Rajni Rao <Rajni.Rao@guelph.ca>
Cc: Matt Cornell <mattc@forumequitypartners.com>
Subject: RE: Guelph Development Charges

Rajni, we're on the Teams call, but can call your phone if that's easier for you, just let me know.

Tobias Oriwol
Vice President

Forum Equity Partners
Forum House at Brookfield Place
181 Bay Street, East Podium, Second Floor
Toronto, ON M5J 2T3
Mobile: 437-688-7244
tobiaso@forumequitypartners.com | www.forumequitypartners.com

---

From: Rajni Rao <Rajni.Rao@guelph.ca>
Sent: Tuesday, March 9, 2021 11:08 AM
To: Tobias Oriwol <tobiaso@forumequitypartners.com>
Cc: Matt Cornell <mattc@forumequitypartners.com>
Subject: RE: Guelph Development Charges

Works for me.

Rajni Rao, Account Analyst I
Corporate Services, **Finance**
City of Guelph
519-822-1260 extension 2307
Rajni.rao@guelph.ca

guelph.ca
Facebook.com/cityofguelph
@cityofguelph

From: Tobias Oriwol <tobiaso@forumequitypartners.com>
Sent: March 9, 2021 11:07 AM
To: Rajni Rao <Rajni.Rao@guelph.ca>
Cc: Matt Cornell <mattc@forumequitypartners.com>
Subject: RE: Guelph Development Charges

Great, thanks Rajni. I'll send you an invite and Microsoft Teams link for 12:30 today, my colleague Matt (copied here) will be joining as well. Talk to you then!

Tobias Oriwol
Vice President

Forum Equity Partners
Forum House at Brookfield Place
181 Bay Street, East Podium, Second Floor
Toronto, ON M5J 2T3
Mobile: 437-688-7244
tobiaso@forumequitypartners.com | www.forumequitypartners.com

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From: Rajni Rao <Rajni.Rao@guelph.ca>
Sent: Tuesday, March 9, 2021 11:04 AM
To: Tobias Oriwol <tobiaso@forumequitypartners.com>
Cc: Matt Cornell <mattc@forumequitypartners.com>
Subject: RE: Guelph Development Charges

Hi Tobias,

Call me any time today as surprisingly it's kind of a slow day. I have a meeting between 2 and 2:30 . Available until 4 today. Calendar is free tomorrow except b/w 1 and 2.

Thanks,
Rajni Rao, Account Analyst I
Corporate Services, **Finance**
City of Guelph
519-822-1260 extension 2307
Rajni.rao@guelph.ca

guelph.ca
Facebook.com/cityofguelph
@cityofguelph

From: Tobias Oriwol <tobiaso@forumequitypartners.com>
Sent: March 9, 2021 10:37 AM
To: Rajni Rao <Rajni.Rao@guelph.ca>
Cc: Matt Cornell <mattc@forumequitypartners.com>
Subject: Guelph Development Charges

[EXTERNAL EMAIL] Do not click links or attachments unless you recognize the sender and know the content is safe.

Rajni, we have applied for a Site Plan pre-consultation with Planning for the conversion of the Holiday Inn Guelph at 601 Scottsdale Dr from hotel to student housing. They shared your contact because we had a questions regarding the application of development charges on a conversion. Would you be free for call so we can understand the process? Thank you, we look forward to hearing from you!

Tobias Oriwol
Vice President

Forum Equity Partners
Forum House at Brookfield Place
181 Bay Street, East Podium, Second Floor
Toronto, ON M5J 2T3
Mobile: 437-688-7244
tobiaso@forumequitypartners.com | www.forumequitypartners.com

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CONFIDENTIAL OFFERING MEMORANDUM

This confidential offering memorandum (the "**Offering Memorandum**") constitutes an offering of these securities only in those jurisdictions where they may be lawfully offered for sale and therein only by persons permitted to sell such securities. No securities commission or similar authority in Canada, the United States of America or elsewhere has reviewed this Offering Memorandum or has in any way passed upon the merits of the securities offered hereunder and any representation to the contrary is an offence. This Offering Memorandum is not, and under no circumstances is it to be construed as a prospectus or advertisement or a public offering of these securities. No person is authorized to give any information or make any representation not contained in this Offering Memorandum in connection with the offering of these securities and, if given or made, any such information or representation may not be relied upon.

*The securities offered under this Offering Memorandum have not been and will not be registered under the United States Securities Act of 1933, as amended (the "**U.S. Securities Act**") or any state securities law and may not be offered or sold in the United States or to U.S. persons except in compliance with the registration requirements of the U.S. Securities Act and applicable state securities laws or pursuant to an exemption therefrom.*

*The contents of this document have not been reviewed by any regulatory authority in Hong Kong. You are advised to exercise caution in relation to the offer to invest in Forum Real Estate Income and Impact Fund (the "**Fund**"). If you are in any doubt about any of the contents of this document, you should obtain independent professional advice. Securities of the Fund may not be offered or sold in Hong Kong by means of any document other than (1) to "professional investors" as defined in the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) (the "**SFO**") and any rules made under the SFO, (2) to persons and in circumstances which do not constitute an invitation to the public within the meaning of the SFO or (3) otherwise pursuant to, and in accordance with the conditions of, any other applicable provisions of the SFO. No person may issue any invitation, advertisement or other document relating to the securities of the Fund whether in Hong Kong or elsewhere, which is directed at, or the contents of which are likely to be accessed or read by the public in Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to the securities of the Fund which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" within the meaning of the SFO and any rules made under the SFO.*

*This Offering Memorandum has not been approved for the purposes of section 21 of the UK Financial Services and Markets Act 2000 ("**FSMA**") and does not constitute an offer to the public in accordance with the provisions of section 85 of the FSMA. This Offering Memorandum is for distribution only to, and is directed solely at, persons who (i) are outside the United Kingdom, (ii) are investment professionals, as such term is defined in article 19(5) of the FSMA (Financial Promotion) Order 2005, as amended (the "**Financial Promotion Order**"), (iii) are high net worth entities falling within article 49(2)(a) to (d) of the Financial Promotion Order, or (iv) are other persons to whom this Offering Memorandum may lawfully be made available (all such persons together being referred to as "**Relevant Persons**"). This Offering Memorandum is directed only at Relevant Persons and must not be acted on or relied on by persons who are not Relevant Persons, including in circumstances in which section 21(1) of the FSMA applies to the Fund. This Offering Memorandum and its contents are confidential and should not be distributed, published or reproduced (in whole or in part) or disclosed by recipients to any other persons in the United Kingdom. Any investment or investment activity to which this Offering Memorandum relates is available only to Relevant Persons and will be engaged in only with Relevant Persons. Any person who is not a Relevant Person should not act or rely on this Offering Memorandum or any of its contents.*

*The Fund and the securities distributed under this Offering Memorandum (the "**Offered Units**") have not been and will not be registered under the securities law (as amended) of the People's Republic of China, excluding the Hong Kong and Macau Special Administrative Regions and Taiwan (solely for the purpose of this Offering Memorandum and any offering material or other documents as referred to in this Offering Memorandum, "**PRC**"), and are not intended to be offered or sold directly or indirectly in the PRC. Neither this Offering Memorandum, which has not been and will not be submitted to the China Securities and Regulatory Commission or any other regulatory agency in China, nor any offering material or other documents as referred to in this Offering Memorandum (including any subscription agreement) relating to the Fund and the Offered Units is intended to be distributed in the PRC or used in connection with any offer for the subscription or sale of the Fund and the Offered Units in the PRC. If any qualified investor in the PRC intends to invest in the Fund and the Offered Units to the extent permitted by, and in accordance with, the applicable Chinese laws and regulations, such qualified investor in the PRC must be responsible for obtaining all applicable approvals from and/or conducting all applicable filings and/or registrations with the competent regulatory agencies with respect to its subscriptions and trading of the Fund and the Offered Units.*

Continuous Offering *February 7, 2024*

Forum Real Estate Income and Impact Fund

Offering of

Series A Units
Series F Units
Series H Units
Series I Units

Forum Real Estate Income and Impact Fund (the "**Fund**"), is an unincorporated, open-ended investment trust formed under the laws of the Province of Ontario pursuant to the Declaration of Trust (as defined herein). The Fund is offering (the "**Offering**") an unlimited number of series A units ("**Series A Units**"), series F units ("**Series F Units**"), series H units ("**Series H Units**") and series I units ("**Series I Units**" and together with Series A Units, Series F Units, Series H Units, the "**Offered Units**" and each, an "**Offered Unit**"). The Offered Units are issued at the current applicable NAV (as defined herein) per Offered Unit.

The Offered Units are being distributed to investors on a private placement basis on the basis that the Fund is exempt from the requirement to prepare and file a prospectus with the relevant Canadian securities regulatory authorities.

The Fund seeks to generate returns to Unitholders through both current income and long-term appreciation of its assets. The Manager is targeting annual distributions to Unitholders of approximately 4-5% and aggregate targeted total net returns of 8-12% for the Series F Units, inclusive of forecasted increases in the NAV of the Series F Units, on the assumption that the Unitholder will hold its Trust Units (as defined herein) for a minimum five year period, the Unitholder does not elect to participate in the Fund's DRIP (as defined herein) and the Series F Units are not subject to a reduction on the Asset Management Fee (as defined herein). The targeted distribution rate and total return received by a Unitholder will differ based on the series of Trust Units in which a Unitholder invests and whether such investor participates in the DRIP.

Except as disclosed elsewhere in this Offering Memorandum, the Fund intends to use the net proceeds of the Offering combined with mortgage financing and other equity and debt financing to acquire, indirectly through Forum Real Estate Income and Impact LP (the "**Partnership**") and/or other holding entities, primarily impact-driven institutional-quality residential real estate, which Forum Asset Management Inc. (the "**Manager**") believes will provide long-term inflation-hedged and stable cash flows, with the opportunity for capital appreciation. Except as disclosed elsewhere in this Offering Memorandum, the Manager will primarily seek to acquire cash-flowing, resilient residential real estate assets (including equity interests and direct ownership) with opportunities for capital appreciation, underpinned by strong market fundamentals, with a focus on multi-family, purpose-built student accommodation, micro-units, and co-living communities ("**Properties**"). The Manager is focused on Properties located in Canada but may also acquire Properties in the United States. Further, the Manager will seek to create impact-driven long-term value by achieving ESG (as defined herein) targets. Forum Real Estate Income and Impact GP Inc. (the "**General Partner**") and Forum Investment and Development Corporation ("**Forum**") are the general partners of the Partnership.

Subscription agreements (each a "**Subscription Agreement**") to be entered into between each subscriber for Offered Units (each, a "**Subscriber**") and cleared funds received on or before the last Business Day (as defined herein) of a calendar month (or such other date as may be determined by the Manager) are accepted on the last Business Day of such month (or on such other date as may be determined by the Manager) (each, a "**Closing Date**"). Subscription Agreements and funds received after a Closing Date are

accepted on the next Closing Date. See "*Other Legal Considerations - Subscription Procedure*". Offered Units are redeemable at the option of the holders of the Offered Units ("**Unitholders**") subject to the terms and conditions set out in the Declaration of Trust.

The minimum initial investment in the Offered Units for Subscribers resident in any province or territory of Canada (the "**Offering Jurisdictions**") who qualify as "accredited investors" (as such term is defined in National Instrument 45-106 *Prospectus Exemptions* ("**NI 45-106**") and, in Ontario, as such term is defined in Section 73.3 of the *Securities Act* (Ontario)) is $5,000, except in respect of (i) Series H Units, whereby the minimum initial investment is $500,000, and (ii) Series I Units, whereby the minimum initial investment is $10,000,000. The Manager may, in its sole discretion, but subject to applicable Securities Laws (as defined herein), waive the minimum investment amount in respect of any Subscriber that wishes to subscribe for the Offered Units. If the Subscriber does not qualify as an "accredited investor", then the minimum investment amount for the Offered Units is $150,000 pursuant to the "minimum amount investment" exemption under NI 45-106; provided that such Subscriber is (i) not an individual, and (ii) not created or used solely to rely on the "minimum amount investment" exemption.

The Offered Units are offered for sale through (i) the Manager, the Fund and the Partnership's manager and an exempt market dealer, investment fund manager and portfolio manager in certain jurisdictions and (ii) by other registered dealers. **The Manager is considered to be a connected issuer under applicable Securities Laws, and may be considered a related issuer, of the Fund in connection with the distribution of the Fund's securities hereunder, which may result in potential conflicts of interest.** The Manager is a connected issuer of the Fund due to the factors described in this Offering Memorandum under "*Conflicts of Interest*" as a result of the fact that Richard Abboud and Aly Damji, two Trustees of the Fund, are each an officer, director and/or ultimate shareholder of the Manager. In addition, the Manager will receive a monthly Asset Management Fee for management services provided to the Fund and the Partnership. See "*Conflicts of Interest*", "*Fees and Expenses - Selling Agents and Compensation Paid to Sellers and Finders*" and "*Fees and Expenses - Asset Management Fee*".

There is no minimum to this Offering. An investor may be the only Subscriber of Offered Units and the proceeds available under the Offering may not be sufficient to accomplish the Fund's proposed objectives. See "*Risk Factors - Risks Relating to the Offering and the Investment in Offered Units - No Minimum Offering*".

The Fund is not a trust company and is not registered under applicable legislation governing trust companies as it does not carry on or intend to carry on the business of a trust company. The Offered Units are not "deposits" within the meaning of the *Canadian Deposit Insurance Corporation Act* (Canada) and are not insured under the provisions of that act or any other legislation.

Table of Contents

Section **Page**

NOTICE TO SUBSCRIBERS **1**

FORWARD LOOKING STATEMENTS **2**

Industry Data and Other Statistical Information 5
Non-IFRS Measures 6
Income Tax Consequences 6
Exempt Plan Eligibility 6
Selling Agents and Compensation Paid to Sellers and Finders 7

OFFERING SUMMARY **8**

Overview 8
Investment Highlights 9
Investment Objectives and Strategy 9
Market Opportunity 10
Distribution Policy 12
Summary Offering Terms 12

INVESTMENT OBJECTIVE, STRATEGY AND PROCESS **24**

Investment Highlights 24
Investment Objective 24
Investment Strategy 24
Investment Process 28
Investment Risks and Mitigation Strategies 31

MARKET OPPORTUNITY **32**

The Multi-Family Market Opportunity 32
The Purpose-Built Student Accommodation Market Opportunity 34
The Micro-units and Co-Living Communities Market Opportunity 35

ESG PLAN **38**

ESG Targets 39
ESG Benefits 40
ESG Investment Process 41
Onboarding of Properties 42

PROPERTIES **42**

Portfolio 42
ROFO Pipeline Assets and Third-Party Assets 42

ORGANIZATIONAL STRUCTURE **43**

MANAGEMENT OF THE FUND **44**

General 44
Leadership 45
The Independent Board 47

FEES AND EXPENSES **48**

Asset Management Fee 48
Special Allocation 49
Expenses 49
Selling Agents and Compensation Paid to Sellers and Finders 50

Table of Contents

Section **Page**

MATERIAL AGREEMENTS ... 50

Declaration of Trust ... 50
Partnership Agreement ... 63
Management Agreement ... 73
ROFO Agreement ... 78
Funds on Deposit Agreement ... 79

NET ASSET VALUE AND VALUATION POLICY ... 80

Net Asset Value ... 80
Fair Market Value ... 82
Valuation Policy ... 82

DISTRIBUTION POLICY ... 83

Distribution Rate per Trust Unit ... 83
Distribution Reinvestment Plan ... 84

FINANCIAL REPORTING ... 84

RISK FACTORS ... 85

Risks Relating to the Offering and the Investment in Offered Units ... 85
Risks Relating to the Fund and the Partnership ... 92
Risks Relating to the Acquisition of Properties ... 96
Risks Relating to the Business ... 98
ESG Risk ... 98
U.S. Securities Law Considerations ... 103

CERTAIN ERISA AND RELATED CONSIDERATIONS ... 105

Plan Assets ... 106
Plan Asset Consequences ... 107
Reporting ... 107
Additional Information ... 107

CONFLICTS OF INTEREST ... 107

Organizational Structure ... 108
Relationship with the Manager ... 108
Other Business Interests ... 109
Asset Management Fee and Special Allocation ... 109
Funds on Deposit Agreement ... 110
Valuation Matters ... 110
Exempt Market Dealer ... 110

CERTAIN CANADIAN TAX CONSIDERATIONS ... 111

Status of the Fund ... 111
Taxation of the Fund ... 112
Computation of Partnership Income ... 113
Taxation of Unitholders ... 114
Capital Gains and Capital Losses ... 115
International Information Reporting Requirements ... 115
Eligibility for Investment by Exempt Plans ... 116

Table of Contents

Section **Page**

CERTAIN UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS 116

- PFIC Considerations 117
- General Taxation on Distributions 119
- Sale or Other Disposition 120
- U.S. Tax-Exempt Investors 120
- Backup Withholding and Information Reporting 121
- Foreign Asset Reporting 121

OTHER LEGAL CONSIDERATIONS 121

- Subscription Procedure 121
- Representations of Subscribers 123
- Resale Restrictions 123
- Proceeds of Crime (Money Laundering Legislation) 124
- Purchasers' Rights of Action 124
- Language of Documents 129

CERTIFICATE 1

DEFINITIONS 1

SCHEDULE "A" 1

SCHEDULE "B" - ROFO PIPELINE ASSETS D-1

affiliate). From time to time, the Manager may determine, in its discretion, that particular Properties be disposed of and that the proceeds of such disposition(s) be reinvested in markets with a more favourable outlook. The Manager may consider the following factors when disposing any Properties:

- Highest-and-best use (i.e. value of the asset is less than value of land on a density/alternate-use basis);
- Expected capital expenditure requirements;
- Existing and forecasted market fundamentals; and
- Long-term asset resiliency based on the Fund's ESG plan. See "*ESG Plan*".

Investment Risks and Mitigation Strategies

Risk identification and management is an important part of the Fund's transaction approval process and is continually evaluated by the Manager. The Fund's performance and composition and financial, investment and ESG risk assessment will be reported to the Trustees and the board of directors of the General Partner every quarter. A summary of key risk factors and mitigation strategies of the Fund's investment strategy are below:

Risk	Mitigation Strategies
Marketability and transferability of interests, along with large redemption risk	• The NAV of the Fund and the Partnership is determined monthly, holders of Trust Units and LP Units may redeem their units monthly and the Manager has designed a liquidity strategy to provide superior redemption provisions relative to other private real estate funds. • Diversity of capital sources providing multiple investor channels to facilitate ongoing subscriptions and redemptions. • Redemption penalties for unitholders who redeem early (except where waived by the Manager in respect of Forum Redeemed Units). See "*Investment Objective, Strategy and Process – Investment Strategy – Liquidity Management*" and "*Material Agreements*".
Liquidity risk (refers to speed and ease with which an asset can be bought and sold)	Arranged for revolving credit facility, hold smaller unencumbered assets, hold a portion of assets in liquid securities, obtained a loan facility provided by Forum and maintain a conservative leverage ratio, coupled with a diversity of capital sources. See "*Investment Objective, Strategy and Process – Investment Strategy – Liquidity Management*" and "*Investment Objective, Strategy and Process – Investment Strategy – Financing Strategy*".
Real estate sector risk	The Fund's portfolio is diversified by geography and residential real estate asset class. See "*Investment Objective, Strategy and Process – Investment Strategy – Acquisition and Growth Strategy*".
Market value risk	Generally, capitalization rate expansion is driven by a rising interest rate environment. Given the Fund's investment strategy to invest in inflation-hedged residential real estate (naturally elevated turnover in purpose-built student accommodations and co-living communities), higher expected future rental rates should mitigate the risk of unfavourable capitalization rate movements.

Interest rate risk	• The Fund primarily employs a fixed-interest rate strategy, with staggered debt maturities to minimize interest rate risk and the resultant impact on the Fund's cash flow in a given year. • Where short-term variable rate debt is required (i.e. for bridging acquisitions until CMHC financing is secured), the Fund may consider forward starting interest rate as well as bond swaps to mitigate short-term interest rate volatility. See "*Investment Objective, Strategy and Process – Investment Strategy – Financing Strategy*".
Reliance on key personnel of the Manager	Forum is building institutional-class capabilities and processes to mitigate key person risk.
Conflicts of interest	The approval of the Independent Board is required with respect to any conflict of interest matter and any related-party transactions or contracts (including the acquisition of Properties) involving the Fund, the Partnership, the Manager, the General Partner, Forum or their directors, officers, shareholders or affiliates. See "*Conflicts of Interest*".
Risk that the Fund is unable to deploy capital as planned	• Multifaceted acquisition strategy o On and off-market acquisitions o ROFO Agreement between Forum and the Partnership. See "*Material Agreements – ROFO Agreement*".
Increased municipal environmental performance standards	• The Fund seeks assets that are newer (constructed or adapted), which future-proofs against rising energy costs and costly retrofits to meet increasingly strict energy efficiency guidelines. • Leveraging state of the art technologies
Vacancy risk	• Newer (constructed or adapted) properties • Located in supply-constrained markets • Impact driven
Degree of leverage	The Fund employs a conservative leverage strategy with significant liquidity options, to ensure execution of the investment strategy and protection of capital during periods of market dislocation. See "*Investment Objective, Strategy and Process – Investment Strategy – Financing Strategy*".

MARKET OPPORTUNITY

The Multi-Family Market Opportunity

The Fund's primary investment focus is on acquiring and managing multi-family residential rental properties in supply-constrained markets across Canada and the United States, driving impact and value for investors.

With an focus on Canadian market opportunities, the following chart depicts the size of the rental market universe in Canada and further outlines the distribution of rental stock by Province, with Toronto and Montreal shown separately as they account for material amounts of rental stock on their own.

	Rental Units Universe	Share of Total	Oct-20 Vacancy	Oct-21 Vacancy	Oct-22 Vacancy	Oct-23 Vacancy	Homeownership Rate
Newfoundland and Labrador	6,724	0.3%	6.7%	3.4%	2.9%	1.6%	75.7%
Prince Edward Island	8,668	0.4%	2.2%	1.3%	0.9%	1.0%	68.8%
Nova Scotia	65,676	2.8%	2.1%	1.2%	1%	1.1%	66.8%
New Brunswick	40,965	1.8%	3.0%	1.7%	1.9%	1.5%	73.0%
Quebec	951,311	41.2%	2.4%	2.5%	1.7%	1.3%	59.9%
Ontario	717,877	31.1%	3.2%	3.4%	1.8%	1.7%	68.4%
Manitoba	83,076	3.6%	3.8%	4.9%	2.8%	2.0%	67.4%
Saskatchewan	41,756	1.8%	7.0%	6.1%	4.1%	2.4%	70.7%
Alberta	177,657	7.7%	6.9%	6.5%	3.7%	2.1%	70.9%
British Columbia	211,671	9.17%	2.5%	1.4%	1.3%	1.2%	66.8%
Canada	2,307,577	100%	3.1%	3.1%	1.9%	1.5%	66.5%

CMHC Rental Market Survey 2022, townhouses and apartment structures with three units or more in Census Metropolitan Areas with more than 10,000 residents (published annually).

	Rental Units Universe	Share of Total	Oct-20 Vacancy	Oct-21 Vacancy	Oct-22 Vacancy	Oct-23 Vacancy	Homeownership Rate
Vancouver	123,867	9.4%	2.6%	1.2%	0.9%	0.9%	62.1%
Edmonton	91,185	6.9%	6.8%	6.9%	4.1%	2.3%	68.7%
Calgary	55,859	4.2%	6.3%	4.9%	2.6%	1.4%	70.5%
Toronto	333,087	25.3%	3.4%	4.5%	1.6%	1.4%	65.1%
Ottawa	79,463	6.0%	3.8%	3.5%	2.2%	2.2%	65.4%
Montreal	634,163	48.1%	2.7%	3.0%	2.0%	1.5%	54.4%
VECTOM Markets	1,317,624	100%	3.3%	3.6%	3.6%	1.5%	60.1%

While Canada has traditionally been a nation of homeowners with roughly two-thirds of the population living in the home they own, two fundamental trends will drive an increase in the share of Canadian renters:

- **Decreasing affordability of homeownership:** While Canadian home prices largely declined from their COVID-19 peaks, high inflation and rising interest rates due to tightening monetary policy caused a further deterioration in housing affordability. As reported by RBC, mortgage payments as a percentage of homeowners' income are now at 62.8% throughout Canada.[5]

- **Low base of renters:** In mature markets such as Germany and Switzerland, renters represent 55% and 58% of the total population, respectively. Renting a home is commonplace in many countries, and will likely become more commonplace across Canada, especially in major cities. In recent years, our census showed that the increase in renters outpaced that of homeowners over the past decade in each of the country's largest urban centres.[6] In addition, the rental rate growth and rent collection in the Partnership's targeted sub-sectors proved to be resilient during COVID-19's darkest days.[7]

[5] RBC, *Housing Affordability Monitor*, March 2023.
[6] The Globe and Mail, *Canada's homeownership rate falls to 20-year low, census shows*, September 2022.
[7] Immigration, Refugees and Citizenship Canada, *2022 Annual Report to Parliament on Immigration*.

The backdrop of the growth in the share of the renting population is one of imbalance between housing supply and demand, with population growth forecasted to accelerate through increased immigration.[8] Immigration Canada reported that 405,000 new immigrants were welcomed in 2021 despite the impact of the global pandemic, with Canada further aiming to welcome 465,000 new permanent residents in 2023, 485,000 in 2024, and 500,000 in 2025.[7] In contrast, housing completions across Canada were just under 140,000 in 2021.[9] Further, major cities are expected to continue experiencing the highest rates of population growth. By 2030, Toronto's population is expected to grow by 460,000, Montreal by 350,000 and Ottawa by 140,000 from 2020 levels.[10] Finally, as reported by Scotiabank, Canada has the lowest housing per 1,000 people in the G7 and to meet the average of G7 countries, Canada needs to add 1.9 million homes.[7]

The Manager will concentrate its acquisition efforts in supply-constrained markets with scale, as evidenced by continued low vacancy rates and limited potential for material increases in supply. This will ensure stable, resilient cash flows with opportunity for capital appreciation.

The Purpose-Built Student Accommodation Market Opportunity

Purpose-built student accommodation is a specialized segment of the purpose-built residential rental asset class and is broadly defined as housing designed to accommodate students enrolled in post-secondary education programs. Overall, the student housing sector has certain unique characteristics that distinguish it from other segments of residential real estate, including targeted tenants enrolled in post-secondary institutions, leasing cycles defined by the academic year and properties designed to accommodate and appeal to the collegiate lifestyle.

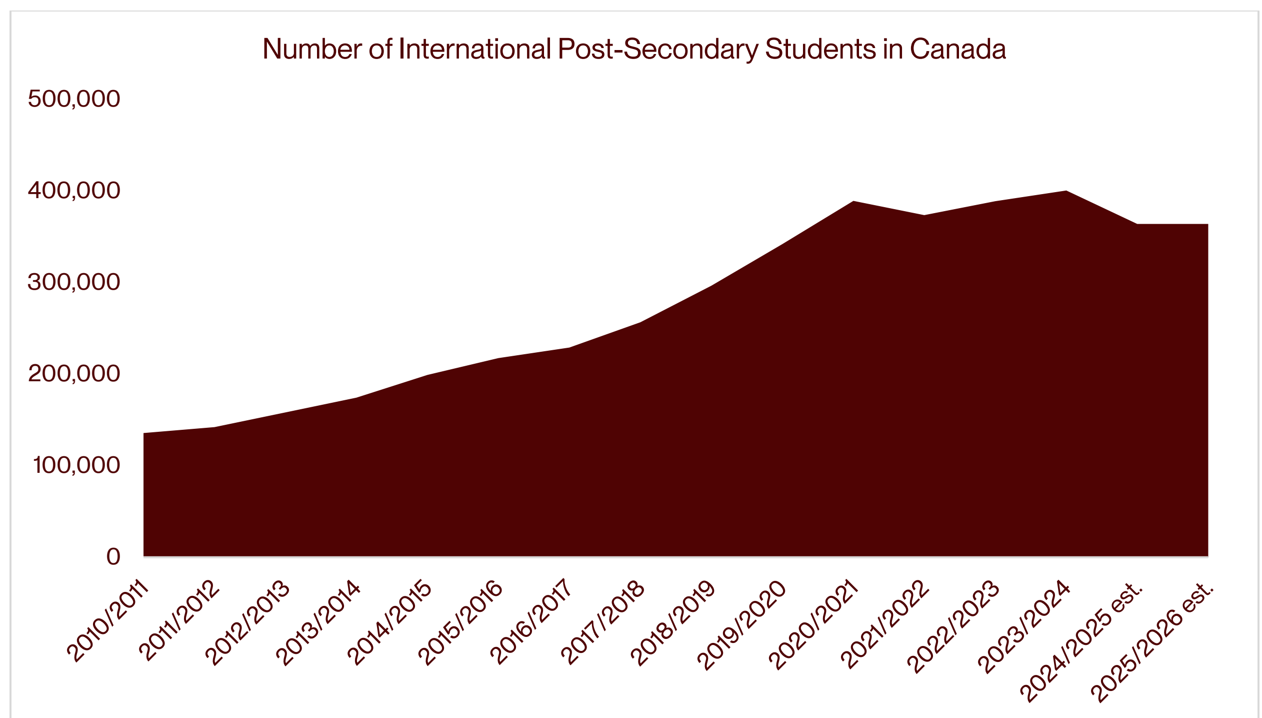
There are two major types of student housing properties: on-campus and off-campus. On-campus housing is predominantly owned and operated by educational institutions and is located on school property. Off-campus housing is typically owned and operated by private investors and is located within proximity to the campus. Purpose-built student accommodation refers to housing that is specifically designed and constructed as student housing with a view towards targeting the unique characteristics of the student-tenant.

The global purpose-built student accommodation market has attracted substantial institutional capital and has generated significant transaction activity in recent years. The US and UK have emerged as the most developed purpose-built student accommodation markets globally, with participation from private Canadian investors and pensions funds. The local Canadian market has however remained relatively overlooked and the ownership landscape remains highly fragmented. The Manager believes that there are several factors that will cause the Canadian purpose-built student accommodation sector to look more like its global counterparts over time:

- **Strong international student enrollment**: The size of the international student population is one of the main drivers of demand for student housing and recent trends point to continued demand in this part of the student body. The strong demand from international students has been driven by the quality of education in Canada, the cost of Canadian education and favourable work visa terms for graduates relative to other English-speaking countries. As a result, the share of international students at Canadian universities and colleges has grown at a 9.4% CAGR from 2000 to 2022 with steady annual demand of about 350,000 students and maintaining a stable population of approximately one million students.[11]

[8] Statistics Canada, *Population Projections for Canada (2021 to 2068)*, August 2022, National Bank.
[9] CMHC, *Housing Starts, Completions and Units Under Construction*, November 2022
[10] Scotiabank, *Estimating the Structural Housing Shortage in Canada: Are We 100 Thousand or Nearly 2 Million Units Short?*, May 2021.

[11] Government of Canada, *International Student Enrolment, 2023*.



- **Lack of Supply**: On-campus student housing is limited at most Canadian universities and colleges and typically only services a fraction of all enrolled students (predominantly first year students). The Manager identified the gap that development of on-campus housing is limited by the financial constraints of the publicly-funded institutions and the constraints associated with building in urban locations, where Canadian universities are primarily located. As such, the growth of the student population needs to be absorbed by off-campus housing, the development of which is in direct competition with traditional purpose-built rental and condominium development.[12]

- **Shift in preferences**: Globally, the Manager noticed that there has been a shift in the preferences of student-tenants from traditional dormitory-style facilities and shared houses to purpose-built properties designed to appeal to modern day students, and the same is true for the Canadian market. This shift has resulted in an increasing demand for new, high-quality student housing that provides security, community, and convenience.

The Manager believes that the increased institutionalization and growth of the Canadian purpose-built student accommodation sector is inevitable given the current undersupply, strong demand, and shift in preferences toward newer, amenitized product.

The Micro-units and Co-Living Communities Market Opportunity

Micro-units refer to self-contained rental accommodation that are smaller than a standard bachelor/studio unit. The typical size of a micro unit varies between markets and projects and can be as small as 140 SF in British Columbia (as seen at University of British Columbia's Exchange Residence nano suites) and 200 SF in Ontario (for combined living, dining, bedroom, and kitchen spaces per Ontario's Building Code requirements). Multi-function furniture combinations, such as murphy beds or smart moveable furniture,

[12] Statistics Canada, SVN Rock Advisors and estimates of the Manager.

can allow for the efficient use of space without sacrificing utility. These communities may include amenity offerings which have become standard in micro-unit buildings as tenants forgo spacious units for a community experience where the amenities become an extension of the living space. Micro-units provide the most attainable form of housing for tenants as smaller unit sizes command lower overall rent relative to a traditional rental unit. A building's design can maximize the total number of tenants per gross square footage of a building, leading to decreased costs per renter.

Co-living is a multi-family model where residents share the common areas of units such as living rooms and kitchens while retaining their private personal spaces. It is also otherwise considered as amenity-rich and cost-effective housing that emphasis the sense of community. While many believe that micro-unit and co-living is a recent development due to the newness of the term, the idea of shared living and workspaces has been around for centuries. At its core, co-living is the sharing of some number of amenities and facilities along with a higher than normal density of residents, which allows tenants to benefit from lower monthly rents and an increased sense of community. In turn, this allows landlords to benefit from higher per square foot rents.

Institutional micro-units and co-living meets the needs of a sizeable portion of the population that are not currently being met by the traditional housing market by providing community, convenience, and cost effectiveness:

- **Community**: The sharing of facilities and amenities naturally lends itself to community building and co-living operators layer on further design and programming that encourages interaction. Micro-units and co-living tenants are often in transition (new to the city, graduating from university) and seek new connections while retaining their own private living space.

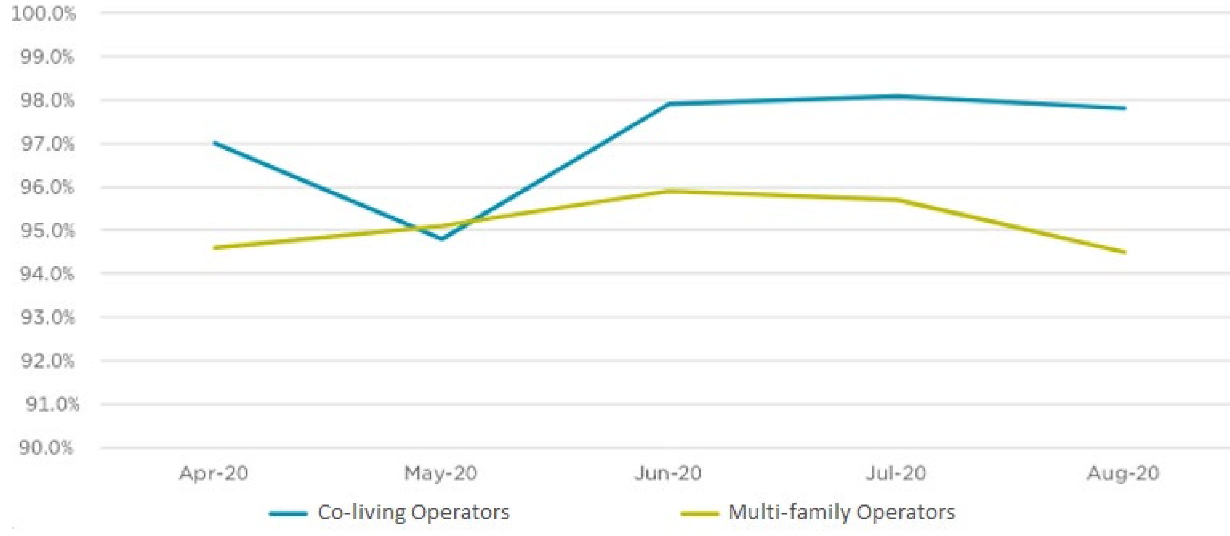
- **Convenience**: Micro-units and co-living offers convenience through furnished apartments, all-inclusive utilities and internet, ease of communication with the landlord, and a tech-enabled living experience. Micro-units and co-living communities commonly cater to the upwardly mobile, single young professionals seeking maximum convenience and flexibility in their living situations.

- **Cost effectiveness**: Driven by the same fundamentals that are making the overall housing market increasingly unaffordable (failure of wages to keep pace with housing costs, lack of supply, increased demand in the form of population growth and the change of the average household composition), micro-units and co-living offers an attainable housing option in the form of a 20%-30% discount to the cost of traditional rentals[13]. This is achieved through a density of residents that is higher than in traditional rental apartments and some amount of sharing of facilities and services.

Since the beginning of the COVID-19 crisis, co-living rents and occupancy have declined in line with declines in conventional Class A urban asset rents but have maintained their per square foot premium to traditional multi-family. COVID-19 further reinforced the strong preferences for bed-to-bath parity. Micro-units are able to offer amenity-rich and cost-effective housing solutions despite the shift in housing preference post pandemic and several indicators point to continued demand from the co-living target demographic. Leasing metrics for micro-units and co-living communities did rebound and exceed pre-COVID rates due to continued depth of demand relative to supply. Rent collections for micro-units and co-living have exceeded performance of both multi-family generally as well as for Class A comparable product.

[13] Typical discount to traditional renting cost, according to Common Living, one of the world's largest co-living operators.

Rent Collections: Co-Living versus Conventional Multi-family[14]



The Manager sees opportunity in this burgeoning asset class because it provides economics that are beneficial to all parties involved (lower rent for tenants, higher per square foot rents for landlords), while being grounded in demographic dynamics that are not new, but that have not yet been addressed with an institutional approach in Canada.

The chart below summarizes the Fund's and the Partnership's key target assets and the key drivers of its current and future investment opportunities.

Details	Multi-Family Apartments	Purpose-Built Student Accommodation	Micro-units and Co-Living Communities
Key Drivers of Target Assets	• Underpinned by stable rent growth and strong demand. ○ Average rents in major Canadian markets grew by 3.93% (11-year CAGR from 2011-2022).[15] ○ Average occupancy rates were 97.1% (2011-2021).[15]	• Strong demand supported by market and demographic fundamentals.	• Addressing the unmet needs of a significant demographic by providing community, convenience, and cost-effective housing.

[14] Cushman & Wakefield, *Coliving During COVID-19*, November 2020.
[15] CMHC Housing Information Portal.

Details	Multi-Family Apartments	Purpose-Built Student Accommodation	Micro-units and Co-Living Communities
Facts Underlying the Key Drivers to Support the Opportunity	• **Unattainable Home Ownership:** Average cost of home ownership as share of gross income currently at 62.8%, compared to the average of 40.8% over the past 35 years.[16]	• **Undersupplied:** Estimated shortfall of more than 400,000 student housing beds in Canada.[17]	• **Attainable:** Offers a 20-30% discount to traditional renting.
	• **Continued Population Growth:** Expect annual population growth of more than 400,000 until 2068.[17]	• **Underserved:** Shift in student preferences to safety, quality, location, and service.	• **Convenient:** All inclusive, turn-key solution that is tech-enabled.
	• **Supply Shortage:** Canada has the lowest number of housing units per 1,000 residents of any G7 country. The number of housing units per 1,000 Canadians has been falling since 2016 owing to the sharp rise in population growth.[18]	• **High Demand**: Canada is in high demand for foreign student enrolment, with frequent mark-to-market through natural turnover, and a market characterized by fragmented ownership.	• **High Growth Opportunity**: Unserved demographic with opportunity for strong income growth and frequent mark-to-market through natural turnover.

ESG PLAN

A key aspect of the Fund's strategy is creating impact-driven long-term value by achieving ESG targets.

The table below summarizes Forum's key ESG themes:

1. Summary of Key ESG Themes		
2. Environment	**3. Social**	**4. Governance**
• Reduce greenhouse gas emissions and achieve carbon neutrality • Implement renewable energy, where possible • Enhance energy efficiency in buildings • Use water responsibly • Manage and recycle waste • Implement sustainable procurement • Use land sustainably	• Improve housing availability and affordability • Increase inclusion and diversity, and enhance health and wellness in communities and workplaces • Positively impact communities and stakeholders • Enhance health and wellness	• Eliminate bribery, corruption and money laundering • Enhance cyber security • Ensure robust whistle-blower policies • Ensure third-party managers and service providers adhere to Forum's ESG plan • Obtain 3rd party validation via GRESB and PRI

[16] RBC Economics, March 2023.
[17] Statistics Canada, *Population Projections for Canada* (2021 to 2068), August 2022, National Bank.
[18] Scotiabank, *Estimating the Structural Housing Shortage in Canada: Are We 100 Thousand or Nearly 2 Million Units Short?*, May 2021.

HOUSING RESEARCH

CANADA
June 2024

Research Insight

Understanding Filtering: A Long-Term Strategy to New Supply and Housing Affordability

The housing supply gap in Canada is a major challenge to addressing the affordability crisis. But how does building new housing benefit a wide range of Canadians in terms of affordability?

- Resolving the supply gap can positively impact affordability for many Canadians, not just those moving into new units.
- Building new homes increases the overall housing stock and leads to a process known as "filtering."
- Filtering is the gradual transition of housing units from higher-income households to lower-income households as newer units are built.

The Filtering Process Works in Canada

New CMHC research[1] and international studies support filtering as providing more affordable housing.

- CMHC research explores the type of housing supply needed to improve affordability and welfare the most. It finds that building mid-cost or a balanced mix of new housing cost types are the most effective for improving affordability and welfare.
- Building a balanced mix of new housing units promotes affordability and reduces other negative trade-offs (such as the out-migration of low-income families).
- These new housing types support the filtering process. This process allows for more low-income households to access more adequate homes through vacancies created in the housing market.

[1] Two research projects were conducted with Amy Hongfei Sun of Queen's University, and Tom Davidoff and Tsur Somerville from the University of British Columbia on behalf of CMHC.

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- CMHC research also finds that, relative to a new building, rents tend to fall 5% in the first 4 years after construction (after adjusting for inflation). This declines to just short of 20% near the 20-year mark.
  - As buildings mature, they tend to become more affordable for lower-income families.

The continuous construction of new housing is crucial:

- Today's new developments will free up existing housing.
- Over time, the new housing of today will become tomorrow's more affordable options.

This will ensure a sustained balance of housing supply into Canada's future.

How Does Filtering Provide More Affordable Housing?

Vacancy Chains

Vacancy chains unfold when households with higher income move into newly built units (see Figure 1). Doing so releases their former units for occupancy by households with lower income. When lower-income households move into the newly vacated units, they in turn create vacancies in their former homes.

Our research explores how building new housing at different costs affects the filtering process in Toronto. Through vacancy chains, this new housing impacts households' welfare, housing affordability, and local amenities.

The study finds that building mid-cost or a balanced mix of low-, mid- and high- cost housing is the best strategy. This is because it makes homes more affordable and benefits most household types. Moreover, building these unit types reduces the likelihood of low-income families leaving their city.

Overall, building low-cost housing leads to lower filtering

Building only low-cost housing isn't optimal. Doing so primarily benefits low-income households, but decreases the welfare of high-income households as local wages can decline and lower property-tax revenue leads to less amenities. That results in many families with post-secondary education leaving the area, which leads to a further decline in amenities. In this case, only few low-income households move to better homes.

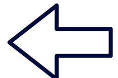
Building only high-cost housing is also not the most optimal solution. This type of supply improves amenities but doesn't improve affordability or the welfare of low-income households very much.

The research also investigates how much new housing is needed to make homes more affordable and stop low-income families from leaving if housing prices rise suddenly. It finds that, while various supply strategies have differing impacts on the number and quality of homes, none of them can fully make them affordable again while also maintaining housing quality. This demonstrates the tricky balance that housing policies must navigate.

Beyond CMHC's analysis, 2 recent studies on vacancy chains examine this topic in the U.S. and Finland, and find evidence that supports filtering.

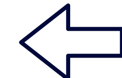
Figure 1: New Housing Spurs Vacancy Chains

Higher-income household moves into new housing



Vacated Housing #1

Middle-income household moves into vacated housing



Vacated Housing #2

Lower-income household moves into vacated housing

Research done in the U.S. (Mast, 2023)[2] shows that, for every 100 new units in above-median-income neighbourhoods, 70 vacancies would be generated in below-median-income neighbourhoods. Estimates show that it would take 2 to 5 years for these filtering effects to fully take place. However, they begin to occur with the first 2 vacancies.

With Finnish data, Bratu et al. (2021)[3] find that 60% of vacancy chains from a newly built unit reached households in the bottom half of the income distribution.

Depreciation

Over time, the new housing of yesterday has become today's more affordable housing. The housing we build now will evolve over time and become the more affordable housing that future generations will rely on.

CMHC's research in Figure 2 displays how much inflation-adjusted rents are estimated to change compared to a new building. Rents tend to fall quickly after construction. This balances out to just short of 20% near the 20-year mark, and shows how relative affordability can improve over time.

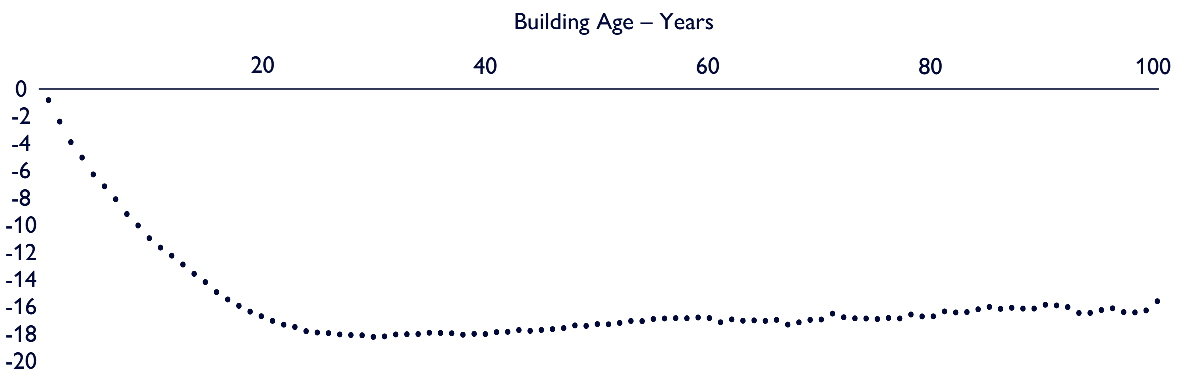
Existing studies, as well as the above findings, point to depreciation as leading to more affordable sources of housing.

A U.S. study (Rosenthal, 2014)[4] found that every year a building ages, its real value decreases by 0.3%, and rents decrease by 0.7%. It also found that a unit's new tenants tend to be less affluent and have incomes 3% lower than those of the previous tenants, while, for owner-occupied homes, there's a 0.5% income decrease at turnover. This indicates that, over time, newer units eventually become the more affordable housing of tomorrow.

Another study by Liu et al. (2022)[5] shows a similar trend, with homeowners who occupy their homes having a 0.5% lower income for every year their building ages.

In Canada, data from the 2021 Census reveals that average household income was 30% higher in newly built homes relative to those built in the period from 1961 to 1970.

Figure 2: National Estimates Show Strong Declining Rents Relative to a Building's Age



Notes: Estimated inflation-adjusted rents relative to a new building are shown as dots based on the age of the building. Source: CMHC Rental Market Survey 1989-2021. Other controls include building fixed effects, and market trends specific to the neighbourhood.

[2] https://www.sciencedirect.com/science/article/abs/pii/S0094119021000656
[3] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3929243
[4] https://www.aeaweb.org/articles?id=10.1257/aer.104.2.687
[5] https://www.sciencedirect.com/science/article/abs/pii/S0166046221001186

Spillover Effects

The construction of new housing units can also have an important impact on the affordability of nearby housing. In a market where supply outpaces demand, or where there's strong competition among landlords, the increased supply may result in rent freezes or even reductions as landlords adjust to attract tenants and maintain occupancy. However, international literature in this area is rather inconclusive and CMHC is currently conducting research to examine the Canadian context.

A U.S.-based study observed a 5%-7% decline in rents of existing buildings surrounding a newly completed development (Asquith et al. 2021)[6]. However, Singh (2020)[7] found an uptick in nearby rents when the construction occurred in areas with lots of vacant land.

Others have shown that spillover effects can vary between high- and low-rent areas. One such study discovered that rents decreased in high-rent buildings but increased in low-rent buildings, ultimately offsetting each other (Damiano and Frenier, 2020)[8].

How Did We Come to These Findings?

The findings in this Research Insight are supported by 2 separate CMHC analyses.

The first analysis adopts the model used by Nathanson (2020)[9], but with 2016 Census data for Toronto. It looks at how different types of new buildings affect people's welfare, house prices, and neighborhood facilities. It also explores how new construction impacts people moving within the city and if it helps lower-income families find better homes. To understand the effects of new housing, it considers 4 scenarios: (i) building only low-cost housing, (ii) building only mid-cost housing, (iii) building only high-cost housing, and (iv) building a balanced mix of all 3 types.

The analysis on the depreciation of rents was conducted using CMHC's Rental Market Survey. A model profiling inflation-adjusted rents at the national level was estimated. The model accounts for building age, building fixed effects, and market trends specific to the neighbourhood.

[6] https://www.researchgate.net/publication/351431291_Local_Effects_of_Large_New_Apartment_Buildings_in_Low-Income_Areas
[7] https://ideas.repec.org/p/jmp/jm2020/psi856.html
[8] https://www.cura.umn.edu/research/build-baby-build-housing-submarkets-and-effects-new-construction-existing-rents
[9] https://bfi.uchicago.edu/wp-content/uploads/TrickleDownHousingEconomics.pdf

Full Report

Evaluating the Impacts of Increasing Housing Supply in Canada: A Sorting Model with Heterogeneous Households
https://assets.cmhc-schl.gc.ca/sf/project/archive/research_6/filtering-report-for-hkc.pdf

Understanding Filtering: A Long-Term Strategy to New Supply and Housing Affordability
https://assets.cmhc-schl.gc.ca/sf/project/archive/research_6/understanding-filtering-research-report.pdf

AKM Nurul Hossain
Senior Specialist, Housing Research – CMHC

John Baker
Senior Specialist, Housing Research – CMHC

For Further Reading

Asquith, Brian J, Evan Mast, and Davin Reed (2021). "Local Effects of Large New Apartment Buildings in Low-Income Areas". In: The Review of Economics and Statistics, pp. 1–46. URL: https://doi.org/10.1162/rest_a_01055.

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Appendix A – Glossary

filtering is the gradual transition of housing units from higher-income households to lower-income households as newer units are constructed.

welfare of households refers to households' satisfaction and happiness arising from consuming goods and services. Welfare rises when wages and amenities increase and falls when house prices increase.

amenities are features of housing that determine its value, other than physical structure and the land components of housing.

housing cost and quality is a multidimensional concept that refers to the physical condition of a house, its size and amenities, and the social environment in which the house is situated.

- **low-cost housing** represents the 20th percentile of the housing value distribution.
- **mid-cost housing** represents the 50th percentile of the housing value distribution.
- **high-cost housing** represents the 80th percentile of the housing value distribution.
- **combined-cost or balanced mix of housing** consists of equal shares of low-cost, mid-cost, and high-cost housing.

Alternative text and data for figures

Depreciation

Figure 2: National Estimates Show Strong Declining Rents Relative to a Building's Age

Building Age	Rent Depreciation (%)
1	-0.916
2	-2.489
3	-4.001
4	-5.132
5	-6.371
6	-7.248
7	-8.196
8	-9.280
9	-10.121
10	-11.058
11	-11.745
12	-12.338
13	-12.989
14	-13.673
15	-14.279
16	-15.018
17	-15.558
18	-16.025
19	-16.450
20	-16.789
21	-17.126
22	-17.407
23	-17.577
24	-17.885
25	-17.983
26	-18.033
27	-18.128
28	-18.171
29	-18.187
30	-18.306
31	-18.271
32	-18.128
33	-18.110
34	-18.096
35	-18.000

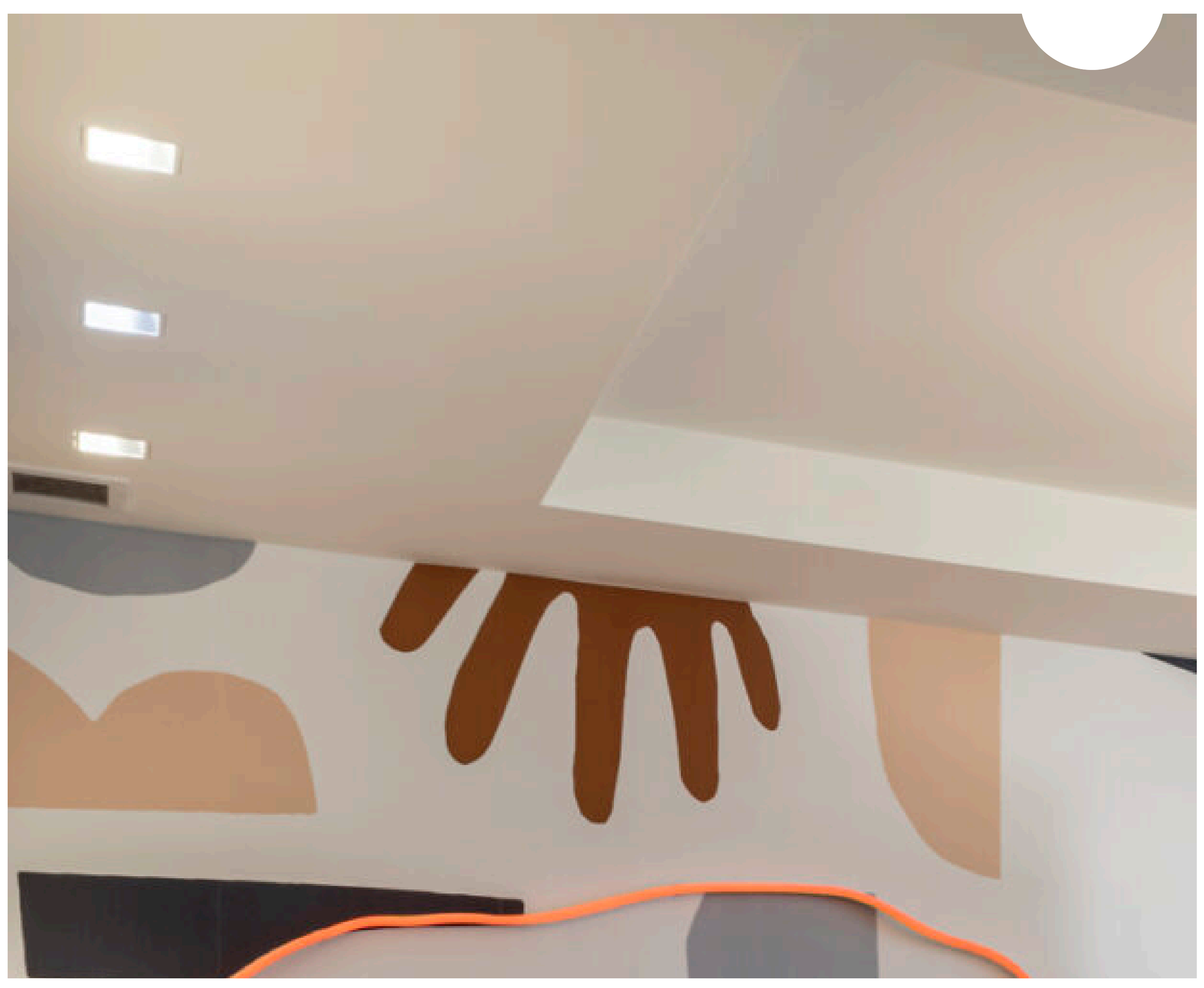
Building Age	Rent Depreciation (%)
36	-18.018
37	-18.042
38	-18.147
39	-18.081
40	-18.098
41	-17.959
42	-17.934
43	-17.803
44	-17.863
45	-17.795
46	-17.739
47	-17.659
48	-17.463
49	-17.499
50	-17.367
51	-17.383
52	-17.283
53	-17.139
54	-17.149
55	-16.993
56	-16.954
57	-16.930
58	-16.936
59	-16.879
60	-16.923
61	-17.236
62	-17.023
63	-17.120
64	-17.093
65	-17.130
66	-17.053
67	-17.402
68	-17.238
69	-17.055
70	-17.028
71	-16.594
72	-16.866
73	-16.942
74	-16.955
75	-16.995
76	-16.914
77	-16.953

Building Age	Rent Depreciation (%)
78	-16.662
79	-16.801
80	-16.797
81	-16.436
82	-16.512
83	-16.484
84	-16.277
85	-16.102
86	-16.244
87	-16.168
88	-16.228
89	-16.224
90	-15.943
91	-15.997
92	-16.116
93	-16.550
94	-16.543
95	-16.333
96	-16.210
97	-16.485
98	-16.508
99	-16.361
100	-15.688

Source: CMHC Rental Market Survey 1989-2021. Other controls include building fixed effects, and market trends specific to the neighbourhood.

Forum Real Estate Income and Impact Fund Reports Q2 2024 Results

News · August 7, 2024



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Rental Market Report

CANADA AND SELECTED MARKETS

Fall 2024

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Table of Contents

Rental Market Report in select Census Metropolitan Areas (CMAs)

3 Canada Overview
8 Regional Snapshots
8 Vancouver
14 Victoria
18 Edmonton
23 Calgary
28 Saskatoon
32 Regina
36 Winnipeg
40 Hamilton
44 Kitchener-Cambridge-Waterloo
48 Windsor
51 St. Catharines-Niagara
55 London
59 Toronto
66 Ottawa
71 Gatineau
74 Montréal
80 Québec
84 Halifax
88 Appendix

Canada Overview

PURPOSE BUILT RENTAL MARKET		CONDOMINIUM APARTMENT MARKET*	
Vacancy Rate	Average Two-Bedroom Rent	Vacancy Rate	Average Two-Bedroom Rent
2.2%	$1,447	0.9%	$2,199
UP	UP by 5.4%		

* 17 CMAs included in the Condominium Apartment Survey.

HIGHLIGHTS

- Rental market conditions across Canada's large urban centres remained tight despite lessening market pressures in some centres due to record level growth in supply outpacing strong demand.
- The average vacancy rate for purpose-built rental apartments[1] rose to 2.2% in 2024 from 1.5% in 2023, remaining below the 10-year historical average of 2.7%.
- Average rent growth slowed, with rents for 2-bedroom units rising by 5.4%[2], down from the record 8.0% in 2023.
- Rents increased by 23.5% when units turned over, which is close to 2023 rates. Rent hikes on turnover units accounted for more than 40% of the overall rent increase.
- Despite the slowdown in rent growth, renter affordability remained strained. The increase in rental stock was driven by newly completed, higher-priced units, which were unaffordable for many renters and primarily served higher-income households.

[1] Privately initiated rental apartments with 3 or more units.
[2] Percentage change of average rents from fixed sample.

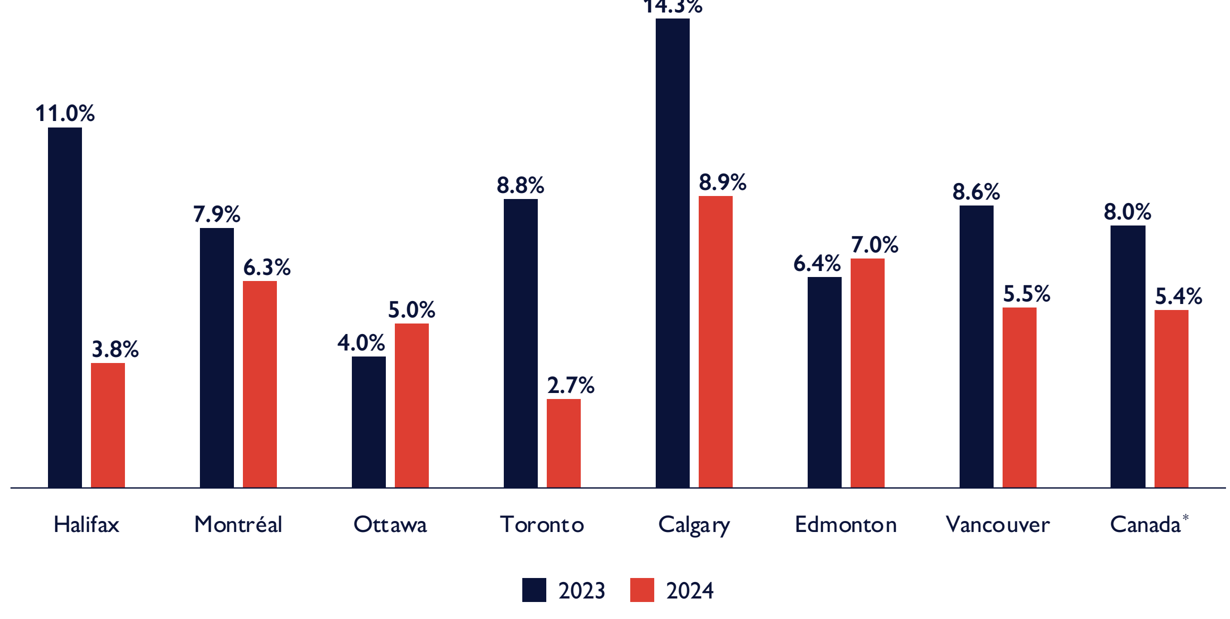
Data tables for all markets are available for download at cmhc.ca/rental-market-report-data.

Rent growth slowed in most of Canada's larger markets

Nationally, rental market conditions became more uniform in 2024. Most census metropolitan areas (CMAs) experienced slower rent growth, though some exceptions remained.

- Toronto had the lowest rent growth among major CMAs. This is the result of rising vacancy rates and a low turnover rate, which declined further in 2024. For occupied units under rent control, landlords had limited ability to raise rents beyond the provincial guideline.[3] Moreover, with a record increase in the supply of rental apartment condominiums, landlords in the purpose-built sector prioritized keeping existing tenants by taking a more cautious approach to rent increases.
- In Vancouver and Montréal, because of tighter rental market conditions and a slight rise in turnover, rent growth didn't slow as much as it did in Toronto.
- Ottawa and Edmonton were 2 CMAs that bucked the trend, with overall average rent growth slightly accelerating. In 2023, rent increases in these areas lagged their respective provincial averages. However, in 2024, stronger rental demand allowed both areas to catch up, with relatively modest adjustments for existing tenants and more significant increases for new tenants.
- Calgary's rent growth slowed in 2024 but still significantly outpaced all other large urban centres due to unabated rental demand. Strong rent increases were supported by updated rental stock over the recent years, with a growing share of newer units becoming competitive with homeownership and secondary rental options. Landlords had more flexibility to raise rents for existing tenants, as they were not bound by rent increase guidelines.

Figure 1: Rent growth slowed in most of Canada's largest rental markets*
Percentage change in average rent for a 2-bedroom purpose-built apartment based on a fixed sample



*Canada includes all urban areas with a population of at least 10,000 people
Source: CMHC

[3] https://www.ontario.ca/page/residential-rent-increases

New tenants across Canada continued to face significant rent hikes. Rents for units that turned over rose by 23.5%, similar to 2023 rates. While turnover impacted 1 in 8 units, these units contributed to more than 40% of the total rent increases. (Canada Table 6.0 and 6.1)

Toronto, Vancouver, and Halifax saw some of the highest rent increases among major CMAs for turnover units. In these rent-controlled markets, persistently low tenant turnover meant that when units became available, landlords had room to adjust rents to match current market levels. Higher rents made it harder for new renters to enter the market and further limited mobility for existing tenants.

Table 1: Rents increased significantly on new leases in low turnover markets

Census metropolitan area	Overall change in average rent (2-bed)	Turnover rate in 2024 (all purpose-built-units)	Turnover unit average rent change when turned over (2-bed)	Turnover percentage point contribution to overall change in average rent (2-bed)	Provincial rent guideline indicator
Canada	**5.4% (a)**	**12.5% (a)**	**23.5% (a)**	**2.2% (a)**	**N/A**
Vancouver	5.5% (b)	9.1% (a)	26.5% (d)	2.0% (a)	Yes
Edmonton	7.0% (a)	26.5% (a)	10.9% (a)	2.5% (a)	No
Calgary	8.9% (a)	23.6% (a)	18.7% (d)	3.7% (a)	No
Toronto	2.7% (a)	6.4% (a)	40.7% (a)	1.9% (a)	Yes
Ottawa	5.0% (b)	14.5% (a)	23.8% (a)	2.9% (a)	Yes
Montréal	6.3% (b)	11.1% (a)	18.7% (a)	2.0% (a)	Yes
Halifax	3.8% (c)	10.0% (a)	28.3% (d)	2.4% (a)	Yes

*The following letter codes are used to indicate the reliability of the estimates: (a) Excellent, (b) Very good, (c) Good, (d) Poor (Use with Caution)
Source: CMHC

Rental demand stayed strong, but signs of weakness emerged

Rental demand grew in 2024, as shown by an increase in the number of occupied units. Here are some of the key factors that impacted demand:

Migration: Population growth remains a significant driver of rental demand. As of July 1, 2024, international migration reached a record high of nearly 1.2 million people over the past 12 months. However, the introduction of a cap on international student intake and adjustments to their provincial distribution led to a shift in late 2024. As a result, fewer foreign students were admitted this school year. Our local market intelligence suggested that in Ontario and British Columbia, the 2 provinces most impacted by these measures, landlords in areas near post-secondary institutions found it harder to fill vacant units this fall.

Labour market: Employment conditions softened across most markets. This mainly affected younger renters aged 15-24 and made it harder for them to form their own households. The 25 to 44-year-olds had a slightly lower employment rate as well. However, due to stronger labour force growth, the number of employed in this age group grew significantly, helping to sustain strong rental demand. According to the latest Census, 40 to 50% of households in major CMAs within this age group were renters.

Access to homeownership: Even with the recent decline in entry-level home prices particularly in higher-priced markets like Toronto and Vancouver, and lower mortgage rates, renting remained the more affordable option. Renters struggled to transition to homeownership because of the additional pressure from rising non-shelter costs. These rising costs made it more difficult to save for a down payment and to qualify for a mortgage, which led many to stay in rentals.

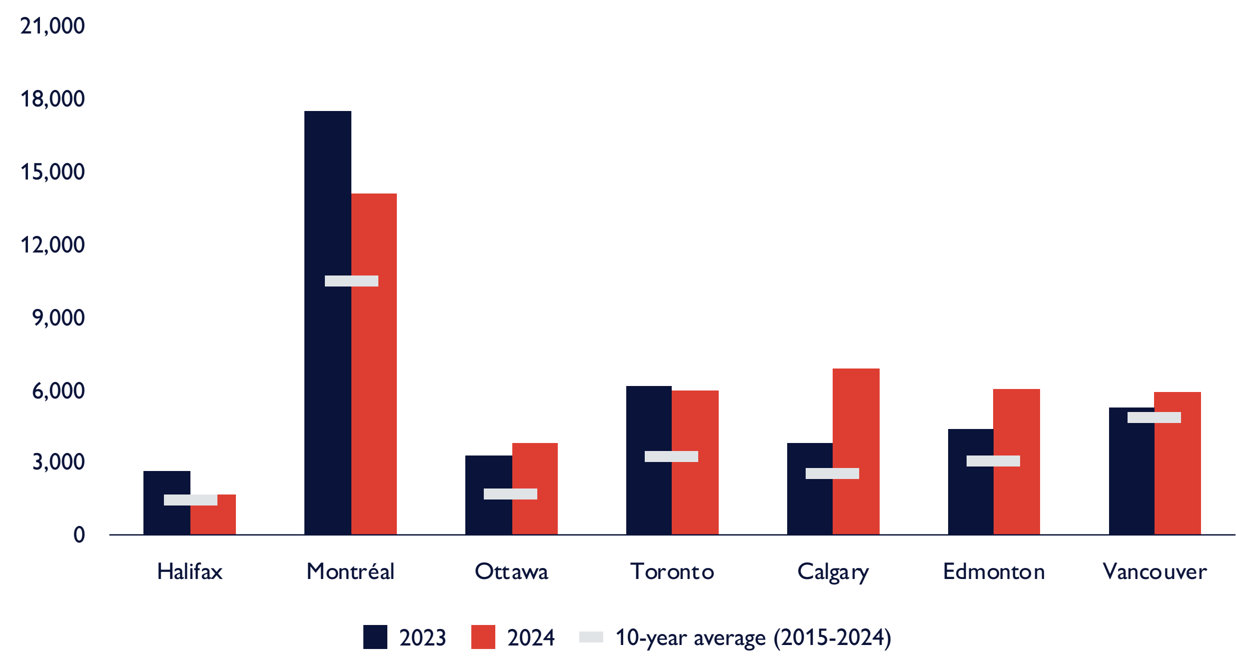
- In CMAs like Calgary and Edmonton, where homeownership was more affordable, renter outflow to homeownership was evident in high turnover and rising vacancy rates.
- Vacancy rates in higher-priced CMAs like Toronto and Vancouver remained low due to limited homeownership options for potential first-time homebuyers.

More purpose-built rentals brought much-needed relief to tight markets

Demand remained high. However, the highest supply growth in over 3 decades outpaced it, resulting in higher vacancy rates and a cooling in rent growth in many urban centres (Canada Table 1.0).

- Calgary and Edmonton saw the largest increases in rental completions, resulting in the highest vacancy rates among major CMAs (Figure 2). Many of these completions occurred in the second half of the year, with some projects still in the lease-up phase. The slower absorption of new units further contributed to the increase in vacancy rates.
- Montréal's rental apartment completions remained among the highest on record, surpassing those of any other CMA despite a decline from the record levels seen in 2023. With a large share of its population living in rental apartments compared to other large CMAs, Montréal continued to experience high rental demand. However, according to market intelligence, longer lease-up periods for new units suggest some moderation in demand. This, combined with strong supply growth, has pushed up the rental vacancy rate.
- Similarly, in Ottawa, record rental apartment completions pushed the vacancy rate higher. Census data shows that a larger share of renters live in the secondary low-rise market (single-detached, semi-detached, and row homes) in Ottawa compared to other large urban centres. The decline in low-rise completions in 2024 drove increased demand for purpose-built rental apartments, which was outpaced by stronger increases in supply.

Figure 2: Purpose-built rental apartment completions far exceed historical average
Based on the 12-month period prior to June 30th of the survey reference year



Source: CMHC

Staff Report

To	**City Council**
Service Area	Office of the Chief Administrative Officer
Date	Wednesday, November 13, 2024
Subject	**Development Charges By-law Update for Bill 185**

Recommendation

1. That the Amendment Memorandum, Development Charges By-Law Amendment - Growth Studies dated October 10, 2024, included as Attachment-1 of Development Charges By-law Update for Bill 185 2024-410 be approved;
2. That the updated capital projects set out in Table 1 of the October 10, 2024, Amendment Memorandum - Growth Studies be approved;
3. That By-laws number (2024) – 20997 and (2024) – 20998, included as Attachment-2 of Development Charges By-law Update for Bill 185 dated November 13, 2024, be approved.

Executive Summary

Purpose of Report

To present the updated Development Charges (DC) "parent" by-law and new "child" by-law to add a Growth Studies class of service to the City's DCs to align with legislative changes made through Bill 185.

Key Findings

On June 6, 2024, Bill 185 (Cutting Red Tape to Build More Homes Act, 2024) received Royal Assent. The province provided for a minor amendments process to re-add growth studies to the DCs and remove the phase-in provisions within a six-month period.

The proposed addition of growth studies will add $2,164 to the current rate for single and semi-detached units leading to a calculated rate of $66,977 per unit for those units.

The City's DC By-law (2024)-20866 contains the phase-in provisions that mandated discounts to DCs. While the provisions ceased to be effective on the date that Bill 185 received Royal Assent (June 6, 2024), the proposed amendment to the by-law will remove the provisions of the mandatory discount in the DC by-law for administrative clarity.

Staff recognize that there is a debate in the public sphere about the impact of increasing DC rates on builders' decisions to move housing projects forward in the

current economic environment. DCs are the revenue tool provided to municipalities by the province to fund the capital costs of enabling and servicing growth.

As a City, we are working towards our strategic goal of improving housing supply. Meeting the Housing Pledge requires all parties to participate in delivering infrastructure, including financial support from upper levels of government.

In the absence of an alternative stable and predictable source of funding, failing to maximize DC revenue results in shifting the burden of growth capital costs on to property tax and utility rate payers. Arbitrary reductions to DCs without offsetting increases to funding for growth related capital costs from progressive tax sources will be detrimental to overall housing affordability. A detailed explanation of staff's position is provided in the body of the report.

Strategic Plan Alignment

DCs are the primary source of capital funding for growth related infrastructure and amenities for our community. They are critical to moving forward initiatives 6, improve housing supply, and 6.1, grow and care for our community spaces and places, under the City Building Theme of the strategic plan.

Future Guelph Theme

City Building

Future Guelph Objectives

City Building: Improve housing supply

Financial Implications

Adopting the amending by-laws would support $26.8 million DC capital program for growth studies over the 10-year by-law period. This will reduce the projected deficit in the Growth capital reserve fund and improve the position of the utility rate supported reserve funds.

Report

Introduction

People rely on municipal services as soon as they move into a new home - whether they turn on a tap, flush a toilet or commute along our roadways on the way into work, shopping or appointments. Municipal water, wastewater and roads infrastructure are essential services that we rely on as part of our everyday lives. Likewise, we need to ensure that new residents and employers have access to critical services like paramedics and firefighters so emergency services are there when they need it most. DCs help provide the City with the funding to ensure these critical services and infrastructure are in place so we can continue to improve housing supply and work to make homes more affordable. Growth studies help the City plan for these essential services and infrastructure to make sure we can meet the needs of future Guelph residents and businesses.

Overview of Bill 185

On June 6, 2024, Bill 185 (Cutting Red Tape to Build More Homes Act, 2024) received Royal Assent. This legislation made changes to a number of statutes, including the Planning Act, Municipal Act, and Development Charges Act. This update is part of a larger body of work being coordinated across the organization

with respect to Bill 185, and Council will see additional reports that respond to other aspects of the legislation as this work progresses.

With respect to changes to the Development Charges Act, Bill 185 made three changes:

- Removed the mandatory five-year phase-in of new DCs that was introduced in 2022 under Bill 23 (effective immediately upon Royal Assent, June 6, 2024, administrative update to remove section from the DC by-law included as part of this update).
- Re-added growth-related studies, including the DC background study, as DC-eligible costs (included as part of this update).
- Reduced the mandatory rate freeze timelines from two years to 18 months (further update to come in 2025, not part of minor amendments process).

Bill 185 also modernized administrative aspects of the DC Act, including updating public notice requirements for passing new by-laws, and providing municipalities with the ability to amend the expiration date if the life of the by-law is within the maximum life of 10 years.

Importantly, the legislation allows for minor amendments related to the imposition of studies, removal of the mandatory phase-in, and extension of by-law expiry dates to be undertaken for by-laws passed after November 28, 2022, and before Bill 185 took effect. Updates made under the minor amendments process must be approved within six months of Bill 185 receiving Royal Assent (deadline is December 6, 2024).

Within the minor amendment process, this report is recommending the DC by-laws be updated to re-add growth studies to the DC, and to remove the provisions of the mandatory discount in the DC by-law for administrative clarity, now that they are no longer in effect.

By-law updates to incorporate growth studies

Bill 23 (More Homes Built Faster Act, 2022) removed studies as an eligible cost under the DC Act. As a result, growth studies were removed from the capital program and were not included in the DC by-laws approved by Council in January 2024, and which came into effect on March 2, 2024.

This update will re-add growth studies as a DC class of service in Section 2.1 of the DC parent by-law. It will also add a child by-law (By-law (2024)-20998) to provide the supporting DC rates, in accordance with the new model for DC by-laws adopted during the most recent update in January 2024.

Growth studies included in the capital program

There are a several different kinds of growth studies in the capital program to support growth. The list includes:

- Official and secondary plan updates
- Master and strategic plan updates
- Condition monitoring works
- Policy and guideline development
- Feasibility studies and environmental assessments

The Growth Studies DC capital program includes $26.8 million in DC eligible costs to be recovered including the current deficit balance in the DC Growth Studies

reserve fund from prior works in this category that had not yet been fully recovered through DC collections.

Approval of this DC capital program would add the following amounts to the current DC rates:

Table 1: Municipal Development Charge Rates

Rate type	Single detached or semi-detached dwelling	Multiple unit dwelling	Apartment with 2+ bedrooms	Apartment bachelor and 1-bedroom	Special care / special dwelling	Non-Residential (per sq. ft. of Gross Floor Area)
Current Rate	$64,813	$46,671	$38,799	$28,434	$20,964	$25.78
Growth Studies	$2,164	$1,558	$1,295	$949	$700	$1.26
Calculated Rate	$66,977	$48,229	$40,094	$29,383	$21,664	$27.04

Analysis

The calculated rate for growth studies of $2,164 per single and semi-detached residential unit is comparable to the growth studies costs included in the DC from the 2018 study, however, at that time some studies were contained within the specific DC service capital programs (e.g. Roads, Stormwater, Wastewater, Water), while the growth studies DC capital program had a City-wide focus (i.e., Planning documents). Combined, growth studies in the 2018 DC totaled approximately $1,840 per single detached unit, in 2018 dollars or $2,840 per single detached unit in 2024 dollars using the Toronto Non-Residential Building Construction Price Index. Growth studies in the 2018 study comprised approximately five per cent of the overall DC, while the update proposed today comprises approximately three per cent of the overall DC.

The City’s DC consultants, Watson & Associates, have confirmed that this is within the normal range for growth studies and Guelph’s total DC rates remain below average among our comparator municipalities.

Development Charges in the current development environment

There is a debate in the public sphere about the impact of increasing DC rates on builders’ decisions to move housing projects forward in the current economic environment. DCs are one of many costs in a builder’s pro forma, including the cost of land, building materials, labour, carrying charges, and more. Inflation, labour shortages, and higher than normal interest rates (among other factors) over the past couple of years have increased the expenditure side of that equation. At the same time, selling prices have stabilized or slightly declined, also in response to higher interest rates, but mitigated by the current supply and demand imbalance. The result is a narrowing of projected profit margins at both ends, resulting in decreased building activity.

This economic reality, combined with a critical shortage of housing across the country, has led some to point to DCs as a barrier to development, and to suggest that cutting DCs significantly should be the solution. However, a critical part of that equation is how that impacts municipalities ability to build the infrastructure and amenities required to support growing communities.

DCs are developed in a prescriptive legislative framework that uses provincially mandated population growth targets, and the estimated costs of the capital works required to support that growth in accordance with the Council-approved official plan and service delivery master plans. The legislation provides guardrails to ensure that new development is not made to subsidize service enhancements for the broader community.

Additionally, there are mandatory exemptions and discounts for certain types of development (e.g., affordable housing, rental housing, additional dwelling units), imposed under the DC Act, as well as a limited number of discretionary exemptions (e.g., hospital and university development) in the City's DC by-law. DC exemptions and discounts must be funded by other sources, and, in the absence of other sources of funding, that means property taxes and utility rates.

If DCs were to be cut to some amount lower than the rates calculated in accordance with the DC Act and regulations, that would reduce the funding available to pay for housing enabling infrastructure and amenities. That would mean that either growth enabling works would be reduced, limiting the potential for development in our community, or, within the context of the current municipal funding framework, that the costs not covered by DCs would be shifted to property tax and utility rate payers, adding to the cost of exemptions and discounts already borne by this group.

While it is possible that cutting the DC may make enough of a difference in builders' profit margins to change a no-go decision to a go, it will not have an immediate impact on the selling price of houses. No matter the input costs, houses are sold at market rates.

If enough units are built relative to population growth, this could be expected to eventually have downward pressure on prices. However, given the complex factors, the size and timing of the impact on the price is unknown, and it would reasonably be expected to take a number of years to realize that benefit. The immediate impact on the overall cost of housing would be felt by property owners through increased property tax and utility bills. This would impact homeowners broadly, and not based on ability to pay.

For these reasons, staff believe that, in the absence of an alternative stable and predictable source of funds for growth related capital costs, it is prudent to stay the course on the tool that the province has provided to municipalities to pay for these costs.

There is space for a broad conversation among all three levels of government about whether growth should continue to pay for growth, but it must be accompanied by a conversation about who should pay, if not new development. Arbitrary reductions to DCs without offsetting increases to funding for growth related capital costs from progressive tax sources will be detrimental to overall housing affordability.

Financial Implications

Adopting the amending by-law would support a $26.8 million DC capital program for growth studies over the 10-year by-law period. This will reduce the projected deficit in the Growth capital reserve fund and improve the position of the utility rate supported reserve funds.

Consultations and Engagement

Finance staff worked with the service departments and Watson & Associates to confirm the capital program.

Attachments

Attachment-1 Development Charges By-Law Amendment Memorandum - Growth Studies

Attachment-2 By-law Number (2024) – 20997 and By-law Number (2024) – 20998

Departmental Approval

None.

Report Author

Kevin Yaraskavitch, Senior Corporate Analyst - Financial Strategy

This report was approved by:

Shanna O’Dwyer
Acting General Manager, Finance and City Treasurer
Office of the Chief Administrative Officer
519-822-1260 extension 2300
shanna.odwyer@guelph.ca

This report was recommended by:

Tara Baker
Chief Administrative Officer
Office of the Chief Administrative Officer
519-822-1260 extension 2221
tara.baker@guelph.ca

Ministry of Municipal Affairs and Housing

Office of the Minister

777 Bay Street, 17th Floor
Toronto ON M7A 2J3
Tel.: 416 585-7000

Ministère des Affaires municipales et du Logement

Bureau du ministre

777, rue Bay, 17e étage
Toronto (Ontario) M7A 2J3
Tél. : 416 585-7000

234-2024-5382

November 18, 2024

Your Worship
Mayor Cam Guthrie
City of Guelph

1 Carden Street,
Guelph ON N1H 3A1
mayor@guelph.ca

Dear Mayor Guthrie:

Bill 185, the *Cutting Red Tape to Build More Homes Act,* was passed on June 6, 2024, to create policy and economic conditions to get 1.5 million homes built by 2031. As part of this Bill, Ontario has exempted undertakings of publicly-assisted universities for the objects of the university from the *Planning Act*. This exemption applies to the *Planning Act* in its entirety, for all planning matters (e.g., official plans, zoning, site plan, etc.).

We have received several inquiries over the past few months regarding the application of this exemption. Though neither I, nor my Ministry can comment on whether any specific project is within the scope of the exemption for university undertakings in the *Planning Act*, I want to provide clarity on the intent behind these reforms.

First and foremost, the exemption's aim was to enable more housing faster for students on university lands. I want to be clear that university undertakings can include a broad range of potential partnerships, whether strictly public or with the private sector, including variations in the associated ownership, financing, construction, operation, and other arrangements for these projects.

When determining whether a proposed project is subject to an exemption, section 62.0.2 of the *Planning Act* sets out two key elements that must be satisfied: the project must be "an undertaking of a post-secondary institution" and it must be for "the objects of the institution."

Of course, the university will need to consider the details of the proposed project, as well as the "objects" of the institution, to assess whether it would be exempt from the *Planning Act*. The details being considered could include the project's ownership model, financing, any potential partnerships, how its final use will meet the university's primary objectives, and whether the use will change over time.

It should also be noted that in undertaking any projects, universities will need to continue to work with municipalities. University projects benefitting from the *Planning Act* exemption would still be subject to approvals under other provincial legislation (e.g., *Ontario Heritage Act,*

Conservation Authorities Act, Building Code Act, Environmental Protection Act, etc.) as well as other municipal permits (e.g., road occupancy, tree by-law, etc.).

There may also be site-specific issues that institutions and municipalities would need to address in respect of projects that are subject to the *Planning Act* exemption, such as water and wastewater connections, stormwater management, or utility provision (i.e., electricity). Agreements with the municipalities or other entities may also be required related to such issues.

With the above in mind, the university and/or external party should still obtain independent legal advice when considering the application of s. 62.0.2 of the *Planning Act* to a specific project.

Should you have any questions or comments, please do not hesitate to contact Laura Evangelista, Director, Planning Policy Branch, Ministry of Municipal Affairs and Housing.

Sincerely,

Hon. Paul Calandra
Minister of Municipal Affairs and Housing

c. Marth Greenberg, Deputy Minister
Jessica Lippert, Chief of Staff
Laura Evangelista, Director, Provincial Planning Branch MMMAH
Kinney Butterfield, Director, Postsecondary Education Policy Branch MCU

What you need to know

Forum Real Estate Income & Impact Fund – Press Release

on **FEBRUARY 7, 2025**

Brookfield invests up to $100 million in Forum Asset Management's Real Estate Income and Impact Fund ("REIIF"), the Leading Owner of Purpose-Built Student Accommodations in Canada.

PRESS RELEASE

Toronto, ON / February 6, 2025 / Forum Asset Management ("Forum") is pleased to announce a strategic investment from Brookfield Asset Management ("Brookfield") in support of Forum's acquisition of Alignvest Student Housing. Brookfield, through its real estate solutions strategy, will invest up to $ 100 million in Forum's private REIT, the Forum Real Estate Income and Impact Fund ("REIIF").

REIIF is a $2.4 billion institutional quality, private REIT that is the leading owner and investor of purpose-built student accommodations across Canada. The fund serves top university markets and is addressing the growing demand for attainable, high-quality housing, and leverages ESG principals for enhanced risk-adjusted returns. REIIF is comprised of 31 institutional-quality properties and approximately 10,500 beds.

Broofield's existing global portfolio of student accommodations is valued over $7 billion with 60,000 beds across Europe, the US, UK and now, in partnership with Forum and REIIF, in Canada. Brookfield's investment in REIIF is underpinned by attractive Canadian long-term supply demand-fundamentals and the institutional

quality of REIIF's portfolio.

Richard Abboud, Founder and CEO of Forum, said, "This important investment by Brookfield into REIIF is validation of our strategy and underscores the opportunity for large scale institutional investment in Canadian student housing. Brookfield's capital will enhance REIIF's financial exibility, support portfolio growth, and strengthen our ability to deliver critically needed, professionally managed student housing across Canada."

FACT SHEET

ABOUT REIIF

REIIF invests primarily in institutional-quality purpose-built student accommodations, as well as multi-family rentals and furnished apartments, in supply-constrained markets. REIIF is committed to delivering impact and Extraordinary Outcomes™ to investors, enhancing yields and total returns while creating dynamic communities for students and renters across Canada.

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August 2024

June 2024

May 2024

April 2024

March 2024

February 2024

January 2024

December 2023

November 2023

August 2023

June 2023

May 2023

March 2023

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August 2020

July 2020

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Cecy, Cindy

From: Shanna O'Dwyer <Shanna.Odwyer@guelph.ca>
Sent: Friday, February 21, 2025 11:03 AM
To: Jennifer Charles
Cc: Vithiya Suthagar; Kevin Yaraskavitch; KJ Shea
Subject: FW: 601 Scottsdale (24 006489 000 00 BPN) - Development Charges and Community Benefits Charges
Attachments: Letter re DCs (Sent to City).pdf

Shanna O'Dwyer, CPA, CA, MA
Acting Treasurer, General Manager
Finance
City of Guelph

My work hours may not match yours, and I do not expect you to respond outside your working hours.

From: Vimal Lad
Sent: Friday, February 21, 2025 9:43 AM
To: Shanna O'Dwyer
Cc: Dayna Gilbert ; Vithiya Suthagar
Subject: RE: 601 Scottsdale (24 006489 000 00 BPN) - Development Charges and Community Benefits Charges

[EXTERNAL EMAIL] This email originates outside the City of Guelph. Do not click links or attachments unless you recognize the sender and know the content is safe.

Good Morning Shanna,

Following up on our previous correspondence, please find attached our legal opinion outlining why our Phase 2 development is not subject to Development Charges.

I'd like to schedule a call with you early next week to discuss our project. Please let me know if you're available on Monday (Feb 24) between 12:00 PM and 2:00 PM or on Tuesday (Feb 25) between 9:00 AM and 12:00 PM, for a 30 minute call.

Thank you,

Vimal Lad
Senior Manager, Real Estate Development

Forum Asset Management
M: 647-863-7085
Vimal@forumam.com
LinkedIn | Website

From: Shanna O'Dwyer <Shanna.Odwyer@guelph.ca>
Sent: Friday, February 14, 2025 12:38 PM
To: Vimal Lad <Vimal@forumam.com>
Cc: Dan Wainwright <DanW@forumam.com>; Vithiya Suthagar <Vithiya.Suthagar@guelph.ca>
Subject: RE: 601 Scottsdale (24 006489 000 00 BPN) - Development Charges and Community Benefits Charges

Hi Vimal,

I acknowledge receipt this email. We will provide a more detailed analysis next week, but our position remains that DCs apply to this project.

Thanks,
Shanna

Shanna O'Dwyer, CPA, CA, MA
Acting Treasurer, General Manager
Finance
City of Guelph

My work hours may not match yours, and I do not expect you to respond outside your working hours.

From: Vimal Lad <Vimal@forumam.com>
Sent: Wednesday, February 12, 2025 4:36 PM
To: Shanna O'Dwyer <Shanna.Odwyer@guelph.ca>
Cc: Dan Wainwright <DanW@forumam.com>; Vithiya Suthagar <Vithiya.Suthagar@guelph.ca>
Subject: RE: 601 Scottsdale (24 006489 000 00 BPN) - Development Charges and Community Benefits Charges

[EXTERNAL EMAIL] This email originates outside the City of Guelph. Do not click links or attachments unless you recognize the sender and know the content is safe.

Hi Shanna,

Upon reviewing the 2024 Development Charges By-law, it explicitly states:

Section 3.5.1 "Development charges shall not be imposed with respect to: a) Development of University Land or Buildings."

Exemptions:

3.5.1 Notwithstanding the provisions of this By-law, Development Charges shall not be imposed with respect to:

(a) Development of University Land or Buildings;

(b) University Land if the development in respect of which development charges would otherwise be payable is intended to be occupied and used by the University, provided that, where only a part of such land, Buildings are so developed, then only that part shall be exempt from the Development Charges specified under this By-law;

(c) Development for a Place of Worship or for the purposes of a cemetery or burial site exempt from taxation under the *Assessment Act*;

(d) Development by a college established under the *Ontario Colleges of Applied Arts and Technology Act, 2002, S.O. 2002, c.8, Sched. F, as amended, or any successor thereto*;

This project is located on university-owned land and serves a use strictly for university-related purpose. The development is exclusively dedicated to housing University of Guelph students, as mandated under our ground lease with the university.

Phase 2 is a direct extension of Phase 1, continuing to provide much-needed student housing for the University of Guelph. As previously confirmed in the City's review of Phase 1, our agreement with the university reinforces our exclusive obligation to provide housing solely for its students.

Based on these facts, we trust that Phase 2 is also exempt from development charges. However, if any further legal clarification is required, I am happy to have my solicitor provide formal justification.

Please let me know if you need any additional information.

Best,

Vimal Lad
Senior Manager, Real Estate Development

Forum Asset Management
M: 647-863-7085
Vimal@forumam.com
LinkedIn | Website

From: Shanna O'Dwyer <Shanna.Odwyer@guelph.ca>
Sent: Wednesday, February 12, 2025 3:25 PM
To: Vimal Lad <Vimal@forumam.com>
Cc: Dan Wainwright <DanW@forumam.com>; Vithiya Suthagar <Vithiya.Suthagar@guelph.ca>
Subject: RE: 601 Scottsdale (24 006489 000 00 BPN) - Development Charges and Community Benefits Charges

Good afternoon Vimal,

From a development application perspective, Phase 2 is a separate development from Phase 1 including for purpose of application of the Development Charges By-law. The By-law was updated in 2024 to clarify the City's intention to provide an exemption for University of Guelph developments. The prior version of the By-law included

a concept of "University Related Purposes" which did not clearly align with the policy intent that the exemptions apply to the University of Guelph directly. The Phase 1 development at 601 Scottsdale was exempt under the prior version of the By-law. The current version of the By-specifically exempts developments intended to be occupied and used by the University of Guelph.

While the proposed development at 601 Scottsdale is on land leased from the University of Guelph, it is not intended to be occupied and used by the University directly, despite the fact that the target rental market for the development is University of Guelph students. Therefore, the development charge exemption for the University of Guelph is not applicable and development charges are due prior to issuance of the building permit. Vithiya will let you know the amount payable at the appropriate point in the permit process.

Regards,
Shanna

Shanna O'Dwyer, CPA, CA, MA
Acting Treasurer, General Manager
Finance
City of Guelph

My work hours may not match yours, and I do not expect you to respond outside your working hours.

From: Vithiya Suthagar <Vithiya.Suthagar@guelph.ca>
Sent: Tuesday, February 11, 2025 8:44 PM
To: Vimal@forumam.com; Shanna O'Dwyer <Shanna.Odwyer@guelph.ca>
Cc: Dan Wainwright <DanW@forumam.com>
Subject: FW: 601 Scottsdale (24 006489 000 00 BPN) - Development Charges and Community Benefits Charges

Hi Vimal,

Apologies for the delay in getting back to you.

I am copying City's acting Treasurer @Shanna O'Dwyer to reply you.

Thanks

Vithiya Suthagar, CPA, CGA
Accounting Analyst
Financial Strategy & Reporting, **Finance**
City of Guelph
519-822-1260 extension 3816
vithiya.suthagar@guelph.ca

guelph.ca
Facebook.com/cityofguelph
@cityofguelph

From: Vimal Lad <Vimal@forumam.com>
Sent: Friday, January 31, 2025 11:30 AM

To: Vithiya Suthagar <Vithiya.Suthagar@guelph.ca>
Cc: Dan Wainwright <DanW@forumam.com>
Subject: RE: 601 Scottsdale (24 006489 000 00 BPN) - Development Charges and Community Benefits Charges

[EXTERNAL EMAIL] This email originates outside the City of Guelph. Do not click links or attachments unless you recognize the sender and know the content is safe.

Hi Vithiya,

As discussed on our call this morning, please find attached the previous correspondence regarding the applicability of development charges for 601 Scottsdale Drive.

Please note that Phase 2 of our development is an extension of Phase 1, all situated on University of Guelph-owned land and housing exclusively for University of Guelph students. As such, development charges would continue to not apply for Phase 2.

Let me know if you need any further details.

Best,

Vimal Lad
Senior Manager, Real Estate Development

Forum Asset Management
M: 647-863-7085
Vimal@forumam.com
LinkedIn | Website

From: Vithiya Suthagar <Vithiya.Suthagar@guelph.ca>
Sent: Friday, January 31, 2025 8:58 AM
To: Dan Wainwright <DanW@forumam.com>
Cc: Vimal Lad <Vimal@forumam.com>
Subject: RE: 601 Scottsdale (24 006489 000 00 BPN) - Development Charges and Community Benefits Charges

Good Morning Dan,

My contact information is below, feel free to contact me anytime.

I have attached Community Benefits Charge (CBC) pamphlet for your reference.

Thanks

Vithiya Suthagar, CPA, CGA
Accounting Analyst
Financial Strategy & Reporting, **Finance**
City of Guelph

519-822-1260 extension 3816
vithiya.suthagar@guelph.ca

guelph.ca
Facebook.com/cityofguelph
@cityofguelph

From: Dan Wainwright <DanW@forumam.com>
Sent: Thursday, January 30, 2025 9:11 AM
To: Vithiya Suthagar <Vithiya.Suthagar@guelph.ca>
Cc: Vimal Lad <Vimal@forumam.com>
Subject: 601 Scottsdale (24 006489 000 00 BPN) - Development Charges and Community Benefits Charges

[EXTERNAL EMAIL] This email originates outside the City of Guelph. Do not click links or attachments unless you recognize the sender and know the content is safe.

Hi Vithiya,

I'm following up on our building permit application for 601 Scottsdale Drive (Alma Guelph Phase II). As mentioned in the attached letter, we were asked to contact you regarding the development charges and community benefits charge.
Would you be available for a brief Teams call either today or tomorrow to discuss these charges and determine what's needed to begin the process?

Looking forward to our discussion.

Thank you,

Dan Wainwright
Sr. Manager, Real Estate Project Management

Forum

Forum House at Brookfield Place
M: 647-482-5944
DanW@forumam.com
LinkedIn | Website

Disclaimer

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Johanna Shapira | B.A., J.D.

T. 416.203.5631
E. jshapira@woodbull.ca

File No. 1899

February 20, 2025

By Email

Shanna O'Dwyer
Acting Treasurer, General Manager
Guelph City Hall
1 Carden Street
Guelph, ON N1H 3A1

Dear Ms. O'Dwyer:

Re: 601 Scottsdale Drive
Development Charges – Phase 2 Student Residence
(24 006489 000 00 BPN)

We represent 601 Scottsdale GP Inc., Forum 601 Scottsdale LP, and related entities in connection with the development of Phase 2 of a student residence (the "**Proposed Development**") at 601 Scottsdale Drive, in the City of Guelph (the "**Subject Lands**").

We write to provide our opinion that the Proposed Development constitutes "Development of University Land" and is therefore exempt from development charges ("**DCs**") pursuant to the City's By-law (2024)-20866, as amended by By-law (2024)-20997 (the "**DC By-law"**). The Proposed Development is also exempt from DCs by operation of the *Ministry of Training, Colleges and Universities Act*, R.S.O. C. M.19 (the "**MTCU Act**").

The Law

Section 2(1) of the *Development Charges Act,* SO 1997, c. 27 (the "**DC Act**") provides that municipalities may pass by-laws to impose DCs on the development of land. The DC Act further provides that a municipality may exempt certain types of developments from the imposition of DCs. In accordance with the DC Act, the DC By-law exempts "Development of University Land or Buildings" from DCs pursuant as follows:

> *3.5.1 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 provides the following definitions of "Development" and "University Land":

> *"Development" means 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*
>
> *"University Land" means land vested in or leased to a publicly-assisted University which is intended to be occupied and used by the university;*

"Buildings" is not a defined term.

Section 6.1(1) of the MTCU Act provides a similarly-worded exemption from DCs, as follows:

> *6.1 (1) 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.* Underlining added

Application

In our opinion, the Proposed Development constitutes a "Development of University Land" in accordance with section 3.5.1(a) of the DC By-law and is therefore exempt from DCs. The Proposed Development is also exempt by operation of section 6.1(1) of the MTCU Act.

With respect to the DC By-law, the Proposed Development meets the definition of "Development" and the Subject Lands meet the definition of "University Land". The Subject Lands are owned by the University, and the University has leased the Subject Lands to our clients for the express purpose of developing and operating a residence to be used and occupied by its students (the "**Lease**"). The University, through the Lease, precludes the Subjects Lands from being used for any other purpose other than housing its students. In this regard, we note section 9.1 of the Lease:

> *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.* Underlining and bold added

“Use” is defined in section 1.2(ee) of the Lease as follows:

> ***“Use”*** *means a* *student residence and ancillary uses* *operated by the Tenant for* *the sole benefit of students of the Landlord* Underlining and bold added

The definition highlights that the Proposed Development is only permitted to be occupied and used by the University’s students. The restriction on the “use” of the Subject Lands is brought forward into section 1.1 of the Lease, which summarizes in its basic terms:

> *(e)* ***Use:*** *A* *student residence and ancillary uses* *operated by the Tenant* *for the sole benefit of students of the Landlord.* Underlining and bold added

As such, the Subject Lands are clearly intended to be occupied and used by the University. Therefore, the Proposed Development constitutes the “Development of University Land” and is exempt from DCs under section 3.5 (1)(a) of the DC By-law. The Proposed Development is also thereby exempt from DCs by operation of section 6.1(1) of the MTCU Act.

Alternatively, for the same reasons noted above related to the exclusive occupation and use of the residence by the University’s students, the Proposed Development constitutes the “Development of University Buildings” and is thereby exempt from the DC By-law.

If you have any questions, please contact the undersigned.

Yours very truly,

WOOD BULL LLP

JShapira

Johanna Shapira
JRS/SO

cc: Client

March 17, 2025

By E-mail vimal@forumam.com

Forum Asset Management
Forum House at Brookfield Place
East Podium, 2nd Floor
181 Bay Street
Toronto, ON M5J 2T3

Attention: Vimal Lad, Senior Manager, Real Estate Development

RE: 601 Scottsdale Drive
Development Charges - Phase 2
City File No. 2024 006489

Dear Vimal,

I am writing in response to your email of February 21, 2025 which attached a legal opinion from Wood Bull LLP addressed to the City Treasurer, Shanna O'Dwyer, regarding the application of development charges to a student-oriented, purpose-built rental development (referred to as "Phase 2") on the property municipally known as 601 Scottsdale Drive, City of Guelph (the "Subject Property"). The Subject Property is owned by University of Guelph and leased to 601 Scottsdale Phase 2 GP Inc., an affiliate of Forum Asset Management (collectively, "Forum").

I write to provide the opinion of the City that Phase 2 is not exempt from development charges ("DCs") under City By-law Number (2024) - 20866, as amended (the "DC By-law").

The DC By-law includes an exemption with respect to "Development of University Land or Buildings" (s.3.5.1(a)). We understand it is Forum's position that Phase 2 should be exempt from DCs pursuant to section 3.5.1(a) of the DC By-law, on the basis that it is a Development on University Land, as such capitalized terms are defined in the DC By-law.

Phase 2 is a new construction purpose-built rental apartment building geared to University of Guelph students. The City agrees Phase 2 is a Development as defined in the DC By-law. The City disputes that Phase 2 is a Development "of University Land". The term University Land is defined in section 1 of the DC By-law as "land vested in or leased to a publicly-assisted University which is intended to be occupied and used by the university".

City Hall
1 Carden St
Guelph, ON
Canada
N1H 3A1

T 519-822-1260
TTY 519-826-9771

guelph.ca

To the City's knowledge, the Development is not intended "to be occupied and used by" the University of Guelph. The exemption in section 3.5.1(a) of the DC By-law is equivalent to the exemption provided in section 6.1(1) of the *Ministry of Training, Colleges and Universities Act*, R.S.O. C. M.19, as amended (the "MTCU Act"), which reads as follows:

> *6.1 (1) 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 City acknowledges that the Subject Property is owned by the University of Guelph, which is a publicly-assisted university. The City further acknowledges that the Subject Property is leased to Forum and that Phase 2 is a rental apartment geared to students of the University of Guelph, in accordance with the permitted use under the lease. However, the City considers Phase 2 as intended to be occupied and used by Forum as the tenant. Forum is financing, constructing and operating Phase 2 as a for-profit rental building within the scope of permitted use under the lease. In a letter from Wood Bull LLP dated 6 September 2024 addressed to Krista Walkey, General Manager, Planning and Building Services, we were provided the following excerpt from the lease:

> *The Property shall be used, operated and maintained by the Tenant and any permitted subtenant (as hereinafter provided 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 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. (Section 9.1)* [Emphasis added]

The lease specifies the permitted use of the Subject Property is "for a student residence and ancillary uses operated by the Tenant for the sole benefit of students of the Landlord". It is a landlord's prerogative to lease its property for specific or limited uses, which does not equate to the leased property being occupied and used by the landlord. In this case, the lease specifies that the Subject Property is to be "used, operated and maintained by the Tenant", and the permitted use as a student residence is "for the sole benefit of students of the Landlord", not the landlord itself.

We understand based on the September 4, 2024 letter from Wood Bull LLP that Forum and the University are independent parties, Phase 2 is not a joint venture, partnership, or agency (section 15.9 and 15.12 of the lease), and Forum will develop and operate the residence, including planning, financing, constructing, and managing the facility and land (sections 3.3, 5.1 and 7.1 of the lease). The City understands that the University may conduct its business, operations, undertakings and objects directly and indirectly through a broad range of potential structures, including partnerships, joint ventures and other structures, including variations in the associated ownership, financing, construction, operation, and other

arrangements. For purposes of the exemption in section 3.5.1(a) of the DC By-law, the criteria "intended to be occupied and used *by the university*" (emphasis added) is intended to be direct. Absent compelling evidence to the contrary, the City considers it determinative that Forum and the University are acting as independent parties and that Forum is independently developing and operating Phase 2, albeit within the permitted scope of the lease. Phase 2 will not be occupied or used by the University directly, nor will the rental building be operated or administered on behalf of the University, nor will the University control or direct rent and other fees charged to tenants.

Applying the DC By-law to the Development application, and having regard for supplementary information provided by Forum and its legal counsel regarding the lease agreement, the City is not satisfied that the Development "is intended to be occupied and used by the university" which is the operative language in the definition of "University Land" in the DC By-law as well as the exemption under section 6(1) of the MTCU Act.

With respect to your alternative position that Phase 2 constitutes the "Development of University [...] Buildings" and is therefore exempt from DCs pursuant to section 3.5.1(a) of the DC By-law, the City does not interpret this to apply. Although Phase 2 includes a new construction rental apartment, which is a Building as defined in section 1 of the DC By-law, the Building is a tenant improvement. Tenant improvements are the separate property of Forum as tenant during the term of the lease. The tenant improvements, including the Building, will not become absolute property of or vest in the University until expiry or termination of the 99-year lease. At the operative time for the purpose of DCs, the Building is not vested in the University.

Jennifer Charles
General Manager, Legal and Court Services / City Solicitor
City of Guelph
519-822-1260 ext 2452
Jennifer.charles@guelph.ca

cc: Johanna Shapira, Wood Bull LLP

Barristers & Solicitors

Bay Adelaide Centre, West Tower
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

Direct Line: +1 (416) 597-5168
jhoffman@goodmans.ca

March 21, 2025

Our File No.: 250940

Via Email

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

Attention: Jennifer Charles, General Manager, Legal and Court Services / City Solicitor

Dear Ms. Charles:

Re: 601 Scottsdale Drive, City of Guelph
Application of Development Charges - Phase 2 Student Residence for Guelph University Students
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**"). The Property is owned by the University of Guelph and planned to be redeveloped by Forum as a student residence for the exclusive use of University of Guelph students (the "**Student Residence**"). As you are aware, Wood Bull LLP is also retained on this matter and we now act as co-counsel.

We have reviewed your letter dated March 17, 2025 addressed to Forum Asset Management, where the City of Guelph advised that the City will apply Development Charges to the development of the Student Residence (the "**City Letter**"). We have also reviewed background materials, including the letter written by Wood Bull LLP to the City of Guelph dated February 20, 2025, setting out reasons for why the Student Residence is 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**").

We write to provide further reasons that clearly demonstrate the Student Residence is exempt from Development Charges pursuant to the Act and the DC By-law. We hope with this additional information the City will reconsider its position and advise that Development Charges are not payable.

Confirmation that Development Charges are not payable is critical for this project. If the Development Charges are applied to the project, the Student Residence 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.

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. It is therefore imperative that this project proceed and proceed in a timely manner. 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.

The Facts

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 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 a land lease with Forum to build student housing for the exclusive use of the University of Guelph students (the "**Lease**"). 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) <u>solely for the Use</u> in a first class and reputable manner. For clarity, <u>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</u> 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 "<u>A student residence and ancillary uses</u> operated by the Tenant <u>for the sole benefit of students of the Landlord</u>." [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 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, has been employed for both Phase 1 and Phase 2. As you are aware, the City found Development Charges did not apply to Phase 1 because it met the exemption found in the City's 2022 DC By-law.

Exemption Pursuant to The Act

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]

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

In particular, 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 position is clearly supported by the case law, including *University of Victoria v. City of Victoria*[1] and *Simon Fraser University v. Burnaby (District).*[2]

The City's Letter, however, takes the position that the tenant improvements, including the building, are not vested in the University and therefore the exemption in Section 6.1(1) of the Act does not

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[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.

apply. This position is incorrect. The exemption clearly requires “land” not “improvements” of land, to be vested in the University, for the exemption to apply.

The City’s position that for the exemption to apply to the building, and not the land where the building is situated, must be vested in the University is inconsistent with how Development Charges are applied. Section 2(1) of the Development Charges Act, 1997, S.O. 1997 c. 27 (the “**DC Act**”) allows a municipality “by by-law impose development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the by-law applies”. [emphasis added]

The City position that the Student Residence does not meet the test for land being vested in the University is also inconsistent with the City’s position for Phase 1, where the City agreed that Development Charges are exempt for the Phase 1 student residence project. In particular, for Phase 1, the City found that the student residence met the exemption in the City’s 2022 DC-By-law, which at that time required “lands, buildings or structures…. to be owned directly or indirectly by the University or on behalf of the University” for the exemption to apply. Here, the City found that despite Forum’s leasehold interest, the University had an ownership interest (or a vested interest) in the “lands, buildings or structures” for Phase 1. This finding was correct and should equally apply to Phase 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. The City Letter takes the position that because of the Lease, the Property is intended to be occupied and used by Forum, as tenant, and not by the University. This interpretation 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.

“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 permitted use is a student residence. It is not Forum, as tenant. Neither the City’s Official Plan nor Zoning By-law speak to nor 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 of University of Guelph students.

Put another way, 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. While for the Student Residence Forum is the tenant under the Lease, the use and occupation of the building remain the same as the example noted above. It is the same students for the same University purpose, which is providing University of Guelph students with much needed housing.

Further, Forum is the tenant of the "land" it has entered into a land lease with the University. The exemption in the Act, however, requires the "development" to be occupied and used by the University and here, clearly, that is the case. Forum is a tenant of the land, not the development. The development will be occupied and used by University of Guelph students.

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 housing. This is in direct contrast to the intent and purpose behind the exemption found in the Act, which is to facilitate and better enable publicly-assisted universities to carry out their mandates. As is the case here, the Student Residence project cannot move forward and will be abandoned if the Development Charges are applied.

The City's letter seems to imply 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.

This structure, where a private developer enters into a land lease with a university to develop student housing for the exclusive use of university students, has been employed elsewhere in Ontario and in such cases the municipality has appropriately and correctly determined the exemption in the Act applies. For example, in the City of Toronto, Forum (through a related entity) entered into a land lease with York University, on York University owned lands, to build and operate student housing for the exclusive use of York University and Seneca College at York University students. This structure is very similar to the structure for the Student Residence and in this case all parties agreed the exemption of Development Charges in the Act applies. The same determination should be made here.

Exemption Pursuant to the DC By-law

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 and therefore the same reasons outlined above apply here. The Student Residence should also be exempt from Development Charges pursuant to the exemption in the DC By-law.

Conclusion

Please confirm by no later than April 1, 2025 that Development Charges will not be applied to the Student Residence. If we do not receive such confirmation by this time, Forum, to mitigate its losses, will be making an application to Court for a determination that the Student Residence is exempt from Development Charges.

On this note, we are writing to put the City on notice that a Court application will likely delay the project, which needs to start construction by early April 2025 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. Delay causing the Student Residence to be open by the 2027 academic school, would cause irreparable harm to Forum and the University, and Forum reserves all rights to seek any damages it may incur.

Please be advised that nothing in this letter is intended to set out an exhaustive list of our client's complaints or concerns nor is it intended to be a complete statement of law and/or the facts relevant to this matter. All of our client's rights and remedies available to it are expressly reserved.

Yours truly,

Goodmans LLP

Joe Hoffman
JH/rr
1377-0026-9332

Cecy, Cindy

From:	Hoffman, Joe <jhoffman@goodmans.ca>
Sent:	Monday, March 31, 2025 4:11 PM
To:	Clerks
Cc:	Gill, Rodney; Jennifer Charles; Allison Thornton
Subject:	601 Scottsdale Drive, City of Guelph, Development Charge Complaint Pursuant to Subsections 20(1)(a) and (c) of the Development Charges Act, 1997, S.O. 1997, c. 27
Attachments:	Development Charge Complaint - 601 Scottsdale Drive City of Guelph - March 31 2025.pdf

[EXTERNAL EMAIL] This email originates outside the City of Guelph. Do not click links or attachments unless you recognize the sender and know the content is safe.

Good afternoon,
Please see the attached Development Charges complaint being filed on behalf of 601 Scottsdale GP Inc. and Forum 601 Scottsdale LP in respect of the property known municipally as 601 Scottsdale Drive in the City of Guelph.

For the reasons outlined in the attached letter, we ask that this Development Charges complaint be heard by City Council at its earliest opportunity.

Joe Hoffman
Goodmans LLP
416.597.5168
jhoffman@goodmans.ca
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

***** Attention *****

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Barristers & Solicitors

Bay Adelaide Centre, West Tower
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

Direct Line: +1 (416) 597-5168
jhoffman@goodmans.ca

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

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[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

Goodmans LLP

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
Jennifer Charles, General Manager, Legal and Court Services / City Solicitor
Allison Thornton, Associate Solicitor, City of Guelph

Cecy, Cindy

From: Clerks <clerks@guelph.ca>
Sent: Monday, March 31, 2025 4:24 PM
To: Hoffman, Joe
Cc: Gill, Rodney; Jennifer Charles; Allison Thornton; Dylan McMahon
Subject: RE: 601 Scottsdale Drive, City of Guelph, Development Charge Complaint Pursuant to Subsections 20(1)(a) and (c) of the Development Charges Act, 1997, S.O. 1997, c. 27

Hello Joe,

I am acknowledging the receipt of the Development Charges Complaint related to 601 Scottsdale Dr.

We will be in touch with additional information.

Thanks,

Garrett

Garrett Meades, Acting Manager, Legislative Services/Deputy City Clerk
Clerk's Office, **Corporate Services**
City of Guelph
519-822-1260 ext. 3812
garrett.meades@guelph.ca

guelph.ca
facebook.com/cityofguelph
@cityofguelph

From: Hoffman, Joe
Sent: Monday, March 31, 2025 4:11 PM
To: Clerks
Cc: Gill, Rodney ; Jennifer Charles ; Allison Thornton
Subject: 601 Scottsdale Drive, City of Guelph, Development Charge Complaint Pursuant to Subsections 20(1)(a) and (c) of the Development Charges Act, 1997, S.O. 1997, c. 27

[EXTERNAL EMAIL] This email originates outside the City of Guelph. Do not click links or attachments unless you recognize the sender and know the content is safe.

Good afternoon,

Please see the attached Development Charges complaint being filed on behalf of 601 Scottsdale GP Inc. and Forum 601 Scottsdale LP in respect of the property known municipally as 601 Scottsdale Drive in the City of Guelph.

For the reasons outlined in the attached letter, we ask that this Development Charges complaint be heard by City Council at its earliest opportunity.

Joe Hoffman
Goodmans LLP

416.597.5168
jhoffman@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

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March 31, 2025

By E-mail jhoffman@goodmans.ca

Goodmans LLP
Bay Adelaide Centre, West Tower
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Attention: Joe Hoffman

RE: 601 Scottsdale Drive, City of Guelph (the "Subject Property")
Development Charges - Phase 2
City File No. 2024 006489
Goodmans File No. 250940

Dear Mr. Hoffman,

I am writing in response to your letter dated March 21, 2025 and your email on March 26, 2025 to which you attached a redacted Land Lease between 601 Scottsdale Phase 2 LP, an affiliate of Forum Asset Management ("Forum") and the University of Guelph (the "University") dated October 1, 2024, and two letters from the University dated August 4, 2023 and April 30, 2024, respectively.

City of Guelph Legal Services and staff have reviewed your initial letter and the additional information provided by email and, in our opinion, at the applicable time it will be the City's position that development charges are payable in respect of Forum's Phase 2 development on the Subject Property. Based on the information provided to us to date, there are insufficient grounds for us to conclude the development is "intended to be occupied and used by the university" and, therefore, would be exempt from development charges under Section 6.1(1) of the *Ministry of Training, Colleges and Universities Act*, R.S.O. C. M.19 , as amended (the "Act").

The City strongly encourages Forum to consider entering into an agreement with the City for affordable rental housing. The smaller, student-oriented units in this development are ideal candidates for an affordable housing commitment, which would allow Forum to enjoy an exemption from development charges in exchange for a 25-year commitment to maintaining the bulletin rates. We understand that the University's Housing Demand Study, which was completed in November 2024, assessed and found that existing and planned purpose-built student housing in the City of Guelph was mostly at the higher end of the rental price range, which is not aligned with student needs, and that it will be

City Hall
1 Carden St
Guelph, ON
Canada
N1H 3A1

T 519-822-1260
TTY 519-826-9771

guelph.ca

important to ensure that purpose-built student housing meets students' needs in terms of affordability.[1]

To address a comment made in your March 21, 2025 letter, for clarity, the City has never taken the position that the land is not vested in the University, which is a threshold criterion for exemption under Section 6.1(1) of the Act as well as Section 3.5.1(a) of the City's Development Charges By-law Number (2024) – 20866 (as amended, the "By-law"). The City acknowledges that the Subject Property is owned by and is vested in the University of Guelph, which is a publicly-assisted university.

The interpretive issue for purpose of exemption under Section 6.1(1) of the Act, mirrored in Section 3.5.1(a) of the By-law, is whether "the development in respect of which development charges would otherwise be payable", namely Forum's Phase 2 development on the Subject Property, is "intended to be occupied and used by the university".

In your March 21, 2025 letter, you characterize the development as "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". Having regard for the material available to us, it appears that the relationship between Forum and the University with respect to the development is one of landlord-tenant only. We acknowledge the permitted use of the property, defined in section 1.2(ee) and further described in section 9.2 of the Lease, is a student residence and ancillary uses operated by Forum for the sole benefit of University students, which can be characterized as a university purpose; However, the Lease terms are clear that the development is arms' length from the University. In addition to the Lease terms, the letters from the University appear to distinguish Forum's project from the University's own residences and, to our knowledge, this development is not identified in the University's housing strategy or promoted by the University as University-endorsed or affiliated off-campus housing.

The City understands that the University may conduct its business, operations, undertakings and objects, including student housing, directly and indirectly through a broad range of potential structures, including partnerships, joint ventures and other structures, including variations in the associated ownership, financing, construction, operation, and other arrangements. Although student rental housing meets a university objective, we do not share your opinion that the permitted use under the Lease means the development is "intended to be occupied and used by the University" and would, therefore, be determinative for the purpose of exemption from development charges. In our view, the permitted use must be read in conjunction with other provisions of the Lease which make it abundantly clear that Forum and the University are independent parties, including section 15.9: "The Landlord and the Tenant hereby expressly declare that it is neither their intention nor their agreement that this Lease or any arrangements between them shall constitute or be deemed to constitute the parties as partners, joint venturers or agents for each other"; and section 15.12: "Notwithstanding anything else

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[1] "University-Operated Housing is Meeting Student Residence Demand", posted Mar 11, 2024, Updated Jan 22, 2025, accessed March 31, 2025: https://news.uoguelph.ca/2024/03/u-of-g-housing-demand-study-finds-university-operated-housing-is-meeting-student-residence-demand/

contained in this Lease, at no time shall the Landlord be consisted to be a partner, co-venturer, operator, manager, etc. of or with the Tenant or with respect to the operation of the student residences". Further, we note that the Phase 2 development by Forum under Land Lease is markedly different from other anticipated redevelopments on University-owned lands for which the University intends to issue Requests for Expressions of Interest to gauge interest of the development community in partnering to potentially design, build, finance, maintain and operate these student housing projects.[2]

In closing, the City values the contributions of the development community to the housing stock in the City of Guelph. Recognizing the distinct need for affordable purpose-built student housing in our community, the City strongly encourages Forum to consider entering into an agreement with the City for affordable rental housing.

Yours truly,

Jennifer Charles
General Manager, Legal and Court Services / City Solicitor
City of Guelph
519-822-1260 ext 2452
Jennifer.charles@guelph.ca

[2] "U of G Exploring Plan to Expand Graduate, Undergraduate Student Housing", posted Dec 5, 2024, updated Dec 5, 2024, accessed Mar 31, 2025: https://news.uoguelph.ca/2024/12/u-of-g-exploring-plan-to-expand-graduate-undergraduate-student-housing/

City development fees threaten future of major student housing project

Richard Vivian
Apr 8, 2025 7:14 PM

1 / 3 Rendering of two new student residential towers, on left, proposed for the old Holiday Inn site on Scottsdale Drive. The coloured building on the right already exists.

Listen to this article
00:04:07

Editor's note: This article has been updated to include comments from Jennifer Charles, the city's general manager of legal and court services.

Work on an expanded student residence has been paused while the company behind it seeks to resolve a $15.5 million dispute with the City of Guelph.

Should the project not be exempt from development charges (DCs), company officials say it is “no longer viable” and won’t proceed.

Forum Asset Management, the private company that runs the “Alma” residence at 601 Scottsdale Dr., the former Holiday Inn, argues it should be exempt from DCs because its project is located on lands owned by the University of Guelph and is to be used solely for housing U of G students.

“In this case, if development charges are applied to the student residence … much needed housing which has been secured for the exclusive use of the University of Guelph students will not be developed,” states Forum’s letter of objection submitted to the city. “This is not in the interest of the city, the University of Guelph, Forum nor the public.”

At the heart of the issue is the interpretation of the city’s DC bylaw and the Ministry of Training, Colleges and Universities Act. They use similar language when it comes to exemptions – applying them when the land is to be used and occupied by a university.

City council is tentatively set to hear the objection on April 29 and decide whether DCs should be applied.

In the objection notice, Forum states city officials believe the land is being used by a private company, not the U of G, to provide student housing.

However, as Forum explains, the lease with the U of G was negotiated and signed under the belief there would be no DCs to build student housing.

The company previously converted the former Holiday Inn building into a student residence and, according to the objection notice, paid no DCs to do it.

The expansion plan calls for eight and nine-storey towers connected by a single-level amenity area, containing 496 units with 594 beds, to be built on that same property – located across from Stone Road Mall, east of the Hanlon Expressway.

Among the difference between phases one and two is that they were approved under different DC bylaws, explained Jennifer Charles, the city's general manager of legal and court services, in an email. The bylaw was amended in 2024.

"Credits and exemptions from development charges are available under applicable legislation and the city’s DC bylaw to incentivize certain types of development – like affordable housing – for the

benefit of the community," she wrote. "Where development charges do apply, they help pay for new roads, water, sewers, emergency services and more to support growth."

Sydney MacDougall, Forum's associate director of real estate marketing and communications, said work on phase two was paused April 1 after city officials "dug into their position that DCs are payable."

"After many conversations between our legal teams and the city's legal team, an official complaint was submitted March 31st, 2025," MacDougall said via email. "Unfortunately, we have now missed the window to complete the project in time for the September 2027 school year."

If the project is cancelled, it could "worsen an already severe student housing shortage in Guelph, where only 17 per cent of students have access to on-campus housing," said

Owen Ellis, president of the Real Estate Student Association at the U of G. "As available housing off-campus is poorly managed, and short in supply, new supply such as this development is vital to improving student life here at the University of Guelph."

If city council decides DCs should be applied to the project, MacDougall said Forum will file an appeal with the Ontario Land Tribunal, which has the authority to overrule council decisions.

Comments (5)

If you would like to apply to become a **Verified Commenter**, please fill out this form.

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Housing Demand Study Finds University-Operated Housing is Meeting Student Residence Demand

Updated November 12, 2024.

The University of Guelph has embarked on a strategic enrolment growth plan and the number of first-year students it expects to enrol on an ongoing basis are greater than was projected in the data used for the Housing Demand Study. U of G has recently announced plans to build a new first-year student residence and is in the process of

updating its Student Housing Strategy to align with its strategic enrolment growth plan. Therefore, some of the information in the news release below is out of date.

The University of Guelph has completed its Housing Demand Study, and based on the study's results, the University is able to maintain its current residence accommodations, which include consistently accommodating all first-year student requests and providing guaranteed spaces for incoming international and domestic out-of-province students.

As a result, U of G can now expand residence space guarantees for the vast majority of international students beginning their studies in fall 2024 to include the duration of their academic endeavors at U of G. This expansion recognizes the importance of providing enhanced wraparound supports to international students.

Housing Demand Study supports U of G's Student Housing Strategy

Conducted by the SCION Group, one of North America's leading owners, operators and advisors on student housing, the Housing Demand Study involved a comprehensive evaluation of the available student housing on and around campus as well as extensive consultation with domestic and international undergraduate and graduate students to better understand current and future housing needs.

Key areas of focus of the Housing Demand Study included support for accommodating first-year and international student requests for residence spaces; support for upper-year students in accessing housing that meets their needs; and determining if existing and planned purpose-built student housing aligns with student demand.

The Housing Demand Study represents the culmination of the first phase of U of G's Student Housing Strategy launched in 2022 in recognition of the shortage of affordable housing, including rental properties, in cities across Canada.

"Our Student Housing Strategy is an integral part of U of G's commitment to support students in accessing housing both on campus and within the broader community," says Sharmilla Rasheed, vice-president (finance & operations). "We're excited to be moving forward with new insights from the study that will help inform future decisions around housing."

Accommodating first year and international students

The University offers on campus housing to 20 per cent of the total student population by consistently accommodating first-years' requests to live in residences. This is nearly double the average offering of Canadian universities and nearly six times that of Canadian colleges.

The study found the University can continue to consistently accommodate all first-year student requests, while also expanding offers for international students to live in residence for the duration of their academic programs. This includes international undergraduate and master students while PhD students will be accommodated for the first year of their studies.

Supporting upper-year students in accessing housing

As part of the study, nearly 2,200 undergraduate and 500 graduate students were surveyed about their housing needs. The survey found student demand for on-campus housing drops after first year and when accessing housing in the community, undergraduates and graduates listed affordability followed by proximity to campus as the two most important factors.

For students with dependents, the study found the University's current family housing facilities are affordable, however these facilities will require renovations and systems replacements within the next decade.

Assessment of purpose-built student housing

Assessments of existing and planned purpose-built student housing in Guelph showed existing purpose-built student housing facilities in the city are currently limited to a few locations and are mostly at the higher end of the price range, which is not aligned with student needs. The median housing cost per person ranges from $901 for a room in a three-bedroom house to $2,139 for a one-bedroom apartment, according to the study.

While there are properties going through the permit approval process now that could add nearly 2,500 student beds in the next few years, the study indicates it will be important to ensure these builds meet student needs in terms of affordability.

"We will continue to focus on collaborations with our municipal and community partners to support the expansion of housing in the city for upper-year students and to find opportunities to ensure future builds will meet students' needs," says Ed Townsley, associate vice-president, ancillary.

Study will inform the University's future housing plans

In terms of replacing or expanding student housing on campus and University-owned lands, the University will be considering the Housing Demand Study along with the Real Estate Strategy and Campus Master Plan, which are both in development, to guide future decisions.

"We recognize that affordable student housing is essential to student success, and we will continue to take a comprehensive and data-informed approach to supporting our students in accessing housing," says Rasheed.

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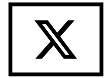
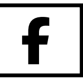

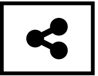

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Ontario Cancer Treatment and Research Foundation v. Ottawa (City of), 1998 CanLII 1255 (ON CA)

Date:	1998-02-12
File number:	c22850
Other citations:	38 OR (3d) 224 — 157 DLR (4th) 38 — 77 ACWS (3d) 645 — 106 OAC 253 — [1998] OJ No 552 (QL) — 45 MPLR (2d) 155
Citation:	Ontario Cancer Treatment and Research Foundation v. Ottawa (City of), 1998 CanLII 1255 (ON CA), <https://canlii.ca/t/6gq5>, retrieved on 2025-04-24

Re Ontario Cancer Treatment and Research Foundation
and Corporation of the City of Ottawa et al.
[Indexed as: Ontario Cancer Treatment &
Research Foundation v. Ottawa (City)]

38 O.R. (3d) 224

[1998] O.J. No. 552

Docket No. C22850

Court of Appeal for Ontario

Finlayson, Osborne and Labrosse JJ.A.

February 12, 1998

Planning -- Development charges -- Cancer Foundation applying for building permit for expansion of treatment facility -- Foundation charged development charge under by-law passed pursuant to Development Charges Act -- Foundation claiming exemption from taxation under Cancer Act -- Development charge a form of taxation -- Component of development charge with respect to hydro services not to be treated differently and also constituting taxation -- Foundation entitled to declaration that it did not have to pay development charge -- Cancer Act, R.S.O. 1990, c. C.1, s. 16 -- Development Charges Act, R.S.O. 1990, c. D.9.

In the summer of 1993, the Ontario Cancer Treatment and Research Foundation (the "Foundation") applied for a building permit to expand its cancer treatment facility. Under Ottawa's Development Charges By-Law (By-law 279-91), which was enacted pursuant to the Development Charges Act ("DCA"), a development charge became payable. The City, however, agreed to provide the

Foundation with a grant equivalent to the City's component of the development charge, leaving payable only the component of the development charge referable to the Hydro-Electric Commission of the City of Ottawa ("Ottawa Hydro"). This portion of the development charge was in the amount of $174,056.

The Ottawa Hydro component of the development charge was one of 11 municipal or hydro-electric services for which development charges provided a means to recover growth-related capital costs. The development charges were not collected to defray the specific capital costs attributable to a particular development, and, under the Ottawa by-law, the moneys collected were allocated to the 11 services in accordance with a schedule to the by-law whether or not a particular development increased the need for any of the listed services. Under the DCA, the development charges could be used only to meet growth-related capital costs and the funds were to be maintained in separate reserve funds. A separate reserve fund was established for the hydro component of the development charge.

The Foundation applied for a declaration that it was exempt from an obligation to pay the development charge because, under s. 16 of the Cancer Act, the property, business and income of the Foundation is not subject to taxation for municipal or provincial purposes. The Foundation's application was granted, and Ottawa Hydro appealed.

Ottawa Hydro's main argument on the appeal was that its component of the development charge was not taxation but a regulatory charge that was a substitute for the capital component of hydro rates which had been charged before Ottawa Hydro, which itself had no authority to impose taxes, had agreed to participate in the development charges scheme.

Held, the appeal should be dismissed.

Per Osborne J.A. (Labrosse J.A. concurring): An analysis of the structure of the Development Charges Act and the City of Ottawa by-law yielded the conclusion that the development charges were a form of taxation. Development charges were substantially similar to the educational development charges that were unanimously held to be a form of taxation by the Supreme Court of Canada in Ontario Home Builders' Assn. v. York Board of Education.

As to determining the character of the Ottawa Hydro component of the charge, the proper approach was to consider the DCA and the Ottawa by-law in their entirety; the hydro component should not be excised from the scheme to determine alone whether or not it was taxation. To narrow the focus of the review to one part of the municipality's development charge would lead to unacceptable fragmentation and instability since a component of one municipality's development charge would be a tax in that municipality but not in another because of the different form of its by-law. The components were part of the whole and should not be divided for purposes of analysis.

Per Finlayson J.A. (dissenting): The trial judge erred in holding that the Ottawa Hydro component of the development charges by-law was taxation. Electrical utility rates cannot constitute taxes since they flow from the province's regulatory power over local works and undertakings set out in s. 92(10) of the Constitution Act, 1867, and the trial judge did not appreciate this legal background in his analysis. The evidence established that the sum charged the Foundation was the incremental capital cost component of the electricity rate to the Foundation. As such, it was an addition to the rate base and it had no relation in law to a tax. The error in the judgment under appeal is that, instead of analyzing the evidence as to how the electrical charges were actually arrived at, the trial judge looked at the scheme of the DCA and the broad parameters therein without recognizing that, within those parameters, there could be levies or charges that were not taxes.

APPEAL from an order of Binks J. (1996), 29 M.P.L.R. (2d) 112 (Gen. Div.), declaring that the Ontario Cancer Treatment and Research Foundation was exempt from payment of a development charge under the Development Charges Act, R.S.O. 1990, c. D.9.

Cases referred to British Columbia (Attorney General) v. Esquimalt & Nanaimo Railway Co., 1949 CanLII 324 (UK JCPC), [1950] A.C. 87 (P.C.); Cariboo College v. Kamloops (City) (1982), 1982 CanLII 544 (BC SC), 18 M.P.L.R. 85, 133 D.L.R. (3d) 241 (B.C.S.C.); CollÃ¨ge d'arts appliquÃ©s et de technologie La CitÃ© collÃ©giale v. Ottawa (City) (1994), 1994 CanLII 7316 (ON SC), 20 O.R. (3d) 541, 119 D.L.R. (4th) 566, 23 M.P.L.R. (2d) 161 (Gen. Div.) [affd (1998), 37 O.R. (3d) 737 (C.A.)]; Guaranty Trust Co. of Canada v. Quality Steels (Canada) Ltd., 1952 CanLII 119 (ON SC), [1953] O.R. 434, [1953] 3 D.L.R. 296 (H.C.J.); Internation Aviation Terminals (Vancouver) Ltd. v. Richmond (Township) (1992), 1992 CanLII 973 (BC CA), 9 M.P.L.R. (2d) 1, 65 B.C.L.R. (2d) 145, 89 D.L.R. (4th) 1, [1992] 4 W.W.R. 550 (C.A.); Lawson v. Interior Tree Fruit & Vegetable Committee of Direction, 1930 CanLII 91 (SCC), [1931] S.C.R. 357; New Mount Sinai Hospital v. Toronto (City), 1973 CanLII 38 (SCC), [1973] S.C.R. 541, 34 D.L.R. (3d) 438; Northwestern Utilities Ltd. v. Edmonton (City), 1929 CanLII 39 (SCC), [1929] S.C.R. 186, [1929] 2 D.L.R. 4; Ontario Home Builders' Assn. v. York Region Board of Education (1993), 1993 CanLII 8458 (ON SC), 13 O.R. (3d) 493, 103 D.L.R. (4th) 55, 15 M.P.L.R. (2d) 1 (Div. Ct.), revd (1994), 1994 CanLII 8710 (ON CA), 17 O.R. (3d) 103, 109 D.L.R. (4th) 289, 19 M.P.L.R. (2d) 1, affd 1996 CanLII 164 (SCC), [1996] 2 S.C.R. 929, 137 D.L.R. (4th) 449, 201 N.R. 81, 4 R.P.R. (3d) 1, 35 M.P.L.R. (2d) 1, 29 O.R. (3d) 320n; Palisade Properties (1985) Ltd. v. Surrey (District) (1991), 5 M.P.L.R. (2d) 206 (B.C.S.C.); Sorokolit v. Peel (Regional Municipality) (1977), 1977 CanLII 1067 (ON SC), 16 O.R. (2d) 607, 78 D.L.R. (3d) 715, 2 M.P.L.R. 249 (Div. Ct.); Reference re Powers of Municipalities to Levy Rates on Foreign Legations & High Commissioners' Residences, 1943 CanLII 39 (SCC), [1943] S.C.R. 208, [1943] 2 D.L.R. 481; Sudbury (Regional Municipality) Development Charges By-law 91-150 (Re) (1993), 30 O.M.B.R. 210; Victoria & Grey Trust Co. v. North Bay (City) (1984), 1984 CanLII 2167 (ON SC), 44 O.R. (2d) 795 (H.C.J.) Statutes referred to Assessment Act, R.S.O. 1970, c. 32, s. 3(7) Cancer Act, R.S.O. 1990, c. C.1, s. 16 City of Toronto Act, 1961-62, S.O. 1961-62, c. 171, s. 1 Constitution Act, 1867, s. 92(2), (9), (10), (13), (16) Development Charges Act, R.S.O. 1990, c. D.9, ss. 1, 3(1), (3), (6), 9, 11, 12, 16(1), 17, 19, 49 Ontario Energy Board Act, R.S.O. 1990, c. O.13, s. 19(3) Rules and regulations referred to R.R.O. 1990, Reg. 267 (Development Charges Act), ss. 3(1), 4(1), (2), 12 Authorities referred to Bonbright, J., et al., Principles of Public Utility Rates (Arlington: Public Utilities Reports, Inc., 1988), pp. 6, 22 Canadian Institute of Resources Law, S.J. Bleckman, ed., Canada Energy Law Service, vol. 1 (Toronto: Carswell, August 1997), pp. 4-9 Hogg, Constitutional Law of Canada, 3rd ed. (Toronto: Carswell, 1994), pp. 29-17, 30-16.1 La Forest, The Allocation of Taxing Power Under the Canadian Constitution (1967), p. 58 Mascarin, J., Annotation to Ontario Home Builders' Assn. v. York Region Board of Education, 35 M.P.L.R. (2d) 1, p. 5 Slack, E., and Bird, R., "Financing Urban Growth Through Development Charges" (1991), 39 Can. Tax Journal 1288, p. 1300

Guy J. Pratte, for appellant, Hydro-Electric Commission of
the City of Ottawa.
Charles T. Hackland and Wayne J. Brynaert, for respondent.

FINLAYSON J.A. (dissenting): -- This is an appeal by the Hydro-Electric Commission of the City of Ottawa ("Ottawa Hydro") from the judgment of the Honourable Mr. Justice Binks of the Ontario Court (General Division). By that judgment, reported (1996), 29 M.P.L.R. (2d) 112, Binks J. granted to the Ontario Cancer Treatment and Research Foundation (the "Foundation") a declaration exempting it from the obligation to pay, in relation to a development at 501 Smyth Road in the City of Ottawa, the Ottawa Hydro portion of development charges in the amount of $174,056 exacted pursuant to the Development Charges Act, R.S.O. 1990, c. D.9 (the "Act"), and Ottawa's By-law 279-91 (the "Development Charges By-Law").

The development charge became payable upon the Foundation obtaining a building permit in the summer of 1993 for the expansion of a cancer treatment facility located at 501 Smyth Road, Ottawa. Neither the land nor the buildings located on the land are owned by the Foundation; rather,

their registered owner is the Ottawa Health Sciences Centre Inc. The Foundation occupies the land as a tenant of the Health Sciences Centre.

On or about October 7, 1993, the Foundation and the City of Ottawa entered into a deferral agreement in relation to the development charge at issue. Pursuant to the terms of the agreement, the parties agreed that the development charge would not be payable until such time as its applicability to the Foundation (including the Ottawa Hydro component whose collection is the City's responsibility) had been lawfully determined.

Subsequently, the City of Ottawa provided to the Foundation a grant equivalent to the City's component of the development charge, thus avoiding the need for litigation. However, Ottawa Hydro decided to proceed with the contemplated litigation in respect of its separate and distinct component of the development charge.

Binks J. held that the development charge in question was, in essence, a tax and that the Foundation was exempted from the payment of the charge by reason of s. 16 of the Cancer Act, R.S.O. 1990, c. C.1, which provides, inter alia, that the Foundation is not subject to taxation in relation to its real and personal property.

The position of the appellant as set out in its factum is that:

(a) the Hydro component of the development charge is a regulatory charge, and not a tax;

(b) in any event, the Development Charges Act expressly overrides any tax exemption contained in the Cancer Act; and, in the further alternative,

(c) the Foundation, as tenant, cannot avail itself of the tax exemption provided in the Cancer Act.

Facts

Ottawa Hydro is a Hydro Electric Commission established under a by-law of the City of Ottawa in 1916. In accordance with the provisions of the then Public Utilities Act and the Power Commission Act, the City of Ottawa delegated to Ottawa Hydro all responsibility for the control and management of the construction, operation and maintenance of all works undertaken by the City for the distribution and supply of electrical power or energy.

Ontario Hydro is responsible for the generation and transmission of electricity to terminal stations jointly operated by Ottawa Hydro and Ontario Hydro. At this point, Ottawa Hydro purchases the electricity from Ontario Hydro at wholesale cost, and distributes it to local consumers of electricity.

Ottawa Hydro is responsible for establishing the rates (as opposed to "taxes", which Ottawa Hydro has no power to impose) charged to consumers for the supply of electricity and for making all decisions relating to expansions or improvements in its distribution network. The rates charged to its customers are Ottawa Hydro's primary source of revenue.

Prior to the enactment of the Development Charges By-Law, Ottawa Hydro prepared annual budgets based on its anticipated revenues and expenses, both operational and capital. With respect to the capital requirements related to its statutory obligation to supply its utility service, Ottawa Hydro was required to anticipate future land development and take the necessary steps to ensure that these areas were adequately serviced when they were ultimately developed. Thus Ottawa Hydro estimated the costs of the infrastructure required to service future developments and incorporated these costs into its annual budget.

Based on the data contained in its annual budget, and the province-wide rate-setting criteria established by Ontario Hydro, Ottawa Hydro calculated the rates it should charge to consumers of electricity in order to offset its expenses. Accordingly, that portion of Ottawa Hydro's incremental capital costs occasioned by new developments was, prior to the Development Charges By-Law in 1991, borne by all consumers of electricity in the form of a rate increase established by Ottawa Hydro.

The Foundation confirmed that it had always paid Ottawa Hydro's rates relating to its consumption of electricity which, prior to 1991, included the same type of capital costs now sought to be recovered through development charges.

While it remains within its power to defray growth-related capital costs by increasing the rates charged to all consumers, Ottawa Hydro's stated position is that it is more equitable to recover these costs, as nearly as possible, from those causing them to be incurred. Therefore, Ottawa Hydro elected to recover its growth-related capital costs by way of development charges, in lieu of assessing these costs against all of its consumers by way of general rate increases. The mechanism afforded by the Act was selected for this purpose.

Under the authority of the Act, the City of Ottawa enacted the Development Charges By-Law in 1991, which imposes a charge against land if the development of the land would increase the need for various services. The Development Charges By-Law distinguishes between two separate components of the development charge, the City of Ottawa component and the Ottawa Hydro component. The charges are set out as Schedules A and B respectively to the Development Charges By-Law.

The evidence before Binks J. was that Ottawa Hydro was exclusively responsible for the calculation of the hydro component of the development charge in Schedule B. Carl Kropp, the General Manager and Chief Engineer of Ottawa Hydro, asserted in affidavit testimony that in order to ensure that the Ottawa Hydro component of the development charges reflected accurately the capital costs which would be incurred by Ottawa Hydro in servicing new developments, it engaged in extensive in-house analysis and relied heavily on the services of C.N. Watson and Associates Limited, a well-respected consulting firm on the subject of development charges.

In calculating the development charge, Ottawa Hydro used only the capital costs occasioned by new development. The operating costs of servicing customers once the infrastructure is installed are specifically excluded and are charged through Ottawa Hydro's general rates, as approved by Ontario Hydro. The rationale is that on a system-wide basis, the operating costs remain more or less constant, regardless of whether they are related to old or new infrastructure. Incremental capital costs, on the other hand, can be more readily attributed to the class of consumer who caused them. It submits that the inclusion of the Ottawa Hydro component in the development charges permits a fairer allocation of costs among Ottawa Hydro's customers on the basis of the rate-making principle known as "cost-causality".

No issue was taken in this court or below as to the propriety of Ottawa creating a separate schedule limited to development charges for Ottawa Hydro nor with the charges themselves as being anything other than what is authorized by the Act. What the Foundation took exception to was the description given by Carl Kropp as to how the charges were arrived at. However, there is nothing to contradict his description and I am satisfied that there can be no argument that the charges embraced the following considerations:

(a) the new development's distance from the transformer station, measured in metres;

(b) the unit costs of the electrical distribution plant given in dollars/megawatt/metre; and,

(c)the magnitude of the new load, measured in kilowatts.

Ultimately, these calculations produced a comprehensive set of charges in relation to the capital costs to be incurred by Ottawa Hydro as a result of a new development. They were adopted by the City of Ottawa and incorporated into the Development Charges By-Law as Schedule B.

With regard to the development at issue, the Foundation has a service consisting of two main switches sized 1,600 A, 347/ 600V. Consequently, pursuant to Schedule B of the Development Charges By-Law, the development charges due and payable to Ottawa Hydro total $174,056.

Since the implementation of the Development Charges By-Law, Ottawa Hydro's capital expenditure budget has reflected anticipated revenues received from the development charges set out in Schedule B. Growth-related capital expenditures are offset by anticipated receipts from development charges such that the budget submitted to Ontario Hydro shows a lower capital requirement, thus reducing the level of the rates which would otherwise be charged to Ottawa Hydro's customers.

Although the City Treasurer is responsible for the collection of the Ottawa Hydro component of the development charge, the funds collected are maintained, on behalf of Ottawa Hydro, in a separate reserve fund (the "Development Charges Reserve Fund -- Ottawa Hydro"), which was established under By-law 281/91. Pursuant to s. 18 of the Development Charges By-Law, the City Treasurer must release to Ottawa Hydro, when demanded by Ottawa Hydro, that portion of the reserve fund required to fund growth-related capital costs. However, only those funds specifically required to fund a growth-related project are released to Ottawa Hydro. Consequently, it is submitted, there is no danger that the funds collected on behalf of Ottawa Hydro will be used for any purpose other than to defray the costs of growth-related capital expenditures necessary for the provision of hydro-electricity for completed projects.

Issue

Although, as indicated above, Ottawa Hydro raised three issues on appeal in its factum, the third ground was abandoned at the opening of argument. I have some difficulty with the proposition advanced by the second ground of appeal, namely, that the general language of the Act can override the express exemption of the Foundation from taxation on real and personal property contained in s. 16 of the Cancer Act. However, if the trial judge was in error in treating the Ottawa Hydro component of the development charges as a tax rather than a rate or charge, this second issue becomes academic. The sole issue then becomes:

> Did the learned trial judge err in holding that the Ottawa Hydro component of the development charge is properly characterized as "taxation" within the meaning of the Ontario Cancer Act?

Analysis

I have set out in some detail the facts relating to the manner in which the Ottawa Hydro development charges were determined because it is apparent to me, with great respect to the learned trial judge, that he misapprehended the evidence of Carl Kropp on this issue. While Kropp was cross-examined on his affidavit, I have not been shown where he altered his evidence in any material way. On its face, his testimony is no more than it purports to be, a straightforward description as to how the capital component of the electrical utility charges was determined for this specific new customer. The calculation of the capital cost of the installation of additional plant and equipment to provide this utility service is traditional to accepted methods of rate determination. On the face of this evidence, one can only conclude that the Ottawa Hydro component of the development charges to the Foundation was the incremental capital cost component of the electricity rate to the Foundation. As such, it is an addition to the rate base of Ontario Hydro and has no relation in law to a tax.

A feature of public utility regulation is the principle that utilities may not operate at a profit. Rather, one of the tenets of ratemaking is the provision of services at cost, a measurement which includes a reasonable rate of return reflecting the net capital requirements of the public utility. Public utility rates must be sufficient to meet current operating costs as well as costs to replace and acquire capital necessary for the service of the utility to consumers: see J. Bonbright et al., Principles of Public Utility Rates (Arlington: Public Utilities Reports, Inc., 1988) generally and particularly at pp. 6 and 22.

The starting point for an analysis of the mechanics of ratemaking begins with the notion that public utilities, given their special status, must function within a standard of reasonableness in rate setting: see Bonbright, supra, at ch. 10. The presumption which surfaces in the context of adjudication at rate hearings is that rates should reflect attempts at utility cost recovery. Public utilities strive not to operate beyond cost recovery, and rates to consumers are calculated in light of a public utility's rate base and specific return with respect to that rate base.

The rate base, simply stated, is the "amount of investment on which a regulated utility is entitled to a fair rate of return": see Canadian Institute of Resources Law, S.J. Bleckman, ed., Canada Energy Law Service, vol. 1 (Toronto:
Carswell, August 1997) at pp. 4-9. The amount of investment reflects the value of the utility's assets that are used to provide services. Scholarly attention has focused on the various components of a utility's assets which are included or excluded from the assets of the utility for the purposes of rate base calculation. The determination of rate base is guided by formulae present in the legislation that governs particular utilities, as in s. 19(3) of the Ontario Energy Board Act, R.S.O. 1990, c. O.13, as amended, which provides that rate base includes a reasonable allowance for the cost of the property that is used or useful in serving the public less certain amounts, plus a reasonable allowance for working capital: see also Northwestern Utilities Ltd. v. Edmonton (City), 1929 CanLII 39 (SCC), [1929] S.C.R. 186, [1929] 2 D.L.R. 4, for a similar definition of rate base. It should be noted that the Ontario Energy Board has advisory powers with respect to Ontario Hydro, and the Board of Directors of Ontario Hydro establish electricity rates after considering the suggestions of the Ontario Energy Board, among other factors influencing their decision-making process. As a result the determination of rate base, within the meaning of the Ontario Energy Board Act, is applicable for Ontario Hydro for purposes of rate setting.

From the above perhaps oversimplified account of rate-making principles, it follows that these hydro charges are utility rates and not taxes. A public utility is only entitled to recover its costs in its rates, those costs including a reasonable rate of return on the utility's capital investments, and as such these rates are charges and not taxes. Taxes are of more general application and are intended to raise revenues:
see Peter Hogg, Constitutional Law of Canada, 3rd ed. (Toronto:
Carswell, 1994) p. 30-16.1 and infra. Indeed, it has long been recognized that electrical utility rates cannot constitute taxes since they flow from the provinces' regulatory power over local works and undertakings set out in s. 92(10) of the Constitution Act, 1867: see Hogg at p. 29-17. This is so notwithstanding that utility rates may be added to the municipal tax roll and collected as "taxes": see Victoria & Grey Trust Co. v. North Bay (City) (1984), 1984 CanLII 2167 (ON SC), 44 O.R. (2d) 795 at pp. 799-800 (H.C.J.), and Guaranty Trust Co. of Canada v. Quality Steels (Canada) Ltd., 1952 CanLII 119 (ON SC), [1953] O.R. 434 at pp. 444-45, [1953] 3 D.L.R. 296 (H.C.J.).

Unfortunately, the trial judge did not appreciate this legal background in his analysis. In his reasons he stated at p. 114:

> There was evidence by affidavit that the quantum of development charges was reached by a complicated formula. The development charges applicable to a new development are not based on the capital cost incurred in providing electricity to that development, but instead by another

> method entirely, and this calculation may not be the same as those utilized by other municipalities which have enacted development charge by-laws.
>
> The development charges paid by subscribers pursuant to the by-law are placed in a general fund, and held in trust for Ottawa Hydro by the Municipality. Furthermore, there is no direct correlation between the development charges rendered on a project and the recovery of those specific charges by Ottawa Hydro.

The trial judge then canvassed the case-law defining a "tax", and concluded that the Ottawa Hydro component of the development charges was a tax, and then summarily concluded that the Foundation was exempt from the development charges.

With great respect to the trial judge, the above-quoted reasons do not reflect an analysis of the evidence as to how Schedule B was arrived at by Ottawa Hydro. The reasons reflect the generality of development charges authorized by the Act. Very clearly, the development charges determined by Ottawa Hydro in Schedule B are the incremental capital costs incurred by Ottawa Hydro in providing electricity to the Foundation. These charges are attributed directly to the Foundation as the incremental capital component of the utility rate for the delivery of electricity to it as a customer. In the result, the Foundation is billed when service commences at the blended rate of capital and commodity charges billed to equivalent users prior to the construction of its new facility. These incremental capital costs may be calculations based on historical costs but, as with all such rate-making calculations, they become current and very real when they are collected from the Foundation through the mechanism provided by the Development Charges By-Law after the installation of the specific equipment that enables Ottawa Hydro to effect delivery to the Foundation of its utility service, namely electricity. To the extent that the above-quoted reasons of the trial judge constitute a finding of fact as to how the development charges in issue were determined, they constitute palpable and overriding error.

With respect to the legal categorization of these charges as taxes, the trial judge relied, in part, on the judicial reasoning from Ontario Home Builders' Assn. v. York Region Board of Education in the Divisional Court (1993), 1993 CanLII 8458 (ON SC), 13 O.R. (3d) 493, 103 D.L.R. (4th) 55, and in the Court of Appeal for Ontario (1994), 1994 CanLII 8710 (ON CA), 17 O.R. (3d) 103, 109 D.L.R. (4th) 289. This case was later heard and decided by the Supreme Court of Canada (1996 CanLII 164 (SCC), [1996] 2 S.C.R. 929, 137 D.L.R. (4th) 449). In this court, Foundation relies on the Divisional Court judgment ((1993), 13 O.R. (3d) 493) which concluded that the education development charge passed under a by-law enacted pursuant to Part III of the Act is a tax and falls squarely within the exemption provided to the foundation by s. 16 of the Cancer Act. The Divisional Court's characterization of these charges as a tax was undisturbed, indeed it was not discussed, in the later decisions of this court and the Supreme Court of Canada.

It is important to recognize that by the time Home Builders' reached the level of the Supreme Court of Canada, the parties had accepted the initial classification of the Divisional Court below that the education development charges were taxes. The Divisional Court concluded that they were indirect taxes and therefore ultra vires the province as contrary to s. 92(2) of the Constitution Act, 1867. The Court of Appeal agreed that they were indirect taxes but reversed the Divisional Court because the taxes were ancillary or adhesive to a regulatory scheme falling within provincial responsibility under one or more of s. 92(9), (13) and (16) of the Constitution Act, 1867.

By the time the matter reached the Supreme Court of Canada, the issue appeared to be framed as a constitutional argument as to whether they were indirect taxes (and thus ultra vires the legislative competence of the province) or direct taxes (and thus intra vires). The majority judgment was delivered by Iacobucci J. on behalf of himself and four members of the court. He held that the education development charges were indirect taxes and thus ultra vires provincial competence under s. 92(2) of the Constitution Act, 1867. However, the education development charges scheme,

composed of a related group of statutes governing land development in Ontario, were ultimately intra vires the province as ancillary to a valid regulatory scheme for the provision of educational facilities as a component of land use planning, pursuant to s. 92(9) (licences to raise money), (13) (property and civil rights) and (16) (matters of a local nature) of the Constitution Act, 1867. In so holding, he made it clear that the justification for the imposition of these indirect taxes was that the educational development charges scheme is limited in scope and operates solely so as to defray the costs of regulation.

La Forest J., for the minority consisting of himself and three other judges, concurred in the result but held that the taxes were intra vires the province because they were taxes on land and therefore direct taxes.

The only reported discussion in Home Builders' respecting the threshold issue whether educational development charges imposed pursuant to Part III of the Act were taxes at all, took place in the Divisional Court before a panel consisting of O'Driscoll, White and McKeown JJ. That court was faced with an application, brought by the Ontario Home Builders' Association and others, to quash by-laws passed by the respondents, certain school boards, which imposed educational development charges. The case considered the constitutional validity of the impugned by-laws. To that extent, the case is not relevant. However, the Divisional Court's consideration of the scheme of imposing and calculating educational development charges is relevant because both the Court of Appeal and Supreme Court did not consider whether they were taxes per se, implicitly accepting the Divisional Court's conclusion on that point.

The majority reasons as to the characterization of the educational development charges were delivered by McKeown J. He made the following analysis of these charges at pp. 497-99:

> Part III of the Development Charges Act gives school boards the authority to pass by-laws that impose education development charges. Section 30 is the operative section and provides that an education development charge is imposed "against land undergoing residential and commercial development" (emphasis added) where that development will give rise to the need for new schools directly attributable to it. Section 29 of the Development Charges Act defines an education development charge as:
>
>> "education development charge" means a development charge imposed under a by-law passed under section 30 respecting growth-related net education capital costs incurred or proposed to be incurred by a board;
>
> Where residential and commercial development gives rise to a need for new schools directly attributable to land development, this is known in s. 29, Part III of the Development Charges Act as a "growth-related net education capital cost". "Growth-related net education capital cost" is calculated pursuant to a statutory and regulatory formula whereby the public or separate school board that wishes to impose an education development charge shall:
>
>> (1) estimate what new school facilities will be needed as a consequence of the development and the cost of these facilities;
>>
>> (2) calculate the amount chargeable to each new home so that it can be expressed and levied on a per-unit basis at the time each building permit is issued; and
>>
>> (3) submit a proposal for anticipated capital needs and an estimate of the education development charge to the Minister of Education for review and approval.
>
> Once the education development charge is approved by the Minister of Education, the board may pass the by-law pursuant to Part III of the Act. The municipality then becomes the collector of the charge pursuant to the Development Charges Act and the charge is payable on a per-unit

> basis when a building permit is issued (s. 35(3)). If two or more boards in the same area pass by-laws, then both charges must be paid when the permit is issued. An account is then established, or a joint account if two or more boards levied the charges and the money is deposited into that account. No money can be withdrawn from this account unless the actual project (as opposed to the estimate made in contemplation of the by-laws described above) is given final approval by the Minister of Education.
>
> Ontario Regulation 722/89 sets out the methodology that school boards must follow to ascertain their eligibility for education development charges and to calculate them. When a school board calculates a proposed education development charge, it cannot include the capital costs associated with renovating schools for existing pupils, or building schools for existing pupils currently accommodated in portables or bussed to distant schools. The projected capital costs must be based on the board's projection of the number of new pupils that it anticipates will be entitled to education within its jurisdiction as a result of the new development.

McKeown J. further considered the nature of levies imposed by a province generally and held as follows at p. 505:

> It is well understood that not every levy imposed by a province is "taxation" within the meaning of s. 92(2). The distinction between "taxation" and "charge" is that the latter is money collected to defray the cost of specific services rather than to raise revenue for general purposes. As Peter Hogg concluded, in his book, Constitutional Law of Canada, 2nd ed. (Toronto: Carswell, 1985), at p. 613:
>
>> These charges are not necessarily taxes, and if they are not they need not be direct. They are not taxes if they can be supported as regulatory charges imposed under one of the province's regulatory powers . . . These can be supported as regulatory charges if they are taken in payment for a specific governmental service, and if they bear a reasonable relation to the cost of providing the service,
>> -- whether it be the issue of a licence . . . the provision of a bridge, or the supply of water. These charges are not taxes because their purpose is to defray expenses, not to raise revenue.

The definition of "development charge" in Part I of the Act is virtually the same as that of "educational development charge" in Part III except that it is not restricted to education and refers to net capital costs that are incurred by the municipality or a local board thereof. The definitions are identical in that they permit the recovery as charges of "costs incurred or proposed to be incurred". Accordingly there appears to be no objection to having the municipality determine what actual costs are to be charged where such a determination is feasible. When the latter is done, it would appear from comments made as obiter by McKeown J. that the characterization of the charge may well be different. He stated at p. 506:

> However, we should point out that, while everyone taking up residence in the new land development will use sewers and side-walks, not everyone will use the schools. It is not enough to say that every homeowner benefits indirectly through potential capital appreciation: Howay v. Caradoc
> (Township) (1991), 6 M.P.L.R. (2d) 70 (Ont. Gen. Div.) at p. 73. Furthermore, a review of Parts I and II of the Development Charges Act shows that the municipality is regulating the development industry, whereas in Part III of the Act, the municipality through its local school boards is levying a charge or tax and is making no attempt to regulate the schools. There is nothing in Part III, or the regulations passed pursuant thereto, regulating schools. The Act and regulations set out how to levy and calculate a charge, when the charge expires, and how to collect it.

McKeown J. further held that at p. 507:

> While schools are an integral part of community life, they are no more services akin to sewers and waterlines than are courts and post offices. It is not useful to compare the construction of schools to the provision of direct municipal services that the community requires in order to function on a daily basis. Schools are not like street lights that perform one function, a physical function. We no more view our schools in such a way than we do our criminal courts, hospitals or the town hall . . . While this charge may not be imposed to "raise revenue for general purposes" as conventionally understood, it is much closer in nature to a tax for raising revenue than it is to a charge to defray costs.

These comments can be taken to suggest that McKeown J. would not have made the same finding had he been faced with a levy for "direct municipal services". McKeown J. appeared prepared to accept that certain levies for municipal services may be properly characterized as charges. With this in mind, it appears that McKeown J. did not wish that the scope of his reasoning should extend to development charges generally. Rather, it suggests that the scope of his reasoning should not extend to the hydro component in the case in appeal because it is very much like those municipal services that are used by the community on a daily basis. In our case, the hydro component of the development charge comprises the cost to the development of two switches which are required for the operation of the Foundation; this is not an anticipated cost based on usual municipal requirements, but is as a determination of the actual needs of the development.

Moreover, McKeown J. concluded that the cases which held that a levy is a charge in the context of non-constitutional cases are not dispositive in constitutional cases. The present appeal is not as a constitutional case. As a result, the cases which concluded that a levy is as a charge, such as Cariboo College v. Kamloops (City) (1982), 1982 CanLII 544 (BC SC), 18 M.P.L.R. 85, 133 D.L.R. (3d) 241 (B.C.S.C.), are still instructive.

In essence, the decision in this case will depend on the characterizations of the administration of the development charges regime in the City of Ottawa. The Foundation argues that this is an improper inquiry. It submits that the question of whether development charges constitute taxation must be answered by reviewing the legislative scheme that authorizes the passage of the operative by-law, not by considering the by- law itself. According to the Foundation, the appeal involves, in part, the characterization of the province-wide enabling statute which authorizes the imposition of a scheme of taxation to raise revenue for capital construction of public works and facilities. If this is correct, the submission is that it is irrelevant how Ottawa calculates and administers its development charges program.

I think that the Foundation is wrong on this point. The question on appeal seeks to determine whether the Ottawa Hydro component is a charge or a tax. To do so, it is necessary to consider how the charge is measured and collected. This must be specific to the Development Charges By-Law of the City of Ottawa. The implication of this is that future litigation would arise whereby municipalities and hydro authorities are tested as to their particular administrative mechanisms in place. This may be so, but there are no constitutional impediments to what the City of Ottawa has done and the Foundation has not raised any objections to the decision of the City to isolate the hydro charges from the other development charges and set them out as Schedule B. Certainly the concept that Ottawa Hydro's ratepayers should be spared the incremental capital costs of providing service to new developments is fully within the spirit of the Act.

While I do not think that the fact that the Development Charges By-Law was passed under Part I of the Act as opposed to Part III has any significance to the outcome of this appeal, it is clear that the courts in Home Builders' were not dealing with electrical rates per se. It is also clear that, historically, utility rates have not been considered as taxes by the courts and we have not been referred to any authority which suggests that there is movement away from this traditional approach. I include in this observation, the Home Builders' case. In my opinion, the error in the judgment under appeal is that instead of analyzing the evidence of Kropp as to how the Ottawa

Hydro charges in Schedule B were arrived at, the trial judge looked at the scheme of the Act and the broad parameters therein set forth for the determination of development charges in general, without recognizing that within those parameters there could be levies or charges that were not taxes.

Disposition

For the reasons set out above, I would allow the appeal, set aside the judgment below and in its place substitute a judgment dismissing with costs the application by the Foundation for a declaration that it is not subject to the development charges set out in Schedule B to the Development Charges By-Law. Ottawa Hydro is entitled to its costs of this appeal.

OSBORNE J.A. (LABROSSE J.A. concurring): -- I have had the advantage of reading the reasons for judgment of my colleague Finlayson J.A. He has concluded the hydro component of the City of Ottawa's development charge is not a tax and that the exemption from taxation claimed by the respondent ("Cancer Foundation") provided by s. 16 of the Cancer Act, R.S.O. 1990, c. C.1, is thus not engaged. I have reached a different conclusion. In my view, Part I, Development Charges ("DC"), imposed under the Development Charges Act, R.S.O. 1990, c. D.9 (the "DCA"), are taxes that come within the ambit of s. 16 of the Cancer Act, with the result that the Cancer Foundation is exempt from this form of taxation. Thus, I think that the appeal should be dismissed. What follows are my reasons for reaching that conclusion.

Overview

I think that the central question is whether DCs imposed under Part I of the DCA constitute taxation. In my view, the answer to that question is, yes. I reach that conclusion on the basis of my analysis of the structure of the DCA and the City of Ottawa by-law passed under the authority of that Act. I am supported in my conclusion by the Supreme Court of Canada's judgments in New Mount Sinai Hospital v. Toronto (City), 1973 CanLII 38 (SCC), [1973] S.C.R. 541, 34 D.L.R. (3d) 438, and Ontario Home Builders' Assn. v. York Region Board of Education, 1996 CanLII 164 (SCC), [1996] 2 S.C.R. 929, 137 D.L.R. (4th) 449. I will refer in more detail to both cases later. For now, I note that in Ontario Home Builders' the Supreme Court of Canada unanimously agreed that education development charges ("EDC") (dealt with in Part III of the DCA) are taxes. The only difference of opinion within the Supreme Court of Canada was on the issue whether the EDC was a direct or indirect tax. I see no difference in substance, or principle, between EDCs and DCs for purposes of determining whether DCs are taxes.

In my opinion, it is the DCA scheme, not what the City of Ottawa, or Ottawa Hydro, does with the relevant DCs, or what the DCs replace, that is significant in the required analysis. The DCA contemplates a DC payment to cover all service areas listed in the municipal corporation's development charge by-law ("DCB"). The service area (electrical) provided by Ottawa Hydro is but one of the service areas listed in that by-law. The payment of a DC is triggered by a list of statutory development-related events, one of which is the issuance of a building permit. It is the payment of the DC, made under the authority of the DCA and in this case the City of Ottawa DCB, that I think must be considered to answer the question whether that payment is the payment of a tax for purposes of s. 16 of the Cancer Act.

My colleague has referred to some of the evidence that was before the motions judge, Binks J., and I will thus limit my references to the evidence to aspects of it that I think are important to give some reasonable factual context to my analysis. That analysis must begin with a consideration of the DCA.

The Development Charges Act

The applicable version of the DCA was given third reading on November 22, 1989 and proclaimed into force on November 23, 1989. It was intended to bring uniformity and order into development -- growth-related municipal costs. The DCA replaced, among other things, the existing lot levy system. By late 1989 lot levies had increased substantially, as municipal corporations grappled with reduced grants and increased growth- related costs and it was thought, at a political level, that a new system had to be devised to permit municipalities to recover growth-related capital costs. The new system is set out in the DCA. The underlying economic philosophy of the DCA is that growth (development) should pay for the infrastructure costs that it generates. Such costs, generally speaking, should not be borne by existing residents. The purpose of DCs was described in this way by the Ontario Municipal Board in Sudbury (Regional Municipality) Development Charges By-law 91-150 (Re) (1993), 30 O.M.B.R. 210 at p. 223:

> If the Board looks at the purposes of development charges, it is to provide a pool of funds which allows the capital expenditures required by development to be borne by those people who will benefit from the services and not to impose the capital costs for developments on the whole of the municipality. The method by which the municipality has determined to collect these fees is that they are payable when a building permit is obtained. It is the building permit which triggers the collection of the taxes or charge. In most circumstances, this provides for an equitable collection of the development charge on the property.

The DCA is divided into four parts. Part I concerns the municipal DCs, which are of concern in this case, Part II front-end payments, Part III education development charges, and Part IV general provisions.

I set out below sections of the DCA that I think are relevant for the purposes of this appeal:

1. In this Act,

> "capital cost" means costs incurred or proposed to be incurred by a municipality or a local board thereof directly or under an agreement,
>
> > (a) to acquire land or an interest in land,
> >
> > (b) to improve land,
> >
> > (c) to acquire, construct or improve buildings and structures,
> >
> > (d) to acquire, construct or improve facilities including,
> >
> > > (i) rolling stock, furniture and equipment, and
> > >
> > > (ii) materials acquired for circulation, reference or information purposes by a library board as defined in the Public Libraries Act, and
> >
> > (e) to undertake studies in connection with any of the matters in clauses (a) to (d)
>
> required for the provision of services designated in a development charge by-law within or outside the municipality, including interest on borrowing for those expenditures under clauses (a), (b), (c) and (d) that are growth-related;
>
> "development charge" means a charge imposed with respect to growth-related net capital costs against land under a by-law passed under section 3;
>
> "development charge by-law" means a by-law passed under section 3;

"growth-related net capital cost" means the portion of the net capital cost of services that is reasonably attributable to the need for such net capital cost that results or will result from development in all or a defined part of the municipality;

"local board" means a local board as defined in the Municipal Affairs Act, other than a board defined in subsection 30(b);

"net capital cost" means the capital cost less capital grants, subsidies and other contributions made to a municipality or that the council of the municipality anticipates will be made, including conveyances or payments under sections 42, 51 and 53 of the Planning Act, in respect of the capital cost;

"services" means services designated in a development charge by-law or in an agreement under section 21, as applicable;

3(1) The council of a municipality may pass by-laws for the imposition of development charges against land if the development of the land would increase the need for services and the development requires,

(a) the passing of a zoning by-law or of an amendment thereto under section 34 of the Planning Act;

(b) the approval of a minor variance under section 45 of the Planning Act;

(c) a conveyance of land to which a by-law passed under subsection 50(7) of the Planning Act applies;

(d) the approval of a plan of subdivision under section 51 of the Planning Act;

(e) a consent under section 53 of the Planning Act;

(f) the approval of a description under section 50 of the Condominium Act; or

(g) the issuing of a permit under the Building Code Act in relation to a building or structure.

. . . . .

(3) A by-law passed under subsection (1) shall,

(a) designate those uses of land, buildings or structures upon which a development charge shall be imposed;

(b) designate the areas within which a development charge shall be imposed;

(c) establish the development charge, or the schedule of development charges, to be imposed in respect of the designated uses of land, buildings or structures; and

(d) designate services for which a development charge may be imposed.

. . . . .

(6) No land, except land owned by and used for the purposes of a board as defined in subsection 30(6) or a municipality, is exempt from a development charge under a by-law passed under subsection (1) by reason only that it is exempt from taxation under section 3 of the Assessment Act.

. . . . .

9(1) A development charge is payable on the date a building permit is issued in relation to a building or structure on land to which a development charge applies.

> (2) Despite any other Act, a municipality is not required to issue a building permit in relation to a building or structure on land to which a development charge applies unless the development charge has been paid.

. . . . .

11. A municipality that has passed a development charge by- law may register the by-law or a certified copy of it on the land to which it applies.

12(1) If the development charge or any part thereof imposed by a municipality, other than an upper tier municipality, remains unpaid after the due date, the amount unpaid shall be added to the tax roll and shall be collected as taxes.

> (2) If the development charge or any part thereof imposed by an upper tier municipalities remains unpaid after the due date, the treasurer of the upper tier municipality shall certify to the treasurer of the area municipality in which the land is located that the amount is unpaid and the amount unpaid shall be added to the tax roll of the area municipality and shall be collected as taxes.

. . . . .

16(1) Payments received by a municipality under this Part shall be maintained in a separate reserve fund or funds and shall be used only to meet growth-related net capital costs for which the development charge was imposed.

. . . . .

17. The treasurer of the municipality shall, in each year, on or before such date as council may direct, furnish to the council a statement in respect of each reserve fund established under section 16 containing the information prescribed.

. . . . .

19. The Lieutenant Governor in Council may make regulations,

> (a) prescribing, for the purposes of section 3, the manner in which development charges shall be calculated;

. . . . .

> (c) prescribing, for the purposes of section 3, those services for which development charges shall not be imposed;

. . . . .

49. In the event of a conflict between this Act and any other general or specific Act, this Act prevails.

A DC is a charge imposed with respect to growth-related net capital costs under a municipal by-law passed under the authority of s. 3(1) of the DCA. Growth-related net capital costs is that part of "the net capital cost of services that result or will result from development". "Services" is not

defined in the DCA or the regulations. I will return to the matter of municipal "services" when I consider the City of Ottawa's DCB. For now, I note that it is the growth-related capital cost of "services" identified in the municipality's DCB that attract DCs.

Under the authority provided in s. 3(1) of the DCA, the council of a municipality may pass by-laws providing for the imposition of DCs against land if the development of the land would increase the need for services, and if the development requires any one of the seven development-related steps set out in s. 3(1)(a) to (g). One development-related triggering event is the issuance of a building permit.

The collection of DCs is governed by ss. 9, 10 and 12 of the DCA. All that needs to be said about this subject is that a DC is payable when a building permit is issued for a development (such as the Cancer Foundation extension) on land to which the DC applies (s. 9(1)). The municipality is not required to issue a building permit until the applicable DC has been paid (s. 9(2)). A municipality that has passed a DCB may register it on the land to which it applies and if the DC, or any part of it, remains unpaid the unpaid DC is added to the tax roll and may be collected as taxes (ss. 11, 12(1) and (2)).

The municipal treasurer is responsible for collecting DCs and must annually provide the municipal council with a statement in respect of every DC reserve fund established under the DCA and the municipality's DCB.

Neither Part I of the DCA nor its Regulation 267, R.R.O. 1990 ("Regulation"), set out in any detailed way how DCs are to be calculated. Instead, the Regulation prescribes somewhat broad principles which must be followed in calculating DCs. Section 3(1) of the Regulation requires the municipality to base its calculation of DCs on the provision of services at standards no higher than the standards at which those services were provided at the time the by-law is passed or have been provided at any time in the preceding 10 years.

Section 4(1) of the Regulation requires that the calculation of DCs be based on growth-related net capital costs for a period not exceeding ten years from the date that the DCB comes into force. Section 4(2) of the Regulation provides that DCs for water supply services, sanitary sewer services, storm drainage surfaces, transportation services, and waste disposal services may be based on estimated growth-related net capital costs for a period exceeding ten years.

Under s. 16 of the DCA, DCs received by the municipality must be maintained in a separate reserve fund or funds. Section 16 provides that DCs can be used only to meet growth-related net capital costs for which the DC was imposed. Section 12 of the Regulation requires the municipal treasurer to include in the information contained in his annual statement the amount of DCs that were refunded or "allocated to other services" (s. 12, para. 4). This suggests that a municipality may spend DCs, deposited as required in a reserved fund, in other service areas set out in the DCB. The municipality's flexibility depends upon the by-law. I will return to this subject shortly.

In summary, DCs are collected for the general public purpose of regulating and providing for the growth-related net capital costs assumed to be created by development. They are not collected to defray the specific capital costs attributable to a particular development. The hydro component of the City of Ottawa's DC, if paid by the Cancer Foundation, would not necessarily be spent on paying capital costs attributable to the Cancer Foundation's expansion. The DCA allows for DCs to be imposed through the municipality's DCB on the basis of a prediction of growth-related net capital costs of future development. The prediction is based on a calculation not prescribed in the Act or its regulations, however, it will necessarily be somewhat imprecise and not directly site specific.

The City of Ottawa Development Charges Act By-Law

On November 6, 1991, the City of Ottawa passed By-law 279-91, the City's DCB, under the authority of s. 3(1) of the DCA. The preamble in the by-law contained five recitals, two of which I think go to make clear the underlying assumption in the by-law is that "development" will increase the need for services:

> Whereas the Development Charges Act, 1989, S.O. 1989, c. 58 authorizes municipalities to pass by-laws for the imposition of charges against land or the development of the land would increase the need for services.
>
> . . . . .
>
> And whereas development will increase the need for municipal services.

(Emphasis added)

This approach is consistent with the philosophy of the DCA -- growth will increase municipal infrastructure costs and growth should pay for the capital costs that it generates. The Ottawa DCB follows the structure suggested by the DCA and its regulations. The by-law applies to all land in the City of Ottawa, apart from that land that is exempted by s. 11 of the by-law. It prohibits the development of land except in accordance with the by-law and provides that DCs collected under the by-law shall be used for 11 specified municipal and hydro-electric services. The services are:

(a) fire stations, vehicles and equipment;

(b) police facilities and equipment;

(c) storm sewer systems;

(d) sanitary sewer systems;

(e) highways, including sidewalks;

(f) parkland development;

(g) community activity and sports and recreation facilities;

(h) library facilities;

(i) cultural facilities;

(j) services provided by Ottawa Hydro;

(k) administrative services in the corporation and Ottawa Hydro relating to the services referred to in subsections (a) to
(j) above.

As is evident, "services provided by Ottawa Hydro" is but one of the listed service areas. The City of Ottawa's DCB provided that the method of calculation of the DC be in accordance with the "rates" set out in Schs. A and B annexed to the by-law (see By-law 279/91, ss. 3, 5 and 6). The by-law makes it clear that the DC payable is the total of the City of Ottawa's component of the DC, which includes all identified services, except hydro, plus the hydro component. Schedules A and B of the by- law set out how the applicable DC is to be calculated (Sch. A for the City of Ottawa services component, and Sch. B for the Ottawa Hydro service component).

The calculation of the City of Ottawa DC component for a residential development, set out in Sch. A, is based on habitable floor area. For example, construction of a single detached dwelling

containing 102 square metres, or more, of habitable floor area required a DC payment of $2,242 in the April 1, 1992 to March 31, 1993 period. Schedule A ratchets the DC upward in each year of the five-year life span of the by-law with the result that construction of the same single-family detached dwelling required a DC payment of $3,417 in 1995. For a single or two-unit residential dwelling, the Ottawa Hydro component of the DC, set out in Sch. B, is a flat rate of $479 per unit. For a row dwelling, the Ottawa Hydro DC component is $335 per unit.

For a non-residential development, such as the Cancer Foundation building, Sch. A provides that the DC, referable to all services but Ottawa Hydro, is $16.15 per square metre of gross floor area. This part of the DC is not in issue because the City of Ottawa gave the Cancer Foundation a grant in an amount equal to the non-hydro component of the DC.

The hydro component of the DC for a development such as that undertaken by the Cancer Foundation is calculated on the basis of three identified criteria: the distance of the development from the transformer station, the unit cost of the electrical distribution plant, and the magnitude of the new load. Mr. Kropp, who gave evidence in this matter for Ottawa Hydro, stated that Ottawa Hydro resorted to averaging and predicting, consistent with the principles of rate making, in its calculation of all of the component elements of the Ottawa Hydro DC. Thus, two identical facilities, like the Cancer Foundation building, built with identical switches, would attract the same DC, even though one of them was much further from the transformer station than the other. As Finlayson J.A. has correctly noted, no issue is taken with the calculation, or the method of calculation of the Ottawa Hydro component of the DC attracted by the Cancer Foundation's application for a building permit for its expansion. I refer to the calculation of DCs under the City of Ottawa's DCB only to note the capital cost assumptions that underlie the calculation of DCs and to explain that the growth-related capital costs are not truly site specific. As I have said, the DCA scheme assumes and predicts that development will give rise to growth-related municipal infrastructure costs in all of the service areas (including Ottawa Hydro) set out in the by-law.

Section 21(2) of the Ottawa DCB provides that DCs collected pursuant to the by-law shall be allocated in accordance with Sch. C, which is a part of the by-law. That schedule provides a percentage allocation of DCs paid under the by-law. For example, under Sch. C for a building such as the Cancer Foundation building, 31.59 cents of each DC dollar would be allocated to transportation, 11.60 cents to administration and 2.62 cents to libraries. Each of the ten service areas is given a prescribed share of the DC dollar. This allocation will occur whether or not a particular development increases the need for transportation facilities, administration or libraries (or any of the other identified service areas).

The Ottawa Hydro service component is set apart in Sch. C of the by-law. The percentage allocation of all services except Ottawa Hydro totals 100 per cent and is referred to in the schedule as "City subtotal". "Electrical", that is Ottawa Hydro, is separately allocated as 100 per cent.

Section 17 of the Ottawa DCB requires the municipal treasurer to maintain a separate reserve fund for that part of the DC attributable to hydro-electric services as set out in Sch. B. The by-law makes no reference to a separate reserve fund or funds for the non-hydro part of the DC; however, Ottawa's municipal council passed two further by-laws on November 6, 1991, By-laws 280/91 and 281/91. By-law 281/91 is in the material. By-law 280/91 is not. By-law 281/91 provided that DCs deposited in the Ottawa Hydro reserve fund shall be used to pay DCs "for the growth-related portion of net capital costs for which the development charges were imposed to the extent there exists a positive balance in the fund intended for that purpose".

By-law 280/91 (which I have reviewed since it is a public document) completes the DCA circle by creating a reserve fund for all other, that is non-hydro, services set out in Ottawa's main DCB, "segregated according to Schedule A attached hereto". Schedule A attached to By-law 280/91 contains the same breakdown of service elements that are in the City of Ottawa's main DCB.

In the final analysis, through its three November 6, 1991 by- laws, the City of Ottawa established two reserve funds, one for DCs related to all of the identified services elements except hydro, and the other for hydro.

Analysis

The appellant submits that the central issue is whether the hydro component of the DC imposed on the Cancer Foundation is properly characterized as taxation for purposes of s. 16 of the Cancer Act.

The appellant contends that the hydro component of the DC is a regulatory charge, not a tax. In support of its position, it points to the existence of the separate reserve fund for the hydro component of the DC and restrictions imposed by the by- law on the use of DCs in that reserve fund.

The appellant notes that the hydro component of the DCs can only be used for future growth and hydro-related net capital costs, not for a general public purpose. The appellant also looks to the manner in which Ottawa Hydro defrayed its capital costs before November 1991, when the City of Ottawa opted into the DCA scheme. The appellant submits that Ottawa Hydro has done no more than to choose to recoup its growth-related infrastructure costs by DCs, instead of by hydro rates. Since the capital component of the pre-DCA hydro rates (paid by all ratepayers) was not a tax, the appellant submits that the substitute -- the hydro component of the DC -- is not a tax. The appellant contends that these features of the DCA and the City of Ottawa DCB support its submission that the hydro component of the DC is a regulatory charge, not a tax.

I agree with the appellant that not every charge or levy imposed by the province constitutes taxation. I do not, however, agree that the question to be answered is whether payment of the hydro component of the DC constitutes payment of a tax. Moreover, I do not think that the limited use that can be made of the hydro component of the DC is determinative. This approach ignores the other service areas in the by-law and focuses the analysis entirely on the hydro component of the DC. As I have said, I think that the issue should be cast more broadly. I do not agree that since the hydro component of the DC became the substitute for the capital component of the pre- November 6, 1991 hydro rates, it follows that the hydro part of the DC is a rate, not a tax. Indeed, because I frame the issue differently, I think that if there is to be a before and after comparison, it should focus on lot levies and DCs. DCs replaced lot levies; lot levies were a form of taxation: see Palisade Properties (1985) Ltd. v. Surrey (District) (1991), 5 M.P.L.R. (2d) 206 at p. 208 (B.C.S.C.), and Sorokolit v. Peel (Regional Municipality) (1977), 1977 CanLII 1067 (ON SC), 16 O.R. (2d) 607 at p. 612, 78 D.L.R. (3d) 715 (Div. Ct.). I do not, however, think that this analysis is productive. In my view, the DC scheme should be assessed for what it is, not on the basis of an assessment of what it replaced.

I turn first to consider the approach that I think should be taken to determine if the Cancer Foundation is entitled to the taxation exemption in s. 16 of the Cancer Act. In my opinion, it is the DCA in its entirety and all of Ottawa's DCB that must be assessed. The hydro component of the Ottawa DCB should not be excised from the DCA scheme to determine whether it alone is a tax. I find support for this analytical approach in the judgments of this court and the Supreme Court of Canada in Ontario Home Builders', supra. In this court ((1994), 1994 CanLII 8710 (ON CA), 17 O.R. (3d) 103) Carthy J.A. concluded that EDCs were an element of the planning process and that they replaced lot levies imposed as a condition of subdivision approval under the Planning Act, R.S.O. 1990, c. P.13. In his analysis, he did not accept Ontario Home Builders' argument that he thought tended to isolate the construction of schools as the responsibility of the school boards from the municipality's responsibility to regulate land development. At p. 112, he said that this argument:

> . . . overlooks the fact that we are testing provincial powers, not the powers of the school board. The constitutionality of the charges must be the same whether imposed directly by the province, by delegation to the municipality to exercise in tandem with land use control, or by a combined delegation, as here, to the school boards to impose the charges, and to the municipality to collect them. Throughout, the ultimate control is retained by the Minister of Education.

(Emphasis added)

Carthy J.A.'s observations have application here. Like EDCs, the hydro component of the City of Ottawa DC is, nonetheless, a DC. It is, as Carthy J.A. put it, "the provincial powers" that must be tested, not the powers of Ottawa Hydro.

In the Supreme Court of Canada, writing for the majority Iacobucci J. accepted that EDCs are part of a comprehensive integrated scheme "namely, the entirety of planning, zoning, subdivision and development of land in the province". His analysis of the DCA supports my view that the entire DC scheme should be looked at to determine if the Cancer Foundation is entitled to the Cancer Act taxation exemption.

The DCA scheme manifestly was intended to apply throughout the province, in respect of those municipalities that chose to participate by passing a DCB. To narrow the focus of the review to one part of one municipality's DCB would lead to unacceptable fragmentation and instability since a component of one municipality's DC would be a tax in that municipality and not a tax in another depending upon the form of the municipality's by-law. More particularly, the precise construction undertaken by the Cancer Foundation would attract payment of the hydro component of the applicable DC in one municipality, but not in another, since the DC payment would be characterized as payment of a tax in one municipality, but not in another. My colleague accepts the prospect of this distortion. I do not. In my opinion, DCs are part of a comprehensive provincial scheme designed to permit participating municipalities to defray growth-related net capital costs. The payer of the DC makes one payment that covers the total DC for all service areas set out in the by- law.

It was the City of Ottawa, not Ottawa Hydro, that determined to pass a DCB and to include Ottawa Hydro as one of its 11 identified service areas. As a practical matter, Ottawa Hydro would not have been included as a service area had it not agreed. Nonetheless, it was the City of Ottawa's decision to pass a DCB and the City had the final say in what services would be listed in its by-law. Indeed, I question what standing Ottawa Hydro has on this appeal. It seems to me that it is the City of Ottawa that should be the appellant. However, since this issue has not been raised, I will proceed on the basis that Ottawa Hydro is the proper appellant.

Virtually all that distinguishes Ottawa Hydro from the ten other service areas listed in the by-law is the provision requiring the hydro component of the DC to be deposited in a separate reserve fund that is not mingled with the DCs allocated to the other ten selected service areas. But the fact remains that hydro is but one among 11 service areas set out in the by-law. I do not think that Ottawa Hydro can properly be isolated from the broader scheme (the DCA), or from the other service areas set out in the by-law. Either the whole DC (including its hydro component) is a tax, or it is not. The components are part of the whole and should not be divided for purposes of this analysis.

Is a DC a Charge or a Tax?

A tax is a compulsory levy imposed by law for a public purpose by a public body: see Lawson v. Interior Tree Fruit & Vegetable Committee of Direction, 1930 CanLII 91 (SCC), [1931] S.C.R. 357. DCs fit within that definition, in my opinion. Nonetheless, it has been recognized that many

charges also fit within the broad definition of a tax. In result, a further examination of the difference between a charge and a tax is required in the context of DCs imposed under the DCA.

The distinction between a charge and a tax was considered in Reference re Powers of Municipalities to Levy Rates on Foreign Legations & High Commissioners' Residences, 1943 CanLII 39 (SCC), [1943] S.C.R. 208, [1943] 2 D.L.R. 481. In that case the Supreme Court of Canada had to consider whether the City of Ottawa could levy rates on real property used by foreign states as legations. Duff C.J.C. expressed the view that real property taxes could not be extracted from diplomatic representatives or the sovereign states that they represented. At p. 222, he distinguished real property taxes from charges such as licence fees, bridge tolls, stamp duties, water rates and electric rates that he accepted were charges which "are taken in payment for specific services rendered directly to the particular individual who pays for them". In La Forest, The Allocation of Taxing Power Under the Canadian Constitution (1967), at p. 58, the author endorsed Duff C.J.C.'s analysis of the distinction between a charge and a tax.

A DC is paid by the developer/owner in a lump sum. The DC is not paid for particular services of which the owner/developer is the direct beneficiary. That is to say the DC imposed bears no relationship to the value to the developer of the capital expenditure that the DC is intended to defray. Whether the burden of the DC will be passed on to others will be dependent upon economic circumstances and is an issue which need not be discussed here. It is an issue which is relevant to the question whether a DC, if a tax, is an indirect tax or a direct tax.

The significance of restrictions on the use of special levy funds as a factor in determining whether a special levy was a tax was considered by the Supreme Court of Canada in Mount Sinai, supra. In that case, the City of Toronto, acting under the authority of the City of Toronto Act, 1961-62, S.O. 1961-62, c. 171 ("City of Toronto Act") levied a special sewer charge against the hospital. The hospital applied for a declaration that it was exempt from this special sewer charge because public hospitals were exempt from taxation.

Section 1 of the City of Toronto Act gave the municipal council the authority to pass by-laws imposing a special levy on certain buildings where a building permit was issued for the erection or enlargement of a building after March 6, 1962. The levy was imposed to defray the capital costs of additional sanitary or storm sewer or water supply capacity "which, in the opinion of the Council, would not otherwise be required". The special levy was over and above all other rates and charges and was intended "to pay for all or part of the cost of providing the additional capacity". Section 1(2) of the City of Toronto Act provided that the proceeds of the charges authorized by s. 1(1) could be used only for the purpose of paying for the identified increased capital costs. Section 1(3) gave the municipality authority to collect special levy as taxes if it remained unpaid.

The City of Toronto's by-law passed under the authority of the City of Toronto Act imposed a 20 cent per square foot of gross floor area special levy on the erection or enlargement of structures to which the special levy was applicable. The by-law provided a 3,300-square-foot deductible for purposes of calculating the applicable gross floor area. Mount Sinai, a public hospital, claimed to be exempt from the special levy on the basis of s. 3(7) of the Assessment Act, R.S.O. 1970, c. 32 ("Assessment Act"), which the hospital contended exempted it from taxation.

There were two issues in Mount Sinai. Was the special levy a tax and if it was did the Assessment Act taxation exemption apply to the hospital? A Weekly Court judge accepted that the special sewer levy was taxation, but did not accept the hospital's submission that it was entitled to the benefit of the Assessment Act exemption from taxation. Thus, he dismissed the application. The hospital's appeal to this court was dismissed. However, on the hospital's appeal to the Supreme Court of Canada, the appeal was allowed. The majority concluded that the special levy was a tax and that the hospital was entitled to the benefit of the Assessment Act exemption from taxation. Hall J. put it this way at p. 546:

> Section 3(7) of The Assessment Act is clear and unambiguous. Under it the hospital is exempt from taxation. The special sewer tax or levy here is a tax.

(Emphasis added)

In my view, although Mount Sinai had nothing to do with what we now know as a DC, the special sewer levy in issue in that case can be equated to DCs by analogy. The sewer levy was imposed on the assumption that certain kinds of development (the erection or enlargement of buildings) would necessitate sewer and water-related growth-related capital costs. The payment of the levy, like DCs, was triggered by the issuance of a building permit. The levy had to be paid in a lump sum and if not paid could be collected as taxes. Similar provisions appear in the DCA. The relevant statute and by-law required the special levy funds to be used for the purpose for which they were collected. There are stark similarities throughout to what we now know as a DC. Thus, it is my view that Mount Sinai supports my conclusion that DCs are taxes.

The appellant's argument that DCs are not taxes because the funds collected are used to offset specified growth-related net capital costs was also considered by the Privy Council in British Columbia (Attorney General) v. Esquimalt & Nanaimo Railway Co., 1949 CanLII 324 (UK JCPC), [1950] A.C. 87. The Privy Council stated, at pp. 121-22:

> The legislature has thus thought it proper to divide the expense of what is a public service of the greatest importance to the province as a whole between the general body of taxpayers and those individuals who have a special interest in having their property protected. The levy has what are, undoubtedly, characteristics of taxation, in that it is imposed compulsorily by the State and is recoverable at the suit of the Crown. It is suggested, however, that there are two circumstances which are sufficient to turn the levy into what is called a "service charge". They are, first, that the levy is on a defined class of interested individuals and, secondly, that the fund raised does not fall into the general mass of the proceeds of taxation but is applicable for a special and limited purpose. Neither of these considerations appears to their Lordships to have the weight which it is desired to attach to them. The fund is made up partly of the levy and partly by contributions from the taxes paid by the general body of taxpayers. This is no doubt a reasonable apportionment of the burden, for to impose the cost of services which are of general interest to the community as well as a particular interest to a class of individual exclusively on one or the other might well have seemed oppressive. The fact that in the circumstances the persons particularly interested are singled out and charged with a special contribution appears to their Lordships to be a natural arrangement. Nor is the fact that the levy is applicable for a special purpose of any real significance. Imposts of that character are common methods of taxation
> -- taxation for the road fund in this country was a well- known example. The objects of the legislature in adopting such a form of tax may be various. But if it finds it convenient to do so the impost, if in other respects it has the character of a tax, does not thereby change its character.

(Emphasis added)

In my opinion, the fact that DCs generally, or the hydro component of the DC, must be used for a particular specified purpose does not support the conclusion that the Ottawa DC, or its hydro component, is not a tax.

This brings me to the Supreme Court of Canada's decision in Ontario Home Builders', supra. EDCs, provided for in Part III of the DCA, were in issue in that case. Whether EDCs were, or were not, taxes was clearly in issue before the Divisional Court, this court, and the Supreme Court of Canada. Throughout, Ontario Home Builders' contended that EDCs were indirect taxes and thus unconstitutional. The competing position was that EDCs were regulatory charges, not taxes and alternatively, if EDCs were taxes, they were direct taxes and, therefore, constitutional.

In Ontario Home Builders', the Supreme Court of Canada determined that EDCs were taxes. The court was divided on the issue whether the EDC was a direct (per La Forest J.) or an indirect tax (per Iacobucci J.). The majority concluded that EDCs were indirect taxes, but nonetheless constitutionally justified because they were a novel form of taxation ancillary to a valid provincial regulatory scheme; the minority concluded that the EDCs were direct taxes and thus constitutional.

In his annotation to the Supreme Court of Canada's decision in Ontario Home Builders' (reported (1996), 1996 CanLII 164 (SCC), 35 M.P.L.R. (2d) 1)), John Mascarin commented on the majority and minority judgments in Ontario Home Builders' and concluded [at p. 5]:

> The decision, which was anxiously awaited by the municipal sector, also means that municipal development charges, which are authorized under Part I of the Development Charges Act, cannot be constitutionally challenged. It appears clear that the reasoning of both the majority and minority decisions of the court with respect to the issues of direct/indirect taxation, and whether the charges are imposed pursuant to a provincial regulatory scheme, would be equally applicable, if not more so, to municipal development charges.

(Emphasis added)

In my opinion, EDCs are similar to DCs in a very substantial way. EDCs are taxes imposed to defray growth-related net capital costs of development in respect of schools. DCs are imposed to defray the growth-related net capital costs with respect to the particular service areas set out in the municipality's DCB. There is a distinct parallel between EDCs and DCs in the definition, the triggering development events, the process of implementing, the calculation, the collection, the identification of who pays, and the statutory controls on the spending of funds. In particular, EDCs must be deposited in a separate reserve fund and used only for growth-related capital costs in respect of schools. The hydro component of the City of Ottawa DC and the City's component must also be deposited in separate reserve funds. I can find no rational basis upon which to conclude that EDCs are taxes, as unanimously held by the Supreme Court of Canada in Ontario Home Builders', but DCs are not. The fact that the analysis in Ontario Home Builders' was undertaken in a constitutional context does not, in my view, dilute the force of the Supreme Court of Canada's conclusion that EDCs are taxes.

For these reasons, I think that the City of Ottawa DC, including that part of it allocated to Ottawa Hydro, is a tax. Although I do not think that the Ottawa Hydro component of the DC should be separately analyzed, if that approach is required, I think that it too is a tax. In my opinion, the DC is a tax on development. [See Note 1 at end of document.]

I will now consider whether the Cancer Act taxation exemption applies.

> Does s. 16 of the Cancer Act Exempt the Cancer Foundation from Paying the City of Ottawa Development Charge?

Section 16 of the Cancer Act provides that:

> 16. The real and personal property, business and income of the Foundation is not subject to taxation for municipal or provincial purposes.

Section 3(6) of the DCA provides:

> 3(6) No land, except land owned by and used for the purposes of a board as defined in subsection 30(6) or municipality, is exempt from a development charge under a by- law passed under subsection (1) by reason only that it is exempt from taxation under section 3 of the Assessment Act.

Section 49 of the DCA provides:

> 49. In the event of a conflict between this Act and any other general or specific Act, this Act prevails.

The Cancer Foundation argues, and I agree, that s. 3(6) of the DCA and s. 16 of the Cancer Act are not inconsistent. Section 3(6) contemplates exemptions from development charges other than under the Assessment Act. The words "by reason only" in s. 3(6) of the DCA support this conclusion. Thus, s. 3 of the Assessment Act does not on its own exempt land from a development charge. The Cancer Foundation does not claim its exemption from taxation through s. 3 of the Assessment Act. Section 3(6) of the DCA leaves it open to find an exemption on some other basis. The other basis in the circumstances of this case is the specific exemption established in s. 16 of the Cancer Act. As Cunningham J. put it in CollÃ¨ge d'arts appliquÃ©s et de technologie La CitÃ© collÃ©giale v. Ottawa (City) (1994), 1994 CanLII 7316 (ON SC), 20 O.R. (3d) 541 at p. 546, 119 D.L.R. (4th) 566 (Gen. Div.), "[h]owever, by the wording of s. 3(6) it is left open to find an exemption for other reasons and of course that other reason in the present case is s. 11 of the Interpretation Act." I agree. I would thus not give effect to this ground of appeal. In my view, s. 16 of the Cancer Act exempts the Cancer Foundation from paying the City of Ottawa DC, including its hydro component.

For these reasons, I would dismiss the appeal with costs.

Appeal dismissed.

Notes

Note 1: In an article, "Financing Urban Growth Through Development Charges" (1991), 39 Can. Tax Journal 1288 at 1300 Enid Slack and Richard Bird discussed development charges on the basis that they are taxes. The authors conclude that a development charge is "in theory . . . similar to a prepaid property tax". In International Aviation Terminals (Vancouver) Ltd. v. Richmond (Township) (1992), 1992 CanLII 973 (BC CA), 9 M.P.L.R. (2d) 1, 65 B.C.L.R. (2d) 145, the British Columbia Court of Appeal noted that DCs were not taxes "as such", although the court accepted that DCs were indistinguishable from municipal or realty taxes. See also Palisade Properties (1985) Ltd. v. Surrey (District), supra, where a by-law imposing a development charge was held to be a taxing by-law.

McMaster University and City of Hamilton et al.

Ontario Reports

ONTARIO

COURT OF APPEAL

KELLY, BROOKE and DUBIN, JJ.A.

5TH SEPTEMBER 1973

(1975), 1 O.R. (2d) 378

B.H. Kellock, Q.C., and V. Libis, for respondents, appellants.

F.S. Weatherston, Q.C., and M.A. Levy, for applicant, respondent.

The judgment of the Court was delivered by

KELLY, J.A.

KELLY, J.A.:— Pursuant to s. 66(4) of the Assessment Act R.S.O. 1970, c. 32, the Corporation of the City of Hamilton and A. Forest Thompson, Regional Assessment Commissioner (Assessment Commissioner), appeal to this Court from the decision of Grant, J., made on an application before him brought by McMaster University (McMaster) to determine the entitlement of McMaster to exemption from taxation for municipal purposes in respect of lands (including the buildings thereon) which is the site of a student residence.

In 1967 McMaster wished additional student residences, one of which was to be upon its campus in the City of Hamilton, the other on an off-campus site to house principally married students and their families. Under the conditions prevailing prior to 1966 this would have been accomplished by McMaster applying to the Department of University Affairs or before its constitution, to the Department of Education for a capital grant to defray the cost or by applying for the right to issue and for the purchase of its debentures in an aggregate amount sufficient to pay the capital cost of the buildings to be erected.

Shortly before the application of McMaster with respect to these projects the Province of Ontario had set up other procedures for the financing of student residences through the agency of the Ontario Student Housing Corporation (O.S.H.C.).

It will be convenient here to give a general outline of the genesis and purpose of O.S.H.C. and its modus operandi regarding student housing. By O.C. 3417/66 dated August 18, 1966, there was constituted a corporation without share capital under the name of Ontario Student Housing Corporation, for the purpose of developing housing projects for students and their families. This Order in Council was passed pursuant to s. 62 of the Housing Development Act, R.S.O. 1960, c. 182 [now R.S.O. 1970, c. 213].

The creation of this corporation is traceable back to the National Housing Act, 1953-54 (Can.), c. 23 [now R.S.C. 1970, c. N-10]. By this latter Act, Parliament created Central Mortgage and Housing Corporation (C.M.H.C.), to assist in the financing of housing accommodation and empowered that corporation by s. 36 as follows:

> 36(1) The Corporation may pursuant to agreements made between the Government of Canada and the government of any province undertake jointly with the government of the province or any agency thereof projects for the acquisition and development of land for housing purposes and for the construction of houses for sale or for rent.

Section 6 of the Housing Development Act, was the complementary legislation which authorized the Province of Ontario to make agreements with the Crown in the right of Canada for like purposes. Subsection (2) of s. 6 empowered the Lieutenant-Governor in Council to constitute corporations with powers and duties deemed expedient to carry out the terms of every agreement made under s-s. (1). The Province of Ontario thus established

O.S.H.C. as the agency whereby loans were secured from C.M.H.C. to finance the erection of student accommodation at Ontario educational institutions.

Accordingly, when in 1967, McMaster decided it wished to provide additional residential accommodation for its students, its request for financial assistance was transmitted to O.S.H.C. In reply, a letter dated August 2, 1967, was addressed to the assistant to the president of McMaster by the development manager, student housing, O.S.H.C., explaining the terms to which McMaster would have to agree. This letter contained the following paragraphs:

> In the provision of student accommodation on campus, the Ontario Student Housing Corportion will undertake the development and construction of the required number of units and will enter into a lease with the university on a 50 year basis with two renewal options of 5 years each. At the conclusion of the lease period, the lands will revert to the university together with any buildings so constructed on these lands. It should also be noted that during the tenure of the lease, the actual administration and management of the housing accommodation is undertaken by the university and not by our corporation and that our only administration would be the supervision of the buildings from time to time to ensure that adequate maintenance is being provided.
>
> In the provision of student accommodation off campus, the Ontario Student Housing Corporation will construct, manage and administer the housing complex. However, it should be noted that admissions will be handled by the University of McMaster and the university will submit applications together with deposits and the first month's rent of bona fide students to this Corporation and we will take the necessary action to accommodate these students accordingly. It is intended that only married graduate and undergraduate students occupy these buildings at the present time. The Ontario Student Housing Corporation through the Ontario Housing Corporation will undertake all maintenance and all operations of this building and the university under the terms of an agreement will guarantee the rentals to the Corporation from year to year. This agreement will be a 50 year agreement and any deficits in the rentals will be guaranteed by the university. The land and building will not revert back to the university at the termination of the 50 year agreement.

The land upon which the residence in question was erected was part of the McMaster campus and at all relevant times, as required by the Act of incorporation of McMaster, was, and still is, registered in the name of "The Governors of McMaster University". This therefore provided student accommodation on campus: to this residence was applicable the provision set out in the first part of the foregoing quotation from the letter of August 2, 1967.

After the receipt of the letter from O.S.H.C., McMaster followed the procedure suggested by O.S.H.C. and concluded the arrangements, executing such documents as it was requested to do so by O.S.H.C.

During the course of the dealings between McMaster and O.S.H.C. the latter made arrangements with C.M.H.C. for the necessary funds. The only documents to implement the arrangement to which McMaster and O.S.H.C. were parties were those of December 31, 1969, and April 1, 1970, to which, later, reference will be made in more detail.

Upon completion of construction, the building was devoted to the purpose for which it was erected, the accommodation of students of and in attendance at McMaster University. These students made application to the administrative officers of McMaster, their applications were passed upon by the officers of McMaster dealing with all student accommodation afforded by McMaster, the structure was managed and maintained by McMaster, the room rentals were received by McMaster and all outgoings were paid by it. The nature of the situation prevailing was described in the cross-examination of B.R. James, an officer of McMaster, on his affidavit in the transcript of which the following questions and answers appear:

49.Q. What documentation, if any, exists between the students and the university or the Ontario Student Housing Corporation concerning the occupancy by the students themselves of the residence?

A. The student fills out an application to live in residence. This is assessed by the appropriate dean -- that would be the dean of men and the dean of women or the dean of students and on approval, is assigned a room and as soon as the student then appears on the scene, he either makes a

payment or otherwise makes a commitment. They occupy the room on presumably September 15th, the beginning of the academic year.

50.Q. I take it the application is a written application at that time?

A. It is a printed application form but it is written on by the student.

51.Q. If the application is approved, is there any other further contract, oral or in writing, between the university and the student concerning his occupation?

A. No.

52.Q. He just enters into possession on the approval of the application?

A. That's correct ...

57.Q. And if they don't behave, is it possible that their enjoyment of their room or bed or whatever may be terminated before the end of the school year?

A. Yes, this could happen.

58.Q. And if so, how would it be accomplished -- by the dean?

A. The dean of students or one of the appropriate deans.

60.Q. Now, in paragraph five of your affidavit of January 12th, in the last two lines you say that the university is in actual occupation of the buildings. Now, can you tell me what you have in mind in making that statement?

A. Well, McMaster University, through using the buildings for the purposes of the university and having students' use therein and looking after the maintenance, the various utilities, are actually in occupation of the buildings.

All revenue arising from the operation of the residence has been collected by McMaster and McMaster has paid all the outgoings with respect thereto including the periodical payments to O.S.H.C. to amortize the capital cost of the residence. Any surplus arising from the operation of the residence has become the property of McMaster without any requirement that it account therefor to O.S.H.C.

It would have been natural to expect that, under these circumstances, the land and buildings as an integral part of it would have enjoyed the exemption from municipal taxation accorded to the buildings and grounds of universities, high schools, public and separate schools by para. 4 of s. 3 of the Assessment Act reading as follows:

> 3. All real property in Ontario is liable to assessment and taxation, subject to the following exemptions from taxation:
>
> 1. Lands or property belonging to Canada or any Province.
> 2. Property held in trust for a band or body of Indians, but not if occupied by a person who is not a member of a band or body of Indians.
> 3. Every place of worship and land used in connection therewith and every churchyard, cemetery or burying ground.
>   (a) Where land is acquired for the purpose of a cemetery or burying ground but is not immediately required for such purpose, it is not entitled to exemption from taxation under this paragraph until it has been enclosed and actually and bona fide required, used and occupied for the interment of the dead.
>   (b) The exemption from taxation under this paragraph does not apply to lands rented or leased to a church or religious organization by any person other than another church or religious organization.
> 4. The buildings and grounds of and attached to or otherwise bona fide used in connection with and for the purposes of a university, high school, public or separate school, whether vested in a trustee or otherwise, so long as such buildings and grounds are actually used and occupied by such institution, but not if otherwise occupied.
>   (a) The exemption from taxation under this paragraph does not apply to lands rented or leased to an educational institution mentioned in this paragraph by any person other than another such institution or a person already exempt from taxation in respect of the property rented or leased.

According to the entries on the assessment roll made by the Assessment Commissioner, the land involved was entered upon the roll against McMaster as owner and O.S.H.C. as tenant, that entry showing the property to be liable to municipal taxation. This action on the part to be liable to municipal taxation. This action on the part of the Assessment Commissioner was because of his contention:

(a) that the land upon which the residence stood was leased by McMaster to O.S.H.C. and that the occupancy of it by McMaster was that of O.S.H.C. of which McMaster was its attorney in fact for management;

(b) that by virtue of s. 24(3)(a) of the Act the land was assessable against the owner and the tenant;

(c) that the exemption of s. 3(4)(a) was not applicable because there was not compliance with the requirement that the land and buildings should be actually used and occupied by McMaster as a univerity.

Before turning to consider whether the relationship between McMaster and O.S.H.C. made the land subject to taxation, it will be well to give some attention to the scheme of the Assessment Act.

In the Assessment Act, land, as defined by the Act, is to be assessed to either or both the owner and the tenant. The assessment is to be made against the tenant in cases where the land is occupied by a person other than the owner.

As an owner is not defined in the Act I would take it that this term is used to refer to the legal owner. A tenant is by the Act defined to include an occupant and the person in possession other than the owner.

The exemption provided by s. 3, para. 4, does not refer to ownership but exempts buildings and grounds of and attached to or otherwise bona fide used in connection with or for the purposes of a university so long as such buildings and grounds are actually used and occupied by such institution and not if otherwise occupied.

It is my view that the Assessment Act is directed to and recognizes as a basis for entry on the roll of persons with respect to any particular parcel of land:

(a) ownership, occupation or use and occupation, and that in this regard it is not concerned with the legal status with respect to the land of those who are not owners;

(b) tenancy may be the basis under s. 24 for the entry on the assessment roll of any person other than an owner;

(c) s. 3, para. 4, makes it clear that it is the use and occupation of land which is the qualifying condition for exemption from taxation.

It is my conclusion that, otherwise than with respect to the owner, the Assessment Act attaches liability for entry on the assessment roll on the basis of occupation or use and occupation which is a fact capable of determination: it is not concerned with the documentation which may exist between parties claiming some interest in the land, except in so far as it may bear upon the determination of whose is the occupancy or use and occupancy.

It is beyond question that if the subject land assessed as taxable be held to be the buildings and grounds of and attached to or otherwise bona fide used in connection with and for the purposes of McMaster, it will be entitled to be exempt so long as it is actually used and occupied by that university.

It appears equally clear that if the assessed land is rented, leased or loaned to McMaster by O.S.H.C., the latter corporation, being itself exempt from taxation, the land would be exempt from taxation by virtue of s. 3, para. 4(a).

Counsel for the Assessment Commissioner and the city has submitted that the effect of the agreement of December 31, 1969, is to put McMaster in a position where it fails to qualify for exemption from taxation.

In support of this contention he points out that the operative words of the document are "demise and let", words he equates to that of leasing; that there is no reconveyance to McMaster of any immediate estate or interest in the lands, and that the sole right of management of the residence enjoyed by McMaster is as attorney in fact for O.S.H.C., the students being actually tenants or licensees of O.S.H.C. O.S.H.C. reserves a right to enter the premises to observe whether maintenance is being kept up and by cl. 15 McMaster is required at all times to facilitate entry by O.S.H.C. and all persons by or under its authority at reasonable times to examine the state and condition of the premises and every part thereof.

While all of these features may exist, other features appear from a perusal of the document, which in my view are relevant to a decision as to whether the document creates a relationship between McMaster and O.S.H.C. inconsistent with that set out in letter of August 2, 1967.

The document is not made pursuant to the Short Forms of Leases Act, R.S.O. 1970, c. 436, and therefore does not attract the extended meaning attributed by that Act to the words contained in the document: by this agreement O.S.H.C. agrees to construct the building, the cost of which is to be repaid to it by McMaster: McMaster is required to maintain an adequate reserve fund to meet the major capital expenditures for repair and replacement: the amount of the cost of construction incurred by O.S.H.C. is to be repaid by McMaster over the lifetime of the agreement but McMaster has the right to repay the whole amount at any time: upon repayment, the lands and improvements revest in the lessor: O.S.H.C. delegates to McMaster and appoints McMaster its attorney in fact in its name to admit and allot dwelling accommodation to student tenants or lodgers, to charge and collect rents, fees or other charges as McMaster in its absolute discretion may deem advisable and to make and enforce rules and regulations for the maintenance of order, discipline and good management of the residence as McMaster sees fit: McMaster is not accountable to the O.S.H.C. for matters pertaining to the letting of accommodation or for the rents received unless there be default in the repayment of the moneys owing to O.S.H.C.: McMaster is required to keep in good repair and not to use the premises for any purpose other than student housing and not to discriminate against any person as an occupant by reason of race, colour, religion or origin.

The agreement of December 31, 1969, is a document specifically drawn to implement the arrangements proposed by O.S.H.C. as a condition for its financing of the residence and accepted by McMaster and, in my opinion, unless to the extent that this document be in any of its terms directly in conflict with the terms of that arrangement, its terms are as far as possible to be accorded the meaning which will be consistent with the original agreement.

Subsequent to the execution of the agreement of December 31, 1969, on April 1, 1970, a further agreement was entered into whereby McMaster, at the request of O.S.H.C., granted to it, its servants, agents and contractors, an exclusive licence to execute in and upon the premises therein described (the subject lands) the work of the construction of the student housing project. Such a licence would have been unnecessary if the agreement of December 31, 1969, had been a lease in favour of O.S.H.C., since the right and possession to the exclusion of the lessor is an incident in the relationship of lessor and lessee.

It is to be noted that the parties thereto by their conduct have clearly indicated what they interpret it to mean and unless there be proof of lack of bona fide in their doing so the contention of a third party must give way to what the parties themselves have from the outset deemed to be the meaning of the agreement and the nature of the relationship between them.

The creation of O.S.H.C. followed the finalization of arrangements by the Province of Ontario with the Government of Canada to bring the Province within the scope of the National Housing Act, 1954. By the operation of the O.S.H.C., it was possible to direct funds provided by the Government of Canada to C.M.H.C. to finance the building of student housing accommodation for universities in Ontario and so to relieve the Province of the burden of providing capital for this purpose. O.S.H.C. being an approved borrower agreed with C.M.H.C. to repay the amount borrowed from C.M.H.C. or to issue its debentures to C.M.H.C. in discharge of that obligation. As was pointed out in the letter of August 2nd which has been quoted above, it was not by employment of this device intended to have O.S.H.C. engage in the actual management and administration of this as an on-campus residence. O.S.H.C. provided finances for the residence and left its actual management and administration entirely in the hands of McMaster. The relationship of O.S.H.C. to McMaster with respect to an on-campus residence such as this is in contrast to the provisions of off-campus housing where the role of O.S.H.C. was one of active management, control and administration.

While in both the on-campus and off-campus situations McMaster was required to guarantee to O.S.H.C. repayment of amounts required to amortize the amount expended in providing the accommodation, in the case of the on-campus housing any surplus revenues over and above the amount of the debt retirement charges remained the property of McMaster, while in the case of off-campus projects such a surplus remained the property of O.S.H.C. Further, in the case of the on-campus residence, the building, upon the discharge of its obligation for the repayment of the cost of erecting the building, became the absolute property of McMaster. In the case of the off-campus residence, when the amount of the cost of providing the residence had been recovered by O.S.H.C. through the operation of the residence, it becomes the absolute property of O.S.H.C.

Having carefully considered the terms of the agreement of December 31, 1969, as well as the relevant events taking place before and after its date, it is my opinion that the purpose of that agreement was to carry out the arrangement proposed by O.S.H.C. to provide residential accommodation for students in attendance at McMaster, using O.S.H.C. as an agency of the Province of Ontario to obtain funds for the construction of such residence, the funds being obtained from C.M.H.C., an agency of the Government of Canada. Whatever provisions are contained in the agreement as to the relationship of O.S.H.C. to the project do not alter the fact that the building with the concurrence of O.S.H.C. was and is used by McMaster as a student residence and occupied by it through its students admitted to that housing by McMaster, paying fees to McMaster to which it became entitled without the requirement of accounting therefor, managed by the staff of McMaster pursuant to the rules and regulations promulgated by McMaster, responsible to McMaster for their conduct as beneficiaries of the student housing.

Despite any provisions that there may have been in the agreement with respect to the financing arrangements, the essential intention of O.S.H.C. was to make available to McMaster the complete occupancy of the building for McMaster's use in providing housing accommodation for its students. As I am satisfied that McMaster is in actual use and occupation of the residence, the land upon which the residence has been erected being occupied by

McMaster for its own purposes as well as owned by it. On this account it is exempt from taxation for municipal purposes. The assessment roll should be so amended.

Save with respect to providing for the necessary amendment to the assessment roll, the appeal should be dismissed with costs.

Appeal dismissed.

End of Document

R. v. Bell

Supreme Court Reports

Supreme Court of Canada

Present: Laskin C.J. and Martland, Ritchie, Spence and Dickson JJ.

1978: October 31, November 1 / 1979: April 24.

[1979] 2 S.C.R. 212 | [1979] 2 R.C.S. 212

Douglas Bell, Appellant; and Her Majesty The Queen, Respondent.

Barry B. Swadron, Q.C., Gordon Fulton and Susan Himel, for the appellant. John J. Robinette, Q.C., and H. Ibsen, for the respondent.

Solicitor for the appellant: Barry B. Swadron, Toronto. Solicitor for the respondent: C.E. Onley, Toronto.

The judgment of Laskin C.J. and Spence and Dickson JJ. was delivered by

SPENCE J.

SPENCE J.:— This is an appeal from the judgment of the Court of Appeal for Ontario pronounced on April 20, 1977. By that judgment, the said Court of Appeal for Ontario allowed an appeal from the decision of the Divisional Court of Ontario pronounced on December 3, 1975, and restored a conviction made by the Justice of the Peace on February 15, 1974.

The appellant had been accused in an Information which read:

> that you during the six months ending June 13/73 being within an RM2 Zone use a part of a building, which part is known as 18 Rambler Place, Borough of North York, for the use by other than one family alone, NAMELY, the use by unrelated persons.

CONTRARY TO: Borough of North York By-law #7625, Section 17.1, as amended.

The appellant was convicted by the Justice of the Peace on February 15, 1974, and appealed to the County Court from such conviction. His Honour Judge Hogg, in the County Court of the Judicial District of York, by his judgment of April 25, 1975, allowed the said appeal and quashed the conviction. The Crown appealed to the Divisional Court of the Supreme Court of Ontario and that appeal was dismissed by the judgment of that Divisional Court dated December 3, 1975, the reasons for judgment being given by Estey C.J.H.C., as he then was. The Crown further appealed to the Court of Appeal for Ontario and the Court of Appeal allowed the appeal in the judgment which I have already recited.

The relevant sections of by-law 7625 to be considered, I set out hereunder as follows:

s. 17.1 USES PERMITTED

Dwellings, Semi-detached Dwellings, duplex

s. 2.32.6 "Dwelling, Semi-detached" shall mean a building divided vertically into two dwelling units.

s. 2.32.7 "Dwelling Unit" shall mean a separate set of living quarters designed or intended for use or used by an individual or one family alone, and which shall include at least one room and separate kitchen and sanitary conveniences, with a private entrance from the outside or from a common hallway or stairway inside.

s. 2.36 "Family" means a group of two or more persons living together and inter-related by bonds of consanguinity, marriage or legal adoption, occupying a dwelling unit, and shall include the following:

(a) Non-paying guests and domestic servants;

(b) A property owner living alone except for two other persons not related;

(c) Not more than three foster children under the care of a children's aid society approved by the Lieutenant Governor in Council under the Child Welfare Act, 1965.

s. 2.9 "Boarding or Lodging House" shall mean a dwelling in which lodging with or without meals is supplied for gain, but shall not include an hotel, hospital, children's home, nursing home, home for the aged or other similar establishment.

The Council of the Borough of North York purported to enact the said by-law by virtue of the provisions of s. 35(1) of The Planning Act, R.S.O. 1970, c. 349. I cite the relevant provisions of s. 35(1) of The Planning Act:

35. (1) By-laws may be passed by the councils of municipalities:

1. For prohibiting the use of land, for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or abutting on any defined highway or part of a highway.

2. For prohibiting the erection or use of buildings or structures for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or upon land abutting on any defined highway or part of a highway.

...

4. For regulating the cost or type of construction and the height, bulk, location, size, floor area, spacing, external design, character and use of buildings or structures to be erected within the municipality or within any defined area or areas or upon land abutting on any defined highway or part of a highway, and the minimum frontage and depth of the parcel of land and the proportion of the area thereof that any building or structure may occupy.

It was the opinion of both Estey C.J.H.C., as he then was, giving reasons for the Divisional Court, and of MacKinnon J.A., giving reasons for judgment for the Court of Appeal, that the sole basis for the enactment of the said by-law was the said s. 35(1) and that, therefore, it was unnecessary to consider the general power to enact by-laws appearing in s. 242 of The Municipal Act, R.S.O. 1970, c. 284, or the provisions of s. 241(2) of the said Municipal Act which barred the holding of any by-law enacted by virtue of the powers granted in that Municipal Act being invalid on the grounds of unreasonableness.

The appellant Douglas Bell and two persons not related by blood, marriage or adoption occupied as co-occupants a detached duplex at 18 Rambler Place, in the Borough of North York. So far as the landlord was concerned, the appellant Douglas Bell alone was the tenant but by arrangement with his fellows the costs of the operation of the household were shared jointly. There is no doubt that these three people did not come within the permitted uses of a "dwelling unit" in s. 2.32.7 of by-law 7625, and if the prohibition in the said by-law 7625 is to be applied literally, then the occupation by the appellant Douglas Bell as a co-occupant is in contravention of the by-law.

The argument by the appellant before this Court and in the courts below was that the prohibition contained in s. 17.1 of the said by-law, when the definitions of "dwelling, semi-detached" in s. 2.32.6 and of "dwelling unit" in s. 2.32.7 are considered, was an unreasonable and, therefore, an invalid exercise of the power created by s. 35(1) of The Planning Act.

His Honour Judge Hogg accepted this submission, and in doing so considered several cases to which I shall refer hereafter, adopting the principle set out in Kruse v. Johnson [[1898] 2 Q.B. 91], Scott v. Pilliner [[1904] 2 K.B. 855], as further considered in Mixnam's Properties Ltd. v. Chertsey Urban District Council [[1964] 1 Q.B. 214], and concluded:

> I think it is open to the Municipality to determine how a dwelling is used but not who can use that dwelling. The community in my opinion has no right to control the relationship of one citizen with another except in so far as that infringes on other citizens rights. I therefore am of the opinion that the By-law in question is unreasonable and is repugnant to our general law, and that it seeks to make unlawful that which is otherwise innocent.

In dismissing the appeal from the County Court Judge's acquittal of the appellant, Estey C.J.H.C., as he then was, said:

> By applying the principles enunciated in the authorities set out above, I come to the conclusion that the portions of the by-law which are relied upon in this prosecution are ultra vires the Borough of North York and therefore the appeal must be dismissed. By reason of the nature of these proceedings, it has not been the policy of this court to make any disposition as to costs.

However, in the Court of Appeal for Ontario, MacKinnon J.A., as he then was, based his allowance of the appeal by the Crown upon two separate grounds: firstly, that the courts in Ontario were bound by their own decision in City of Toronto v. Polai [*[1970] 1 O.R. 483*], as affirmed by this Court under the name Polai v. The Corporation of the City of Toronto [*[1973] S.C.R. 38*], and, secondly, that the sections of the by-law attacked were not so offensive or discriminating, in the legal sense, as to be unreasonable and outside the legislative jurisdiction of the municipality and therefore were not ultra vires.

I turn first to consider the Polai case as decided in the courts of Ontario and affirmed in this Court.

Polai, the appellant, had purchased a residence in the College Heights area of the City of Toronto which had been covered by a zoning by-law the terms of which may be likened to, although they are not exactly the same as, the present by-law, and had by structural alterations created a considerable number of self-contained dwelling units therein, the whole without any building permit. She had been prosecuted for a breach of the building by-law, convicted and fined, but continued to occupy and to rent to others the various self-contained dwelling units, and the City of Toronto then began an application for an injunction under the provisions of s. 486 of The Municipal Act, which reads:

> 486. Where any by-law of a municipality or of a local board thereof, passed under the authority of this or any other general or special Act, is contravened, in addition to any other remedy and to any other penalty imposed by the by-law, such contravention may be restrained by action at the instance of a ratepayer or the corporation or local board.

The injunction there authorized had been denied by Haines J. and his decision was reversed in the Court of Appeal and that disposition was affirmed in this Court. One of the grounds of opposition set out by Polai in her defence upon the injunction was as follows:

5. In the alternative, the Defendant pleads that the definition of "private detached dwelling house" as it appears in the Plaintiff's By-law Number 20623 in Section 2 Subsection 46(b) is ultra vires the Plaintiff.

That defence to the injunction action was not accepted by Haines J. and in the Court of Appeal Schroeder J.A. said:

> I entirely agree with the learned Judge's disposition of these grounds of defence and I find it unnecessary to embark upon a fresh discussion or elaboration of the points involved.

When the appeal from that decision of the Court of Appeal for Ontario in that case came to this Court, section 32 of the appellant's factum recited:

> It is submitted that the definition of "private detached dwelling house" contained in Zoning By-law No. 20623 is ultra vires the Plaintiff. The Corporation exceeds its powers under The Planning Act when it deviates from use as a criterion and imposes a restriction on the kind of people who may use a property. The definition of "private detached dwelling house" provided in the By-law literally excludes from the permitted use inter alia persons who live in a common law marital relationship, for example.

I was a member of the Court upon the hearing of the appeal when it came to this Court and the major discussion here was the alleged discriminatory application of the provisions of the by-law of the City of Toronto there in question based on the allegation that the municipality kept a secret preferred list of possible infractions of the by-law which council had determined should not be the subject of prosecution and that, therefore, the enforcement in the Polai appeal by application for an injunction should be refused. Judson J. gave reasons for this Court and a perusal of his reasons shows that he considered that ground of appeal alone. I am, therefore, of the opinion that whether or not the Court of Appeal for Ontario were bound by the decision in Polai upon the issue of the ultra vires nature of the provisions of the by-law as distinguished from the discriminatory nature of its enforcement, this Court is not bound.

I am, however, of the opinion that the factual situation in Polai cannot be applied to the decision of the present appeal. As I have pointed out, what was done in Polai was very different. There was a separate self-contained residence which had for a very long time been occupied by one family. Polai took that self-contained one-family residence and altered it by structural alterations at a cost of $20,000 so that it was a building containing many single family units which she rented to various tenants and in which, therefore, she carried on a business.

The appellant in the present case made no structural alterations whatsoever. The building when he went into it contained a self-contained dwelling unit and it still contains a self-contained dwelling unit with exactly the same conveniences as before. The appellant simply occupied it with two others who contributed in some fashion to the upkeep of the household. The only bar to his so doing is the definition appearing in by-law 7625 in s. 2.32.7 of a "dwelling unit" as being "a separate set of living quarters designed or intended for use or used by an individual or one family alone ..." and the definition of "family" in s. 2.36 as "... a group of two or more persons living together and inter-related by bonds of consanguinity, marriage or legal adoption, occupying a dwelling unit ...".

The power to enact the by-law in question, as I have said, comes from s. 35(1) of The Planning Act which in para. 1 authorizes by-laws for prohibiting the use of the land, in para. 2 for prohibiting the erection or use of buildings, and in para. 4 for regulating, inter alia, the character and use of buildings.

I am in exact agreement with His Honour Judge Hogg when he said that the by-law in question restricted the occupation to "family" and then defined "family" by reference to consanguinity, marriage and adoption only, and so was not regulating the use of the building but who used it. The same view was reflected by Estey C.J.H.C., as he then was, in giving reasons for the Divisional Court, and Brooke J.A. in the Court of Appeal for Ontario, although he was of the view, with which, with respect, I disagree, that that court was bound by the decision of this Court in Polai. Brooke J.A. said:

> I do not think personal qualification of this type or other personal characteristics or qualities have ever been suggested here as a proper basis for control of density or any issue relevant to land use or land zoning. Such a submission can only be supported on the basis of the statement in the City of Toronto v. Polai to the effect that municipalities are authorized to ensure the preservation of better residential districts by requiring them to be occupied by persons who are related (and not by unrelated people). This is land zoning by people zoning and is not within the scope of The Planning Act.

In all four courts in argument, the dire result of such a restrictive provision as to the occupation of property was pointed out. Estey C.J.H.C., as he then was, put it well in his reasons when he said:

> Both counsel admitted before this court that the effect of such a provision of the By-law is to preclude the sharing of rented accommodations by two adult persons unrelated by blood or marriage, whether or not that accommodation be an apartment. For example, students attending a college in the Borough of North York, could not as tenants share apartment accommodation in or outside the college. There are endless examples, all of which inexorably lead this court to the conclusion that there are consequences which cannot reasonably be considered to have been in the mind of the enacting legislature, and which certainly were not within the contemplation of the provincial legislature when it enacted s. 35 of The Planning Act. Such possible consequences would require the clearest possible language in the ensuing legislation.

That circumstance was regarded as of no telling effect by the Court of Appeal for Ontario, it being said:

> The by-law was not "aimed" at unmarried couples or elderly widows or at any other particular individuals, or, indeed at any other particular individuals, or, indeed at anyone's moral conduct. As has been said in another connection, consequential effects are not the same as legislative subject matter.

I am in agreement with the view as expressed so aptly by Masten J.A. in Re Howard v. City of Toronto [(1927), 61 O.L.R. 563], at p. 575:

> What is or is not in the public interest is a matter to be determined by the judgment of the municipal council; and what it determines, if in reaching its conclusion it acted honestly and within the limit of its power, is not open to review by the Court ...
>
> The question of the relative balance of convenience or detriment to different persons is a matter which the Legislature has committed to the consideration and determination of the municipal council, and their judgment on that question, if bona fide exercised in what they believe to be the public interest, will not be interfered with by the Court: In re Inglis and City of Toronto, *9 O.L.R. 562*, per Anglin, J., at p. 568; Re Mills and City of Hamilton *(1907), 9 O.W.R. 731*.

I also realize that the doctrine of unreasonableness permitting the declaration of invalidity as to municipal by-laws has, by virtue of the provisions set out in The Municipal Act, lately been very much limited but I point out that even as limited the doctrine still exists and in Kruse v. Johnson, supra, Lord Russell, in holding for a strong Divisional Court that the particular by-law was not ultra vires, said at pp. 99-100:

> I do not mean to say that there may not be cases in which it would be the duty of the Court to condemn by-laws, made under such authority as these were made, as invalid because unreasonable. But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires." But it is in this sense, and in this sense only, as I conceive, that the question of unreasonableness can properly be regarded.

In view of the many possible inequitable applications of the definition of "family" which I have mentioned above, I am of the opinion that the by-law in its device of adopting "family" as being the only permitted occupants of a self-contained dwelling unit comes exactly within Lord Russell's words as to be found to be "such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men" and, therefore, as Lord Russell said, the legislature never intended to give authority to make such rules and the device of zoning by reference to the relationship of occupants rather than the use of the building is one which is ultra vires of the municipality under the provisions of The Planning Act.

For these reasons, I would allow the appeal, set aside the decision of the Court of Appeal for Ontario, and affirm the acquittal by the County Court Judge.

I am somewhat concerned as to the disposition of costs. This is an appeal in a summary appeal matter within s. 41 of the Supreme Court Act and I am of the opinion that this Court has jurisdiction to grant costs. Costs were not even mentioned in the reasons for acquittal by the learned County Court Judge. In the Divisional Court, it was said "by reason of the nature of these proceedings, it has not been the policy of this court to make any disposition as to

costs". In the Court of Appeal, it was simply said "there will be no costs of these proceedings" and with some reluctance I follow the latter course.

The judgment of Martland and Ritchie JJ. was delivered by

MARTLAND J. (dissenting)

MARTLAND J. (dissenting):-- I am in agreement with the reasons for judgment delivered by MacKinnon, J.A., in the Court of Appeal.

With respect to the judgment of this Court in Polai v. The Corporation of the City of Toronto [*[1973] S.C.R. 38*], while it is true that the reasons for judgment in this Court do not refer to the contention of counsel for the appellant that the definition of "private detached dwelling house" contained in Zoning By-law No. 20623 was ultra vires of the municipality to enact, that submission, which had been rejected by the Court of Appeal, was made in argument before this Court. Had it been successful, the appellant would have been entitled to succeed. The judgment of this Court, although not in terms, rejected that argument. The definition of "private detached dwelling house" in the zoning by-law there in issue is very similar to the combined effect of the definition of "dwelling unit" and "family" in the by-law in issue in the present case.

The definition of "private detached dwelling house" in the by-law considered in the Polai case was as follows:

> the whole of a dwelling house occupied or capable of being occupied by one person or two or more persons related by bonds of consanguinity, marriage or legal adoption, with or without one or more full-time domestic servants.

The definition of "dwelling unit" and of "family" in the by-law under consideration in the present case is:

> "Dwelling Unit" shall mean:
>
> a separate set of living quarters designed or intended for use or used by an individual or one family alone, and which shall include at least one room and separate kitchen and sanitary conveniences, with a private entrance from outside or from a common hallway or stairway inside.
>
> "Family" means a group of two or more persons living together and inter-related by bonds of consanguinity, marriage or legal adoption, occupying a dwelling unit, and shall include the following:
>
> (a) Non-paying guests and domestic servants;
>
> (b) A property owner living alone except for two other persons not related;
>
> (c) Not more than three foster children under the care of a children's aid society approved by the Lieutenant Governor in Council under the Child Welfare Act, 1965.

The decision that the definition of "private detached dwelling house was intra vires of the municipality in the Polai case leads to the conclusion that the definitions now in issue are also intra vires of the respondent.

I also agree with MacKinnon J.A., that the specific provisions of s. 35(1) of The Planning Act empowered the respondent to enact the provisions of By-law 7625 which apply in this case.

If the by-law was within the express powers of the respondent to enact, as I think it was, and if it was enacted bona fide, and there is no suggestion that it was not, it is my view that a court should not hold the by-law to be invalid because some of the consequences of its application might be regarded by the court as unreasonable. MacKinnon J.A., cited a passage from the judgment of Masten J.A., in Re Howard and City of Toronto [(1927), 61 O.L.R. 563], at p. 575, as summarizing the principles applicable in this case:

> What is or is not in the public interest is a matter to be determined by the judgment of the municipal council; and what it determines, if in reaching its conclusion it acted honestly and within the limit of its powers, is not open to review by the Court: ...
>
> The question of the relative balance of convenience or detriment to different persons is a matter which the Legislature has committed to the consideration and determination of the municipal council, and their judgment on that question, if bona fide exercised in what they believe to be the public interest, will not be interfered with by the Court: ...

The view expressed by Chief Justice Meredith in Leitch v. Strathroy [(1923), 53 O.L.R. 665] at p. 669, is to the same effect. It is as follows:

> I have discussed the reasonableness of the course which was taken by the council and have expressed the opinion that it was reasonable, but I desire emphatically to disclaim any jurisdiction in the Court to review the action of a municipal council acting within its powers and in good faith. Granting these two things, it is for the council, and not for the Court, to determine whether an arrangement which it enters into is a reasonable one.

I would dismiss the appeal, without costs.

Appeal allowed, no costs in the proceedings, MARTLAND and RITCHIE JJ. dissenting.

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Assessors of Areas #1 and #10 v. University of Victoria,*** 2010 BCSC 133

Date: 20100201
Docket: S078717
Registry: Vancouver

2010 BCSC 133 (CanLII)

In the Matter of a Stated Case Under the *Assessment Act*, R.S.B.C. 1996, c. 20 and amendments thereto

And In the Matter of an Appeal to the Property Assessment Appeal Board of British Columbia

Between:

Assessor of Area #1 – Capital
Assessor of Area #10 – North Fraser Region

Appellants

And

University of Victoria, University of Victoria Students' Society, Simon Fraser University, The Simon Fraser Student Society and Property Assessment Appeal Board

Respondents

Corrected Judgment: The text of the judgment was corrected at paragraph [79] on March 29, 2010.

Before: The Honourable Madam Justice Ballance

Reasons for Judgment

Counsel for the Appellants:	J. H. Shevchuk
Counsel for the Respondents, University of Victoria and University of Victoria Students' Society	R. S. Gill
Counsel for the Respondents, Simon Fraser Student Society and Property Assessment Appeal Board	N. R. Hughes
Date and Place of Hearing:	May 6-7, 2009 Vancouver, B.C.

INTRODUCTION

[1] On March 25 and 26, 2008, a stated case initiated pursuant to s. 65 of the *Assessment Act*, R.S.B.C. 1996, c. 20, brought by the Assessor of Area #1 and the Assessor of Area #10 (together, the "Assessors"), appealing the decision of the British Columbia Property Assessment Appeal Board (the "Board") was argued before this Court. Before the Board were the appeals from the decisions of a property assessment review panel with respect to property located on lands owned by the University of Victoria ("UVic") and lands owned by Simon Fraser University ("SFU"). The central issue for the Board was whether these properties vested in the respondent universities are "*held or used for university purposes*" within the meaning of s. 54(1) of the *University Act*, R.S.B.C. 1996, c. 468 (the "*Act*"). The Board concluded that the subject properties were both held and used for university purposes, and, therefore, were exempt from taxation pursuant to s. 54(1).

2010 BCSC 133 (CanLII)

[2] I ruled that the questions posed in the stated case were defective in material ways and were not proper questions of law to be answered. The questions were remitted back to the Board to make the necessary amendments for resubmission. The reasons for judgment can be found at 2008 BCSC 1302.

[3] Thereafter, the Board filed an amended notice of stated case posing three modified questions. These are my reasons in respect of the rehearing the following year.

BACKGROUND

[4] The Board's findings of fact are set out in paragraphs 1-35 of the amended notice of stated case filed January 14, 2009. They are reproduced in the appended Schedule "A".

UVic Properties

[5] The property in issue located on the lands owned by UVic is the portion of the UVic student union building ("SUB") that is leased to commercial tenants by the UVic

students society ("UVSS"). About 70% of UVic's student population hail from outside the Victoria area. Roughly 12% of the student body live on campus.

[6] The SUB is managed by a joint committee of UVic and the UVSS. In that committee's terms of reference, UVic recognizes the autonomy of the UVSS in the daily business operations of the SUB. It also recognizes that the students, through the UVSS, are the primary occupants and users of the SUB. The policies and regulations governing the use and operation of the SUB are to be developed and administered to reflect this intended purpose and function of the building.

2010 BCSC 133 (CanLII)

[7] The UVSS is a registered non-profit society. It is governed by a student board of directors elected annually by the undergraduate students of UVic. The UVSS has multiple functions including: advocating on behalf of its members; making representations to the board of UVic on issues such as fees, funding for financial aid, etc.; providing a meeting space for student clubs; maintaining financial accounts for those clubs; and providing services to its members, both directly as an operator/employer and through third party leases.

[8] Some services are provided by the UVSS directly to its student members. These include the operation of a pub, coffee shop, health food bar, international grill, consignment bookstore, extended health and dental plan, photocopy shop, movie theatre and night time theatre concession. All of those facilities are operated by the UVSS and the employment positions they provide are generally available only to students. The Assessor of Area #1 has treated these enterprises as exempt from taxation. Accordingly, they do not form part of this appeal.

[9] Generally speaking, the prices at those campus facilities are lower than those off campus, except for the pub which typically complies with a per-drink minimum in order not to encourage over-consumption of alcohol. While the majority of these enterprises are open to the public, the lion's share of their business comes from the students.

[10] The areas in the SUB that form the subject matter of this appeal are leased by:

Travel CUTS travel agency;
On the Fringe hair design;
Campus Dentist;
Campus Medicine Centre Pharmacy; and
Back in Line Chiropractic and Massage.

The above enterprises operate under leases negotiated between the UVSS and the tenants themselves.

[11] Among other things, the leases explicitly recognize the importance of the UVSS medical plan coverage to the tenants providing the medical services. By way of illustration, the Campus Dentist tenant is entitled to terminate its lease on three months written notice in the event that UVSS cancels its dental plan coverage for its members. Along the same lines, if UVSS reduces its extended health plan coverage for chiropractic and massage therapies to less than $200 per year, the Back in Line Chiropractic and Massage tenant may terminate its lease. The UVSS requires the tenants to be open sufficient hours to serve the students and the tenants provide a coupon or something similar as a bonus/perk in the UVSS welcome package for the students. The commercial tenants in respect of each of the respondent universities are strongly encouraged by the respective student societies to give price breaks to the student population they serve. Greater particulars concerning the individual commercial tenants are set out in the amended notice of stated case.

[12] The UVSS does not pay any rent to UVic. Instead, it uses the rent that it charges to these third party tenants to cover its share of the building maintenance costs which it is required to pay to UVic.

2010 BCSC 133 (CanLII)

SFU Properties

[13] SFU consists of 1,000 acres at the top of Burnaby Mountain. There are very few commercial or retail outlets within close proximity of campus. It is predominantly a commuter campus.

2010 BCSC 133 (CanLII)

[14] The SFU properties under appeal are areas located in SFU's student union building known as the Maggie Benston Centre (the "MBC"). The MBC includes a facility provided for student union activities and areas used by the university for registration, health and counselling, archives, computer support and a book store. These are all treated as exempt from taxation by the Assessor of Area #10.

[15] The SFU student society (SFUSS) occupies a portion of the MBC, which it leases from SFU for the nominal rent of $1.00 per year. The preamble in the lease states that it is to be used "primarily as a centre for relaxation and enjoyment for the university community". The SFUSS pays its proportionate share of the costs for maintenance, utilities and the like.

[16] The five areas in the MBC subject to this appeal are: Travel CUTS travel agency, Mini-Mart 101, and three fast food outlets. Those businesses are located within the portion of the MBC leased by the SFUSS.

[17] SFU granted BC Transit a licence to occupy the bus loop area and rest station on campus for an annual fee of $1.00. The licence provides BC Transit with the non-exclusive use of that area for the purposes of a bus loop and washroom facilities for Transit personnel. Bus services are to be provided to students, staff and faculties of SFU, as well as to the general public. Initially, exemption of the bus loop was also under appeal. The Assessor of Area #10 has since conceded that the bus loop is exempt under s. 54(1) and has abandoned that aspect of the appeal.

OVERVIEW OF THE ASSESSORS' POSITION

[18] As it was before the Board, the pivotal issue on this stated case is whether the subject properties are being "*held or used for university purposes*" within the meaning of s. 54(1) of the *Act.* The expression "*university purposes*" is not defined

in the *Act*, and has not been judicially considered in the context of s. 54(1). Section 54 reads as follows:

> **Exemption from Taxation**
>
> 54 (1) Unless otherwise provided in an Act, the property vested in a university and held or used for university purposes is exempt from taxation under the *Community Charter*, the *Local Government Act*, the *School Act*, the *Vancouver Charter* and the *Taxation (Rural Area) Act*.
>
> (2) If land vested in a university is disposed of by lease to a college affiliated with the university, so long as it is held for college purposes, the land continues to be entitled to the exemption from taxation provided in this section.

2010 BCSC 133 (CanLII)

[19] To be captured by the exemption, property need only be held for university purposes or used for university purposes – not both.

[20] Prior to March 12, 2003, s. 54 permitted an expansive exemption for all property vested in a university. Effective March 12, 2003, and retroactive to December 31, 2002, the section was amended so as to incorporate the requirement that the property vested in a university was "held or used for university purposes" in order to be eligible for the tax exemption (the "2003 Amendment").

[21] The Assessors advanced two lines of arguments before the Board and on this appeal.

[22] Their primary position is that the meaning of "*university purposes*" in s. 54(1) is to be found by reference exclusively to the four corners of the *Act*. They contend that by adopting this contextual interpretation informed solely by the provisions of the *Act*, it becomes apparent that "*university purposes*" must relate to the educational, academic and degree-granting objectives expressly addressed in the *Act*. They assert that this is the proper approach to interpretation and does not admit of the broader construction of "*university purposes*" endorsed by the Board and urged by the respondents on this appeal. The Assessors submit that going outside the provisions of the *Act* caused the Board to adopt a far broader interpretation of the exemption than intended by the legislature. In this regard, the Assessors concede that the common understanding of the notion of a university may be wider than the

meaning derived solely by reference to the *Act.* They assert, however, that the underlying legislative intent is to temper that common understanding and impose a more constrained meaning for the purposes of s. 54(1).

[23] In developing their primary contention, the Assessors highlight several specific provisions of the *Act*. In a nutshell, they contend that those provisions, particularly the sections establishing the constituent elements of a university (i.e., the board of governors, senate, faculties, convocation and chancellor) and their respective duties, together with the statutorily articulated functions and duties of a university at large, support the view that the purposes of a university are to provide formal courses of instruction in high-level education, academic pursuits such as research and granting degrees. The Assessors say that it follows that property being held or used in a manner that does not advance those narrow purposes is not being held or used in pursuance of "*university purposes*" as contemplated by s. 54(1). They assert this is the case even though the use of the property might be beneficial to the university community in a general way. To bolster this argument they refer to the separate enabling legislation of five universities in the Province not covered by the *Act*. They contend that a unifying thread in such legislation is the notion that the purpose of those universities is formal education and academic environment. They submit that this concept of university purpose is consistent with the narrow scope of the purposes drawn from the four corners of the *Act*, and supports their constrained interpretation of *"university purposes*" in s. 54(1).

[24] The Assessors' secondary position, advanced in the alternative, is that even if one looks beyond the *Act* to discern the meaning of "*university purposes*", it is still to be interpreted narrowly in order to reflect the intent of the legislature that there be limits to the parameters of the exemption in s. 54(1). According to the Assessors, this asserted limitation has two features: First, they say that the prevailing theme common to the concept of "university" in the jurisprudence is of an institution which facilitates educational and academic pursuits and, consequently, only activities that are aimed at furthering those objectives are for the purposes of a university. Second, they contend that the authorities support the proposition that the use of the

2010 BCSC 133 (CanLII)

subject properties must be critically necessary, as distinct from merely convenient, to the attainment of those constrained university purposes in order to come within the statutory exemption. The Assessors' position is that none of the enterprises being carried on at the properties in question are necessary to the furtherance of any such university purpose and, thus, are not captured by the exemption.

2010 BCSC 133 (CanLII)

[25] At the heart of the Assessor's principal and alternative arguments, is the base contention that a commercial enterprise operating for profit on property owned by the university, simply cannot be in furtherance of a university purpose, whether the definition of "*university purposes*" is ascertained from within or without the four corners of the *Act*.

OVERVIEW OF THE RESPONDENTS' POSITION

[26] As a general posture, the respondents assert that the Assessors seek an artificially constrained interpretation of the exemption that is not supported on a proper interpretation of the *Act* or by the case law. More specifically, they submit that the student union buildings in question qualify as property being "held" for "*university purposes*" within the exemption. They also contend that the properties which house the commercial tenants are being used to facilitate the provision to the students of legitimate ancillary services which they want and under arrangements that are favourable to them and are, therefore, being used for "*university purposes*".

[27] The respondents also submit that universities have the power and capacity to reasonably provide for ancillary services to be used mostly by the university population that enhance the quality of the academic and university experience at large. They emphasize the point that the only distinction between the premises under appeal and other properties on campus which the Assessors treat as tax exempt, including food services and even a movie theatre and pub open to the public, is the fact that the subject premises are occupied by a third party who derives a profit. The respondents submit that the for-profit factor is not a distinction embodied in s. 54(1), and that there is nothing conceptually improper in permitting the tax exemption to apply to the commercial tenants in the case at hand.

2010 BCSC 133 (CanLII)

SUMMARY OF THE BOARD'S DECISION

[28] The Board rejected the Assessors' main argument that the duties and functions of a university and its constituent parts as set out in the provisions of the *Act* effectively determine whether or not a property is "*held or used for university purposes*". In dismissing this branch of the Assessors' argument, the Board made a number of important observations relative to the concept of the modern Canadian university, at para. 43:

> I find that the functions of a university as set out in section 47 of the *University Act* do not determine whether or not property is "held or used for university purposes". I find that universities provide a wide range of ancillary services above and beyond the provision of academic courses, granting degrees and research. Universities provide housing and food for its students. Universities provide bookstores, academic and non-academic counselling services, health care clinics athletic and recreational services, bursaries and scholarships, and orientation programs. Students societies contribute to a student's enjoyment of university life by providing meeting places for social interaction and by providing for services to meet the needs of students on campus and consequently to reduce the off-campus travel time. Student societies thus assist the university in furthering its objectives of recruiting and retaining students. I find that there are a broad range of activities offered by the university or student society that may fall within the definition of "university purpose". These activities go well beyond the functions of degree granting and academic research as set out in section 47 of the *University Act*.

[29] In addressing the Assessors' alternate argument, the Board considered case law from British Columbia and other jurisdictions presented by the parties to support their respective interpretations. Put broadly, the Assessors relied on jurisprudence which they maintained supported the proposition that the services being provided on university property must be critically necessary, in contrast to being convenient, to achieve the fundamental academic, educational and degree-granting purposes of the university, and thereby qualify for the tax exemption. I will survey those and other cases later in my reasons. Suffice it to say at this stage that in the Board's view, the case law cited to it did not support the restrictive interpretation of "*university purposes*" urged by the Assessors.

[30] A common refrain of the Assessors at the Board hearing and on this appeal is that the legislature did not intend the tax exemption to apply to property occupied by

a for-profit commercial enterprise. In this connection, the Board noted that the Assessors regard non-commercial undertakings such as a student operated pub and coffee shop on both campuses as exempt. In the mind of the Board, the difficulty in distinguishing a commercial service operated for profit from a not-for-profit service run by students or a student society was that the legislation does not make such a distinction. On this point, the Board stated, at para. 48:

> If I find that the property is held or used for a university purpose, then that is the end of the matter. There is nothing in the legislation that eliminates a for-profit service from an exemption if the property is held or used for a university purpose.

[31] The 2003 Amendment was subject to debate in *Hansard*, March 5, 2003. The Assessors recited the remarks made at the time by the Honourable Ida Chong about the incorporation into s. 54(1) of the phrase "*held or used for university purposes*" at page 5245, para. 1515-1520,:

> Section 48 of Bill 6 also makes reference to the *University Act*. I want to speak very briefly on this, because I represent a university in my riding – the University of Victoria. What this section does is confirm that the exemption from taxation for property that is vested in a university will continue to apply to only those properties that will be held and used for university purposes. That is important, because in Victoria, due to a very substantial bequest that was left to the university, some properties had been left – in particular, some commercial properties. In fairness, it would have been exempt from property taxes, and that would have been an unfair playing field for the businesses that competed with that.
>
> While the university was very grateful for this bequest left to them, they also realized that taxation would have had to apply to that. But ensuring that those properties, if they were to be used for university purposes, would qualify for the exemption ... That clarity needed to be made, because I think there were some concerns about that. Again, that deals with fairness, and that deals with equity.

[32] The Board was made aware that the parties had agreed that in this passage, Ms. Chong was referring to a hotel property bequeathed to UVic located in downtown Victoria that had no connection to the university campus. Leaving to the side the question of whether it was even necessary to look at the legislative history of s. 54(1), the Board would not accede to the Assessors' submission that

2010 BCSC 133 (CanLII)

2010 BCSC 133 (CanLII)

Ms. Chong's comments implied that a commercial entity operating on campus could not be covered by the tax exemption.

[33] The Board cited *Re Simon Fraser University and District of Burnaby* (1968), 67 D.L.R. (2d) 638 (B.C.S.C.) [*Simon Fraser University*], confirmed on appeal at 1 D.L.R. (3d) 427, as support for adopting an expansive interpretation of the scope of the s. 54(1) exemption. In that case, this Court considered the pre-2003 version of s. 54(1) which did not contain the phrase "*and held or used for university purposes*". For that reason, the case provides no guidance in interpreting the phrase under consideration here. However, the aspect of the decision relied upon by the Board was its articulation of the rule of statutory interpretation that provides where the words of a statute are precise and unambiguous, the role of the court is to expound the words in their natural and ordinary sense, and its warning of the danger of implying words into a statute when it is clear on its face.

[34] Relying, in part, on the relatively recent decision of the Alberta Court of Appeal in *University of Alberta v. Edmonton (City)*, 2005 ABCA 147, 252 D.L.R. (4th) 501 [*University of Alberta*], the Board reasoned that the presence of a dual purpose, that is a for-profit commercial enterprise that also offers a service to the university community, does not preclude a finding that the property is being "*held or used for university purposes*". It concluded that there was nothing in s. 54(1) that required it to discriminate between for-profit and not-for-profit use of the property in determining whether it could be characterized as being "*held or used for university purposes*". From the Board's perspective, drawing a line between commercial and not-for-profit services in determining whether property is held or used for a university purpose under s. 54(1) was tantamount to asking the Board to expand on the clear meaning of that statutory provision. Building on the caution expressed in *Simon Fraser University* about the dangers of implying words into legislation that is clear on its face, the Board stated that if the legislature wished to make that distinction, it must say so expressly.

[35] At the hearing before the Board, the respondents referred to s. 71 of the *Act* which authorizes the making of regulations to define an expression used in the *Act*

and to prescribe "conditions or limitations for the purpose of section 54". The Board's attention was specifically taken to *B.C. Regulation 366/2005*, deposited December 13, 2005 (the "Section 54 Regulation"), which states:

> **CONDITIONS AND LIMITATIONS ON UNIVERSITY PROPERTY TAX REGULATION**
>
> **Conditions and limitations**
>
> 1 The following conditions and limitations apply for the purposes of section 54 of the *University Act*:
>
> (a) property that is held or used for residential or rental accommodation purposes is not exempt from taxation unless the accommodation is held or used
>
> (i) primarily for the accommodation of students, visiting professors, visiting scientists, visiting scholars, visiting postdoctoral fellows or visiting medical residents,
>
> (ii) for the president or to meet a requirement of a faculty member's appointment to a specified position at the university, or
>
> (iii) as university apartments rented primarily to the full time university faculty or staff for a stay of no more than 3 years.

[36] The Board agreed with the respondents' submissions to the effect that the regulation making power is available if the Lieutenant Governor in Council wishes to exclude commercial entities operating for-profit businesses on university lands from the ambit of the tax exemption. It reasoned that the absence of such a regulation, though not determinative, strengthened the interpretation that the contentious phrase does not exclude university properties just because they are leased to third parties hoping to make a profit.

[37] Having concluded that "*held or used for university purposes*" does not exclude commercial businesses on campus properties, the Board next addressed each of the subject properties. It is useful to reproduce this portion of the Board's decision:

> <u>Application of section 54 to the Facts in the UVic Appeals</u>
>
> [59] I accept the evidence provided by Mr. Clode and Ms. Jensen as to the importance of these services to the students and their connection to the overall university community. They both testified as to the importance of the student union society in the life of the university. They also testified as to the reasons for locating these various entities within the student union building.

2010 BCSC 133 (CanLII)

The leases emphasize the connection to the university with the clauses requiring compliance with university and student society policies and regulations. The Travel CUTS agency provides a service that increasingly is part of university life today, which includes not only travel from campus to home for students, but international travel as well, as part of the exchange programs offered by the university.

2010 BCSC 133 (CanLII)

[60] Ms. Jensen testified that the hair salon, the pharmacy, the chiropractic and dental services all benefit the lives of the students on campus by reducing travel time for accessing such services. In addition, there is a connection between the UVSS and the operators of these services through the lease agreements, the medical plan, advertising perks, as well as through the UVSS encouragement to these entities to maintain lower fees for the students (e.g. reference to the dental fees). I find that these services are used “for a university purpose” by contributing to the quality of life for the students, through both lower costs and reducing travel time off campus. All these services are overwhelmingly used by the student population.

[61] I find that the Travel CUTS travel agency, On The Fringe hair design, Campus Medicine Centre Pharmacy, Back in Line Chiropractic and Massage, and Campus Dentist, all located in the student union building on land owned by UVic and leased to the UVSS, are “held or used for university purposes”.

<u>Application of Section 54 to the Facts in the SFU Appeals</u>

[62] With respect to the SFU appeals, I find that the bus loop is not only convenient for students and faculty who require transportation to and from their university activities, but is also essential to the university community. I note the non-exclusive occupancy by B.C. Transit and the maintenance of the area by SFU (except for washroom). I find that the bus loop is “used for a university purpose”, by providing a needed location for the buses and bus drivers who are providing this service to the campus community.

[63] With respect to the other properties under appeal, all are located in the student union building on campus (the MBC) and all are part of the area leased to SFUSS. I find that the Travel CUTS travel agency, Mini-Mart 101, and the three fast food outlets ... are all “held or used for a university purpose”. Similar to the UVic appeals, I find that the provision of food services does not stop being a “university purpose” just because the operator is a fast-food commercial entity. The Travel CUTS travel agency provides a service that is “used for a university purpose” in the same way as stated above on the UVic appeals. The Mini-Mart provides a food service of a different sort but one that, by eliminating travel time for the students, is again “used for a university purpose” by reducing the off-campus travel time and thus improving the quality of life for the students. The leases demonstrate the connection with the SFUSS and the university community as a whole. All the leases are subject to the terms and conditions of the lease agreement between SFU and SFUSS with respect to the MBC, as well as requiring compliance with SFUSS and SFU policies.

[64] The legislation provides no basis for drawing a distinction between these “for-profit” commercial entities that provide food and the student-run not-for-profit entities. They all are there to improve the lives of the students

> by providing services that may not be essential but certainly contribute to the lives of the students who no longer have to make the trek off campus to access alternatives to the standard university provided food services.

[38] In the end, the Board concluded that the properties under appeal were both held and used for university purposes within the meaning of s. 54(1) and, therefore, were exempt from taxation.

2010 BCSC 133 (CanLII)

AMENDED QUESTIONS

[39] The Court's answers are sought to the following restated questions:

1) Is the phrase "*university purposes*" in s. 54(1) to be defined and constrained by reference to the sections of the [*Act*] and the scheme of that legislation and, if so, did the Property Assessment Appeal Board err in law by adopting a definition of "*university purposes*" that is not supported by the sections and the scheme of the [*Act*]?

   Further, did the Property Assessment Appeal Board unduly restrict its consideration of the [*Act*] to s. 47 therein to define "*university purposes*" and thereby err in law by not giving effect to the context and legislative scheme in which "*university purposes*" is found in s. 54(1) of the [*Act*]?

2) Did the Property Assessment Appeal Board misinterpret and misapply s. 54(1) of the [*Act*], and thereby err in law when it held that property occupied and used by third parties for commercial purposes in the manner occupied in the subject appeals does not necessarily preclude the property from being "*held or used for university purposes*"?

3) Did the Property Assessment Appeal Board err in law by characterizing activities as being for "*university purposes*" under s. 54(1) of the [*Act*] if the activities contribute to the students' enjoyment of university life, provide "for services to meet the needs of students on campus," contribute "to the quality of life for students," and "reduce the off-campus travel time"?

2010 BCSC 133 (CanLII)

SUITABILITY OF AMENDED QUESTIONS

[40] The respondents maintain that the recast questions are defective and are not proper questions of law. I will address each question in turn.

Question 1

[41] Question 1 is presented in compound form and is made up of at least two distinct questions.

[42] The first prong is intended to elicit the Court's ruling in respect of the Assessors' primary contention that the meaning of "*university purposes*" in s. 54(1) is to be ascertained solely from within the four corners of the *Act*.

[43] The respondents' chief criticism of question 1 is that it does not pertain to any particular legal conclusion reached by the Board. They characterize it as being the same, in substance, as the original version. I do not see it that way. The Board rejected the Assessors' contention that the meaning of "*university purposes*" is to be extracted exclusively from its legislative context. As part of its reasoning on that point, the Board held that the functions of a university as set out in s. 47 of the *Act* do not determine whether property is being "*held or used for university purposes*" under s. 54(1).

[44] The legal issue at the root of question 1 is sufficiently clear. In effect, it asks whether, as a matter of law, the Board is required to confine its quest for interpretation of the contentious phrase to the four corners of the *Act*. While I find the second part of the question slightly difficult to follow, I believe its thrust is to ask whether the Board erred in law by not giving effect to the entirety of the legislative context by failing to consider the sections of the *Act,* other than s. 47, relied on by the Assessors in their primary argument. These are proper questions of law.

[45] In my opinion, the revised version of question 1 adequately addresses the flaws identified by the Court with respect to the question as originally stated and does not trigger fresh defects. Question 1, as reframed, is properly before the Court.

Question 2

[46] There is no quarrel that amended question 2 is one of mixed fact and law. The leading difficulty with the original question 2 was that it was premised on an erroneous footing and thereby mischaracterized the Board's ruling.

[47] The respondents submit that because the scope of the modified version is confined to the unique facts before the Board, it lacks the degree of precedential importance sufficient to raise it to a question of law. (See generally, *British Columbia (Assessor of Area No. 27 – Peace River) v. Burlington Resources Canada Ltd.*, 2005 BCCA 72, 37 B.C.L.R. (4th) 151 [*Burlington*]).

[48] The *Act* was recently amended to create a new category of university known as a "special purpose, teaching university". There are currently five institutions (formerly colleges) classified as such. Pursuant to s. 3(1.1) of the *Act*, each of them is continued as a "university" in British Columbia. The definition of "university" under the *Act* includes a special purpose, teaching university. Section 54 draws no distinction between a special purpose, teaching university and a university established under s. 3(1) of the *Act*. Accordingly, s. 54 appears to apply to both types of universities. This, in turn, has expanded the university category of stakeholders interested in the answer to question 2.

[49] Other potentially affected stakeholders are commercial occupiers of university property and commercial entities off campus who may be in competition with those operating on site, as well as the municipalities that collect taxes from the universities. The issue has perpetual relevance as it will arise annually with each new assessment cycle.

[50] Respondents' counsel suggest that question 2 could withstand scrutiny and be elevated to a question of law if it were further varied to remove the phrase "in the manner occupied in", thereby recasting it to ask whether the Board erred in holding that property used by third parties for commercial purposes does not necessarily preclude it from coming within the statutory exemption. In reply, counsel for the

2010 BCSC 133 (CanLII)

Assessors stated that if the Court thought that the only way amended question 2 could be properly asked would be to make the change proposed by the respondents, then the Assessors could "live with it".

2010 BCSC 133 (CanLII)

[51] This Court only has jurisdiction to answer the precise questions asked on the stated case; it may not implement any variation that may arise during argument or submissions: *New Vista Society v. British Columbia (Assessor of Area No. 10 – Burnaby/New Westminster)*, [1992] B.C.J. No. 1127 (C.A.). In any event, while I think that the proposed alteration may improve question 2, it is by no means essential. I conclude that the reach of question 2 is sufficiently general that it may have importance in the determination of future cases, despite the fact that it is phrased with respect to the commercial tenants involved in this particular case.

[52] In my view, question 2 raises a proper question of law. The Court will answer it.

Question 3

[53] Question 3 continues to be problematic in its amended form. As with the original version, the reformulated question oversimplifies and, in that sense, mischaracterizes the findings of the Board. The Board did not conclude that the properties in question were held or used for university purposes based solely on the four factors identified in the amended question. Although the factors enumerated in question 3 were informing considerations that led to the Board's decision, they were by no means the only considerations. Echoing the remarks I previously made with respect to the original question 3, the Board's analysis and ruling was significantly more layered and nuanced than is reflected in the question.

[54] In defending amended question 3, the Assessors repeatedly voiced the complaint that because the Board's decision did not supply a definition of "*university purposes*", one is left to infer from the various factors that the Board did take into account whether a future use of property would come within the exemption. From the standpoint of the Assessors, the Board's decision is flawed on the basis that it

did not compose a definition of "*university purposes*". To the extent that is being contended, it is misguided. The task of the Board was not to formulate a comprehensive definition of "*university purposes*". Its job was to consider and weigh the relevant evidence concerning the use being made of the areas under appeal, and apply the law, including the principles of statutory interpretation, to determine whether those areas fell within the exemption. Of necessity, this required the Board to consider the meaning of "*university purposes*" and identify the factors in the case before it bearing on that issue; but it was not compelled to attempt a fulsome definition.

2010 BCSC 133 (CanLII)

[55] I find that amended question 3 continues to be flawed in a material way. It is not a proper question of law to be answered by this Court and is dismissed.

STANDARD OF REVIEW

[56] The parties agree that the standard of review in connection with question 1 is that of correctness. There is debate over the standard that applies to question 2 and even whether it is necessary for the Court to engage in a standard of review analysis. Both parties appear to agree that the determination is more difficult because question 2 is a mixed question of fact and law. The Assessors rely on *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, and *Burlington*, in support of their assertion that the standard of review for question 2 is correctness. The respondents say that because question 2 involves a mixed question of fact and law, some degree of deference is called for, and the standard should be that of reasonableness.

[57] As will be seen, I have found that the Board's decision is correct. It must obviously follow that it is reasonable as well. Given my conclusion, there is no need to decide the standard of review, and I have not done so.

ANALYSIS AND ANSWERS

[58] The Assessors' core arguments presented to this Court are virtually identical to those made before the Board.

[59] Although I found it convenient to structure these reasons to address the Assessors' two lines of argument under separate headings, there is overlap among the considerations pertinent to both.

[60] In essence, this appeal is about statutory interpretation.

[61] It is common ground that the governing principle of statutory interpretation is what has come to be known as the modern interpretation rule. In its decision, the Board referred to Elmer Driedger's definitive formulation of that rule:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> [Driedger, *Construction of Statutes* (2nd ed), 1983, page 87]

[62] The modern approach requires the court to ascertain the meaning of legislation in its total context, having regard to the purpose of it, the consequences of proposed interpretations, any applicable presumptions and special rules of interpretation, as well as admissible external aids: Driedger, *Construction of Statutes* (3rd ed), 1994, page 132.

[63] The Board also referred to *BellExpress Vu Limited Partnership v. R.*, 2002 SCC 42, which held that resort to external interpretative aids is only required where there is a genuine ambiguity in the provision, in the sense that it is capable of supporting two plausible readings.

[64] The Assessors advocate a narrow interpretation of the expression "*university purposes*" that would exclude the for-profit use of university property by commercial third parties in all instances. The respondents, on the other hand, submit that the Board's less constrained interpretation better reflects the multi-faceted complexity of modern Canadian universities and is correct.

[65] An obvious starting place is to ask the question: What is a university? The answer has implications for both branches of the Assessors' arguments.

2010 BCSC 133 (CanLII)

[66] The Assessors cite the bare bones definition of "university" from the *Concise Oxford English Dictionary*, 10th ed. Revised (Oxford University Press), 2002. It reads: "a high-level educational institution in which students study for degrees and academic research is done". They also point to the more thoughtful appreciation of the concept given by the Ontario Court of Appeal in *University of Waterloo v. Ontario (Minister of Finance)*, [2002] O.J. No. 4416, 166 O.A.C. 262 (Ont. C.A.) [*University of Waterloo*], at paras. 27-29. Although that case discussed the notion of a university in more expansive terms than the skeletal dictionary definition, the court did not purport to establish a comprehensive definition of the term. Rather, the focus of the court's discussion revolved around a particular statutory definition and whether a discrete structure on campus (a student residence) could be considered a part of a university within the meaning of that definition.

[67] To my mind, neither the dictionary definition of university nor the description of it in *University of Waterloo* adequately conveys the complex fabric of the institution that is a modern Canadian university. In my opinion, the Board's comments in paragraph 43 of its decision about universities and the wide range of ancillary services they legitimately provide beyond the pure educational function present a more realistic depiction.

[68] Canadian universities today are multifaceted institutions that require a diverse array of services to advance their broad objectives. They operate in a competitive environment. In order to achieve their objectives and perpetuate as relevant institutions, they must reasonably service the needs and aspirations of their faculty and their diverse student bodies. Student and faculty recruitment and retention play a significant role in the success of a university. It is surely trite to observe that the attendance of students is the most vital component of a university; without them, a university is little more than a languishing collection of resources, vacant classrooms and idle professors. I agree with the Board's remarks that student societies play an important role in assisting universities in recruiting students by contributing to a student's enjoyment of university life in a variety of ways. To that end, universities need to provide more than the rudimentary features of higher learning; more than

2010 BCSC 133 (CanLII)

lecture halls and labs. Modern universities commonly have extensive athletic and recreational facilities, as well as facilities aimed at promoting social interaction among the students, the faculty, and the students and faculty together. As observed by the Board, universities also require considerable human support services such as housing, transportation, food services and health care clinics to reasonably attend to the needs of their students and faculty.

2010 BCSC 133 (CanLII)

Assessors' Primary Argument

[69] The lynchpin of the Assessors' principal argument is the premise that the purpose of a university is to perform the functions and duties prescribed by its enabling legislation, in this case, the *Act*. They insist that the "*university purposes*" contemplated under s. 54(1) must relate to the educational and academic pursuits expressly stipulated in the *Act*. Their corollary assertion is that there is no need to look beyond the *Act* in order to interpret the exemption provision.

[70] As a means of setting the statutory backdrop to s. 54(1), the Assessors refer to several specific provisions of the *Act*. For the most part, the general scheme of the *Act* sets out:

1) the nature and source of the legal personality of a university;

2) the internal governance structure of a university and the powers and duties of those component parts;

3) the powers and duties of a university at large; and

4) numerous miscellaneous provisions addressing a wide array of matters.

[71] Section 3(2) describes the structural components of a university comprising a chancellor, convocation, board of governors, senate and faculties.

[72] The *Act* vests the academic governance of the university in the senate. The powers bestowed on the senate under s. 37 of the *Act* are largely educational and academic in nature. The term "faculty" is defined under the *Act* as an academic or

educational administrative division of a university constituted by the board of governors. The Assessors contend that the mandate of the faculties, as discerned from their stated powers and duties under s. 40 of the *Act*, is the provision of formal courses of instruction. I accept that.

2010 BCSC 133 (CanLII)

[73] The Assessors say from the standpoint of the senate and the faculties, "*university purposes*" must be confined to the pursuit of purely educational and academic matters and cannot legitimately be characterized as encompassing the broad ancillary services that the Board speaks of in its decision.

[74] When one considers the roles of the senate and faculties in the overall governance of a university, it is unremarkable that their powers are circumscribed as described above. While I accept that the nature of their prescribed powers inform the meaning of "*university purposes*" under s. 54(1) to some extent, I do not accept that they serve to constrain them. Along the same lines, I do not accept that the statutorily prescribed roles of the office of chancellor and the convocation (which, incidentally, is itself comprised of all former students who are graduates of the university) to confer degrees, diplomas and the like, serve to curtail the scope of "*university purposes*" under s. 54(1).

[75] Section 27 of the *Act* recites the powers of the board of governors. They are expressed both in general and specific terms. Cast in general terms, the board is empowered to manage, administer and control the property, revenue, business and affairs of the university. Section 27(2) then provides a non-exhaustive list of some of the specific powers of the board. The Assessors say that there is nothing in s. 27 that would lead to the conclusion that the use of the subject premises by the current commercial tenants fulfills the mandate of the board. Their companion assertion is that the powers of the board of governors enumerated in s. 27(2) circumscribe what can be properly included within the rubric of "*university purposes*".

[76] Even if the Court were to accept the submission that the parameters of "*university purposes*" is dictated by the scope of the functions of the university and its component parts particularized in the *Act*, the simple fact is the *Act* is not as

restrictive as the Assessors would urge. Section 27 does not purport to list each and every function and duty belonging to the board of governors. It contemplates that a university, acting through its directing mind, is to involve itself in activities beyond the narrow educational, academic and degree-granting functions that the Assessors attribute to it. The board's specific powers are expressly stated to be without limitation to its broad and overarching power to manage, administer and control property revenue, business and the affairs of the university. The breadth of s. 27(2)(y) supports this point, and raises a separate point at the same time.

2010 BCSC 133 (CanLII)

[77] That section contains an expansive catchall provision that authorizes the board of governors "*to do and perform all other matters and things that may be necessary or advisable for carrying out and advancing … the purposes of the university..".* The expression "*purposes of the university*" appearing in s. 27(2)(y) is not defined in the *Act*. On its face, this catchall provision vests in the board of governors wide-reaching powers that are not otherwise specified in the *Act*. It is drafted on the premise that a university has purposes, and that the board has authority to carry out such purposes as it sees advisable or necessary, but does not purport to declare what those purposes are. It is circular logic to say that s. 27 articulates the functions and duties of the board of governors, and in that way and to that extent informs the purposes of a university, when the section itself empowers the board to do all things advisable to advance the unspecified purposes of the university.

[78] Further indication that the powers of the board of governors listed in s. 27 are not directed solely towards fulfilling the university purpose of providing high level programs of education and academic research is reflected by the clear connection in the *Act* between the board of governors and the student society. The term "student society" is defined in the *Act* as an incorporated society whose purpose is to represent the interests of the general undergraduate or graduate student body, or both. Section 27(2)(m) authorizes the board of governors to set fees for a variety of matters including in respect of "*all other activities in the university*", "*for the use of student and alumni organizations in charge of student and alumni activities*", and

"*building and operating gymnasium and other athletic facilities*". Section 27.1 is devoted entirely to describing the board's obligations concerning the collection and payment of student society fees. It goes so far as to empower the board of governors to withhold the remittance of fees in the event that the student society is struck from the register of societies or fails to comply with certain financial disclosure requirements. Through the imposition of this link, the board of governors is statutorily bound to participate in facilitating the financial maintenance of the student society.

2010 BCSC 133 (CanLII)

[79] Although the student society is not a structural component of a university under s. 3(2) of the *Act*, the interplay between it and a university via its board of governors as fixed by the four corners of the *Act* is of significance and serves to weaken the underlying thesis of the Assessors' main argument. The Assessors' essential logic is that the functions and duties of a university and its constituent parts translate into and dictate a university's purposes. Applying that logic with respect to the provisions concerning the student society tends to support an interpretation of "*university purposes*" that would include the objective of the perpetuation of its student society. Read in this way, the *Act* itself can be fairly said to embrace a broader notion of "*university purposes*" than the interpretation advanced by the Assessors and one that encompasses the interests of the student body.

[80] Section 47 imposes an obligation on a university (excluding a special purpose, teaching university) to do things such as establish colleges, faculties, departments, courses, continuing education, scholarships and financial assistance, and to provide instruction in the pursuit of research. The Assessors assert that s. 47 continues the theme that, based on the *Act,* a university and its components governed by the *Act* are to engage in activities that advance the university's purposes of providing education, academic/research pursuits and the granting of degrees, and nothing more. Building on that premise, the Assessors assert that the activities of the commercial tenants in the case at hand are in no way related to a university's functions and duties described in s. 47 and, consequently, are not being carried out for "*university purposes*".

[81] I do not read s. 47 as purporting to itemize all of the functions and duties of a university. In my view, it merely imposes minimum requirements upon a university, in contrast to limitations on its power. The provision speaks to things that a university must do, but does not purport to preclude it from engaging in particular activities. The scope of a university's powers is considerably open-ended under s. 47. This reading of s. 47 is compatible with, and even complementary to, the provisions of s. 46.1 of the *Act* which bestow upon a university the powers of a natural person of full capacity for the purposes of exercising its powers and carrying out its duties and functions.

[82] Section 47(2)(f) stipulates, in particular, that a university must "*generally, promote and carry on the work of a university in all its branches*" through the cooperation of its constituent elements. This expansive basket clause basically states that a university must carry on the work of a university. Section 47(2)(f) raises, but does not answer, the question: What is the "work of a university"? To suggest that this in some measure places limitations on the definition of "*university purposes*" under s. 54(1) also invites the application of circuitous reasoning.

[83] The fact that the *Act* is somewhat preoccupied with educational and academic matters is not surprising given a university's ultimate objectives. The educational and academic objectives highlighted by the Assessors are undoubtedly "*university purposes*". It does not follow, however, that they are a university's only purposes or that functions or activities that are reasonably ancillary to the promotion of a university's broad objectives do not qualify as "*university purposes*" under s. 54(1).

[84] I agree with the Board's conclusion that the duties and functions of a university as set out in s. 47 of the *Act* do not determine whether property is being held or used for university purposes under s. 54(1). I would add that the same conclusion also holds true with regard to the functions of a university's statutorily created components and with respect to any other provisions of the *Act*. In my opinion, the scope of "*university purposes*" reaches beyond the functions and duties

2010 BCSC 133 (CanLII)

of the university and its components as set out in the Act – the whole is greater than the sum of its individual parts.

[85] In discerning the meaning of the expression "*university purposes*" in s. 54(1), it is informative to consider its immediate statutory context. Section 54(2) provides that land vested in the university and leased to an affiliated college continues to be tax exempt "*so long as it is held for college purposes*". This provision pre-dates and was unchanged by the 2003 Amendment.

[86] I doubt that it can be credibly advanced that the meaning of "*college purposes*" is confined to the legislative context of the *Act*. The *Act* is virtually silent about a college's functions and duties, much less, its purposes. It would be necessary to interpret the phrase in accordance with the modern rule of statutory interpretation. In that event, I think it likely to suppose that the interpretation of "*college purposes*" would be broader than the narrow definition of "*university purposes*" derived solely from within the four corners of the *Act* as proposed by the Assessors. That may well lead to the curious result that where the use of certain university property does not conform to the restricted meaning of "*university purposes*" endorsed by the Assessors and is not leased to a college, it is subject to taxation; whereas the same property used in an identical way but leased to an affiliated college, might qualify for tax exemption on the basis that it is being used for "*college purposes*". In that scenario, entitlement to the tax exemption of university property would turn on whether it was leased to an affiliated college. It is difficult to conceive of a principled rationale supporting such an anomalous tax treatment. I do not expect that potential anomaly to have been intended by the legislature.

[87] The Assessors suggest that the scope of the exemption can also be ascertained by reference to separate provincial statutes that establish other learning institutions. The language of those exemptions ranges from relatively restrictive (e.g. used for educational purposes) to extremely broad (e.g. not liable to taxation except to the extent that the government is liable). All that can be taken from the differences in language is that the legislature intended more restrictive tax

2010 BCSC 133 (CanLII)

exemptions for some universities and broader ones for others. It still remains to address the properties in this case by reference to s. 54(1). This line of argument offered no real assistance in determining the issue at hand.

[88] The Assessors concede that to adopt their main argument is to accept that "university" should not be accorded its commonplace meaning in the interpretation of s. 54(1). They advocate acceptance of the concept of university in its crudest sense. In doing so, the Assessors endorse constraining the expression "*university purposes*" in s. 54(1) in a way that lends itself to an unnatural interpretation. I do not regard the *Act* to indicate that the legislature intended the unambiguous expression "*university purposes*" in s. 54(1) to be given anything other than its ordinary meaning and do not accept that it ought to be artificially constrained in the manner the Assessors propose in their main argument.

[89] For the reasons given, the answer to the first branch of question 1 is "no". Assuming that the nub of the second part of question 1 is as I have previously described, it too is answered in the negative.

Assessors' Alternate Argument

[90] The Assessors complain that by concluding that the subject properties are covered by the statutory exemption, the Board effectively adopted a test of whether those properties were being held or used in a manner that is convenient to the university population. They assert that the Board ought to have approached the analysis by asking whether the holding or use of those properties was necessary, in the sense of being critical, to the furtherance of the purposes of a university.

[91] A related concern is that permitting tax exemption to commercial enterprises operating on campus, and depriving their off-campus competitors of the same benefit, creates an unfair playing field among business competitors. The Assessors contend that based on the comments of Minister Chong quoted earlier, that kind of lopsided state of affairs was unintended by the legislature in enacting the 2003 Amendment. They argue that the Minister's remarks imply that the legislative intent

2010 BCSC 133 (CanLII)

behind the incorporation of the contentious phrase was to ensure that all commercial enterprises operating on property owned by a university, whether on campus or off-site, would be subject to the same non-exempt taxation treatment. In the Assessors' reading of the Board's decision, the Board drew a distinction based on the location of the university property, namely whether it is situated on or off campus, and then held that only commercial property located on campus will be captured by the tax exemption. In my view, that is not an accurate reading of the Minister's comments in *Hansard* or of the Board's decision.

[92] More to the point, the Board was aware of the parties' agreement concerning the passage from *Hansard*. Relying on that agreement, the Board attributed the reason for the Minister's reference to an "unfair playing field" to ensuring that similar-type commercial businesses operating off the university campus with clearly no university purpose, would not have a tax advantage simply because the owner happened to be a university. The respondents say that these comments were made to emphasize a *bona fide* distinction, that is, commercial property which is coincidentally owned by a university but is otherwise separate from it and operating in the general market place, is not being held or used for university purposes and is not exempt from taxation. In the circumstances, that is a fair reading of the *Hansard* extract.

[93] The Assessors informed the Court that the assessment community is seeking judicial guidance in the form of the articulation of a general principle as to the applicable test, including the enumeration of the relevant factors to be considered, in determining whether a particular holding or use of property falls within the tax exemption. They are especially interested in whether the for-profit commercial use of university property is exempt. The Assessors forewarn that unless the definition of "*university purposes*" is interpreted in accordance with its main argument or, alternatively, unless the use made of the properties is confined to use that is strictly necessary to the attainment of university purposes, the floodgates will open with "virtually no boundaries". They caution that, in turn, will trigger unintended

2010 BCSC 133 (CanLII)

ramifications such as enabling big-box retail outlets to locate on campus and avail themselves of the tax exemption.

[94] The Assessors therefore ask this Court to sanction a restrictive interpretation requiring that the use of the property be necessary, meaning critical or indispensible, to the fulfillment of the purposes of the university. They say that such an approach is imperative to preserve the legislative intent of the tax exemption. In developing what they coin as the "convenience versus necessary" line of argument, the Assessors point to the reasoning undertaken in the collection of cases discussed below.

[95] In *Re City of London and Ursuline Religious of the Diocese of London*, [1964] 1 O.R. 587, 43 D.L.R. (2d) 220 (Ont. C.A.) [*City of London*], the pertinent statutory provision provided an exemption from municipal tax for property "*attached to or otherwise bona fide used in connection with and for the purposes a university ... so long as such [property is] actually used and occupied by such institution but not if otherwise occupied*". The premises in issue comprised certain buildings and grounds owned by a religious order, colloquially known as Ursula College. Some of those premises were occupied by maintenance personnel, housekeepers, teachers and kitchen help of the university. Ursula College was affiliated as a college to the University of Western Ontario but was not a university in its own right.

[96] The lower court held that the premises were covered by the tax exemption. It reasoned, at p. 223, that, although the occupation of the premises by Ursula College was not essential or a matter of absolute necessity in terms of carrying out the undertaking of the university, it was a "definite advantage by way of convenience, effectiveness, and financial costs".

[97] The Ontario Court of Appeal thought differently and overturned the lower court ruling. Based on an established line of authorities, which the lower court had sought to overcome, the appellate court concluded that in order to be within the exemption, the criterion requiring the property to be "occupied" by the institution could only be satisfied where its servant or employee residing at the property was

2010 BCSC 133 (CanLII)

obligated to do so as an essential or necessary ingredient of such employment. The element of the necessity of use was key to the determination of whether the university could be said to be "occupying" the property. The appellate court also supported the reversal on the basis that Ursula College was not a university and therefore could not bring itself within the exemption.

2010 BCSC 133 (CanLII)

[98] I do not agree with the Assessors' contention that *City of London* examined the balance between convenience of use and necessity of use in a way that would provide guidance in ascertaining the meaning of "*held or used for university purposes*" under s. 54(1).

[99] Next in time is the decision of *University of Windsor v. City of Windsor Assessment Commissioner*, [1965] 2 O.R. 455 (Ont. Co. Ct.) [*University of Windsor*]. The Assessors rely on this case to buttress their argument that the use of the property in respect of which tax exemption is sought must be something more than convenient to the attainment of a university's purposes; it must be critically necessary. Applying this reasoning to the case at hand, the Assessors submit that the uses of the subject properties do not satisfy the requisite threshold of being necessary to achieve the university's purposes and, thus, are not captured by s. 54(1).

[100] In *University of Windsor*, the applicable exemption clause required that property be "actually used and occupied for the purposes of the University". At issue was a large on-campus house provided by the university to its president free of cost. The residence was intended to be used as private accommodation for the president and his family, as well as a place to enable him to host meetings and receptions, provide accommodation for dignitaries and entertain the university community and members of the public.

[101] To appreciate the decision in *University of Windsor*, it is important to understand that the basic question before the court was whether the university was using and occupying the residence by virtue of the president carrying out certain activities there. Its consideration about whether the element of necessity was

present arose within those narrow confines. In the course of its analysis, the court reviewed authorities that considered whether servants of institutions (such as a sanatorium and a girls' finishing school) who resided on site could be said to be doing so as a matter of necessity linked to their employment duties, or for their own private benefit and convenience. Citing a longstanding line of cases, including *City of London*, the court stated that where university land is occupied by its servant or agent, it does not necessarily mean that it is being used and occupied for the purposes of the university. It explained that the determination turns on whether the use and occupation is for the private benefit and convenience of the servant/agent, in contrast to use and occupation that is essential to the performance of employment duties or that otherwise pertains to the promotion of the objectives of the university. The court referred to established jurisprudence that held that in the former situation, where the property is used and occupied for private benefit and convenience, the agent/servant is at law a bare tenant of the university. In that scenario, the property would be liable for assessment. Only in the latter circumstance, where the use and occupation was necessitated by the employment relationship, did the property in question qualify as being used and occupied for the purposes of the institution.

[102] In *University of Windsor*, the court concluded that the proper test is whether the use and occupation adds materially to the efficiency or effectiveness of a servant or agent in performing the duties of his/her office. If the answer is yes, then the use and occupation is for "*university purposes*". The court further reasoned that university property should enjoy the tax exemption if an integral element of its use and occupation is the advancement of the university's interests. Importantly, the court favoured an expansive interpretation of what constituted the advancement of the interests of a university at p. 460:

> In my view, the advancement of the interests of the university must include not only the advancement of the objects and purposes as set out in s. 3 of the *University of Windsor Act* which reads as follows:
>
> 3. The objects and purposes of the University are,
>
> (a) the advancement of learning and the dissemination of knowledge; and

2010 BCSC 133 (CanLII)

> (b) the intellectual, spiritual, moral, social and physical development of its members and students and the betterment of society.
>
> The advancement of the interests must also include the promotion of those activities which are reasonably necessary in order that these broad objectives can be attained. ...
>
> I do not think it can fairly be said that lecture halls, laboratories and administrative offices of a university are to be tax exempt within the meaning of s. 10 and that lands and buildings used for student lounges or snack bars or football stadiums are not. To hold otherwise would unduly limit the meaning of the section and would disregard the true nature and scope of activities which we have come to consider necessary to a university. Universities can operate without student residences but it does not follow that student residences are liable for municipal taxation if a university chooses to build and permit occupation of them.

2010 BCSC 133 (CanLII)

[103] It was within the context of discussing the requirement of the feature of need that the court continued at pages 463-464:

> But in order to become entitled to exemption, I believe it to be necessary to show a need as distinguished from a convenience – a needed use, as distinguished from an opportune use. But I do not think the need must involve the preservation of human life, as in the case of a sanatorium, in order to constitute a need in the case of a university. The two types of institution are incorporated for different purposes and their requirements must of course be quite different.
>
> It seems to me that the wording of s. 10, fairly interpreted, would permit exemption if the use and occupation of the premises provides a needed facility to bring about the objectives of the University of Windsor. I do not feel that it would be proper to substitute the opinion of the assessment commissioner or, for that matter, of the Court for that of the Board of the university as to the degree of importance to be attached to the nature of the use and occupation and in particular whether that use and occupation was a necessary one for the promotion and advancement of the objectives of the university. I do not think that because all or most of the university activities which take place at [the president's residence] might be held at some other location is a disqualifying circumstance on this appeal.
>
> …

[104] Notably, the court in *University of Windsor* held that the exemption did not require that the use and occupancy of the premises by the servant/agent be for the purposes of the university exclusively. It clarified that the right to the exemption was not disqualified by the fact that there were dual uses/purposes at play (i.e. a private benefit conferred on the servant/agent and achieving university purposes by

facilitating the performance of employment/agency duties). In this regard, the court thought it sufficient that the president's residence was being used and occupied to a "substantial degree" for university purposes. The court also observed that the right to the tax exemption did not rest on the location of the president's residence. It stated that if premises off campus were vested in the university and otherwise qualified under the section, they would also be treated as exempt from taxation.

[105] Applying the foregoing principles to the situation before it, the court found that the functions carried out in the president's residence were necessary for the effective discharge of his presidential duties:

> The facts before me establish that the premises here in question were acquired by the university to provide a suitable location for the holding of meetings and receptions as well as providing accommodation for dignitaries visiting the university. These premises are used for entertaining students, faculty members and members of the public. I find that the premises are necessary to the effective discharge of the duties of the chief executive officer of the university. (p. 464)

[106] In my view, the discussion of the concept of the necessity of use, in contrast to the convenience of use, in *University of Windsor* must be confined to the context in which it was raised and the narrow factual scenario before the court. Even so, it is clear that the court recognized that there are degrees of necessity. Implicit in its analysis is the acknowledgment that the extent of necessity of the use is that of reasonable necessity to promote or advance the broadly understood interests and objectives of a university, and not necessity in the sense of being indispensible to the attainment of those objectives.

[107] Referencing the recital by the court in *University of Windsor* of student lounges and snack bars as examples of activities that have come to be considered necessary to a university, the Board did not accept the Assessors' submission that *University of Windsor* supports their assertion that commercial services available on university property that are merely convenient cannot be interpreted as being used for university purposes under s. 54(1).

2010 BCSC 133 (CanLII)

[108] The Board noted further that, in any event, *University of Windsor* was interpreting different statutory language and was not binding. Having said that, it is clear from the Board's decision that an aspect of *University of Windsor* it considered to be of importance and applicable was the proposition that a finding that university property is being put to more than one purpose does not preclude a finding that it is being used for a university purpose.

[109] Under consideration by the court in *Re Trinity College et al. and City of Toronto*, [1968] 2 O.R. 24 (Ont. H.C.J.) [*Trinity College*], was the same tax exemption as had applied in *City of London*. In this case, the subject property was the off-campus residence of the provost, the executive head of Trinity College. As it was in *City of London* and *University of Windsor*, the analysis centred on the question of whether, and the degree to which, the provost used and occupied the residence for carrying out his employment duties. The court concluded that the provost's entertainment of officials and others on the premises was limited in its scope and frequency and was not much greater than that of many professors. The court regarded *University of Windsor* readily distinguishable because the facts and legislative provisions were materially different. Relying in large part on the principles enunciated in *City of London*, the court concluded that the provost's residence was not being used and occupied by the university in the manner required by the case authorities, i.e. as a necessary incident to the performance of the provost's functions and duties as a servant of Trinity College.

[110] It is important to recall that the first branch of the exemption in *Trinity College* explicitly required that the property be used in connection with and for the "*purposes of a university*". As I understand it, the Assessors say that *Trinity College* supports the proposition that in order for a university to claim the tax exemption, it must demonstrate some university purpose in addition to owning the property. In light of the language of the exemption, that is an obvious proposition so far as it goes; however, the court in *Trinity College* shed no light on the concept of university purposes *per se*. Given its conclusion that the provost's residence was not captured by the "*use and occupation*" aspect of the exemption, the court found it unnecessary

2010 BCSC 133 (CanLII)

to decide whether the residence could be brought within the first prong of the exemption requiring that it be used for the purposes of a university.

[111] In my view, *Trinity College* offers no guidance on the interpretation of "*university purposes*" and provides no judicial insight into the convenience versus necessity analysis. The case does not assist the Assessors.

[112] The Assessors also point to the 1968 tribunal decision from Northern Ireland, *Lord Mayor Aldermen and Citizens of Belfast v. Commissioner of Valuation for Northern Ireland*, Lands Tribunals for Northern Ireland (11 November 1968) [*Belfast*], to further buttress their contention that, in evaluating whether university property is being used for the attainment of university purposes, the test of necessity of use is to be preferred over the standard of convenience of use.

[113] Unlike the three cases discussed above, *Belfast* was not concerned with the lodgings of university servants. In *Belfast*, the tribunal considered whether several facilities such as a barber shop, retail shop and a club bar located in a student union building at Queen's University were exempt from taxation. The decision makes clear that in order to secure the exemption, the facilities had to be either of a public nature and occupied and used for the public service, or their use had to be of an exclusively charitable character, such as the advancement of education. In its analysis, the tribunal contemplated whether the facilities were a necessary and integral part of the university. But it did not do so in the course of analyzing the larger issue of whether a requirement of necessity of use ought to be imposed over convenience of use. Rather, the tribunal turned its attention to the issue of the necessity of the services provided at the facilities because the presence of necessity was compulsory in order to secure exemption on the ground of public character. *Belfast* is distinguishable in a material way on that basis. It does not advance the Assessors' argument that mere convenience of the use of the property is not sufficient to attract the exemption under s. 54(1).

[114] The Assessors took the Court to *Re University of Ottawa and City of Ottawa*, [1969] 2 O.R. 382 (Ont. Co. Ct.) ["*University of Ottawa*"] to strengthen their assertion

2010 BCSC 133 (CanLII)

that the purposes of a university are chiefly educational. The main issue confronting the court in that case was whether student residences were being used for “educational purposes”. The court of revision held that the residences were not used for educational purposes and therefore not exempt from taxation. That conclusion was reversed on appeal. The court on appeal criticized the approach taken by the court of revision for looking narrowly and exclusively at the precise use made of the individual buildings without taking into consideration their function in the general scheme of the university (p. 383). The court in *University of Ottawa* directed that a broader approach be taken, aimed at examining the use of the property in conjunction with its overall function in the university at large. Additionally, the court did not employ the test of necessity of use in evaluating whether the use of the property achieved an educational purpose.

[115] In my view *University of Ottawa* does not stand for the proposition asserted by the Assessors. At most, it tends to support the respondents’ position in that it rejected ascribing a narrow meaning to the expression “educational purposes” within the context of the exemption.

[116] Also considered by the Board was the decision of the Nova Scotia Court of Appeal in *Governors of Acadia University v. Town of Wolfville* (1971), 29 D.L.R. (3d) 441, 2 N.S.R. (2d) 630 (C.A.) [*Acadia University*]. There, the taxation status of the student residences, president’s residence and student union building were in issue. The governing clause exempted university property from taxation “*with the exception of property mainly used for commercial, industrial, business, rental or other non-educational purposes*”.

[117] The trial judge found that the student residences were mainly used for educational purposes, and thus were exempt from taxation. That was not challenged on appeal. With respect to the on-campus residence of the university president, the trial judge concluded that it was mainly used for non-educational purposes and denied the exemption. Quoting with approval the reasoning in *University of Windsor*, the Nova Scotia Court of Appeal reversed the trial judge’s

2010 BCSC 133 (CanLII)

2010 BCSC 133 (CanLII)

conclusion on that matter. It remarked that the analysis in *University of Windsor* found support among certain American authorities, which the court expressly noted had taken a broad view of the matter. In expanding that point, the court in *Acadia University* quoted from the judgment of Cheney J. in *Re Syracuse University* (1925), 124 Misc. 788. Interestingly for our purposes, in determining whether a chancellor's elaborate residence was used exclusively for carrying out educational purposes, Cheney J. reasoned that it was "convenient" for the chancellor to conduct meetings and host social occasions at his residence, and concluded that the dominant purpose of such use qualified as educational.

[118] In *Acadia University*, the appellate court found that, although the president's residence had a private use component, it was nonetheless "mainly used" for the purposes of Acadia University, and thus not for non-educational purposes, and therefore the tax exemption applied.

[119] The evidence established that the student union building at Acadia University contained a cafeteria and lounge and provided space for activities such as student council, the preparation of the yearbook, a carnival, committee work, theatre work, and for discussion groups. The trial court concluded that the student union building was mainly used for business and, at most, for the non-educational purpose of providing recreation and diversion for students. Accordingly, it held that the student union building fell within the exception to the exemption and was taxable. The court of appeal disagreed. It held that, assuming its reasoning approving the application of the exemption to the president's residence was correct, it must surely follow that the student union building was likewise exempt.

[120] In the case at hand, the Board accurately noted that the language of the exempting provision in *Acadia University* was "quite different" from s. 54(1) of the *Act*. It stated that even so (which I take to mean despite the more restrictive test of educational purposes considered in *Acadia University*), the student residences, president's residence, and student union building were all held to be used for educational purposes and exempt from taxation. The Board also referred to the

observation in *Acadia University* that the student residences and student union building were part of university life and that the ultimate purposes of the student residences was "to help fulfil the educational purpose of the university" (p. 448).

[121] The Assessors cite the decision of the Ontario Court of Appeal in *Donaldo Pianezza Beauty Salon et al. v. The Borough of North York et. al.* (1978), 19 O.R. (2d) 343 (Ont. C.A.) [*Donaldo*] to illustrate the incongruity of characterizing property that is used to generate profit as being used for the purposes of a university. The property under consideration in *Donaldo* was owned by York University and was located at the concourse level in a building complex said to be the hub of the university. The premises consisted of several commercial enterprises leased to private entrepreneurs, including a bookstore, cafeteria, drug store, beauty salon, travel agency, and others. The basis for the asserted exemption was a provision under the *York University Act* which exempted property vested in or leased to the university so long as it was "*actually used and occupied for the purposes of the university*".

[122] The trial judge interpreted the exemption clause disjunctively and concluded that it created two separate exemptions, one of which was extremely broad and effectively covered all property vested in a university irrespective of its use or how it was occupied. The court of appeal did not uphold that interpretation. It read the provision as creating a single exemption which required that the property be used and occupied for the purposes of the university. The trial judge had found that the premises were occupied by the occupants for profit and for the purposes of the occupants, not for the purposes of the university. The court of appeal's decision to deny the exemption was clearly predicated on this finding of fact. Once again, at the nub of this case was the consideration of whether the property was being occupied for the purposes of the university. Interestingly, the court of appeal said nothing about whether the trial judge had considered if the properties leased to the commercial third parties were being used for the purposes of the university.

2010 BCSC 133 (CanLII)

[123] The exemption language in *Donaldo* is significantly different from s. 54(1) and the decision can be distinguished on that basis alone. Moreover, it would appear that the court in *Donaldo* was deprived of the benefit of the instructive analysis and ultimate conclusion in the *University of Windsor* case that the presence of a dual purpose does not inevitably preclude a finding that the property is being used for the purposes mandated by the exemption.

2010 BCSC 133 (CanLII)

[124] I return now to the decision of the Alberta Court of Appeal in *University of Alberta*, which I outlined briefly when summarizing the Board's decision. It clearly weighed heavily in favour of the respondents in the Board's overall determination and warrants closer examination.

[125] The issue on that appeal was whether a number of university academic buildings and a college residence used to provide food and beverage services delivered by a third party contractor were exempt from municipal taxation. The answer depended on whether the properties in question were being "*used in connection with educational purposes*".

[126] The assessment review board upheld taxation imposed by the assessor. A separate board dismissed the university's second appeal. The next step was judicial review. In upholding the board's conclusion that the properties were not used in connection with educational purposes, the chambers judge applied both the reasonableness and patent unreasonableness standard of review. The task for the Alberta Court of Appeal was to determine whether the reviewing judge had correctly concluded that the board's decision was reasonable.

[127] The appellate court observed that in concluding that the properties were not used in connection with educational purposes, the board relied on its finding that the food services in question were commercial for-profit operations, competing with off-campus services. That rationalization did not find favour at the court of appeal. Fruman J.A., speaking for the court, expressed these criticisms at para. 14:

> [14] … This is unreasonable because commercial and educational purposes are not mutually exclusive and a commercial service may be connected with

> educational purposes. For example, an on-campus tutoring service might be a commercial venture, yet still be connected with educational purposes. It is also unreasonable to conclude that on-campus services that compete with off-campus services cannot be connected with educational purposes. For example, an on-campus college bookstore could still be connected with educational purposes even though college textbooks can be purchased online.

2010 BCSC 133 (CanLII)

[128] Fruman J.A. next examined the second string of analysis relied on by the board to disallow the exemption, namely whether the provision of food services at the properties was a "necessary and integral part of the provision of education" (para. 15). The board had concluded that the food services were used primarily by students and were convenient for them, but that they were not a necessary and integral part of education. On that footing, the board concluded that the food services were not provided "*in connection with educational purposes*" within the meaning of the exemption. With respect to this arm of the board's reasoning, Fruman J.A. stated at para. 16:

> [16] In our view, the "necessary and integral part" test is too restrictive and does not accord with the plain wording of the statute. Section 362(1)(d) requires a property to be "used in connection with educational purposes". The requirement that the service be a "necessary and integral part of the provision of education" would only capture a subset of properties used in connection with educational purposes. For example, an essay editing service or a library photocopy service might not be a necessary and integral part of the provision of education, yet they might well be connected with educational purposes.

[129] Noting that there was no definite precedent, Fruman J.A. suggested that a helpful consideration to apply in determining whether property is used "in connection with" educational purposes would be to ask whether the properties are used "for the purpose of achieving [educational purposes] in a practical and efficient manner" (para. 17).

[130] It strikes me that on its face the breadth of the phrase "*university purposes*" is considerably greater than of the phrase "*educational purposes";* the latter is a subset of the more expansive notion of the former.

[131] An important companion issue in *University of Alberta* was whether the property was "held" by the university or by the third party service provider. The appellate court concluded that the trial judge relied on an inapplicable section of the statute to find that the third party held the property. Although it did not decide the point, the court of appeal suggested that holding the fee simple is likely sufficient to conclude that the property is held by the university. The court of appeal remitted the whole of the matter back to the board for reconsideration. On reconsideration, the board held that fee simple ownership was determinative of which entity held the property within the meaning of the exemption (reported at *University of Alberta v. Edmonton (City)* 2005 CarswellAlta 2644).

[132] While the Assessors concede that the court of appeal in *University of Alberta* concluded that an activity could be in furtherance of both commercial and educational pursuits and still qualify as "*educational purposes*", they assert that the legislature of this province has taken a different path from its Alberta counterpart and intends that commercial activity not be exempted. The Assessors are also critical of the court of appeal's rejection of the imposition of a "necessary and integral test" to link the use with the purpose. Resurrecting the spectre of opening the floodgates, they contend that if the threshold of necessity is not applied to decide whether a use is for a university purpose, there will be no practical way to impose limits on the exemption.

[133] The Assessors made several additional submissions aimed at minimizing the importance of the reasoning in *University of Alberta*. To that end, they noted that the court was interpreting different statutory language. However, that is true for all the cases. They intimated that the decision did not embody a thoughtful analysis because it was an oral judgment rendered the same day of the hearing; if that is factually accurate, nothing turns on it. The Assessors were also critical that the standard of review accepted by the court of appeal was reasonableness as distinct from correctness which applies in this case. That statement is accurate but does not assist the Assessors' position. The task of the appellate court in *University of Alberta* was to determine whether the lower court was correct in finding that the

2010 BCSC 133 (CanLII)

decision of the subordinate board to deny the exemption was reasonable. Examining the board's decision from the deferential vantage of reasonableness, the court of appeal nonetheless held that the board's determination was unreasonable and that the lower court's ruling to the opposite effect was incorrect.

2010 BCSC 133 (CanLII)

[134] After the Board's hearing of this matter, an appeal by way of stated case was heard by this Court in *British Columbia (Assessor of Areas Nos. 17, 21 & 23) v. Interior Health Authority*, 2008 BCSC 1719 [*Interior Health*]. There, the property assessment appeal board had allowed the appeals of the Interior Health Authority (the "IHA") from decisions denying tax exemptions under the *Health Authorities Act*, R.S.B.C. 1996, c. 180 (the "*HAA*"). Included among the properties were private physicians' clinics situated variously in health care facilities owned by the IHA. The tax exemption of interest for our discussion, covered property that was vested in the regional health board "*being used for the purposes of [the HAA*]".

[135] In *Interior Health*, Trustcott J. did not disturb the board's decision to allow the exemption. He reasoned that the exemption provision does not confine the use of the property to only the purposes of the *HAA*. He stated that the exemption was available so long as one of the principal uses of the property was for the purposes of the *HAA*.

[136] The Assessors assert that *Interior Health* supports their primary argument because when determining the scope of the purposes covered by the exemption clause, the board (and impliedly this Court in upholding the board) stayed within the four corners of the enabling legislation. That contention is fully answered by the fact that in *Interior Health*, the criterion for exemption was use in accordance with the purposes of the statute itself.

[137] The Assessors also note that at the board level in the *Interior Health* case, the board remarked that in order for the regional health boards to carry out their mandate, they must work in concert with physicians, and that the two entities are "inextricably linked" and "interdependent" in the health care model embodied in the *HAA*. Seizing on that observation, the Assessors contend that it was the presence

of this interdependent connection that drove the board's decision to favour tax exemption, and that the decision thereby bolsters their assertion that the use of the property must be vital to the attainment of the articulated purposes. I do not agree. In the course of the same analysis, the board made other observations with equal emphasis. It commented to the effect that the arrangement between the physicians and the health care facilities was mutually beneficial for them, and that offering the professional offices to the physicians free of charge amounted to an economic incentive advantageous to both parties. The board also accepted that the arrangement provided administrative and operational advantages for both parties. In my view, all of these factors, as well as others, led to the board's decision. I reject the contention that the board applied a test of critical necessity of use as framed by the Assessors in arriving at its decision. Moreover, the decision of Truscott J. is not rooted on that connection.

2010 BCSC 133 (CanLII)

[138] *Interior Health* accepted the dual purpose concept that appears to have originated in *University of Windsor* and was given a ringing endorsement by the appellate court in *University of Alberta* and by the Board. It stands for the proposition that if the purposes identified in the applicable exemption are being advanced by a particular use of property, it will not matter that a secondary purpose is also being satisfied. *Interior Health* also affirms the conclusion in *University of Alberta* that the application of the exemption in such circumstances is not jeopardized by the fact that one of the uses of the property results in private financial gain.

[139] The Assessors also refer to another recent decision of this Court in *Barbour v. The University of British Columbia*, 2009 BCSC 425, 310 D.L.R. (4th) 130 [*Barbour*] to highlight the limited scope of activity that a university enjoys under the *Act*. *Barbour* did not consider either s. 54(1) or the meaning of the phrase "*university purposes*", and the University of British Columbia had conceded that the activity it engaged in of taking fines and impounding vehicles was outside its powers conferred by the *Act*. In my view, *Barbour* does not blow wind into the Assessors' sails.

[140] As mentioned earlier, the Board considered arguments about the interpretative effect, if any, of the Section 54 Regulation. That regulation provides that the s. 54 exemption is to be maintained relative to residential and rental accommodation only where such accommodation is being held or used by certain individuals in a stipulated way. Those approved manners of use include accommodation for the president of the university and for certain faculty members, accommodation that is primarily for students, visiting professors, scholars, scientists and the like, and as apartments rented to faculty or staff.

[141] The Assessors submit that the purpose behind the Section 54 Regulation was to overcome the prevailing case authorities that would otherwise hold these types of premises to be subject to tax assessment. They contend that, in the absence of the Section 54 Regulation, those properties would not be exempt. Considered carefully, these submissions tend to undermine the Assessors' alternative argument. The Section 54 Regulation exempts accommodation of various visiting and regular university faculty as well as staff without imposing a requirement that the use of such property be critically necessary or indispensable to the advancement of university purposes. While the president's home may readily satisfy that requirement in any event, the renting of university apartments by faculty and staff members can hardly be said to be integral to university purposes in the manner defined by the Assessors. Viewing it from that standpoint, the effect of the Section 54 Regulation could be said to have relaxed the link of necessitous use of the kind that the Assessors insist applies.

[142] In any event, the Section 54 Regulation is reasonably susceptible of a persuasive counter-interpretation. On a plain reading, it appears to be drafted on the premise that s. 54(1) would encompass a much wider range of uses of properties than those described in the Section 54 Regulation, had the Section 54 Regulation not been enacted. In other words, it appears to cut down the reach of s. 54(1) rather than expand it.

2010 BCSC 133 (CanLII)

[143] As a general rule, regulations are frequently ignored when interpreting a provision in the enabling statute. However, where the legislation and regulation form an integrated scheme, it is permissible to examine the regulations enacted under a statutory provision as an aid in interpreting the provision: *Crupi v. Canada (Employment and Immigration Commission)*, [1986] 3 F.C. 3 (C.A.) and *Garland v. Canada (Employment and Immigration Commission)*, [1985] 2 F.C. 508 (C.A.). In my view, this is an instance where resort to the regulation is valid. I find that the Section 54 Regulation assists in the interpretation of s. 54(1) as explained above. In saying that I wish to be clear that consideration of the Section 54 Regulation is by no means vital to my overall determination; my ultimate conclusions would be no different had I paid it no heed.

[144] The Assessors directed their arguments to the particular uses being made of the individual properties subject to this appeal. Understandably, the respondents replied in kind and for the most part modelled their submissions using the same approach. The question of whether the property is being "held" for university purposes and the impact of an affirmative answer to that question was all but overlooked. I will confine my comments for the moment to the UVic situation in order to expand the point.

[145] It is not contested that the SUB is property vested in UVic and held by it within the meaning of s. 54(1). In submissions the Assessors effectively conceded that the respondent universities held the properties at issue by virtue of their ownership.

[146] The SUB is leased to the UVSS. The *raison d'être* of the UVSS, as acknowledged in the *Act*, is to represent the interests of the student population. The existence of the UVSS is sanctioned by the board of governors insofar as it is obligated to take an active role in facilitating its financial continuance. Student societies, such as the UVSS, provide valuable assistance to universities in attracting and retaining talented faculty and students. In this endeavour, they arrange to provide services of all kinds to meet the needs of their student body. The UVSS supplies these services directly and through third party leases. The provision of

2010 BCSC 133 (CanLII)

services is, in part, delivered through the UVSS's allocation of space within the SUB. UVic has empowered the UVSS to have charge of a "student union" building and control the assignment of space within its walls, and thus the particular use made of it.

[147] In its discretion, presumably exercised in accordance with its paramount objective to serve the interests of the student population, and pursuant to its operational arrangement with UVic, the UVSS permits a variety of uses of space by SUB tenants. Some space is made available for non-commercial endeavours like the student-run newspaper, the women's centre, and the ombudsperson's office; other space is leased to commercial tenants. As the Board noted in this case, to ensure that it meets the needs of its members, the UVSS may take the step of polling them in deciding how to allocate space within the SUB. Whenever possible, the UVSS attempts to negotiate prices and other arrangements most beneficial for its student body. Although many of the services, especially those carried on by the commercial tenants in this case, are available to the public, the UVic students are the primary occupants and users of their student union building. Implicit in the overall arrangement is that UVic recognizes the importance of designating a campus property to be a student union building and of empowering its student society to oversee and virtually control the use of such a building to provide the services desired by the student body.

[148] Mindful of the foregoing, I think it is reasonable to say that UVic "*holds*" the SUB for "*university purposes"* within the meaning of s. 54(1). Indeed, it is difficult to conceive how UVic could be fairly said to be holding the SUB for non-university purposes. In my view, there is no need to penetrate the arrangement at any deeper level in order to find coverage by the exemption. Having said that, however, it would seem that in this paradigm, the manner in which the UVSS uses the SUB – determining the various uses to be made of the interior spaces and allocating and leasing them as it sees fit – may, of itself, also satisfies the exemption relative to the "*use*" of the property within s. 54(1).

2010 BCSC 133 (CanLII)

[149] The above analysis and the conclusions I draw from it apply with equal vigour to SFU.

[150] Section 54(1) does not stipulate that the use of the property be critically necessary or inextricably linked to the purposes of the university. The provision is clear and unambiguous on its face. In my opinion, there is no principled basis either through statutory interpretation or by application of the relevant jurisprudence to interpret the exemption as importing the criterion of necessity. Were a threshold of critical necessity to be imposed, as urged by the Assessors, only a small subset of university properties would be entitled to the exemption in s. 54(1); in my opinion, this result would not accord with the plain reading of the provision. The fallacy of requiring that the Court imply the necessity criterion in this instance is demonstrated by the reality that the Assessors have themselves not applied that test in respect of the other spaces in the SUB and MBC that they treat as tax exempt. How is it that areas used for the movie theatre or pub are inextricably intertwined or otherwise indispensible to the purposes of the respondent universities as construed by the Assessors? The answer is that they are not.

[151] The recent decision of this Court in *Interior Health* as well as the reasoning in *University of Alberta,* and *University of Windsor* establish the proposition that more than one purpose may be achieved through the use of university property, and that the presence of such dual purposes will not disentitle the property from the benefit of the tax exemption so long as one of the purposes satisfies the criteria of the applicable exemption provision. There is much to commend the common-sense thinking at the root of that proposition.

[152] The defining criterion that the Assessors wish to apply in determining entitlement to the exemption is whether the university property is being used by for-profit enterprises. Section 54(1) does not distinguish, either explicitly or impliedly, between for-profit and not-for-profit uses in relation to the scope of "*university purposes*". Nor does the preponderance of the case law discriminate on that ground. An exception is found in the *Donaldo* case. That decision is not binding

2010 BCSC 133 (CanLII)

and, in light of the analyses favoured in the more recent decisions of *University of Alberta* and, more importantly, in *Interior Health*, should not be followed in interpreting s. 54(1). There is nothing conceptually incompatible with one of the dual purposes being the for-profit objective of a commercial occupier of the university property; for-profit purposes and university purposes are not necessarily mutually exclusive purposes. There is nothing that flows from the specific uses being made by the commercial tenants of the spaces in the SUB and MBC under appeal that would necessarily preclude those properties from falling within the exemption under s. 54(1) either. The Assessors have not identified any cogent rationale or principled basis for the court to read-in a distinction based on whether the property use is for-profit by a commercial undertaking, in the face of unambiguous legislation that is silent on the point. To the extent that the floodgates argument was meant to provide a sound basis, I do not accept it.

[153] The approach put forward by the Assessors seeks to constrain the breadth of the exemption by shackling the scope of the meaning of *"university purposes"*. The asserted constraints are not supported by the principles of statutory interpretation or by the jurisprudence. The words in the expression *"university purposes"* in s. 54(1) are to be interpreted in their plain and ordinary sense in the context of the *Act* and harmoniously with its scheme and object and the intention of the legislature. In my view, application of that approach supports a broad and liberal interpretation of *"university purposes"*.

[154] I endorse the Board's remarks in paragraph 43 and elsewhere of its decision concerning the broad array of ancillary services provided by universities beyond the provision of academic courses, research and granting degrees that may legitimately qualify as "*university purposes*" under s. 54(1). In the case at hand, it is significant that the uses of the properties by the commercial tenants are approved and arranged by the respondent student societies, which are obligated to act in the interests of their student body and whose funding is facilitated by the universities themselves. The services carried out at those properties, and hence the uses of such properties, are important and convenient to the student body and demonstrably

2010 BCSC 133 (CanLII)

beneficial to the quality of their university life. While it is true that they are not indispensible or critically necessary to the attainment of the university's educational objectives, they have a substantial and reasonable connection to the furtherance and advancement of the multiple *bona fide* broad objectives of a modern Canadian university, including attracting and retaining the ever vital student body. In that way, they qualify as "*university purposes*" as contemplated by s. 54(1). To the extent that the purpose of the tax exemption is to bestow preferential tax treatment to universities is reflective of the societal benefit that such institutions confer, then a broad and liberal reading also accords with the purposive approach which forms part of the modern rule of interpretation.

2010 BCSC 133 (CanLII)

[155] Based on the foregoing, I accept, as correct, the Board's conclusion that the specific uses of the individual properties under appeal are for "*university purposes*" under s. 54(1). The answer to question 2 is no.

[156] If counsel are not able to agree on costs, they are at liberty to appear in order to set deadlines for the exchange of submissions.

"Ballance J."
The Honourable Madam Justice Ballance

2010 BCSC 133 (CanLII)

SCHEDULE "A"

AMENDED NOTICE OF STATED CASE

UVic Properties

1. UVic has an on-campus residential population of about 2,400, about 12% of the total student population. About 70% of the total student population come from somewhere other than the Victoria area.

2. The UVSS is a registered non-profit society incorporated in 1964 (originally as the Alma Mater Society). The UVSS is governed by a student Board of Directors annually elected by the undergraduate students at UVic.

3. Student societies are common at all Canadian universities. In British Columbia, only Royal Roads University is without a student society. The functions of the UVSS are: to advocate on behalf of its members and make representations to the government board of the university on issues such as university fees, funding for financial aid, etc.; to provide a meeting space for student clubs; to maintain financial accounts for these clubs; to provide services to its members both directly as the operator/employer and through third party leases.

4. The SUB was originally built in 1963. Major expansions to the building were done in 1975 and 1996. The SUB property is managed by a joint committee of UVic and the UVSS, called the UVSS/UVic Operational Relations Committee. The terms of reference for this committee have a section described as "Student Union Building Ownership and Maintenance." In this section, UVic recognizes the autonomy of the UVSS in the day to day business operations of the SUB. It further recognizes that the students of the university, through the UVSS, are the primary occupants and users of the building. The policies and regulations governing the use and operation of the building are to be developed and administered to reflect this intended purpose and function of the building.

5. UVic is responsible for arranging the heat, light, water and ventilation service to the SUB and for the maintenance of the SUB "in a manner and form similar to that provided in other University buildings." UVic recovers 49% of the maintenance costs for SUB from UVSS. UVic pays 51% cost of utilities, janitorial, maintenance and waste

removal costs. The UVSS does not pay any rent to the University. UVSS charges rent to its third party tenants to recoup these maintenance costs.

6. The UVSS provides the following services directly to its student members: Felicita's Pub, Bean There coffee shop, International Grill, Health Food Bar, Subtext consignment bookstore, Extended Health and Dental Plan, Zap photocopy shop, Cinecenta movie theatre and Munchie Bar daytime coffee shop and night time theatre concession. None of these areas are part of the appeal; the Assessor has treated them as exempt from taxation. The Cinecenta movie theatre operates as a traditional movie theatre and is open to the general public as well as to the UVic students. The Munchie Bar is a coffee shop in the daytime with all student employees. A number of food outlets at the university are operated by the students' society and are in competition with food outlets provided by the university. UVic also operates a bookstore which competes with the one operated by the UVSS.

7. The above facilities are all operated by the students' society; the positions in these facilities are generally available to students only. In general, prices at these on campus facilities are lower than those off campus. The exception is the Felicitas Pub which usually complies with a per drink minimum in order not to encourage over consumption of alcohol. The pub, the various food outlets, the consignment bookstore, the Zap photocopy shop, the movie theatre and the Munchie Bar are all open to the public, although most business comes from students.

8. The SUB also provides space for the student-run newspaper and radio station, various student offices such as the Women's Centre and Native Student Union, space for clubs and courses as well as non-revenue generating services such as the Ombudsperson, advocacy and study space.

9. The areas in the SUB that are the subject of the appeal are: Travel CUTS travel agency, On the Fringe Hair Design, Campus Medicine Centre Pharmacy, Back in Line Chiropractic and Massage and Campus Dentist (collectively, the tenants). These services operate under leases negotiated between UVSS and the tenants. Each of the leases sets out the triple net rate and the annual rent payable monthly to UVSS. The leases provide for between three to six months written notice prior to the expiry of the lease if the decision of UVSS is not to renew. Several of the leases include the following clause: "The UVSS may exercise its authority to assign space within the

2010 BCSC 133 (CanLII)

Student Union Building on its own initiative to effect the best utilization of space for the benefit of the undergraduate students of the University of Victoria. However, it is the UVSS' intent not to initiate relocation within the Student Union Building without the agreement of the Tenant." The tenants are also responsible for complying with UVic and/or UVSS policies and regulations regarding all products and services offered.

2010 BCSC 133 (CanLII)

10. There is also recognition in the leases of the importance of the UVSS medical plan coverage to those providing medical services. The Campus Dentist may terminate its lease by providing three months written notice if UVSS cancels its dental plan coverage for its members. Similarly, if UVSS reduces its extended health plan coverage for chiropractic and massage therapy to less than $200 a year, the Back in Line Chiropractic and Massage may terminate its lease. The dentist, chiropractor and the pharmacy all have the ability to direct bill their customers.

11. Travel CUTS is a travel agency that was initially formed in the late 1960s by the predecessor of the Canadian Federation of University Students to provide favourable prices for student travel.

12. On the Fringe hair salon is a fairly recent addition to the campus. There had been a hair salon on campus many years ago. When space became available in the SUB, as a result of the expansion in 1996, the UVSS polled its members as to their preferred choice for the use of this space. The answer was a hair salon. The students see this as an important convenience in terms of reducing time that might otherwise be spent traveling to hair salons off campus.

13. The Campus Medicine Centre provides an on campus prescription service to the students, as well as operating a postal service. The owner of this pharmacy also owns the Cadboro Pharmacy located about a kilometre down the hill from the campus. Prior to the on campus location, students were able to leave prescriptions at the information desk in the SUB to pick up the medications later in the day. Less than 1% of the pharmacy business comes from off campus clientele.

14. The Back in Line Chiropractic and Massage provides services required by many students as a result of sports-related injuries on campus or other injuries. UVSS had had a relationship with the owner/chiropractor as he had provided chiropractic assessments in the hallway in the SUB. When space became available, UVSS decided to offer this space to the chiropractor. About 10% of his business is from off-

campus clientele. This service on campus eliminates travel time for students who would otherwise have to travel to an off campus location.

15. The dentist on campus meets the needs of students in the same way as the other entities – provision of an on-campus service that eliminates off-campus travel time. About 10% of the dentist's business comes from off-campus clientele.

16. UVSS requires the tenants to be open sufficient hours to serve the students. The same advertising opportunities available to the tenants are not available to off campus businesses. The tenants provide a coupon or something similar as a bonus/perk in the UVSS welcome package for the students.

17. The tenants are currently paying the property taxes that were assessed.

<u>SFU Properties</u>

18. SFU consists of 1000 acres at the top of Burnaby Mountain in Burnaby. The population of SFU is slightly in excess of 21,000. There are very few commercial or retail outlets within close proximity to the SFU campus. Most are a 10 to 15 minute drive away or about a 45 minute walk downhill from the campus. There is a skytrain station at the bottom of the hill with bus transportation available for those coming up the hill to the campus.

19. The properties under appeal include a bus loop located on property owned by SFU and five other areas that are located in SFU's student union building, known as the Maggie Benston Centre (the MBC). The five areas in the MBC include the Travel CUTS travel agency, Mini-mart 101, and three fast food outlets, Mr. Submarine, Koya Japan and Bubbleworld. The rest of the MBC is treated as exempt from taxation.

20. The bus loop and rest station were situated in the present location in about 1993 in response to the number of buses that were staying for a period of time at the university and to the needs of the drivers for a restroom and a break. SFU has granted a Licence to Occupy to BC Transit for this area of the campus (with an annual fee of $1.00). This licence provides BC Transit with the non-exclusive use of the land for the purposes of a bus loop and for the purposes of washroom facilities for bus personnel. Bus services are to be provided to students, staff and faculty of SFU and to the general public. Among other things, SFU is required to maintain the bus shelter in good repair at its expense, and is responsible for landscaping the areas around the bus loop. SFU is also responsible for providing the same level of security as provided

2010 BCSC 133 (CanLII)

on other areas of the campus. BC Transit is responsible for the maintaining the washroom facilities.

21. SFU is primarily a commuter campus with many students relying on public transport.

22. The SFUSS is a registered non-profit society with directors elected annually. The SFUSS provides a number of services to students including assisting in the management of the various campus clubs, assisting with the convocation activities, providing the pub and other meeting spaces where dances and social activities take place.

23. The MBC includes a facility provided for student union activities and areas used by the university for registration, health and counselling, archives, computer support and a bookstore. The SFUSS occupies a portion of the MBC and has a lease with SFU for $1 a year rent. The SFUSS also shares costs for maintenance, utilities etc with SFU in proportion to its share of the building. The preamble in the lease states that it is to be used "primarily as a centre for relaxation and enjoyment for the University community." A clause in the lease refers to contracts for the supply of food services. Any such contracts must provide for compliance with any requirements established by the University respecting the operation of food outlets in general at the campus and must not be with any person, firm, etc whose labour affiliation may be incompatible with any of the unions certified to represent employees of SFU.

24. The fast food outlets under appeal as well as the Travel CUTS and Mini mart 101 are all located on the third floor of the MBC, all within the portion of the MBC leased by SFUSS. Travel CUTS has been on the campus for years. The fast food outlets appeared within the last 3 or 4 years. The mini-mart appeared within the last 4 or 5 years.

25. Most of the food services on campus (not part of the appeal) are contracted out to third parties by SFU. Some are operated directly by the SFUSS. The Higher Grounds coffee shop on campus is an example of a student-operated food service. SFU uses third party contractors for the provision of on campus security and for janitorial services. The security firm and the janitorial contractor have offices on campus. The daycare facility on campus is run by a separate daycare society. None of the areas used by these services (security, janitorial, daycare) are subject to property taxation.

2010 BCSC 133 (CanLII)

<u>Board's Findings</u>

26. The Board found that the functions of a university as set out in section 47 of the *University Act* do not determine whether or not property is "held or used for university purposes." The Board found that universities provide a wide range of ancillary services above and beyond the provision of academic courses, granting degrees and research. Universities provide housing and food for its students. Universities provide bookstores, academic and non-academic counselling services, health care clinics, athletic and recreational services, bursaries and scholarships, and orientation programs. Student societies contribute to a students' enjoyment of university life by providing meeting places for social interaction and by providing for services to meet the needs of students on campus and consequently to reduce the off-campus travel time. Student societies thus assist the university in furthering its objectives of recruiting and retaining students. The Board found that there are a broad range of activities offered by the university or students' society that may fall within the definition of "university purpose." These activities go well beyond the functions of degree granting and academic research as set out in section 47 of the *University Act*.

27. The Board found that the fact that a commercial entity is providing a service on the university campus does not preclude the property from being held or used for a university purpose. The Board found that the presence of dual purpose, i.e. a commercial for profit enterprise that offers a service to the university community, does not preclude the property from being exempt from taxation.

28. The Board found that the services provided by the tenants at UVic are overwhelmingly used by the student population, and that they contribute to the quality of life for students through both lower costs and reducing travel time off campus. The Board found the services are "used for a university purpose." The Board found that the Travel CUTS travel agency, On the Fringe Hair Design, Campus Medicine Centre Pharmacy, Back in Line Chiropractic and Massage, and Campus Dentist, all located in the student union building on land owned by UVic and leased to the UVSS, are "held or used for university purposes".

29. The Board found that the bus loop at SFU is not only convenient for students and faculty who require transportation to and from their university activities, but it is also essential to the university community. The Board found the bus loop is "used for a

2010 BCSC 133 (CanLII)

university purpose" by providing a needed location for the buses and the bus drivers who are providing this service to the campus community.

30. The Board found that the Travel CUTS travel agency, Mini-mart 101, and the three fast food outlets, Mr. Submarine, Koya Japan, and Bubbleworld, all in the MBC at SFU, are all "held or used for a university purpose". The Board found that the provision of food services does not stop being "a university purpose" just because the operator is a fast food commercial entity. The Travel CUTS travel agency provides a service that is "used for a university purpose". The Mini-Mart provides a food service of a different sort but one that, by eliminating travel time for the students, is "used for a university purpose" by reducing the off-campus travel time and thus improving the quality of life for the students.

31. The Board found the legislation provides no basis for drawing a distinction between these "for profit" commercial entities that provide food and the student-run not for profit entities. The Board found they are all there to improve the lives of students by providing services that may not be essential but certainly contribute to the lives of students who no longer have to make the trek off campus to access alternatives to the standard university provided food services.

32. The Board found that the properties are exempt from taxation as they are being "held or used for university purposes" under section 54 of the *University Act*. The Board ordered the Assessor to amend the 2007 assessment rolls by applying the exemption of section 54 of the *University Act*.

2010 BCSC 133 (CanLII)

1967 CarswellOnt 82
Ontario Carleton County Court

University of Ottawa v. Ottawa (City)

1967 CarswellOnt 82, [1969] 2 O.R. 382

Re University of Ottawa and City of Ottawa

Re Carleton University and City of Ottawa

Honeywell, Co.Ct.J.

Judgment: June 30, 1967

Counsel: *David Dehler*, for appellant, University of Ottawa.
D. D. Diplock, for appellant, Carleton University.
J. K. Dundas, for respondent, City of Ottawa.

***Honeywell, Co.Ct.J.*:**

1 In these appeals, both appellants submit that as they are exempt under their private Acts from all kinds of municipal taxation, they therefore come within the exemption provided by s. 5 (a) of this by-law and, as a result, the university residences in question are not subject to the charges provided for in the by-law. The question in issue is whether these buildings are being used for "educational purposes". I have decided that the appellants' submission should be accepted and the appeals allowed.

2 This submission opens up some very interesting problems. I have read and carefully considered the reasons given by the Chairman of the Court of Revision in which he justified his decision that the appellants did not come within that exemption. I may say I disagree with the conclusion he arrived at and I feel that the basis upon which he arrived at that conclusion, namely, the definition he gave to the word "education" is not the one which I should apply. On p. 6 of his reasons for judgment, he defined "education" as a systematic instruction, schooling or training, etc., and based on that definition he reached the conclusion that since, on the evidence before him, he could find no systematic instruction, schooling or training taking place in these particular buildings, it could be said that students were not being educated there. He found, as a fact on the evidence before him, that the main purpose and use of the building is that of providing suitable living accommodation for the students and that any other benefits are incidental. I disagree with him on that question of fact, in view of the evidence that I have heard. The definition which he has given is a sufficient one in this sense that if, on examining a particular building that might be in question one finds that systematic instruction, schooling or training of a suitable kind is taking place in that building, then in general I think we can affirmatively find that it was used for educational purposes, but, on the other hand, I feel that if a building does not answer to that description it does not necessarily mean that it is not being used for educational purposes. When, as in this case, we have a building which is part of a university complex, one of a number of different elements all directed at an educational purpose, I do not think it is the correct approach, when faced with the question that we are now faced with, to look narrowly and exclusively at the precise use which is made of that individual building without taking into consideration its function in the general scheme of the university.

3 Now, I have said I did not agree with the finding of fact that the main purpose and use of the building is that of providing suitable living accommodation for the students. Certainly, it does provide that, and certainly most of the building space is used and occupied by students for living and studying purposes, but it seems to me that the final and ultimate purpose of this building is to have a place where there can be brought together and allowed to live together representative students from the different faculties and from the different courses, who will do their studying in this building in a controlled environment, subject to certain restrictions by the staff in residence, but with the benefit of the advice and assistance of those tutors or fellows or counsellors

who may be attached to the residences. To go into the nicety of how many hours a day a student may sleep in a room compared with the number of hours in a day he may study in that room would make no sense but, nevertheless, we must not forget that these residences are occupied by students a good part of whose time is spent in studying in the building, and in the mutual exchange of ideas and argument which seem almost invariably to follow when two or more students are gathered together in an academic atmosphere.

4 I reject the definition of "education" which limits itself strictly to receiving systematic instruction, schooling or training. That would only be supplied and received in the class room. I consider that "education" would also include that which the student obtains in the library when he is pursuing on his own the studies which have been outlined in his courses. When doing so, he is being educated. He is also being educated when he pursues the same studies in his own room in the residence. I think I should say that, if the buildings with which we are concerned in these two cases were not owned by the university but were privately owned and were situated, let us say, on the edge of the campus, I would be much more inclined to examine them from the point of view of the definition referred to by the Chairman of the Court of Revision, namely, was some systematic instruction being given in the building, or was the main purpose commercial. But these buildings are all part of the university complex, and the purposes of the university are educational. We have the evidence given at least in one case, from the minutes of the governing body of Carleton University, that residences are part of the fabric of university life.

5 The ultimate purpose of the residence is to help fulfil the educational purpose of the university. The investment of millions of dollars in student residences, run at a yearly loss, would not be justified under any circumstances for the sole purpose of providing habitation when such living accommodation is available privately in a city such as ours, within a reasonable distance.

6 I believe, as I said before, that we must look at the position of the residence with respect to all other factors in the university, and I cannot come to any other conclusion but that this building is used in conjunction with the other university buildings for educational purposes. Now, it has not been disputed that both universities are exempt from all kinds of municipal taxation, as referred to in s. 5(a), and the result must be that the appeals of both universities are allowed and the assessments then are declared invalid.

Development Charges Act, 1997

S.O. 1997, CHAPTER 27

CURRENT Consolidation period: January 6, 2025 - e-Laws currency date (April 11, 2025)

Last amendment: 2024, c. 16, Sched. 6.

Legislative History

Table of contents

PART I
DEFINITIONS

Definitions

1 In this Act,

"area municipality" means a lower-tier municipality; ("municipalité de secteur")

"development" includes redevelopment; ("aménagement")

"development charge by-law" means a by-law made under section 2; ("règlement de redevances d'aménagement")

"front-ending agreement" means an agreement under section 44; ("accord initial")

"local board" means a local board as defined in section 1 of the *Municipal Affairs Act* other than a board as defined in subsection 1 (1) of the *Education Act*. ("conseil local")

"prescribed" means prescribed by the regulations; ("prescrit")

"regulations" means the regulations made under this Act; ("règlements")

"rental housing development" means development of a building or structure with four or more residential units all of which are intended for use as rented residential premises; ("aménagement de logements locatifs")

"waste diversion services" means services related to waste management, but not including,

(a) landfill sites and services, and

(b) facilities and services for the incineration of waste. ("services de réacheminement des déchets") 1997, c. 27, s. 1; 2002, c. 17, Sched. F, Table; 2015, c. 26, s. 1; 2019, c. 9, Sched. 3, s. 1; 2022, c. 21, Sched. 3, s. 1.

v **Section Amendments with date in force (d/m/y)**

PART II
DEVELOPMENT CHARGES

DEVELOPMENT CHARGES

Development charges

2 (1) The council of a municipality may by by-law impose development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the by-law applies. 1997, c. 27, s. 2 (1).

What development can be charged for

(2) A development charge may be imposed only for development that requires,

(a) the passing of a zoning by-law or of an amendment to a zoning by-law under section 34 of the *Planning Act*;

(b) the approval of a minor variance under section 45 of the *Planning Act*;

(c) a conveyance of land to which a by-law passed under subsection 50 (7) of the *Planning Act* applies;

(d) the approval of a plan of subdivision under section 51 of the *Planning Act*;

(e) a consent under section 53 of the *Planning Act*;

(f) the approval of a description under section 9 of the *Condominium Act, 1998*; or

(g) the issuing of a permit under the *Building Code Act, 1992* in relation to a building or structure. 1997, c. 27, s. 2 (2); 2015, c. 26, s. 2 (1); 2015, c. 28, Sched. 1, s. 148.

Same

(3) An action mentioned in clauses (2) (a) to (g) does not satisfy the requirements of subsection (2) if the only effect of the action is to permit the enlargement of an existing residential unit. 2022, c. 21, Sched. 3, s. 2 (1).

Exemption for residential units in existing rental residential buildings

(3.1) The creation of the greater of the following in an existing rental residential building, which contains four or more residential units, is exempt from development charges:

1. One residential unit.

2. 1 per cent of the existing residential units. 2022, c. 21, Sched. 3, s. 2 (1).

Exemption for residential units in existing houses

(3.2) The creation of any of the following is exempt from development charges:

1. A second residential unit in an existing detached house, semi-detached house or rowhouse on a parcel of land on which residential use, other than ancillary residential use, is permitted, if all buildings and structures ancillary to the existing detached house, semi-detached house or rowhouse cumulatively contain no more than one residential unit.

2. A third residential unit in an existing detached house, semi-detached house or rowhouse on a parcel of land on which residential use, other than ancillary residential use, is permitted, if no building or structure ancillary to the existing detached house, semi-detached house or rowhouse contains any residential units.

3. One residential unit in a building or structure ancillary to an existing detached house, semi-detached house or rowhouse on a parcel of land, if the existing detached house, semi-detached house or rowhouse contains no more than two residential units and no other building or structure ancillary to the existing detached house, semi-detached house or rowhouse contains any residential units. 2022, c. 21, Sched. 3, s. 2 (1); 2023, c. 10, Sched. 3, s. 1 (1).

Exemption for additional residential units in new residential buildings

(3.3) The creation of any of the following is exempt from development charges:

1. A second residential unit in a new detached house, semi-detached house or rowhouse on a parcel of land on which residential use, other than ancillary residential use, is permitted, if all buildings and structures ancillary to the new detached house, semi-detached house or rowhouse cumulatively will contain no more than one residential unit.

2. A third residential unit in a new detached house, semi-detached house or rowhouse on a parcel of land on which residential use, other than ancillary residential use, is permitted, if no building or structure ancillary to the new detached house, semi-detached house or rowhouse contains any residential units.

3. One residential unit in a building or structure ancillary to a new detached house, semi-detached house or rowhouse on a parcel of land, if the new detached house, semi-detached house or rowhouse contains no more than two residential units and no other building or structure ancillary to the new detached house, semi-detached house or rowhouse contains any residential units. 2022, c. 21, Sched. 3, s. 2 (1); 2023, c. 10, Sched. 3, s. 1 (2).

What services can be charged for

(4) A development charge by-law may impose development charges to pay for increased capital costs required because of increased needs for the following services only:

1. Water supply services, including distribution and treatment services.

2. Waste water services, including sewers and treatment services.

3. Storm water drainage and control services.

4. Services related to a highway as defined in subsection 1 (1) of the *Municipal Act, 2001* or subsection 3 (1) of the *City of Toronto Act, 2006*, as the case may be.

5. Electrical power services.

6. Toronto-York subway extension, as defined in subsection 5.1 (1).

6.1 Yonge North subway extension, as defined in subsection 5.1.1 (1).

7. Transit services other than the Toronto-York subway extension and the Yonge North subway extension.

8. Waste diversion services.

9. Policing services.

10. Fire protection services.

11. Ambulance services.

12. Services provided by a board within the meaning of the *Public Libraries Act*.

13. Services related to long-term care.

14. Parks and recreation services, but not the acquisition of land for parks.

15. Services related to public health.

16. Child care and early years programs and services within the meaning of Part VI of the *Child Care and Early Years Act, 2014* and any related services.

17. Repealed: 2022, c. 21, Sched. 3, s. 2 (2).

18. Services related to proceedings under the *Provincial Offences Act*, including by-law enforcement services and municipally administered court services.

19. Services related to emergency preparedness.

20. Services related to airports, but only in the Regional Municipality of Waterloo.

21. Additional services as prescribed. 2020, c. 18, Sched. 3, s. 1 (2); 2021, c. 34, Sched. 7, s. 1; 2022, c. 21, Sched. 3, s. 2 (2).

Deemed amendment of by-law

(4.0.1) If a by-law under this section imposes development charges to pay for increased capital costs required because of increased needs for housing services, the by-law is deemed to be amended to be consistent with subsection (4) as it reads on the day subsection 2 (2) of Schedule 3 to the *More Homes Built Faster Act, 2022* comes into force. 2022, c. 21, Sched. 3, s. 2 (3).

Development charge — relationship to community benefits charge

(4.1) For greater certainty, nothing in this Act prevents a community benefits charge under section 37 of the *Planning Act* from being imposed with respect to the services listed in subsection (4), provided that the capital costs that are intended to be funded by the community benefits charge are not capital costs that are intended to be funded under a development charge by-law. 2020, c. 18, Sched. 3, s. 1 (2).

Local services

(5) A development charge by-law may not impose development charges with respect to local services described in clauses 59 (2) (a) and (b). 1997, c. 27, s. 2 (5).

Services can be outside the municipality

(6) A development charge by-law may impose development charges with respect to services that are provided outside the municipality. 1997, c. 27, s. 2 (6).

Application of by-law

(7) A development charge by-law may apply to the entire municipality or only part of it. 1997, c. 27, s. 2 (7).

Multiple by-laws allowed

(8) More than one development charge by-law may apply to the same area. 1997, c. 27, s. 2 (8).

Area rating, prescribed areas and services

(9) Despite subsection (7), a development charge by-law dealing with an area that is prescribed for the purposes of this subsection and with a service that is prescribed with respect to the prescribed area for the purposes of this subsection shall apply only to the prescribed area and not to any other part of the municipality. 2015, c. 26, s. 2 (3).

Transition

(10) Subsection (9) does not apply to a development charge by-law that was passed before the relevant area and the relevant service were prescribed for the purposes of that subsection. 2015, c. 26, s. 2 (3).

Area rating, prescribed municipalities, services and criteria

(11) The following rules apply to a municipality that is prescribed for the purposes of this subsection:

1. With respect to a service that is prescribed for the purposes of this subsection, the council shall pass different development charge by-laws for different parts of the municipality.

2. The parts of the municipality to which different development charge by-laws are to apply shall be identified in accordance with the prescribed criteria. 2015, c. 26, s. 2 (3).

Transition

(12) Subsection (11) does not apply to a development charge by-law that was passed before the municipality and the relevant service were prescribed for the purposes of that subsection. 2015, c. 26, s. 2 (3).

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v **Section Amendments with date in force (d/m/y)**

Limited exemption

3 No land, except land owned by and used for the purposes of a municipality or a board as defined in subsection 1 (1) of the *Education Act*, is exempt from a development charge by reason only that it is exempt from taxation under section 3 of the *Assessment Act*. 1997, c. 27, s. 3.

Exemption for industrial development

4 (1) If a development includes the enlargement of the gross floor area of an existing industrial building, the amount of the development charge that is payable in respect of the enlargement is determined in accordance with this section. 1997, c. 27, s. 4 (1).

Enlargement 50 per cent or less

(2) If the gross floor area is enlarged by 50 per cent or less, the amount of the development charge in respect of the enlargement is zero. 1997, c. 27, s. 4 (2).

Enlargement more than 50 per cent

(3) If the gross floor area is enlarged by more than 50 per cent the amount of the development charge in respect of the enlargement is the amount of the development charge that would otherwise be payable multiplied by the fraction determined as follows:

1. Determine the amount by which the enlargement exceeds 50 per cent of the gross floor area before the enlargement.
2. Divide the amount determined under paragraph 1 by the amount of the enlargement. 1997, c. 27, s. 4 (3).

Exemption for affordable and attainable residential units

Definitions

4.1 (1) In this section,

"affordable residential unit" means a residential unit that meets the criteria set out in subsection (2) or (3); ("unité d'habitation abordable")

"Affordable Residential Units bulletin" means the bulletin entitled the "Affordable Residential Units for the Purposes of the *Development Charges Act, 1997* Bulletin", as it is amended from time to time, that is published by the Minister of Municipal Affairs

and Housing on a website of the Government of Ontario; ("bulletin relatif aux unités d'habitation abordables")

"attainable residential unit" means a residential unit that meets the criteria set out in subsection (4). ("unité d'habitation à la portée du revenu") 2022, c. 21, Sched. 3, s. 3 ; 2023, c. 18, Sched. 1, s. 1 (1).

Affordable residential unit, rented

(2) A residential unit intended for use as a rented residential premises shall be considered to be an affordable residential unit if it meets the following criteria:

1. The rent is no greater than the lesser of,

   i. the income-based affordable rent for the residential unit set out in the Affordable Residential Units bulletin, as identified by the Minister of Municipal Affairs and Housing in accordance with subsection (5), and

   ii. the average market rent identified for the residential unit set out in the Affordable Residential Units bulletin.

2. The tenant is dealing at arm's length with the landlord. 2022, c. 21, Sched. 3, s. 3; 2023, c. 18, Sched. 1, s. 1 (2).

Affordable residential unit, ownership

(3) A residential unit not intended for use as a rented residential premises shall be considered to be an affordable residential unit if it meets the following criteria:

1. The price of the residential unit is no greater than the lesser of,

   i. the income-based affordable purchase price for the residential unit set out in the Affordable Residential Units bulletin, as identified by the Minister of Municipal Affairs and Housing in accordance with subsection (6), and

   ii. 90 per cent of the average purchase price identified for the residential unit set out in the Affordable Residential Units bulletin.

2. The residential unit is sold to a person who is dealing at arm's length with the seller. 2022, c. 21, Sched. 3, s. 3; 2023, c. 18, Sched. 1, s. 1 (3).

Attainable residential unit

(4) A residential unit shall be considered to be an attainable residential unit if it meets the following criteria:

1. The residential unit is not an affordable residential unit.

2. The residential unit is not intended for use as a rented residential premises.

3. The residential unit was developed as part of a prescribed development or class of developments.

4. The residential unit is sold to a person who is dealing at arm's length with the seller.

5. Such other criteria as may be prescribed. 2022, c. 21, Sched. 3, s. 3.

Rent based on income

(5) For the purposes of subparagraph 1 i of subsection (2), in identifying the income-based affordable rent applicable to a residential unit, the Minister of Municipal Affairs and Housing shall,

(a) determine the income of a household that, in the Minister's opinion, is at the 60th percentile of gross annual incomes for renter households in the applicable local municipality; and

(b) identify the rent that, in the Minister's opinion, is equal to 30 per cent of the income of the household referred to in clause (a). 2023, c. 18, Sched. 1, s. 1 (4).

Purchase price based on income

(6) For the purposes of subparagraph 1 i of subsection (3), in identifying the income-based affordable purchase price applicable to a residential unit, the Minister of Municipal Affairs and Housing shall,

(a) determine the income of a household that, in the Minister's opinion, is at the 60th percentile of gross annual incomes for households in the applicable local municipality; and

(b) identify the purchase price that, in the Minister's opinion, would result in annual accommodation costs equal to 30 per cent of the income of the household referred to in clause (a). 2023, c. 18, Sched. 1, s. 1 (4).

Arm's length

(7) For the purposes of this section, in the determination of whether two or more persons are dealing at arm's length, section 251 of the *Income Tax Act* (Canada) applies with necessary modifications. 2022, c. 21, Sched. 3, s. 3.

Affordable residential unit, exemption from development charges

(8) The creation of a residential unit that is intended to be an affordable residential unit for a period of 25 years or more from the time that the unit is first rented or sold is exempt from development charges. 2022, c. 21, Sched. 3, s. 3.

Same, agreement

(9) A person who, but for subsection (8), would be required to pay a development charge and the local municipality shall enter into an agreement that requires the residential unit to which subsection (8) applies to be an affordable residential unit for a period of 25 years. 2022, c. 21, Sched. 3, s. 3.

Attainable residential unit, exemption from development charges

(10) The creation of a residential unit that is intended to be an attainable residential unit when the unit is first sold is exempt from development charges. 2022, c. 21, Sched. 3, s. 3.

Same, agreement

(11) A person who, but for subsection (10), would be required to pay a development charge and the local municipality shall enter into an agreement that requires the residential unit to which subsection (10) applies to be an attainable residential unit at the time it is sold. 2022, c. 21, Sched. 3, s. 3.

Standard form agreement

(12) The Minister of Municipal Affairs and Housing may establish standard forms of agreement that shall be used for the purposes of subsection (9) or (11). 2022, c. 21, Sched. 3, s. 3.

Registration of agreement

(13) An agreement entered into under subsection (9) or (11) may be registered against the land to which it applies and the municipality is entitled to enforce the provisions of

the agreement against the owner and, subject to the *Registry Act* and the *Land Titles Act*, against any and all subsequent owners of the land. 2022, c. 21, Sched. 3, s. 3.

Transition

(14) Subsection (8) does not apply with respect to a development charge that is payable before the day section 3 of Schedule 3 to the More Homes Built Faster Act, 2022 comes into force. 2022, c. 21, Sched. 3, s. 3.

Non-application of *Legislation Act, 2006*

(15) Part III (Regulations) of the *Legislation Act, 2006* does not apply to,

(a) a bulletin referred to in this section; or

(b) a standard form of agreement established under subsection (12). 2022, c. 21, Sched. 3, s. 3.

v **Section Amendments with date in force (d/m/y)**

Exemption for non-profit housing development

Definition

4.2 (1) In this section,

"non-profit housing development" means the development of a building or structure intended for use as a residential premises and developed by,

(a) a corporation to which the *Not-for-Profit Corporations Act, 2010* applies, that is in good standing under that Act and whose primary object is to provide housing,

(b) a corporation without share capital to which the *Canada Not-for-profit Corporations Act* applies, that is in good standing under that Act and whose primary object is to provide housing, or

(c) a non-profit housing co-operative that is in good standing under the *Co-operative Corporations Act*. 2022, c. 21, Sched. 3, s. 4.

Exemption

(2) A non-profit housing development is exempt from development charges. 2022, c. 21, Sched. 3, s. 4.

Transition

(3) Subsection (2) does not apply with respect to a development charge that is payable before the day section 4 of Schedule 3 to the *More Homes Built Faster Act, 2022* comes into force. 2022, c. 21, Sched. 3, s. 4.

Same

(4) For greater certainty, subsection (2) applies to future instalments that would have been payable in accordance with section 26.1 after the day section 4 of Schedule 3 to the *More Homes Built Faster Act, 2022* comes into force. 2022, c. 21, Sched. 3, s. 4.

v **Section Amendments with date in force (d/m/y)**

Exemption for inclusionary zoning residential units

Exemption

4.3 (1) The creation of a residential unit described in subsection (2) is exempt from development charges unless a development charge is payable with respect to the residential unit before the day section 4 of Schedule 3 to the *More Homes Built Faster Act, 2022* comes into force. 2022, c. 21, Sched. 3, s. 4.

Application

(2) Subsection (1) applies in respect of residential units that are affordable housing units required to be included in a development or redevelopment pursuant to a by-law passed under section 34 of the *Planning Act* to give effect to the policies described in subsection 16 (4) of that Act. 2022, c. 21, Sched. 3, s. 4.

v **Section Amendments with date in force (d/m/y)**

Determination of development charges

5 (1) The following is the method that must be used, in developing a development charge by-law, to determine the development charges that may be imposed:

1. The anticipated amount, type and location of development, for which development charges can be imposed, must be estimated.

2. The increase in the need for service attributable to the anticipated development must be estimated for each service to which the development charge by-law would relate.

3. The estimate under paragraph 2 may include an increase in need only if the council of the municipality has indicated that it intends to ensure that such an increase in need will be met. The determination as to whether a council has indicated such an intention may be governed by the regulations.

4. The estimate under paragraph 2 must not include an increase that would result in the level of service exceeding the average level of that service provided in the municipality over the 15-year period immediately preceding the preparation of the background study required under section 10. How the level of service and average level of service is determined may be governed by the regulations.

5. The increase in the need for service attributable to the anticipated development must be reduced by the part of that increase that can be met using the municipality's excess capacity, other than excess capacity that the council of the municipality has indicated an intention would be paid for by new development. How excess capacity is determined and how to determine whether a council has indicated an intention that excess capacity would be paid for by new development may be governed by the regulations.

6. The increase in the need for service must be reduced by the extent to which an increase in service to meet the increased need would benefit existing development. The extent to which an increase in service would benefit existing development may be governed by the regulations.

7. The capital costs necessary to provide the increased services must be estimated. The capital costs must be reduced by the reductions set out in subsection (2). What is included as a capital cost is set out in subsection (3). How the capital costs are estimated may be governed by the regulations.

8. Repealed: 2019, c. 9, Sched. 3, s. 3 (2).

9. Rules must be developed to determine if a development charge is payable in any particular case and to determine the amount of the charge, subject to the limitations set out in subsection (6).

10. The rules may provide for full or partial exemptions for types of development and for the phasing in of development charges. The rules may also provide for the

indexing of development charges based on the prescribed index. 1997, c. 27, s. 5 (1); 2019, c. 9, Sched. 3, s. 3 (1, 2); 2022, c. 21, Sched. 3, s. 5 (1).

Transition, par. 4 of subs. (1)

(1.1) For greater certainty, paragraph 4 of subsection (1), as it read immediately before the day subsection 5 (1) of Schedule 3 to the *More Homes Built Faster Act, 2022* came into force, continues to apply in respect of a development charge by-law in force on that day. 2022, c. 21, Sched. 3, s. 5 (2).

Capital costs, deductions

(2) The capital costs, determined under paragraph 7 of subsection (1), must be reduced, in accordance with the regulations, to adjust for capital grants, subsidies and other contributions made to a municipality or that the council of the municipality anticipates will be made in respect of the capital costs. 1997, c. 27, s. 5 (2).

Capital costs, inclusions

(3) The following are capital costs for the purposes of paragraph 7 of subsection (1) if they are incurred or proposed to be incurred by a municipality or a local board directly or by others on behalf of, and as authorized by, a municipality or local board:

1. Costs to acquire land or an interest in land, including a leasehold interest, except in relation to such services as are prescribed for the purposes of this paragraph.
2. Costs to improve land.
3. Costs to acquire, lease, construct or improve buildings and structures.
4. Costs to acquire, lease, construct or improve facilities including,
   i. rolling stock with an estimated useful life of seven years or more,
   ii. furniture and equipment, other than computer equipment, and
   iii. materials acquired for circulation, reference or information purposes by a board within the meaning of the *Public Libraries Act*.
5. Costs to undertake studies in connection with any of the matters referred to in paragraphs 1 to 4.
6. Costs of the development charge background study required under section 10.

7. Interest on money borrowed to pay for costs described in paragraphs 1 to 4. 1997, c. 27, s. 5 (3); 2020, c. 18, Sched. 3, s. 2; 2022, c. 21, Sched. 3, s. 5 (3, 4); 2024, c. 16, Sched. 6, s. 1 (1).

(3.1) Repealed: 2024, c. 16, Sched. 6, s. 1 (2).

Capital costs, leases, etc.

(4) Only the capital component of costs to lease anything or to acquire a leasehold interest is included as a capital cost under subsection (3). 1997, c. 27, s. 5 (4).

(5) Repealed: 2019, c. 9, Sched. 3, s. 3 (5).

Restriction on rules

(6) The rules developed under paragraph 9 of subsection (1) to determine if a development charge is payable in any particular case and to determine the amount of the charge are subject to the following restrictions:

1. The rules must be such that the total of the development charges that would be imposed upon the anticipated development is less than or equal to the capital costs determined under paragraphs 2 to 8 of subsection (1) for all the services to which the development charge by-law relates.

2. If the rules expressly identify a type of development they must not provide for the type of development to pay development charges that exceed the capital costs, determined under paragraphs 2 to 8 of subsection (1), that arise from the increase in the need for services attributable to the type of development. However, it is not necessary that the amount of the development charge for a particular development be limited to the increase in capital costs, if any, that are attributable to that particular development.

3. If the development charge by-law will exempt a type of development, phase in a development charge, or otherwise provide for a type of development to have a lower development charge than is allowed, the rules for determining development charges may not provide for any resulting shortfall to be made up through higher development charges for other development.

4. Repealed: 2024, c. 16, Sched. 6, s. 1 (3).

1997, c. 27, s. 5 (6); 2022, c. 21, Sched. 3, s. 5 (6); 2024, c. 16, Sched. 6, s. 1 (3).

to the day it is refunded. 1997, c. 27, s. 18 (3); 2020, c. 18, Sched. 3, s. 6.

v Section Amendments with date in force (d/m/y)

PROCESS AND APPEALS FOR AMENDMENTS TO BY-LAWS

Application of other sections to amendments

19 (1) Sections 10 to 18 apply, with necessary modifications, to an amendment to a development charge by-law other than an amendment by, or pursuant to an order of, the Ontario Land Tribunal. 1997, c. 27, s. 19 (1); 2021, c. 4, Sched. 6, s. 41 (1).

Amendments to extend by-law

(1.1) Subsection (1) does not apply to an amendment to a development charge by-law if the only effect of the amendment is to repeal a provision specifying the date on which the by-law expires or to amend such a provision to provide for the by-law to expire on a later date. 2024, c. 16, Sched. 6, s. 2 (1).

Notice

(1.2) The clerk of a municipality that passed an amendment referred to in subsection (1.1) shall give written notice of the passing of the amendment and subsections 13 (2) to (4) apply, with necessary modifications, to the notice. 2024, c. 16, Sched. 6, s. 2 (2).

(1.3), (1.4) REPEALED: 2024, c. 16, Sched. 6, s. 2 (2).

Limitation of Tribunal powers

(2) In an appeal of an amendment to a development charge by-law, the Ontario Land Tribunal may exercise its powers only in relation to the amendment. 1997, c. 27, s. 19 (2); 2021, c. 4, Sched. 6, s. 41 (1).

v Section Amendments with date in force (d/m/y)

COMPLAINTS ABOUT DEVELOPMENT CHARGES

Complaint to council of municipality

20 (1) A person required to pay a development charge, or the person's agent, may complain to the council of the municipality imposing the development charge that,

(a) the amount of the development charge was incorrectly determined;

(b) whether a credit is available to be used against the development charge, or the amount of the credit or the service with respect to which the credit was given, was incorrectly determined; or

(c) there was an error in the application of the development charge by-law. 1997, c. 27, s. 20 (1).

Time limit

(2) A complaint may not be made under subsection (1) later than 90 days after the day the development charge, or any part of it, is payable. 1997, c. 27, s. 20 (2).

Form of complaint

(3) The complaint must be in writing, must state the complainant's name, the address where notice can be given to the complainant and the reasons for the complaint. 1997, c. 27, s. 20 (3).

Hearing

(4) The council shall hold a hearing into the complaint and shall give the complainant an opportunity to make representations at the hearing. 1997, c. 27, s. 20 (4).

Notice of hearing

(5) The clerk of the municipality shall mail a notice of the hearing to the complainant at least 14 days before the hearing. 1997, c. 27, s. 20 (5).

Council's powers

(6) After hearing the evidence and submissions of the complainant, the council may dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint. 1997, c. 27, s. 20 (6).

Notice of decision and time for appeal

21 (1) The clerk of the municipality shall mail to the complainant a notice of the council's decision, and of the last day for appealing the decision, which shall be the day that is 40 days after the day the decision is made. 1997, c. 27, s. 21 (1).

Requirements of notice

(2) The notice required under this section must be mailed not later than 20 days after the day the council's decision is made. 1997, c. 27, s. 21 (2).

Appeal of council's decision

22 (1) A complainant may appeal the decision of the council of the municipality to the Ontario Land Tribunal by filing with the clerk of the municipality, on or before the last day for appealing the decision, a notice of appeal setting out the reasons for the appeal. 1997, c. 27, s. 22 (1); 2021, c. 4, Sched. 6, s. 41 (1).

Additional ground

(2) A complainant may also appeal to the Ontario Land Tribunal if the council of the municipality does not deal with the complaint within 60 days after the complaint is made by filing with the clerk of the municipality a notice of appeal. 1997, c. 27, s. 22 (2); 2021, c. 4, Sched. 6, s. 41 (1).

v **Section Amendments with date in force (d/m/y)**

Clerk's duties on appeal

23 (1) If a notice of appeal under subsection 22 (1) is filed with the clerk of the municipality on or before the last day for appealing a decision, the clerk shall compile a record that includes,

(a) a copy of the development charge by-law certified by the clerk;

(b) the original or a true copy of the complaint and all written submissions and material received in support of the complaint;

(c) a copy of the council's decision certified by the clerk; and

(d) an affidavit or declaration certifying that notice of the council's decision and of the last day for appealing it was given in accordance with this Act. 1997, c. 27, s. 23 (1).

Same

(2) If a notice of appeal under subsection 22 (2) is filed with the clerk of the municipality, the clerk shall compile a record that includes,

(a) a copy of the development charge by-law certified by the clerk; and

(b) the original or a true copy of the complaint and all written submissions and material received in support of the complaint. 1997, c. 27, s. 23 (2).

Same

(3) The clerk shall forward a copy of the notice of appeal and the record to the Ontario Land Tribunal within 30 days after the notice is received and shall provide such other information and material that the Tribunal may require in respect of the appeal. 1997, c. 27, s. 23 (3); 2021, c. 4, Sched. 6, s. 41 (5).

v **Section Amendments with date in force (d/m/y)**

Tribunal hearing of appeal

24 (1) The Ontario Land Tribunal shall hold a hearing to deal with any notice of appeal relating to a complaint forwarded by the clerk of a municipality. 1997, c. 27, s. 24 (1); 2021, c. 4, Sched. 6, s. 41 (1).

Parties

(2) The parties to the appeal are the appellant and the municipality. 1997, c. 27, s. 24 (2).

Notice to parties

(3) The Ontario Land Tribunal shall give notice of the hearing to the parties. 1997, c. 27, s. 24 (3); 2021, c. 4, Sched. 6, s. 41 (1).

Powers of Tribunal

(4) After the hearing, the Ontario Land Tribunal may do anything that could have been done by the council of the municipality under subsection 20 (6). 1997, c. 27, s. 24 (4); 2021, c. 4, Sched. 6, s. 41 (1).

Dismissal without hearing

(5) Despite subsection (1), the Ontario Land Tribunal may, where it is of the opinion that the complaint set out in the notice of appeal is insufficient, dismiss the appeal without holding a full hearing after notifying the appellant and giving the appellant an

opportunity to make representations as to the merits of the appeal. 1997, c. 27, s. 24 (5); 2021, c. 4, Sched. 6, s. 41 (1).

v **Section Amendments with date in force (d/m/y)**

Refund if development charge reduced

25 (1) If a development charge that has already been paid is reduced by the council of a municipality under section 20 or by the Ontario Land Tribunal under section 24, the municipality shall immediately refund the overpayment. 1997, c. 27, s. 25 (1); 2021, c. 4, Sched. 6, s. 41 (1).

Interest

(2) The municipality shall pay interest on an amount it refunds at a rate not less than the prescribed minimum interest rate from the day the amount was paid to the municipality to the day it is refunded. 1997, c. 27, s. 25 (2); 2020, c. 18, Sched. 3, s. 7.

v **Section Amendments with date in force (d/m/y)**

COLLECTION OF DEVELOPMENT CHARGES

When development charge is payable

26 (1) A development charge is payable for a development upon a building permit being issued for the development unless the development charge by-law provides otherwise under subsection (2). 1997, c. 27, s. 26 (1).

Multiple building permits

(1.1) If a development consists of one building that requires more than one building permit, the development charge for the development is payable upon the first building permit being issued. 2015, c. 26, s. 6.

Multiple phases

(1.2) If a development consists of two or more phases that will not be constructed concurrently and are anticipated to be completed in different years, each phase of the development is deemed to be a separate development for the purposes of this section. 2015, c. 26, s. 6.

Special case, approval of plan of subdivision

(2) A municipality may, in a development charge by-law, provide that a development charge for services set out in paragraphs 1, 2, 3, 4 or 5 of subsection 2 (4) for development that requires approval of a plan of subdivision under section 51 of the *Planning Act* or a consent under section 53 of the *Planning Act* and for which a subdivision agreement or consent agreement is entered into, be payable immediately upon the parties entering into the agreement. 1997, c. 27, s. 26 (2); 2019, c. 9, Sched. 3, s. 7.

Agreement prevails

(3) This section does not apply in cases where there is an agreement under section 27. 1997, c. 27, s. 26 (3).

v **Section Amendments with date in force (d/m/y)**

Certain types of development, when charge payable

26.1 (1) Despite section 26, a development charge in respect of any part of a development that consists of a type of development set out in subsection (2) is payable in accordance with this section. 2019, c. 9, Sched. 3, s. 8 (1).

Same

(2) The types of development referred to in subsection (1) are the following:

1. Rental housing development.
2. Institutional development.
3. Repealed: 2022, c. 21, Sched. 3, s. 7 (1).
4., 5. Repealed: 2019, c. 15, Sched. 10, s. 1 (1).

2019, c. 9, Sched. 3, s. 8 (1); 2019, c. 15, Sched. 10, s. 1 (1); 2022, c. 21, Sched. 3, s. 7 (1).

Annual instalments

(3) A development charge referred to in subsection (1) shall be paid in equal annual instalments beginning on the earlier of the date of the issuance of a permit under the *Building Code Act, 1992* authorizing occupation of the building and the date the building is first occupied, and continuing on the following five anniversaries of that date. 2022, c. 21, Sched. 3, s. 7 (2).

Amount of charge

(4) The amount of a development charge referred to in subsection (1) is the amount of the development charge determined in accordance with section 26.2, regardless of whether the by-law under which the amount of the development charge would be determined is no longer in effect on the date an instalment is payable. 2019, c. 9, Sched. 3, s. 8 (1).

Notice of occupation

(5) A person required to pay a development charge referred to in subsection (1) shall, unless the occupation of the building in respect of which the development charge is required is authorized by a permit under the *Building Code Act, 1992*, notify the municipality within five business days of the building first being occupied. 2019, c. 9, Sched. 3, s. 8 (1).

Failure to provide notice

(6) If a person described in subsection (5) fails to comply with that subsection, the development charge, including any interest payable in accordance with subsection (7), is payable immediately. 2019, c. 9, Sched. 3, s. 8 (1).

Interest

(7) A municipality may charge interest on the instalments required by subsection (3) from the date the development charge would have been payable in accordance with section 26 to the date the instalment is paid, at a rate not exceeding the maximum interest rate determined in accordance with section 26.3. 2019, c. 9, Sched. 3, s. 8 (1); 2022, c. 21, Sched. 3, s. 7 (3).

Unpaid amounts added to taxes

(8) Section 32 applies to instalments required by subsection (3) and interest charged in accordance with subsection (7), with necessary modifications. 2019, c. 9, Sched. 3, s. 8 (1).

Change in type of development

(9) If any part of a development to which this section applies is changed so that it no longer consists of a type of development set out in subsection (2), the development charge, including any interest payable, but excluding any instalments already paid in accordance with subsection (3), is payable immediately. 2019, c. 9, Sched. 3, s. 8 (1).

Transition, date charge payable

(10) This section does not apply to a development charge that becomes payable before the day subsection 8 (1) of Schedule 3 to the *More Homes, More Choice Act, 2019* comes into force. 2019, c. 9, Sched. 3, s. 8 (1).

Agreement prevails

(11) This section does not apply in cases where there is an agreement under section 27. 2019, c. 9, Sched. 3, s. 8 (1).

v **Section Amendments with date in force (d/m/y)**

When amount of development charge is determined

26.2 (1) Subject to subsection (1.1), the total amount of a development charge is the amount of the development charge that would be determined under the by-law on,

(a) the day an application for an approval of development in a site plan control area under subsection 41 (4) of the *Planning Act* or subsection 114 (5) of the *City of Toronto Act, 2006* was made in respect of the development that is the subject of the development charge;

(b) if clause (a) does not apply, the day an application for an amendment to a by-law passed under section 34 of the *Planning Act* was made in respect of the development that is the subject of the development charge; or

(c) if neither clause (a) nor clause (b) applies,

(i) in the case of a development charge in respect of a development to which section 26.1 applies, the day the development charge would be payable in accordance with section 26 if section 26.1 did not apply, or

(ii) in the case of a development charge in respect of a development to which section 26.1 does not apply, the day the development charge is payable in accordance with section 26. 2019, c. 9, Sched. 3, s. 8 (1); 2022, c. 21, Sched. 3, s. 8 (1).

Discount, rental housing development

(1.1) In the case of rental housing development, the amount determined under subsection (1) shall be reduced in accordance with the following rules:

1. A development charge for a residential unit intended for use as a rented residential premises with three or more bedrooms shall be reduced by 25 per cent.

2. A development charge for a residential unit intended for use as a rented residential premises with two bedrooms shall be reduced by 20 per cent.

3. A development charge for a residential unit intended for use as a rented residential premises not referred to in paragraph 1 or 2 shall be reduced by 15 per cent. 2022, c. 21, Sched. 3, s. 8 (2).

Same, transition

(1.2) Subject to subsection (1.3), subsection (1.1) does not apply in respect of a development charge for a development in respect of which a building permit was issued before the day subsection 8 (2) of Schedule 3 to the *More Homes Built Faster Act, 2022* came into force. 2022, c. 21, Sched. 3, s. 8 (2).

Same, exception

(1.3) Despite subsection (7), paragraphs 1 to 3 of subsection (1.1) apply to any part of a development charge payable under an agreement under section 27 that is in respect of a prescribed development and that was entered into before the day that subsection 8 (2) of Schedule 3 to the *More Homes Built Faster Act, 2022* came into force, other than a part of the development charge that is payable under the agreement before the day the development was prescribed for the purposes of this subsection. 2022, c. 21, Sched. 3, s. 8 (2).

Same, if by-law not in effect

(2) Subsection (1) applies regardless of whether the by-law under which the amount of the development charge would be determined is no longer in effect on the date the development charge is payable. 2019, c. 9, Sched. 3, s. 8 (1).

Interest

(3) Where clause (1) (a) or (b) applies, the municipality may charge interest on the development charge, at a rate not exceeding the maximum interest rate determined in accordance with section 26.3, from the date of the application referred to in the applicable clause to the date the development charge is payable. 2019, c. 9, Sched. 3, s. 8 (1); 2022, c. 21, Sched. 3, s. 8 (3).

More than one application

(4) If a development was the subject of more than one application referred to in clause (1) (a) or (b), the later one is deemed to be the applicable application for the purposes of this section. 2019, c. 9, Sched. 3, s. 8 (1).

Exception, prescribed amount of time elapsed

(5) Clauses (1) (a) and (b) do not apply in respect of,

(a) any part of a development to which section 26.1 applies if, on the date the first building permit is issued for the development, more than 18 months has elapsed since the application referred to in clause (1) (a) or (b) was approved; or

(b) any part of a development to which section 26.1 does not apply if, on the date the development charge is payable, more than 18 months has elapsed since the application referred to in clause (1) (a) or (b) was approved. 2019, c. 9, Sched. 3, s. 8 (1); 2024, c. 16, Sched. 6, s. 3 (1).

Same, transition

(5.1) Subsection (5) as it read before the day subsection 3 (1) of Schedule 6 to the *Cutting Red Tape to Build More Homes Act, 2024* came into force continues to apply to a development in respect of which the application referred to in clause (1) (a) or (b) was approved before the day subsection 3 (1) of Schedule 6 to the *Cutting Red Tape to Build More Homes Act, 2024* came into force. 2024, c. 16, Sched. 6, s. 3 (2).

Transition, date of application

(6) Clauses (1) (a) and (b) do not apply in the case of an application made before the day subsection 8 (1) of Schedule 3 to the *More Homes, More Choice Act, 2019* comes into force. 2019, c. 9, Sched. 3, s. 8 (1).

Transition, eligible services

(6.1) Beginning on the day described in subsection (6.2), the total amount of a municipality's development charge for the purposes of subsection (1) shall not include the amount of a development charge in respect of a service unless the service is listed in subsection 2 (4). 2020, c. 18, Sched. 3, s. 8.

Same

(6.2) The day referred to in subsection (6.1) is,

(a) in the case of a local municipality, the earlier of,

(i) the day the municipality passes a community benefits charge by-law under subsection 37 (2) of the *Planning Act*, and

(ii) the specified date for the purposes of section 9.1; and

(b) in the case of an upper-tier municipality, the specified date for the purposes of section 9.1. 2020, c. 18, Sched. 3, s. 8.

Agreement prevails

(7) This section does not apply in cases where there is an agreement under section 27. 2019, c. 9, Sched. 3, s. 8 (1).

Special rule, City of Ottawa

(8) If an application referred to in clause (1) (a) or (b) is made to the City of Ottawa between May 14, 2024 and the day that is 15 days after the day subsection 3 (3) of Schedule 6 to the *Cutting Red Tape to Build More Homes Act, 2024* comes into force, the application shall be deemed for the purposes of this section to have been made on the day that is 16 days after the day subsection 3 (3) of Schedule 6 to the *Cutting Red Tape to Build More Homes Act, 2024* comes into force. 2024, c. 16, Sched. 6, s. 3 (3).

v **Section Amendments with date in force (d/m/y)**

Maximum interest rate

26.3 (1) In this section,

"adjustment date" means January 1, April 1, July 1 or October 1; ("date de rajustement")

"average prime rate", on a particular date, means the mean, rounded to the nearest hundredth of a percentage point, of the annual rates of interest announced by each of the Royal Bank of Canada, The Bank of Nova Scotia, the Canadian Imperial Bank of Commerce, the Bank of Montreal and The Toronto-Dominion Bank to be its prime or reference rate of interest in effect on that date for determining interest rates on

Ministry of Training, Colleges and Universities Act, R.S.O. 1990, c.M.19

Section 6.1

Exemption, development charges

6.1 (1) 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. 2020, c. 34, Sched. 10, s. 1; 2022, c. 22, Sched. 1, s. 4.

Same

(2) For greater certainty, the exemption from development charges referred to in subsection (1) applies with respect to land described in that subsection regardless of whether an application referred to in clause 26.2 (1) (a) or (b) of the *Development Charges Act, 1997* has been made with respect to that land on or before the day section 1 of Schedule 10 to the *Better for People, Smarter for Business Act, 2020* comes into force. 2020, c. 34, Sched. 10, s. 1.

Same

(3) Nothing in this section limits the application of an exemption from development charges provided in any other Act with respect to a university described in subsection (1). 2020, c. 34, Sched. 10, s. 1.

<u>An Act to Incorporate the University of Guelph, S.O. 1964, c.120, as amended by 1965, c.136</u>

Section 3

Objects and purposes of University

3. The objects and purposes of the University are,

(a) the advancement of learning and the dissemination of knowledge, including, without limiting the generality of the foregoing, the advancement of learning and the dissemination of knowledge respecting agriculture; and

(b) the intellectual, social, moral and physical development of its members and the betterment of society. 1964, c. 120. s, 3; 1965, c. 136, s. 1.

Section 19

Tax Exemption

19. The property vested in the University and any lands and Tax exemption premises leased to and occupied by the University are not liable to taxation for provincial, municipal or school purposes, and are exempt from every description of taxation so long as the same are actually used and occupied for the purposes of the University. 1964, c. 120, s. 19.

Planning Act, R.S.O. 1990, c.P.13

Section 62.0.2

Undertakings of post-secondary institutions

62.0.2 (1) Except as otherwise prescribed, an undertaking of a post-secondary institution described in subsection (2) for the objects of the institution is not subject to this Act or to section 113 or 114 of the City of Toronto Act, 2006. 2024, c. 16, Sched. 12, s. 11.

Same

(2) Subsection (1) applies to the following post-secondary institutions:

1. Publicly-assisted universities, as defined in section 1 of the Ministry of Training, Colleges and Universities Act, except as otherwise prescribed.

2. Colleges and universities federated or affiliated with a publicly-assisted university referred to in paragraph 1, except as otherwise prescribed. 2024, c. 16, Sched. 12, s. 11.

CHAPTER 21

An Act to amend various statutes, to revoke various regulations and to enact the Supporting Growth and Housing in York and Durham Regions Act, 2022

Assented to November 28, 2022

Table of contents

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2 (1) Except as otherwise provided in this section, this Act comes into force on the day it receives Royal Assent.

(2) The Schedules to this Act come into force as provided in each Schedule.

(3) If a Schedule to this Act provides that any of its provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3 The short title of this Act is the *More Homes Built Faster Act, 2022*.

SCHEDULE 3
DEVELOPMENT CHARGES ACT, 1997

1 Section 1 of the *Development Charges Act, 1997* is amended by adding the following definition:

“rental housing development” means development of a building or structure with four or more residential units all of which are intended for use as rented residential premises; (“aménagement de logements locatifs”)

2 (1) Subsections 2 (3) and (3.1) of the Act are repealed and the following substituted:

Same

(3) An action mentioned in clauses (2) (a) to (g) does not satisfy the requirements of subsection (2) if the only effect of the action is to permit the enlargement of an existing residential unit.

Exemption for residential units in existing rental residential buildings

(3.1) The creation of the greater of the following in an existing rental residential building, which contains four or more residential units, is exempt from development charges:

1. One residential unit.
2. 1% of the existing residential units.

Exemption for residential units in existing houses

(3.2) The creation of any of the following is exempt from development charges:

1. A second residential unit in an existing detached house, semi-detached house or rowhouse on a parcel of land on which residential use, other than ancillary residential use, is permitted, if all buildings and structures ancillary to the existing detached house, semi-detached house or rowhouse cumulatively contain no more than one residential unit.
2. A third residential unit in an existing detached house, semi-detached house or rowhouse on a parcel of land on which residential use, other than ancillary

residential use, is permitted, if no building or structure ancillary to the existing detached house, semi-detached house or rowhouse contains any residential units.

3. One residential unit in a building or structure ancillary to an existing detached house, semi-detached house or rowhouse on a parcel of urban residential land, if the existing detached house, semi-detached house or rowhouse contains no more than two residential units and no other building or structure ancillary to the existing detached house, semi-detached house or rowhouse contains any residential units.

Exemption for additional residential units in new residential buildings

(3.3) The creation of any of the following is exempt from development charges:

1. A second residential unit in a new detached house, semi-detached house or rowhouse on a parcel of land on which residential use, other than ancillary residential use, is permitted, if all buildings and structures ancillary to the new detached house, semi-detached house or rowhouse cumulatively will contain no more than one residential unit.

2. A third residential unit in a new detached house, semi-detached house or rowhouse on a parcel of land on which residential use, other than ancillary residential use, is permitted, if no building or structure ancillary to the new detached house, semi-detached house or rowhouse contains any residential units.

3. One residential unit in a building or structure ancillary to a new detached house, semi-detached house or rowhouse on a parcel of urban residential land, if the new detached house, semi-detached house or rowhouse contains no more than two residential units and no other building or structure ancillary to the new detached house, semi-detached house or rowhouse contains any residential units.

(2) Paragraph 17 of subsection 2 (4) of the Act is repealed.

(3) Section 2 of the Act is amended by adding the following subsection:

Deemed amendment of by-law

(4.0.1) If a by-law under this section imposes development charges to pay for increased capital costs required because of increased needs for housing services, the by-law is

deemed to be amended to be consistent with subsection (4) as it reads on the day subsection 2 (2) of Schedule 3 to the *More Homes Built Faster Act, 2022* comes into force.

3 The Act is amended by adding the following section:

Exemption for affordable and attainable residential units

Definitions

4.1 (1) In this section,

"affordable residential unit" means a residential unit that meets the criteria set out in subsection (2) or (3); ("unité d'habitation abordable")

"attainable residential unit" means a residential unit that meets the criteria set out in subsection (4). ("unité d'habitation à la portée du revenu")

Affordable residential unit, rented

(2) A residential unit intended for use as a rented residential premises shall be considered to be an affordable residential unit if it meets the following criteria:

1. The rent is no greater than 80 per cent of the average market rent, as determined in accordance with subsection (5).
2. The tenant is dealing at arm's length with the landlord.

Affordable residential unit, ownership

(3) A residential unit not intended for use as a rented residential premises shall be considered to be an affordable residential unit if it meets the following criteria:

1. The price of the residential unit is no greater than 80 per cent of the average purchase price, as determined in accordance with subsection (6).
2. The residential unit is sold to a person who is dealing at arm's length with the seller.

Attainable residential unit

(4) A residential unit shall be considered to be an attainable residential unit if it meets the following criteria:

1. The residential unit is not an affordable residential unit.

2. The residential unit is not intended for use as a rented residential premises.

3. The residential unit was developed as part of a prescribed development or class of developments.

4. The residential unit is sold to a person who is dealing at arm's length with the seller.

5. Such other criteria as may be prescribed.

Average market rent

(5) For the purposes of paragraph 1 of subsection (2), the average market rent applicable to a residential unit is the average market rent for the year in which the residential unit is occupied by a tenant, as identified in the bulletin entitled the "Affordable Residential Units for the Purposes of the *Development Charges Act, 1997* Bulletin", as it is amended from time to time, that is published by the Minister of Municipal Affairs and Housing on a website of the Government of Ontario.

Average purchase price

(6) For the purposes of paragraph 1 of subsection (3), the average purchase price applicable to a residential unit is the average purchase price for the year in which the residential unit is sold, as identified in the bulletin entitled the "Affordable Residential Units for the Purposes of the *Development Charges Act, 1997* Bulletin", as it is amended from time to time, that is published by the Minister of Municipal Affairs and Housing on a website of the Government of Ontario.

Arm's length

(7) For the purposes of this section, in the determination of whether two or more persons are dealing at arm's length, section 251 of the *Income Tax Act* (Canada) applies with necessary modifications.

Affordable residential unit, exemption from development charges

(8) The creation of a residential unit that is intended to be an affordable residential unit for a period of 25 years or more from the time that the unit is first rented or sold is exempt from development charges.

Same, agreement

(9) A person who, but for subsection (8), would be required to pay a development charge and the local municipality shall enter into an agreement that requires the residential unit to which subsection (8) applies to be an affordable residential unit for a period of 25 years.

Attainable residential unit, exemption from development charges

(10) The creation of a residential unit that is intended to be an attainable residential unit when the unit is first sold is exempt from development charges.

Same, agreement

(11) A person who, but for subsection (10), would be required to pay a development charge and the local municipality shall enter into an agreement that requires the residential unit to which subsection (10) applies to be an attainable residential unit at the time it is sold.

Standard form agreement

(12) The Minister of Municipal Affairs and Housing may establish standard forms of agreement that shall be used for the purposes of subsection (9) or (11).

Registration of agreement

(13) An agreement entered into under subsection (9) or (11) may be registered against the land to which it applies and the municipality is entitled to enforce the provisions of the agreement against the owner and, subject to the *Registry Act* and the *Land Titles Act*, against any and all subsequent owners of the land.

Transition

(14) Subsection (8) does not apply with respect to a development charge that is payable before the day section 3 of Schedule 3 to the *More Homes Built Faster Act, 2022* comes into force.

Non-application of *Legislation Act, 2006*

(15) Part III (Regulations) of the *Legislation Act, 2006* does not apply to,

(a) a bulletin referred to in this section; or

(b) a standard form of agreement established under subsection (12).

4 The Act is amended by adding the following sections:

Exemption for non-profit housing development

Definition

4.2 (1) In this section,

"non-profit housing development" means the development of a building or structure intended for use as a residential premises and developed by,

(a) a corporation to which the *Not-for-Profit Corporations Act, 2010* applies, that is in good standing under that Act and whose primary object is to provide housing,

(b) a corporation without share capital to which the *Canada Not-for-profit Corporations Act* applies, that is in good standing under that Act and whose primary object is to provide housing, or

(c) a non-profit housing co-operative that is in good standing under the *Co-operative Corporations Act*.

Exemption

(2) A non-profit housing development is exempt from development charges.

Transition

(3) Subsection (2) does not apply with respect to a development charge that is payable before the day section 4 of Schedule 3 to the *More Homes Built Faster Act, 2022* comes into force.

Same

(4) For greater certainty, subsection (2) applies to future instalments that would have been payable in accordance with section 26.1 after the day section 4 of Schedule 3 to the *More Homes Built Faster Act, 2022* comes into force.

Exemption for inclusionary zoning residential units

Exemption

4.3 (1) The creation of a residential unit described in subsection (2) is exempt from development charges unless a development charge is payable with respect to the residential unit before the day section 4 of Schedule 3 to the *More Homes Built Faster Act, 2022* comes into force.

Application

(2) Subsection (1) applies in respect of residential units that are affordable housing units required to be included in a development or redevelopment pursuant to a by-law passed under section 34 of the *Planning Act* to give effect to the policies described in subsection 16 (4) of that Act.

5 (1) Paragraph 4 of subsection 5 (1) of the Act is amended by striking out "10-year period" and substituting "15-year period".

(2) Section 5 of the Act is amended by adding the following subsection:

Transition, par. 4 of subs. (1)

(1.1) For greater certainty, paragraph 4 of subsection (1), as it read immediately before the day subsection 5 (1) of Schedule 3 to the *More Homes Built Faster Act, 2022* came into force, continues to apply in respect of a development charge by-law in force on that day.

(3) Paragraph 1 of subsection 5 (3) of the Act is amended by adding "except in relation to such services as are prescribed for the purposes of this paragraph" at the end.

(4) Paragraphs 5 and 6 of subsection 5 (3) of the Act are repealed.

(5) Section 5 of the Act is amended by adding the following subsection:

Transition

(3.1) For greater certainty, subsection (3), as it read immediately before the day subsection 5 (4) of Schedule 3 to the *More Homes Built Faster Act, 2022* came into force, continues to apply in respect of a development charge by-law in force on that day.

(6) Subsection 5 (6) of the Act is amended by adding the following paragraph:

4. In the case of a development charge by-law passed on or after the day subsection 5 (6) of Schedule 3 to the *More Homes Built Faster Act, 2022* comes into force, the rules must provide that,

    i. any development charge imposed during the first year that the by-law is in force is no more than 80 per cent of the maximum development charge that could otherwise be charged in accordance with this section,

    ii. any development charge imposed during the second year that the by-law is in force is no more than 85 per cent of the maximum development charge that could otherwise be charged in accordance with this section,

    iii. any development charge imposed during the third year that the by-law is in force is no more than 90 per cent of the maximum development charge that could otherwise be charged in accordance with this section, and

    iv. any development charge imposed during the fourth year that the by-law is in force is no more than 95 per cent of the maximum development charge that could otherwise be charged in accordance with this section.

(7) Section 5 of the Act is amended by adding the following subsections:

Special rule

(7) Subsection (8) applies to a development charge imposed by a development charge by-law passed on or after January 1, 2022 and before the day subsection 5 (7) of Schedule 3 to the *More Homes Built Faster Act, 2022* comes into force, unless the development charge was payable before the day subsection 5 (7) of Schedule 3 to the *More Homes Built Faster Act, 2022* comes into force.

Same

(8) The amount of a development charge described in subsection (7) shall be reduced in accordance with the following rules:

1. A development charge imposed during the first year that the by-law is in force shall be reduced to 80 per cent of the development charge that would otherwise be imposed by the by-law.

2. A development charge imposed during the second year that the by-law is in force shall be reduced to 85 per cent of the development charge that would otherwise be imposed by the by-law.

3. A development charge imposed during the third year that the by-law is in force shall be reduced to 90 per cent of the development charge that would otherwise be imposed by the by-law.

4. A development charge imposed during the fourth year that the by-law is in force shall be reduced to 95 per cent of the development charge that would otherwise be imposed by the by-law.

Same, interpretation

(9) For the purposes of subsections (7) and (8), a development charge is deemed to be imposed on the day referred to in subsection 26.2 (1) that applies to the development charge.

6 (1) Subsection 9 (1) of the Act is amended by striking out “five years” and substituting “10 years”.

(2) Section 9 of the Act is amended by adding the following subsection:

Transition

(1.1) For greater certainty, subsection (1), as it reads on and after the day subsection 6 (1) of Schedule 3 to the *More Homes Built Faster Act, 2022* came into force, does not apply with respect to a development charge by-law that, before that day, had expired pursuant to subsection (1) as it read before that day.

7 (1) Paragraphs 1 to 3 of subsection 26.1 (2) of the Act are repealed and the following substituted:

1. Rental housing development.
2. Institutional development.

(2) Subsection 26.1 (3) of the Act is repealed and the following substituted:

Annual instalments

(3) A development charge referred to in subsection (1) shall be paid in equal annual instalments beginning on the earlier of the date of the issuance of a permit under the *Building Code Act, 1992* authorizing occupation of the building and the date the building is first occupied, and continuing on the following five anniversaries of that date.

(3) Subsection 26.1 (7) of the Act is amended by striking out "not exceeding the prescribed maximum interest rate" at the end and substituting "not exceeding the maximum interest rate determined in accordance with section 26.3".

8 (1) Subsection 26.2 (1) of the Act is amended by striking out "The total amount" at the beginning and substituting "Subject to subsection (1.1), the total amount".

(2) Section 26.2 of the Act is amended by adding the following subsections:

Discount, rental housing development

(1.1) In the case of rental housing development, the amount determined under subsection (1) shall be reduced in accordance with the following rules:

1. A development charge for a residential unit intended for use as a rented residential premises with three or more bedrooms shall be reduced by 25 per cent.
2. A development charge for a residential unit intended for use as a rented residential premises with two bedrooms shall be reduced by 20 per cent.

3. A development charge for a residential unit intended for use as a rented residential premises not referred to in paragraph 1 or 2 shall be reduced by 15 per cent.

Same, transition

(1.2) Subject to subsection (1.3), subsection (1.1) does not apply in respect of a development charge for a development in respect of which a building permit was issued before the day subsection 8 (2) of Schedule 3 to the *More Homes Built Faster Act, 2022* came into force.

Same, exception

(1.3) Despite subsection (7), paragraphs 1 to 3 of subsection (1.1) apply to any part of a development charge payable under an agreement under section 27 that is in respect of a prescribed development and that was entered into before the day that subsection 8 (2) of Schedule 3 to the *More Homes Built Faster Act, 2022* came into force, other than a part of the development charge that is payable under the agreement before the day the development was prescribed for the purposes of this subsection.

(3) Subsection 26.2 (3) of the Act is amended by striking out "at a rate not exceeding the prescribed maximum interest rate" and substituting "at a rate not exceeding the maximum interest rate determined in accordance with section 26.3".

9 The Act is amended by adding the following section:

Maximum interest rate

26.3 (1) In this section,

"adjustment date" means January 1, April 1, July 1 or October 1; ("date de rajustement")

"average prime rate", on a particular date, means the mean, rounded to the nearest hundredth of a percentage point, of the annual rates of interest announced by each of the Royal Bank of Canada, The Bank of Nova Scotia, the Canadian Imperial Bank of Commerce, the Bank of Montreal and The Toronto-Dominion Bank to be its prime or

reference rate of interest in effect on that date for determining interest rates on Canadian dollar commercial loans by that bank in Canada. (“taux préférentiel moyen”)

Same

(2) For the purposes of subsections 26.1 (7) and 26.2 (3), the maximum interest rate that a municipality may charge shall be determined in accordance with the following rules:

1. A base rate of interest shall be determined for April 1, 2022 and for each adjustment date after April 1, 2022 and shall be equal to the average prime rate on,

   i. October 15 of the previous year, if the adjustment date is January 1,

   ii. January 15 of the same year, if the adjustment date is April 1,

   iii. April 15 of the same year, if the adjustment date is July 1, and

   iv. July 15 of the same year, if the adjustment date is October 1.

2. The base rate of interest in effect on a particular date shall be,

   i. the base rate for the particular date, if the particular date is an adjustment date, and

   ii. the base rate for the last adjustment date before the particular date, otherwise.

3. The maximum rate of interest that may be charged, in respect of a particular day after June 1, 2022, shall be an annual interest rate that is one percentage point higher than the base rate of interest in effect for that day.

Transition

(3) Subsection (2) does not apply in respect of a development charge that was payable before the day section 9 of Schedule 3 to the *More Homes Built Faster Act, 2022* comes into force.

10 Section 35 of the Act is amended by adding the following subsections:

Requirement to spend or allocate monies in reserve fund

(2) Beginning in 2023 and in each calendar year thereafter, a municipality shall spend or allocate at least 60 per cent of the monies that are in a reserve fund for the following services at the beginning of the year:

1. Water supply services, including distribution and treatment services.

2. Waste water services, including sewers and treatment services.

3. Services related to a highway as defined in subsection 1 (1) of the *Municipal Act, 2001* or subsection 3 (1) of the *City of Toronto Act, 2006*, as the case may be.

Same

(3) If a service is prescribed for the purposes of this subsection, beginning in the first calendar year that commences after the service is prescribed and in each calendar year thereafter, a municipality shall spend or allocate at least 60 per cent of the monies that are in a reserve fund for the prescribed service at the beginning of the year.

11 (1) Subsection 44 (4) of the Act is amended by striking out "Subsection 2 (3.1) and section 4" at the beginning and substituting "Subsections 2 (3.3), 4.2 (2) and 4.3 (1) and section 4".

(2) Subsection 44 (4) of the Act, as amended by subsection (1), is amended by adding "4.1 (8) and (10)" after "Subsections 2 (3.3)" at the beginning.

12 (1) Clauses 60 (1) (b) and (b.1) of the Act are repealed.

(2) Subsection 60 (1) of the Act is amended by adding the following clauses:

(d.2) prescribing developments and classes of developments for the purposes of paragraph 3 of subsection 4.1 (4);

(d.3) prescribing criteria for the purposes of paragraph 5 of subsection 4.1 (4);

(3) Subsection 60 (1) of the Act is amended by adding the following clause:

(l) prescribing services for the purposes of paragraph 1 of subsection 5 (3);

(4) Clause 60 (1) (s.2) of the Act is repealed.

(5) Subsection 60 (1) of the Act is amended by adding the following clause:

(s.2.1) prescribing developments for the purposes of subsection 26.2 (1.3);

(6) Subsection 60 (1) of the Act is amended by adding the following clause:

(s.4) prescribing one or more services for the purposes of subsection 35 (3);

(7) Section 60 of the Act is amended by adding the following subsections:

Adoption by reference

(1.1) A regulation under clause (1) (d.3) may adopt by reference, in whole or in part and with such changes as are considered necessary, any document and may require compliance with the document.

Rolling incorporation by reference

(1.2) The power to adopt by reference and require compliance with a document in subsection (1.1) includes the power to adopt a document as it may be amended from time to time.

Revocation

13 Subsections 11.1 (1) and (3) of Ontario Regulation 82/98 are revoked.

Commencement

14 (1) Except as otherwise provided in this section, this Schedule comes into force on the day the *More Homes Built Faster Act, 2022* receives Royal Assent.

(2) Section 3, subsection 11 (2) and subsections 12 (2) and (7) come into force on a day to be named by proclamation of the Lieutenant

CHAPTER 16

An Act to amend various Acts

Assented to June 6, 2024

Table of contents

Preamble

The Government of Ontario:

Is reducing red tape and removing costly burdens in order to make government work better for the families, business owners, municipalities and workers who are building Ontario.

Understands that unnecessary red tape too often delays shovels from getting in the ground, making it more expensive and time-consuming to build badly-needed homes.

Recognizes the urgent need to tackle the housing supply crisis and get at least 1.5 million homes built by 2031 in partnership with municipalities.

Is building on its previous actions to cut red tape with a variety of measures that will save people and businesses time and money, including by improving how people and businesses access government services, streamlining municipal approvals and reducing costs to build more homes, prioritizing infrastructure for housing projects that are ready to go, providing certainty once a decision is made and building homes faster for more people.

Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

(c) be less than three years, if a prescribed time period under clause (a) or (b) does not apply with respect to the development.

(4) Section 51 of the Act is amended by adding the following subsections:

Approvals given on or before March 27, 1995

(33.4) If an approval to a draft plan of subdivision was given on or before March 27, 1995, the approval lapses at the expiration of the third anniversary of the day subsection 10 (4) of Schedule 12 to the *Cutting Red Tape to Build More Homes Act, 2024* comes into force. However, if there is an outstanding appeal under subsection (43) or (48) of this section in respect of a condition to the approval of the plan on the day subsection 10 (4) of Schedule 12 to the *Cutting Red Tape to Build More Homes Act, 2024* comes into force, or such an appeal is commenced after that day and before the third anniversary of that day, the approval lapses on the third anniversary of the day that all appeals are withdrawn or the Tribunal has finally disposed of all of those appeals.

Same

(33.5) For clarity, subsections (33), (33.1) and (39) do not apply in respect of the lapsing of an approval described in subsection (33.4).

11 The Act is amended by adding the following sections:

Undertakings of post-secondary institutions

62.0.2 (1) Except as otherwise prescribed, an undertaking of a post-secondary institution described in subsection (2) for the objects of the institution is not subject to this Act or to section 113 or 114 of the *City of Toronto Act, 2006*.

Same

(2) Subsection (1) applies to the following post-secondary institutions:

1. Publicly-assisted universities, as defined in section 1 of the *Ministry of Training, Colleges and Universities Act*, except as otherwise prescribed.

2. Colleges and universities federated or affiliated with a publicly-assisted university referred to in paragraph 1, except as otherwise prescribed.