

LOCAL PLANNING APPEAL TRIBUNAL

NOTICE OF APPEAL

May 4, 2018

THE APPELLANTS

I am retained by three clients in this matter, Sudbury Downtown Business Improvement Area (“BIA”), Tom Fortin (“Fortin”) and Dr. Christopher Duncanson-Hales (“Dr. Hales”).

The BIA and Tom Fortin oppose the relocation of the existing Downtown arena/event centre to a suburban site located on a street municipally known as the “Kingsway” located well outside the Downtown and in combination with a proposed casino because of the long term negative economic impacts on the Downtown. They also oppose the single issue of the establishment of a casino in the City. The basis for the appeals are founded on economic planning, land use planning and legal grounds described in detail hereafter.

Dr. Hales is appealing the casino approvals only, both in his personal capacity but also, with their written permission, on behalf of 36 multi-faith leaders (Schedule 1 attached) of various religious groups in Sudbury and surrounding areas on the grounds of the impacts of the casino of problem gambling and in particular for those vulnerable low income housing areas and developments (Schedule 2 attached) of the City located in close proximity to the Kingsway location. Their appeal is based on land use and legal grounds described in detail hereafter.

The following written submissions (attached) have been filed by or on behalf of the Appellants and are part of the record that the City and are referenced hereafter in support of the Grounds Of Appeal.

- Tom Fortin – “Casino Free Sudbury” January 30, 2018 and March 24, 2018.
- Gordon Petch on behalf of Sudbury BIA and Tom Fortin March 12, 2018 (including urbanMetric (Faludi) Report dated March 12, 2018) and March 22, 2018 (including urbanMetrics Report dated March 21, 2018 and WND Planning (Dragicevic) Report dated March 20, 2018).
- Dr. Hales-January 21, 2018, March 25, 2018 and April 5, 2018

THE PROPOSAL

The City of Greater Sudbury (“City”) has approved the development of a new major entertainment district known as the Kingsway Entertainment District (“Entertainment District”) in a designated and zoned industrial park located beside an operating landfill site, on an arterial street municipally known as “Kingsway” in the south east quadrant of the urban area of the City. The development is integrated and to be composed of a new casino, arena/event centre, hotel/convention centre and

related retail, restaurants and other service commercial uses. It was also promoted to include other sports facilities. The arena/event centre is proposed to be physically connected to the casino and integrated in other ways. This location is well outside the Downtown and in close proximity of low income residential housing. The best description of the proposed development can be viewed on the proponents video link - <https://www.youtube.com/watch?v=myHvTbaTbTbOA>. (USB Key attached).

There currently exists gambling slot facilities at the Sudbury Downs Racetrack in the rural area of the City governed by the Ontario Lottery and Gaming Corporation (“OLG”), which will be closed and relocated to the Kingsway site. These facilities opened in November 1999.

The current arena/event centre has existed in the Downtown of the City for decades and has been home to the Sudbury Wolves Ontario Hockey League team. It has undergone costly expansion and mechanical upgrades in recent years. It is the City’s major entertainment facility for commercial and other family/community events. It is also a major tourist draw for the City and the largest single economic draw for Downtown retail, service commercial and other entertainment businesses. The proposal is to expand the size of the new arena with increased seating and larger stage facilities to create a major Event Centre so that it can attract larger ticket entertainment and cultural events.

In order to provide sufficient parking for the Entertainment District, the city has approved the rezoning of an additional vacant parcel of Industrial designated and zoned lands solely for the purpose of providing additional lands for a “Parking Lot” for entertainment purposes.

The hotel component is a permitted use within the current industrial zoning by-law permissions as such was intended to service the industrial land uses which is proposed to become a hotel/convention centre.

The City adopted By-law 2018-60P approving official plan amendment No. 92 amending the General Industrial Designation with the use of a “Notwithstanding” clause to permit the casino. No amendments to the official plan were applied for to permit the arena/event centre, the “Parking Lot”, nor the overall development of an Entertainment District within the “General Industrial” designated lands.

The City adopted the following zoning by-laws:

1. By-law 2018-61Z as amended by By-law 2018-70Z to permit the casino; and
2. By-law 2018-63Z as amended by By-law 2018-72Z to permit the arena/event centre; and
3. By-law 2018-62Z as amended by By-law 2018-71Z to permit the parking lot.

My clients Tom Fortin and the Downtown Sudbury Business Improvement Area hereby appeal the aforesaid Official Plan Amendment and all of the said zoning by-law amendments pursuant to Sections 17(24) and 34(19) of the Planning Act respectively. Attached hereto are the required LPAT appeal forms for each of these appellants.

My client Christopher Duncan-Hales, in his personal capacity and on behalf of his said represented group, hereby appeals the aforesaid Official Plan Amendments No. 92 and Zoning By-law 2018-61Z as amended by Zoning By-law 2018-70Z pursuant to Sections 17(24) and 34(19) respectively. Attached are the LPAT appeal form for this appellant.

GROUND OF APPEAL

LAND USE APPROVALS

a. Casino – “A Willing Host”

O. Reg. 347/00

- i. Prior to June 1, 2012 the OLG statutory process for the approval of the Casino was governed O. Reg. 347/00 which required the holding of a municipal referendum during the municipal election in order to determine whether or not a municipality was agreeable to be a willing host for a casino. The Regulation provided the wording for the simple question:

“Do you approve a casino in our municipality?”
- ii. If the referendum failed to obtain a majority approval the new casino could not be established. That was the end of the process. Obviously, this process was intended to require the municipality to thoroughly inform the public on all the relevant social, economic and planning issues and to obtain and respect the views, with the results of the referendum being determinative.
- iii. If the referendum succeeded and the Ontario Casino Corporation (“Corporation”) wanted to proceed with the casino, it was required to prepare and file a business case with the Management Board establishing the capital cost and the financial viability of the casino in the municipality. This had to take place before the Corporation could decide that the municipality was a suitable location for the casino. Once approved, the Corporation was also required to provide a summary of the business case, provide it to the municipality and make it available to the public. This would occur prior to the municipality approving any land use applications. The obvious reason for such was the

need for the public and the municipality to review the business case and be satisfied that their financial expectations from the “partnership” in sharing gambling profits and the projected new jobs creation was sustainable.

O. Reg 81/12

- iv. Effective June 1, 2012, O. Reg 81/12 revoked O. Reg 347/00.
- v. The new Regulation required the Corporation (now OLG) to prepare the business case prior to establishing a new casino “*for the proposed site*” that establishes its financial viability. The Corporation then provides it to the Minister of Finance for approval. There is nothing in the regulation stating whether or not the business case is to be provided to the municipality or to be made public.
- vi. However, before the Corporation can proceed with the casino on the “proposed site” s. 2(2) 3 i) and 3 ii) of the Regulation requires the municipality obtain the views of the public:
 - i) *The municipal council....seeks public input into the establishment of the proposed gaming site and gives the Corporation, in writing, a description of the steps it took to do so and a summary of the public input it received, and*
 - ii) *The municipal council Passes a resolution supporting the supporting the establishment of the gaming site...and gives a copy of the resolution to the Corporation.*
- vii. What is important to note is that the Regulation no longer requires a Referendum to determine the most fundamental question – “*Do you approve of a casino in our municipality*”. The Regulation leaves the answer to this fundamental question to the planning approval process which is governed by the Planning Act.
- viii. If it is to be considered prior to the planning approval process (as was the case with the referendum), the intent of the Regulation, in my submission, is that it requires clear prior written public notice whereat all of the relevant issues will be fully investigated and considered and open for debate by the public and Council. As detailed in my letter to Council dated March 22, 2018 commencing at the bottom of page 4, this has never occurred.
- ix. If it is to be considered as part the land approval process as contemplated in the Regulation that is governed by s. 16(1) (b) the Planning Act which requires a municipality’s official plan to contain “*a description of the measures and procedures for informing and obtaining the views of the public in respect of..proposed amendments to the official plan and proposed zoning by-laws.*”
- x. The City’s current Official Plan provides many policies for obtaining the public’s views and the importance for doing so:

- *S. 1.3.1 and 16.1- “Some of the determinants of a healthy community identified through a public consultation process include:*
 - *Citizen engagement in community decision-making processes”.*
 - Part V (p. 162)
 - *“Healthy Community determinants developed as part of an extensive public input process form the underlying foundation of the official plan.”*
 - *S. 16.2.1 “Citizen Engagement In Community Decision-Making*
 - *1. Recognize that citizen engagement is an essential component of local decision-making and continually seek ways to increase participation in civic affairs. Section 20.11 contains policies related to public participation matters.”*
- xi. These policies are similar to what we read in the Growth Plan for Northern Ontario, which I deal with hereafter, stressing the importance of transparency and citizen engagement for the public to genuinely feel part of the decision making process and to “buy in” support municipal decisions.
- xii. Section 1.1 (d) of the Planning Act reinforces this fundamental principle when dealing with planning matters:

“to provide for planning processes that are fair by making them open, accessible, timely and efficient.”
- xii. The statutory method for selecting a site for a casino that is not already zoned for such use is governed by the provisions of the Planning Act and are well known. In the case of the subject Kingsway site a public process in accordance sections 17 and 34 are required with advance written Notice and a Statutory Public Meeting prior to which all relevant materials are made available to the public and the public are encouraged to make submissions to the Committee of Council and/or Council. The only statutory public meetings ever held dealing with the merits of a proposed location for the casino were those meetings held before the Committee on March 26 and 28, 2018 followed by the Council meeting on April 10, 2018.
- xiii. At the City Council meeting on April 10, 2018 a Councillor put the question to Catherine Matheson, the Manager of Community Development, as to when Council decided to be a “willing host” for the new casino. She responded that the decision was made in 1999 when a previous Council agreed to have gaming in the City. However that was the date when slots (and not a casino) was approved for the racetrack at Sudbury Downs, its current location. She also advised that the decision was made by the previous Council, which would be the resolutions in May and August 2012, which I deal with in my letter to Council dated March 22, 2018 at page 5, paras c) and d). The process leading to these resolutions was not one dealing with the sole question as to

whether or not the community wanted a full fledge casino in the City with all the issues discussed in a Staff Report of which the public had prior written notice.

- xiv. Therefore, the only time where this fundamental question could be properly considered with required notice and information was during the subject land approval process. However, that single fundamental question was never on the Public Notice of the statutory public meeting and never considered by Council. They simply assumed the matter had been finally determined by the previous council, and that they were bound by the decision, and therefore had no obligation to deal with it.

Submission

In my submission, the failure of City to hold a public meeting with full clear and unequivocal public notice Notice of the statutory public meeting that this fundamental question was to be considered was an error in law. In addition, the failure to preclude that fundamental question from being fully examined by Staff with transparent public input, and debated by Council at the said statutory public meetings was an error in law. For Council to assume that they were bound by the May and August 2012 Resolution of the previous council to be a willing host for the casino was an error in law. Until that sole question is put to the public with proper written notice and full disclosure and examination of all relevant facts and issues it is premature for Council to consider any of the proposed land use approvals and the appeals of the said by-laws should be granted.

Casino and Arena Location Approval Issues

I deal with this issue in my letter to Council dated March 22, 2018 at page 6-7, paras. h-m. Staff and Council take the position that the arena location was decided at the June 27, 2017 meeting. This is confirmed in the Staff Report dated March 14 and presented March 28, 2018. In my submission this was also the de-facto decision to locate the casino in this location because the “Partnership” between the developer/Gateway and the City was formed immediately thereafter and public monies spent to fund the preparation of an integrated site plan for all uses, including the casino and hotel, in the amount of \$387,000.00 of which the City paid 1/3rd. As well the City contributed staff resources on a priority basis to the integrated project. This was followed by Council approving their 2018 Budget allocating \$100M for the “Kingsway” location for the arena. The June 27, 2017 meeting was not a statutory public meeting as required by the Planning Act.

Submission

The decision to locate the casino and the arena/event centre at the Kingsway site prior to the required statutory public meeting whose fundamental statutory purpose is to determine the merits of the Official Plan Amendment and zoning by applications which would determine the merits of the proposed site. This was a clear error in law relating to both the decision for the location for the arena and the casino and requires the appeals OPA 92 and all of the said zoning by-laws be granted.

Casino – Social Issues

Granting permission for a casino to be established in a community raises obvious social and economic issues. The social problems relate to problem gambling which most frequently affects the most vulnerable members of society. There are also economic issues because the financial gains for the casino are the financial losses for the gambling public. The low income members of society are the most vulnerable to problem gambling affecting their ability to maintain employment, support their families and rise out of poverty. The Kingsway location for the casino is in close proximity to vulnerable neighbourhoods. Clearly locating the casino in this location violates the principles of the Planning Act, PPS, the City Official Plan noted hereafter.

The Greater Sudbury and District Health Unit prepared and forwarded to the City a Report dated February 14, 2013 on problem gambling and its impacts on youth, adolescents and older adults and the City's most vulnerable. The Report stated that *"A casino has the potential to worsen existing inequalities in that the introduction of gambling has a differential impact on different socio-economic levels."* The Report asks that the City take these issues into consideration when deliberating on the casino at the Kingsway location.

My client Dr. Hales filed with the City his above noted submissions on this issue prior to Council making its Decision also asking that they take them into account prior to making any Decision on the Casino applications. Other Members of the public orally made submissions expressing the same concerns.

This writer's oral submission, in testing the veracity of the City's position, questioned why the City would locate a municipally owned arena/event centre that hopes to welcome age groups and families from all sectors of the City beside a casino and indeed connect it to the casino which can only dramatically increase the potential for problem gambling.

Notwithstanding this obvious issue, the City Staff Report dated March 14, 2018 advised as follows:

"This staff report will provide additional information with respect to these themes with the exception of socio-economic matters, as the socio economic impacts of gambling fall outside of the scope of these land use planning matters."

As to this issue I review the relevant statutory and policy provisions below.

Planning Act

- i. Sections 3(5) and 3(6) of the Planning Act requires that all municipal staff, the municipal planning committee provide "comments, submissions or advice" on an official plan amendments and/or zoning by-law amendment "shall be consistent with" the policies in the 2014 Provincial Policy Statement.

Provincial Policy Statement

- ii. The following sections of the PPS provide and demonstrate that land use planning includes consideration of applicable social issues:

- *“Part III: How To Read the Provincial Policy Statement*

*The Provincial Policy-led planning system recognizes and addresses the complex inter-relationships among environmental, economic and **social factors** in land use planning. The Provincial Policy Statement supports a comprehensive, integrated and long-term approach to planning, and recognizes linkages among policy areas.”*

- *Read the Entire Provincial Policy Statement*

This section makes it clear that the PPS is to be read as a whole and is not to be “cherry picked” to attempt to restrict its relevance. In my submission it is clear that the PPS requires an assessment of the relationship between land use decisions and development patterns and relevant social issues as part of an integrated decision making process. The following provisions further support this principle.

- *“Part IV: Vision for Ontario’s Land Use Planning System*

*The long-term prosperity and **social well-being** of Ontario depends upon planning for strong, sustainable and resilient communities for all ages...”*

*“Long-term prosperity, human and environmental health and **social well-being** should take precedence over short-term considerations.”*

- *“S.1.0 Building Strong Healthy Communities*

*Ontario’s long term prosperity, environmental health and **social well-being** depend on wisely managing change and promoting efficient lands use and development patterns.”*

“S. 1.1.1 Healthy, livable and safe communities are sustained by:

*c. avoiding development and land use patterns which may cause environmental or **public health** and safety concerns.”*

- *“S. 1.2 Coordination*

*1.2.3 - Planning authorities should coordinate emergency management and **other social planning considerations** to support efficient and resilient consideration.”*

In concert with the PPS Section 16(1)(a) of the Planning Act prescribes that the “*Contents of an Official Plan shall contain....goals, objectives and policies established primarily to manage and direct physical change and the effects on the **social**, economic, built and natural environment of the municipality..*”

In compliance with the above sections of the Planning Act and the PPS the City’s current Official Plan was adopted by City Council on June 14, 2006 and finally approved by the OMB on August 20, 2010. Subsequent amendments have occurred to date. Section 20.10 of the Plan requires that it be comprehensively reviewed in five years (2015) but to date such has not occurred. The Official Plan contains many sections relating to the inter-relationship between land use planning and social issues:

- “S. 1.1-Purpose of the Official Plan

*The purpose of the Official Plan is to establish goals, objectives and policies to manage direct physical change and its effects on the **social**, economic and natural environment for the 20 year planning period.”*

- “S. 1.3 - Principle of the Plan

Based on our collective vision for the community, the following four key principles will guide future, change, growth and development of the City.”

“1.3.1 A Healthy City

*It is a Council priority for Greater Sudbury to be a **Healthy Community** offering a high quality of life to its residents.*

*The healthy community model recognizes that the **quality of life of citizens is a product of economic, social and natural environments** in our City. Some of the determinants of a healthy community identified through a public consultation process include:*

- *Citizen engagement in community decision-making process*
- *Social supports*

*Many of these can be supported by land use policies contained in the Official Plan, while others are addressed by City initiatives including the **City of Greater Sudbury Human Services Strategy 2015**, and **Coming of Age in the 21st century: An Economic Development Strategic Plan for Greater Sudbury 2015.**”*

It should be noted here that S. 16.2.7.5 of the Official Plan incorporates the underlined strategy above into the implementation policies of the Plan by requiring the City in its decision making process to “*Review and implement the recommendations of the City of Greater Sudbury Human Services Strategy 2015.*” This policy document speaks profoundly to the need for residents to be

fully engaged and listened to in a comprehensive rather than narrow way when considering planning and economic matters and their social consequences (Strategic Direction #2) and “Reducing Poverty” (Strategic Direction # 5). The following provisions of the Official Plan are also applicable:

- “S. 16.0 Healthy Community

*While there are a wide range of factors that contribute to a Healthy Community, an Official Plan is best suited to addressing **how land use policies can support Healthy Community Goals**. Although the focus of this section is the Healthy Community Model, it should be remembered that **Healthy Community Principles underlie the entire Plan**.*

- “Developing Quality of Place

*S. 17.5.1- Recognizing that quality of life is a key component of its economic development strategy, Council will strive to protect the community’s natural environment, to improve its built form, and to enhance its **social environment**.”*

- “Implementation

*S. 20.0 - The goals, objectives and policies of this Plan provide guidance in making decisions affecting land use and economic and **social development**, and are consistent with directives published under the Provincial Policy Statement.*

Ontario Regulation 81/12

This Regulation requires OLG to submit to the Minister of Finance for approval a business case for each site, which includes an assessment of the “**adequacy of responsible gaming features for the proposed site**”. There is no evidence that OLG has ever provided the City with a copy of same. Certainly, it has never been released to the public. Since the Regulation recognizes the importance of this issue before an approval for the Sudbury is granted, it was clearly in the public interest for the City to have undertaken such review independently.

Submission

In my submission, the position of City Staff and the Decision of Council that they had no obligation to consider the many social issues related to problem gambling and the location for the proposed casino in close proximity to low income communities most vulnerable to problem gambling and the merits of having an public arena beside and indeed connected to a casino, was contrary to the public interest and to the aforesaid provisions of the Planning Act, PPS and the City’s Official Plan and an error in law and justifies that the appeals of the said By-laws approving the casino should be granted.

Casino – Economic Issues

- i. As noted above, S. 3(5) and 3(6) of the Planning Act requires all “comments, submissions or advice” from City Staff and the Planning Committee and all Decisions of the Planning Committee and of Council “shall be consistent with” the policies of the PPS.
- ii. Section 1.1.1 of the PPS provides that:

“Healthy, liveable and safe communities are sustained by:

 - a) *Promoting efficient development and land use patterns which sustain the **financial well-being** of the Province and municipalities over the long term.*
 - e) *Promoting **cost-effective development patterns** and standards to minimum land consumption and **servicing costs**.*
- iii. As noted in S. 16(1) (a) of the Planning Act above an Official Plan is required to contain policies to “manage and direct physical change and the effects and the effects on the ...**economic**...environment of the municipality.”
- iv. In accordance with S. 16(1) S. the City’s Official Plan contains the following fundamental policy objective:

“OBJECTIVE

S. 19.1 – To implement the policies and programs of the Official Plan in a **financially sound manner** in conjunction with the Long-Term Financial Plan.

S. 19.2.1 a. - To facilitate the implementation of the policies and programs of the official plan, Council **will**:

a. *Examine the financial impacts of all major development projects or proposals to ensure that they are financially sustainable.*

b. *Have regard to the programs contained in this plan and give precedence to financing those programs which further Official Plan Programs and policies.*

c. *Before undertaking a program, consider alternative proposals that meet the same objective and evaluate their cost effectiveness, taking into account capital, operating and maintenance costs.*

- v. The obvious desire for some municipalities to welcome and approve a new Casino is that the Province, through OLG, provides the municipality with a portion of gambling revenues for a stipulated period of time and alleges a projected net increase in jobs for the municipality. It is a revenue sharing partnership and the quid pro quo for the

municipality supporting the initiative, including the planning approvals. As reported in the urbanMetrics Report it is estimated the City currently receives from OLG a share of the existing slots revenues from the Sudbury Downs location in the amount of approximately \$2.2m annually.

- vi. In 2012 the Province approved a “Modernization Plan” for OLG that was to privatize operations and increase net profit to the Province from \$1.7B to \$3B based on projected increased gambling revenues. This was to be accomplished in part by moving the casino/slot operations into the more densely populated urban areas to make it easier for people to attend the casino, thereby dramatically increasing gambling revenues and net profits. OLG also projected a dramatic net increase in net new gaming industry jobs and net new jobs in the hospitality, entertainment and retail sectors.
- xv. In April 2014 the Provincial Auditor General released her report advising that all of these projections were significantly overstated and unattainable.
- xvi. Ontario Regulation 81/12 requires OLG to prepare a business case for each site and obtain the approval of the Minister of Finance for such. The business case is required to:
 - “i. set out the cost of establishing the proposed gaming site.
 - ii. demonstrate the **viability of the proposed gaming site** and the adequacy of responsible gaming features for the proposed site, and
 - iii. sets out or demonstrates any other matter that the Corporation (OLG) considers appropriate.”

To date, there is no evidence that the City has ever seen this business case and it certainly has never been made public. Efforts by this writer in the past in another municipality to obtain a copy of same from OLG pursuant to Freedom of Information legislation have been denied. I understand this is the same position of OLG in other municipalities.

It is obvious that the increase in gambling revenue, which Mr. Faludi projects to be between \$33-38M (from \$42M to \$75-80M) will come substantially from Sudbury residents. Mr. Faludi also points out that slot gambling is different than gambling in a casino. The City can therefore expect the disposable income of City residents to decline by \$75-80M annually going forward – if the casino meets its financial projections. This reduction in disposable income reduces the amount City residents can spend on other City goods and services – an economic issue one would think the City would want to consider before entering into the “partnership” and as part of the exercise in considering the land use approvals for the Casino.

In my letter to the City dated March 12, 2018 I provided City Staff and elected officials with a copy of the urbanMetrics report by Rowan Faludi of the same date. This was prior to the City Planning Staff being released and therefore was available for their review and when finalizing their Staff Report. Mr. Faludi, who has a long history of studying the economics of the province’s gaming industry advised that the proposed casino may not result in any significant increased

revenues to the City or any a net increase in employment and that it would not likely result in many economic and financial costs that would outweigh its benefits. Notwithstanding, there is no mention of either his report nor of these economic issues in the Staff report..

Notwithstanding this clear warning to the City, both from the Auditor General and urbanMetrics, the City has not undertaken any independent due diligence of these most fundamental economic issues. City Staff take the position that they have no obligation to consider these issues.

Finally, there is the issue of Gateway Casinos Entertainment Ltd. (“Gateway”) the selected developer and operator of the casino. Gateway is owned by Catalyst Capital Group Inc. (“Catalyst”). Numerous recent media publications which are readily available to Staff (2 of which I have attached as Schedule 2 hereto) bring into question the financial ability of Catalyst to fulfill its financial obligations to OLG to invest approximately \$700M to renovate and build new casinos by 2020. Indeed, Catalyst is attempting to now sell Gateway in order to raise capital to support its other operations. Therefore, it would be prudent for anyone wanting to partner with Gateway, including the City, to undertake its own due diligence of the company before granting it such land use approvals. If Gateway is sold there can be no assurances that the new owner would consider Sudbury sufficiently profitable to proceed.

The City has approved a \$100M budget charge in its 2018 budget to build the arena as a form of “Partnership” with Gateway. What has not been revealed to the public are the financial arrangements between Gateway and the City and what portion of the infrastructure costs that the City will pay for will benefit Gateway. What is also unclear is that if Gateway is unable to proceed either in a timely way or at all, would the City continue to choose to relocate the arena/event centre in the subject location, on its own, in this vacant industrial site, when the Downtown site with its obvious certainty and benefits for the Downtown is so readily available?

Submission

In my submission, the failure of the City to take the position that it is not obligated in any way undertake its own independent investigation and analysis of the financial viability and economic impacts of the proposed casino project is contrary to the above noted requirements of the Planning Act, PPS, GPNO and the City’s Official Plan and the appeals of the subject by-laws should be granted.

Arena-Economic Issues

PWC Reports

- i. The City retained PWC to prepare 2 reports relevant to the arena issue. The first is dated February 21, 2017. This report made the business case for a new arena with major Event facilities. Mr. Faludi reviews this report at page 16-17 in his report and notes the preference for the new arena to be established in a built up urban area rather than in a suburban undeveloped greenfield location. The second report is dated June 2017 and deal with analysing the Downtown, Kingsway and other locations. PWC established

criteria for the analysis and concluded the Downtown 3 ac. site abutting the existing Downtown arena as the preferred location. However, Council then asked PWC to restrict its analysis to only 3 criteria which tended to distort the analysis in favour of the suburban Kingsway site, which the City resolved to accept. Mr. Faludi challenged the City's restrictive criteria as flawed, and unreliable.

- ii. Mr. Faludi also pointed out that at no stage in the process was PWC or any other consultant or Staff asked to consider the economic impacts of removing the arena from the Downtown, as the first issue, and then as a separate issue, the economic/financial impacts on the Downtown of combining it with a casino in a new Entertainment District.
- iii. Therefore, Council made its decision to prefer the Kingsway site with its June 27, 2017 Resolution without any expert advice or consideration of the economic impacts of such on the Downtown.

Planning Act/PPS/Growth Plan

As noted above Sections 3(5)(a) and 3(6)(a) of the Planning Act requires City Staff and Planning Committee to provide "comments, submissions or advice" and Council to make "Decisions" that are consistent with the policies of the PPS. In addition to the economic provisions of the PPS noted above, S. 1.7 c) specifically requires that the "Long-Term Economic Prosperity" of the municipality be supported by:

"maintaining and where possible, enhancing the **vitality and viability of downtowns...**"

Sections 3(5)(b) and 3 (6)(b) of the Planning Act requires such "comments, submissions and advice" and "Decisions" to "conform with" or "not conflict with" provincial plans that are in effect.

Growth Plan For Northern Ontario

The relevant plan for my purposes is the Growth Plan For Northern Ontario ("GPNO") which Mr. Dragicevic addresses in his letter report dated March 20, 2018. As stated in the Preamble, the GPNO is an "economic development plan, an infrastructure investment plan, a labour market plan and a land use plan." Its purpose is to guide decisions premised on sound economic planning to provide for long term sustainable development. They direct that such can be achieved by collaboration between all levels of government and business and resident organizations. In Section 4.1 (pg. 24), the goal is stated to be best achieved with the full participation of the community and the relevant levels of government in completing plans such as "*community economic plans and participation in community planning efforts*". These initiatives are described as "effective tools and approaches to ensure citizens and businesses' views are reflected in their communities' future economy and long term sustainability. Section 4.3.3 d) provides that for economic and service

hubs (such as the Downtown of Sudbury) the City should “maintain updated official plans and develop **other supporting documents** which include strategies for

encouraging a significant portion of future residential and employment development to locate in **existing downtown areas...**”

There are other economic policies in S. 4 of the Plan that would readily apply rejuvenating and encouraging development in the Downtown.

Section 2.3.10 deals with the importance of Tourism to the economies of Northern municipalities and investing in infrastructure to “improve the competitiveness of the tourism industry and enhance the visitor experience. This is a policy directly related to Sudbury’s Downtown.

Economic Development Strategic Plan and Downtown Master Plan

In accordance with these policies the City initiated two community-based studies relevant to this issue:

- i. **“A Community Economic Development Strategic Plan-From the Ground Up 2015-2025”** involving 2300 persons as stakeholders including the City’s Economic Corporations and City Economic and Tourism Staff;
- ii. **“The Downtown Sudbury Master Plan” (March 2012)**
 - b. As both Mr. Faludi and Mr. Dragicevic noted in their respective reports both these reports stressed the vital importance of the Downtown to the in all critical aspects, namely business, culture and tourism.
 - c. At page 9 (s. 4.0) of the Downtown Master Plan it provides:

“As Sudbury’s economy continues to evolve and its cultural offer develops further the Downtown will play an increasingly important role in providing the place for that continues economic and cultural growth. The success of the Downtown will be fundamental in helping the community cement its role as the economic and cultural ‘Centre of the North’.”

This report goes on to advise that the strategy for achieving this goal is to:

- Grow Employment in the Downtown
- Create Destination attractions in the Downtown
- Make the Downtown a Centre for Learning
- Make the Downtown a Centre for Living

At page 10 of the report the following strategies relevant to this matter are:

- Invest in the infrastructure necessary to support growth in the Downtown.
- Build a multi-use Recreation and Conference complex/hotel” and

- Undertake the downtown Sudbury Arena Improvements.

The Economic Development Strategy, as both Mr. Faludi and Mr. Dragicevic advise, similarly point to the importance of the need for capital investment in the continued rejuvenation of the Downtown and how significant this is to the City's future success in all respects. At page 44, under the heading "Required Action" S. 7.1.1. the Report recommends:

"Develop a multi-purpose facility (or facilities) for arts, culture, business and sport **in the Downtown**, with consideration for the following high-priority uses:

- conference facilities,
- performing arts centre,
- **Arena/Sports complex,**
- Art Gallery and
- Hotels for the Downtown as priority uses.

These projects are referred to a "Transformational Large Projects" for the Downtown.

As noted in the Faludi Report (pg.24) in November 2012 the City commenced a community initiative for large projects that would be "Transformational" for the City. On November 27, 2015 the City endorsed four major initiatives. On September 12, 2017 the City gave direction to implement to implement two of these projects in the Downtown in the location of the former arena:

- The Greater Sudbury Convention and Performance Centre, and
- New Library and expanded Art Gallery

In the March 14, 2018 Staff Report the Staff's response to the concerns for the economic impacts of the new Kingsway Entertainment District project is that such will be remedied with these two projects in the Downtown.

However, there was no analysis done by the City to determine if these proposed projects are now financially viable with the approval of the new Kingsway Entertainment District. Mr. Faludi opined that the Casino/Arena Event Centre/Hotel/Convention Center planned for the Kingsway Entertainment District would overwhelm and duplicate the functions and market for a second performing arts and hotel/convention centre in the Downtown rendering then not financially viable. This is not hard to anticipate. Yet there is no mention of this concern in the said City Staff Report.

When asked about this missing component in their Staff Report at the Committee Meeting of Council during the statutory public meeting, notwithstanding the legislative requirements above, Jason Ferrigan, the Director of Planning, advised City Council that they did not have to consider or have regard for these two plans and that they had no weight or merit because they were not adopted as amendments to the Official Plan. However, this was contrary to what Staff said in their own report at the bottom of page under the heading "Neighbourhood Consultation" Staff state:

"City Council continues to take other steps to support and encourage downtown revitalization, consistent with the opportunity-based Downtown Master Plan."

City Official Plan

Similarly, consistent with these community economic and planning initiatives for the Downtown the City's Official Plan provides as follows. In reviewing the following, note the underlined references to the aforesaid Economic Development Strategic Plan.

- Five “Vision Statements (S.1.2). The fourth relies on the said Economic Development Strategic Plan (bottom pg. 4) and the fifth provides (Top pg. 5):

“The City's Economic Development strategic plan has identified five engine for growth and a number of strategic actions and initiatives to be implemented. **Greater Sudbury's Downtown will be developed and sustained as the vibrant hub of a dynamic City** by preserving its built form, promoting arts and culture, improving linkages to neighbourhoods and amenities, integrating natural features, developing residential uses, and creating unique urban spaces through innovative design”
- Part II: Managing Growth and Change

“A number of historical land use issues need to be addressed, including...the strategic importance of revitalizing the Downtown...Policies to facilitate objectives set out in the City's long term economic development strategy are also essential to this process.”
- “Employment” Section 4.1 e. “promote the development of the **Downtown** as an employment and business centre for the City.”
- “Downtown” Section 4.2.1:
 - i. “Downtown Sudbury forms the historic core of the amalgamated City, retaining its important function as a centre of retail, arts and culture, government and business services.”
 - ii. Compact and walkable, the Downtown possesses a distinct built form that sets it apart from other urban areas, **offering unique opportunities to protect, develop and sustain its role as the vibrant hub of a dynamic City.**
 - iii. **Council will develop the Downtown as a creative district by promoting arts and culture...The development of a performing arts facility in the Downtown will be a key priority.**
- “Downtown” S. 4.2.1.1- Downtown Residential Development:

- i. “Amenities such as theSudbury Arena...contribute to the appeal of the Downtown. In order to make it more attractive as a place of residence, additional amenities necessary to enhance the liveability of the Downtown will be identified.”
- “Downtown” S. 4.2.1.2- Downtown Urban Environment
 - i. “The Downtown plays a key role in defining the City’s image and quality of place, perceptions that are essential to the success of a number of City Initiatives.”
- “A Prosperous Community with employment opportunities” - S. 16.2.3
 - i. In addition to the more detailed discussion of Economic Development contained in Chapter 17.0, the following policies will apply:
 1. Having regard to the City’s Economic Development Strategic Plan in assessing Development Applications.
 2. Recognize the importance of “quality of place” in attracting new residents and investment to our community. Related to this, the image of the City is often associated with its **Downtown** and mainstreets....”
- As noted above in dealing with the Casino-Economic issues, Section 19 of the Official Plan provides direction to the City in dealing with these large projects. They are also provide direction to the implementation of programs and policies in the official plan itself.
- The “Objective” (S. 19.1) of these policies is “**To implement the policies and programs of the Official Plan in a financially sound manner** in conjunction with the Long Term Financial Plan Council will:
 - a. Examine the financial impacts of all major development projects or Proposals to ensure that they are financially sustainable.
 - b. Have regard for the programs contained in this Plan and give precedence to financing those programs which further Official Plan objectives and policies.
 - c. Before undertaking a program, consider alternative proposals that meet the same objectives and evaluate their cost-effectiveness, taking into account capital, operating and maintenance costs.

Therefore, in order to comply with above policies in S. 19 and implement the policies for the Downtown identified in the “Economic Development Strategic Plan” referenced in the Official Plan required the City to measure the financial impacts of the proposed “Kingsway Entertainment District” on the on the “vitality and viability of the Downtown” (as also required by s.1.7 c of the PPS s. 1.7) and the proposed Transitional Large Projects, which the City has never undertaken.

Submission

In my submission, the advice by City Staff to City Council and Council Decision, and the position both Staff and Council took, that it did not have to consider the economic impacts of the removal of the arena from the Downtown to the Kingsway location connected to a casino in a new Entertainment District is contrary to the above noted provisions of the Planning Act, the Growth Plan for Northern Ontario, the PPS and the City Official Plan and my clients appeals of the relevant by-laws should be granted.

Employment Lands Conversion

Mr. Dragicevic deals with this issue on page 7 and 10 of his report.

All of the lands subject to the proposed Official Plan Amendment for the Casino and zoning by-law amendments for casino and the new Arena/Event Centre and the “Parking Lot” are zoned for industrial uses. Their planned purpose in combination with the existing hotel permissions is to create a new Entertainment District.

As Mr. Dragicevic advises all of the proposed amendments are intended to establish land use permissions for a new “Entertainment District”. The City Staff Report of March 14, 2018 advises, under the heading “Long Term Economic Prosperity” advises that this “Entertainment District” will “provide a venue for major entertainment events that will draw attendees from other parts of Northern Ontario to the City of Greater Sudbury”. Therefore, it should be assessed from a planning perspective as one entity and not just by its parts unrelated to each other. In Mr. Dragicevic’s opinion the proposed Kingsway Entertainment District is not an “employment use” as defined and contemplated in the PPS and cannot be approved until the City initiates and completes a “Comprehensive Review” which it has not done. Individually, a casino is not an “employment use” and requires an official plan amendment for it to be permitted in the “General Industrial” designation. Similarly, removing approximately 30 acres of industrial lands simply for a “Parking Lot” for entertainment uses means there are 30 acres less for industrial uses meaning the proposed Parking Lot is not an “employment use”.

As Mr. Faludi advises in his March 21, 2018 Report (page 2, para 3) one of the key requirements for an Employment Land Conversion study is to determine whether the proposed uses could be located elsewhere in the City. Clearly the Arena/Event Centre can be located in the Downtown and the Casino can locate at the existing gambling venue at Sudbury Downs. Obviously, this is the likely result of such a study.

Submission

In my submission, for the reasons stated above, all of the proposed Planning Act applications collectively are a “conversion” of “employment lands” and contrary to the provisions cannot be approved without “Comprehensive Review” being undertaken and approved which has not occurred. In the alternative the proposed casino use and the proposed “Parking Lot” uses individually are a “conversion” and cannot be approved without a “comprehensive review” being undertaken and approved which has not occurred. Under either scenario, the Tribunal has no jurisdiction to approve the aforesaid official plan and zoning by-law amendments and the appeals should be granted.

Official Plan Amendment for Entire Entertainment District

Consistent with Mr. Dragicevic’s reasons for analyzing all of the lands proposed for the establishment of the Kingsway Entertainment District for employment land “conversion” purposes, the entire project should be analysed for Official Plan compliance purposes. In his opinion the entire project must proceed as a single official plan amendment for the entire project and not simply for the Casino. No application for such an official plan amendment has been applied for and is not before the Tribunal.

The proposed applications are therefore contrary to the Official Plan and the appeals of the said official plan amendment for the casino and all of the aforesaid zoning by-laws should be granted.

Submission

In my submission, it is premature for the Tribunal to proceed with the approval of the proposed official plan amendment and zoning by-laws until a single official plan amendment is filed and processed for the entire project and assessed with regard to its compliance with other policies in the Official Plan, the PPS and GPNO and the relevant policies of the Downtown Master Plan and the City Long Term Economic Development Strategic Plan. To do otherwise is contrary to the City’s Official Plan, not consistent with the PPS and does not conform with and conflicts with the GPNO.

COUNCIL BIAS

I dealt with the ground for this issue in detail in my letter to Council dated March 22, 2018 at pages 4-7 and will incorporate but not repeat them here.

Submission

By the time this matter came before Committee at the Statutory Meetings held on March 26 and 28, 2018, Council had already established what staff referred to as a “Partnership” with OLG and the landowner and had made commitments and rendered rulings (noted above) that precluded it from being able to fairly listen to those opposed the both the process and the decision to approve, contrary to the intent of the Planning Act public process and the goals of the City’s own official

plan. Staff admit that Council had previously made their decision on the merits of the location for the arena/event centre (and in my submission the casino) at the June 27, 2017 Council meeting, and that such was not open for reconsideration. This was a clear error of law justifying that the appeals of all of the said by-laws be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

This 4th day of May, 2018

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