**LAND AND PROPERTY RIGHTS TRIBUNAL**

**Citation:** 1343419 Alberta Ltd. v City of Edmonton (Subdivision Authority), 2025 ABLPRT 104

**Date:** 2025-03-06
**File No.** S24/EDMO/C-031
**Decision No.** LPRT2025/MG0104
**Municipality:** City of Edmonton

**In the matter of** an appeal from a decision of the City of Edmonton Subdivision Authority (SA) respecting the proposed subdivision of part of NE-8-54-23-W4M and Lot 1, Blocks A, B, and C, Plan 212 1658 (subject land) under Part 17 of the *Municipal Government Act*, RSA 2000, c M-26 (*Act*).

BETWEEN:

1343419 Alberta Ltd.

Appellant

- and -

City of Edmonton Subdivision Authority

Respondent Authority

BEFORE: H. Kim, Presiding Officer
G. Newcombe, Member
G. Sokolan, Member
(Panel)

K. Lau, Case Manager

---

**DECISION**

---

APPEARANCES

See Appendix A

This is an appeal to the Land and Property Rights Tribunal (LPRT or Tribunal). The hearing was held by videoconference, on January 21, 2025, after notifying interested parties.

## OVERVIEW

[1] This appeal concerns a subdivision to create two block shell parcels from three block shell parcels created in 2021 and a remnant of a quarter section in the Horse Hills area of the City of Edmonton (City). The application was approved subject to a number of conditions, including a requirement that the owner dedicate road rights-of-way for arterial roadways and mass transit, and to clear and level the road rights-of-way dedications.

[2] The Appellant filed an appeal on the grounds that the alignment of the arterial roads and location of mass transit are conceptual and subject to change, and timing is unknown; therefore, it is premature to require the dedication. Further, the dedication required would result in more land provided for roads and utilities for the overall land than the *Act* contemplates, and the application is a consolidation that only required subdivision approval because the parcels are located in more than one section.

[3] The SA argued the amount it required for roads and mass transit is less than the 30% maximum the *Act* allows it to take for that purpose as a condition of subdivision, and that dedication is not premature, but rather is guided by the most recent available planning information and documents. Further the condition is consistent with the City's policy to take land for arterial roads at first subdivision; this policy avoids the need to take land for roads at more advanced stages of development, when expropriation may be the only realistic option.

[4] The LPRT found the subject subdivision was for the creation of large parcels for further subdivision, that did not require arterial roads or public utilities for the parcels to be created. The LPRT noted the current statutory plan has a different alignment of arterial roads and mass transit than the proposed amended statutory plan. The LPRT further determined that in this case, it is too early in the planning process to determine what land is sufficient for the purposes of arterial roads and mass transit. Further, dedicating land for roadways and mass transit at this early stage in the planning process would not be appropriate from a land use planning perspective, as such dedications would impede potential future amendments to the statutory plans that might be considered for development given that build out is expected to span decades.

[5] Accordingly, the LPRT allowed the appeal and deleted the impugned conditions.

## REASON APPEAL HEARD BY LPRT

[6] Section 678(2) of the *Act* directs subdivision appeals to the LPRT instead of a subdivision and development appeal board when the subject land is in the Green Area or within prescribed distances of features of interest to Provincial authorities, including a highway, body of water, sewage treatment, waste management facility, or historical site. The distances are found in s. 26 of the *Matters Related to Subdivision and Development Regulation*, Alta Reg 84/2022 (*Regulation*). The LPRT also hears subdivision appeals when the land is the subject of a licence, permit, approval or other authorization from various Provincial authorities.

[7] In this case, the southwest corner of the subject land contains a body of water, the left bank of Horse Hills Creek.

## PROPOSAL

[8] To create two parcels of 65.88 hectare (162.8 acre) and 19.33 ha (47.77 ac) from three parcels created in 2021 and a remnant parcel from NE-8-54-23-W4M.


*Figure 1- The four previous parcels shown on the left in different colours, and the two proposed block shell parcels on the right.*

## BACKGROUND

[9] The subject application is a consolidation of four parcels of land in two quarter sections, into two parcels of land. The land is subject to the Horse Hill District Plan, Horse Hill Area Structure Plan (ASP), and the Marquis Neighbourhood Structure Plan (NSP). An application to amend the ASP and NSP was submitted at the same time as the subject subdivision application, by Stantec Consulting Ltd. on behalf of Cameron Communities.

[10] The amended statutory plans, along with an amendment to the Horse Hill Catchment within Bylaw 14380 - Arterial Roads for Development (ARA) to reflect the revised arterial road network, received second reading at City Council in July 2024. The proposed amendments are changes to the land uses and road network as shown in Figure 2.

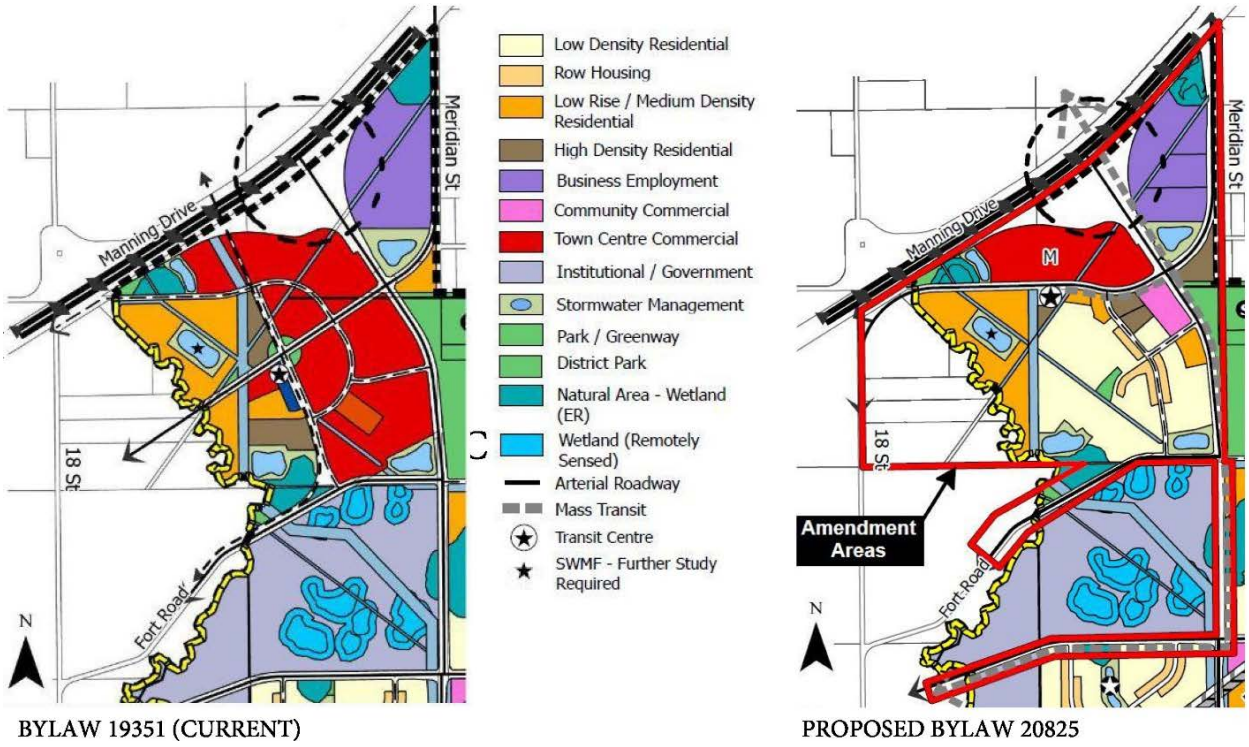



*Figure 2- Marquis NSP Development Concept: current on left, proposed amendment on right*

[11] The subdivision application was conditionally approved as follows:

RE: Tentative plan of subdivision to create two block shells from Lots 1, Blocks A, B, and C, Plan 212 1658, and the NE-8-54-23-W4M located south of Manning Drive and west of Meridian Street NW;

MARQUIS

The Subdivision by Plan is APPROVED on October 17, 2024, subject to the following conditions:

1. that the owner provide Municipal Reserve (MR) in the amount of 6.501 ha by a Deferred Reserve Caveat (DRC) registered against proposed Parcel 1 pursuant to Section 669 of the Municipal Government Act;
2. that the owner provide MR in the amount of 1.933 ha by a DRC registered against proposed Parcel 2 pursuant to Section 669 of the Municipal Government Act;
3. that the owner provide MR in the amount of 2.809 ha by a DRC registered against the remnant of Lot 1, Block B, Plan 212 1658 pursuant to Section 669 of the Municipal Government Act;
4. that the owner dedicate road right-of-way for arterial roadways and mass transit to conform to updated and approved Concept Plans or to the satisfaction of Subdivision and Development Coordination for Meridian Street NW and Arterial "C" (195 Avenue NW) within the parent parcels, as shown on the "Conditions of Approval" map, Enclosure I;
5. that, subject to Condition #4, the owner clear and level Meridian Street NW and Arterial "C", as required for road right-of-way dedication to the satisfaction of

Subdivision and Development Coordination and Integrated Infrastructure Services, as shown on the "Conditions of Approval" map, Enclosure I;

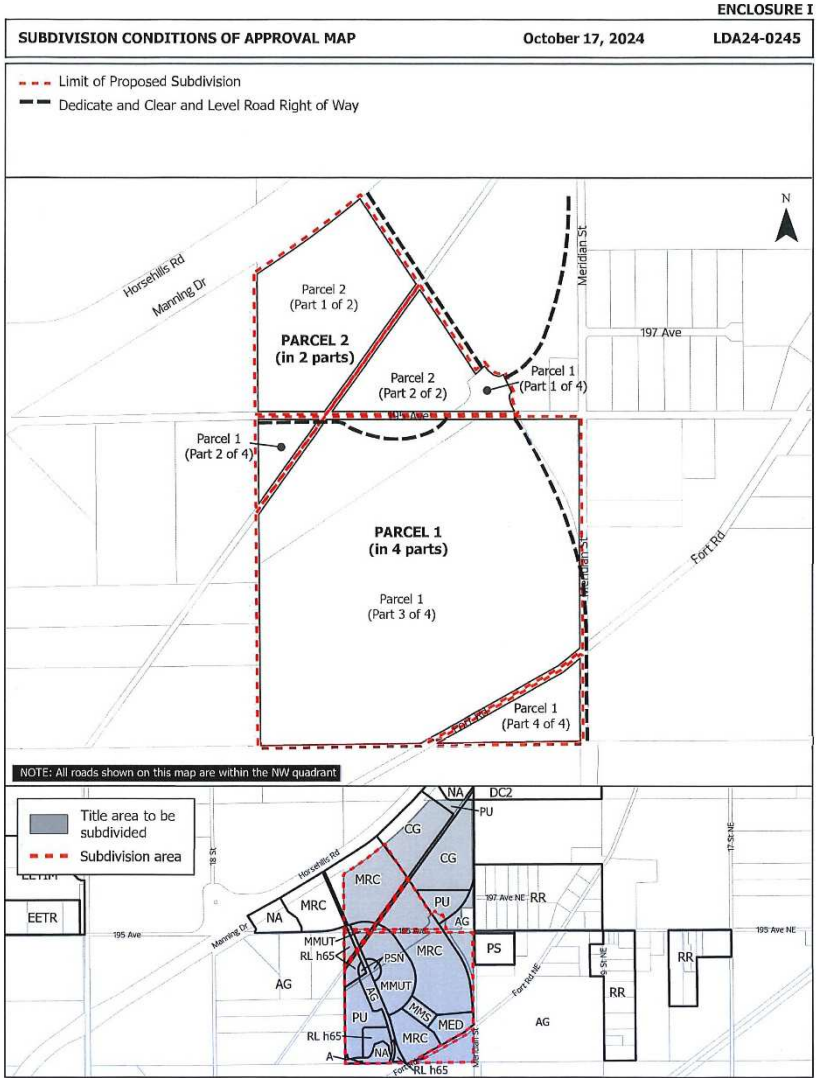
6. That a bylaw to amend the Area Structure Plan, a bylaw to amend the Neighbourhood Structure Plan, and a bylaw to amend the Horse Hill Catchment within Bylaw 14380 shall be approved, to align with this plan of subdivision, prior to endorsement of the plan of survey; and
7. that the owner pay all outstanding property taxes prior to the endorsement of the plan of survey.

Enclosure I is a map of the subdivision identifying major conditions of this approval.

Municipal Reserves for the NE 8-54-23-W4M, Lot 1, Block A, Plan 212 1658, Lot 1, Block B, Plan 212 1658, and Lot 1, Block C, Plan 212 1658 in the amount of 6.501 ha, 1.933 ha and 2.809 ha are being provided by Deferred Reserve Caveats with this subdivision, dependent upon final plan of survey.

Please be advised that the approval is valid for one (1) year from the date on which the subdivision approval is given to the application. An extension beyond that time may be granted by the City of Edmonton.

ENCLOSURE I



[12] The Notice of Decision advised that an appeal may be lodged with the Subdivision and Development Appeal Board (SDAB). The Appellant filed an appeal of Conditions 4 and 5 to the SDAB within the appeal period as follows:

> The owner and the Applicant wish to appeal conditions four and five of the above subdivision approval on the following grounds:
> 1. The alignment of the arterial roads and location of mass transit are conceptual only and subject to change. Timing of mass transit and arterial road development is unknown. Therefore it is premature to require the dedication. In particular:
>    (a) The condition references "mass transit". The type of mass transit is unclear and location of future mass transit routes is unknown.
>    (b) Depending on the type of mass transit, the time frame for mass transit that might affect the property could be 50+ years. The mass transit for this area is not funded and the alignment is not determined. It is unknown whether there will ever be mass transit that affects the property. Therefore, it is premature to require a dedication for a hypothetical future mass transit that may or may not affect the property.
> 2. This subdivision is not the terminal subdivision. The location of the arterial roads and mass transit will be determined as part of future subdivisions. Dedications should be addressed at that time.
> 3. In addition, the amount of the dedication is in excess of the maximum dedication permitted under the Municipal Government Act.
> 4. In light of the foregoing, the Subdivision Authority does not have the authority to impose these conditions.
> 5. Such further and other grounds of appeal as may be raised at the hearing of the appeal.

[13] The SDAB held a hearing on November 28, 2024, and determined that it did not have jurisdiction to consider the matter due to the presence of a body of water on the subject land. The SDAB decision referred the appeal to the LPRT pursuant to s. 678(5) of the *Act*.

**ISSUES**

[14] The LPRT must consider requirements under the *Act, Regulation*, the Provincial Land Use Policies (LUP), the Land Use Bylaw (LUB), and any statutory plans. Against this general regulatory backdrop, the parties focused on the following particular issues:

1. Does the *Act* allow for land dedication to be taken at every subdivision, even if it results in more than 30% dedication for the overall land?
2. Should the conditions of approval require dedication of the rights-of-way for arterial roadways and mass transit?
3. If it should be required, should the conditions of approval also require rights-of way be cleared and leveled by the landowner?

**SUMMARY OF THE SA'S POSITION**

[15] The subdivision approval requires approval of the amended ASP, NSP and Horse Hill Catchment within Bylaw 14380. The Appellant's reasons for appeal relate to the authority and timing of dedication of arterial roads and mass transit. The SA noted that s. 662(1) and (2) of the *Act* allows the SA to require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land for the purpose of roads, public utilities or both. Section1(1)(z) of the *Act* defines a road as land

shown as a road on a plan of survey that has been filed or registered in a land titles office, or used as a public road, and includes a bridge forming part of a public road and any structure incidental to a public road. The subject arterial roads meet this definition, and the *Act* does not preclude mass transit from the definition of roads. The requirement to dedicate the subject arterial roads conforms to both s. 662(1) of the *Act* and the NSP amendment (proposed Bylaw 20825). Further, this approach aligns with standard City practices: Policy C507 - Arterial Roads for Development allows dedication and cost sharing compensation for up to 51 m width of road right-of-way. The subject arterial roads are anticipated to be 48 m in width.

[16] In response to the Appellant's contention that the dedication exceeds the maximum 30% dedication permitted under the s. 662(2) of the *Act*, the SA provided a table indicating that the land for rights-of-way taken from each titled parcel is 6.8% to 14.1% - less than the maximum 30%.

[17] Section 655(1)(a) of the *Act* authorizes the SA to impose any conditions to ensure that statutory plans affecting the land proposed to be subdivided are complied with, as well as a condition that the applicant enter into an agreement with the municipality to construct or pay for the construction of a road required to give access to the subdivision.

[18] Section 662(1) does not limit the timing of land dedication for the purpose of roads; however, the SA addressed three issues raised by the Appellant against dedication of arterial road right-of-way at this time: Terminal vs. non-terminal subdivision, timing of mass transit, and prior decisions.

[19] The SA is of the opinion that proposed Parcel 2 may be a terminal subdivision, because it is designated Town Centre Commercial to be zoned MRC - Marquis Retail Centre Zone. Large commercial retail locations may develop on a single titled lot, and while the landowner intends to further subdivide the land, a future landowner may decide to develop without subdivision; therefore, dedication to secure land for future roads is necessary at this time. The SA agrees that proposed Parcel 1 is not terminal; however, a portion of Arterial "C" (195 Avenue NW) is within proposed Parcel 1 and is necessary to serve proposed Parcel 2. The SA argued that Condition 2, which defers municipal reserves on Parcel 2 does not mean that it agrees that Parcel 2 is not a terminal subdivision. The *Act* provides options for reserves - dedication, cash in lieu or to defer by deferred reserve caveat (DRC). The City's Open Space department was comfortable with the risk of deferral despite the potential that Parcel 2 could be a terminal subdivision. For road dedication, there are no options: either dedication is required or not, and the City's Transportation department determined that dedication should be required, as allowed under the *Act*. Securing the land at this time ensures rights of way are available when construction is warranted in the future.

[20] The SA noted the issues cited by the Appellant with respect to mass transit in its reasons for appeal were due to uncertainty with respect to the type, location, and timeline of mass transit. The SA addressed the issues as follows:

- Type: While the type of mass transit is not yet known, dedication of the road right-of-way does not preclude future design work. The ASP and NSP have been planned such that a variety of mass transit technologies can be contemplated. Further planning will be required as the area develops, but dedication of road right-of-way helps set the framework for that work.
- Location: With respect to location of mass transit, the SA deals with each application based on the most current information available, which at this time is the location and alignment outlined in the proposed NSP Amendment. To suggest that decisions based on these plans is premature contravenes the intent of the plan-making stage of development.
- Timeline: The timeline for mass transit has not yet been determined; however, if the City waited until the surrounding area was developed before taking the dedication, dedication would no longer be possible and expropriation would be necessary, increasing costs to the municipality and

> unfairly benefitting the landowner. Dedication of arterial lands is best addressed at the subdivision stage of development, when larger parcels exist and larger lengths of road right-of-way may be obtained to secure future connectivity as an area develops.

[21] The City's Guidelines for Arterial Construction with Subdivision (Arterial Guidelines) addresses the timing of dedication of arterial roads. Section 3 states:

> Land dedication is required with the first subdivision of the parent parcel, as shown in Figure 4. The amount of land dedication required is in accordance with an approved Concept Plan for the arterial roadway. The City conditions the dedication required from the entire parent parcel, and not just within the subdivision boundary. This is due to a constraint of the MGA, which allows for a maximum of 30% dedication of land for municipal purposes. The condition for dedication while the parent parcel is at its largest allows the City to remain within the bounds of the MGA. It also allows for the land to be within City jurisdiction should arterial construction be required in advance of further subdivision. With dedication in place, another developer/landowner (that did not dedicate the land but needs the arterial road to develop) is also able to construct the arterial roadway and proceed with orderly development of their land.

[22] The previous parcels were created through prior subdivisions approved in February 2021. While dedication of arterial roads were not conditions of subdivision at that time, the subject subdivision may potentially be a terminal parcel. The 2021 subdivision parcels were large, with multiple land uses and zones, necessitating further subdivision. The SA noted that this is the Appellant's subdivision application, the amounts are under 30% and are not in excess of what is necessary to serve the subdivision. The SA provided a table of the area of road dedication as a percent of each original parcel to demonstrate that the amounts varied between 6.8 and 14.1%.

[23] The fact that the City did not require road dedication in the past does not require it to continue to refrain from imposing such a requirement going forward. Nothing in the *Act* prevents taking up to 30% of the parent parcel in each of multiple subdivisions of the same land. The developer could avoid this result by subdividing the entire parent parcel at once, but this is the developer's choice. The City's policy is not to take 30%; rather, it is to take what is required for roads and public utilities.

[24] With respect to the issue of compensation, the ARA bylaw has a mechanism for cost sharing to distribute the costs of arterial roads. There is no mechanism for cost sharing public utilities, but some developers may consider it a benefit to have LRT/transit through their lands. The *Act* gives the SA the right to require dedication. The Appellant's reliance on the LPRT's decision in *JH Agro Ltd. v. Foothills County (Subdivision Authority)*, 2022 ABLPRT 1353 (*Agro*) is not supported in the subject circumstances. In *Agro*, the layout and design of the interchange is uncertain. In the subject case, the arterial roads are set out in the concept plan. The SA must not approve a subdivision unless it conforms to a growth plan or statutory plan.

[25] With respect to Condition 5, clearing and levelling of arterial land prior to dedication ensures no additional liabilities are transferred to the municipality, such as the cost of removing trees under City Policy C456C - Corporate Tree Management.

[26] In summary, s. 662(1) of the *Act* does not limit the timing of land dedication for the purpose of roads and the required road dedication is less than 30% for each titled parcel. The dedication of Arterial "C" (195 Avenue NW) and Meridian Street is necessary and appropriate. If road right-of-way is not dedicated as a condition of this subdivision approval, it would only be possible as a condition of future subdivision and would result in the need for future expropriation of lands.

[27] The SA requested that should the LPRT allow the appeal and remove Condition I-4 or I-5, the following conditions be applied:

- that the owner enter into a Deferred Arterial Dedication Agreement with the City of Edmonton, pursuant to s. 655 of the *Act*;
- that concurrent with registration of the plan of survey, the City of Edmonton shall register against the proposed Parcels 1 and 2, and the remnant of Plan 212 1658, Block B, Lot 1 a claim of interest by caveat of the Deferred Arterial Dedication Agreement pursuant to s. 655 of the *Act*.

**SUMMARY OF APPELLANT'S POSITION**

[28] The Appellant argued that the dedication requirement in s. 662(1) of the *Act* is discretionary, and ss. 662(2) and (3) states the maximum dedication is the lesser of 30% of the area of the parcel or "sufficient land" for the purpose of roads, public utilities or both with no minimum dedication. The Appellant cited *Canada Lands Co. v Edmonton (City)*, 2005 ABCA 218 (*Canada Lands*) which considered whether a dedication was "grossly disproportionate to the size of the development." The Appellant submitted that other factors could be considered, such as:

- Whether the public utility is necessary. If the municipality cannot establish that a public utility, such as transit, is necessary, a municipality should not be entitled to require that land be dedicated for it.
- Whether the land will actually be needed for the public utility. The municipality must establish that there is a reasonable prospect that the public utility will be built and operational in the foreseeable future. Depending on the type of transit, the funding is provided by various levels of government, leading to uncertainty - the subdivision could proceed, but without funding, certain types of transit may never be developed. It is unreasonable to require an owner to dedicate land for a public utility that may never be built.
- Whether it is reasonable for one owner to bear the cost of a public utility that will benefit the entire municipality - In the case of transit, if the transit route is through developed areas or if it is through an area that is not being developed, then the City has to expropriate the land and pay market value to the owner for the land. In contrast, if City selects a transit route that is through land that is being subdivided, the City's position is that it is entitled to have the land dedicated without compensation to the owner. Given that transit benefits the municipality as a whole, it is an unreasonable exercise of discretion to impose a particular transit route on one owner and to require that owner to dedicate its land without compensation.

[29] The LPRT has discretion to determine whether to require land dedication and in what amount. The Appellant cited *Agro*, where the amount of land to be dedicated for a service road was varied on the basis that the dedication was premature, as the detailed planning had not been done and that there was uncertainty as to whether the service road would ever be needed. Two conflicting decisions of the Edmonton SDAB regarding dedication of Light Rail Transit (LRT) right-of-way in Heritage Valley on the south side of the City were appealed to the Court of Appeal, which granted leave for both, in *Edmonton (City) v Edmonton (City) Subdivision and Development Appeal Board* 2014 ABCA 337 and *HV Corner Ltd. v Edmonton (City)* 2015 ABCA 256. The appeals were withdrawn when the City and the developer resolved the issue, with the City agreeing to pay the developer 50% of the value of the land required for the LRT right-of-way.

[30] The Arterial Guidelines require arterial dedication with the first subdivision of the parent parcel; however, they were not approved by Council, were not policy, and adopted without consultation. The Urban Development Institute (UDI) filed a letter of objection with respect to the lack of engagement, stating the document was not properly vetted prior to adoption. The Arterial Guidelines take dedication from the first subdivision without addressing issue of sufficiency. The Heritage Valley SDAB decision

provided no guidance due to insufficient reasons, and there is no direction from the Court as the appeal did not proceed. In *Agro,* the LPRT followed *Canada Lands* and considered sufficiency.

[31] The proposed subdivision is a consolidation which could have been registered without subdivision approval had the parcels been within one section. The parcels to be created do not require any additional accesses or services. Neither parcel is a terminal subdivision, notwithstanding the City's suggestion that the 19.33 ha Parcel 2 may be terminal subdivision based on its commercial designation. Similar commercial development by the Appellant and related entities have been subdivided multiple times.

[32] The Appellant argued that the arterial road dedication was not required at this time for two reasons:

- It is highly unlikely that a DP application would be made for the entirety of Parcel 2 without further subdivision, but if even it were, it is inconceivable that the DP would be approved with only the existing road access and with servicing from the existing roads. Such a DP application would be refused, as the existing roads do not have sufficient capacity for the full development of Parcel 2. A small commercial development might be possible to build, but the entirety of Parcel 2 would not be developable without further road dedication and construction.
- Conditions 1.1 and 1.2 of the subdivision approval require municipal reserves to be provided by DRCs to be registered on the titles to Parcels 1 and 2. There is no condition requiring dedication of environmental reserves; therefore, the City clearly expects future subdivision of Parcel 2, at which time it will be able to acquire municipal and environmental reserves. This indicates the dedication is premature.

[33] The alignment of arterial roads and location of mass transit are conceptual and subject to change, as evidenced by the pending amendments. The ASP was first adopted in May 2013 as Bylaw 16353 and subsequently amended by Bylaws 17021, 18197, 19350, and 19773 in addition to the amendment currently before Council. The NSP was first adopted in November 2015 as Bylaw 17022 and subsequently amended with Bylaws 18198, 19606, and 19351 in addition to the current amendment. Plans and alignments change - in Heritage Valley the LRT dedication was provided for a particular alignment which changed, leaving odd parcels. For the subject area, there have been five ASP amendments in twelve years and four NSP amendments in ten years.

[34] The City's report to Council described four significant changes to the transportation network in the proposed amendments: relocation of the northeast-southwest running Arterial C to an east-west alignment and reconfiguring the site's collector roads, removal of a dedicated LRT right-of-way corridor and replacement with mass transit routing following arterial roadways, relocation of a Transit Centre and introduction of an additional interim access point on Manning Drive to supplement the existing interim access. It also stated that the extension of mass transit into Marquis is not anticipated to occur for several decades. The Appellant submitted that once a right of way is dedicated, there is no flexibility to make modifications.

[35] Condition 5 requires that the rights of way be cleared and leveled. This requirement, potentially decades prior to the roads being built, with an alignment that could change, is inconsistent with the City's policies with respect to protecting trees. For example, an infill development on a residential lot requires the mature trees to be marked and staked to protect the mature trees for preservation; however, this condition requires clearing and leveling, eliminating the trees potentially decades in advance of the road being built or knowing whether the trees will ever even need to be cut down if the alignment changes.

[36] The Appellant argued that the dedication exceeds 30% and provided an analysis of Parcel 1 which had a net area of 63.54 ha. At full build-out, the Appellant calculated that the area of the arterial,

collector, local roads and alleys; stormwater and other public utility lots; transit centre, and mass transit ROW, less compensation would result in a net 37.7% dedication or 7.7% over dedication

[37] In summary, the Appellant urged the LPRT to consider the *Agro* decision, specifically, whether arterial road dedication is needed for the subject creation of two block shells parcels at this time, as the alignment could change again over many decades. The mass transit is conceptual, and hypothetical - it could be different or not happen if not funded, better to wait to see what happens, what the alignment will be. These are huge parcels: Parcel 1 is bigger than a quarter section, there will be further opportunities in the planning process when there is a better idea of what is needed and the decision as to what is sufficient will have been better informed.

## FINDINGS

1. The *Act* allows for up to 30% dedication of land for roads and public utilities at every subdivision; however, land cannot be taken if sufficient land has been provided for that purpose.
2. The dedication of rights-of-way for arterial roadways and mass transit are not necessary for the subject subdivision application.
3. As the rights-of way are not necessary at this time, they should not be cleared and leveled as a condition of this subdivision approval.

## DECISION

[38] The appeal is allowed and the decision of conditional approval of the SA is varied as follows:

1. that the owner provide Municipal Reserve (MR) in the amount of 6.501 ha by a Deferred Reserve Caveat (DRC) registered against proposed Parcel 1 pursuant to Section 669 of the *Municipal Government Act*;
2. that the owner provide MR in the amount of 1.933 ha by a DRC registered against proposed Parcel 2 pursuant to Section 669 of the Municipal Government Act;
3. that the owner provide MR in the amount of 2.809 ha by a DRC registered against the remnant of Lot 1, Block B, Plan 212 1658 pursuant to Section 669 of the *Municipal Government Act;*
4. That a bylaw to amend the Area Structure Plan, a bylaw to amend the Neighbourhood Structure Plan, and a bylaw to amend the Horse Hill Catchment within Bylaw 14380 shall be approved, to align with this plan of subdivision, prior to endorsement of the plan of survey; and
5. that the owner pay all outstanding property taxes prior to the endorsement of the plan of survey.

Municipal Reserves for the NE 8-54-23-W4M, Lot 1, Block A, Plan 212 1658, Lot 1, Block B, Plan 212 1658, and Lot 1, Block C, Plan 212 1658 in the amount of 6.501 ha, 1.933 ha and 2.809 ha are being provided by Deferred Reserve Caveats with this subdivision, dependent upon final plan of survey.

**[39] FURTHER, the Appellant shall provide documentation to the City of Edmonton to demonstrate that the above noted conditions have been met, prior to the endorsement pursuant to sections 657 and 682 of the *Act*.**

**[40] AND FURTHER, this decision is valid for a period of one year from the date of this Order. Under section 657(4) of the *Act*, if the plan of subdivision or other instrument is not submitted to the subdivision authority within the time prescribed by section 657(1) or any longer period authorized by council, the subdivision approval is void.**

**REASONS**

**Issue 1 Does the *Act* allow for land dedication to be taken at every subdivision, even if it results in more than 30% dedication for the overall land?**

[41] Section 662 of the *Act* allows the SA to require land for roads and public utilities as a condition of subdivision.

> **662(1)** A subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land for the purpose of roads, public utilities or both.
>
> **(2)** The land to be provided under subsection (1) may not exceed 30% of the area of the parcel of land less the land taken as environmental reserve or as an environmental reserve easement.
>
> **(3)** If the owner has provided sufficient land for the purposes referred to in subsection (1) but the land is less than the maximum amount authorized by subsection (2), the subdivision authority may not require the owner to provide any more land for those purposes.

[42] Section 662(2) limits the SA from taking more than 30% of a parcel to be subdivided for roads and public utilities under a given application; however on a plain reading, this provision does not limit the SA from exercising its discretion to take land for roads and public utilities at each successive application. The implication is that the cumulative amount taken for this purpose may ultimately be greater than 30% if necessary. Notably, the *Act* takes a different approach to "reserve land": s. 666 allows the SA to take 10% of the land as municipal and school reserves (or money in lieu), but s. 663(d) prevents reserve land from being taken more than once in respect of the same land.

[43] In this case, the land requested for roads and public utilities in connection with the current subdivision application is less than 30%. The remaining question is whether land already taken for roads and public utilities is sufficient for these purposes, or whether more land should be taken as a condition of the current subdivision given the restriction placed by s. 662(3).

**Issue 2 Should the conditions of approval require dedication of the rights-of-way for arterial roadways and mass transit?**

[44] As explained by the Court of Appeal in *Canada Lands (at para 20),* the purpose of requiring lands dedication under s. 662 is

> … to provide roadways and public utilities which ultimately will be used by citizens of the municipality, including those residents in the subdivision.

The Court went on to note that while the land taken for roads under s. 662 need not necessarily be required to provide access to the subdivision, the SA's discretion is limited by subsection (3) to taking an

amount "sufficient" for that purpose. Where less than the statutory 30% maximum is sufficient, the SA cannot take more. The Court explained that the use of the word sufficient is intended to provide the SA with flexibility in identifying the amount required:

> In our view, the use of the word 'sufficient' in s. 662 equips the subdivision authority with flexibility in determining the amount of land required, but also limits the exercise of that discretion. The absence of wording in s. 662 limiting the obligation of an applicant for subdivision to provide roads "required to give access to the subdivision" suggests a legislative intent not to limit the discretion to require dedication in that respect.

[45] In the subject case, the proposed subdivision creates two very large parcels of land that are not likely to be developed immediately. The proposed parcels have access from the existing road network and do not appear to require public utilities. While the *Act* does not limit land dedication to provide roadways and public utilities to that required for a subject subdivision, the LPRT finds that for the proposed parcels, the existing roadways and public utilities are sufficient to serve the subject lands and the citizens of the municipality; as such, and additional land should not be taken for this purpose at this time. Of course, the SA remains free to take additional land for roads and public utilities at subsequent subdivision applications.

[46] The SA argued that it is not premature to take land for arterial roads and mass transit, because the land to be taken for this purpose under the disputed condition has been identified based on the most recent planning documents, including the significant proposed changes to the concept plan in the NSP; further, it stated dedication of land for arterial roads and mass transit at this stage in the planning process is beneficial from a planning perspective, in that it will provide structure to guide future planning and development and avoid the potential for future expropriation. The LPRT does not accept any of these propositions. First the LPRT notes the most recent proposed changes are in draft form and have not adopted by Council as of the date of this hearing. Second, in view of the anticipated time for build out and the history of multiple revisions to the City planning documents for this area, it will almost certainly be necessary to evaluate revisions to the ASP and NSP in response to changing conditions. Dedication of arterial roads and mass transit rights of way at this stage of development would unnecessarily constrain the potential for future planning revisions. Likewise, given the length of time anticipated before buildout, the current plans are likely to change prior to future subdivisions, and are inadequate to determine the location and quantity of land that will ultimately be needed (or sufficient) for that purpose. On balance, the LPRT finds the SA's condition requiring dedication of land for arterial roads and mass transit rights-of-way at this stage of this subdivision is premature and not supportable.

[47] The SA also stated that although Parcel 1 will be further subdivided, Parcel 2 may be a terminal subdivision due to its commercial designation; if so, the current subdivision application would be its last opportunity to take land for roads and public utilities without compensation in respect of Parcel 2. However, as previously noted, it is unclear at this stage of planning and development what land is sufficient the purposes of roads and public utilities. Further, the LPRT agrees with the Appellant's position that it is highly unlikely that Parcel 2 is a terminal subdivision. As noted by the Appellant, the SA has deferred reserves by caveat on both parcels, suggesting that it too anticipates future subdivision of Parcel 2. Under the circumstances, the LPRT finds on balance that the SA will have opportunity to obtain land for roads and public utilities on both parcels at a future subdivision, after more detailed analysis and planning has taken place.

[48] As the Court of Appeal noted in *Canada Lands*, land use planning decisions - including the imposition of conditions requiring sufficient land for roads and public utilities - involves weighing public and private interests. In this case, the LPRT finds public interest in not missing an opportunity to take land without compensation is outweighed by the risk to the landowner of surrendering land that may

ultimately not be needed for roads and public utilities and the public interest in sound and efficient land use planning, which would be jeopardized by premature dedication of land for these purposes.

[49] The LPRT noted the SA's request, made in its written submissions but not discussed at the hearing, that should the LPRT allow the appeal, a condition be added that the owner enter into a Deferred Arterial Dedication Agreement with the City of Edmonton, pursuant to s. 655 of the *Act*. It is unclear where, in s. 655, the *Act* gives authority to LPRT to require a deferred arterial dedication agreement as a condition of subdivision; in any event, the LPRT determined it would not be necessary as a condition for this subdivision, as the arterial roads can be required at an appropriate future subdivision.

**Issue 3 If it should be required, should the conditions of approval also require rights-of way be cleared and leveled by the landowner?**

[50] Having determined that the rights of way should not be dedicated at this time as a condition of this subdivision, the LPRT also determined the rights of way should not be cleared and levelled and deleted Condition 5.

**Other Approvals**

[51] The landowner/developer is responsible for obtaining all applicable permits for development and any other approvals or permits required by other enactments (for example, *Water Act*, *Environmental Protection Act*, *Nuisance and General Sanitation Regulation,* etc.) from the appropriate authority. The LPRT is neither granting nor implying any approvals other than that of the conditional subdivision approval. Any other approvals are beyond the scope of a subdivision appeal.

Dated at the City of Edmonton in the Province of Alberta this 6th day of March, 2025.

**LAND AND PROPERTY RIGHTS TRIBUNAL**

_____

(SGD) H. Kim, Member

**APPENDIX A**

PARTIES WHO ATTENDED, MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING:

| NAME | CAPACITY |
|---|---|
| J. Agrios | Kennedy Agrios Oshry Law, Counsel for Appellant |
| Y. Lew | Stantec, Appellant |
| E. Decorby | Stantec, Appellant |
| C. Brightwell | Cameron Communities, Landowner |
| P. Cavanagh | Development consultant |
| K. Haldane | City of Edmonton Law Branch, Respondent |
| C. Ashmore | City of Edmonton Law Branch, Respondent |
| M. Beraldo | Planner, City of Edmonton, Respondent |
| K. Sizer | Senior Planner, City of Edmonton, Respondent |
| B. Mcdowell | Subdivision Officer, City of Edmonton, Respondent |

**APPENDIX B**

DOCUMENTS RECEIVED PRIOR TO THE HEARING:

| NO. | ITEM |
|---|---|
| 1A | Notice of Appeal |
| 2R | Requested information package |
| 3R | Respondent submission |
| 4R | Respondent PowerPoint |
| 5A | Appellant Submission |
| 6A | Emails regarding jurisdiction |
| 7A | Emails regarding location of Horse Hill Creek |
| 8A | Ecological Network Report showing wetlands |
| 9A | Email and updated survey |
| 10 | SDAB decision S-24-002 |
| 11A | UDI Letter June 1, 2023 re. Guidelines for Arterial Construction with Subdivision |

**APPENDIX C**

**LEGISLATION**

The *Act* and associated regulations contain criteria that apply to appeals of subdivision decisions. While the following list may not be exhaustive, some key provisions are reproduced below.

***Municipal Government Act***

Purpose of this Part

Section 617 is the main guideline from which all other provincial and municipal planning documents are derived. Therefore, in reviewing subdivision appeals, each and every plan must comply with the philosophy expressed in 617.

> 617 The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted
>
> (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and
>
> (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,
>
> without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

Conditions of subdivision approval

Section 655(1) of the *Act* details the conditions of subdivision approval that may be imposed by the subdivision authority.

> 655(1) A subdivision authority may impose the following conditions or any other conditions permitted to be imposed by the subdivision and development regulations on a subdivision approval issued by it:
>
> (a) any conditions to ensure that this Part, including section 618.3(1), and the statutory plans and land use bylaws and the regulations under this Part affecting the land proposed to be subdivided are complied with;
>
> (b) a condition that the applicant enter into an agreement with the municipality to do any or all of the following:
>
> (i) to construct or pay for the construction of a road required to give access to the subdivision;
>
> (ii) to construct or pay for the construction of
>
> (A) a pedestrian walkway system to serve the subdivision, or
>
> (B) pedestrian walkways to connect the pedestrian walkway system serving the subdivision with a pedestrian walkway system that serves or is proposed to serve an adjacent subdivision,
>
> or both;
>
> (iii) to install or pay for the installation of a public utility described in section 616(v)(i) to (ix) that is necessary to serve the subdivision, whether or not the public utility is, or will be, located on the land that is the subject of the subdivision approval;
>
> (iv) to construct or pay for the construction of

(A) off-street or other parking facilities, and
(B) loading and unloading facilities;
(v) to pay an off-site levy or redevelopment levy imposed by bylaw;
(vi) to give security to ensure that the terms of the agreement under this section are carried out.

Land dedication

Section 661 and 662 of the *Act* discuss the authority for the SA to require the dedication of land at time of subdivision as follows:

661 The owner of a parcel of land that is the subject of a proposed subdivision must provide, without compensation,
(a) to the Crown in right of Alberta or a municipality, land for roads and public utilities,
(a.1) subject to section 663, to the Crown in right of Alberta or a municipality, land for environmental reserve, and
(b) subject to section 663, to the Crown in right of Alberta, a municipality, one or more school boards or a municipality and one or more school boards, land for municipal reserve, school reserve, municipal and school reserve, money in place of any or all of those reserves or a combination of reserves and money,
as required by the subdivision authority pursuant to this Division.

Roads, utilities, etc.

662(1) A subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land for the purpose of roads, public utilities or both.
(2) The land to be provided under subsection (1) may not exceed 30% of the area of the parcel of land less the land taken as environmental reserve or as an environmental reserve easement.
(3) If the owner has provided sufficient land for the purposes referred to in subsection (1) but the land is less than the maximum amount authorized by subsection (2), the subdivision authority may not require the owner to provide any more land for those purposes.

Circumstances under which reserves cannot be required

663 A subdivision authority may not require the owner of a parcel of land that is the subject of a proposed subdivision to provide reserve land or money in place of reserve land if
(a) one lot is to be created from a quarter section of land,
(b) land is to be subdivided into lots of 16.0 hectares or more and is to be used only for agricultural purposes,
(c) the land to be subdivided is 0.8 hectares or less, or
(d) reserve land, environmental reserve easement or money in place of it was provided in respect of the land that is the subject of the proposed subdivision under this Part or the former Act.

Municipal and school reserves

Section 666 of the *Act* describes when reserves can be taken and the form that they can be taken in.

666(1) Subject to section 663, a subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision

(a) to provide part of that parcel of land as municipal reserve, school reserve or municipal and school reserve,

(b) to provide money in place of municipal reserve, school reserve or municipal and school reserve, or

(c) to provide any combination of land or money referred to in clauses (a) and (b).

(2) The aggregate amount of land that may be required under subsection (1) may not exceed the percentage set out in the municipal development plan, which may not exceed 10% of the parcel of land less all land required to be provided as conservation reserve or environmental reserve or made subject to an environmental reserve easement.

(3) The total amount of money that may be required to be provided under subsection (1) may not exceed 10% of the appraised market value, determined in accordance with section 667, of the parcel of land less all land required to be provided as conservation reserve or environmental reserve or made subject to an environmental reserve easement.

(3.1) For greater certainty, for the purposes of calculating the 10% under subsection (2) or (3), the parcel of land includes any land required to be provided under section 662.

(4) When a combination of land and money is required to be provided, the sum of

(a) the percentage of land required under subsection (2), and

(b) the percentage of the appraised market value of the land required under subsection (3)

may not exceed 10% or a lesser percentage set out in the municipal development plan.

Section 669 of the *Act* provides for the SA to defer taking reserves for a subdivision approval to a future subdivision by caveat.

669(1) Despite sections 661(b) and 666, instead of requiring municipal reserve, school reserve or municipal and school reserve or money in place of any of them, a subdivision authority may direct that the requirement to provide all or part of those reserves be deferred against

(a) the remainder of the parcel that is the subject of the proposed subdivision approval, or

(b) other land of the person applying for subdivision approval that is within the same municipality as that parcel of land, or both.

(2) If a deferment is directed under subsection (1), the subdivision authority must file a caveat in a land titles office against the title of the land to which the direction relates.

(3) The direction for a deferment under subsection (1) must

(a) state the name of the applicant for subdivision approval,

(b) describe the land that is the subject of the application for subdivision approval,

(c) describe the land to which the deferment relates,

(d) state the area of the land referred to in clause (b), and

(e) state whether the deferment is in respect of municipal reserve, school reserve or municipal and school reserve.

(4) If an application for subdivision approval is made in respect of land against the title of which is filed a deferred reserve caveat under this section or a former Act, the subdivision authority may, in addition to requiring municipal reserve, school reserve or municipal and school reserve to be provided in accordance with this Division or a former Act, require to be provided all or part of the reserve land in respect of which a deferment was directed or

required under this section or a former Act.
(5) If deferred reserve is provided in accordance with subsection (4), the caveat must be discharged or amended accordingly.
(6) If a deferred reserve caveat was registered in a land titles office under a former Act in respect of land in respect of which under section 663 no reserve land could be required to be provided, the registered owner may apply to the Registrar to endorse the certificate of title with a memorandum cancelling the registration of the caveat.
(7) On being satisfied that subsection (6) applies to the deferred reserve caveat, the Registrar must endorse a memorandum on the certificate of title cancelling the registration of the caveat.

Appeals

Section 678 of the *Act* sets out the requirements for appeal of a decision by the subdivision authority.

678(1) The decision of a subdivision authority on an application for subdivision approval may be appealed
(a) by the applicant for the approval,
(b) by a Government department if the application is required by the subdivision and development regulations to be referred to that department,
(c) by the council of the municipality in which the land to be subdivided is located if the council, a designated officer of the municipality or the municipal planning commission of the municipality is not the subdivision authority, or
(d) by a school board with respect to
(i) the allocation of municipal reserve and school reserve or money in place of the reserve,
(ii) the location of school reserve allocated to it, or
(iii) the amount of school reserve or money in place of the reserve.
(2) An appeal under subsection (1) may be commenced by filing a notice of appeal within 14 days after receipt of the written decision of the subdivision authority or deemed refusal by the subdivision authority in accordance with section 681
(a) with the Land and Property Rights Tribunal
(i) unless otherwise provided in the regulations under section 694(1)(h.2)(i), where the land that is subject of the application
(A) is within the Green Area as classified by the Minister responsible for the Public Lands Act,
(B) contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site,
(C) is the subject of a licence, permit, approval or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board or Alberta Utilities Commission,
or
(D) is the subject of a licence, permit, approval or other authorization granted by the Minister of Environment and Parks,
or
(ii) in any other circumstances described in the regulations under section 694(1)(h.2)(ii),
or
(b) in all other cases, with the subdivision and development appeal board.

(2.1) Despite subsection (2)(a), if the land that is the subject-matter of the appeal would have been in an area described in subsection (2)(a) except that the affected Government department agreed, in writing, to vary the distance under the subdivision and development regulations, the notice of appeal must be filed with the subdivision and development appeal board.

…

(5) If the applicant files a notice of appeal within 14 days after receipt of the written decision or the deemed refusal with the wrong board, that board must refer the appeal to the appropriate board and the appropriate board must hear the appeal as if the notice of appeal had been filed with it and it is deemed to have received the notice of appeal from the applicant on the date it receives the notice of appeal from the first board.

…

Hearing and decision

Section 680(2) of the *Act* requires that LPRT decisions conform to the uses of land referred to in the relevant land use district of the LUB. It does not require that the LPRT abide by other provisions of the LUB, the MDP or the *Subdivision and Development Regulation*, although regard must be given to them.

680(2) In determining an appeal, the board hearing the appeal

(a) repealed 2020 c39 s10(48);

(a.1) must have regard to any statutory plan;

(b) must conform with the uses of land referred to in a land use bylaw;

(c) must be consistent with the land use policies;

(d) must have regard to but is not bound by the subdivision and development regulations;

(e) may confirm, revoke or vary the approval or decision or any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own;

(f) may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part.

***Matters Related to Subdivision and Development Regulation - Alberta Regulation 84/2022***

Application referrals

Section 7 of the *Regulation* deals with application referrals.

7

…

(6) On an application for subdivision being determined or deemed under section 653.1 of the *Act* to be complete, the subdivision authority must send a copy to

….

(e) the Deputy Minister of the Minister responsible for administration of the P*ublic Lands Act* if the proposed parcel

(i) is adjacent to the bed and shore of a body of water, or

(ii) contains, either wholly or partially, the bed and shore of a body of water;

Relevant considerations

While the LPRT is not bound by the *Subdivision and Development Regulation*, it is the LPRT's practice to

evaluate the suitability of a proposed site for the purpose intended using the criteria in section 9 as a guide.

9 In making a decision as to whether to approve an application for subdivision, the subdivision authority must consider, with respect to the land that is the subject of the application,

(a) its topography,

(b) its soil characteristics,

(c) storm water collection and disposal,

(d) any potential for the flooding, subsidence or erosion of the land,

(e) its accessibility to a road,

(f) the availability and adequacy of a water supply, sewage disposal system and solid waste disposal,

(g) in the case of land not serviced by a licensed water distribution and wastewater collection system, whether the proposed subdivision boundaries, lot sizes and building sites comply with the requirements of the *Private Sewage Disposal Systems Regulation* (AR 229/97) in respect of lot size and distances between property lines, buildings, water sources and private sewage disposal systems as identified in section 4(4)(b) and (c),

(h) the use of land in the vicinity of the land that is the subject of the application, and

(i) any other matters that it considers necessary to determine whether the land that is the subject of the application is suitable for the purpose for which the subdivision is intended.

…