



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Planning, Administration and Policy Division

TO:	Chair and Members Audit, Finance and Administration Committee
COMMITTEE DATE:	December 7, 2017
SUBJECT/REPORT NO:	John Bruce Robinson Construction Limited, Section 20 Complaint under the <i>Development Charges Act</i> (FCS17103) (Ward 11)
WARD(S) AFFECTED:	Ward 11
PREPARED BY:	Lindsay Gillies (905) 546-2424 Ext. 2790
SUBMITTED BY:	Mike Zegarac General Manager Finance and Corporate Services
SIGNATURE:	

RECOMMENDATION

That the Development Charges complaint filed under Section 20 of the *Development Charges Act, 1997* by letter dated October 31, 2017 from John Bruce Robinson Construction Limited be dismissed.

EXECUTIVE SUMMARY

A letter dated October 31, 2017 (attached as Appendix "A" to Report FCS17103) was received by the City Clerk's Office. The letter serves as a formal complaint under Section 20 of the *Development Charge Act, 1997* (DC Act) that the Binbrook Special Area Charge (SAC) was incorrectly determined and that there was an error in the application of the Development Charges (DC) By-law.

Under Section 20(4) and Section 20(6) of the *DC Act*, Council shall hold a hearing into the complaint and after hearing evidence and submissions of the complaint may dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint, the key being that there was an incorrect determination or error in the application of the DC By-law.

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The hearing before Committee shall include the following:

- (1) Presentation of staff position regarding the complaint;
- (2) Questions by Complainant and Committee Members of Staff;
- (3) Presentation by Complainant of its case;
- (4) Questions by Staff and Committee Members of Complainant or Complainant Representative;
- (5) Response, if any, by Staff to Complainant's Case;
- (6) Any further questions of Committee Members to Staff or Complainant or its Representative;
- (7) Closing Statements by Complainant;
- (8) Closing Statements by Staff; and
- (9) Decision by Committee.

The complaint letter from the developer focuses on the legality and fairness of the Binbrook SAC. The legality or fairness of a DC is not the subject of a Section 20 complaint under the *DC Act*. A Section 20 complaint cannot challenge the validity of a DC By-law and cannot be used to amend a DC By-law. A Section 20 complaint provides a process for remedy when a developer is of the opinion that the DC By-law has been incorrectly interpreted or applied. Staff recommends dismissing the complaint as there has been no error or incorrect determination while applying the DC By-law to the development.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Staff recommends dismissing the complaint made under Section 20 of the *DC Act* as there has been no error or incorrect determination while applying the DC By-law to the development.

Financial: None

Staffing: None

Legal: None

HISTORICAL BACKGROUND

The Binbrook SAC for permits 17-119060, 17-120921 and 17-120892 were levied according to DC By-law 14-153 and paid under protest by John Bruce Robinson Construction Ltd. See Insert 1 in the “Analysis and Rationale for Recommendation” Section of this Report for a summary of the addresses, dates and amounts.

**SUBJECT: John Bruce Robinson Construction Limited, Section 20 Complaint
under the *Development Charges Act (FCS17103)* (Ward 11) - Page 3 of 6**

The City Clerk's Office received the letter attached as Appendix "A" to Report FCS17103 on November 1, 2017 (the "Complaint"). The letter serves as a formal complaint under Section 20 of the *DC Act* that the Binbrook SAC was incorrectly determined and that there was an error in the application of the DC By-law.

Council, at its meeting of November 22, 2017, approved a Motion as Item 7.7 to delegate the hearing of the Complaint pursuant to Section 20(4) of the *DC Act* to the Audit, Finance and Administration Committee.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Section 20 of the *DC Act* provides a remedy for developers who disagree with a Development Charge required to be paid.

Excerpts from Section 20 of the *DC Act*:

- (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.
- (4) The council shall hold a hearing into the complaint and shall give the complainant an opportunity to make representations at the hearing.
- (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.

Section 22(1) of the *DC Act* permits a complainant to appeal the decision of council to the Ontario Municipal Board.

RELEVANT CONSULTATION

The Legal Services Division staff was consulted and is in agreement with the hearing process, rationale and recommendation of Report FCS17103. Legal Services has confirmed that a Section 20 complaint under the *DC Act* cannot challenge the validity of a DC By-law and cannot be used to amend a DC By-law.

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ANALYSIS AND RATIONALE FOR RECOMMENDATION

The Complaint references Permits 34319, 34388 and 34793. Staff reviewed these references and concluded that these numbers refer to the pre-numbered “Charges to be paid prior to the issuance of a Building Permit” payment sheets on which the Development Charges were recorded as paid. These sheets recorded payments for the following permits:

Insert 1: Summary of charges paid under protest

Sheet	Permit	Address	Paid	Issued	For:	Binbrook SAC DC (paid under protest)
34319	17-119060	17 FAIRGROUNDS DR	04-Aug-17	04-Aug-17	8-unit townhouse block	\$ 18,560.00 (8 x \$2,320)
34388	17-120921	33 FAIRGROUNDS DR	30-Aug-17	06-Sep-17	8-unit townhouse block	\$ 18,560.00 (8 x \$2,320)
34793	17-120892	38 DAW AVE	05-Sep-17	08-Sep-17	1 Single Family Dwelling	\$ 3,211.00 (1 x \$3,211)
Total						\$40,331.00

The following section of DC By-law 14-153 details the requirement to charge the Binbrook SAC:

DC By-law 14-153 - Section 5(d):

Subject to any applicable exemption set out in this By-Law, where there is development of land in Binbrook within the area depicted as "Phase 1" on Schedule "E" to this By-law, or within those areas of Dundas and Waterdown delineated on Schedule "F" to this By-law, respectively, the development charges payable pursuant to this By-law shall be the development charges set out in Schedule "A" and Schedule "C" and the applicable Special Area Charge as shown on Schedule "G" to this By-law. (emphasis added)

The Binbrook SAC is only applicable to lands within Phase 1 on the referenced Schedule “E” to DC By-law 14-153. Insert 2 provides a copy of the map from Schedule “E” to DC By-law 14-153.

The referenced Schedule “A” and Schedule “C” are the Municipal Wide Development Charges and the Stormwater, Water and Wastewater Development Charges schedules, respectively and are not part of the complaint.

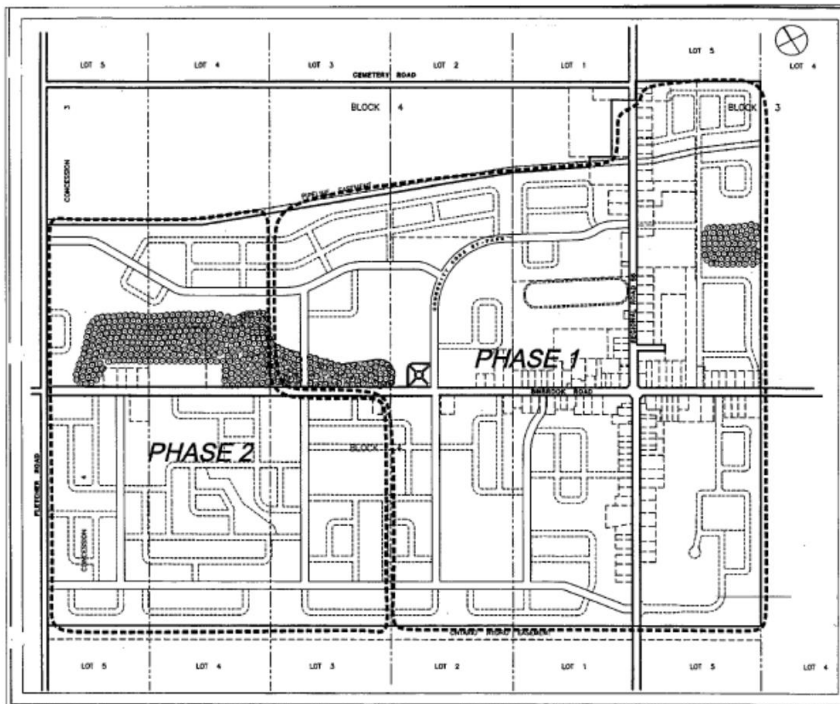
The referenced Schedule “G” is the Special Area Charges Schedule and is the charge being disputed. Insert 3 provides a copy of the table from Schedule “G” of DC By-law 14-153.

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Insert 2: Relevant Map from Schedule “E” of DC By-law 14-153



Insert 3: Relevant Table from Schedule “G” of DC By-law 14-153

Special Area Charge	Single-Detached Dwelling & Semi-Detached Dwelling	Townhouses & Other Multiple Unit Dwellings	Apartments 2-Bedrooms +	Apartments Bachelor & 1-Bedroom	Residential Facility Dwelling	Non-Residential	
	(per Unit)	(per Unit)	(per Unit)	(per Unit)	(per Bedroom)	(per Sq. Ft.)	(per Sq. m.)
Binbrook Special Area Charge	3,211	2,320	1,961	1,364	1,042	N/A	N/A
Dundas/Waterdown Special Area Charge	1,588	1,147	970	674	515	1.09	11.73

The Binbrook SAC is required to be paid under DC By-law 14-153. Staff do not have discretion to determine who pays a charge. The DC By-law must be applied. When charging the Binbrook SAC, the DC By-law requires that:

1. The development must be within the defined borders (see Phase 1 of Insert 2)
2. The charge must correspond with the type of dwelling unit (see Insert 3)

Staff has reviewed the permits and have found no error in applying the DC By-law. The developments are within the defined border (see Phase 1 of Insert 2) and have been levied the appropriate unit charge according to the dwelling type (see Insert 1 and Insert 3).

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**SUBJECT: John Bruce Robinson Construction Limited, Section 20 Complaint
under the *Development Charges Act (FCS17103)* (Ward 11) - Page 6 of 6**

The Complaint focuses on the legality and fairness of the Binbrook Special Area Charge. The legality or fairness of a Development Charge is not the subject of a Section 20 complaint. A Section 20 complaint cannot challenge the validity of a DC By-law and cannot be used to amend a DC By-law.

Staff recommend dismissing the Complaint as there has been no error or incorrect determination while applying the DC By-law to the development.

ALTERNATIVES FOR CONSIDERATION

N/A

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement & Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” – Letter dated October 31, 2017 regarding John Bruce Robinson Construction Limited, Section 20, *Development Charges Act*, 1997 Complaint

LG/dt

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