

DEVELOPMENT AGREEMENT

Land Titles Act, S.N.B. 1981, c.L-1.1, s.24

Parcel Identifiers
of Parcels Burdened
by Agreement:

30354948; 30354955; 30354963; 30354971;
30354989; 30354997; 30355002; 30355010;
30355028; 30355036; 30355044

Owner of Land Parcel:

A. E. McKay Builders Ltd.
Andrew E. McKay
Cathy J. McKay

all of

380 Model Farm Road
Quispamsis, NB
E2G 1L8 (Hereinafter called the "Developer")

Agreement with:

Rothesay
70 Hampton Road
Rothesay, N.B.
E2E 5L5 (Hereinafter called the "Town")

a body corporate under and by virtue of the
Municipalities Act, RSNB 1973, Chapter M-22,
located in the County of Kings and Province of New
Brunswick

WHEREAS the Developer is the registered owner of certain lands located on Dobbins Street and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS Rothesay did on 15 October 2013 rezone said lands to the Multi-Unit Residential R4 zone; the Attached Residential Zone (R3) and the Recreation Zone (Rec) pursuant to the execution of a Development Agreement;

AND WHEREAS the Developer entered into an Agreement for the development of multi-unit apartment buildings and town homes located off a new public street as an extension of Dobbins Street;

AND WHEREAS the Developer now wishes to revise the original agreement executed March 24, 2015 to allow an increase in the permitted maximum number of residential units and a change in the lot configuration and to provide for a minimum of nine (9) 'affordable housing' units.

NOW THEREFORE THIS AGREEMENT WITNESSETH that for and in the consideration of the mutual covenants and agreements herein expressed and contained, the parties hereto covenant and agree as follows:

1. The number of residential dwellings situated on the portion of the Lands indicated on **Schedule A** shall not exceed a total density of 124 units including a combination of apartment units and townhouse units.
2. The Developer agrees to submit for approval by the Town, prior to commencing any work on the subdivision, the following plans, each meeting the requirements in accordance with the minimum requirements, standards and specifications as prescribed in the Standard Specifications for Developers of Rothesay Subdivision By-law No. 4-10;
 - i. Plan of Subdivision prepared by a person registered to practice land surveying in the Province of New Brunswick;
 - ii. a letter of engagement from the project engineer retained by the Developer to design the proposed works, along with engineering design drawings for all municipal services as specified herein; and

- iii. a Storm Water Management Plan prepared in accordance with Schedule “D” – Stormwater Standards of Rothesay Zoning By-law No. 02-10.
3. The Developer expressly agrees and understands that notwithstanding any provision of the Town’s Building By-laws or any statutory by-law or regulatory provision to the contrary, the Building Inspector shall not issue a building permit to the Developer for work directly connected with the development of the Lands, nor shall the Developer be entitled to such a permit unless and until the Developer deposits with the Town an Irrevocable Letter of Credit from a Canadian Chartered Financial Institution or other security acceptable to the Town:
 - a) Valued at 50% of the cost of construction to execute the work approved by the Engineer pursuant to this agreement; and
 - b) containing a provision that upon the expiration of a thirty-six (36) month term it be renewed and extended (with appropriate amendments to reduce the sum to an amount sufficient to recover the remaining work) from year to year until such time as the Town has accepted “final completion” of the work mentioned in this agreement, by resolution of the Town Council.

SCHEDULES

4. The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, is generally in conformance with the following Schedules attached to this Agreement as follows:

- Schedule A Revised Conceptual Site Plan
- Schedule B Architectural Design Concept Building Elevations Revised for Lot 2
- Schedule C Proposed Public Road Extension
- Schedule D Typical Residential Street Cross Section
- Schedule E Typical Traffic Circle Plan and Section

Development

5. Except as otherwise provided for herein, the development, subdivision and use of the Lands shall comply with the requirements of the Rothesay Zoning By-law 2-10 and Subdivision By-law 4-10, as may be amended or replaced from time to time.
 - a) The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, is generally in conformance with this Agreement.
 - b) Maximum density shall not exceed 124 residential units comprised of the following:
 - i. 109 apartments units as per the schedules attached
 - ii. 15 townhouse units as per the Attached Residential (R3) Zone

Architectural Guidelines

6. The Developer agrees that an objective of this development is to provide an aesthetically pleasing streetscape which exhibits a complementary variety of houses types and architectural designs. The Developer agrees to ensure the following:
 - i. The architectural design of the buildings shall be, in the opinion of the Development Officer, generally in conformance with **Schedule B.**

- ii. Building plans shall have similar features, such as roof lines, facade articulation (projections/recesses), fenestration, primary exterior wall colour or materials or roof colour, etc.
- iii. Building façades shall be designed so that windows and doors are prominent features with a variety in setbacks and projections to provide visual interest along the streetscape they front.
- iv. Attached Residential (R3) dwellings shall be designed so that garages do not dominate the width of the front façade and do not project past the front building wall of the residential dwelling.
- v. Street facing façade walls of Multi-Unit Residential (R4) buildings shall incorporate brick, cast stone, stone or other high quality, long-lasting masonry material over a 25% minimum percentage of surface area.

Land for Public Purposes

6. The Town agrees to accept, the parcel identified as “Land for Public Purposes” (PID 30355036) on the approved plan of subdivision.
7. As a as a condition of subdivision approval the Development Officer, in consultation with the Director of Recreation, shall specify to the Developer the degree of land preparation that may be necessary to be completed by the Developer.

Tenant Selection

8. The Town and the Developer agree that prior to Final Occupancy the parties SHALL enter into a Memorandum of Understanding (MOU) regarding the preference for the selection of tenants for the affordable housing and Universal Design Barrier-Free Apartments units that reflects a mutual commitment to housing low to moderate income people and persons with disabilities. The intent will be to have a mechanism where the preference for low to moderate income people and persons with disabilities is enabled for the affordable housing units and Universal Design Barrier-Free units. Under no circumstances, will the Developer be limited to marketing the units to the general public to maintain occupancy. This MOU would govern if the proposed project were not under the jurisdiction of a CMHC financing program that supports affordable housing or a provincial program for affordable housing.

Affordable Housing

9. The Developer agrees to maintain for a period of twenty (20) years, adjusted by the Consumer Price Index based upon initial occupancy at the first day of building occupancy, no fewer than nine (9) ‘affordable’ two bedroom apartment units with similar finishes for flooring, trim, bathrooms, paint and kitchen cabinets as the market rental units, with a Base Monthly Rental Rate at or below 30% of the Median Total Income of Lone-Parent economic families in the published 2020 Statistics Canada data, being \$54,400, in Rothesay.
10. The Developer further agrees that once the base rents for the affordable units are established in the first year of occupancy, they shall only be raised by a maximum of the Consumer Price Index (CPI), annual average not seasonally adjusted for Saint John, N.B.
11. The Developer agrees to provide to Rothesay an annual audit or legal affidavit signed by a licensed member in good standing of the Chartered Professional Accountants of New Brunswick that provides reasonable assurance that the rents of the affordable units comply with this agreement.

12. The Developer agrees to bear all costs associated with the annual audit or legal affidavit referenced in the preceding paragraph (8) above and to fully cooperate with Rothesay relating to such audit monitoring and evaluation.
13. The Developer agrees that during the full Term of this Agreement, that any failure by the Developer to maintain the affordability provisions as set out in the preceding paragraphs above (6 to 8) or any other violation of any material term of the affordability principles shall constitute a default under this Agreement.
14. The Developer agrees that upon any such default, Rothesay may demand and the Developer agrees to pay to Rothesay an amount equal to twice the difference of the actual rent received and the maximum amount of rent permitted under clause ~~107~~. The Developer agrees to pay interest on any balance in arrears at the rate of 1.25% percent per month compounded monthly.
15. Rothesay and the Developer agree to defer monitoring of the affordable housing aspects of this Agreement should the development become subject to or be monitored under a Federal or Provincial recognized affordable housing program that provides governance, regulation and monitoring. Where no such program is in effect, this agreement shall prevail.
16. Rothesay and the Developer agree that nothing contained in this agreement shall make or be construed to make any tenant or resident of the Project the responsibility of Rothesay.

Municipal Infrastructure

9. The Developer shall be responsible for securing all applicable approvals associated with the onsite and offsite servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable laws, standards, policies, and regulations of the Town and other approval agencies. The Developer expressly agrees and understands that they are responsible to furnish the entire project with Rothesay approved infrastructure as required herein, and where identified on Schedules to this Agreement.

Municipal Streets

10. The Developer shall carry out, subject to inspection and approval by Town representatives, and pay for the entire actual cost of an extension of Dobbin Street through to Salmon Crescent as shown on **Schedule C** including all of the following:
 - a) surveying and staking of lots and streets;
 - b) rough grading of streets to profiles approved by the Town;
 - c) fine grading of streets to profiles approved by the Town;
 - d) hard surfacing of the streets and sidewalks as shown the attached Town specification cross section **Schedule D** (Typical Residential Street Figure 335A) and approved in writing by the Town Engineer, before final hard surfacing may be installed;
 - e) hard surfacing of a traffic circle including a raised circular island constructed in the centre of Dobbin Street as shown in the attached Town specification **Schedule E** (Typical Traffic Circle Plan and Section) and approved in writing by the Town Engineer, before final hard surfacing may be installed;
 - f) the construction of a sidewalk to Rothesay standards from the intersection of Dobbin and Lennox along Lennox to join the existing sidewalk at civic number 19 Lennox;
 - g) engineering design and inspection of those works referred to in clauses b), c) d), and e) of this section; and

- h) supply and maintenance for a period of one (1) year the topsoil, sod, landscaping and the planting of street trees located every 10 meters, or an equivalent number planted in locations approved by the Town, along the length of the public road right-of-way where trees are as follows:
 - a. Not smaller than six centimetres (100mm) in diameter measured at a point being 2 meters above the root ball such trees species as approved by the Town.
- 11. Upon the request of the Town Engineer the Developer agrees to provide progress reports from an engineer qualified to practice in New Brunswick that the work done and materials provided herein are in accordance with this Agreement and approved specifications and a final certificate to the Town when the work has been completed.
- 12. The Town shall supply street name signs and traffic signs to the Developer. The Developer is responsible for the full cost of the signs, including HST, plus a ten percent (10%) administration fee.
- 13. Town Council reserves the right to assign appropriate street names through a resolution of Council, notwithstanding that the names may not coincide with those shown on the filed subdivision plan.
- 14. All items following acceptance of delivery on site by the Developer shall become the responsibility of the Developer against their accidental breakage or vandalism until the completed works are accepted by the Town.
- 15. The Developer agrees that it will not commence construction of any dwelling and no building permit will be issued by the Town for any such dwelling until such time as the street, which provides the normal access, to each dwelling, has been constructed to Town standards as specified by the Town and is ready for hard surfacing at least beyond the point which shall be used as the normal entrance of the driveway to service such dwelling.

Storm Water Management System

- 16. The Developer agrees to submit for approval by the Town, prior to commencing any work on the development, a storm water management plan, meeting the requirements as described in the Specifications for Developer and the Zoning By-law.
- 17. The Developer, at their cost, will restore the public road for the entire frontage of this development to the satisfaction of the Town Engineer following installation of the required services.
- 18. The Developer shall carry out, ensuring compliance with Town By-laws and Municipal Plan and subject to inspection and approval by Town representatives, and pay for the entire actual costs of the installation of a storm water management system which will result in a zero net increase of storm water runoff to the Town system. The Developer will be responsible for the costs of the following:
 - (a) construction, to Town Standards, of a storm water control system including pipes, fittings, precast sections for manholes and catch basins capable of removing surface water, to a predetermined location selected by the Developer's Engineer and approved by the Town Engineer, from the entire developed portion of the lands as well as top soil and hydro-seeding of shoulders of roadways; and
 - (b) provide and grant to the Town, its successors and assigns, unencumbered easements, in the form customarily used by the Town, which the Town might deem necessary to adequately provide for the operation and maintenance of the storm water control system.

19. The Developer agrees to submit for approval by the Town, prior to commencing any work on the storm water control system, such plans required by the Town, each plan meeting the requirements as described in the Specifications for Developers.
20. The written certification of the Town Engineer that the construction of the said storm water control system has been satisfactorily completed and constructed in accordance with the Specifications for Developers is required prior to any construction of any buildings on the Lands pursuant to the specific proposal under this Agreement.

Water Supply

21. The Town agrees to supply potable water for the purposes and for those purposes only for residential development and for minor purposes incidental thereto and for no other purposes whatsoever.
22. The Developer agrees that the water supply shall not be used to service any water-to-air heat pump or exchanger and that there shall be no inter-connection with domestic wells.
23. The Developer agrees to provide and grant to the Town, its successors and assigns, unencumbered easements, in the form customarily used by the Town, which the Town might deem necessary to adequately provide for the operation and maintenance of the water supply system including the water service laterals and fire hydrants.
24. In addition to and notwithstanding the payments committed elsewhere in this agreement the Developer agrees to pay the Town the sum of \$1500 as a connection fee for each residential unit, plus the application fee of \$100, or an amount pursuant to the applicable By-law as may be amended from time to time, to the Town water system calculated in the manner set out by by-law, shall be paid to the Town on issuance of each building permit.
25. The Town does not guarantee and nothing in this Agreement shall be deemed to be a guarantee of an uninterrupted supply or of a sufficient or uniform water pressure or a defined quality of water. The Town shall not be liable to the Developer or to any person, firm or corporation for any damage or injury caused by the interruption of the supply of water, the lack of uniform pressure thereof or the quality of water. Further the Developer agrees to the following:
 - a. that a separate water meter shall be installed, at his expense, for each connection made to the Town Water System.
 - b. that the Town Council may terminate the Developer's connection to the Town water system in the event that the Town finds that the Developer is drawing water for an unauthorized purpose or for any other use that the Town deems in its absolute discretion.
26. It is expressly agreed and understood that all connections to the Town water mains shall be approved and inspected prior to backfilling by the Town Engineer or such other person as is designated by the Town and shall occur at the sole expense of the Developer. Operation of valves is not permitted by anyone other than the Town Engineer or designate.
27. The written certification of a Professional Engineer, licenced to practice in the Province of New Brunswick that the connection of service laterals and the connection to the existing town water supply has been satisfactorily completed and constructed in accordance with the Specifications for Developers is required prior to the occupation of any buildings or portions thereof. The connection must be inspected prior to backfilling or the Developer will be required to excavate at no cost to the Town.

Sanitary Sewer System

28. In addition to and notwithstanding the payments committed elsewhere in

this agreement the Developer agrees to pay the Town the sum of \$1000 as a connection fee for each residential unit, plus the application fee of \$100, or an amount pursuant to the applicable By-law as may be amended from time to time, to the Town sanitary sewer system calculated in the manner set out by by-law, shall be paid to the Town on issuance of each building permit.

29. The Developer shall carry out, ensuring compliance with Town By-laws and Municipal Plan and subject to inspection and approval by Town representatives, and pay for the entire actual costs of the following:
 - a) Engineering design, supply, installation, inspection and construction of all service lateral or laterals necessary to connect to the existing sanitary sewer system inclusive of all pipes, laterals, fittings, and precast concrete units. The Developer shall connect to the existing sanitary sewer system at a point to be determined by the Town Engineer.
 - b) Providing and granting to the Town, its successors and assigns, unencumbered easements, in the form customarily used by the Town, which the Town might deem necessary to adequately provide for the operation and maintenance of the sanitary sewer inclusive of all pipes, laterals, fittings and precast concrete units crossing the Lands of the Developer.
 - c) The Developer agrees to submit for approval by the Town, prior to commencing any work to connect to the sanitary sewer system, any plans required by the Town, with each such plan meeting the requirements as described in the Specifications for Developers (hereinafter referred to as the "Specifications for Developers").
30. It is expressly agreed and understood that all connections to the Town sanitary sewer system shall be supervised by the Developer's engineer and inspected by the Town Engineer or such other person as is designated by the Town prior to backfilling and shall occur at the sole expense of the Developer.

Site Development

31. The Developer shall develop the site in accordance with **Schedule A**.
32. The Developer shall install lighting on the building to provide clear illumination to the building 9-1-1 number which shall be placed on each building facing the driveway.
33. The Developer shall maintain, at its own expense, the Lands, buildings or structures shown on the site plan in a condition appropriate to the area in which it is located, such determination to be made in accordance with standards prescribed by the Town.
34. The Developer expressly agrees and understands that notwithstanding any provision of the Town's Building By-Laws or any statutory by-law or regulatory provision to the contrary, the Building Inspector shall not issue a building permit to the Property Owner for work directly connected with the development of the Lands, nor shall the Property Owner be entitled to such a permit unless and until the Development Officer has approved the Site Plan submitted as part of the Development Permit process illustrating the precise size, location and configuration of the proposed buildings.
35. The Developer shall maintain a treed buffer of no less than 2m at the rear of each lot. In the event the buffer is disturbed, it shall be replaced with appropriate vegetation which creates a visual barrier to the satisfaction of the Town.

Retaining Walls

36. The Developer agrees that the use of gabion basket retaining walls is not appropriate and will not be used for erosion protection or slope stability for the development.
37. Any retaining walls required on the site will be designed by a Professional Engineer, licensed to practice in the Province of New Brunswick and any over four feet in height will require a Building Permit and a fence along the top of the wall.

Indemnification

38. The Developer does hereby indemnify and save harmless the Town from all manner of claims or actions by third parties arising out of the work performed hereunder, and the Developer shall file with the Town prior to the commencement of any work hereunder a certificate of insurance naming the Town as co-insured evidencing a policy of comprehensive general liability coverage on “an occurrence basis” and containing a cross-liability clause which policy has a limit of not less than Two Million Dollars (\$2,000,000.⁰⁰). The aforesaid certificate must provide that the coverage shall stay in force and not be amended, cancelled or allowed to lapse within thirty (30) days prior to notice in writing being given to the Town. The aforesaid insurance coverage must remain in full force and effect during the period available to the Developer pursuant to this agreement to complete the work set out as described in this Agreement.

Notice

39. Any notice or advice which is to be given under this Agreement shall be deemed to have been satisfactorily given to the Developer if delivered personally or by prepaid mail addressed to A.E. MacKay Builders Ltd., 380 Model Farm Road, Quispamsis, N.B. E2G 1L8 and to the Town if delivered personally or by prepaid mail addressed to ROTHESAY, 70 HAMPTON ROAD, ROTHESAY, NEW BRUNSWICK, E2E 5L5. In the event of notice by prepaid mail, the notice will be deemed to have been received four (4) days following its posting.

By-laws

40. The Developer agrees to be bound by and to act in accordance with the By-laws of the Town and such other laws and regulations that apply or may apply in future to the site and to activities carried out thereon.

Termination

41. The Town reserves the right and the Developer agrees that the Town has the right to terminate this Agreement without compensation to the Developer if the specific proposal has not been completed satisfactorily such that the written certifications contemplated in this agreement could reasonably be issued by January 1, 2029.
42. If the Town terminates this Agreement, the Developer agrees that the Town may call the Letter of Credit described herein and apply the proceeds to the cost of completing the work or portions thereof as outlined in the agreement. If there are amounts remaining after the completion of the work in accordance with this agreement, the remainder of the proceeds shall be returned to the Institution issuing the Letter of Credit. If the proceeds of the Letter of Credit are insufficient to compensate the Town for the costs of completing the work mentioned in this agreement, the Developer shall promptly on receipt of an invoice pay to the Town the amounts required to complete the work.

Entire Agreement

43. This Agreement contains the whole agreement between the parties hereto and supersedes any prior agreement as regards the lands outlined in the plan hereto annexed.

Severability

44. If any paragraph or part of this agreement is found to be illegal or beyond the power of the Town Council to execute, such paragraph or part or item shall be deemed to be severable and all other paragraphs or parts of this agreement shall be deemed to be separate and independent therefrom and to be agreed as such.

Reasonableness

45. Both parties agree to act reasonably in connection with any matter, action, decision, comment or approval required or contemplated under this Agreement.

Registration

46. A copy of this Agreement and every amendment and/or discharge of this Agreement shall be recorded at the Land Registry Office, in Hampton, New Brunswick and the Developer shall incur all costs in recording such documents.

Subsequent Owners

47. This Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which is the subject of this Agreement until this Agreement is discharged by Council.

48. Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

IN WITNESS HEREOF the parties have duly executed these presents the day and year first above written.

Date: _____, 2024

Witness:

A.E. MacKay Builders Ltd.

Director

Witness:

Rothesay:

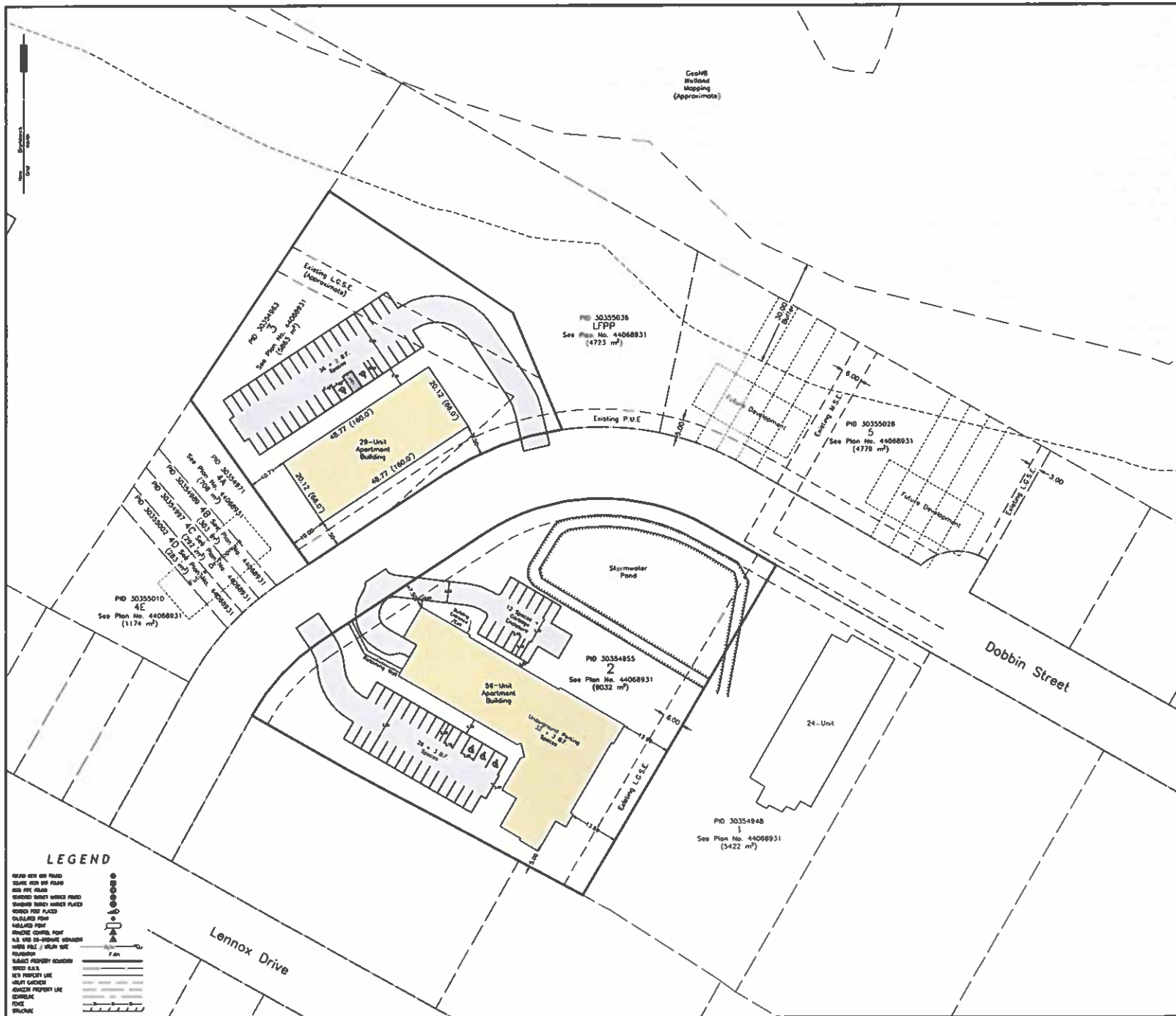
Mayor

Clerk

SCHEDULES

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30354948; 30354955; 30354963; 30354971;
30354989; 30354997; 30355002; 30355010;
30355028; 30355036; 30355044



CeMAB
Wetland
Mapping
(Approximate)



Area of
Survey

Key Plan Scale -----

NOTES

1. Directions are New Brunswick Grid azimuths derived from tabulated N.B. coordinate survey monuments.
2. All distances are in metres and are grid distances, calculated using a combined scale factor and using grid model HT2_0, to convert to imperial equivalents divide by 0.3048.
3. Area of survey outlined thus , peripheral information compiled from various sources.
4. All document and plan references refer to the Registry Office for Kings County or the Land Titles District of New Brunswick.
5. Field survey completed on -----.
6. All computations performed and coordinates shown on this plan are based on New Brunswick Stereographic Double Projection and the NAD83(CRS) Reference System as realized by Service New Brunswick High Precision Network coordinate survey monuments.
7. Wetlands and their 30 metre buffers may be subject to Regulation 30-00 - Wetlands and Wetland Alteration Regulation - Clean Water Act.

LEGEND

- ROUND METAL SURVEY MONUMENT
- FLAT METAL SURVEY MONUMENT
- WOODEN SURVEY MONUMENT
- SHAPED SURVEY MONUMENT
- WOODEN POST PLACED
- CHALKED POINT
- WETLAND POINT
- INDICATE CORNER POINT
- U.S. AND SI-METRIC EQUIVALENT
- WATER MAIN / FURNACE LINE
- FOUNDATION
- SHADED PROPERTY BOUNDARY
- SPREAD E.A.S.
- NEW PROPERTY LINE
- UTILITY CONDUIT
- CONCRETE PROPERTY LINE
- CONCRETE
- TOILET
- BRICKWORK

Site Plan
A. E. McKay Builders Ltd. Development
Dobbin Street,
Town of Rothesay,
Parish of Rothesay,
Kings County, New Brunswick

HUGHES SURVEYS & CONSULTANTS INC.

Surveyed by _____ Date: 22, 2013



Dwg. No. 23389C	Disk No. -----	Pages -----	Disk No. -----
Drawn by U.C.B.	Job No. 723-389	Rev. No. -----	Map Ref. -----

