

File Number: 39T-02509

TO:	CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE MEETING ON FEBRUARY 22, 2016
FROM:	GEORGE KOTSIFAS, P. ENG. MANAGING DIRECTOR, DEVELOPMENT AND COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL
SUBJECT	AMENDMENT TO SPECIAL PROVISIONS HYDE PARK MEADOWS SUBDIVISION - PHASE 2 DREWLO HOLDINGS INC. 39T-02509

RECOMMENDATION

That, on the recommendation of the Manager, Development Services and Engineering Liaison, the following actions be taken with respect to entering into an amending subdivision agreement between The Corporation of the City of London and Drewlo Holdings Inc. for the subdivision of land over Part of Lot 23, Concession 4 (Geographic Township of London), City of London, County of Middlesex, situated on the south side of Fanshawe Park Road West, east of Hyde Park Road.

- (a) the Special Provisions contained in the Subdivision Agreement between The Corporation of the City of London and Drewlo Holdings Inc. for Hyde Park Meadows Subdivision, Phase 2, (39T-02509, 33M-671) **BE AMENDED** to include clauses to support the financing, tendering and administration of Dalmagarry Road construction from Fanshawe Park Road West to Blackacres Boulevard, attached as Appendix "A"; and
- (b) the Mayor and the City Clerk **BE AUTHORIZED** to execute this Agreement, any amending agreements and all documents required to fulfil its conditions.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

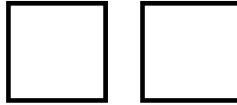
June 20, 2013 – Report to Planning and Environment Committee – Hyde Park Meadows Phase 2 – Special Provisions for the subdivision agreement now registered as 33M-671.

BACKGROUND

History:

Dalmagarry Road is the main collector road connecting this subdivision and other lands to the south to Fanshawe Park Road. At the time Hyde Park Meadows was draft approved, only half of the Dalmagarry Road allowance was included within the draft plan of subdivision. The remainder of the road allowance (to the west) was under the ownership of Smartcentres (formerly First London North Developments Inc.). The need to have Dalmagarry Road constructed was first identified in the 2003 development agreement associated with the Smartcentres commercial development (Walmart) at 1280 Fanshawe Park Road West. Through that agreement, Smartcentres agreed to work with Drewlo Holdings to cost share in the construction of this collector road when Drewlo came forward with plans to advance Phase 2 of their residential subdivision. Smartcentres has since dedicated the balance of the required road allowance to the City in order to allow for the construction of the road.

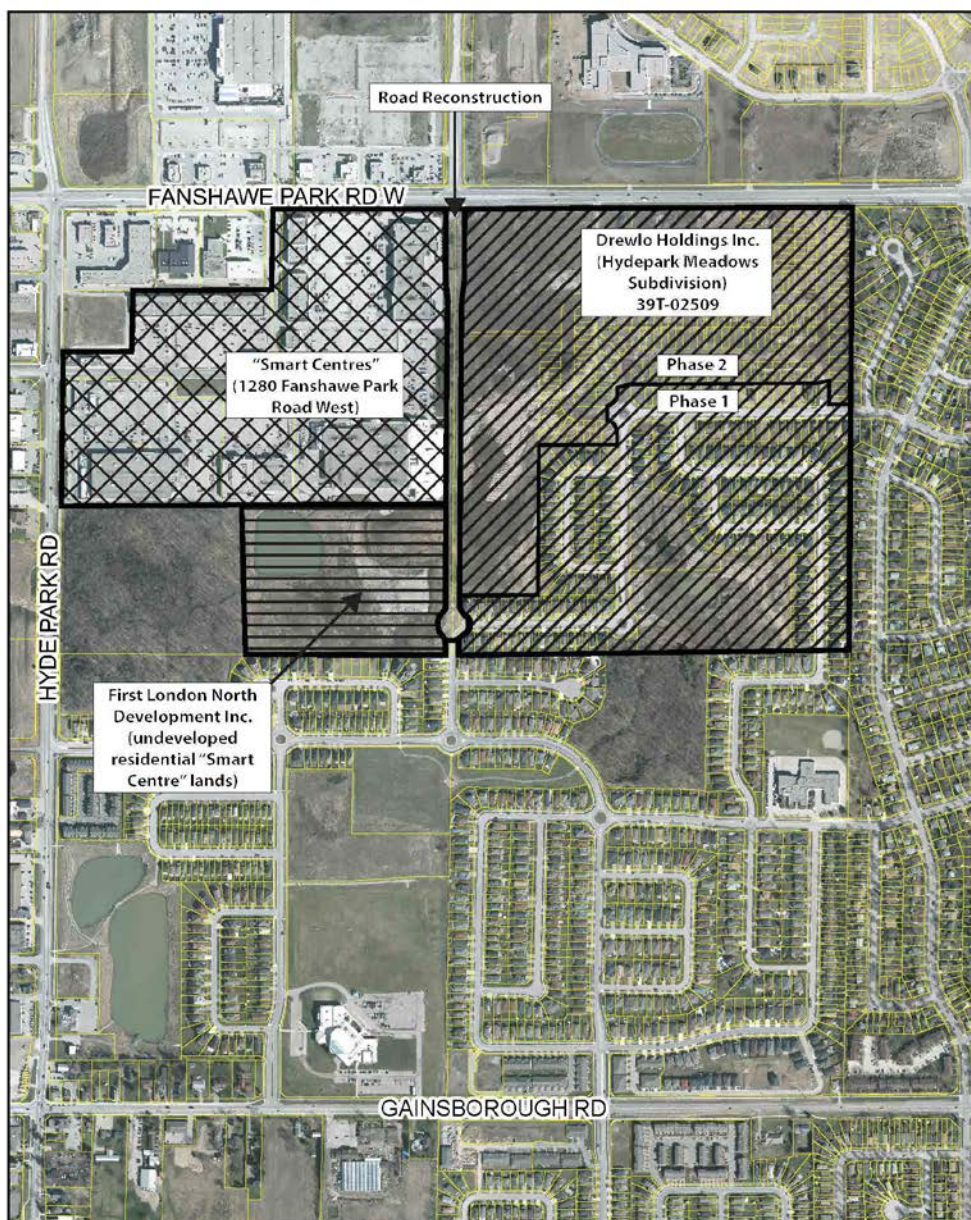
Design and construction of Dalmagarry Road was to be led by Drewlo Holdings. Dalmagarry Road detailed engineering drawings were reviewed and approved in conjunction with the approvals for Hyde Park Meadows Phase 2. The design incorporated associated, grading, landscaping and site works on Smartcentres lands necessary to complete the roadworks and provides Smartcentres with a rights in / rights out access to their lands. Special Provisions for Hyde Park Meadows Phase 2 subdivision agreement were approved by Council in June 2013 with securities collected for half the estimated value of constructing Dalmagarry.



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In January 2014, clauses and securities for the Smartcentres share of constructing Dalmagarry Road were captured through an amendment to their development agreement for 1280 Fanshawe Park Road West. The clauses gave the City the right to access the Smartcentres site to carry out works associated with the Dalmagarry Road construction, as identified in the approved engineering drawings, if the works were not completed within one (1) year of Drewlo Holdings registering the Hyde Park Meadows Phase 2 subdivision agreement. Drewlo's phase 2 agreement was registered on June 18, 2014.

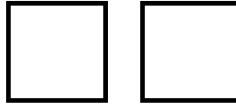
Location Map



Notice of Default:

Drewlo and Smartcentres worked to reach a cost sharing arrangement under which Drewlo would administer the construction contract and Smartcentres would cover their proportional share of project costs. After numerous protracted discussions, the two parties were unable to reach an agreement. On June 19, 2015, the City issued Notice of Default to both parties.

The Smartcentres development agreement language provides for immediate cashing of securities upon Notice of Default and an initial security drawdown in the amount of \$791,542 was cashed on August 27, 2015. The City continues to hold additional securities under the development agreement for 1280 Fanshawe Park Road West and its associated amendments. Smartcentres has been notified that additional securities will be cashed if actual construction costs exceed the security estimate prepared in 2013.



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The language in the Drewlo Subdivision Agreement calls for a remedy period following Notice of Default during which the Owner can make efforts to remedy the default situation prior to Notice of Final Default and the cashing of securities. Upon receiving notice, Drewlo Holdings expressed an interest in working with the City to advance construction of Dalmagarry Road and satisfy their obligation to cover a 50% share in the road costs. As a result of their efforts, a Final Notice of Default has not been issued to date and no securities have been cashed.

Amending Subdivision Agreement:

The intent was always for Drewlo Holdings to administer the construction contract with Smartcentres financing their share of the project through a cost sharing agreement. The subdivision agreement for Hyde Park Meadows Phase 2 already captures all the necessary provisions for the construction, inspection and assumption of Dalmagarry Road as constructed by Drewlo. Therefore, staff is recommending approval of an Amending Subdivision Agreement to incorporate additional clauses that would allow Drewlo to advance construction as intended with the City using cashed Smartcentres securities to administer payment for their share of the contract.

The amending agreement establishes that Drewlo will be responsible to administer the contract for the project. The City will remit payment for monthly invoices within thirty (30) days of receiving and reviewing progress payment certificates. Each invoice will clearly indicate the Smartcentres share of each progress payment as well as the total Smartcentres share to date. The amending agreement also sets an upset limit to be paid from Smartcentres securities. The upset limit was determined based on the Engineer's Tender Estimate plus the Contact Administration Consultant Fee Estimate. The upset limit also maintains a security holdback to secure against outstanding onsite obligations. Should change orders or contract extras push the Smartcentres share of project costs above the established upset limit, additional costs above the upset limit will be borne by Drewlo Holdings.

All other matters relating to standard of work, onsite supervision, City inspection and assumption of works and eligible claims under the Development Charges By-law are referenced back to the existing clauses of the Hyde Park Meadows Phase 2 subdivision agreement. The only anticipated claim to the CSRF DC Fund associated with this contract is for pavement widening on Dalmagarry Road at Fanshawe Park Road West and is already addressed in the Phase 2 subdivision agreement, the estimated cost of which is \$7,797 (DC14-UR00132).

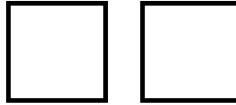
Project Estimates and Securities:

The initial project estimate was prepared in 2013 in conjunction with the Hyde Park Meadows Phase 2 subdivision agreement. At that time, the established estimate for the 'Base Shareable Roadworks' to be split between Drewlo and Smartcentres on a 50/50 basis was approximately \$1,300,000 (Including contingency but excluding HST and contract administration).

This estimate did not include works 100% associated with either Smartcentres or Drewlo. The contract includes sanitary sewer and minor storm drainage works that solely benefit the Hyde Park Meadows subdivision. Also, certain works solely benefiting Smartcentres were necessary as a result of the Dalmagarry roadworks including engineered grading, on-site drainage, landscaping and establishing an access for the Smartcentres site. These works are secured separately against the Smartcentres site but have always been included in the scope of work for Dalmagarry Road construction as these works are prompted by the need to match proposed Dalmagarry Road grades.

Project costs have also been affected by increased market prices since the 2013 estimate for "Base Shareable Roadworks" of approximately \$1,300,000. An updated estimate prepared in August 2014, which was acknowledged by both parties during their cost sharing negotiations, identified an increase to approximately \$1,568,000. The 2016 Engineer's Tender Estimate now identifies the 'Base Shareable Roadworks' cost to be \$1,641,000 (plus HST & contract administration).

The following table summarizes the total estimated Smartcentres costs used to determine the security upset limit identified in the Amending Subdivision agreement. The upset limit is based on 50% of the 2016 'Base Shareable Roadworks' cost and additional onsite Smartcentres costs plus contingency, consulting fees for contract administration and HST.



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50% of Base Sharable Roadworks Cost	–	\$765,867
100% Smartcentres Engineered Slope Imported Granular B Fill	–	\$118,069
100% Smartcentres On-site Drainage	–	\$29,868
100% Smartcentres On-site Landscaping	–	\$102,646
100% Smartcentres Site access with Restoration	–	\$59,868
	SUBTOTAL	\$1,072,052
	Contingency	– \$85,000
	SUBTOTAL	\$1,157,052
	Engineering Contract Administration	– \$43,612
	SUBTOTAL	\$1,200,664
	Net HST	– \$21,371
	TOTAL SMARTCENTRES SHARE	\$1,222,036

Based on this value, up to an additional \$435,000 in Smartcentres securities will need to be cashed. However, the actual security drawdown will be based on the awarded tender contract price. Cashed securities will be placed in a capital budget account to cover the awarded value of contract and the City will be ready to make prompt payment of invoices from that account. In the event there are cost savings on the project, those proportional savings will be returned back to the Smartcentres security pool after completion of Dalmagarry Road and eventually released back to Smartcentres either through a security reduction or upon final acceptance of their site works.

Conclusion

This collector road provides a critical link to Fanshawe Park Road West for Hyde Park Meadows and Hyde Park Woods residents while alleviating capacity and traffic issues within the existing White Hills neighbourhood to the east.

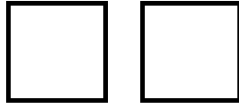
Development Services provided the proposed amending subdivision agreement to Drewlo Holdings Inc. for their review and they are in agreement with staff’s recommendation.

This report has been prepared in consultation with the City’s Solicitors Office, Construction Administration and Finance.

A copy of the recommended amending subdivision agreement is attached as Appendix “A”.

PREPARED & RECOMMENDED BY:	CONCURRED BY:
JENNIE RAMSAY, P.ENG. MANAGER, DEVELOPMENT SERVICES & ENGINEERING LIAISON	TERRY GRAWAY, MCIP, RPP MANAGER, DEVELOPMENT SERVICES & PLANNING LIAISON
SUBMITTED BY:	
GEORGE KOTSIFAS, P. ENG. MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL	

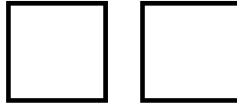
cc. Edward Soldo Dave Mounteer Paul Choma Alan Dunbar
 Matt Feldberg Rafique Turk



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Appendix 'A'

Amending Subdivision Agreement



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THIS AGREEMENT made, in triplicate, this _____ day of _____, 2016.

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON
(hereinafter called the City)

OF THE FIRST PART

AND

DREWLO HOLDINGS INC.
a Company incorporated
under the laws of the Province of Ontario
(hereinafter called the Owner)

OF THE SECOND PART

WHEREAS the Owner represents it is seized of the lands in the City of London, County of Middlesex as more particularly described in Schedule 'A' attached hereto (the "Lands");

AND WHEREAS an existing subdivision agreement between the City and The Owner registered June 25, 2014 as Instrument ER 935547 (the "Subdivision Agreement") requires The Owner to construct Dalmagarry Road south of Fanshawe Park Road West;

AND WHEREAS the cost to construct Dalmagarry Road was to be shared between Drewlo and the adjacent landowner ("Smartcentres");

AND WHEREAS Smartcentres has defaulted on its obligation to share the cost of constructing Dalmagarry Road with The Owner and the City has collected upon securities provided through the Smartcentres development agreement;

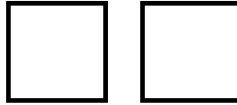
AND WHEREAS The Owner has agreed to advance construction of the road in accordance with the Subdivision Agreement;

AND WHEREAS the City has agreed administer payment of construction invoices representing the Smartcentres share of construction costs using the securities collected from Smartcentres;

AND WHEREAS the City and The Owner have agreed to amend the Subdivision Agreement to provide for the administration of the payments representing the Smartcentres share of construction costs

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the sum of ONE DOLLAR (\$1.00) of lawful money of Canada now paid by The Owner to the City, the receipt whereof is hereby acknowledged, the City and The Owner covenant and agree as follows:

- 1. The Subdivision Agreement shall be amended by adding the following:



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28.1. ADMINISTRATION OF DALMAGARRY ROAD CONSTRUCTION

28.1.1 DEFINITIONS

For the purposes of Section 28.1 of this Agreement, the words and phrases defined in this paragraph shall have the meanings herein specified unless the context expressly or by necessary implication otherwise requires.

“City Engineer” means that person who, for the time being, is employed by the City as its Engineer, its Deputy or Acting Engineer.

“Professional Engineer” or “engineer” means a licensed Professional Engineer who, holds a current certificate of authorization issued by the Association of Professional Engineers Ontario or, is employed by partnership or corporation authorized by the Association to offer Professional Engineering services to the public.

“Project” means all works required for the design and construction of Dalmagarry Road south of Fanshawe Park Road West, in accordance with accepted engineering plans all to the satisfaction of the City Engineer.

28.1.2 TENDERING, CONSTRUCTION AND ADMINISTRATION

2.1 Prior to advertising the tender for the project, The Owner shall provide to the City:

- a) copies of the tender package(s) for review by City Staff;
- b) an itemized breakdown of cost sharing for the project that also identifies how cost sharing for change orders will be determined throughout the project;
- c) A Consultant Fee Estimate for contract administration, including estimates for elements requiring sub-consultant administration.

2.2 The Owner shall follow all applicable policies of the Development Charges By-law for the tendering of any eligible works included in the project. Any eligible claims will be made through the existing subdivision agreement registered on the Lands as 33M-671.

2.3 Upon opening of the tender, should the Smartcentres share of the construction costs exceed the upset limit of \$1,225,000 plus HST, the Owner may choose to award the tender and advance construction with project costs in excess of the upset limit to be borne by The Owner. Alternatively, The Owner may choose to re-tender the project at a later time.

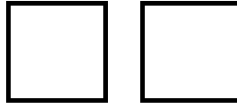
2.4 The Owner shall construct the project as required under the Subdivision Agreement and in accordance with accepted engineering plans all to the satisfaction of the City Engineer.

2.5 The Owner shall administer the contract for the project and provide all necessary onsite supervision. The Owner agrees to take responsibility for all contract administration decisions including contract change orders relating to unforeseen issues and extras.

2.6 The Owner shall provide to the City monthly payment certificates outlining the Smartcentres share of construction costs in accordance with the itemized breakdown provided to the City prior to tendering.

2.7 The City shall remit payment for monthly payment certificates within thirty (30) days of receiving and reviewing monthly payment certificates. The Owner shall be responsible for arranging payment to the Contractor. Should change orders or contingency costs increase the Smartcentres share of project costs above the established upset limit of \$1,225,000 plus HST all additional construction costs above the upset limit shall be borne by the Owner.

2.8 City inspection and assumption of works constructed in conjunction with this project shall be administered in accordance with the existing subdivision agreement registered on the Lands



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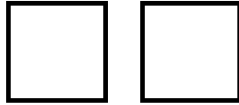
as 33M-605.

28.1.3 GENERAL

- 3.1 The Owner shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative or other tribunal the right of the City to enter into this Agreement and to enforce each and every term, covenant and condition hereof and this provision may be pleaded by the City in any such action or proceeding as a complete and conclusive estoppel of any denial of such right.
- 3.2 The Owner shall not assign this Agreement without the written consent of the City which consent shall not be unreasonably withheld.
- 3.3 If any term of this Agreement shall be found to be "ultra vires" of the City, or otherwise unlawful, such term shall conclusively be deemed to be severable and the remainder of this Agreement "mutatis mutandis" shall be and remain in full force and effect.
- 3.4 In this agreement the singular shall include the plural and the neutral shall include the masculine or feminine as the context may require, and if there are more than one Owner the covenants of such Owner shall be joint and several.
- 3.5 Except as expressly provided for herein, this Agreement shall enure to the benefit of and shall be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.

All other provisions and conditions of the Subdivision Agreement as amended shall remain in full force and in effect and this Agreement shall alter the Subdivision Agreement only as far as is stated herein and the Subdivision Agreement in all other respects is hereby confirmed.

IN WITNESS WHEREOF the Parties hereto have hereunto caused to be affixed their respect corporate seals duly attested by the hands of their respective proper signing officers.



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SCHEDULE "A"

This is Schedule "A" to the Subdivision Agreement dated this ____ day of _____, 2015 between The Corporation of the City of London and Drewlo Holdings Inc., to which it is attached and forms a part.

ALL AND SINGULAR that certain parcel or tract of land and premises, lying, being and situate on Lots 1 to 239, both inclusive and Blocks 240 to 249, both inclusive the streets namely Blackacres Boulevard, Dalmagarry Road, Freeport Street, Jubilee Drive, Jubilee Crescent, Springwood Crescent, Tansbury Street and Tribalwood Street, According to Plan 33M-605 in the geographic Township of Westminster, now in the City of London, County of Middlesex.