

**MAURICE YELLE EXCAVATION LTD. AGGREGATE RESOURCES ACT APPLICATION, OMB FILE NO. MM160070 PROPOSED SETTLEMENT – *IN CAMERA* – LITIGATION OR POTENTIAL LITIGATION, AFFECTING THE CITY, INCLUDING MATTERS BEFORE ADMINISTRATIVE TRIBUNALS; RECEIPT OF ADVICE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE, INCLUDING COMMUNICATIONS NECESSARY FOR THAT PURPOSE. REPORTING OUT DATE: UPON RESOLUTION OF THE MATTER**

**MAURICE YELLE EXCAVATION LTD – APPLICATION DE LA *LOI SUR LES RESSOURCES EN AGRÉGATS*, RÈGLEMENT PROPOSÉ POUR LE DOSSIER N° MM160070 À LA CAMO – RÉUNION À HUIS CLOS – LITIGES ACTUELS OU ÉVENTUELS, Y COMPRIS LES QUESTIONS DONT LES TRIBUNAUX ADMINISTRATIFS SONT SAISIS, AYANT UNE INCIDENCE SUR LA MUNICIPALITÉ; CONSEILS PROTÉGÉS PAR LE PRIVILÈGE DU SECRET PROFESSIONNEL DE L'AVOCAT, Y COMPRIS LES COMMUNICATIONS NÉCESSAIRES À CETTE FIN. DATE DE COMPTE RENDU : SUR RÉOLUTION DE LA QUESTION**

### **COMMITTEE RECOMMENDATION**

**That Council approve the settlement of the objection by the City of Ottawa to the application for a license under the *Aggregate Resources Act* (Ontario Municipal Board File No. MM160070) on the basis of the terms outlined in this report and with the settlement agreement subject to execution by and with language satisfactory to the General Manager, Planning, Infrastructure and Economic Development and the City Clerk and Solicitor.**

### **RECOMMANDATION DU COMITÉ**

**Que le Conseil approuve le règlement de l'objection présentée par la Ville d'Ottawa concernant la demande d'un permis en vertu de la *Loi sur les ressources en agrégats* (n° de dossier MM160070 à la Commission des affaires municipales de l'Ontario), sous réserve des conditions décrites dans le présent rapport, l'entente de règlement devant être signée par le directeur général de la Direction générale de la planification, de l'infrastructure et du développement économique et le greffier municipal et avocat général, et son libellé devant être à la satisfaction de ceux-ci.**

### **DOCUMENTATION / DOCUMENTATION**

1. City Clerk and Solicitor's Report, dated 29 June 2017 (ACS2017-CMR-LEG-0004).

Rapport du Greffier municipal et avocat général, daté le 29 juin 2017 (ACS2017-CMR-LEG-0004).

2. Extract of draft Confidential Minutes, Agriculture and Rural Affairs Committee, 6 July 2017.

Extrait de l'ébauche du procès-verbal confidentiel du Comité de l'agriculture et des affaires rurales, le 6 juillet 2017.

**AGRICULTURE AND RURAL  
AFFAIRS COMMITTEE  
CONFIDENTIAL REPORT 26A  
12 JULY 2017**

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**COMITÉ DE L'AGRICULTURE ET  
DES AFFAIRES RURALES  
RAPPORT CONFIDENTIEL 26A  
LE 12 JUILLET 2017**

**Report to  
Rapport au:**

**Agriculture and Rural Affairs Committee  
Comité de l'agriculture et des affaires rurales  
6 July 2017 / 6 juillet 2017**

**and Council  
et au Conseil  
12 July 2017 / 12 juillet 2017**

**Submitted on June 29, 2017  
Soumis le 29 juin 2017**

**Submitted by  
Soumis par:  
M. Rick O'Connor,  
City Clerk and Solicitor / Greffier Municipal et avocat général  
Office of the City Clerk and Solicitor / Bureau du greffier municipal et de l'avocat  
général**

**Contact Person  
Personne ressource:  
Tim Marc, Senior Legal Counsel-Planning, Development and Real Estate /  
Conseiller juridique principal-planification, développement et immobilier  
(613) 580-2424 ext. 21444, Timothy.Marc@ottawa.ca**

**Ward: OSGOODE (20)**

**File Number: ACS2017-CMR-LEG-0004**

**SUBJECT: MAURICE YELLE EXCAVATION LTD. AGGREGATE RESOURCES  
ACT APPLICATION, OMB FILE NO. MM160070 PROPOSED  
SETTLEMENT – *IN CAMERA* – LITIGATION OR POTENTIAL  
LITIGATION, AFFECTING THE CITY, INCLUDING MATTERS BEFORE**

**ADMINISTRATIVE TRIBUNALS; RECEIPT OF ADVICE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE, INCLUDING COMMUNICATIONS NECESSARY FOR THAT PURPOSE. REPORTING OUT DATE: UPON RESOLUTION OF THE MATTER**

**OBJET: MAURICE YELLE EXCAVATION LTD – APPLICATION DE LA *LOI SUR LES RESSOURCES EN AGRÉGATS*, RÈGLEMENT PROPOSÉ POUR LE DOSSIER N<sup>o</sup> MM160070 À LA CAMO – RÉUNION À HUIS CLOS – LITIGES ACTUELS OU ÉVENTUELS, Y COMPRIS LES QUESTIONS DONT LES TRIBUNAUX ADMINISTRATIFS SONT SAISIS, AYANT UNE INCIDENCE SUR LA MUNICIPALITÉ; CONSEILS PROTÉGÉS PAR LE PRIVILÈGE DU SECRET PROFESSIONNEL DE L'AVOCAT, Y COMPRIS LES COMMUNICATIONS NÉCESSAIRES À CETTE FIN. DATE DE COMPTE RENDU : SUR RÉOLUTION DE LA QUESTION**

## **REPORT RECOMMENDATIONS**

It is recommended that Agriculture and Rural Affairs Committee refer the following recommendation to Council:

Council approve the settlement of the objection by the City of Ottawa to the application for a license under the *Aggregate Resources Act* (Ontario Municipal Board File No. MM160070) on the basis of the terms outlined in this report and with the settlement agreement subject to execution by and with language satisfactory to the General Manager, Planning, Infrastructure and Economic Development and the City Clerk and Solicitor

## **RECOMMANDATIONS DU RAPPORT**

Il est recommandé que le Comité de l'agriculture et des affaires rurales adresse la recommandation suivante au Conseil :

Que le Conseil approuve le règlement de l'objection présentée par la Ville d'Ottawa concernant la demande d'un permis en vertu de la *Loi sur les ressources en agrégats* (n<sup>o</sup> de dossier MM160070 à la Commission des affaires

municipales de l'Ontario), sous réserve des conditions décrites dans le présent rapport, l'entente de règlement devant être signée par le directeur général de la Direction générale de la planification, de l'infrastructure et du développement économique et le greffier municipal et avocat général, et son libellé devant être à la satisfaction de ceux-ci.

## BACKGROUND

In fall 2013 Maurice Yelle Excavation Ltd. submitted an application for a new license under the *Aggregate Resources Act* to extract sand and gravel below the water table on lands municipally known as 1792 Old Prescott Road and 1818 Old Prescott Road. 1792 Old Prescott Road is currently licensed as a sand and gravel pit however this license limits extraction to material available above the water table.

There are three proposed phases to the mineral extraction. Phases 1 and 2 are on the northerly parcel at 1792 Old Prescott Road. Phase 3 is proposed on lands to the south of the previous phases on 1818 Old Prescott Road. Separating the northerly two phases and the southerly final phase of the operation is a city-owned unopened road allowance.

Because the lands are already zoned for aggregate extraction, a *Planning Act* application is not necessary to establish the proposed sand and gravel pit. Both the existing and proposed operations can be lawfully established under the current zoning by-law and the City is a commenting agency for the new provincially-issued license.

Phases 2 and 3 of the proposed operation will be within the Area of Influence of the Shadow Ridge (Greely) Municipal well. The Shadow Ridge well is an overburden well influenced by surface activities and thus there has been concern by the City that the operation could put drinking water resources at greater risk. In particular, as the sand and gravel is to be extracted from below the water table, there is a concern that the operation could provide an entry point for contaminants into the groundwater and put the nearby municipal well at risk. Due in large part to this concern the City objected to the application for a license in February 2014.

The location of the Shadow Ridge development, the current production wells and the land subject to the license application are shown on Document 1.

## **DISCUSSION**

### Shadow Ridge Wells

As outlined in the 2014 and 2015 Drinking Water Quality Management System Annual Reports, while nitrate levels are well below the Maximum Allowable concentration, there is evidence of an increasing trend in nitrate concentration in the groundwater wells in Shadow Ridge. To address this concern and to mitigate against any possible impacts from an expansion of the Maurice Yelle Excavation Ltd. operation, it is the opinion of Water Services and Infrastructure staff that it would be appropriate to drill two new production wells to the deeper Nepean formation, approximately 80-100 metres below the surface. The Nepean formation is a deep source of water that is considered less vulnerable to potential contamination because it is separated from the surface aquifer by layers of glacial till.

Should the new wells be drilled, studies would also be required to determine the wellhead protection area for these wells and a modification would have to be made to the Raisin-South Nation Source Protection Plan. A high level estimate of the total cost involved is in the order of \$300,000 to \$500,000. It is expected that deeper wells would have reduced vulnerability to potential contamination and this may safely allow for sand and gravel extraction by Maurice Yelle Excavation Ltd. on their lands.

### Extraction of Sand and Gravel

As stated above, City staff are concerned that extraction of sand and gravel within the wellhead protection area for the current production wells could create a preferential pathway for contaminants to enter the shallow aquifer in the vicinity of the Shadow Ridge well. This led the City to seek limitations on sand and gravel extraction in that area. In addition, as also noted above, the City has an unopened road allowance which bisects the lands owned by Maurice Yelle Excavation Ltd. Sand and gravel extraction is not permitted within 30 metres of a road. As a result of the unopened road allowance, this means that there is 60 metres horizontally from which aggregate cannot be removed. Further, there would also be the potential of aggregate within the 20 metre wide unopened road allowance.

Proposed Settlement

The following factors discussed above have led to a settlement proposal in this matter:

- a) The desirability of having deeper wells to ensure a safer supply of water
- b) The likely ability for sand and gravel extraction closer to the property line with a deeper well
- c) A closure and sale of the unopened road allowance (as shown in Document 2) would permit the extraction of sand and gravel within an 80 metre horizontal area.

The proposed settlement of issues tied to the matter of the production wells are as follows:

1. Maurice Yelle Excavation Ltd. will make a contribution of \$260,000 for the cost of the studies and the construction of two, new, deep wells to replace the existing Shadow Ridge Communal Wells.
2. The location of the new wells, though not yet determined, will be no further south than the location of the current wells. The City will make best efforts to determine if the new wells can be located further to the north.
3. The City will extend best efforts to complete construction of the new wells by the end of 2021. The commencement of construction is conditional upon the City owning the land upon which the new wells are to be located.
4. The setback for extraction from the existing wells will be the current wellhead protection area. The setback for extraction from the new wells shall not be greater than 100 m and shall be determined through the source water protection studies and best efforts shall be made to establish a setback of 30 metres from the property line once the new wells have been constructed and have become operational.
5. The groundwater monitoring program for the sand and gravel pit will be carried out in accordance with what is agreed upon with the Ontario Ministry of the

Environment and Climate Change in regard to sampling frequency and parameters and has been incorporated in the latest Site Plan. The monitoring program for the sand pit will be reviewed and amended accordingly within 36 months (or less) and once the new communal wells become operational and the existing communal wells are properly abandoned.

An integral part of this settlement is also the acquisition by Maurice Yelle Excavation Ltd. of the portion of the unopened road allowance shown on Document 2. The notification of the proposal for the closing of this road allowance has produced an objection which will be considered by Committee the same date as this report. Subject to the confirmation of this settlement proposal by Council, approval of the road closing and execution of a settlement agreement, the unopened road allowance will be closed and conveyed to Maurice Yelle Excavation Ltd. for a consideration, based upon a market rate assessment.

#### Ancillary Matters – License Application

As part of the resolution with respect to the City's objection to the license application, the applicant has agreed to make certain changes to their site plan under the *Aggregate Resources Act*. These are set forth in Document 3.

#### All-Terrain Vehicle Network

The road allowance shown on Document 2 is identified as a potential link in an All-Terrain Vehicle (ATV) network. This network is subject to a ATV pilot program within Osgoode Ward that was initially approved with an initial expiration date of November 30, 2015, subsequently extended in 2015 to November 30, 2017.

This road segment is not presently in use. Maurice Yelle Excavation Ltd. has stated to the City that it is prepared to exercise reasonable efforts to provide an alternative link if such will not negatively impact its ability to obtain an aggregate license if issues such as liability and insurance requirements can be resolved.



## **RURAL IMPLICATIONS**

This settlement will promote development in the rural area, both through the extraction of aggregate resources and the development of land for residential purposes.

## **CONSULTATION**

As this is a proposed settlement of an appeal before the Ontario Municipal Board, no consultation has been conducted.

## **COMMENTS BY THE WARD COUNCILLOR(S)**

Councillor Darouze is aware of this report.

## **LEGAL IMPLICATIONS**

The principles outlined in this report, including Document 3, should serve to reach a resolution with respect to the Maurice Yelle Excavation Ltd. application for a licence under the *Aggregate Resources Act*. It will also serve to assist in resolving the appeal by the owner of the Shadow Ridge subdivision in its appeal of its Phase 3 subdivision conditions.

## **RISK MANAGEMENT IMPLICATIONS**

There are no risk management implications association with the recommendation in this report.

## **ASSET MANAGEMENT IMPLICATIONS**

The information documented in this report is consistent with the [City's Comprehensive Asset Management \(CAM\) Program](#) objectives. The construction of two new deeper wells to be maintained together with the other water infrastructure located at the Shadow Ridge development supports a forward looking approach to meet future challenges, including legislative and environmental factors.

Operation, maintenance and capital renewal works associated with the proposed pond are consistent with existing practices. The anticipated ongoing operation, maintenance

and future renewal costs will be captured as part our budget updates, Long Range Financial Plans and Asset Management Plans.

### **FINANCIAL IMPLICATIONS**

The total cost of the new wells is estimated to be between \$300,000 and \$500,000, with funding of \$260,000 to come from Maurice Yelle Excavation Ltd. The balance of the costs will be funded from the Water Capital Reserve Fund. Once approved by Council, a new capital internal order will be created for this project with authority established for 2019 when the construction is expected to begin. As such, this becomes a pre-commitment against the 2019 Rate Supported Capital Budget.

### **ACCESSIBILITY IMPACTS**

There are no accessibility implications associated with this report.

### **ENVIRONMENTAL IMPLICATIONS**

The aquifer presently supplying water to the Shadow Ridge development is considered to be under the influence of surface water. Adoption of this report will assist in seeking a water supply that, subject to confirmation by further study, is not under such influence.

### **TERM OF COUNCIL PRIORITIES**

This report is consistent with Strategic Objective ES1, implement priority projects that protect property, land, air and water for city residents.

### **SUPPORTING DOCUMENTATION**

Document 1 – Shadow Ridge Area and Area subject to license application under the *Aggregate Resources Act*

Document 2 – Land subject to road closing application

Document 3 – Additional settlement terms – *Aggregate Resources Act* application

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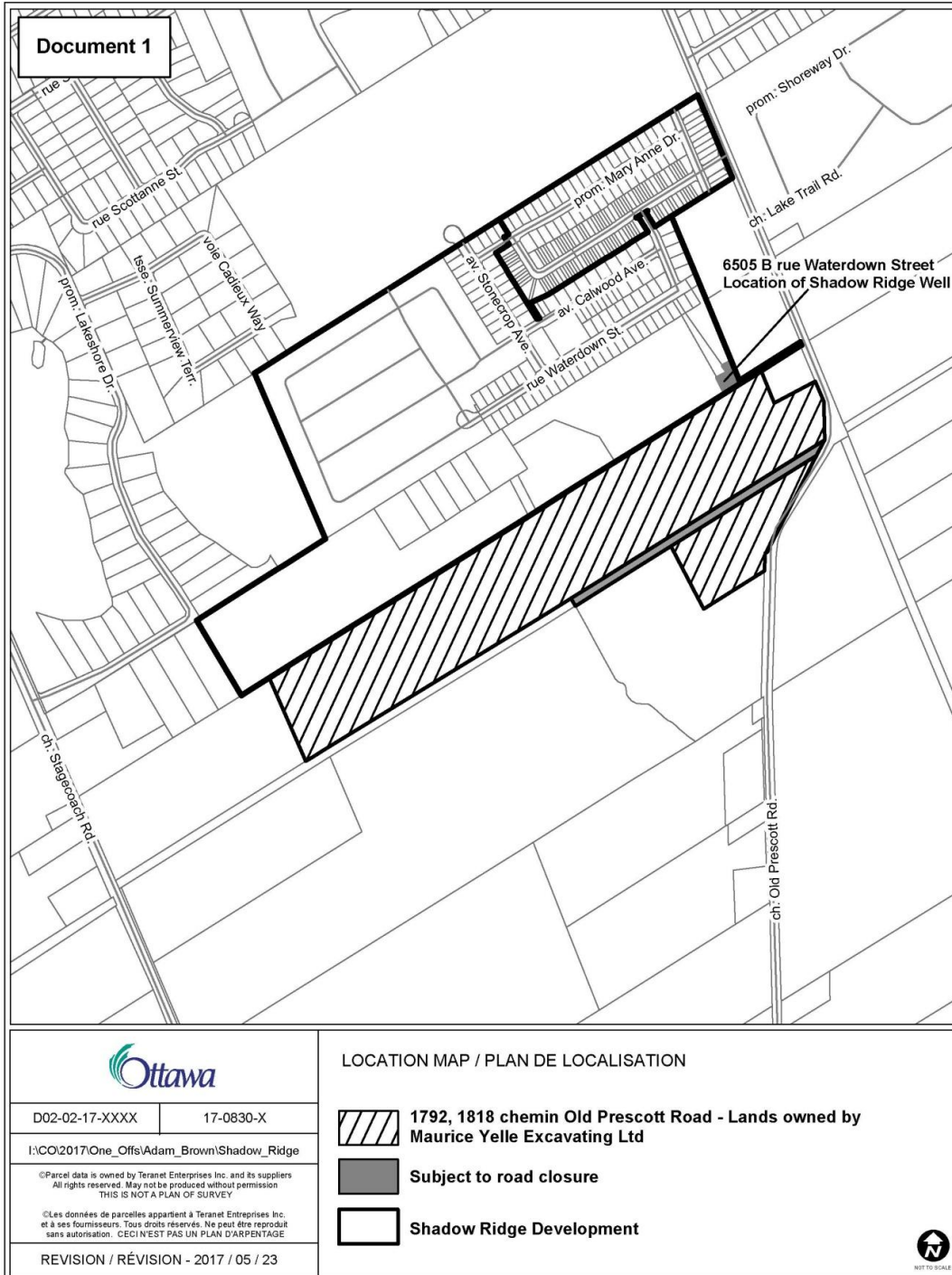
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LE 12 JUILLET 2017**

**DISPOSITION**

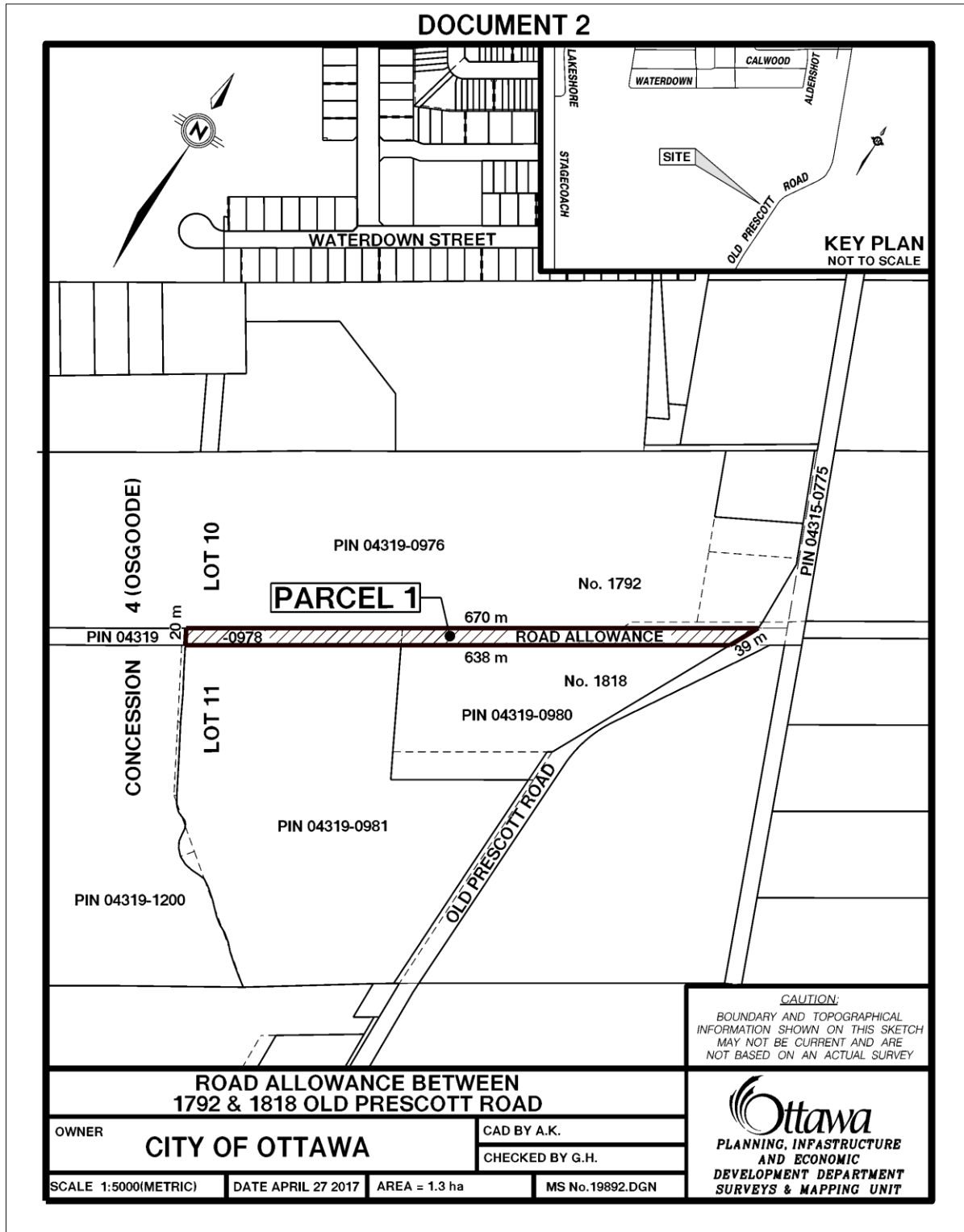
Legal Services staff will seek to implement a settlement with the applicant in accordance with the terms approved by Council.

Document 1 - Shadow Ridge Area and Area subject to license application under  
 the *Aggregate Resources Act*



		LOCATION MAP / PLAN DE LOCALISATION	
D02-02-17-XXXX	17-0830-X	 1792, 1818 chemin Old Prescott Road - Lands owned by Maurice Yelle Excavating Ltd	 Subject to road closure
I:\CO\2017\One_Offs\Adam_Brown\Shadow_Ridge			
<small>©Parcel data is owned by Teranet Enterprises Inc. and its suppliers                  All rights reserved. May not be produced without permission                  THIS IS NOT A PLAN OF SURVEY</small>			
<small>©Les données de parcelles appartient à Teranet Entreprises Inc.                  et à ses fournisseurs. Tous droits réservés. Ne peut être reproduit                  sans autorisation. ©CEI WEST PAS UN PLAN D'ARPENTAGE</small>			
REVISION / RÉVISION - 2017 / 05 / 23		 <small>NOT TO SCALE</small>	

Document 2 - Land Subject to Road Closing Application



**Document 3 - Changes to be made to *Aggregate Resources Act* Site Plan**

**General changes to the ARA site plan (does not include errata or the statutory requirements of the MNR and the Provincial Standards issued under the ARA):**

1. The ARA site plan is to show the WHPAs on plan
2. All stockpiles, composting materials, etc. to be located in Phase 2 and outside of WHPA areas.
3. Site plan to reflect updated zoning for 1818 old Prescott road
4. Existing dwelling to be labelled as office on the plans.
5. Show location of above ground storage tank (outside of whpa), site plan details to include TSSA certification, double walled tank with alarms
6. Monitoring of water quality to be to satisfaction of the MOE (if all extraction is located outside the WHPA areas)
7. No trespassing signs to be installed at periphery of the licensed area
8. Emergency spill plan to be referenced on site plan
9. Operational hours to limit nighttime activities (7pm to 7am) o loading only and limited to a maximum of 4 loads per hour
10. Site phasing to be changed so that the last phase to be extracted will be where the WHPA is now. This will result in the current Phase 1 becoming Phase 3, and the current Phase 3 becoming the Phase 1. Phase 2 (where all material handling and storage to take place) will remain unchanged.
11. Plans to be signed by an engineer or other qualified person

**Other agreements:**

12. The city will withdraw its objection to the ARA licence application(s).

13. City acknowledges conditional support for a common boundary agreement with former gravel pit at 1864 Old Prescott Road.
14. Changes to allow for expansion of the extraction further north following relocation of the wells will be considered a minor site plan amendment and not objected to by the City.