

Properties

PIN 37313 - 0503 LT
Description LOTS 2, 3, 4, 5, 6 & 7 PL 555 ; PT LT 159 PL 529 & PT LT 20 CON 2 COLLINGWOOD
 ALL BEING PART 1 ON 16R10467; TOWN OF THE BLUE MOUNTAINS
Address BLUE MOUNTAINS

Consideration

Consideration \$0.00

Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

Name THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS
Address for Service 32 Mill Street, Box 310
 Thornbury, ON N0H 2P0

This document is not authorized under Power of Attorney by this party.
 This document is being authorized by a municipal corporation WILL THOMSON, DIRECTOR OF LEGAL SERVICES.

Party To(s)	Capacity	Share
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<i>Name</i>	MACPHERSON BUILDERS (BLUE MOUNTAINS) LIMITED
<i>Address for Service</i>	5525 Eglinton Avenue West, Suite 128 Etobicoke, ON M9C 5K5

A person or persons with authority to bind the corporation has/have consented to the registration of this document.
 This document is not authorized under Power of Attorney by this party.

Statements

This notice is pursuant to Section 71 of the Land Titles Act.
 This notice is for an indeterminate period
 Schedule: See Schedules

Signed By

Debra-Ann Katherine Young	32 Mill Street Thornbury N0H 2P0	acting for Applicant(s)	Signed 2023 03 24
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Tel 519-599-3131
 Fax 519-599-3018

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

THE TOWN OF BLUE MOUNTAINS	32 Mill Street Thornbury N0H 2P0	2023 03 24
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Tel 519-599-3131
 Fax 519-599-3018

Fees/Taxes/Payment

<i>Statutory Registration Fee</i>	\$69.00
<i>Total Paid</i>	\$69.00

SUBDIVISION PRE-SERVICING/TREE-CUTTING AGREEMENT

THIS AGREEMENT dated the 23 day of, March, 2023

BETWEEN:

MACPHERSON BUILDERS (BLUE MOUNTAINS) LIMITED
(hereinafter called the "Owner")

- and -

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS
(hereinafter called the "Municipality")

WHEREAS the Owner is the registered owner of lands described in Schedule "A" (the "Lands");

AND WHEREAS the Owner proposes to develop the Lands pursuant to draft approved plan of subdivision;

AND WHEREAS the Owner desires to commence the installation, construction and provision of certain works on the Lands prior the execution of the subdivision agreement with the Municipality, as such works are more particularly set out in Schedule "B" and shown on the Approved Plans identified therein (the "Works");

AND WHEREAS the Municipality has agreed to permit the Owner to undertake certain Works as requested on the terms and conditions as set out in this Agreement;

AND WHEREAS this Agreement will be registered on title to the Lands;

AND WHEREAS the parties to this Agreement declare that the recitals herein are true.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of other good and valuable consideration and the sum of TWO DOLLARS (\$2.00) of lawful money of Canada now paid by each of the parties hereto to each of the other parties hereto, the receipt whereof is hereby acknowledged, the parties hereto hereby covenant, promise and agree with each other as follows:

1. Permission to Construct

The Municipality grants permission to the Owner to commence certain Works, as more particularly set out in Schedule "B", on the Lands in advance to the execution of a subdivision agreement between the Owner and the Municipality.

2. Construction of Works

The Owner covenants and agrees to:

- a) retain a professional consulting engineer experienced in the municipal engineering field who will carry out all necessary engineering requirements associated with the construction and installation of the Works;
- b) construct and install the Works in a good and workmanlike manner and in accordance with all of the Municipality's standards and practices and only in accordance with the approved plans for the Works;
- c) not undertake any construction or installation of the Works in contravention of the Municipalities Noise By-law, or such other dates and times as may be established by the Municipality from time to time;
- d) not undertake work on any proposed public right-of-way, which includes any public highways, easements or reserves, prior to the execution of the required subdivision agreement.

3. Owner's Acknowledgments

The Owner acknowledges and agrees that:

- a) it is being given permission to commence construction and installation of the Works prior to the execution of the subdivision agreement and that any work it undertakes in furtherance thereof will be at its sole and absolute risk;
- b) it will be bound by the terms and conditions of the subdivision agreement and that nothing contained in this Agreement or in the Municipality's grant of the permission to proceed with the installation and construction of the Works will estop the Municipality from imposing any of its standard conditions and requirements pertaining to the installation of public works or from enforcing its authority to require the Owner to fully comply with all applicable conditions of approval of the plan of subdivision;
- c) it may be required to modify, alter, relocate and reconstruct certain of the Works based on the final drawings and plans approved by the Municipality;
- d) it will comply with every direction issued or given by the Municipality during the course of pre-servicing, including but not limited to the cessation of work, the installation or carrying out of additional works, the phasing of Works construction and installation or any other matter the Municipality deems to be in the interest of the proper development of the Lands and surrounding areas;
- e) that it is not being given any permission to carry out any works or to enter upon any lands not owned by it, except for lands owned by the Municipality, without the written consent of the owner and that such consent shall be filed with the Municipality;
- f) that it cannot connect any Works to any public services on any municipal right-of-way;
- g) the Municipality will be under no obligation whatsoever to complete all or any portion of the Works if the Owner fails to complete them but that, notwithstanding the foregoing, the Municipality shall, at its sole and absolute discretion, be entitled to enter onto the Lands and complete any Works or portion of the Works and to take any action it deems necessary to safeguard the health and safety of its residents all at the Owner's expense;
- h) this agreement shall permit only the Works as set out in Schedule "B", and more specifically, that the permitted Works is restricted to the cutting of trees as shown on the

Approved Plans set out in Schedule "B" ("Approved Plans") and does not include the removal of stumps or any earthworks or site grading;

- i) it shall only remove trees and vegetation which are identified on the Approved Plans as to be removed;
- j) It shall not remove any trees or vegetation within 20 metres of an open and maintained public road except for those trees required to be removed to gain access to the site AND as shown on the Approved Plans;
- k) It shall reasonably repair the ground and mitigate the ponding of water, including smoothing or filling of divots or tracks, which is caused by the use of heavy machinery or vehicles in undertaking the Works;
- l) it shall follow all recommendations within the Approved Plans and take all reasonable steps to protect trees and vegetation which are to be preserved from damage or harm, including, but not necessarily limited too:
 - a. delineating all tree or vegetation protection areas with flagging and physical fencing;
 - b. ensuring that all tree or vegetation protection zones are appropriately sized to avoid accidental damage to trees and vegetation or root compaction;
 - c. ensuring all contractors on site have been provided with the Approved Plans and understand the limits of permitted tree and vegetation cutting;
- m) it will be required to enter into a further pre-servicing agreement or subdivision agreement with the Municipality prior to undertaking any work or construction on the Lands other than those Works contemplated and approved by this agreement;
- n) this Agreement, including the Schedules and Approved Plans, are deemed to be public documents which the Municipality may post on its website or otherwise make freely available to the public, and the Owner hereby consents to the same;
- o) that a minimum of (six) 6 business days prior to the commencement of any work on the Lands, the Owner shall provide to the Municipality a Communications Plan that shall include, at a minimum:
 - a. a summary statement of the proposed works to be completed;
 - b. Digital copies of all Approved Plans, drawings, reports, and agency/third party sign-off, as applicable;
 - c. The proposed start date and estimated end date of the proposed works, the intended hours of operation, and a summary of the equipment to be used;

4. Inspection and Right of Entry

The Owner covenants and agrees that the Municipality and any of its employees or agents may enter onto the Lands at any time upon reasonable notice being provided to the Owner in accordance with Section 11 in order to make all necessary inspections and to correct any deficiencies or remedy any other defects arising from or relating to the construction and installation of the Works.

5. Compliance with All Laws and Regulations

The Owner covenants and agrees to comply with all federal, provincial and municipal laws, rules, by-laws and regulations in constructing, installing or otherwise providing the Works.

6. Insurance

- (a) Prior to commencing any work on the Lands the Owner shall take out and keep in full force and effect, at its sole cost and expense, the following minimum insurance:
- (i) Commercial General Liability insurance applying to all operations of the Owner which shall include coverage for bodily injury liability, property damage liability, products and completed operations liability, contractor's protective liability, contractual liability, non-owned automobile liability, contingent employers liability and employees as additional insured.
- This policy shall contain no exclusions for damage or loss from blasting, vibration, pile driving, the removal or weakening of support, shoring, and underpinning or from any other activity or work that may be done in connection with the development of the Plan.
- This policy shall be written with limits of not less than FIVE MILLION DOLLARS (\$5,000,000) exclusive of interest or costs, per occurrence and shall include the Municipality as an additional insured.
- This policy shall provide primary insurance coverage and not excess to any other insurance available to the Municipality.
- (ii) Automobile Liability (Owned and/or Leased Vehicles) insurance with an inclusive limit of liability of not less than FIVE MILLION DOLLARS (\$5,000,000) exclusive of interest or costs, per occurrence for loss or damage resulting from bodily injury to or death of one or more persons and for loss or damage to property. This policy must cover all vehicles owned, leased or operated by or on behalf of the insured.
- (b) These policies shall not be terminated, cancelled, or materially altered unless written notice, by registered mail, of such termination, cancellation, or material alteration is given by the insurers to the Municipality at least sixty (60) days before the effective date thereof.
- (c) The premiums on these policies must be paid initially for a period of one year and the policies shall be renewed for further one-year periods until all the Works required under this Agreement are installed and assumed by the Municipality. If required by the Municipality, the Owner shall prove to the satisfaction of the Municipality that all premiums on these policies have been paid and that all insurance is in full force and effect.
- (d) The Owner shall deliver with this Agreement (if not previously delivered) certified copies of these policies of insurance or a certificate of insurance setting out the essential terms and conditions of insurance, the form and content of which shall be satisfactory to the Municipality.
- (e) The Owner shall file a renewal certificate with the Municipality not later than one (1) month before the expiry date of any policy provided pursuant to this Agreement, until the Municipality has indicated in writing that the policy need not continue in force any longer.

In the event that such renewal certificate is not received, the Municipality shall be entitled to either renew the policy at the expense of the Owner or to order that all work on the Lands cease until the policy is renewed.

- (f) These policies shall provide for cross-liability and severability of interest protecting the Municipality against claims by the Owner as it were separately insured and providing that the Municipality shall be insured notwithstanding any breach of any condition in the policy by any other insured.

7. Indemnification and Release

The Owner covenants and agrees to indemnify and save the Municipality completely harmless from and against all actions, suits, claims or demands which may arise either directly or indirectly by reason of the permission granted hereunder and the construction and installation of the Works on the Lands or by reason of the maintenance or lack of maintenance of the Works or by reason of any defect in workmanship or material. The Owner further covenants and agrees to release and forever discharge the Municipality from and against any and all actions, suits, claims or demands which may arise either directly or indirectly by reason of the permission granted hereunder and the construction and installation of the Works on the Lands in advance of the execution of the subdivision agreement.

8. Security

- a) In order to guarantee compliance with all conditions contained herein, the Owner covenants and agrees to file with the Municipality, upon execution of this Agreement, security in the amount of \$50,000.00. The security shall be in a form approved by the Municipality. The Owner acknowledges and agrees that should there be a deficiency in or failure to carry out any work or matter required by any clause of this Agreement, or if the Owner undertakes work not authorized by the Approved Plans, and the Owner fails to comply within ten (10) days written notice with a direction to carry out such work or matter or remedy the defect, the Municipality may draw on the security, in whole or in part, and enter onto the Lands and complete all outstanding Works or associated matters, including remedying a defect, and pay all costs and expenses incurred thereby from the proceeds so drawn. The Owner acknowledges that the Municipality reserves the right to draw on the security to complete any Works, rectify any Works undertaken other than those permitted by this Agreement, or other associated matters required to be done by the Owner pursuant to this Agreement.
- b) Wherever security is required to be filed with the Municipality, the Owner may deposit cash or a certified cheque to be cashed or an irrevocable letter of credit (in a form approved by the Municipality) in an amount equal to the total security required and such deposit shall be held by the Municipality as security in accordance with this Agreement provided that no interest shall be payable on any such deposit. The Owner acknowledges that upon the transfer of ownership of any of the subject lands, the Municipality will not return any security required under this Agreement until the new Owner(s) files substitute security in the required amounts.

- c) The Municipality shall not be obligated to return the Security to the Owner until the Owner files replacement Security pursuant to a subsequent pre-servicing or subdivision agreement for the Lands.

9. Withdrawal of Permission

The Owner acknowledges and agrees that the Municipality is entitled to withdraw its permission granted herein for the installation and construction of the Works if it is determined, in the sole and absolute discretion of the Municipality, that such withdrawal is in the best interests of the Municipality. Upon notification of such withdrawal of permission, the Owner covenants and agrees to immediately cease any further construction, installation or other work in respect of the Works. The Owner acknowledges that it shall have no claim against the Municipality if it exercises its right to withdraw the permission granted under this Agreement and it specifically waives and disclaims its rights to make any claim in connection therewith.

10. Transfer of Lands

The Owner covenants and agrees that in the event it transfers or conveys the Lands to a third party prior to the execution of the subdivision agreement, that it shall, prior to completing the transfer, provide the Municipality with an executed agreement from the third party in a form satisfactory to the Municipality whereby the third party agrees to a complete assumption of the terms of this Agreement and to be bound by this Agreement as if it had been the original signatory.

11. Notice

- a) If any notice is required to be given by the Municipality to the Owner with respect to this Agreement, such notice shall be mailed, delivered or sent by facsimile transmission:

Mr. Russell Higgins
MacPherson Builders (Blue Mountains) Limited
5525 Eglinton Avenue West, Suite 128
Etobicoke, Ontario M9C 5K5
Tel: 905-882-8000
Fax: 905-882-8001
Email: russell@macphersonbuilders.com

or such other address of which the Owner has notified the Clerk, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of this Agreement.

- b) If any notice is required to be given by the Owner to the Municipality with respect to this Agreement, such notice shall be mailed, delivered or sent by facsimile transmission to:

Adam Smith
Director of Planning and Development Services
Town of The Blue Mountains, 32 Mill Street, P.O. Box 310, Thornbury, ON N0H 2P0
Tel: 519-599-3131
Fax: 519-599-2093
Email: directorpds@thebluemountains.ca

or such other address of which the Municipality has notified the Owner, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of this Agreement.

12. Termination of Agreement

- a) If a subdivision agreement relating to the Lands has not been executed between the Owner and the Municipality within one (1) year from the date of execution of this Agreement, the Municipality may, at its option and on twenty (20) days written notice to the Owner in accordance with Section 11, declare this Agreement to be null and void and of no further effect. The Municipality may, in writing and at its sole and absolute discretion, extend the termination of this Agreement for additional one (1) year periods.
- b) The Owner agrees that if the Municipality terminates this agreement in accordance with this Section, the Municipality shall be entitled to draw on the Security and use those funds to:
 - I. Undertake any necessary work to ensure the Lands are in a safe and acceptable state of repair, including fencing;
 - II. restore the Lands, including landscaping, seeding/sodding, and the planting of trees, to the Municipalities sole and absolute satisfaction.

13. Registration of Agreement

The Owner covenants and agrees that this Agreement and any schedules attached hereto may be registered upon title to the lands and that such registration shall be at the instance of the Municipality and at its sole and absolute discretion. The Owner further covenants and agrees to pay all costs associated with the preparation and registration of this Agreement, as well as all other costs incurred by the Municipality as a result of the registration of any other documents pertaining to this Agreement, including but not limited to, any amendment thereto.

14. No Fettering of Discretion

Notwithstanding any other provision of this Agreement, the Owner expressly acknowledges and agrees that none of the provisions of this Agreement (including a provision stating the parties' intention) is intended to operate, nor shall have the effect of operating, in any way to fetter the discretion of the Municipality and its Council in the exercise of any of its discretionary power, duties or authorities, including without limitation, the authority to approve, approve with conditions or deny draft plan approval of the application for approval of a draft plan of subdivision filed by the Owner. The Owner expressly acknowledges and agrees that it will not obtain any advantageous planning or other consideration or treatment, including approval of a draft plan of subdivision for the Lands, by virtue of it having entered into this Agreement.

15. Applicable Law

This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

16. Successors and Assigns

It is hereby agreed by and between the parties hereto that this Agreement shall be enforceable by and against the parties hereto, their heirs, executors, administrators, successors and assigns and that the Agreement and all the covenants by the Owner herein contained shall run with the Lands.

17. Counterparts

The Parties agree that this agreement may be executed in any number of counterparts (including counterparts by email or facsimile) and all such counterparts taken together shall be deemed to constitute one and the same instrument.

18. Electronic Signatures

The Parties consent and agree to the use of electronic signatures pursuant to the *Electronic Commerce Act 2000*, SO 2000, c17 as amended from time to time with respect to this Agreement.

IT IS HEREBY DECLARED THAT this Agreement and the covenants, provisions, conditions and schedules herein contained shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their corporate seals duly attested to by their proper signing officers in that behalf.

SIGNED, SEALED AND DELIVERED	)	MACPHERSON BUILDERS (BLUE
	)	MOUNTAINS) LIMITED
)	
)	_____
	)	Name: Russell Higgins
	)	Title: Authorized Signing Officer
)	
	)	I/WE have the authority to bind the
	)	Corporation
)	
	)	THE CORPORATION OF THE TOWN
	)	OF THE BLUE MOUNTAINS
)	
)	_____
	)	Mayor – Andrea Matrosovs
)	
)	_____
	)	Clerk – Corrina Giles

Schedule "A"
DESCRIPTION OF LANDS

Lots 2, 3, 4, 5, 6 and 7, Registered Plan 555 and
Part of Lot 159, Registered Plan 529 and
Part of Lot 20, Concession 2 (Formerly Township of Collingwood)
Town of the Blue Mountains, County of Grey
(PINs 37313-0503 and 37313-0122)

SCHEDULE "B"
"WORKS" TO BE CONSTRUCTED/"APPROVED PLANS"

The Owner must provide a plan or plans (singularly or collectively referred to as the "Plan") to the Municipality's satisfaction and the same must be accepted and stamped accordingly by the Municipality prior to the commencement of any work on the Lands.

The Plan must be in accordance with Section 5.1.4.7 of the Municipality's Official Plan and include, at a minimum, the following:

1. The Plan shall be required to identify the existing trees, woodlands and other vegetation, including hedgerows, and identify those which are to be protected, relocated or planted in order to protect the natural environment and the visual and cultural heritage landscape character.
2. The Plan shall identify:
 - a. the species, height and age of existing woodlots, identified through the Environmental Constraints Impact Assessment and/or Environmental Impact Study,
 - b. specifications for the protection of existing vegetation (including but not limited to protective fencing beyond the dripline for individual trees or masses of vegetation),
 - c. a detailed assessment of the vegetation to be retained, removed or relocated including the rationale.
3. Protective fencing shall be erected outside the dripline of any vegetation to be protected. There shall be no alteration of grades or disturbance (including storage of construction materials, equipment or fuel, or refueling of equipment) within the fenced area.
4. Existing surface and groundwater availability are important to the viability of vegetation to be protected. As such, alterations to existing grades and drainage patterns outside of the protected areas will be minimized in order to maintain existing drainage, surface and groundwater availability.
5. The Plan shall incorporate results of the identified Environmental Constraints Impact Assessment and/or Environmental Impact Study all of which shall be reflected on the Plan.

APPROVED PLANS:

The following plans prepared by Crozier Consulting Engineers for Project 721-3464, and stamped "Accepted for Tree Cutting Only" by the Town on March 22/23

1. Plan SED1A – Phase 1 Tree Clearing Erosion and Sediment Control Plan
2. TMP-1 – Tree Management Plan
3. LD-1 – Landscape Detail