



## Tribunals Ontario

Assessment  
Review Board

## Tribunaux décisionnels Ontario

Commission de révision de  
l'évaluation foncière

**ISSUE DATE:** March 12, 2021

**FILE NO.:** DM 167847

Assessed Person(s): See Schedule A  
Appellant(s): City of Greater Sudbury  
Respondent(s): Municipal Property Assessment Corporation Region 30  
Respondent(s): Vale Canada Limited, Xstrata Canada Corporation, and  
Glencore Canada Corporation  
Property Location(s): See Schedule A  
Municipality(ies): City of Greater Sudbury  
Roll Number(s): See Schedule A  
Appeal Number(s): See Schedule A  
Taxation Year(s): 2017, 2018, 2019 and 2020  
Hearing Event No.: 737381  
Legislative Authority: Rule 45 of the Assessment Review Board's *Rules of Practice and Procedure* and section 53 of the *Assessment Act R.S.O. 1990, c. A.31*

### Parties

City of Greater Sudbury

Vale Canada Limited,  
Xstrata Canada  
Corporation,  
Glencore Canada  
Corporation

Municipal Property  
Assessment Corporation

### Counsel

Dan Rosman

Phillip Sanford

Sarah Corman and Hilary Brown

**REQUEST FOR:** An Order for Disclosure  
**HEARD:** December 17, 2020 in writing  
**ADJUDICATOR(S):** Carly Stringer, Member

## **MOTION DECISION**

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## OVERVIEW

[1] The City of Greater Sudbury (the “City”) filed appeals with the Assessment Review Board (the “Board”) with respect to the January 1, 2016 current value assessment of 18 Rink Street, 1045 Regional Road 24, 487 Power Street, 1700 Elm Street, 6 Edison Road and Garson Mine (the “Subject Properties”) relating to the 2017 to 2020 taxation years. Five of the Subject Properties are owned by Vale Canada Limited (“Vale”) and one is owned by Glencore Canada Corporation, formerly Xstrata Canada Corporation (“Glencore”).

[2] The City filed a Notice of Motion seeking an Order for disclosure pursuant to Rule 45 of the Board’s *Rules of Practice and Procedure* (“Rules”) and s. 53(5) of the *Assessment Act*, R.S.O. 1990, c A.31 (the “Act”), compelling Vale and the Municipal Property Assessment Corporation (“MPAC”) to disclose the information listed in Attachment 1 (“Disclosure Requests”). The City does not seek any relief against Glencore. The City also seeks an amendment to the Schedule of Events (“SOE”) to accommodate this motion.

[3] Both MPAC and Vale oppose the motion.

[4] I have carefully reviewed the evidence, submissions, and case law provided by the parties. For the reasons that follow, the Board denies the motion for disclosure. The Board will grant a short extension to the SOE to accommodate this motion.

## BACKGROUND

[5] The Subject Properties are mining properties located in the City of Greater Sudbury. The issues raised across the appeals are very similar. The parties are in agreement that the Subject Properties are considered “special purpose” and the current value assessment for the January 1, 2016 valuation date should be determined using the cost approach.

[6] The City's position on the appeals is that MPAC's current value assessment is too low. More specifically, the City argues that inputs used by MPAC in its cost approach valuation are understated compared to actual construction costs. The City also questions MPAC's land values, on the basis that raw lands are valued much lower than developed or serviced lands given high costs associated with blasting, grubbing, and servicing raw lands for development.

[7] On this motion, the City submits that it requires actual costing information for construction projects completed on the Subject Properties to properly determine the correct current value using the cost approach. The City also requests information from MPAC related to the valuation methodology used in its expert report. It is the City's position that its requests for disclosure are narrowly tailored to the information and facts relevant to the application of the cost approach to valuing the Subject Properties.

[8] Vale argues that the City is on a fishing expedition. Vale's position is that the Disclosure Requests are not relevant; the City's requests are not proportionate to the issues in dispute; and the requests are being made too late in the proceeding.

[9] MPAC opposes the motion on the basis that it comes more than two years past the deadline set in the SOE for a motion for disclosure from MPAC, without the City showing evidence of exceptional circumstances to justify an amendment to the SOE. MPAC also maintains the requests are neither relevant nor proportionate.

## **ISSUES**

[10] There are two general issues to be decided on this motion in relation to each Disclosure Request:

1. Should the Board grant an amendment to the SOE to permit disclosure and allow the parties to file additional documents past the prescribed timelines? To answer that question, one sub-issue must be considered:
  - (a) Are there exceptional circumstances to warrant altering the timeline set out in the SOE?
  
2. If the answer to Issue 1 is yes, should the Board order disclosure? To answer that question, two sub-issues must be considered:
  - (a) Is the information sought relevant to the issues in dispute?
  
  - (b) If the information sought is relevant, is its disclosure proportionate to the importance and complexity of the issues in dispute with a view to resolving appeals within the four-year cycle?

## **ANALYSIS**

### **Preliminary Matters**

[11] The Board is advised by MPAC that it is not in possession of any document that is responsive to Disclosure Request No. 6. This is not disputed by the City. Given that a party is not required to create new documents in response to disclosure requests, the Board will make no order in respect of Disclosure Request No. 6.

[12] Regarding Disclosure Requests Nos. 10 and 11, MPAC refuses to provide the information without a s. 53(5) order. Section 53 of the Act addresses instances where parties are seeking that MPAC disclose information relating to properties not on appeal ("Other Properties"). The City is required to provide notice to the owners of the Other Properties that it is seeking disclosure. MPAC maintains that the City does not appear to

have provided the requisite notice, and therefore there is no proper s. 53 motion before the Board. The City has not responded to MPAC's position on the notice requirement, and there is no evidence before me to confirm whether the City provided notice to affected parties. Therefore, I agree with MPAC. The Board makes no order in respect of Disclosure Requests Nos. 10 and 11. The City may apply separately for a s. 53 order with proper notice, following the expedited process the Board has in place.

[13] The Board is advised that MPAC and the City have resolved Disclosure Request No. 12. Therefore, the Board makes no order in respect of Disclosure Request No. 12.

[14] The Board is advised by MPAC that its expert has agreed to respond to Disclosure Request No. 13. Therefore, the Board makes no order in respect of Disclosure Request No. 13 with the understanding that MPAC will provide the information sought.

[15] To organize the analysis below, I have divided the remaining Disclosure Requests into two groups: Group A and Group B. Group A Disclosure Requests are aimed at both Vale and MPAC and pertain to information regarding actual construction costs incurred by Vale. Group B Disclosure Requests are aimed solely at MPAC and pertain to specific items raised in MPAC's expert report delivered on September 21, 2020.

<b>Group A Disclosure Requests made to Vale and MPAC</b>	<b>Group B Disclosure Requests made to MPAC</b>
<b>Disclosure Request No. 1 (Vale):</b> Detailed actual costs of construction along with cost records for any construction projects commenced on the Subject Properties between 2013 and 2020 for each site under appeal with a project cost over \$100,000.00	<b>Disclosure Request No. 5 (MPAC):</b> Any and all studies, reports, comparisons to actual building costs, or similar indicating that the Hanscomb system as incorporated into ACS appropriately reflects costs of construction in Northern Ontario and, more specifically, the Greater Sudbury Area

Group A Disclosure Requests made to Vale and MPAC	Group B Disclosure Requests made to MPAC
<p><b>Disclosure Request No. 2 (Vale):</b> Actual building construction costs along with costs records of projects related to the building permits provided at Schedule “A” of the City’s Statement of Issues and Schedule “C” of the City’s Statement of Reply.</p>	<p><b>Disclosure Request No. 9 (MPAC):</b> Any and all studies, reports, formulas, or similar on the application of economies of scale to the Cost Approach to Value as applied to the Subject Properties in particular the Quantity Adjustment Factor as described at p. 16 of the MPAC reports</p>
<p><b>Disclosure Request No. 3 (Vale):</b> Actual construction costs for infrastructure including roads, hydro sewer, water, and similar built by Vale on or near the Subject Properties between 2015 and 2020.</p>	
<p><b>Disclosure Request No. 4 (Vale):</b> Actual costs of site preparation including grubbing, clearing, blasting, crushing and similar incurred between 2015 and 2020</p>	
<p><b>Disclosure Request No. 7 (MPAC):</b> All actual construction costs of the buildings on the Subject Properties in the possession of MPAC if not already provided</p>	
<p><b>Disclosure Request No. 8 (MPAC):</b> Any construction cost information relating to the Subject Properties in the possession of MPAC</p>	

**Issue 1 - Should the Board grant an amendment to the SOE to permit disclosure and allow the parties to file additional documents past the prescribed timelines?**

[16] Under the SOE applicable to these appeal proceedings, MPAC was required to provide its initial disclosure by July 13, 2018. The City was required to complete any required motions for disclosure from MPAC by August 17, 2018. The City was required to provide its disclosure and Statement of Issues (“SOI”) to all other parties by November 9, 2018. Vale was required to provide its Response to the SOI along with any additional disclosure by May 3, 2019. The City ought to have identified any additional

disclosure required from Vale in order to complete its Reply, which was due May 31, 2019. The City was required to provide its expert report by December 13, 2019. MPAC and Vale were required to provide their expert reports by September 25, 2020. The City was required to provide any reply expert reports by November 6, 2020.

[17] The City brought this motion on November 30, 2020.

[18] In light of the relevant dates I have outlined above, an amendment extending the timelines in the SOE will be required to accommodate this disclosure motion and its outcome.

[19] Rule 82 of the Board's Rules states that once a SOE has begun, "... the Board will not alter any timeline set out in the schedule of events, other than in exceptional circumstances." Rule 48 provides that, unless the Board finds there are exceptional circumstances, a document will only be admitted into evidence at a hearing if it has been disclosed to the parties and filed with the Board in accordance with the Rules. Therefore, a party seeking to alter the SOE, or disclose documents at this stage of the proceeding, must prove that exceptional circumstances exist.

**Issue 1(a) - Are there exceptional circumstances to warrant altering the timeline set out in the SOE?**

[20] In *IG Investment Management Ltd. v Municipal Property Assessment Corporation, Region 32*, 2020 CanLII 83829 (ON ARB) at paragraph 10, the Board confirmed that

"Exceptional means, among other things, something that does not occur regularly, something unusual, or something atypical..."

[21] The City suggests the following are exceptional circumstances that warrant altering the timeline in the SOE:

- (a) the subject appeals are themselves unusual and not typical because they concern complicated special purpose mining properties that are unique within Ontario;
- (b) the Subject Properties represent an enormous portion of the City's assessment base;
- (c) the City has evidence that MPAC's costing values are inaccurate; and
- (d) MPAC and Vale have repeatedly denied requests to provide this information.

[22] Regarding the first two circumstances identified above - I agree that the Subject Properties are special purpose and require a particular approach to valuation. It may be that the values at issue could represent a sizeable portion of the City's assessment base. That said, I am not satisfied that these factors render the circumstances "exceptional" to warrant altering the SOE. Although unique, high-value properties can be complicated to value, I have not been provided with any case law where the Board found that either the nature of the property at issue, or the impact on the assessment base for a municipality, was sufficient to render the circumstances "exceptional."

[23] Regarding the third circumstance—that the City has evidence that MPAC's costing values are incorrect—I am not satisfied this is exceptional. The City states that it has building permits filed by Vale that show costs of recent construction by Vale are on average 2.1 times higher than MPAC's Automated Cost System ("ACS") inputs applied to the Subject Properties' returned assessments. In my view, this is not exceptional as parties before the Board will often disagree regarding the relevant inputs that inform a Cost Approach valuation. There is nothing particularly atypical or unusual about one party having evidence that may challenge the veracity of another party's cost inputs. I have not been provided with any case law where the Board determined this type of

evidence was sufficient to render the circumstances “exceptional,” and I decline to find that it is.

[24] The Board’s analysis of the final circumstance listed above – that MPAC and Vale repeatedly denied requests for disclosure – varies when applied to Group A Disclosure Requests as compared to Group B Disclosure Requests.

#### Group A Disclosure Requests

[25] As noted above, Group A Disclosure Requests pertain to information about actual construction costs incurred by Vale. The City submits that MPAC and Vale repeatedly denied requests for disclosure, and this amounts to an exceptional circumstance.

[26] I do not agree that the repeated refusal of a disclosure request constitutes an exceptional circumstance which warrants deviating from the SOE. A refusal to disclose can occur as a matter of course, which is why the SOE contemplates the timing of disclosure and motions related thereto.

[27] Moreover, in my view, the City has not satisfactorily explained its failure to bring a timely motion in the face of the refusals. Some background is needed to contextualize the City’s requests for information:

- (a) On July 9, 2018, MPAC provided its initial disclosure. This initial disclosure included two MPAC reports entitled “Assessment Methodology Guide: Assessing Mining Properties in Ontario - 2016 Base Year” and “Market Valuation Report: Assessing Special Purpose Properties in Ontario: Base Metal Mining.” MPAC also provided a “Property Profile” for each of the properties, which included the ACS cost inputs.

- (b) On July 25, 2018, the City requested additional disclosure from MPAC relating to, among other things, land values; and reproduction and/or replacement cost new (“RCN”) data including complete copy of ACS rates per component and a description of how quantity adjustment factors were calculated.
- (c) On July 24, 2018, MPAC provided additional disclosure relating to the land values of the Subject Properties. With respect to the RCN data requested, MPAC provided the property profile, methodology guide and market value report. MPAC took the position that other items requested are either “not proportional, readily available, or relevant to initial disclosure.”
- (d) On August 20, 2018, the City asked Vale for, among other things, construction cost details for a list of seven (7) buildings with permit values ranging between \$100,800 and \$8,834,950. The City also requested “... the construction cost breakdowns of any other recent construction projects undertaken by Vale that illustrate typical costs of construction circa 2016.”
- (e) On September 21, 2018, Vale declined to provide the requested construction cost details. Vale’s legal counsel stated “It is my client’s position that the information is not relevant. Aside from that, the request in any event is premature.”
- (f) On November 9, 2018, the City served its SOI. In that pleading, the City relied on the building permits issued to Vale to argue that actual costs of construction are higher than those employed by MPAC; referenced its requests for additional disclosure; and noted the City “has not received full comprehensive data from the Owners and MPAC.”

- (g) On May 31, 2019, Vale provided its Response to the City's SOI. In that pleading, Vale disagreed with the "actual cost" approach taken by the City.
- (h) On July 12, 2019, the City provided its Reply. In that pleading, the City repeated its position that MPAC's utilization of the ACS significantly underestimates the actual construction costs, and does not establish the costs of construction in the City of Greater Sudbury; stated twice that Vale refuses to disclose any information on the actual construction costs despite numerous requests from the City; reiterated a formal demand to Vale to provide Vale's actual costs of construction; and requested that MPAC compare the costs produced by ACS with any actual costing information from the City of Greater Sudbury.
- (i) On December 13, 2019, the City served its expert reports.
- (j) On June 1, 2020, Vale provided an expert report prepared by Chris Ratnasingham at Altus Group (the "Ratnasingham Report"). Subsequent to the delivery of this report, Mr. Ratnasingham left Altus Group. Vale advised the City it would be providing a further expert report and would not be relying upon the Ratnasingham Report.
- (k) On July 15, 2020, the City wrote to Vale noting that it had reviewed the Ratnasingham Report and "[t]here are documents and information mentioned and relied upon by the expert and raised in the Pleadings that have not yet been produced." The City then provided an itemized list of six items including detailed actual costs of construction along with cost records for any construction project commenced on the Subject Property between 2015 and 2019 for each site under appeal; actual building construction costs along with cost records of projects related to the building permits provided at Schedule "A" of the City's Statement of Issues and Schedule "C" of the

City's Statement of Reply; actual construction costs for infrastructure including roads, hydro, sewer, water, and similar built by Vale on or near the Subject Property between 2015 and 2019; and actual costs of site preparation including grubbing, clearing, blasting, crushing and similar incurred between 2015 and 2019.

- (l) On or about September 21, 2020, MPAC provided its expert report and Vale provided its further expert report.
- (m) On October 7, 2020, the City wrote to Vale and MPAC. The City repeated its request to Vale for the documents and information as stated in the July 15, 2020 letter. The City requested information from MPAC including Disclosure Requests Nos. 5, 7, 8 and 9.
- (n) On October 16, 2020, Vale wrote to the City to respond to the July 2020 and October 7, 2020 requests. Vale declined to produce "cost records for any construction projects commenced on the Subject Property between 2015 and 2019 for each site under appeal." Vale agreed to provide actual building construction costs for the buildings relied on in the City's expert reports, and took under consideration the City's request for site preparation costs and costs for infrastructure.
- (o) On October 21, 2020, the City wrote to Vale to, among other things, reiterate its request for the items Vale had declined to produce. The City also noted it had not yet received a response from MPAC to its October 7, 2020 letter.
- (p) On October 27, 2020, Vale wrote to the City. Vale confirmed its position that the cost records for construction projects is not relevant at this point given the stage of the litigation. Vale confirmed it was seeking construction costs

for the buildings relied on by the City's expert in his report and would provide as soon as possible.

- (q) On November 2, 2020, MPAC wrote to the City. Regarding Disclosure Request No. 5, MPAC confirmed that the relevant studies and reports are set out in the applicable methodology guide and market valuation reports, and that Sudbury is not broken out from the balance of Northern Ontario for the purpose of this analysis. Regarding Disclosure Requests Nos. 7 and 8, MPAC confirmed that no construction cost information had been provided to MPAC. Regarding Disclosure Request No. 9, MPAC asked the City to provide more specificity.
  
- (r) On November 20, 2020, the City provided its Notice of Motion for Disclosure.

[28] This background information indicates that since the beginning of this appeal, the City has argued that MPAC's inputs are understated. The City has known, since the beginning of its case, that the costs reflected in building permits are far more than MPAC's assessment. The City made at least two requests for more information in 2018 one request in 2019, followed by a gap of one year between the City's Reply of July 2019 and the City's request for more documents on July 15, 2020.

[29] In my view, if the City believed it required actual construction costs for its case and considered that Vale was improperly refusing to provide this information from as far back as 2018, then the City ought to have taken steps much earlier to bring this motion. There is nothing "exceptional" to explain why the City waited to submit its request until this stage of the proceedings. The City submits that it expected the necessary disclosure to be included in MPAC and Vale's expert reports. It is unclear why the City would expect that the requested disclosure would be included in the expert reports provided by MPAC and Vale, if they had already refused and/or ignored requests for

these documents. If the City has maintained all along that the actual construction costs are critical to determining the correct current value assessment of the Subject Properties, it is also unclear why the City believed it ought to wait and see if MPAC and Vale's experts opined on the issue and provided disclosure.

[30] In my view, the refusal of MPAC and Vale to provide disclosure is not an exceptional circumstance. If the City believed it required additional disclosure regarding actual construction costs, it had ample opportunity under the SOE to bring a disclosure motion on a timely basis.

[31] The Board requires strict compliance with its Rules. Parties are expected to complete their pre-hearing exchange of disclosure in a timely way in order to properly complete their pleadings and expert reports. There are no exceptional circumstances warranting an amendment to the SOE regarding the Group A Disclosure Requests.

#### Group B Disclosure Requests

[32] As noted above, Group B Disclosure Requests (Disclosure Requests Nos. 5 and 9) are aimed solely at MPAC and reference items raised in MPAC's expert report delivered on September 21, 2020.

[33] MPAC maintains that there are no exceptional circumstances in relation to Disclosure Requests Nos. 5 and 9. MPAC maintains that it provided extensive early disclosure of the valuation methodology applied to the Subject Properties, and if the City had requests for further information, such requests should have been made in compliance with the SOE.

[34] As outlined in paragraph 27 (a) to (c) above, in July 2018, the City did request disclosure from MPAC relating to ACS rates per component and a description of how quantity adjustment factors were calculated. That said, the City did not specifically

itemize the Group B Disclosure Requests until October 7, 2020, after MPAC's expert report was received.

[35] I am not satisfied that the City ought to have been aware of the need for disclosure of the information sought by Disclosure Requests Nos. 5 and 9 prior to receipt of MPAC's expert report. With respect to Disclosure Request No. 5, there is only one brief reference to Hanscomb data in the "Market Valuation Report, Assessing Special Purpose Properties in Ontario: Base Metal Mining, 2016 Assessment Update, Valuation Date: January 1, 2016" that was provided as part of MPAC's initial disclosure in July 2018. This same brief reference was repeated verbatim at paragraph 16 of MPAC's SOI dated June 3, 2018. In contrast, MPAC's expert report contains a more extensive reference, spending at least three (3) paragraphs on page 12 of the report discussing Hanscomb data and its reliability. With respect to Disclosure Request No. 9, the quantity adjustment factor was a line item in the Property Profile provided in initial disclosure. In contrast, MPAC's expert report expands on the quantity adjustment factor in relation to the City's "building permit analysis," arguing that the building permit approach does not factor in economies of scale. MPAC's expert also states that MPAC's automated cost system makes adjustments for size differentials.

[36] In my view, the information requested in Disclosure Requests Nos. 5 and 9 could not reasonably have been identified earlier and is disclosure requested on the basis of new evidence raised in MPAC's expert report delivered September 21, 2020. Disclosure is an on-going obligation, and new information raised in an expert report is sufficient to constitute an exceptional circumstance in this case. The City is entitled to request disclosure relating to new information raised in MPAC's expert report so that the City's expert, in his reply report, can fully respond.

#### Findings on Issue 1

[37] Based on the foregoing, the Board has determined:

- (a) There are no exceptional circumstances warranting an amendment to the SOE to permit Disclosure Requests Nos. 1, 2, 3, 4, 7 and 8, at this stage in the proceeding. Therefore, the Board will not grant an amendment to the SOE in relation to Disclosure Requests Nos. 1, 2, 3, 4, 7 and 8.
  
- (b) There are exceptional circumstances warranting an amendment to the SOE in relation to Disclosure Requests Nos. 5 and 9.

## **Issue 2 - Should the Board order disclosure?**

[38] Even if the Board is prepared to grant an amendment to the SOE to allow for the City's disclosure requests made to MPAC, the City must still satisfy the Board that it ought to order such disclosure.

[39] Rule 45 requires that all parties provide a copy of "...all relevant documents in their possession, control or power to all other parties in the proceeding, except for privileged documents."

[40] In determining whether to order disclosure in accordance with Rule 45, the Board applies a two-part test. First, the Board considers whether the information sought is relevant to the issues in dispute. Second, the Board considers whether ordering disclosure is proportionate to the issues in dispute: see *Metro Ontario Inc. v Municipal Property Assessment Corporation, Region 13*, 2019 CanLII 47974 (ON ARB) ("*Metro*"), *supra* at paragraph 11.

[41] Given that I have determined there will be no amendment to the SOE in relation to the Group A Disclosure Requests, this analysis will pertain only to the Group B Disclosure Requests, particularly Disclosure Requests Nos. 5 and 9.

**Issue 2(a) - Is the information sought relevant to the issues in dispute?**

[42] Relevance is determined in relation to whether a document is relevant to an issue in dispute: *Walmart Canada Corporation and Target Canada Corporation v Municipal Property Assessment Corporation, Region 01*, 2018 CanLII 67789 (ON ARB) (“*Wal-Mart*”) at paragraph 18; *Metro* at paragraph 11. As noted by the Board in *Toyota Motor Manufacturing Canada Inc. v Municipal Property Assessment Corporation*, 2020 CanLII 77938 (ON ARB) (“*Toyota*”) at paragraph 13, “the test for relevance really comes down to whether or not the production of documents requested relates to the issues in dispute. If so, they are relevant.”

Disclosure Request No. 5

[43] Disclosure Request No. 5 requests information indicating that the Hanscomb system as incorporated into MPAC’s ACS appropriately reflects the costs of construction in Northern Ontario and, more specifically, Sudbury. The City says this request is relevant to the correctness of MPAC’s inputs in the cost approach to value.

[44] MPAC has not disputed the relevance of this information.

[45] MPAC has explicitly raised that it relies on Hanscomb data for the accuracy of its ACS inputs. I agree that this request is relevant to an issue raised by the City, being the accuracy of the inputs being used in MPAC’s cost approach to valuing the Subject Properties.

Disclosure Request No. 9

[46] Disclosure Request No. 9 requests information regarding the basis for any economies of scale adjustments used by MPAC in valuing the Subject Properties.

[47] The City states this is relevant to the accuracy of the ACS inputs, as MPAC's expert disclosed that MPAC adjusts its ACS input values to account for economies of scale. Therefore, the formula, application and basis for this adjustment is directly relevant to the accuracy of MPAC's valuation of the Subject Properties.

[48] MPAC has not disputed the relevance of this information.

[49] I agree that this request is relevant to an issue raised by the City, being the accuracy of the inputs being used in MPAC's cost approach in valuing the Subject Properties.

**Issue 2(b) - If the information sought is relevant, is its disclosure proportionate to the importance and complexity of the issues in dispute with a view to resolving appeals within the four-year cycle?**

[50] Relevance is not the only criteria that the Board will consider when determining whether a document should be disclosed. Rule 5 of the Board's Rules provides "[t]hese Rules shall be applied in a manner proportionate to the importance and complexity of the issues in a proceeding and with a view to resolving appeals within the four year cycle."

[51] Therefore, the requirement to disclose relevant documents must also be applied in a proportionate manner. As noted by the Board in *Toyota, supra* at paragraph 15,

In making this determination it is necessary for the Board to consider the competing interests of non-disclosure and, excessive disclosure which may unreasonably increase the cost in a particular case and delay the final resolution of the matter on its merits.

[52] Although the Rules do not include specific criteria to assess proportionality, the Board has previously applied the criteria enumerated in Rule 29.2.03(1) and (2) of

Ontario's *Rules of Civil Procedure: Walmart, supra* at paragraph 18. This is considered a non-exhaustive list and other criteria may be considered on a case by case basis.

[53] Given that I have determined that the Group B Disclosure Requests are relevant, I will now determine in turn whether each request is proportionate to the issues in dispute.

#### Disclosure Request No. 5

[54] MPAC submits that this request is overly broad and constitutes a classic fishing expedition. MPAC maintains that this request lacks the specificity required of a disclosure request as it provides a generic description of documents that may or may not exist, as opposed to pointing to a specific document. According to MPAC, this broad request is not proportionate to the specific issues in respect of the six properties that are the subject of this motion.

[55] The City argues that its request is proportionate, noting that MPAC explicitly relies on Hanscomb in its materials. The City submits that there is no way that it can know the exact title of any document MPAC relies upon to support its use of Hanscomb.

[56] I agree with MPAC that the wording of the request is broad. Disclosure requests must be discrete and targeted, so there is no confusion about what a party is being ordered to produce. It is up to the requesting party to be precise. Although I appreciate the City's argument that there is no way for it to be able to identify a specific document in the circumstances, I have concern with the wording of Disclosure Request No. 5. In my view, asking for information regarding whether ACS "appropriately" reflects costs of construction in Northern Ontario incorporates a value judgment of what MPAC should be required to produce. Further, including words like "or similar" expands the scope beyond a sufficient level of specificity.

[57] In my view, Disclosure Request No. 5 is imprecise, overbroad, and incorporates a value judgment into what MPAC would be required to produce. In these circumstances, I find Disclosure Request No. 5 is not proportionate.

#### Disclosure Request No. 9

[58] MPAC submits that this request is unclear and constitutes an overbroad fishing expedition. MPAC maintains that the City has not identified a specific document, but rather has provided a non-exhaustive list of hypothetical documents that may or may not exist and may or may not be relevant and probative of the issues. According to MPAC, this overbroad request is not proportionate.

[59] The City argues that its request is proportionate, again submitting that it cannot know the exact names of the documents in MPAC's possession. The City submits that it requires the requested disclosure so it can ascertain the economies of scale discounts applied to the Subject Properties on which MPAC relies.

[60] I agree with MPAC that the wording of the request is unclear and broad. Although I appreciate the City's argument that there is no way for it to be able to identify a specific document in the circumstances, disclosure requests must be specific and precise, so that there is no confusion respecting what must be produced. Inclusion of words like "or similar" expands the scope beyond a sufficient level of specificity. The request is not proportionate.

#### Findings on Issue 2

[61] Based on the foregoing, the Board has determined:

- (a) Disclosure Requests Nos. 5 and 9 are relevant to the issues in dispute.

- (b) Disclosure Requests Nos. 5 and 9 are imprecise and overbroad, and therefore not proportionate.

[62] Therefore, the Board denies Disclosure Requests Nos. 5 and 9.

## **ORDER**

[63] The motion for disclosure is denied.

[64] Although the Board has determined there are no exceptional circumstances warranting amendment to the SOE, some adjustment is required to allow for this motion. Therefore, the due date for serving the Reply Expert Report, as set out in the Schedules of Events for the appeal proceedings for each of the Subject Properties, is amended to a date 20 days from the issuance date of this Motion Decision. All other subsequent due dates are to be adjusted accordingly. The Board's Case Coordinator will advise the parties of the specific due dates, which may be adjusted slightly due to constraints imposed on the Board's electronic case management system.

*"Carly Stringer"*

CARLY STRINGER  
MEMBER

### ATTACHMENT 1 – Disclosure Requests

Disclosure Request No.	Request
1	To Vale: Detailed actual costs of construction along with cost records for any construction projects commenced on the Subject Properties between 2013 and 2020 for each site under appeal with a project cost over \$100,000.00
2	To Vale: Actual building construction costs along with costs records of projects related to the building permits provided at Schedule “A” of the City’s Statement of Issues and Schedule “C” of the City’s Statement of Reply.
3	To Vale: Actual construction costs for infrastructure including roads, hydro sewer, water, and similar built by Vale on or near the Subject Properties between 2015 and 2020.
4	To Vale: Actual costs of site preparation including grubbing, clearing, blasting, crushing, and similar incurred between 2015 and 2020.
5	To MPAC: Any and all studies, reports, comparisons to actual building costs, or similar indicating that the Hanscomb system as incorporated into ACS appropriately reflects costs of construction In Northern Ontario and, more specifically, the Greater Sudbury Area.
6	To MPAC: Details and list of the “34 Typical Structures” used by Hanscomb and referred to at page 12 of the MPAC reports.
7	To MPAC: All actual construction costs of the buildings on the Subject Properties in the possession of MPAC if not already provided.
8	To MPAC: Any construction cost information relating to the Subject Properties in the possession of MPAC.
9	To MPAC: Any and all studies, reports, formulas, or similar on the application of economies of scale to the Cost Approach to Value as applied to the Subject Properties in particular the Quantity Adjustment Factor as described at page 16 of the MPAC reports.
10	To MPAC: The complete files, including sales investigation and notes regarding the sales at Appendix “G”
11	To MPAC: Full information on properties used in MPAC’s ASR Study (p. 24-18 Rink Report) including sales information, sales notes, questionnaires, appeal information and whether any assessments have been changed
12	To MPAC: Provide a description and inventory of the exact land areas under appeal. Specifically, the legal descriptions cross-referenced to the PIN (Property Identification Number) compared to the Assessment Roll Number (ARN) ie the mapping of the ARN to the PIN/legal descriptions, etc.
13	To MPAC: Explanation of the “locational adjustment” – specifically as applied to the sales in Appendix G. Provide detailed, specific examples of how the locational adjustment works. Specific examples – properties #4 and #10.

### SCHEDULE A

Appeal No	Roll Number	Property Address	Region	Assessed Person	Unit	Year
3242166	5307 040 013 05200 0000	1700 to 0 ELM ST	30	VALE CANADA LIMITED		2017
3314573	5307 040 013 05200 0000	1700 to 0 ELM ST	30	VALE CANADA LIMITED		2018
3367986	5307 040 013 05200 0000	1700 to 0 ELM ST	30	VALE CANADA LIMITED		2019
3392161	5307 040 013 05200 0000	1700 to 0 ELM ST	30	VALE CANADA LIMITED		2017
3392162	5307 040 013 05200 0000	1700 to 0 ELM ST	30	VALE CANADA LIMITED		2018
3392163	5307 040 013 05200 0000	1700 to 0 ELM ST	30	VALE CANADA LIMITED		2019
3392164	5307 040 013 05200 0000	1700 to 0 ELM ST	30	VALE CANADA LIMITED		2018
3392165	5307 040 013 05200 0000	1700 to 0 ELM ST	30	VALE CANADA LIMITED		2019
3411098	5307 040 013 05200 0000	1700 to 0 ELM ST	30	VALE CANADA LIMITED		2020
3411109	5307 040 013 05200 0000	1700 to 0 ELM ST	30	VALE CANADA LIMITED		2020
3411121	5307 040 013 05200 0000	1700 to 0 ELM ST	30	VALE CANADA LIMITED		2020
3242167	5307 080 005 01800 0000	487 to 0 POWER ST	30	VALE CANADA LIMITED		2017
3314720	5307 080 005 01800 0000	487 to 0 POWER ST	30	VALE CANADA LIMITED		2018
3367864	5307 080 005 01800 0000	487 to 0 POWER ST	30	VALE CANADA LIMITED		2019
3411025	5307 080 005 01800 0000	487 to 0 POWER ST	30	VALE CANADA LIMITED		2020

**SCHEDULE A - Continued**

Appeal No	Roll Number	Property Address	Region	Assessed Person	Unit	Year
3242168	5307 080 005 04000 0000	18 to 0 RINK ST	30	VALE CANADA LIMITED		2017
3314721	5307 080 005 04000 0000	18 to 0 RINK ST	30	VALE CANADA LIMITED		2018
3367825	5307 080 005 04000 0000	18 to 0 RINK ST	30	VALE CANADA LIMITED		2019
3392166	5307 080 005 04000 0000	18 to 0 RINK ST	30	VALE CANADA LIMITED		2017
3392167	5307 080 005 04000 0000	18 to 0 RINK ST	30	VALE CANADA LIMITED		2018
3392168	5307 080 005 04000 0000	18 to 0 RINK ST	30	VALE CANADA LIMITED		2018
3392169	5307 080 005 04000 0000	18 to 0 RINK ST	30	VALE CANADA LIMITED		2019
3392170	5307 080 005 04000 0000	18 to 0 RINK ST	30	VALE CANADA LIMITED		2019
3411072	5307 080 005 04000 0000	18 to 0 RINK ST	30	VALE CANADA LIMITED		2020
3411084	5307 080 005 04000 0000	18 to 0 RINK ST	30	VALE CANADA LIMITED		2020
3411119	5307 080 005 04000 0000	18 to 0 RINK ST	30	VALE CANADA LIMITED		2020
3242171	5307 120 016 03201 0000	1045 to 0 REGIONAL RD 24	30	VALE CANADA LIMITED		2017
3314601	5307 120 016 03201 0000	1045 to 0 REGIONAL RD 24	30	VALE CANADA LIMITED		2018
3367916	5307 120 016 03201 0000	1045 to 0 REGIONAL RD 24	30	VALE CANADA LIMITED		2019
3411013	5307 120 016 03201 0000	1045 to 0 REGIONAL RD 24	30	VALE CANADA LIMITED		2020

**SCHEDULE A - Continued**

Appeal No	Roll Number	Property Address	Region	Assessed Person	Unit	Year
3242174	5307 210 012 04200 0000	0 to 0 GARSON MINE	30	VALE CANADA LIMITED		2017
3314553	5307 210 012 04200 0000	0 to 0 GARSON MINE	30	VALE CANADA LIMITED		2018
3367961	5307 210 012 04200 0000	0 to 0 GARSON MINE	30	VALE CANADA LIMITED		2019
3410979	5307 210 012 04200 0000	0 to 0 GARSON MINE	30	VALE CANADA LIMITED		2020
3241743	5307 220 002 00300 0000	6 to 0 EDISON RD	30	XSTRATA CANADA CORPORA		2017
3314509	5307 220 002 00300 0000	6 to 0 EDISON RD	30	XSTRATA CANADA CORPORA		2018
3367758	5307 220 002 00300 0000	6 to 0 EDISON RD	30	XSTRATA CANADA CORPORA		2019
3392174	5307 220 002 00300 0000	6 to 0 EDISON RD	30	XSTRATA CANADA CORPORA		2017
3392175	5307 220 002 00300 0000	6 to 0 EDISON RD	30	XSTRATA CANADA CORPORA		2018
3392176	5307 220 002 00300 0000	6 to 0 EDISON RD	30	XSTRATA CANADA CORPORA		2019
3392177	5307 220 002 00300 0000	6 to 0 EDISON RD	30	XSTRATA CANADA CORPORA		2018
3392178	5307 220 002 00300 0000	6 to 0 EDISON RD	30	XSTRATA CANADA CORPORA		2018
3392179	5307 220 002 00300 0000	6 to 0 EDISON RD	30	XSTRATA CANADA CORPORA		2019
3392180	5307 220 002 00300 0000	6 to 0 EDISON RD	30	XSTRATA CANADA CORPORA		2019
3392181	5307 220 002 00300 0000	6 to 0 EDISON RD	30	XSTRATA CANADA CORPORA		2019

**SCHEDULE A - Continued**

Appeal No	Roll Number	Property Address	Region	Assessed Person	Unit	Year
3411122	5307 220 002 00300 0000	6 to 0 EDISON RD	30	GLENCCORE CANADA CORPO		2020