



# The Regional Municipality of Durham Report

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To: Committee of the Whole  
From: Acting Commissioner of Finance  
Report: #2018-COW-109  
Date: June 6, 2018

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**Subject:**

Final Recommendations Regarding Carruthers Creek Sanitary Sewerage Service Area Specific Development Charge

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**Recommendation:**

That the Committee of the Whole recommends to Regional Council:

- A) That Pursuant to Section 10(1) of the Development Charges Act, 1997, the Carruthers Creek Sanitary Sewerage Service Area Specific Development Charge Background Study dated March 27, 2018 be adopted including the forecast of anticipated development, the underlying capital forecast and the calculations contained in the Background Study and that the approval of the capital forecast in the Background Study indicate Regional Council's intention to ensure that such an increase in need for service will be met as required under paragraph 3 of Section 5(1) of the Development Charges Act, 1997 and Section 3 of Ontario Regulation 82/98;
- B) That a Carruthers Creek Sanitary Sewerage Service Area Specific Development Charge in the amount of \$15,903 per net hectare for both residential and non-residential uses be imposed effective July 1, 2018;
- C) That the Development Charge policies for the Carruthers Creek Sanitary Sewerage Service Area Specific Development Charge as contained in the proposed by-law included in the Background Study (Attachment #2) be approved;
- D) That the Regional Solicitor be instructed to prepare the requisite Development Charge By-law for presentation to Regional Council and passage;
- E) That the Regional Solicitor be instructed to revise future development agreements and any by-law(s) relating thereto to reflect any changes required to implement the foregoing recommendations and that any such revised by-law(s) be presented to Council for passage;

- F) That the Acting Treasurer be instructed to prepare the requisite development charge pamphlet pursuant to the Development Charges Act, 1997 and related materials; and
  - G) That the Regional Clerk be instructed to follow the notification provisions pursuant to the Development Charges Act, 1997.
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## 1. Introduction

The purpose of this report is to provide final recommendations regarding the proposed Sanitary Sewerage Service Area Specific Development Charge for the Carruthers Creek Area. These recommendations will form the basis for the by-law to be implemented on July 1, 2018 which replaces the existing Area Specific Development Charge By-law #17-2013.

The Carruthers Creek Sanitary Sewerage Service Area Specific Development Charge Background Study contained the proposed by-law and provided information regarding the proposed development charge policies for review by Regional Council and the public. The background study was made available to Regional Council and the public (free of charge) beginning on March 27, 2018 as indicated in the public notices placed in the Toronto Star on March 17 and 19, 2018 and three times in the local Metroland newspapers throughout the Region over the time period March 15 to March 29, 2018.

An overview of the key recommendations contained in the proposed development charge by-law and background study is provided in Report #2018-COW-64: Public Meetings Regarding Proposed Development Charge By-laws and Background Studies.

## 2. Proposed Carruthers Creek Sanitary Sewerage Service Area Specific Development Charge By-Law

### 2.1 Overview of Public Input Regarding Carruthers Creek Sanitary Sewerage Service Area Specific Development Charge

Public notices regarding the proposed by-law, availability of the background study and the invitation for public submissions were placed as noted above and concurrently with the notices for the proposed Regional Development Charge By-law.

Letters were also sent to all signatories of the Carruthers Creek Front-ending Agreements on March 20, 2018 advising them of the expiry date of the front-ending agreements on August 31, 2019 and advising that staff were considering a recommendation that the sanitary sewerage area specific development charge by-law for the Carruthers Creek Area would also expire on August 31, 2019. The letter outlined the public process and the opportunities to provide comment at the April 11, 2018 Public Meeting. No delegation appeared at the April 11, 2018 Public Meeting to speak to this matter and no reply was received to the March 20, 2018 letter.

No verbal submissions were made at the public meeting of Council held to consider the proposed Sanitary Sewerage Service Area Specific Development Charge By-law and Background Study on April 11, 2018. A resident in Ajax inquired as to whether the

Carruthers Creek Area Specific Development Charge would apply to his property. Staff responded that the Carruthers Creek Area Specific Development Charge would not apply as his property is outside the Carruthers Creek Service Area.

A letter was received on May 18, 2018 by a law firm representing Runnymede Development Corporation Limited (Attachment #1) requesting that the Carruthers Creek Sanitary Sewerage Area Specific Development Charge By-law not have an expiry date of August 31, 2019 and that the existing front-ending agreements be extended in order to provide additional time to allow a full recovery of costs.

Runnymede and a number of other developers upfronted the cost to provide sanitary sewerage services to the Carruthers Creek Service Area in the Town of Ajax (in the late 90's) in order to advance the development of their lands.

The Region executed two front-ending agreements with these landowners in 1997 (and subsequently an area specific development charge by-law) which required the Region to collect payments from benefitting landowners in the Carruthers Creek Service Area who did not provide any upfront funds and subsequently distribute these funds to Runnymede and the other landowners who upfronted the costs of the sanitary sewerage services. The developers entered into these agreements knowing that they had a sunset clause of August 31, 2019 and that there was a risk that depending on the pace of development, they may not recover their entire costs by the sunset clause.

The letter from the law firm representing Runnymede is requesting that the Region extend the date of the agreements and the development charge by-law beyond August 31, 2019, to enable the Region to continue to collect payments from other benefitting landowners for the purpose of re-imbursing Runnymede and other landowners.

There is no obligation on the Region to extend the agreements beyond August 31, 2019. Extending the agreements could require the Region to have all the signatories of the original agreements to execute an amended agreement. As well, if the Region was to extend the front-ending agreements and development charge by-law beyond August 31, 2019, the Region would have to notify all landowners in the Carruthers Creek Service Area (with undeveloped lands) to advise that the agreements that are set to expire on August 31, 2019 are being extended. As these agreements are set to expire on August 31, 2019, the sanitary sewerage area specific development charge for the Carruthers Creek Area will no longer apply on these lands, which may promote the development of the residential and non-residential lands within this service area. For these reasons, it is recommended that the front-ending agreements and development charge by-law expire on August 31, 2019.

## 2.2 Final Recommendations

No changes are proposed from the recommendations contained in the Carruthers Creek Sanitary Sewerage Service Area Specific Development Charge Background Study.

Those recommendations will increase the rate of the Carruthers Creek Sanitary Sewerage Service Area Specific Development charges to \$15,903 (from the current rate

of \$15,560) per net hectare.

### **3. Further Considerations by Regional Council Per DCA, 1997**

#### **3.1 Formal Consideration of Need for Further Public Meeting**

If the proposed by-law is changed then Regional Council is required under the provisions of the DCA, 1997 to consider whether a further public meeting is required. An additional public meeting would require public notices to be placed providing at least twenty days notice of such a public meeting.

Given that the final recommendations do not vary from the proposed Regional Development Charge by-law, if these recommendations are accepted and no change is made, a further public meeting would not be required.

#### **3.2 Direction to Regional Staff To Prepare Necessary Notices, Satisfy Reporting Requirements and Provide Information**

In order to implement the recommended Carruthers Creek Sanitary Sewerage Service Area Specific Development Charge, various administrative tasks must be undertaken by the Regional Solicitor, Regional Clerk and Regional Treasurer.

### **4. Conclusion**

It is recommended that the Carruthers Creek Sanitary Sewerage Service Area Specific Development Charge by-law be approved as proposed in the Background Study.

This report has been reviewed by staff of the Planning & Economic Development, Works and Corporate Services - Legal departments who concur with the recommendations.

**5. Attachments**

Attachment #1      Written Correspondence and Staff Response  
Attachment #2:      Proposed Development Charge By-law

Respectfully submitted,

Original Signed By

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M.E. Simpson, CPA, CMA, MA  
Acting Commissioner of Finance and Treasurer

Recommended for Presentation to Committee

Original Signed By

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G.H. Cubitt, MSW  
Chief Administrative Officer



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May 18, 2018

FILE NUMBER: 46165-00002

**DELIVERED BY E-MAIL**

Ralph Walton, Regional Clerk  
Director of Legislative Services  
Regional Municipality of Durham  
605 Rossland Road East  
Level 1  
P.O. Box 623  
Whitby, ON L1N 6A3

Dear Mr. Walton:

**Re: Area Specific Development Charges - Sanitary Sewage - Carruthers Creek Area**

We act on behalf of Runnymede Development Corporation Limited (“RDCL”) a party to both Front Ending Agreements for the Carruthers Creek Development Area. RDCL is the primary funder of the services that were installed pursuant to the Front Ending Agreements. It was responsible for 72% of the funding under Agreement #1 and 92% under Agreement #2. As a result, it is the most affected party in terms of the front ended amounts that have yet to be repaid.

We have reviewed the staff report dated April 11, 2018 (report number 2018-COW-64) and note that the staff recommendation is only to extend the Area Specific Development Charge By-law for sanitary sewage services until the Front Ending Agreements expire on August 31, 2019. By its calculation, RDCL continues to be approximately \$2 million for the services that it installed pursuant to the Front Ending Agreements.

RDCL is extremely concerned that, in the absence of an area specific development charge by-law and an extension of the Front Ending Agreements, it will have expended a significant amount of money as part of an agreement with the Region, with the risk that it may not be able to be reimbursed in full for the funds it expended.

Not extending the agreement and by-law will be a disincentive to landowners in the Region to enter into front ending financing agreements with the Region in the future, if there is a risk that payment will not ultimately be made in full for the amounts expended.

We therefore request that the Area Specific Development Charge By-law not have an expiry date of August 31, 2019 and that the existing Front Ending Agreements be extended in order to allow for a full compensation pursuant to those agreements to take place. RDCL would be pleased to meet with staff in



order to discuss next steps to ensure that the agreements can be negotiated well in advance of their expiry date.

Sincerely,  
**DLA Piper (Canada) LLP**  
Per:

A handwritten signature in black ink, appearing to read 'CB', written over the word 'Per:'.

Chris Barnett

CMB/sxo

Cc: Runnymede Development Corporation Limited  
Kevin Ryan

CAN: 27389189.1



May 25, 2018

Chris Barnett  
DLA Piper (Canada) LLP  
Suite 6000, 1 First Canadian Place  
PO Box 367, 100 King Street West  
Toronto, Ontario  
M5X 1E2

Dear Mr. Barnett:

RE: Response to Comments Related to the 2018 Carruthers Creek  
Sanitary Sewerage Area Specific Development Charge Background  
Study

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The Regional  
Municipality  
of Durham

Finance Department

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PO BOX 623  
WHITBY ON L1N 6A3  
CANADA  
905-668-7711  
1-800-372-1102  
Fax: 905-666-6207

www.durham.ca

Thank you for your letter dated May 18, 2018 regarding the 2018 Carruthers Creek Sanitary Sewerage Area Specific Development Charge Background Study concerning the request that the Carruthers Creek Sanitary Sewerage Area Specific Development Charge By-law not have an expiry date of August 31, 2019 and that the existing front ending agreements be extended in order to provide for additional time to allow a full recovery of costs.

Letters were sent to all signatories of the Carruthers Creek Front-ending Agreements on March 20, 2018 advising of the expiry date of the front-ending agreements on August 31, 2019 and advising that staff were considering a recommendation that the sanitary sewerage area specific development charge by-law for the Carruthers Creek Area would expire on August 31, 2019. The letter outlined the public process and the opportunities to provide comment at the April 11, 2018 Public Meeting. No delegation appeared at the April 11, 2018 Public Meeting to speak to this matter and no reply was received to the March 20, 2018 letter.

The Region executed two front-ending agreements with your client and a number of landowners in 1997 which required the Region to collect payments from benefitting landowners in the Carruthers Creek Service Area who did not provide any upfront funds and subsequently distribute these funds to Runnymede and the other landowners who upfronted the costs of the sanitary sewerage services. These agreements were executed by all parties with the understanding of the sunset clause of August 31, 2019 and that there was a risk that depending on the pace of development, they may not recover their entire costs by the sunset clause.

Extending the agreements could require the Region to have all the signatories of the original agreements to execute an amended agreement and require the Region to notify all landowners in the Carruthers Creek Service Area (with undeveloped lands) to advise that the agreements that are set to expire on August 31, 2019 are being extended.

"Service Excellence  
for our Communities"



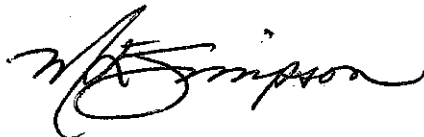
100% Post Consumer



Staff will be not be recommending that the agreements and development charge by-law be extended beyond August 31, 2019. Staff will continue to collect the charges from benefitting non-contributing landowners and forward these funds to Runnymede and the other landowners up until August 31, 2019.

Please be advised that the final recommendations regarding the Carruthers Creek Sanitary Sewerage Area Specific Development Charge By-law will be considered by Committee of the Whole on June 6, 2018 and Regional Council on June 13, 2018. Your letter and our staff response will be provided to Regional Council as part of that report.

If you have any questions or comments, please call me at 905-668-4113 ext 2300.



Mary E. Simpson, CPA, CMA, MA  
Acting Commissioner of Finance

cc: R. Walton, Regional Clerk / Director of Legislative Services  
S. Siopis, Commissioner of Works  
B. Bridgeman, Commissioner of Planning and Economic Development  
K. Ryan, Senior Solicitor  
J. Presta, Director of Environmental Services  
P. Gillespie, Manager of Development Approvals  
S. Tsenis, Manager, Corporate Asset Management  
A. Wismer, Economist  
M. MacDonald, Economist  
G. Asselin, Economist

**BY-LAW NUMBER • - 2018**

**OF**

**THE REGIONAL MUNICIPALITY OF DURHAM**

**being a new area specific by-law regarding development charges for sanitary sewerage works for the Carruthers Creek Development Area**

**WHEREAS** section 2(1) of the *Development Charges Act, 1997*, provides that 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 if the development requires one or more of the approvals identified in section 2(2) of the *Development Charges Act, 1997*;

**AND WHEREAS** the Council of The Regional Municipality of Durham has given notice and held a public meeting on April 11, 2018, in accordance with section 12(l) of the *Development Charges Act, 1997*;

**AND WHEREAS** the Council of The Regional Municipality of Durham has permitted any person who attended the public meeting to make representations in respect of the proposed development charges;

**NOW THEREFORE THE COUNCIL OF THE REGIONAL MUNICIPALITY OF DURHAM HEREBY ENACTS AS FOLLOWS:**

**PART I**

**INTERPRETATION**

**Definitions**

1. In this By-law,
  - (a) “Act” means the Development Charges Act, 1997;
  - (b) “Area Municipality” means a lower-tier municipality that forms part of the Region;
  - (c) “Carruthers Creek Development Area” means the area within the Region generally as described in Schedule A and shown on Schedule B;
  - (d) “Council” means the Council of The Regional Municipality of Durham;
  - (e) “Development” includes redevelopment;

- (f) “Development Charges” means a development charge imposed pursuant to this by-law in accordance with the Act in regard to sanitary sewerage services;
  - (g) “Local Board” means a local board as defined in the Municipal Affairs Act, other than a board defined in section 1(1) of the Education Act;
  - (h) “Mixed-Use” means a building or structure containing both Non-Residential and Residential uses;
  - (i) “Net Hectares of Land” means the area of any parcel of land in the Carruthers Creek Development Area in hectares net of the area designated by the Toronto and Region Conservation Authority as floodplain and/or fill regulated area, and net of any area existing or required by the Ontario Hydro Electric Power Commission for its high voltage transmission line corridor;
  - (j) “Non-Residential” means the use of lands, buildings or structures for other than a Residential use;
  - (k) “Region” means The Regional Municipality of Durham;
  - (l) “Residential” means the use of lands, buildings or structures used, or designed or intended for use as a home or residence of one or more individuals;
  - (m) “Residential Unit” means a residential building or structure or a room or suite of rooms within a residential building or structure used, or designed or intended for use by one person or persons living together, in which culinary and sanitary facilities are provided for the exclusive use of such person or persons;
  - (n) “Service” means the service designated in section 7 of this by-law.
2. In this by-law where reference is made to a statute or a section of a statute such reference is deemed to be a reference to any successor statute or section.

## **PART II**

### **APPLICATION OF BY-LAW — RULES**

#### **Circumstances Where Development Charges are Payable**

3. Development charges shall be payable in the amounts set out in section 8 of this by-law where:
- (a) the lands are located in the area described in section 4(l); and

- (b) the development of the lands requires any of the approvals set out in section 5(1).

**Lands Affected**

- 4. (1) Subject to section 4(2), this by-law applies to all lands within the Carruthers Creek Sanitary Sewerage Development Area.
- (2) This by-law shall not apply to lands that are owned by and used for the purposes of:
  - (i) the Region or a Local Board thereof;
  - (ii) a board as defined in section 1(1) of the *Education Act*;
  - (iii) an Area Municipality or a Local Board thereof in the Region.

**Approvals for Development**

- 5. (1) Development Charges shall be imposed upon all lands in the Carruthers Creek Sanitary Sewerage Development Area that are developed for Residential uses or Non-Residential uses if the Development requires;
  - (i) the passing of a zoning by-law or of an amendment thereto 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*;
  - (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 50 of the *Condominium Act*;
  - (vii) the issuing of a permit under the *Building Code Act, 1992*;
- (2) Council has determined that the Development of the land to which this by-law applies increases the need for the service designated in section 7.

**Multiple Approvals**

- 6. (1) The Development Charges shall not be imposed on land subject to this by-law more than once even though two or more of the actions described in section 5(1) are required before the land can be developed.
- (2) Notwithstanding section 6(1), if two or more of the actions described in section 5 occur at different times, additional Development Charges shall be imposed, if the subsequent action has the effect of increasing the need for the service designated in Section 7.

**Designation of Service**

- 7. (1) For the purposes of this by-law, the service for which Development Charges are imposed under Part II of this by-law is the Carruthers Creek sanitary sewerage service.
- (2) The components of the service designated in section 7(1) are described on Schedule “C”.

**Amount of Development Charges**

- 8. (1) Subject to the provisions of this by-law, a Development Charge of \$15,903 per hectare shall be imposed upon Residential uses and Non-Residential uses of lands, buildings or structures in the Carruthers Creek Development Area.
- (2) The Development Charges described in section 8(1) shall be calculated in the case of Residential and Non-Residential Development, based upon the number of Net Hectares of Land related to the Development.

**Exemptions**

- 9. (1) In this section,
  - (i) “gross floor area” means the total floor area, measured between the outside of exterior walls or between the outside of exterior walls and the centre line of party walls dividing the building from another building, of all floors above the average level of finished ground adjoining the building at its exterior walls;
  - (ii) “other residential building” means a residential building not in another class of residential building described in this subsection.
  - (iii) “semi-detached or row dwelling” means a residential building consisting of one dwelling unit having one or two vertical walls, but no other parts, attached to another structure;

- (iv) "single detached dwelling" means a residential building consisting of one dwelling unit and not attached to another structure.
- (2) Subject to subsections 9(3) and 9(4), development charges shall not be imposed in respect to:
  - (i) the issuance of a building permit not resulting in the creation of an additional dwelling unit;
  - (ii) the enlargement of an existing dwelling unit;
  - (iii) the creation of one or two additional dwelling units in an existing single detached dwelling;
  - (iv) the creation of one additional dwelling unit in a semi-detached dwelling, a row dwelling, or any other residential building.
- (3) Notwithstanding subsection 9(2)(c), development charges shall be imposed in accordance with section 8 if the total gross floor area of the additional one or two dwelling units in the existing single detached dwelling exceeds the gross floor area of the existing dwelling unit.
- (4) Notwithstanding subsection 9(2)(d), development charges shall be imposed in accordance with section 8 if the additional dwelling unit has a gross floor area greater than:
  - (i) in the case of a semi-detached or row dwelling, the gross floor area of the existing dwelling unit; and
  - (ii) in the case of any other residential building, the gross floor area of the smallest dwelling unit already contained in the residential building.

### **PART III**

#### **ADMINISTRATION**

##### **Payment of Development Charge**

- 10. Development Charges with respect to any Non-Residential, Residential or Mixed-Use Development, adjusted in accordance with section 14 of this by-law to the date of payment, are payable in full on the earlier of:
  - (a) the date of entering into a subdivision agreement under Section 51 of the *Planning Act*, or
  - (b) the issuing of a permit under the *Building Code Act, 1992* in relation to such Development.

**Payment by Money**

11. Payment of the Development Charges shall be by cash or by certified cheque.

**No Refunds Arising out of Credits**

12. Notwithstanding anything in this by-law to the contrary, whenever a credit is allowed against the Development Charges otherwise payable pursuant to this by-law and such credit(s) exceeds the amount of the Development Charges payable pursuant to this bylaw, no further credit(s) shall be allowed and no refund shall be payable.

**Front-Ending Agreement**

13. Council, from time to time, and at any time, may enter into front-ending agreements in accordance with the Act.

**Indexing**

14. The Development Charges imposed by this by-law shall be adjusted annually, without amendment to this by-law, as of the 1<sup>st</sup> day of July, 2019, and on each successive July 1<sup>st</sup> date in accordance with the Statistics Canada Quarterly, *Construction Price Statistics*, catalogue number 62-007, for the most recently available annual period ending March 31.

**Schedules**

15. The following schedules to this by-law form an integral part thereof:
- |            |   |   |
|------------|---|---|
| Schedule A | — | Description of Carruthers Creek Sanitary Sewerage Development Area          |
| Schedule B | — | Map Showing Boundary of Carruthers Creek Sanitary Sewerage Development Area |
| Schedule C | — | Components of Service Designated in Section 7                               |

**Date By-law in Force**

16. This by-law shall come into force on July 1, 2018.

**Date By-law Expires**

17. This by-law will expire on August 31, 2019, unless it is repealed at an earlier date by a subsequent by-law.

**Repeal**

18. By-law No. 17-2013 is hereby repealed effective on the date this by-law comes into force.

**Registration**

19. A certified copy of this by-law may be registered on title to any land to which this by-law applies.

**Severability**

20. In the event any provision, or part thereof, of this by-law is found by a court of competent jurisdiction to be *ultra vires*, such provision, or part thereof, shall be deemed to be severed, and the remaining portion of such provision and all other provisions of this by-law shall remain in full force and effect.

**Short Title**

21. This By-law may be cited as the Regional Municipality of Durham Carruthers Creek Development Area Sanitary Sewerage Development Charges By-law, 2018.

BY-LAW passed this 13<sup>th</sup> day of June, 2018.

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Gerri Lynn O'Connor, Regional Chair  
and CEO

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Ralph Walton, Regional Clerk /  
Director of Legislative Services



**SCHEDULE "A"**

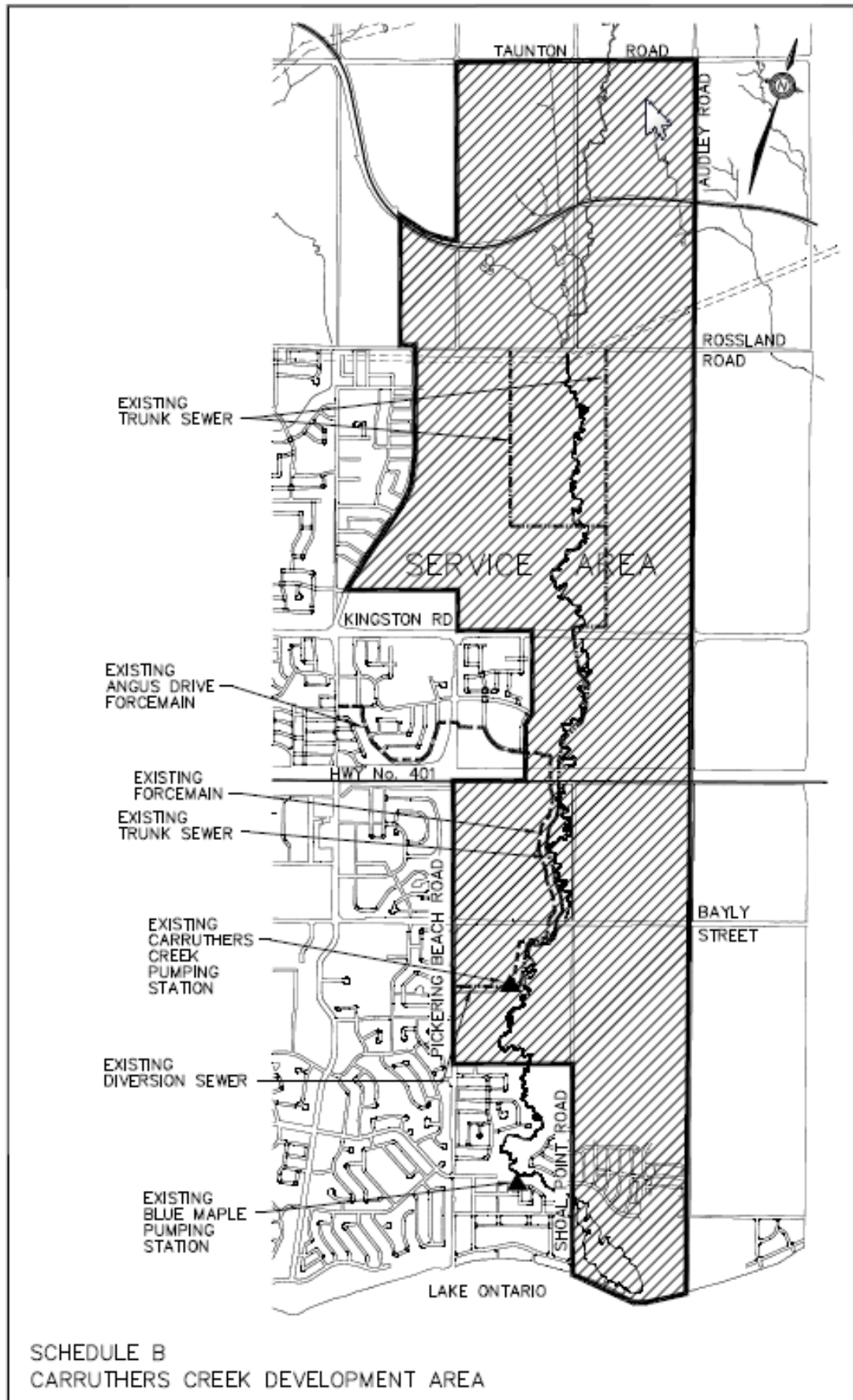
**DESCRIPTION OF CARRUTHERS CREEK SANITARY SEWERAGE DEVELOPMENT  
AREA**

The Carruthers Creek Development Area is the area, generally, bounded by Lake Ontario to the south, Audley Road to the east, Taunton Road to the north, and Pickering Beach Road, Harwood Avenue and Salem Road to the west, all in the Town of Ajax, and as more specifically shown on the map attached as Schedule B.

**SCHEDULE "B"**

MAP SHOWING BOUNDARY OF CARRUTHERS CREEK SANITARY SEWERAGE  
DEVELOPMENT AREA

Schedule 'B' Boundary of Carruthers Creek  
Sanitary Sewerage Development Area



**SCHEDULE "C"**

COMPONENTS OF SERVICE DESIGNATED IN SECTION 7

1. Angus Drive Forcemain (Construction)
2. Truck Sanitary Sewer and Forcemain (Design Only)
3. Carruthers Sanitary Sewage Pumping Station (Design Only)
4. Blue Maple Pumping Station (Expansion)
5. Letter of Credit Fees (Design)
6. Letter of Credit Fees (Construction)
7. Truck Sanitary Sewer and Forcemain (Construction)
8. Diversion Sewer @ Emperor Street (Construction)
9. Carruthers Sanitary Sewage Pumping Station (Construction)
10. Letter of Credit Fees (Construction)