

**Local Planning Appeal Tribunal**  
Tribunal d'appel de l'aménagement  
local



**ISSUE DATE:** January 08, 2021

**CASE NO(S):** PL120591

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

**PROCEEDING COMMENCED UNDER** subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Dalron Construction Limited
Subject:	Proposed Plan of Subdivision
Property Address/Description:	Parcels 57095 & 18754 SES, Lot 4, Concession 3, Township of McKim
Municipality:	City of Greater Sudbury
Municipal File No.:	780-6/11007
OMB Case No.:	PL120591
OMB File No.:	PL120591
OMB Case Name:	Dalron Construction Limited v. Greater Sudbury (City)

**Heard:** November 2, 2020 by video hearing

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

Dalron Construction Limited

K. Mullin\*

City of Greater Sudbury

S. Watt\*

John Lindsay

Self-represented

Suzy Franklyn

Self-represented

Wanda Eurich

Self-represented

## **DECISION DELIVERED BY STEVEN COOKE AND MARIO RUSSO AND ORDER OF THE TRIBUNAL**

---

[1] This is a settlement hearing on an appeal by Dalron Construction Limited (the “Dalron”) regarding a proposed plan of subdivision in the City of Greater Sudbury (the “City”) resulting from the decision of the City Council to refuse the application. The Minutes of Settlement have been entered as part of the Joint Document book marked as Exhibit 1B, Tab 32. In a previous decision of the Tribunal, Party status had been granted to three individuals: John Lindsay, Suzy Franklyn and Wanda Eurich (collectively the “Opposing Parties”) who remain opposed to the proposed plan of subdivision.

[2] The Subject Lands cover an area of 26.8 hectares with an approximate 275 metre frontage on Howey Drive along the northern property boundaries. To the east and the west are existing areas that have been developed. To the south of the Subject Lands is the railway right-of-way, followed by a small strip of lands owned by the City and Lake Ramsey.

[3] Despite the settlement between Dalron and the City, two issues remain from the Opposing Parties. They are concerns of the impact to safety and traffic volumes along Howey Drive, and the impact that this proposed plan of subdivision may have on Lake Ramsey.

[4] In accordance with s. 3 of the *Planning Act* (the “Act”), the Tribunal must determine whether the draft plan of subdivision is consistent with the Provincial Policy Statement, 2020 (the “PPS”) and conforms with the Growth Plan for Northern Ontario (“GP”). In making its decision, the Tribunal must have regard to the matters of provincial interest, set out in s. 2 of the Act, and the criteria set out in s. 51(24) of the Act. Additionally, the Tribunal must determine whether any conditions of approval are reasonable, in accordance with s. 51(25) of the Act.

## PLANNING EVIDENCE

[5] Kris Menzies is a partner with MHBC Planning Limited that was retained by Dalron. Glen Ferguson is a Senior Planner with the City. The Tribunal was satisfied that both individuals are qualified to give expert witness testimony to the Tribunal and note that they have both submitted a signed Tribunal's Acknowledgment of Expert's Duty form.

[6] It was their opinion that the proposed settlement has regard to matters of Provincial interest and items contained in s. 51(24) of the Act.

[7] Ms. Menzies gave evidence that the proposed development conforms with the GP. In particular, the proposed development meets the objectives of the following transportation policies:

5.3.1 Transportation system planning, land-use planning, and transportation investments will be co-ordinated to implement this Plan.

5.3.2 The transportation system within Northern Ontario will be planned and managed with an emphasis on opportunities to:

- a. optimize the capacity, efficacy and safety of the existing transportation system

[8] Mr. Ferguson stated that the settlement proposal includes a number of changes to the draft plan approval conditions that represented good land use planning and he has no areas of concern with respect to the PPS.

[9] In the opinion of Ms. Menzies, the proposed development is consistent with the PPS and is good land use planning as it promotes development in a settlement area.

[10] Section 1.6.6.7 of the PPS states that:

Planning for stormwater management shall:

- a) be integrated with planning for sewage and water services and ensure that systems are optimized, feasible and financially viable over the long term;
- b) minimize, or, where possible, prevent increases in contaminant loads;
- c) minimize erosion and changes in water balance, and prepare for the impacts of a changing climate through the effective management of stormwater, including the use of green infrastructure;
- d) mitigate risks to human health, safety, property and the environment;
- e) maximize the extent and function of vegetative and pervious surfaces; and
- f) promote stormwater management best practices, including stormwater attenuation and re-use, water conservation and efficiency, and low impact development.

[11] Ms. Menzies informed the Tribunal that as part of the settlement agreement, Draft Plan Condition 23 requires that a Stormwater Management (“SWM”) report be prepared. The June 26, 2020 preliminary SWM report address both pre and post development conditions, water quality, and water quantity control. The Subject Lands will include two SWM ponds that will provide water quality protection and water quality control Provincial standards. As part of Draft Plan Condition 6, Dalron is required to meet all of conditions to the satisfaction of the City that includes surface water and SWM systems.

[12] In June 2020, Transplan Associates prepared a Traffic Impact Study (“TIS”). As a result of the TIS remedial measures have been included to the settlement agreement. This includes a 20-metre wide road allowance, a left turn lane into the proposed subdivision, and Dalron will contribute financially to the traffic signalization at Howey Drive and Van Horne Street. It is the opinion of Mr. Ferguson and Ms. Menzies that this is consistent with PPS section 1.6.7.1 that states: “Transportation systems should be provided which are safe, energy efficient, facilitate the movement of people and goods, and are appropriate to address projected needs.”

[13] The Greater Sudbury Official Plan (the “OP”) designates the Subject Lands primarily as “Living Area 1” with a small portion that includes the existing curling club as “Institutional”. Living Area 1 are designated to lands that are considered residential

lands and located in fully serviced urban communities. It is the expert opinion of Ms. Menzies that new residential dwellings that are proposed in the development conforms with the Living Area 1 designation.

[14] The Subject Lands are zoned R2-2 “Low Density Residential” with two overlay policies that include the Lake Ramsey Overlay Watershed and IPZ1 “Intake Protection Zone”. In the evidence and joint statement of facts, Ms. Menzies and Mr. Ferguson agree that the draft plan includes a variety of residential units that would conform with the zoning provisions of R2-2. Furthermore, they agree that the proposed development does not include any of the prohibited uses that are identified in IPZ1 or the Lake Ramsey Overlay.

## **STORMWATER MANAGEMENT**

[15] Hans Arisz is an engineering consultant with R.V. Anderson Associates Limited that was retained by Dalron. Paul Javor is the Drainage Engineer – Infrastructure Capital Planning for the City. The Tribunal was satisfied that both individuals are qualified to give expert witness testimony to the Tribunal and note that they have both submitted a signed Tribunal’s Acknowledgment of Expert’s Duty form.

[16] As agreed upon in the settlement, Dalron shall prepare a SWM report that details hydraulic control methods to limit the flows generated on site for the minor and major storm events, including the 100 year storm, to pre-development runoff conditions. These conditions are not to exceed the capacity for the drainage areas within the existing downstream storm overflow systems.

[17] Mr. Arisz informed the Tribunal that the proposed subdivision would include two SWM ponds located on the Subject Lands. Currently drainage from the Curling Club parking lot goes untreated. The proposed development would include the drainage of the Curling Club into the SWM pond that will improve the quality treatment.

[18] In the joint statement of facts, Messrs. Javor and Arisz state that the proposed drainage design and SWM planning is conducted in conformance of:

- a. the City's Engineering Services Division – Engineering Design Manual (May 2005 Revision);
- b. the Stormwater Background Study to the City's Official Plan (Earth Tech, January 2006);
- c. Ramsey Lake Subwatershed Study and Master Plan Phase 2 Report (Aquifor Beech Limited, 2020);
- d. the Stormwater Management Planning and Design Manual (Ministry of Environment, March 2003);
- e. the Greater Sudbury Source Water Protection Plan; and
- f. the City of Greater Sudbury Official Plan policies dealing with water resources (Part III, Section 8.0).

[19] Mr. Arisz concluded that in his expert opinion, the proposed settlement has a plan that will fully mitigate the potential water quantity and quality that will not have an impact on the water quality in Lake Ramsey.

[20] In the professional opinion of Mr. Javor, the requirements of the SWM plan required policies applicable in both the OP and the Ramsey Lake Subwatershed Study are an appropriate safeguard from the proposed development to the water quality of Lake Ramsey.

[21] The Opposing Parties gave non-expert opinion submissions to the Tribunal. Mr. Lindsay informed the Tribunal that as a local resident in the area, he is or has also served on the boards of various local organizations including the Minnow Lake Restoration Group, Ramsey Lake Stewardship Group, Greater Sudbury Watershed Alliance, and the Minnow Lake Community Action Network.

[22] It was the personal opinion of Mr. Lindsay that the proposed development would have a negative impact to the environment and does not address his climate change concerns. In his opinion, Mr. Lindsay states that the impact of climate change has increased the use of road salt to maintain safe driving conditions. He feels that the additional salt into Lake Ramsey caused by the proposed development would negatively impact the health of residents and the sustainability of the lake as a good source of drinking water.

### **TRAFFIC CAPACITY OF HOWEY DRIVE AND RELATED SAFETY CONCERNS**

[23] Toivo Rukholm is an associate with Transplan Associates that was retained by Dalron. Joe Rocca is the Traffic and Asset Management Supervisor for the City. The Tribunal was satisfied that both individuals are qualified to give expert witness testimony to the Tribunal and note that they have both submitted a signed Tribunal's Acknowledgment of Expert's Duty form.

[24] The Opposing Parties raised concerns that in their view, Howey Drive is already at maximum capacity and suffers from high levels of congestion.

[25] On behalf of Dalron, Transplan Associates prepared a 2020 TIS using existing and historical data from the 2013 TIS to address the projected conditions of Howey Drive. The TIS includes current traffic and projected traffic of existing and currently proposed developments that would have an impact to Howey Drive. Mr. Rocca informed the Tribunal that in his opinion, the TIS was done using industry best practices to estimate the expected trip generation of the proposed development.

[26] Mr. Rukholm informed the Tribunal that over the last 20 years, Howey Drive has seen minimal changes to its daily vehicle usage with approximately 8,500 vehicles per day. The standard level of a two-lane roadway capacity is 10,000 vehicles a day. The

only period of time that saw a slight increase to the traffic volumes was during a construction period to rebuild The Kingsway.

[27] The TIS identified two potential areas of traffic impact issues as a result of the proposed development to Howey Drive.

[28] The first issue relates to the intersection of Howey Drive and Van Horne Street, which is currently controlled by stop signs. In its current state there are on average afternoon peak time delays making the left turn from Van Horne Street onto Howey Drive. Mr. Rukholm stated that these delays are common for non-signalized intersections during peak times. However, the current conditions of this intersection are already close to warranting traffic signals. As part of the settlement, Dalron has committed to a financial contribution to the signalization of the intersection.

[29] The second issue that has been identified in the TIS is the safety at the two vehicular access entrances to the Subject Lands. Mr. Rukholm gave evidence that the proposed development would require a widening of Howey Drive to provide a centre two-way left turn lane for safe access to the proposed development. It is his opinion that a two-lane roadway with a left turn lane could potentially achieve a capacity of 18,000 vehicles per day.

[30] Mr. Rukholm informed the Tribunal that in his opinion, limited build could occur on the Subject Lands without the need of the centre left turn lane. Mr. Rocca stated that in his professional opinion the staged timing, as identified in the conditions of draft plan of approval, is appropriate and will address the potential traffic safety concerns of this corridor.

[31] Mr. Rocca also confirmed that Howey Drive is a public transportation route in the City and would be able to service the proposed development.



[32] The Opposing Parties gave non-expert opinion submissions to the Tribunal. Ms. Eurich has resided in the area since 1960 and has personal knowledge of Howey Drive.

[33] In Ms. Eurich's personal opinion, she has seen a continuous increase of traffic along Howey Drive. There are a number of proposals along Howey Drive that she feels will continuously make a negative impact to traffic volumes and are a potential safety hazard to pedestrians, especially in the winter months.

[34] The submissions of Ms. Eurich included an expert witness statement of James Gough of MMM Group Limited prepared for the Ontario Municipal Board, dated February 25, 2013. Mr. Gough was retained by the City to do a peer review of the various reports prepared by Dalron at that time.

[35] It was the opinion of the Opposing Parties that the witness statement of Mr. Gough was significant to prove that the proposed project would be cost prohibitive to the City and that the improvements to the Howey Street corridor are more substantial than what has been agreed in settlement.

## **FINDINGS AND CONCLUSION**

[36] In determining this matter, the Tribunal accepts and adopts the uncontested land use planning evidence and expert opinion provided by Ms. Menzies and Mr. Ferguson. The Tribunal is persuaded by the evidence that the proposal promotes efficient development of land, intensifies uses within the urban settlement area, and contributes to the range of housing options, and in particular, will have access to public transportation as desired by the City.

[37] The Tribunal has reviewed the witness statement of Mr. Gough. While Mr. Gough's previous statement to the Tribunal does outline the costs and

recommended improvements, the Tribunal accepts the expert witness opinion of Messrs. Rocca and Rukholm that the proposed development and draft plan is consistent with relevant policies and is satisfied that it adequately addresses the traffic issues along Howey Drive.

[38] The Tribunal accepts the uncontested expert opinions on SWM of Messrs. Javor and Arisz. The Tribunal is satisfied that the proposed SWM plan meets the requirements of provincial policies and accepts that it meets the further enhanced standards in the policies of the City.

[39] In their final submissions to the Tribunal, the Opposing Parties asked that the Tribunal ignore the current decision of the City Council and uphold the decisions of previous City Councils. The Tribunal has considered the concerns raised by the Opposing Parties but was not persuaded that the concerns they have raised are either sustainable, given the evidence offered in support of the planned development, or otherwise bear relevance to the land use planning merits of the proposal.

[40] The Tribunal finds that the proposal is consistent with the policy direction established by the PPS, and conforms to the relevant directives established by the GP, and as maintained by the OP. The Tribunal is further satisfied that the proposal has due regard for matters of Provincial interest and the criteria set out in s. 51(24) of the Act, represents good land use planning and is in the greater public interest. The Tribunal also finds that the conditions of draft plan approval are reasonable in accordance with s. 51(25) of the Act.

## **ORDER**

[41] THE TRIBUNAL ORDERS that the appeal is allowed in part and the draft plan shown in Schedule A of Exhibit 1B, Tab 32 is approved subject to the fulfillment of the conditions set out in in Schedule B of Exhibit 1B, Tab 32.

[42] AND THE TRIBUNAL ORDERS that pursuant to s. 51(56.1) of the *Planning Act*, the City of Greater Sudbury shall have the authority to clear the conditions of draft plan approval and to administer final approval of the plan of subdivision for the purpose of s. 51(58) of the *Planning Act*. In the event that there are any difficulties implementing any of the conditions of draft plan approval, or if any changes are required to be made to the draft plan, the Tribunal may be spoken to.

*“Steven Cooke”*

STEVEN COOKE  
MEMBER

*“Mario Russo”*

MARIO RUSSO  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.olt.gov.on.ca](http://www.olt.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

A constituent tribunal of Ontario Land Tribunals

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

**PL 120591 - Attachment 1**

**O.M.B. Case No.: PL120591**

**LOCAL PLANNING APPEAL TRIBUNAL**

**PROCEEDING COMMENCED UNDER subsection 51(39) of the  
*Planning Act*, R.S.O. 1990, c. P.13, as amended.**

Appellant:	Dalron Construction Limited
Subject:	Proposed Plan of Subdivision
Property Address/Description:	Parcels 57095 & 18754 SES, Lot 4, Concession 3, Township of McKim City of Greater Sudbury
Municipality:	City of Greater Sudbury
Municipality File No.:	780-611007
OMB Case No.:	PL120591
OMB File No.:	PL120591
OMB Case Name:	Dalron Construction Limited v. Greater Sudbury (City)

**MINUTES OF SETTLEMENT**

**B E T W E E N:**

**DALRON CONTRUCTION LIMITED**

(hereinafter referred to as ("**Owner**")

- and -

**THE CITY OF GREATER SUDBURY**

(hereinafter referred to as (the "**City**")

**WHEREAS** the Owner and the City are parties (the "**Parties**") to the proceeding identified herein;

**AND WHEREAS** the Owner is the owner of lands described as Parcels 57095 & 18754 SES, Lot 4, Concession 3, Township of McKim (the "**Property**");

**AND WHEREAS** in 2012 the Owner made an application to the City for approval of a draft plan of subdivision to permit the construction of 192 residential dwelling lots (384 units) on property

with frontage along Howey Drive (the "**Subdivision**" and the "**Application**"), as more particularly described in the sketch plan attached as Schedule A to these Minutes of Settlement (the "**Sketch Plan**");

**AND WHEREAS** the zoning and official plan designation for the subdivision were already in place at the time of the Application;

**AND WHEREAS** the City staff report regarding the Application, dated April 3<sup>rd</sup>, 2012, recommended approval of the Application and contained proposed conditions of draft approval (the "**Conditions of Draft Approval**");

**AND WHEREAS** at the Planning Committee meeting of April 16, 2012, staff recommended approval of the draft plan of subdivision;

**AND WHEREAS** the Planning Committee denied the Application;

**AND WHEREAS** Council ratified the decision of the Planning Committee on May 1, 2012;

**AND WHEREAS** the Owner appealed Council's refusal of the draft plan of subdivision to the Ontario Municipal Board (the "**OMB**") by submission of an appeal letter and Appellant Form (A1) on May 15, 2012 (the "**Appeal**");

**AND WHEREAS** the OMB has now been continued as the Local Planning Appeal Tribunal ("**LPAT**");

**AND WHEREAS** on November 28, 2012 the OMB issued a Procedural Order with respect to the hearing of the Appeal which established the date for the hearing of the Appeal (the "**Hearing**") and issues to be considered at the hearing of the Appeal (the "**Issues List**");

**AND WHEREAS** the Items 5 and 6 on the Issues List relate to transportation and traffic matters;

**AND WHEREAS** the Hearing scheduled to commence March 18, 2013 was adjourned *sine die* on consent of the Parties to allow the City and the Owner to assess new information respecting the required extent of road improvements and infrastructure costs relating to the Application;

**AND WHEREAS** these discussions have been ongoing;

**AND WHEREAS** the City Council approved a new cost sharing policy in August 2016;

**AND WHEREAS** through a series of communications, the City and the Owner have agreed to consider revisions to the draft plan of subdivision conditions relating to road improvements and infrastructure costs on a without prejudice basis;

**AND WHEREAS** these changes to the conditions have been considered and authorized by the City Council at its meeting of May 29, 2018;

**AND WHEREAS** City Council directed that Minutes of Settlement be entered into with the Owner respecting these changed conditions to the draft plan of subdivision;

**NOW THEREFORE** the Parties hereto agree and covenant to settle the Appeal on the following basis:

**A. Howey/Van Horne Intersection**

1. Condition 34 of the Conditions of Draft Approval which reads:

***“That the owner/developer update the Traffic Impact Study by Tranplan Associates, December 2011, to include an analysis of the intersection of Howey Drive and Van Horne Street. The owner/developer further agrees to participate in the cost of any upgrades or improvements identified if required, in accordance with the City’s Cost Sharing Policy, all to the satisfaction of the General Managers of Infrastructure Services and Growth and Development.”***

shall be deleted from the Conditions of Draft Plan Approval.

2. The signalization and any improvements for the Howey/Van Horne intersection shall be included by the City as a capital project in the development charge background study, which study shall be undertaken and completed by the City by the end of 2019 Any costs attributable to the Owner will be assessed as part of

the development charge process rather than as a condition of draft plan approval of this subdivision.

**B. St. Raphael Street Connection**

3. The Parties agree that the proposal to align Street "A" with St. Raphael Street no longer be considered.

**C. Howey Drive Centre Left Turn Lane**

4. The Parties agree that the City will assume responsibility for the timing and construction of the centre left turn lane (the "**Centre Left Turn Lane**") across the Howey frontage of the Property (the "**Howey Frontage**") and that the Owner will contribute financially to the construction of the Centre Left Turn Lane. The extent of the Howey Frontage is illustrated on Sketch Plan.
5. The Parties agree that the contributions by the Owner for the Centre Left Turn Lane shall be \$845,000.00 (the "**Owner's Contribution**"). The City's contribution for the Centre Left Turn Lane shall not be included as a capital project in the development charge background study or the development charge by-law.
6. The Owner's Contribution will be made in the form of the payment of \$2,200.00 per dwelling unit (the "Owner's Unit Payment")
7. The Owner's Unit Payment shall be made at the time that a building permit is issued by the City for the dwelling unit.
8. The Parties agree that a certain amount of development may take place in the subdivision on the Property before the completion of the Centre Left Turn Lane will be required. This phasing of the development shall not permit the occupancy of more than 40 dwelling units in total with either the Wessex Street access or Street "A" access in operation, and shall not permit the occupancy of more than 100 dwelling units with both the Wessex Street access and Street "A" access in operation.
9. The Parties agree that the Owner shall notify the City in writing when the building permit for the 50<sup>th</sup> dwelling unit has been issued (the "**Notice**"). No later than the time that it receives the Notice, the City will commence the process of designing, tendering and constructing the Centre Left Turn Lane.

10. The Parties agree that the City will make its best efforts to complete the construction of the Centre Left Turn Lane within three (3) years of the building permit for the 50<sup>th</sup> dwelling unit being issued.
11. The Parties agree that the City shall notify the Owner in writing upon the completion of the Centre Left Turn Lane. At the time that the building permit is issued by the City for the 300<sup>th</sup> dwelling unit, the Owner will repay the City any outstanding balance of the Owner's Contribution.
12. Unless the City's consent is provided in accordance with Clause C14, of this Agreement the Parties agree that no more than 100 dwelling units may be occupied before the construction of the Centre Left Turn Lane is completed.
13. The Parties agree that prior to the completion of the construction of the Centre Left Turn Lane, that the Owner may commence a further phase of development beyond 100 dwelling units, including: obtaining approvals and building permits, servicing, road construction, and the construction of units. For clarification, the issuance of the aforementioned permits and approvals shall not permit the occupancy of more than 100 dwelling units unless such construction is undertaken in accordance with the terms of this Agreement.
14. The Parties agree that the City, at its sole discretion, may permit the occupancy of additional dwelling units on the Property beyond 100 dwelling units if, in the opinion of the City, traffic flows entering and exiting the Property are not being negatively impacted. Notwithstanding the foregoing, if the City has not completed the construction of the Centre Left Turn Lane in three (3) years as set out in Clause C10 of this Agreement, the City will not unduly delay the issuance of issue building permits for dwelling units beyond the first 100 dwelling units.
15. The Parties agree that the Owner, through a Traffic Impact Study approved by the City, or the City may propose alternatives to the Centre Left Turn Lane prior to its construction. In the event that the City, at its sole discretion, approves the alternatives, the terms of this Agreement may be modified pursuant to Clause E31 and any monies collected by the City pursuant to this Agreement will be refunded to the Owner or applied to the agreed upon alternative.



16. Accordingly, the Parties agree to the following changes to the conditions of the draft plan of subdivision:

(i) Condition 27 of the Conditions of Draft Plan Approval which reads:

***“That a maximum of 35 dwelling units be permitted from Street “A” without the need for any road improvements on Howey Drive.”***

shall be deleted from the Conditions of Draft Approval

(ii) Condition 28 of the Conditions of Draft Plan Approval shall be amended to read as follows:

***“28. The City shall be responsible to construct the centre left turn lane across the Howey Drive frontage of the property. A cumulative of 40 dwelling units shall be permitted with access from either Wessex Street or Street “A” prior to the construction of the centre left turn lane, where only one of these access streets is in operation.”***

(iii) Condition 29 of the Conditions of Draft Plan Approval which reads:

***“That the Traffic Impact Study by Tranplan Associates dated December 2011, be updated to assess whether the right turn deceleration lanes and tapers on Howey Drive at both Street “A” and Wessex Street are required, to the satisfaction of the General Manager of Infrastructure Services.”***

shall be deleted from the Conditions of Draft Approval.

(iv) Condition 31 of the Conditions of Draft Plan Approval shall be amended to read as follows:

***“That a maximum of 100 dwelling units will be permitted prior to the centre left turn lane being constructed, subject to both Wessex Street and Street “A” being in operation.”***

(v) Condition 34 of the Conditions of Draft Plan Approval which reads:

***“That the owner/developer update the Traffic Impact Study by Tranplan Associates, December 2011, to include an analysis of the intersection of Howey Drive and Van Horne Street. The owner/developer further agrees to participate in the cost of any upgrades or improvements identified if required, in accordance with the City’s Cost Sharing Policy, all to the***

**satisfaction of the General Managers of Infrastructure Services and Growth and Development.”**

shall be deleted from the Conditions of Draft Approval.

**D. LPAT Hearing**

17. The Parties agree that they will jointly advise the LPAT that they have settled the issues between them in the Appeal and will jointly request that the LPAT schedule a hearing of the Appeal at the earliest possible date.
18. The Parties will request the LPAT to allow the Appeal, in part, and to issue an Order granting the draft plan approval for the Subdivision subject to the amended conditions of draft approval attached as Schedule B to these Minutes of Settlement (the “**Amended Conditions of Draft Approval**”).
19. The City agrees that an Order issued in accordance with the previous clause will resolve all the City’s issues in regard to the Application and the Appeal.
20. Each party will bear its own costs of this proceeding, including the negotiation and preparation of these Minutes of Settlement and neither will seek a cost order from LPAT against the other.
21. Notwithstanding these Minutes of Settlement, the Parties retain the right to seek leave to appeal the LPAT’s decision regarding the Appeal if such decision is not consistent with the terms of these Minutes of Settlement in a material respect.

**E. General**

22. These Minutes of Settlement are governed by the laws of the Province of Ontario.
23. The Parties agree to act reasonably and in good faith in carrying out the terms of these Minutes of Settlement.
24. The Parties acknowledge that in these Minutes of Settlement words importing the singular include the plural and vice versa as may be required for the context. The Parties acknowledge that in these Minutes of Settlement, words importing gender include all genders as may be required for the context.
25. The Parties acknowledge that in these Minutes of Settlement, the headings contained herein form no part of these Minutes of Settlement but shall be deemed to be inserted for convenience of reference only.

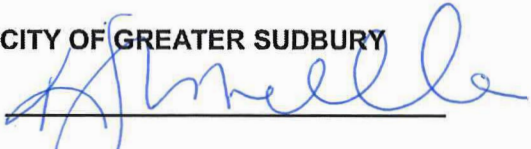
26. The Parties acknowledge and agree that the recitals to these Minutes of Settlement are true and accurate and form a binding part of these Minutes of Settlement.
27. The following is a list of the schedules to these Minutes of Settlement which shall form part of these Minutes of Settlement for all purposes:
  - a. Schedule A - Sketch Plan
  - b. Schedule B - Amended Conditions of Draft Approval
28. These Minutes of Settlement may be executed in counterpart, each of which so executed is deemed to be an original, and such counterparts together constitute one and the same instrument.
29. These Minutes of Settlement are binding upon the Parties hereto and their respective successors and assigns.
30. These Minutes of Settlement comprise the whole of the understanding between the Parties and are not subject to or in addition to any representations, warranties or agreements, whether written, oral or implied.
31. These Minutes of Settlement may only be amended, supplemented or otherwise modified by written agreement of the Parties.
32. These Minutes of Settlement may be executed in counterparts and may be delivered to the other parties by personal delivery, electronic transmission or facsimile transmission, each and any of which shall constitute valid and effective delivery.

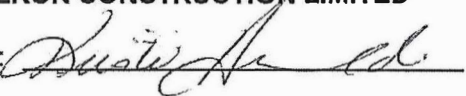
[remainder of page left intentionally blank]

33. The Parties agree that an original, signed copy of these Minutes of Settlement may be filed with the LPAT.

**IN WITNESS HEREOF** the Parties hereto have duly executed these Minutes of Settlement:

DATED this 26 day of ~~March~~ <sup>April</sup>, 2019.

**THE CITY OF GREATER SUDBURY**  
Per:   
Deputy City Solicitor

**DALRON CONSTRUCTION LIMITED**  
Per:   
Title: \_\_\_\_\_

\_\_\_\_\_ I have the authority to bind the Corporation.

**Schedule A**

**Sketch Plan - Plan of Subdivision**



## Schedule B

### Amended Conditions of Draft Approval

1. That this draft approval applies to the draft plan of subdivision of PIN 73582-0131 & 735583-0363, Parcel 18754 & 57095 SES, Lots 3 & 4, Concession 3, Township of McKim, as shown on a plan of subdivision prepared by Tulloch Engineering and dated March 29, 2012 and redlined as follows:
  - a) The addition of a walkway block extending from Street "D" to Wessex Street in the general location of Lots 120, 121, 143 and 144 to the satisfaction of the Director of Planning Services; and,
  - b) The addition of a walkway block extending from Street "D" to Block 198 in a location to the satisfaction of the Director of Planning Services.
2. That any dead-ends or open sides of road allowances created by this plan of subdivision shall be terminated in 0.3 metre reserves, to be conveyed to the Municipality and held in trust by the Municipality until required for future road allowances or the development of adjacent land.
3. That prior to the signing of the final plan, the Planning Services Division shall be advised by the Ontario Land Surveyor responsible for preparation of the final plan, that the lot areas, frontages and depths appearing on the final plan do not violate the requirements of the Restricted Area By-laws of the Municipality in effect at the time such plan is presented for approval.
4. That the subdivision agreement be registered by the Municipality against the land to which it applies, prior to any encumbrances.
5. That such easements as may be required for utility or drainage purposes shall be granted to the appropriate authority.
6. That the owner/developer agrees in writing to satisfy all the requirements, financial and otherwise, of the City of Greater Sudbury, concerning the provision of roads, walkways, street lighting, sanitary sewers, watermains, storm sewers and surface drainage facilities.
7. That the subdivision agreement contain provisions whereby the owner/developer agrees that all the requirements of the subdivision agreement including installation of required services be completed within 3 years after registration.
8. Draft approval does not guarantee an allocation of sewer or water capacity. Prior to the signing of the final plan, the Director of Planning is to be advised by the General Manager of Infrastructure Services, that sufficient sewage treatment capacity and water capacity exists to service the development.
9. That this draft approval shall lapse three years from the date on which the draft approval letter is issued.

10. The final plan shall be integrated with the City of Greater Sudbury Control Network to the satisfaction of the Coordinator of the Surveying and Mapping Services. The survey shall be referenced to NAD83(CSRs) with grid coordinates expressed in UTM Zone 17 projection and connected to two (2) nearby City of Greater Sudbury Control Network monuments. The survey plan must be submitted in an AutoCAD compatible digital format. The submission shall be the final plan in content, form and format and properly geo-referenced.
11. That the owner/developer agrees to transfer Blocks 193 and 197 to the City for the purposes of storm water management, and to transfer Block 195 to the City for the purposes of servicing.
12. Prior to the submission of servicing plans, the owner/developer shall, to the satisfaction of the Director of Planning Services, provide an updated geotechnical report prepared, signed, sealed, and dated by a geotechnical engineer licensed in the Province of Ontario. Said report shall, as a minimum, provide factual information on the soils and groundwater conditions within the proposed development. Also, the report should include design information and recommend construction procedures for any proposed storm and sanitary sewers, stormwater management facilities, watermains, roads to a 20 year design life, the mass filling of land, surface drainage works, erosion control, slope stability, slope treatment and building foundations. Included in this report must be details regarding the removal of substandard soils (if any) and placement of engineered fill (if required) for the construction of homes. Also, the report must include an analysis illustrating how the groundwater table will be lowered to a level that will not cause problems to adjacent boundary housing and will, in conjunction with the subdivision grading plan, show that basements of new homes will not require extensive foundation drainage pumping. The geotechnical information on building foundations shall be to the satisfaction of the Chief Building Official and Director of Planning Services.
13. All streets will be constructed to an urban standard, including the required curbs and gutters.
14. The owner/developer shall provide a detailed lot grading plan prepared, signed, sealed, and dated by a professional civil engineer with a valid certificate of authorization for the proposed lots as part of the submission of servicing plans. This plan must show finished grades around new houses, retaining walls, sideyards, swales, slopes and lot corners. The plan must show sufficient grades on boundary properties to mesh the lot grading of the new site to existing properties and show the stormwater overland flow path.
15. The owner/developer agrees to provide the required soils report, stormwater management report, water, sanitary sewer and lot grading master planning reports and plans to the Director of Planning Services prior to the submission of servicing plans for any phase of the subdivision.
16. The owner/developer shall develop a siltation control plan for the subdivision construction period to the satisfaction of the Director of Planning Services, Nickel District Conservation Authority and the Department of Fisheries and Oceans.



## Schedule B

### Amended Conditions of Draft Approval

17. Any streetlights required for this subdivision will be designed and constructed by Greater Sudbury Hydro Plus Inc. at the cost of the owner/developer.
18. As part of the submission of servicing plans, the owner/developer shall have rear yard slope treatments designed by a geotechnical engineer licensed in the Province of Ontario incorporated in to the lot grading plans if noted as required at locations required by the Director of Planning Services. Suitable provisions shall be incorporated into the Subdivision Agreement to ensure that the treatment is undertaken to the satisfaction of the Director of Planning Services.
19. The owner/developer shall provide a utilities servicing plan showing the location of all utilities including City services, Greater Sudbury Hydro Plus or Hydro One, Bell, Union Gas, Canada Post and Eastlink Cable. This plan must be to the satisfaction of the Director of Planning Services and must be provided prior to construction for any individual phase.
20. The owner/developer provide proof of sufficient fire flow in conjunction with the submission of construction drawings for each phase of construction. All costs associated with upgrading the existing distribution system to service this subdivision will be borne totally by the owner/developer.
21. The owner/developer provide proof of sufficient sanitary sewer capacity in conjunction with the submission of construction drawings for each phase of construction. All costs associated with upgrading the existing collection system and/or sewage lift stations to service this subdivision will be borne totally by the owner/developer.
22. That sidewalks be constructed consistent with Official Plan policies to the satisfaction of the Director of Planning Services.
23. The owner shall have a storm water management report prepared that details hydraulic control methods to limit the flows generated on site for the minor and major (100 year)/regional storm events to pre-development runoff conditions, so as to not exceed the City defined capacity for the subject drainage areas within the existing downstream conveyance system for both the minor and major/regional storm overflow system. The report shall apply to the Howey Drive, Somerset Street, and St. Antoine Street trunk storm sewer outlets. The report shall analyze they conveyance systems downstream of the subject subdivision for adequacy for both minor and major storm (100 year) flows from the subdivision to the outlet at Ramsey Lake.
24. The regional storm overland flow route for the subject property shall be clearly delineated on the stormwater management and subdivision grading plans. Major storm overland flow for the subdivision is to remain within City road allowances and City drainage blocks.
25. The stormwater management report shall establish stormwater quality treatment stations for each of the three sub-watershed drainage outlets to City engineering standards in effect at the time of engineering approvals.

26. The owner agrees to cost share in the correction of any deficiencies in the minor/major stormwater conveyance system downstream of the subject subdivision necessary to provide capacity for subdivision stormwater based on the City's Cost Sharing Policy.
27. Deleted.
28. The City shall be responsible to construct the centre left turn lane across the Howey Drive frontage of the property. A cumulative of 40 dwelling units shall be permitted with access from either Wessex Street or Street "A" prior to the construction of the centre left turn lane, where only one of these access streets is in operation.
29. Deleted.
30. The owner/developer is required to transfer to the City a 5 metre strip of property along the entire frontage of Howey Drive, free of mortgages, charges, trust deeds and other encumbrances securing financing. The City shall be responsible for all survey and legal costs associated with this transfer.
31. That a maximum of 100 dwelling units will be permitted prior to the centre left turn lane being constructed, subject to both Wessex Street and Street "A" being in operation.
32. That Street "A" and Wessex Street be constructed with two outbound lanes and one inbound lane.
33. That Wessex Street be constructed to an urban standard with sidewalks on both sides between Howey Drive and Street "C."
34. Deleted
35. The owner/developer will be required to provide a geotechnical report on how the work related to blasting shall be undertaken safely to protect adjoining structures and other infrastructure. The geotechnical report shall be undertaken by a blasting consultant defined as a professional engineer licensed in the Province of Ontario with a minimum of five years experience related to blasting.
36. The blasting consultant shall be retained by the developer and shall be independent of the contractor and any subcontractor doing blasting work. The blasting consultant shall be required to complete specified monitoring recommended in his report of vibration levels and provide a report detailing those recorded vibration levels. Copies of the recorded ground vibration documents shall be provided to the contractor and contract administration weekly or upon request for this specific project.
37. The geotechnical report will provide recommendations and specifications on the following activity as a minimum but not limited to:

## Schedule B

### Amended Conditions of Draft Approval

- a) Pre-blast survey of surface structures and infrastructure within the affected area;
  - b) Trial blast activities;
  - c) Procedures during blasting;
  - d) Procedures for addressing blasting damage complaints;
  - e) Blast notification mechanism for adjoining structures; and,
  - f) Structural stability of exposed rock faces.
38. The geotechnical report referred to in Conditions 35 and 37 shall be submitted for review to the satisfaction of the Chief Building Official prior to the commencement of any removal of rock by blasting.
  39. Should the owner's/developer's schedule require to commence blasting and rock removal prior to the subdivision agreement having been signed, a site alteration permit shall be required under the City of Greater Sudbury's By-law 2009-170 and shall require a similar geotechnical report as a minimum prior to its issuance.
  40. That the owner/developer agree to transfer Block 199 to the City for the purposes of an open space buffer and further the owner agrees that such transfer does not form part of the parkland dedication credit that is applicable to the draft plan.
  41. That the owner/developer transfer Blocks 194 and 198 to the City for the purposes of satisfying the parkland dedication requirements under Section 51.1 of the Planning Act.
  42. That the owner/developer transfer Block 196 and the Blocks referred to in Conditions 1 a) and b) for walkway purposes to the satisfaction of the Director of Planning Services.
  43. The owner/developer agrees to develop Block 194 for park purposes to the satisfaction of the Director of Leisure Services.
  44. That the owner agrees to construct a fence along the boundary of lots 47 to 61 abutting Block 198 to the satisfaction of the Director of Leisure Services.
  45. The owner/developer shall prepare and submit a Landscape and Preservation Plan that is to the satisfaction of the Director of Planning Services.
  46. The owner/developer shall complete to the satisfaction of the City of Greater Sudbury and Canada Post:
    - a) That the owner/developer agrees to include on all offers of purchase and sale a statement that advises the prospective purchaser:

- i. That the home/business mail delivery will be from a designated Centralized Mail Box; and,
  - ii. That the owner/developer be responsible for officially notifying the purchasers of the Centralized Mail Box locations prior to the closing of any home sales.
- b) The owner/developer further agrees to:
  - i. Work with Canada Post to determine and provide suitable Centralized Mail Box location, which may be utilized by Canada Post until the curbs, boulevards and sidewalks are in place in the remainder of the subdivision;
  - ii. Install a concrete pad in accordance with the requirements of, and in locations to be approved by, Canada Post to facilitate the placement of the Community Mail Boxes;
  - iii. Identify the pads above on the engineering drawings. The pads are to be poured at the time of the sidewalk and/or curb installation within each phase of the plan of subdivision; and,
  - iv. Determine the location of the all centralized mail facilities in cooperation with Canada Post and to post the location of these sites on appropriate maps, information boards and plans.
47. The owner/developer agrees to construct and maintain a 1.83 metre high chain-link fence along the common property line of the Canadian Pacific Railway and the development by the owner/developer at their expense, and the owner/developer is made aware of the necessity of including a covenant running with the lands, in all deeds, obliging the purchasers of the land to maintain the fence in a satisfactory condition at their expense.
48. That dwellings must be constructed such that the interior noise levels meet MOE criteria. A noise study should be carried out by a professional noise consultant to determine what impact, if any, railway noise would have on residents of proposed subdivisions and to recommend mitigation measures if required. The Railway may consider other measures recommended by the study.
49. That a clause is to be inserted in all offers of purchase and sale or lease, and be registered on title or included in the lease for each dwelling affected by any noise and vibration attenuation measures, advising that any berm, fencing, or vibration isolation features implemented are not to be tampered with or altered, and further that the owner shall have the sole responsibility for and shall maintain these features.
50. That setbacks for all dwellings from the railway right-of-way will be a minimum of 30 metres.
51. That a clause will be inserted in all offers to purchase, agreements of purchase and sale or

## Schedule B

### Amended Conditions of Draft Approval

lease and in the title deed or lease of each dwelling within 300m of the railway right-of-way, warning prospective purchasers or tenants of the existence of the Railway's operating right-of-way, the possibility of alterations including the possibility that the Railway may expand its operations, which expansion may affect the living environment of the residents notwithstanding the inclusion of noise and vibration attenuating measures in the design of the subdivision and individual units, and that the Railway will not be responsible for complaints or claims arising from the use of its facilities and/or operations.

52. That any proposed alterations to the existing drainage pattern affecting railway property must receive prior concurrence from the Railway, and be substantiated by a drainage report to be reviewed by the Railway.
53. That any proposed utilities under or over railway property to serve the development must be approved prior to their installation and be covered by the Railway's standard agreement.
54. The owner shall submit to the City, a Stage 1 Archaeological Assessment of the subject lands and no grading or other soil disturbances shall take place on the subject property prior to it being confirmed that all archaeological resource concerns have met licensing and resource conservation requirements.