

**Title: F.J. Blackwell Ltd.**

**Date: September 22, 2020**

## **STAFF REPORT**

### **PROPOSAL:**

The application for a temporary use by-law seeks to amend By-law 2010-100Z being the Zoning By-law for the City of Greater Sudbury in order to permit a private bus terminal as a temporary use on the subject lands for a maximum period of three years. The private bus terminal is proposed to be accessed from a private driveway onto Government Road and to the west of Bryce Street and would include the construction of a private bus terminal building along with a bus loop and parking area containing 176 parking spaces and 4 accessible parking spaces.

The owner submitted an application for pre-consultation on July 27, 2020, that was considered by the Sudbury Planning Application Review Team (SPART) on August 5, 2020, (File # PC2020-73). The owner reviewed and signed their Pre-Consultation Understanding Agreement (PCUA) on August 12, 2020, and subsequently submitted a formal application for a temporary use by-law to the City on September 3, 2020, for consideration. The application was deemed complete on September 10, 2020, and was circulated for comments from agencies and departments on September 10, 2020.

The owner has submitted a Concept Plan and a Traffic Flow Briefing in support of their request to permit a private bus terminal as a temporary use on the subject lands for a maximum period of three years.

**Existing Zoning:** “OSP(3)”, Open Space – Private Special

The “OSP(3)” Zone permits a park and on a site-specific basis a commercial or public garage and a bus parking area is also permitted.

**Requested Zoning:** “OSP(3)”, Open Space – Private Special with added “T(#)”, Temporary Use Zone

This application does not seek to amend the existing “OSP(3)” Zone. The temporary use by-law application would instead affix a “T” symbol and numerical identifier to the subject lands that would establish a temporary use in the form of a private bus terminal on the subject lands for a maximum period of three years.

### **Location and Site Description:**

The subject lands are located on the south side of Government Road in the community of Coniston. The lands also have frontage to and are situated to the south of Bryce Street. The lands have a total lot area of approximately 9.53 ha (23.55 ft) with approximately 136 m (446.19 ft) of lot frontage along Government Road and approximately 20 m (65.62 ft) of lot frontage on Bryce Street. The proposed private bus terminal would be situated on an existing cleared area on the north-easterly portion of the subject lands with the balance of the lands being well vegetated with several informal trails traversing the lands. The lands are presently vacant.

### **Surrounding Land Uses:**

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|--------|---|
| North: | Several large and vacant open space parcels of land including a portion of the Trans-Canada Trail, Coniston Creek, a Canadian National Railway right-of-way, and Highway #17 East.                                      |
| East:  | Canadian National Railway right-of-way, low density urban residential land uses with the pre-dominant built-form being single-detached dwellings, several large and vacant rural parcels of land, and Highway #17 East. |

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South: Canadian National Railway right-of-way, Twin Stacks Golf Club, and the Coniston Airport.

West: Coniston Centennial Park, Toe Blake Memorial Arena, large tract of vacant open space land, Coniston Water-Wastewater Treatment Plant, and existing low density urban residential land uses further to the west.

The existing zoning and location map attached to this report indicates the location of the subject lands to be rezoned in order to permit the temporary use of the lands, as well as the applicable zoning in the immediate area.

Site photos depict the portion of the subject lands that are proposed to accommodate the private bus terminal. The proposed driveway access would be situated to the west of Bryce Street and the lands appear to have been cleared and prepared for development. Photos of the immediately surrounding area also illustrate the existing lower density urban residential nature and character of residential dwellings along Bryce Street and Government Road.

### **Public Consultation:**

The statutory Notice of Application was provided to the public by newspaper and to nearby landowners and tenants located within 120 m (400 ft) of the subject lands on September 10, 2020. The statutory Notice of Public Hearing dated October 1, 2020 was provided to the public by newspaper and to nearby landowners and tenants located within 120 m (400 ft) of the subject lands.

The owner was also advised of the City's policy recommending that applicants consult with their neighbours, ward councilor and key stakeholders to inform area residents of the applications prior to the public hearing. Staff understands that the owner approached immediately abutting neighbours to explain their temporary use by-law application and to address any comments and/or concerns. Staff did not receive any feedback from the owner with respect to their public consultation strategy efforts.

At the time of writing this report, several phone calls seeking clarification on the proposed temporary use by-law were fielded by staff, however, no emails or letter submissions have been received by the Planning Services Division.

### **POLICY AND REGULATORY FRAMEWORK:**

The property is subject to the following policy and regulatory framework:

- [Planning Act, R.S.O. 1990, c. P.13](#);
- [2020 Provincial Policy Statement \(PPS\)](#);
- [2011 Growth Plan for Northern Ontario](#);
- [Official Plan for the City of Greater Sudbury](#); and,
- [Zoning By-law 2010-100Z](#).

The PPS and the Growth Plan for Northern Ontario, along with the City's Official Plan, provide a policy framework for land use planning and development in the City of Greater Sudbury. This framework is implemented through a range of land use planning controls such as, but not limited to, zoning by-laws (including temporary use by-laws), plans of subdivision and site plans.

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**Planning Act, R.S.O. 1990, c. P.13**

Section 39 of the Planning Act allows for a municipality in a by-law passed under Section 34 (ie. Zoning By-laws) of the Planning Act to authorize the temporary use of land, buildings or structures for any purpose set out in the municipality's Zoning By-law that is otherwise prohibited. Further to this, Section 39(3) of the Planning Act further allows for a municipality to extend temporary use permissions beyond the initial maximum three year period for further periods of not more than three years each during which the temporary use is authorized.

**2020 Provincial Policy Statement:**

Municipalities in the Province of Ontario are required under Section 3 of the Planning Act to ensure that decisions affecting planning matters are consistent with the 2020 Provincial Policy Statement (PPS). The following PPS policies are applicable to this application for a temporary use by-law:

1. With respect to Settlement Area policies, Section 1.1.3.1 outlines that settlement areas are to be the focus of growth and their vitality and regeneration is to be promoted;
2. With respect to Long Term Economic Prosperity policies, Section 1.7 a) generally outlines that long-term economic prosperity should be supported by promoting opportunities for economic development and community investment-readiness; and,
3. With respect to Natural Heritage policies, Section 3.1.2 d) outlines that development and site alteration shall not be permitted within a floodway regardless of whether the area of inundation contains high points of land not subject to flooding.

**Growth Plan for Northern Ontario:**

Municipalities in the Province of Ontario are required under Section 3 of the Planning Act to ensure that decisions affecting planning matters conform with the Growth Plan for Northern Ontario. With respect to Minerals Sector and Mining Supply and Services policies, Section 2.3.8 g) and h) outlines the importance of enabling new mining opportunities that allow for growth and diversity in the minerals and mining supply and services sectors, as well as the importance of facilitating partnerships among communities and industry to optimize community employment and benefits.

**Official Plan for the City of Greater Sudbury:**

The subject lands are designated Parks and Open Space in the Official Plan for the City of Greater Sudbury. Permitted uses on privately owned Parks and Open Space lands may include conservation, passive and active recreational uses, agriculture, forestry or other activities where buildings are incidental to those uses.

Section 19.5.3 of the Official Plan outlines that the City may pass a temporary use by-law under Section 39 of the Planning Act to permit the temporary use of land, buildings or structures, in defined areas and for prescribed periods of time and for any purpose set out therein that is otherwise prohibited in the City's Zoning By-law. Conformity with the land use policies of the Official Plan is not required for the passing of a temporary use by-law.

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**Zoning By-law 2010-100Z:**

The existing “OSP(3)”, Open Space – Private Special Zone does not permit a private bus terminal. The owner is therefore requesting that a temporary use by-law be applied to the subject lands in order to permit a private bus terminal to operate on the subject lands for a maximum period of three years. After the initial three year period, the owner is permitted to seek an extension allowing for further periods of not more than three years each during which the temporary use is authorized.

**Site Plan Control:**

[By-law 2010-220](#) being the Site Plan Control Area By-law for the City of Greater Sudbury designates the whole of the City as a site plan control area pursuant to Section 41 of the Planning Act. The intended temporary use of the lands as a private bus terminal does not meet any of the exclusion criteria set out in the City’s Site Plan Control By-law. As such, site plan control would be applicable to the development proposal. Site plan control is a land use planning tool that is typically utilized in order to, but not necessarily limited to, improving the appearance of the City by applying consistent development standards and guidelines, ensuring off-street parking and loading facilities are located, constructed and maintained according to City requirements, ensuring safety and convenience of automobile and pedestrian traffic to, from and within a new development or redevelopment, and to improve infrastructure systems through land easement dedications.

**Department/Agency Review:**

The application including relevant accompanying materials has been circulated to all appropriate agencies and departments. Responses received from agencies and departments have been used to assist in evaluating the application and to formulate appropriate development standards in a temporary use by-law should the application be approved.

During the review of the proposal, comments provided by circulated agencies and departments included the following:

Active Transportation, Fire Services, Roads, and Transit Services have each advised that they have no concerns from their respective areas of interest.

Building Services have no concerns with the application for a temporary use by-law, but would note that building permits may be required for those buildings and/or structures that are depicted on the submitted Concept Plan.

Conservation Sudbury does not support the application for a temporary use by-law. Specifically, Conservation Sudbury has noted that there is a watercourse along a westerly portion of the subject lands. The majority of the lands are also within a floodplain are therefore regulated by [Ontario Regulation 156/06](#). Section 3.1.2 d) of the PPS states that, “Development and site alteration shall not be permitted within a floodway regardless of whether the area of inundation contains high points of land not subject to flooding.” Development is defined as, “the creation of a new lot, a change in land use, or the construction of buildings and structures requiring approval under the Planning Act.” Section 10.2.2 of the Official Plan for the City of Greater Sudbury is identical stating, “Development and site alteration is not permitted within a floodway regardless of whether the area of inundation contains high points of land not subject to flooding.” The proposed temporary use by-law includes lands within the floodway, and more specifically, as shown on the Concept Plan, includes the proposed private bus terminal building and access/egress within the floodway. This is inconsistent with both the policies of the PPS and the City’s Official Plan. The owner is advised that any works in an area regulated by Ontario Regulation 156/06 requires permission from Conservation Sudbury by way of a permit pursuant to Section 28 of the [Conservation Authorities Act](#).

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“Works” include, but are not limited to, placement or removal of fill, grading, and the erection of a building or structure.

Development Engineering advises that the subject lands be serviced with municipal water and sanitary sewer infrastructure, which traverses the site within an easement from Bryce Street. A capacity review is being performed to ensure that sufficient water and sanitary sewer capacity are available for the development. Any upgrades to the system that are identified through this review will need to be addressed by the owner.

The City’s Drainage Section does not oppose the application for temporary use by-law, but have noted that the subject lands are partially situated within a floodplain.

Operations has requested that a snowplow turnaround at the dead end of Bryce Street be required.

Site Plan Control has noted that those comments provided to the owner during the pre-consultation process with respect to site plan approval can be addressed via a site alteration permit prior to issuance of a building permit on the subject lands.

Traffic and Transportation understand that an estimated 400 persons (ie. 200 in & 200 out) would be using the proposed private bus terminal each week. The terminal would be operating three days a week, which would mean approximately 135 persons per day. There would be four buses (2 in & 2 out) using the site per day. Based on these numbers we would have no concerns with the additional traffic generated by the private bus terminal.

## **PLANNING ANALYSIS:**

The 2020 PPS, the 2011 Growth Plan, and the City of Greater Sudbury Official Plan, and other relevant policies and supporting guidelines were reviewed in their entirety. The following section provides a planning analysis of the application in respect of the applicable policies, including issues raised through agency and department circulation.

The proposed temporary use by-law application is consistent with the PPS for the following reasons:

1. The community of Coniston is an identified settlement area in the City’s Official Plan. The subject lands also immediately abut the identified built boundary of the Coniston settlement area. Staff is of the opinion that a private bus terminal situated within the Coniston settlement represents an appropriate location for a temporary use in the form of a private bus terminal;
2. With respect to applicable Long Term Economic Prosperity policies, staff notes that the proposed temporary use in the form of a private bus terminal is expected to positively contribute to and promote mining and mining-related economic development in the larger regional area, while at the same time act to demonstrate community investment-readiness with respect to mining and mining-related industries and their related land uses; and,
3. With respect to applicable Natural Heritage policies, staff have reviewed those comments provided from Conservation Sudbury and note that there appears to be sufficient area outside of the identified floodway that would be capable of supporting the proposed private bus terminal building and point of ingress/egress. Staff notes that any works in an area regulated by Ontario Regulation 156/06 requires direct permission from Conservation Sudbury by way of a permit pursuant to Section 28 of the Conservation Authorities Act. The owner is therefore cautioned that should the proposed private bus terminal building and point of ingress/egress remain as shown on the Concept Plan that approval from Conservation Sudbury will be required. The owner is encouraged to explore re-locating both the private bus terminal building and the point of ingress/egress outside of those areas on the subject lands that are regulated by Ontario Regulation 156/06.

Staff recognize the importance of the minerals, mining, mining-supply and services sector of the local economy within the larger overall land use planning framework of Northern Ontario. Staff is of the opinion that accommodating a private bus terminal for the purposes of transporting employees to and from a mining site in the region is of significant land use planning importance to Northern Ontario in terms of enabling new mining opportunities (ie. IAMGOLD – Gogama Site) which positively contribute to the growth and diversity in the minerals, mining and mining-supply and services sector. Staff is further of the opinion that the proposed temporary use by-law represents an opportunity to facilitate important partnership between local communities and industry in order to optimize community employment and benefits within the City of Greater Sudbury. Staff are therefore satisfied that the application for a temporary use by-law in order to permit a private bus terminal as a temporary use on the subject lands for a maximum period of three years conforms to and does not conflict with the Growth Plan for Northern Ontario.

Staff in general would again note that conformity with the land use policies of the Official Plan is not required for the passing of a temporary use by-law. Staff therefore has no concerns with respect to the proposed temporary use by-law to permit a private bus terminal from the perspective of having to conform to the Official Plan for the City of Greater Sudbury.

With respect to the City's Zoning By-law, the owner is requesting that a temporary use by-law be enacted that would affix a "T" symbol and numerical identifier to the subject lands that would establish a temporary use in the form of a private bus terminal on the lands for a maximum period of three years. Staff would again note that the owner is not proposing to rezone the lands and the existing "OSP(3)" Zone would remain and continue to be applicable to the subject lands. Staff have no concerns with the request for a temporary use by-law, as it is considered to be the most suitable approach for allowing a private bus terminal to locate on the subject lands on a temporary basis.

Staff do however have the following comments with respect to the requested temporary use by-law:

1. It is noted that the existing "OSP(3)" Zone permits a commercial or public garage and a bus parking area. These land uses are permitted as of right and could locate on the subject lands without any limitation around the length of time that they would be permitted on the lands. Staff is of the opinion that the proposed private bus terminal is somewhat similar in nature to that of commercial or public garage and bus parking area in terms of bus trips being generated to and from the subject lands. Staff would note however that the temporary use in the form of a private bus terminal would not extend to the storage, repair and maintenance of buses as staff is recommending that the temporary use by-law restrict the use of the land to only that of private bus terminal and related accessory uses;
2. The temporary use by-law should appropriately restrict those uses permitted on a temporary basis to only that of a private bus terminal and related accessory uses;
3. The submitted Concept Plan depicts 176 parking spaces, which would include 4 accessible parking spaces. Based on the net floor area of the proposed bus terminal building, staff would agree that 20 parking spaces are required and that due to the nature of the proposed temporary use that additional parking spaces should be provided. It is on this basis that staff is recommends that the temporary use by-law include a parking-related development standard ensuring that these parking spaces are provided for accordingly on the lands;
4. Staff advises that the Concept Plan generally demonstrates compliance with respect to those applicable development standards in terms of general provisions, parking provisions and the "OSP(3)" Zone under the City's Zoning By-law;
5. The temporary use by-law should explicitly deem the temporary bus terminal to not be subject to the provision of the city's site plan control by-law pursuant to Section 41 of the Planning Act. This preferred approach is discussed in further detail later in this report; and,

6. Staff advises that the temporary use by-law permission that would be provided for under Section 39 of the Planning Act shall expire three years from the date on which the temporary use by-law is enacted by Council. It is also noted that extensions beyond the initial three year period are permissible under Section 39(3) of the Planning Act.

It is further noted that should the owner request an extension beyond the initial three years that staff would bring forward a planning report outlining said request for extension to the City's Planning Committee for consideration and approval by Council.

With respect to the City's Site Plan Control By-law, it is noted that site plan control would typically be applicable to the development of a private bus terminal on lands as they immediately abut residential land uses. However, staff is recommending that the temporary use by-law include a site-specific provision that would deem the lands to not be within an area of site plan control for the purposes of accommodating a private bus terminal on the lands on a temporary basis. Staff are of the opinion that both the site alteration permit and building permit processes can each through their own review and approval mechanisms identify any on-site works that would be necessary in order to properly accommodate the private bus terminal on a temporary basis on the lands. With respect to comments from Operations, staff notes that initially Bryce Street was proposed to be the point of ingress and egress from the lands, however, the driveway access on the most current Concept Plan has shifted the driveway to the west. The request for a turnaround at the end of Bryce Street should be considered through the site alteration permit required for the proposed temporary use.

It should also be noted that site-specific provisions included within the temporary use by-law itself can also be leveraged in this case to ensure that the proposed private bus terminal is situated on the lands in a manner that is appropriate given the temporary nature of the proposed land use. The site-specific provisions that are recommended to be included in a temporary use by-law was discussed previously in this report.

## **CONCLUSION:**

Staff has reviewed the development proposal and is satisfied that it is generally consistent with the land use planning policy directions identified in the PPS. The application also conforms to and does not conflict with the Growth Plan for Northern Ontario. Staff has further noted in this report that conformity with the land use policies contained within the City's Official Plan is not required in order to enact a temporary use-by-law.

Staff are also supportive of the development proposal on the basis that both the site alteration permit and building permit processes can identify and require any on-site works that would be necessary in order to properly accommodate the private bus terminal on a temporary basis on the lands. Staff has also noted that there may be opportunity to situate the private bus terminal building outside of the regulated floodplain area that is present on the lands. The location of the ingress and egress from the lands onto Government Road should also be further explored by the owner. Staff would in any event caution the owner that at present a permit under Section 28 of the Conservation Authorities Act would need to be obtained from Conservation Sudbury.

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The following are the principles of the proposed site-specific temporary use by-law:

- a) That the only permitted use of the lands on a temporary basis shall be that of a private bus terminal and related accessory uses;
- b) That a minimum of 176 parking spaces and 4 accessible parking spaces be provided;
- c) That the temporary land use be deemed to not be an area of site plan control; and,
- d) That the temporary use by-law shall expire three years from the date of enactment by Council.

The Planning Services Division therefore recommends that the application for a Temporary Use By-law be approved in accordance with the Resolution section of this report.