

Form 4.03B

2004

**SUPREME COURT OF NOVA SCOTIA**

BETWEEN:

NEILA CATHERINE MACQUEEN, JOSEPH M. PETITPAS,  
ANN MARIE ROSS, and KATHLEEN IRIS CRAWFORD

Hfx. No. 218010

Court Administration

JAN 21 2013

Halifax, N.S.  
Plaintiffs

- and -

SYDNEY STEEL CORPORATION, a body corporate; THE ATTORNEY GENERAL OF NOVA SCOTIA representing Her Majesty the Queen in right of the Province of Nova Scotia; and THE ATTORNEY GENERAL OF CANADA representing Her Majesty the Queen in right of Canada.

Defendants

**Proceeding under the *Class Proceedings Act*, S.N.S 2007, c. 28**

**FOURTH AMENDED CONSOLIDATED STATEMENT OF CLAIM  
AMENDED THE 21<sup>ST</sup> DAY OF JANUARY, 2013**

1. In this Fourth Amended Consolidated Statement of Claim, the following capitalized terms have the meanings set out below:
  - (a) "Atwell Study" means the study commissioned by the Defendant Canada and published in June 1984 which was conducted in Sydney, Nova Scotia from October 16, 1981 to September 21, 1982, to determine the magnitude of polynuclear aromatic hydrocarbon (PAH) levels in the area and to determine the major source or sources of PAH. The study was a cooperative effort between the Environmental Protection Service, Atlantic Region of Environment Canada and the Nova Scotia Department of the Environment.
  - (b) "Band and Camus Study" means the study commissioned by the Defendant Canada and published in March of 2003 which specifically identified (i) some of the materials contained in the Contaminants; (ii) the

unique and specific exposure of residents of the Neighbourhoods to high levels of airborne emissions; and (iii) the potential for a causal link between the Contaminants and adverse health consequences.

- (c) "Canada" means the Queen in right of Canada, the Attorney General of Canada, the former Cape Breton Development Corporation and all of their agencies, departments, contractors, subcontractors, agents, servants, employees, assigns, appointees or partners.
- (d) "Cantox Study" means the study commissioned by the Defendants Canada and Nova Scotia and published on August 11, 1998 which was conducted as an independent human health risk assessment of the Frederick Street area to determine whether chemicals associated with the Frederick Street Brook, the seep area and dusting activities related to work on the coke ovens and released into the environment have the potential to cause health problems in people.
- (e) "Choquette Study" means a study of the emissions from the Steel Works commissioned by the defendant Canada and completed in or about 1974 which concluded that the emissions from the Steel Works exceeded guidelines including the National Ambient Air Quality Guidelines and were impacting Class Members and their property.
- (f) "Class Boundaries" are provisionally described, subject to refinement as set out in Appendix A, attached hereto.
- (g) "Class" or "Class Member" means either a Property Owner Class Member or a Residential Class Member.
- (h) "Class Period" means the period from January 5, 1968 to the date that notice of the Order certifying this proceeding is given.
- (i) "Coke Ovens" means the facility formerly located within the Class Boundaries at which coke was produced for use in the Steel Plant, which was located on the Coke Ovens Lands.

- (j) "Coke Ovens Lands" means the lands formerly occupied by and surrounding the Coke Ovens.
- (k) "Contaminants" means the Operational Emissions and the Tar Ponds Contaminants.
- (l) "Furimsky Study" means the study entitled "Sydney Tar Ponds: Some Problems in Quantifying Toxic Waste" authored by Edward Furimsky and published in 2002 concerning information on the type and amount of hazardous and toxic waste that is required to develop a meaningful strategy and estimate a realistic cost for clean up of the Sydney Tar Pond site.
- (m) "Health Studies" means the following studies:
  - (i) "Burra Study" means the study entitled "Effects of residential exposure to steel mills and coking works on birth weight and preterm births among residents of Sydney, Nova Scotia" authored by Tara A. Burra and others and published in 2006 which was to assess the prevalence and determinants of birth weight and preterm birth among residents living in proximity to an industrial site contaminated with a mix of industrial wastes arising from a former steel mill and coking works (the Tar Ponds) in Sydney, Nova Scotia.
  - (ii) "Dodds Study" means the study entitled "Congenital Anomalies and Other Birth Outcomes Among Infants Born to Women Living Near a Hazardous Waste Site in Sydney, Nova Scotia" authored by Linda Dodds and published in September 2001 which was conducted to compare the rates of adverse birth outcomes among residents of Sydney, Nova Scotia compared with residents of the rest of CBC (with similar occupational and lifestyle characteristics) and with Nova Scotia residents outside of Cape Breton County.

(iii) “Guernsey Study #1” means the study entitled “Health Deficiencies in Cape Breton County, Nova Scotia, Canada, 1950-1995” authored by Paul Veugelers and Judith Guernsey and published in February 1999 which was conducted to evaluate mortality patterns for Cape Breton County over the past 5 decades. The life loss and life expectancy of Cape Bretoners was compared to other Canadians as well as comparing the life loss due to the local conditions in Cape Breton County with the life loss caused by the major diseases in Canada.

(iv) “Guernsey Study #2” means the study entitled “Incidence of Cancer in Sydney and Cape Breton County, Nova Scotia 1979-1997” authored by Judith Guernsey and others and published in July 2000 which was to assess whether Sydney, Industrial Cape Breton County excluding Sydney (ICBxS) and Cape Breton County (CBCo) residents were at an increased risk for cancer compared to Nova Scotia (NS) residents over five-year periods during 1979 through 1997.

(v) “Health & Welfare Canada Study” means the study entitled “Report of the Sydney Respiratory Health Survey” commissioned by the Defendants Canada and Nova Scotia and published in March 1977 which was undertaken in January-March 1976, and demonstrated a small but statistically significant connection between respiratory function in school children living at Sydney, Nova Scotia, and the degree of air pollution in the locality where they lived and went to school

(vi) “O’Leary Study” means the study entitled “Tar Ponds Kids: Toxic Environments and Adolescent Well-Being” authored by Johnna O’Leary and Katherine Covell and published in 2002 which assessed the impact of perceived risk from exposure to a major environmental hazard on adolescents’ psychological health.

(vii) "Yang Mao Study" means the study entitled "Special Report No. 11 Mortality in Cape Breton, Nova Scotia, 1971-1983" authored by Yang Mao and others dated December 1, 1985 which was prepared at the request of the Defendant Nova Scotia to address concerns which have been expressed regarding possible environmental and occupational health hazards in the Cape Breton region, and consists of an analysis of mortality patterns in Cape Breton County for the period 1971-1983.

- (n) "Havelock Study" means a study of the emissions from the Steel Works commissioned by the Defendant Canada and completed in or about 1973 which concluded that the emissions from the Steel Works were impacting Class Members and their property and that significantly reduced emissions levels were necessary to insure acceptable levels of ambient air quality.
- (o) "Hildebrand Study" means the study entitled "Environmental Quality in Sydney and Northeast Industrial Cape Breton, Nova Scotia" commissioned by the Defendant Canada which was authored by Lawrence Hildebrand and published in January, 1982 which was conducted to provide a background against which to discuss the results of environmental surveys for polycyclic aromatic hydrocarbons in 1981 and 1982. Data on environmental levels of pollutants and industrial sources prior to 1981 were collected and synthesized.
- (p) "JDAC Study" means the draft study entitled "Human Health Risk Assessment North of Coke Ovens Sites Sydney, Nova Scotia" and dated November 26, 2001 which was prepared for Public Works and Government Services Canada by Jacques Whitford, Dillon Consulting, ADI Group and CBCL Limited.
- (q) "JDAC NOCO+ Study" means the study entitled "Statistical Evaluation of Sydney Urban Soil Data - NOCO+ Sampling Program" commissioned by the Defendant Canada which was authored by Jacques Whitford, Dillon Consulting, ADI Group and CBCL Limited and published in June, 2003

which was a systematic surface soil sampling program carried out in the community immediately north of the former Coke Ovens site in Sydney, Nova Scotia.

- (r) "Kilotat Study" means the study entitled "An Evaluation of Air Pollution Levels in Sydney, Nova Scotia" commissioned by the Defendant Canada which was authored by E.J. Kilotat and H.J. Wilson and published in October 1970 which presented air pollution levels for the period 1965 to 1970 for Sydney, Nova Scotia. The data indicated that the levels were high even for a "steel city" and that there was an overall increase during the five year period. Air pollution was shown to be directly related to the steel production in the city.
- (s) "Katz Study" means a study of the emissions from the Steel Works commissioned by the Defendant Canada and completed in or about 1959 which concluded that the emissions from the Steel Works were impacting Class Members and their property and presented a risk to the health and property of Class Members.
- (t) "Neighbourhoods" means all residential neighbourhoods within the Class Boundaries.
- (u) "Nova Scotia" means the Queen in right of the Province of Nova Scotia, the Attorney General of Nova Scotia, Sydney Steel Corporation, and all of their agencies, departments, contractors, subcontractors, agents, servants, employees, assigns, appointees or partners.
- (v) "Operational Emissions" means the materials originating from the Steel Works which have escaped from the Steel Works into the air, soil or water within the Class Boundaries, which materials include heavy metals (including lead, arsenic and cadmium), polycyclic aromatic hydrocarbons ("PAH's" including benzo[a]pyrene, benzchphenanthrene, benz(a)anthracene, a benzfluoranthene isomer, a bezfluoranthrene isomer, and clolanthrene) and dangerous respirable particulates.

- (w) "Property Owner Class" or "Property Owner Class Member" means persons other than the Defendants and their parent companies, affiliates or subsidiaries who are the beneficial owners of real property within the Class Boundaries as of the date that notice of the order certifying this proceeding as a class proceeding is given.
- (x) "Residential Class" or "Residential Class Member" means living persons who have lived within the Class Boundaries for a minimum of seven (7) continuous years during the Class Period.
- (y) "Scott Studies" means the study entitled "Lead and Arsenic Biological Testing Program in Residential Areas Near the Coke Ovens Site" dated November 2001 which was commissioned by the Defendant Nova Scotia and the study entitled "Statistical Evaluation of the Sydney Urban Soil Data (NOCO+) Sampling Program Potential Public Health Implications" dated April 15, 2004 which was commissioned by the Defendant Nova Scotia and authored by Dr. Jeff Scott, Chief Medical Officer of Health for the Nova Scotia Department of Health at the time.
- (z) "SENES Study" means a draft study titled "Statistical Modelling of Industrial and Urban Baseline Contributions to Soil Concentrations in Sydney Nova Scotia" and dated September, 2001 which was prepared for Health Canada by Senes Consultants Limited.
- (aa) "Steel Plant" means the facility within the Class Boundaries at which steel was manufactured until 2000.
- (bb) "Steel Works" means the Steel Plant and the Coke Ovens.
- (cc) "Steel Works Defendants" means Canada, Nova Scotia, and Sydney Steel Corporation.
- (dd) "Sydney Tar Ponds" means the former tidal flats adjacent to Sydney Harbour at the mouth of Muggah Creek where the runoff from the Coke Ovens Brook and other proximate watercourses or brooks has accumulated.

- (ee) "SYSCO" means the Defendant Sydney Steel Corporation.
- (ff) "Tar Ponds Contaminants" means the contaminants that have accumulated in the Sydney Tar Ponds, including oils, heavy metals (including lead, arsenic and cadmium), polychlorinated biphenyls (PCB's), and polycyclic aromatic hydrocarbons (PAH's, including benzo[a]pyrene, benzchphenanthrene, benz(a)anthracene, a benzfluoranthene isomer, a bezfluoranthrene isomer, and clolanthrene).

## **I. OVERVIEW**

2. For many years, Sydney, Nova Scotia was home to a steel plant and coke ovens that operated in the heart of the city with no emissions controls. Throughout that period, those operations spewed hundreds of thousands of tonnes of Contaminants into Sydney's air, water and soil.
3. The Defendants in this action are those who directed and operated the Steel Works that caused the pollution that continues to contaminate Sydney to this day. As a result, Sydney, home to approximately 26,000 people, is one of Canada's most polluted sites.
4. Nova Scotia and Canada have committed \$400,000,000 to the cleanup of the Sydney Tar Ponds, and the Coke Ovens Lands, which are the most prominent symbols of contamination in Sydney. Nova Scotia and Canada know, however, that the contamination extends beyond the lands targeted for remediation.
5. The remediation plan proposed by Canada and Nova Scotia fails to address the impacts of Sydney's contamination on its residents and their property. The Plaintiffs and Class Members continue to be exposed to the Contaminants from their own and surrounding properties.
6. The Plaintiffs' do not seek recovery of damages in this proceeding for the individual personal injuries they and other Class Members have suffered as a result of their exposure to the Contaminants. The Plaintiffs say that the Class has been and continues to be exposed to the Contaminants, exposure to which is or may be hazardous. In this action, therefore, the Plaintiffs seek, on their own behalf and on behalf of the Classes, the following:



- (a) To stop the exposure of Class Members by inhalation, ingestion and dermal contact to the Contaminants by either remediation to remove the Contaminants from the subject properties or by relocation of residents;
  - (b) To implement a medical monitoring program, under the supervision of the Court, consisting of a large-scale epidemiological study and an education program which would identify, monitor, and educate the Plaintiffs, Class Members and Health Care Professionals of the health risks associated with the hazardous Contaminants;
  - (c) To recover damages for nuisance pursuant to the exposure analysis principles espoused in *St. Lawrence Cement Inv. v. Barrette* [2008] S.C.J. No 65, for the exposure and substantial interference to the enjoyment of their properties; and
  - (d) To recover damages for the intentional tort of battery or alternatively, for negligent battery.
7. The Plaintiffs had sought to certify this action as a class proceeding, and plead the Supreme Court of Canada's decision in *Western Canadian Shopping Centers Inc. v. Dutton*, [2001] 2 S.C.R. 534, and Rule 5.09 of Nova Scotia's *Civil Procedure Rules*, as providing the basis for such certification. On August 22, 2008, the common law class proceeding was converted to a class action pursuant to s. 3(4) of the *Class Proceedings Act*, S.N.S. 2007, c. 28. The Plaintiffs state that there is an identifiable class that would be fairly and adequately represented by these Plaintiffs (the Classes); that the Plaintiffs' claims raise common issues; and that a class proceeding would be the preferable procedure for the resolution of such common issues.

## **II. REPRESENTATIVE PLAINTIFFS**

8. The Plaintiffs and Class Members have been continuously exposed to the Contaminants as hereinafter described. Each of the Plaintiffs, save Mr. Petitpas, is both a Residential Class Member and a Property Owner Class Member.

## **III. DEFENDANTS**

9. The *Sydney Steel Corporation Act*, 1967 (2<sup>nd</sup>) Sess., c. 1, was enacted to authorize the purchase of the Steel Works, and to create SYSCO to operate the Steel Works. SYSCO was at all times the agent or instrument of the Defendant Nova Scotia, and Nova Scotia is, accordingly liable in law for all of SYSCO's acts, omissions and liabilities as owner or occupier of the lands on which the Steel Works were operated.

10. The Defendant SYSCO operated the Steel Works from 1967 until it finally closed operations in 2000. For six of these 33 years the Coke Ovens were owned and operated by Canada. Specifically, the Coke Ovens were sold to the federal crown corporation, the Cape Breton Development Corporation ("DEVCO") in or about July 1, 1968. DEVCO was a federal crown corporation statutorily created in 1965 pursuant to the *Cape Breton Development Corporation Act*, 1985, Chap. C-25, as amended. The Defendant, the Attorney General of Canada representing Her Majesty the Queen in right of Canada (hereinafter "Canada"), is the legal successor to the now dissolved (on or after June 29, 2000) DEVCO pursuant to the *Cape Breton Development Corporation Divestiture Authorization and Dissolution Act*, R.S.C. 2000, C-23.
11. DEVCO owned and operated the Coke Ovens from July 1, 1968 until in or about 1974, when they were sold back to the Defendants Nova Scotia and SYSCO. Except for a temporary closure between 1983 and 1985 due to a surplus in available quantities of coke, the Defendants SYSCO and Nova Scotia owned and operated the Coke Ovens until they were permanently closed in 1988.

#### **IV. THE DEFENDANTS' OPERATIONS**

##### **Steel Plant and Coke Ovens Operations (1900 – 2000)**

12. In 1900, the Steel Plant was built in the heart of Sydney, Nova Scotia, alongside Muggah Creek, a tidal estuary flowing into the Sydney harbour. An integral part of the steel making operations involved the use of coke as fuel in the Steel Plant's blast furnaces. Coke is a by-product of the incomplete combustion of coal. Consequently, in addition to the Steel Plant, batteries of coke ovens were built on an approximately 60 hectare parcel of land abutting the Steel Plant. In addition, the Coke Ovens Lands included a number of on site by-products plants directed at processing some of the coking by-products including coal tar, benzol, ammonia sulphate, and sulphuric acid. The Steel Works Defendants were, either serially or concurrently, the owners and operators of the Steel Works from 1967 up to the present time.
13. The Steel Works were built by the Dominion Iron and Steel Company (DISCO) in or about 1900. In or about 1909, DISCO amalgamated with the Dominion Coal

Company to become the Dominion Steel Corporation. In 1920, the British Empire Steel Company (BESCO) was combined with the Dominion Steel Corporation, and other coal and rail operations. In 1928, BESCO went into receivership and Ispat, formerly known as the Dominion Steel and Coal Corporation (DOSCO), assumed ownership and control of BESCO operations, including the Steel Works.

14. There were never any emission controls installed by any of the Steel Works Defendants to combat air pollution from the Steel Works, although the Steel Works Defendants have known since at least the completion of the Katz Study in 1959 that the emissions from the Steel Works were a danger to the Plaintiffs and Class Members.
15. There exists, underneath the Coke Ovens Lands, approximately one hundred and sixty kilometres of underground pipes. These pipes were used to move chemicals throughout the Steel Works site. Despite the fact that these pipes contain a mixture of dangerous, toxic and potentially explosive substances, many were never purged of their contents when the Coke Ovens operations ceased.
16. When the Defendant Canada operated the Coke Ovens the Operational Emission levels were exacerbated. During this operational phase, very low grade coal was used in the coking process resulting in even greater levels of Operational Emissions and Tar Ponds Contaminants being emitted into the air. Many Operational Emissions and Tar Ponds Contaminants were dumped directly onto the lands, and directly into Muggah Creek or its tributaries. Canada knew or ought to have known that using low grade materials would result in a significantly increased level of Operational Emissions and Tar Ponds Contaminants from the Coke Ovens, but proceeded to do so without using any emission controls.
17. The Steel Works Defendants also deposited and released slag at or under properties in the vicinity of the Steel Plant. Slag is a routine by-product of steel and coke production, and was habitually dumped by each of the Steel Works Defendants during the period when it operated the Steel Works.

## **V. NATURE OF THE ACTION: EMISSIONS AFFECTING THE NEIGHBOURHOODS**

### **(A) The Sydney Tar Ponds**

18. The Steel Works are situated in the Muggah Creek watershed. Although originally constructed directly adjacent to the Muggah Creek, after decades of dumping waste on the tidal flats, the Steel Plant is now almost a kilometre distant from the present shoreline of what is left of the tidal estuary. The Coke Ovens Lands are immediately adjacent to the Steel Plant, and are dissected by the Coke Ovens Brook. Muggah Creek, the Coke Ovens Brook, and other proximate watercourses or brooks, including the sewers on the Steel Works site, carried, and continue to carry, contaminated ground and surface water to the surrounding lands, the Sydney Tar Ponds and the Sydney harbour.
19. Over time, the people of Sydney have stopped referring to Muggah Creek by its proper name. Instead, this former tidal estuary is commonly referred to as the "Sydney Tar Ponds", reflecting the fact that it contains approximately 700,000 tons of sludge consisting of many Contaminants hazardous to human health which were dumped there by the Steel Works Defendants in the course of the operation of the Steel Works.
20. The Steel Works are the primary sources of the contamination now contained in the Sydney Tar Ponds owned and occupied by Nova Scotia. The Steel Works Defendants (during the period when each owned and/ or operated the Steel Plant and Coke Ovens) directly released the Operational Emissions and Tar Ponds Contaminants into Muggah Creek, the tributaries leading into Muggah Creek, and onto the land directly adjacent to these water systems, to the knowledge of Nova Scotia and Canada. The contamination from the Steel Works has penetrated the ground to a depth of seventy feet in some parts of the Coke Ovens Lands.
21. In the 2002, Report of the Commissioner of the Environment and Sustainable Development to the House of Commons (Office of the Auditor General of Canada), it was noted that "the federal government has so far failed to address the issue of federal contaminated sites adequately." Further, it was noted that although Sydney Tar Ponds is not considered to be a designated federal toxic site, and despite the fact that \$250 million has been spent on this site and

surrounding areas in the last 20 years, the Defendant Canada has not yet "finalize[d] its game plan for the Sydney tar ponds site."

22. On February 2, 2004, the Government of Canada delivered its Speech from the Throne, reiterated in the federal budget announcement delivered on March 23, 2004. Therein, the Defendant Canada announced a \$3.5 billion program to clean up contaminated sites for which it is responsible, along with a further \$500 million to "do its part in the remediation of certain other sites, notably the Sydney tar ponds." The difficulty with this announcement is the establishment of a further ten year horizon for the effective remediation, and, apparently, the plan still does not address the individual needs and claims of the Plaintiffs and Class Members.

**(B) The Contamination Of The Neighbourhoods**

23. In addition to their joint and several responsibility for the accumulation of Contaminants in the Sydney Tar Ponds, each of the Defendants knowingly and continuously, during the period when it operated the Steel Works (the Steel Works Defendants) emitted the Contaminants directly, without due regard for the Plaintiffs and Class Members, into the ambient air as fine particulates amenable to inhalation, and into the waters and lands of the Neighbourhoods.
24. The Contaminants emitted by each of the Steel Works Defendants when they operated the Steel Works remain on the properties of the Plaintiffs and Class Members, and throughout the Neighbourhoods in the surface water, ground water, and in or on the soil in the Neighbourhoods. These Contaminants have migrated and continue to migrate throughout the Neighbourhoods. Prevailing climatological conditions, including precipitation and prevailing winds, and various human activities at play in the affected areas, including industrial activity, vehicular traffic, human foot traffic, and construction activity continue to cause these already widely dispersed Contaminants to migrate into, *inter alia*, the Plaintiffs' and Class Members' property and homes.
25. The Canadian Ministry of the Environment and the Canadian Council of Ministers of the Environment (CCME) has classified a number of carcinogens and "priority substances" (defined as such since they "may be harmful to the environment or constitute a danger to human health"). Many of the compounds customarily

associated with steels works and coke ovens operations were among these classified substances. Those compounds include benzene, polycyclic aromatic hydrocarbons (including benzpyrene and benzfluoranthene) toluene, xylenes, ammonia phenol, particulate matter less than or equal to 10 microns, arsenic and cadmium.

26. The continued presence of all of the Contaminants in the Sydney Tar Ponds and on the lands in the Neighbourhoods has caused, and continues to cause damage to the physical and mental health of the Plaintiffs and Class Members.
27. The presence of the Contaminants remain in and on the lands and homes owned, occupied or used by the Plaintiffs and Class Members and in the Neighbourhoods. The Class Members continue to have contact with these hazardous Contaminants. No effective toxic remediation has taken place at the Steel Works, Sydney Tar Ponds, or in the Neighbourhoods. Consequently the Contaminants continue to migrate into and affect the Plaintiffs' and Class Members' properties.
28. Exposure to the Contaminants represents a human health hazard. The Plaintiffs and Class Members regularly inhale, ingest and come into dermal contact with the Contaminants in their everyday lives by virtue of their living in close proximity to the Sydney Tar Ponds and by virtue of the Contaminants having been deposited on the properties of the Plaintiffs and Class Members over the years by the Steel Works.

**(C) THE DEFENDANTS' KNOWLEDGE OF THE CONTAMINATION**

29. In 1959, the Katz Study was made available to the Steel Works Defendants. In 1970, the Kilotat Study was made available to the Steel Works Defendants. In 1973, the Havelock Study was made available to all of the Steel Works Defendants. In 1974, the Choquette Study was made available to all of the Steel Works Defendants. In 1982, the Hildebrand Study was made available to the Steel Works Defendants. In 1984, the Atwell Study was made available to the Steel Works Defendants. In 2002, the Furimsky Study was made available to the Steel Works Defendants.

30. At all times during the Class Period, each of the Defendants knew which of the Contaminants it was emitting, and the properties of those Contaminants, as a result of its knowledge of the nature of its own operations.
31. In 1982, the Defendant Canada closed the lobster fishery in the south arm of Sydney harbour (the outlet of Muggah Creek), since it was discovered that the lobsters were contaminated with PCB's, mercury, cadmium and lead. Despite the obvious connection between the contamination of local aquatic life and the emissions from the Steel Works, no steps were taken to halt or reasonably limit Nova Scotia's then ongoing release of Contaminants, nor were any steps taken to protect the health and safety of the Plaintiffs and Class Members.
32. This lack of response continued even in the face of a 1985 warning, issued in a letter from J. R. Hickman, the then Director of the Bureau of Chemical Hazards at Health and Welfare Canada to the Nova Scotia Regional Director of the federal Environmental Protection Service, that continuing Coke Ovens operations without installing emission controls "could be expected to result in increases of morbidity and mortality in the coke plant workers and probably in the residents of Sydney."
33. The Steel Works Defendants accordingly knew or were substantially certain that the Plaintiffs and Class Members would inhale, ingest and have dermal contact with the Contaminants directly resulting from their operations. This contact constituted a non-trivial interference with the bodily security of persons exposed to these Contaminants. The Steel Works Defendants were informed by the "Health Studies".

**(D) The Concealment of the Contamination**

34. Until the Band and Camus Study was released to the Sydney community in March, 2003, the Plaintiffs and Class Members were effectively unaware of the nature, extent and ramifications of the contamination in the Neighbourhoods.
35. The Steel Works Defendants knew based on the Katz Study (all Steel Works Defendants), the Havelock Study and the Choquette Study, the Kilotat Study, the Hildebrand Study, the Atwell Study and the Furimsky Study (all Steel Works

Defendants) that the Plaintiffs and Class Members were coming into contact with the Operational Emissions and Tar Ponds Contaminants. The Havelock Study and the Choquette Study were marked restricted and intentionally suppressed from public disclosure.

36. In 2004 the Steel Works Defendants announced, purportedly based on the Cantox Study, the JDAC Study, the JDAC NONO+ Study, the SENES Study and the Scott Studies, that the Contaminants present within the Class Boundaries posed no risk to the life or health of Class Members and expressly stated their conclusion that Sydney was a safe place to live. In fact, as the Steel Works Defendants knew or ought to have known, those studies provided no proper basis for drawing those conclusions because they were not designed to consider that conclusion and they did not, in fact, support that conclusion. As a result, the Steel Works Defendants, in making the statements they did about those studies, misled the Plaintiffs and Class Members by misrepresenting the conclusions of the Scott Study, the JDAC Study and the SENES, particularly to the effect that their health was not at risk.
37. In fact, the Defendants Canada and Nova Scotia have told, and continue to tell, the Plaintiffs and Class Members that (i) there is no connection between the Contaminants present on the Class Members' properties and the Steel Works operations and (ii) that the Neighbourhoods are a safe place to live. Nova Scotia and Canada continue these historical misrepresentations:
  - (a) by their actions in failing to move the Plaintiffs and Class Members from their contaminated homes or to remediate their properties;
  - (b) by publically asserting no dangers are posed to the Plaintiffs and Class Members; and
  - (c) by their various statements to the effect that there is no connection between the Steel Works Operations and the contamination found on the Plaintiffs' properties or that the Contaminants pose no health and/or safety risks, found at the following websites maintained by Nova Scotia: [www.gov.ns.ca](http://www.gov.ns.ca) and [www.tarpondscleanup.ca](http://www.tarpondscleanup.ca).



38. None of the Defendants has ever stepped forward to correct statements that they know to be untrue. None of them has ever advised the Plaintiffs and Class Members that the Neighbourhoods are contaminated. None of them has offered or attempted to clean up the Contaminants they deposited in the Neighbourhoods or to contribute to such a clean-up.
39. Even in agreeing to relocate the residents of Frederick Street in Whitney Pier in 1999, the Defendant Nova Scotia avowed that it was doing so only on compassionate grounds when, in fact, the serious contamination of those properties resulting in a direct and immediate health risk to those Class Members was the basis for that decision.
40. The damages wrought by exposure to toxic emissions are peculiarly complex, manifesting themselves slowly. The Plaintiffs and Class Members did not know and were prevented from fully knowing the nature and/or impact of the offensive contact delivered by the Steel Works Defendants.
41. The suppression of information or the deliberate presentation of misinformation by Canada and Nova Scotia is inconsistent with the duty of utmost good faith owed by Canada and Nova Scotia in their respective roles as owners and operators to the Plaintiffs and Class Members, who rely on Canada and Nova Scotia to ensure that the environment in which they live is not unduly contaminated. The suppression of this information or the deliberate presentation of misinformation by Canada and Nova Scotia is reckless and unconscionable conduct in these circumstances.
42. Canada and Nova Scotia continue to attempt to deny and conceal the harm they have done to the environment in the Neighbourhoods, the property of the Plaintiffs and Class Members, and to the long term health of the Plaintiffs and Class Members including that described herein and in the Band and Camus Study. They also have not carried out or commissioned any proper or definitive studies sufficient to permit them to make the claims they have made about the safety of the environment in Sydney.

43. This concealment of the contamination of the lands within the Class Boundaries and of the health threat presented by that contamination as pleaded herein constitutes equitable fraud.
44. Each of the Defendants is liable to the Plaintiffs and Class Members for the failure to prevent the past and continuing escape of such Contaminants onto lands in the Neighbourhoods of which the Defendants have known at all material times. In addition to the harm already suffered by the Plaintiffs and Class Members, new or additional symptoms caused by the exposure to, and the inhalation or ingestion of, emissions may not manifest for many years. The Defendants' conduct has, however, created a risk of health problems.

**(E) No Clean-Up of the Neighbourhoods**

45. Notwithstanding Canada's and Nova Scotia's knowledge that the Steel Works emissions were deposited and were toxic to Class Members and properties, they have not taken any or any adequate steps to remediate the lands in the Neighbourhoods, or to prevent the Class Members from having further contact with the Contaminants.
46. The duties owed by the Defendants were informed by the environmental statutory framework in which they operated. Specifically, the federal legislation applicable through the Class Period includes:

<u>FEDERAL STATUTE</u>	<u>CITATION</u>	<u>RELEVANT SECTIONS</u>
<u><i>Fisheries Act</i></u>	<u><b>R.S.C. 1952, c.119</b></u>	<u><b>ss. 33, 60, 61, 62, 67</b></u>
	<u>As amended</u>	
	<u><b>S.C. 1960/61, c.23</b></u>	<u><b>ss. 33, 56, 62</b></u>
	<u>As amended</u>	
	<u><b>R.S.C. 1985, c. F-14</b></u>	<u><b>ss. 34-43, 70, 80</b></u>
	<u>As amended</u>	

<u>FEDERAL STATUTE</u>	<u>CITATION</u>	<u>RELEVANT SECTIONS</u>
	<u>S.C. 1991, c.1</u>	<u>ss. 34-43, 80</u>
<u>Navigable Waters Protection Act</u>	<u>R.S.C. 1952, c.193</u>  <u>As amended</u>  <u>S.C. 1968/69, c.15</u>  <u>As amended</u>  <u>R.S.C. 1985, c. N-22</u>	<u>ss. 19, 20, 21, 28</u>    <u>ss. 19, 20, 25, 26</u>    <u>ss. 21, 22, 27, 28</u>
<u>Canada Water Act</u>	<u>S.C. 1969/70, c.52</u>  <u>As amended</u>  <u>R.S.C. 1985, c. C-11</u>	<u>ss. 2, 8, 16, 28, 29, 39</u>    <u>ss. 2, 9, 10, 18, 30, 31</u>
<u>Clean Air Act</u>	<u>S.C. 1970/71/72, c.47</u>  <u>As amended</u>  <u>R.S.C. 1985, c. C-31</u>	<u>ss. 2, 3, 4, 6, 7, 8, 9, 10, 34</u>    <u>ss. 2, 3, 4, 5, 7, 8, 9, 10, 11, 35</u>
<u>Environmental Contaminants Act</u>	<u>S.C. 1974/75/76, c.72</u>  <u>As amended</u>  <u>R.S.C. 1985, c. E-12</u>	<u>ss. 2, 3, 4, 5, 8, 10, 15, 17, 18</u>    <u>ss. 2, 3, 5, 7, 9, 10, 17, 19, 24, 29</u>
<u>Canadian Environmental Protection Act</u>	<u>R.S.C. 1985, c.16 (4<sup>th</sup> Supplement)</u>	<u>ss. 2, 3, 4, 7, 8, 11, 15, 17, 18, 32, 33, 34, 35, 36, 39, 40, 53, 54, 57, 58, 60, 64, 65, 87, 99, 100, 108, 109, 110, 111, 112, 113, 115, 116, 117, 118, 122, 130, 135, 136, 137</u>
<u>Canadian Environmental Protection Act, 1999</u>	<u>S.C. 1999, c.33</u>	<u>ss. 2, 3, 5, 40, 42, 44, 45, 46, 48, 54, 64, 65, 66, 67, 68, 69, 70, 76, 77, 82, 89, 90, 93, 94, 95, 96, 98, 121, 125, 135, 167, 169, 171, 172, 173, 200, 201, 205, 209, 212, 214, 215, 218,</u>

<u>FEDERAL STATUTE</u>	<u>CITATION</u>	<u>RELEVANT SECTIONS</u>
		<u>235, 238, 239, 240, 272, 273, 274, 275, 276, 277, 279, 280, 282, 291, 292, 296</u>
<u>Public Harbours Regulations</u> <u>(Regs to the Canada Shipping Act)</u>	<u>C.R.C., c.45 (1955)</u>  <u>As amended</u>  <u>C.R.C., c.1461 (1978)</u>	<u>s. 14</u>    <u>s. 14</u>
<u>Public Harbours Regulations</u> <u>(Regs to the Public Harbours and Port Facilities Act)</u>	<u>S.O.R. / 83-654</u>	<u>s. 14</u>
<u>Public Harbours Regulations</u> <u>(Regs to the Canada Marine Act)</u>	<u>S.O.R. / 83-654</u>	<u>s. 14</u>
<u>Chlorobiphenyls Regulations</u> <u>(Regs to the Cdn. EPA)</u>	<u>S.O.R. / 91-152</u>	<u>ss. 2, 3, 5, 6</u>
<u>Storage of PCB Material Regulations</u> <u>(Regs to the Cdn. EPA)</u>	<u>S.O.R. / 92-507</u>	<u>ss.1-16</u>

The provincial legislation applicable through the class Period includes:

<u>PROVINCIAL STATUTE</u>	<u>CITATION</u>	<u>RELEVANT SECTIONS</u>
<u>Dangerous Goods and Hazardous-wastes Management Act</u>	<u>S.N.S. 1986, c.7</u>	<u>ss. 2, 3, 4, 6, 7, 8, 11</u>
<u>Environment Act</u>	<u>S.N.S. 1994/95, c.1</u>	<u>ss. 2, 3, 4, 8, 10, 14, 52, 67, 68, 69, 71, 72, 75, 85, 88, 89, 104, 105, 111, 114, 116, 125, 126, 134, 141, 142, 143, 159, 162</u>
<u>Environmental Assessment Act</u>	<u>S.N.S. 1988, c.11</u>	<u>ss. 3, 4, 19</u>
<u>Environmental Protection Act</u>	<u>S.N.S. 1973, c.6</u>	<u>ss. 3, 8, 19, 22, 23, 24, 26, 28, 29, 34, 37, 48, 50, 54,</u>

<u>PROVINCIAL STATUTE</u>	<u>CITATION</u>	<u>RELEVANT SECTIONS</u>
		<b><u>55</u></b>
<i><u>Smelting and Refining Encouragement Act</u></i>	<b><u>R.S.N.S. 1954, c.267</u></b>	<b><u>ss. 1, 3, 4, 5</u></b>
<i><u>Sydney Steel Corporation Act</u></i>	<b><u>S.N.S. 1967 (2<sup>nd</sup> Sess.), c.1</u></b>  <b><u>As amended by S.N.S. 1972, c.61</u></b>  <b><u>As amended by R.S.N.S. 1989, c.456</u></b>	<b><u>ss. 4, 5, 6, 13, 14, 18, 19</u></b>  <b><u>ss. 4, 5, 6, 13, 14, 18, 19, 22</u></b>  <b><u>ss. 4, 5, 6, 14, 15, 20, 24</u></b>
<i><u>Water Act</u></i>	<b><u>R.S.N.S. 1967, c.335</u></b>  <b><u>As amended by S.N.S. 1972, c.58</u></b>	<b><u>ss. 1, 6, 8, 12, 16, 19, 20</u></b>  <b><u>ss. 2, 7, 9, 10, 11, 15, 16, 18, 19, 20</u></b>
<i><u>Dangerous Goods Management Regulations (Regs to the s.84 of the N.S. Environment Act)</u></i>	<b><u>N.S. Reg. 56/95</u></b>	<b><u>ss. 2, 5, 6, 7, 8, 9, 12, 13</u></b>
<i><u>PCB Management Regulations (Regs to s.84 of the N.S. Environment Act)</u></i>	<b><u>N.S. Reg. 52/95</u></b>	<b><u>ss. 1-16</u></b>

47. On or about November 7, 1986, the Defendants Nova Scotia and Canada entered into a joint federal/provincial agreement to clean up the Muggah watershed area. In the ensuing years, through the auspices of a variety of government departments, agencies, and advisory bodies, there have been lengthy and conflict-ridden deliberations as to how to proceed with an effective clean up.
48. To date nothing material has been done to effect an actual clean up, other than superficial efforts to demolish buildings and to remove a top layer of soil from a patchwork of neighbouring residential properties. Further, nothing material has

been done to remedy the risk created by continued exposure or risk of exposure to the contaminants on the properties. The risk of continued inaction is one which is borne directly by the Plaintiffs and other Class Members.

## **VI. IMPACT ON PLAINTIFFS**

### **(A) Neila Catherine MacQueen**

49. The Plaintiff Neila MacQueen, (born June 5, 1940) has lived in Sydney from in or about 1950 to the present time. From in or about 1950 until approximately 1968 she resided at 895 Upper Prince Street in Ashby, one of the Neighbourhoods. From approximately 1968 until 1983 she resided at 29 and 53 Stanfield Street, in Ashby. From 1983 to the present time she has resided at 206 and at 198 Dorchester Street, in North End, another of the Neighbourhoods, in close proximity to the Sydney Tar Ponds. Neila MacQueen also worked at the Prince Street Shopping Mall, which is in close proximity to the Sydney Tar Ponds, for almost thirty years from in or about 1954 to 1983. In the normal course of her residential life in the Neighbourhoods, Ms. MacQueen has inhaled, ingested, and had dermal exposure to the Contaminants emitted by all of the Defendants.
50. This Plaintiff is the owner of the residential properties at 198 Dorchester Street, 29 and 53 Stanfield Street, and the store and residential property at 206 Dorchester Street, Sydney. The soil on all four of these properties was tested by the Department of Health of the Defendant Nova Scotia and, with the exception of 29 Stanfield Street, was found to have levels of petroleum hydrocarbons, polycyclic aromatic hydrocarbons and heavy metals exceeding the recommended CCME guidelines for residential uses. The Defendant Nova Scotia offered to remediate the soil at 53 Stanfield Street, but not at any of the other properties.
51. Ms. MacQueen was diagnosed with lung cancer in 1999. She has never smoked. As a result she has had the lower lobe on her right lung removed. Since 1999 she has suffered from asthma, chronic bronchitis, and a persistent cough. She has also suffered from ear and throat infections.
52. In addition, Ms. MacQueen has suffered and continues to suffer from anxiety about her and her family's health because of the contaminated environment in

which they live. This Plaintiff states that all of the Defendants bear the responsibility to, *inter alia*, create a medical monitoring fund/mechanism as described in paragraphs 100-102 below for her benefit and for the benefit of the Class Members.

**(B) Joseph M. Petitpas**

53. The Plaintiff Joseph M. Petitpas, (born November 12, 1947) is a lifelong resident of Whitney Pier, one of the Neighbourhoods. Since 1977, he has owned and lived at 153 Laurier Street. In the normal course of his residential life in the Neighbourhoods, Mr. Petitpas has inhaled, ingested, and had dermal exposure to the Contaminants emitted by all of the Defendants.
54. This Plaintiff has made many improvements to the family home. In the past couple of years he has been trying to sell this home. A realtor's sign has been on his front lawn since approximately September, 2002. He had not received any purchase offers until November 25, 2006 when he sold his property.
55. Mr. Petitpas suffers from unexplained, and highly distressing, health conditions, including seizures, headaches, acne (at the age of 58) and prostate problems. Consequently, this Plaintiff has suffered, and continues to suffer, from anxiety about his and his family's health in the face of the contaminated environment in which they live. This Plaintiff states that all of the Defendants bear the responsibility to, *inter alia*, create a medical monitoring fund/mechanism as described in paragraphs 100-102 below for his benefit and for the benefit of the Class Members.

**(C) Ann Marie Ross**

56. Ann Ross, (born November 6, 1959), owns 192 Laurier Street in the Whitney Pier Neighbourhood, and has resided there for her entire life. In the normal course of her residential life in the Neighbourhoods, Ms. Ross has inhaled, ingested, and had dermal exposure to the Contaminants emitted by all of the Defendants.
57. In or about 1999, this Plaintiff started observing an orange substance seeping into her basement. In or about May, 1999, Ann Ross and her daughter (Lindsay), were relocated from their home by the Defendant Nova Scotia and

- accommodated at a hotel in Sydney for a period of forty-two days. Nine other families, all of whom resided on either Frederick Street or Curry's Lane in the Whitney Pier Neighbourhood, were also relocated by the Defendant Nova Scotia. Subsequent to May 1999, the Defendant Nova Scotia offered to buy all of the properties owned by the nine other families. However, the Defendant Nova Scotia advised Ann Ross that her home was safe for occupation and she should return there.
58. Soil tests were conducted on Ann Ross' property pursuant to the Chronic Health Risk Assessment conducted by the Defendant Nova Scotia and released in or about December, 2001. The results of the testing showed that the soil at 192 Laurier Street had elevated levels of petroleum hydrocarbons, polycyclic aromatic hydrocarbons, and heavy metals exceeding both the recommended CCME guidelines for residential uses and the urban background guidelines (commonly referred to as "the made in Sydney standards"). Ever since June, 1999, the Defendant Nova Scotia has consistently refused to relocate Ann Ross despite numerous requests for relocation. She remains at risk of further serious health problems.
59. In or about June, 2002, the Defendant Nova Scotia offered to remediate Ann Ross' property. The cost of remediation was estimated to be \$100,000. The market value of 192 Laurier Street in June of 2002 was approximately \$35,000. Ann Ross declined the Defendant Nova Scotia's offer of remediation and continued to request relocation by the Defendant Nova Scotia.
60. Ann Ross suffers from various medical conditions including nose bleeds, headaches, burning eyes, water blisters, running nose, frequent sore throat, psoriasis, skin rashes, and neurological problems. In addition, Ann Ross has suffered and continues to suffer from anxiety about her and her daughter's health because of the contaminated environment in which they live. This Plaintiff states that all of the Defendants bear the responsibility to, *inter alia*, create a medical monitoring fund/mechanism as described in paragraphs 100-102 below for her benefit and for the benefit of the Class Members.



**(D) Kathleen Iris Crawford**

61. Iris Crawford, (born January 5, 1941), is the widow of Carl Anthony Crawford, and currently resides at 86 Hankard Street in the Whitney Pier Neighbourhood. Iris Crawford and the late Carl Anthony Crawford have resided in the Whitney Pier Neighbourhood for their entire lives. In the normal course of her and her late husband's residential life in the Neighbourhoods, they, along with their four children, have inhaled, ingested, and had dermal exposure to the Contaminants emitted by the Defendants.
62. In addition, Mrs. Crawford has suffered and continues to suffer from anxiety about her and her family's health because of the contaminated environment in which they live or have lived. This Plaintiff states that all of the Defendants bear the responsibility to, *inter alia*, create a medical monitoring fund/mechanism as described in paragraphs 100-102 below for her benefit and for the benefit of the Class Members.

**V. LIABILITY**

**(A) Battery**

**(i) The Steel Works Defendants**

63. The Steel Works Defendants are liable to the Plaintiffs and Class Members for having committed the intentional tort of battery. During the period that each of them operated the Steel Works or a portion thereof (as set out above), they knew or were substantially certain, as a result of

- (a) in the case of Canada, Nova Scotia and SYSCO, the Katz Study, the Choquette Study and the Havelock Study the Kilotat Study, the Hildebrand Study, the Atwell Study and the Furimsky Study

that people living in the Neighbourhoods would inhale, ingest and have dermal exposure to the Operational Emissions and Tar Ponds Contaminants produced by the Steel Works. The Steel Works Defendants knew what these emissions contained, and that inhalation, ingestion and dermal exposure to the Operational Emissions and Tar Ponds Contaminants constituted a non-trivial interference with the bodily security of the Plaintiffs and Class Members. The Steel Works

Defendants intentionally continued to emit the Operational Emissions and Tar Ponds Contaminants, with full knowledge and intention that the Plaintiffs and Class Members would be exposed to them.

64. In the alternative, the Steel Works Defendants are liable for the tort of negligent battery. The Steel Works Defendants' operation of the Steel Works caused the Contaminants to come into contact with the Plaintiffs and Class Members. Despite their knowledge that this contact would occur if they failed to take adequate steps to prevent it from occurring 82-83, the Steel Works Defendants continued to emit the Contaminants without regard to the fact that those Contaminants would come into contact with and cause harm to the Plaintiffs and Class Members as a direct result of their conduct.
65. The Operational Emissions and Tar Ponds Contaminants were deposited in the Plaintiffs' and Class Members' respiratory bronchioles and alveoli, and introduced into the persons of the Plaintiffs and Class Members by way of ingestion and dermal exposure. Such exposure is linked to adverse health effects including premature death and cancer and lung disease.

**(B) Strict Liability and Nuisance**

66. Each of the Defendants is liable pursuant to the doctrine of strict liability in *Rylands v. Fletcher*, in that the storage and release of the Contaminants is a non-natural use of the lands owned and/or occupied by each of the Defendants. Further, the Defendants failed, and continue to fail, to prevent the escape of these Contaminants, thereby causing continuing damage to the Plaintiffs and other Class Members.

**The Steel Works Defendants**

67. During the period that each of the Steel Works Defendants operated the Steel Works or a portion thereof, the Contaminants escaped from the Steel Works in the following ways:
  - (a) From the smoke stacks at the Coke Ovens and Steel Plant, as fine particulate amenable to inhalation;

- (b) As dust blown from the Steel Works on the wind;
  - (c) As effluent escaping from the Coke Ovens washing into the soil on the Coke Ovens Lands and migrating in the air, soil and water into the adjoining Neighbourhoods;
  - (d) Underground into the adjoining Neighbourhoods;
  - (e) As effluent dumped into the Coke Ovens Brook which carried it to the Sydney Tar Ponds; from where it has escaped into the air, soil and water and continued to migrate in the air, soil and water into the adjoining Neighbourhoods;
  - (f) In the slag dumped by the Steel Works Defendants on the land surrounding the Steel Works; and
  - (g) As effluent dumped onto the lands immediately surrounding the Steel Plant from where it has escaped into the air, soil and water and continued to migrate in the air, soil and water into the adjoining Neighbourhoods.
68. None of the Steel Works Defendants has ever taken any steps to clean up the Operational Emissions and Tar Ponds Contaminants which escaped from the Steel Works into the Neighbourhoods as described above.
69. The particulates and dust released by the Steel Works Defendants remains in the Neighbourhoods. The Plaintiffs and Class Members continue to have dermal contact with it, to inhale it, and to ingest it in the course of their daily lives. It is in their homes and on their property
70. The Operational Emissions and Tar Ponds Contaminants remain in the water and soil in the Neighbourhoods. They continue to migrate onto the property of the Plaintiffs and Class Members. They continue to seep into the homes of the Plaintiffs and Class Members.
71. In addition, the Steel Works Defendants are strictly liable for the escape of the Domtar Contaminants from the By-Products Operations after Domtar abandoned those operations as the owners or occupiers of the Coke Ovens Lands where the By-Products Operations were located. Specifically, Nova Scotia and SYSCO are

liable for the escape occurring between 1967 and the present, and Canada is liable for the escape occurring between 1968 and 1974.

### **Conclusion on Strict Liability and Nuisance**

72. Each of the Defendants is accordingly strictly liable given that it, in pursuit of its own interests, released, directed the release of, or acquiesced in the release of Contaminants creating an abnormally dangerous and pervasive risk to the health and welfare of the Plaintiffs and Class Members. The risk created by all of the Defendants has materialized resulting in direct and consequential damages to the property and health of the Plaintiffs and Class Members.
73. Further, the past and ongoing release of Contaminants by all of the Defendants from lands they own and/or occupy or from lands which they owned and/or occupied in the past has substantially and unreasonably interfered with the Plaintiffs' and Class Members' use and enjoyment of their lands and premises. In addition to causing extensive property damage, exposure to the Contaminants has created widespread adverse health consequences and risks to the Plaintiffs and other Class Members. Accordingly, the Defendants are liable in nuisance.

### **(C) Trespass**

74. All of the Defendants are liable in trespass in that each of them has discharged Contaminants, without the Plaintiffs' and Class Members' consent, onto lands owned by the Plaintiffs and Class Members as further particularized below.

### **Steel Works Defendants**

75. From 1967 until 2000, SYSCO and Nova Scotia emitted Operational Emissions and Tar Ponds Contaminants from the Steel Works (except for 1968-1974 when Canada operated the Coke Ovens, and 1988-2000 when the Coke Ovens ceased to operate, during which periods Nova Scotia operated only the Steel Plant). These emissions were deposited on the lands in the Neighbourhoods owned and/or occupied by the Plaintiffs and Class Members through the air in the form of vapour, particulate matter and dust, and through the earth and water migrating from the Coke Ovens Lands and the Sydney Tar Ponds.

76. From 1968-1974, Canada emitted Operational Emissions and Tar Ponds Contaminants from the Coke Ovens. These emissions were deposited on the lands in the Neighbourhoods owned and/or occupied by the Plaintiffs and Class Members through the air in the form of vapour, particulate matter and dust, and through the earth and water migrating from the Coke Ovens Lands and the Sydney Tar Ponds.

### **Conclusion on Trespass**

77. The Contaminants released by each of the Defendants as described in paragraphs 75-76 above remain on the surface of the lands in the Neighbourhoods (particulate and dust), and beneath the surface (water and soil). Those Contaminants were deposited by the Defendants on the lands of Plaintiffs and Class Members without the consent of Plaintiffs and Class Members. Their presence accordingly constitutes an ongoing trespass on the land of the Plaintiffs and Class Members.

### **(D) Negligence**

78. As set out more particularly below, each of the Defendants owed a duty of care to each of the property-owning Plaintiffs and Property Owner Class Members in the conduct of their respective operations. The standard of care owed by the Defendants to the property-owning Plaintiffs and Property Owner Class Members was elevated in relation to the Contaminants emanating from each of their respective operations because:

- (a) An environment contaminated/polluted with hazardous Contaminants is inherently dangerous; and
- (b) The property-owning Plaintiffs and Property-Owner Class Members have no control over and/or knowledge in relation to the Contaminants which have and continue to affect their properties.

### **Duty of Care**

79. The property-owning Plaintiffs and Property-Owner Class Members live(d) and owned property in close proximity to the Sydney Tar Ponds, and to the Steel

Works. Each of the Steel Works Defendants knew by 1959, as a result of the Katz Study, that:

- (a) The Operational Emissions and Tar Ponds Contaminants were escaping from the Steel Works and were impacting the property of the property-owning Plaintiffs and Property-Owner Class Members; and
- (b) The characteristics of the Operational Emissions and Tar Ponds Contaminants were such that they could cause damage to the property of the property-owning Plaintiffs and Property Owner Class Members, including buildings, walls, textiles, laundry and other exposed surfaces.

- 80. Each of the Steel Works Defendants accordingly knew or ought to have known, during the period that each such Defendant operated the Steel Works or a portion thereof, that a lack of sufficient care on their part would cause harm to the property-owning Plaintiffs and Property Owner Class Members' properties.
- 81. Accordingly, a duty of care was owed by all of the Steel Works Defendants in their operation of the Steel Works to the property-owning Plaintiffs and Property Owner Class Members. That duty required the Steel Works Defendants to take reasonable steps to avoid the harm to the property-owning Plaintiffs and Property Owner, Class Members' properties that was foreseeable as a result of the foregoing, having regard to the likelihood and gravity of the potential harm, and the likelihood that taking such steps would ameliorate the harm.
- 82. When the Defendants Nova Scotia and SYSCO assumed operation of the Steel Works in 1967, they were already aware of the facts set out at paragraph ~~80~~ 79 above. They owed the same duty of care, and breached it.
- 83. Canada was also aware of all of those facts in 1968 when it assumed operation of the Coke Ovens. During the period when Canada operated the Coke Ovens, it breached its duties to the property-owning Plaintiffs and Property Owner Class Members.
- 84. In 1973, as a result of the Havelock Study, the Defendants Canada, Nova Scotia and SYSCO knew that in order to meet the National Ambient Air Quality Objectives in Sydney,

- (a) Suspended particulates from the Steel Works would need to be reduced by 98% from the levels present in 1972; and
  - (b) Sulphur dioxide emissions from the Steel Works would have to be reduced by 54% from 1972 levels.
- 85. In 1974, as a result of the Choquette Study, the Defendants Canada, Nova Scotia and SYSCO knew that:
  - (a) The Coke Ovens were contributing heavily to air pollution levels in the Neighbourhoods, and that significant reductions in particulate emissions were necessary to insure acceptable levels in ambient air quality;
  - (b) To meet the National Ambient Air Quality Objectives, sulphur dioxide emissions would need to be reduced by 45%; and
  - (c) Approximately 95% of the air particulate at ground level in Sydney came from the Coke Ovens.
- 86. In 1985, as a result of the Hickman letter referenced above at paragraph ~~35~~ 32, the Defendants, Nova Scotia and SYSCO knew that continuing to operate the Coke Ovens without installing emissions controls could be expected to result in deposition of hazardous Contaminants on the properties of the property-owning Plaintiffs and Property Owner Class Members.
- 87. Accordingly, in addition to the breaches listed above, the Defendants Canada, Nova Scotia and SYSCO further breached their duty of care by failing to act on the recommendations made by the Choquette Study, the Havelock Study, the Kilotat Study, the Hildebrand Study, the Atwell Study and the Furimsky Study and the Hickman letter.
- 88. At no time prior to the closing of the Coke Ovens in 1988, and the installation of electric arc furnaces at the Steel Plant in 1989 were the above or any other steps taken to reduce the emissions emanating from the Steel Works.
- 89. The Operational Emissions and Tar Ponds Contaminants deposited in the Neighbourhoods, and in the Sydney Tar Ponds by each of the Steel Works Defendants when they operated the Steel Works (or, in the case of Canada, the

Coke Ovens) remain in the Neighbourhoods, and continue to migrate thereto from the Sydney Tar Ponds.

90. The past and ongoing release and migration of Contaminants into the ambient air, land and water of the Neighbourhoods has caused, and continues to cause damage to the property-owning Plaintiffs and Property Owner Class Members as pleaded herein. The Steel Works Defendants' failure to exercise a sufficient standard of care in relation to the toxic emissions caused or materially contributed to the damages suffered by the property-owning Plaintiffs and Property Owner Class Members.

**(E) Breach of Fiduciary Duty**

91. By virtue of
- (a) Their ownership and occupation of the lands and facilities from which the Contaminants were emitted,
  - (b) Their sole discretion to make decisions regarding the operation of the Steel Works,
  - (c) The information that each of the Steel Works Defendants possessed about the nature and potential effects of the particular Contaminants produced and emitted by the operations in which they were involved, which knowledge arose from their management of the Steel Works and from their knowledge of the contents of the Katz Study, the Havelock Study and the Choquette Study, the Kilotat Study, the Hildebrand Study, the Atwell Study, the Furimsky Study and the Scott Studies, and
  - (d) Their role as the primary source of information for the Plaintiffs, Class Members and to the community regarding the potential health implications of exposure to the Contaminants.

all of the Steel Works Defendants owe the Plaintiffs and Class Members a fiduciary duty to act in the best interests of the Plaintiffs and Class Members in dealing with the dissemination of information concerning the contamination described herein and in the remediation of the contamination described herein.



92. All of the Steel Works Defendants have breached their fiduciary duties by choosing not to:
- (a) Fully disclose the known nature and effects of the Contaminants;
  - (b) Fully disclose and inform the Plaintiffs and Class Members of the health risks associated with exposure to the Contaminants;
  - (c) Take any steps to prevent the spread of the Contaminants to the Neighbourhoods; and
  - (d) Take any steps to remediate the contamination now present on the lands in the Neighbourhoods.
93. In addition, Nova Scotia and Canada have breached their fiduciary obligations in committing to clean up the Sydney Tar Ponds and the Coke Ovens Lands without acknowledging the need for a cleanup of the property of the Plaintiffs or Class Members. In so doing, Canada and Nova Scotia have preferred their own political and economic interests over those of the Plaintiffs and Class Members.

## VII. JOINT AND SEVERAL LIABILITY

94. The Plaintiffs state that the Defendants in their role as the primary source of information for the Plaintiffs and Class Members are responsible, jointly and severally, for the injuries and damages suffered by the Plaintiffs and other Class Members.
95. The Plaintiffs plead the doctrine of *respondeat superior* and state that the Defendants are vicariously liable to the Plaintiffs and Class Members for the acts, omissions, deeds, misdeeds and liabilities of their contractors, sub-contractors, agents, servants, employees, assigns, appointees and partners.
96. The Plaintiffs plead and rely on the doctrine of equitable fraud.
97. The Plaintiffs plead and rely on the *Proceedings Against the Crown Act*, R.S.N.S., 1989, c. 360, the *Crown Liability and Proceedings Act*, S.C.C. 1985, c. C-50, and the *Tortfeasors Act*, R.S.N.S., c. 471.

## VIII. DAMAGES

98. The past and ongoing emissions of the Contaminants and the failure of the Defendants to take proper or appropriate steps, including the failure to use known emission control devices on the Operations, to prevent or minimize the adverse effects of the Contaminants and activities have resulted in the following types of losses or injuries to property:
- (a) Loss of use and enjoyment of property owned, occupied or used by the property-owning Plaintiffs and other Property Owner Class Members, including extensive business and personal loss.
99. Class Members assert a claim for damages pursuant to the exposure analysis principles espoused in *St. Lawrence Cement Inc. v. Barrette*, [2008] S.C.J. No. 65 and [2003] R.J.Q. 1883 for their exposure and substantial interference to their enjoyment of their properties. The nuisance was intolerable considering the nature, severity, and duration of the interference when considering the character of the neighbourhood, the sensitivity of the Class Members use and the utility of the activity.

### **Medical Monitoring: Responding to Material Risk of Illness**

100. Further, the inhalation, ingestion and dermal exposure to the Contaminants emitted by all of the Defendants have also caused or materially contributed to increased risks of cancer and lung disease to the Plaintiffs and other Class Members. As a result of the exposure, the Plaintiffs and Class Members have already and will continue to experience illness, anxiety, loss of amenities and enjoyment of life, and a number will die premature deaths.
101. The Plaintiffs and Residential Class Members seek to recover damages in the form of the funds required to establish a 'medical monitoring' process to be made available to the Plaintiffs and Residential Class Members. Such damages include the costs of education and information to the public and medical community, and for the funding of a properly structured and designed study of the health risks and effects on the community as a result of the contamination.

102. The Plaintiffs further allege that the establishment of a medical monitoring process is a necessary and appropriate step for all of the Defendants to take in the course of fulfilling their obligation to minimize the damages suffered by Plaintiffs and Residential Class Members.

#### **IX. AGGRAVATED, AND PUNITIVE AND EXEMPLARY DAMAGES**

103. The Defendants Canada and Nova Scotia operated the Steel Works for decades with full knowledge of the fact that they were emitting materials that could and did adversely impact the physical and psychological health of, as well as the property used by, the Plaintiffs and the Class Members. Knowledge of the risks associated with such emissions was not released to the Plaintiffs and Class Members. Despite having specific information that the Plaintiffs and Class Members were at risk of higher mortality and morbidity rates due to the failure to install appropriate emissions controls, Canada and Nova Scotia continued Steel Works operations without any or reasonable controls. By failing to provide accurate information, or recklessly or knowingly presenting misinformation about Class Members' health risks related to exposure to Contaminants, both Canada's and Nova Scotia's conduct was unconscionable.
104. These activities were carried out with reckless, callous and wanton disregard for the health, safety and pecuniary interests of the Plaintiffs and other Class Members. Canada and Nova Scotia knowingly compromised the interests of the Plaintiffs and Class Members, solely for the purpose of monetary gain and political expediency. Furthermore, once Canada and Nova Scotia knew of the extraordinary dangers that their operations posed to the Plaintiffs and Class Members, Canada and Nova Scotia failed to advise them in a timely fashion, or fully, or at all. Indeed, the Plaintiffs and Class Members were misled into believing that Sydney's environment was a safe place to live. These misrepresentations persist.
105. Consequently, the Plaintiffs and Class Members are entitled to aggravated damages, and an award of punitive and exemplary damages commensurate with the outrageous behaviour of Canada and Nova Scotia.

## **X. RELIEF SOUGHT**

106. The Plaintiffs restate the foregoing paragraphs of this Statement of Claim and state that the Defendants are jointly and severally liable for the following:

- (a) an Order certifying this proceeding as a class proceeding and appointing the Plaintiffs as Representative Plaintiffs for the Classes;
- (b) damages for nuisance under the exposure analysis principles espoused in *St. Lawrence Cement Inc. v. Barrette*, [2008] S.C.J. No. 65 and [2003] R.J.Q. 1883;
- (c) general and special damages to the property-owning Plaintiffs' and Property Owner Class Members for the cost of remediation or relocation;
- (d) damages for the intentional tort of battery or alternatively, for negligent battery;
- (e) punitive and exemplary damages as against Nova Scotia and Canada;
- (f) damages for the funding of a "Medical Monitoring Program", supervised by the Court, for the purpose of educating and informing the public and medical community for the benefit of the Plaintiffs and Residential Class Members, and for the funding of a properly structured and designed study of the health risks and effects on the community as a result of the contamination.
- (g) an Order declaring that the Defendants Canada and Nova Scotia have, by their acts and omissions alleged herein, caused the contamination of the property-owning Plaintiffs' and Property Owner Class Members' real property by the Contaminants to levels beyond legally permissible levels in breach of their common law and equitable duties to the property-owning Plaintiffs' and Property Owner Class Members;
- (h) interest pursuant to the *Judicature Act*;
- (i) costs; and
- (j) such further and other relief as this Honourable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia

DATED at Halifax, in the County of Halifax, Province of Nova Scotia this 24<sup>th</sup> day of March, 2004.

AMENDED at Halifax, in the County of Halifax, Province of Nova Scotia this 17<sup>th</sup> day of November, 2005.

FURTHER AMENDED at Halifax, in the County of Halifax, Province of Nova Scotia this 14<sup>th</sup> day of July, 2006.

FURTHER AMENDED at Halifax, Province of Nova Scotia this 7<sup>th</sup> day of September, 2007.

FURTHER AMENDED at Halifax, Province of Nova Scotia this 21<sup>st</sup> day of August, 2009.

CONSOLIDATED at Halifax, Province of Nova Scotia this 28<sup>th</sup> day of August, 2009.

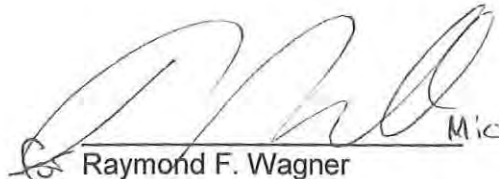
FURTHER AMENDED at Halifax, Province of Nova Scotia this 11<sup>th</sup> day of March, 2010.

FURTHER AMENDED at Halifax, Province of Nova Scotia this 5<sup>th</sup> day of October, 2010.

FURTHER AMENDED at Halifax, Province of Nova Scotia this 21<sup>st</sup> day of January, 2013.

**Signature**

Signed this 21<sup>st</sup> day of January, 2013

  
Michael Dull  
Raymond F. Wagner  
**Wagners**  
1869 Upper Water Street  
Suite PH301, Pontac House  
Halifax, NS B3J 1S9  
Tel: (902) 425-7330  
Fax: (902) 422-1233  
Solicitor for the Plaintiffs

## **APPENDIX “A”**

### **Sydney Class Action**

#### **Class Boundaries Definition**

##### **Northern Zone**

COMMENCING at a point at Sydney Harbour at the high water mark where it intersects the North Western corner of the property known as PID 15522659 (Civic 1861 Highway 28).

THEN travelling in an Easterly direction along the Northern property line of PID 15522659 (Civic 1861 Highway 28) to where it intersects with the centre line of Highway 28.

THEN travelling in a South Easterly direction along the centre line of Highway 28 direction to where it intersects with the prolongation of the Northern property line of the property known as PID 15626534 (Civic 1696 Victoria Road).

THEN travelling in an Easterly direction along the Northern property line of the property known as PID 15626534 (Civic 1696 Victoria Road), then in a Southerly direction along the Eastern property line of the property known as PID 15626534 (Civic 1696 Victoria Road) and then in a Westerly direction along the Southern property line of the property known as PID 15626534 (Civic 1696 Victoria Road) to where it intersects with the North Western corner of the property line of the property known as PID 15626559 (No Civic).

THEN travelling in a Southerly direction along the Western property line of the property known as PID 15626559 (No Civic) to the South Eastern corner of the property line of the property known as PID 15626542 (Civic 50 Grants Lane), then in a Westerly direction along the Southern property line of the property known as PID 15626542 (Civic 50 Grants Lane) to the South Western corner of the property line of the property known as PID 15626542 (Civic 50 Grants Lane).

THEN travelling in a South Easterly direction along the Western property line of the property known as PID 15626559 (No Civic) to where it intersects with the prolongation of the Northern property line of the property known as PID 15155146 (No Civic).

THEN travelling in a Westerly direction along the prolongation of the Northern property line of the property known as PID 15155146 (No Civic) to the North Eastern corner of the property line of the property known as PID 15155146 (No Civic).

THEN travelling in a Southerly direction along the Eastern property line of the properties known as PID 15155146 (No Civic), PID 15155153 (No Civic), PID 15155161 (No Civic), PID 15155179 (No Civic), PID 15155187 (No Civic), PID 15155195 (No Civic), PID 15155203 (No Civic), PID 15154990 (No Civic), PID 15155005 (No Civic), PID 15155013 (No Civic), PID 15155021 (No Civic), PID 15155039 (No Civic), PID 15155047 (No Civic), PID 15155054 (No

Civic), PID 15154958 (No Civic), PID 15154909 (Civic 78 Dalton Lane) and PID 15154909 (Civic 80 Dalton Lane) to where it intersects with the centre line of Dalton Lane.

THEN travelling in an Easterly direction along the centre line of Dalton Lane to where it intersects with the prolongation of the Northern property line of the property known as PID 15630890 (Civic 48 Dalton Lane).

THEN travelling in an Easterly direction along the Northern property line of the property known as PID 15630890 (Civic 48 Dalton Lane) to the North Eastern corner of the property line of the property known as PID 15630890 (Civic 48 Dalton Lane).

THEN travelling in a Southerly direction along the Eastern property line of the properties known as PID 15630890 (Civic 48 Dalton Lane), PID 15154701 (Civic 32 Dalton Lane), PID 15154693 (Civic 28 Dalton Lane) to the South Eastern corner of the property line of the property known as PID 15154693 (Civic 28 Dalton Lane).

THEN travelling in a Westerly direction along the Southern property line of the property known as PID 15154693 (Civic 28 Dalton Lane) to the South Western corner of the property line of the property known as PID 15154693 (Civic 28 Dalton Lane).

THEN travelling in a Southerly direction along the prolongation of the Western property line of the property known as PID 15154693 (Civic 28 Dalton Lane) to where it intersects with the South Western corner of the property known as PID 15154719 (No Civic).

THEN travelling in an Easterly direction along the Southern property line of the property known as PID 15154719 (No Civic) to where it intersects with the centre line of Gill Street.

THEN travelling in a Southerly direction along the centre line of Gill Street to where it intersects with the centre line of East Broadway.

THEN travelling in an Easterly direction along the centre line of East Broadway to where it intersects with the prolongation of the Eastern property line of the property known as PID 15153059 (Civic 254 East Broadway).

THEN travelling in a Westerly direction along the Southern property line of the property known as PID 15153059 (Civic 254 East Broadway) to where it intersects with the North Western corner of the property line of the property known as PID 15507064 (No Civic).

THEN travelling in a Southerly direction along the Western property line of the property known as PID 15507064 (No Civic) and then in an Easterly direction along the Southern property line of the property known as PID 15507064 (No Civic), to where the prolongation of the line intersects with the centre line of Gibbons Street.

THEN travelling in a Southerly direction along the centre line of Gibbons Street to where it intersects with the centre line of Columbus Avenue.

THEN travelling in an Easterly direction along the centre line of Columbus Avenue to where it intersects with the prolongation of the Western property line of the property known as PID 15149313 (Civic 173 Columbus Avenue).

THEN travelling in a Northerly direction along the Western property line of the property known as PID 15149313 (Civic 173 Columbus Avenue), then in an Easterly direction along the Northern property lines of the properties known as PID 15149313 (Civic 173 Columbus Avenue), PID 15149321 (No Civic) and PID 15149305 (Civic 201 Columbus Avenue) and then in a Southerly direction along the Eastern property line of the property known as PID 15149305 (Civic 201 Columbus Avenue) to where the prolongation of the line intersects with the centre line of Columbus Avenue.

THEN travelling in an Easterly direction along the centre line of Columbus Avenue & Linview Drive to where it intersects with the prolongation of the Eastern property line of the property known as PID 15154321 (Civic 20 Linview Drive).

THEN travelling in a Southerly direction along the Eastern property line of the property known as PID 15154321 (Civic 20 Linview Drive), then in a Southerly direction in a straight line along the prolongation of the line through the properties known as PID 15154198 (412 & 414 Lingan Road) and PID 15154172 (No Civic) to where it intersects with the Northern property line of the property known as PID 15153968 (No Civic).

THEN travelling in an Easterly direction along the Northern property line of the property known as PID 15153968 (No Civic).

THEN travelling in a Southerly direction along the Western property line of the properties known as PID 15153968 (No Civic), PID 15153976 (No Civic), PID 15153984 (No Civic) & PID 15153992 (No Civic) to the South Eastern corner of the property line of the property known as PID 15153992 (No Civic).

THEN travelling in a Southerly direction along the prolongation of the Eastern property line of the property known as PID 15153992 (No Civic) to where it intersects with the centre line of Gatacre Street.

THEN travelling in a South Easterly direction along the centre line of Gatacre Street to where it intersects with the prolongation of the Northern property line of the property known as PID 15143902 (Civic 7 & 9 MacDonald Crescent).

THEN travelling in a North Easterly direction along the Northern property line of the properties known as PID 15143902 (Civic 7 & 9 MacDonald Crescent), PID 15143894 (Civic 13 & 15 MacDonald Crescent), PID 15143886 (Civic 19 & 21 MacDonald Crescent) and PID 15143878 (Civic 25 & 27 MacDonald Crescent) to the North Eastern corner of the property known as PID 15143878 (Civic 25 & 27 MacDonald Crescent).



THEN travelling in a South Easterly direction along the Eastern property line of the properties known as PID 15143878 (Civic 25 & 27 MacDonald Crescent), PID 15143860 (Civic 37 & 39 MacDonald Crescent), PID 15143852 (Civic 45 MacDonald Crescent), PID 15143845 (Civic 49 MacDonald Crescent), PID 15143837 (Civic 53 MacDonald Crescent) and PID 15143829 (Civic 111 MacDonald Court) to the South Eastern corner of the property line of the property known as PID 15143829 (Civic 111 MacDonald Court).

THEN travelling in a North Easterly direction along the Northern property line of the property known as PID 15697600 (Civic 115 MacDonald Court) to the North Eastern corner of the property line of the property known as PID 15697600 (Civic 115 MacDonald Court).

THEN travelling in a South Easterly direction along the Eastern property line of the property known as PID 15697600 (Civic 115 MacDonald Court) to the South Eastern corner of the property line of the property known as PID 15697600 (Civic 115 MacDonald Court).

THEN travelling in a Westerly direction along the Southern property line of the property known as PID 15697600 (Civic 115 MacDonald Court) to the North Eastern corner of the property line of the property known as PID 15143795 (Civic 119 MacDonald Court).

THEN travelling in a Southerly direction along the Eastern property line of the properties known as PID 15143795 (Civic 119 MacDonald Court), PID 15143787 (Civic 123 MacDonald Court), PID 15143779 (Civic 127 MacDonald Court), PID 15143761 (Civic 131 MacDonald Court), PID 15143753 (Civic 135 MacDonald Court) and PID 15143746 (Civic 145 MacDonald Court) to the South Eastern corner of the property line of the property known as PID 15143746 (Civic 145 MacDonald Court).

THEN travelling in a Westerly direction along the Southern property line of the property known as PID 15143746 (Civic 145 MacDonald Court) to the North Eastern corner of the property line of the property known as PID 15143563 (Civic 71 Gunn Street).

THEN travelling in a South Easterly direction along the Eastern property line of the property known as PID 15143563 (Civic 71 Gunn Street) to the prolongation of the Eastern property line of the property known as PID 15143563 (Civic 71 Gunn Street) where it intersects the centre line of Gunn Street.

THEN travelling in a North Easterly direction along the centre line of Gunn Street to where it intersects with the prolongation of the Eastern property line of the property known as PID 15144801(Civic 172 Gunn Street).

THEN travelling in a South Easterly direction along the Eastern property line of the property known as PID 15144801(Civic 172 Gunn Street) to the South Eastern corner of the property line of the property known as PID 15144801(Civic 172 Gunn Street).

THEN travelling in a Westerly direction along the Southern property line of the property known as PID 15144801 (Civic 172 Gunn Street) to where it intersects with the Eastern property line of the property known as PID 15143027 (Civic 75 & 77 Carroll Crescent).

THEN travelling in a South Easterly direction along the Eastern property line of the properties known as PID 15143027 (Civic 75 & 77 Carroll Crescent), PID 15143480 (Civic 81 Carroll Crescent), PID 15143498 (Civic 83 Carroll Crescent), PID 15143506 (Civic 87 Carroll Crescent), PID 15143514 (Civic 91 Carroll Crescent), PID 15624398 (No Civic), PID 15143282 (Civic 95 Carroll Crescent), PID 15143290 (Civic 99 Carroll Crescent) and PID 15143308 (Civic 103 Carroll Crescent) crossing Austin Place and continuing in a South Easterly direction along the Eastern property line of the properties known as PID 15143365 (Civic 107 Carroll Crescent), PID 15143373 (Civic 111 Carroll Crescent), PID 15143381 (Civic 115 Carroll Crescent) and PID 15143399 (Civic 119 Carroll Crescent) to the South Eastern corner of the property line of the property known as PID 15143415 (Civic 123 Carroll Crescent).

THEN travelling in a Westerly direction along the Southern property line of the property known as PID 15143415 (Civic 123 Carroll Crescent) to the North Eastern corner of the property line of the property known as PID 15143423 (Civic 199 Maloney Street).

THEN travelling in a South Easterly direction along the Eastern property line of the property known as PID 15143423 (Civic 199 Maloney Street) to where the prolongation of the line to where it intersects with the centre line of Maloney Street.

THEN travelling in a North Easterly direction along the centre line of Maloney Street to where it intersects with the prolongation of the Eastern property line of the property known as PID 15356298 (Civic 220 Maloney Street).

THEN travelling in a South Easterly direction along the Eastern property line of the property known as PID 15356298 (Civic 220 Maloney Street) to the South Eastern corner of the property line of the property known as PID 15356298 (Civic 220 Maloney Street).

THEN travelling in a Westerly direction along the Southern property line of the properties known as PID 15356298 (Civic 220 Maloney Street), PID 15186786 (Civic 214 Maloney Street), PID 15141104 (Civic 210 Maloney Street), PID 15626286 (Civic 192 Maloney Street), PID 15141088 (Civic 186 Maloney Street), PID 15134638 (No Civic), PID 15141062 (Civic 180 Maloney Street), PID 15141054 (Civic 178 Maloney Street), PID 15141047 (Civic 176 Maloney Street), PID 15141039 (No Civic), PID 15141021 (Civic 168 Maloney Street), PID 15141013 (Civic 164 Maloney Street), PID 15141005 (Civic 162 Maloney Street), PID 15140999 (Civic 158 Maloney Street), PID 15140973 (No Civic), PID 15547227 (No Civic), PID 15140965 (Civic 152 Maloney Street) and PID 15140957 (Civic 148 Maloney Street) to the North Western corner of the property line of the property known as PID 15140981 (No Civic).

THEN travelling in a South Easterly direction along the Western property line of the properties known as PID 15140981 (No Civic), PID 15140980 (No Civic), PID 15547367 (No Civic), PID 15547201 (No Civic) and PID 15140049 (No Civic) to where the prolongation of the Western

property line of the property known as PID 15140049 (No Civic) intersects with the centre line of Frederick Street.

THEN travelling in a Westerly direction along the centre line of Frederick Street to where it intersects with the centre line of Lingan Road.

THEN travelling in a Southerly direction along the centre line of Lingan Road to where it intersects with the centre line of Sydney Port Access Road.

THEN travelling in a Westerly direction along the centre line of Sydney Port Access Road to where it intersects with the centre line of Victoria Road.

THEN travelling in a Northerly direction along the centre line of Victoria Road to where it intersects with the prolongation of the Southern property line of the property known as PID 15146251 (Civic 11 and 15 Railroad Street).

THEN travelling in a Westerly direction along the Southern property line of the properties known as PID 15146251 (Civic 11 and 15 Railroad Street), PID 15146269 (Civic 17 and 19 Railroad Street), PID 15146277 (Civic 21 and 23 Railroad Street), PID 15146285 (Civic 25 and 27 Railroad Street), PID 15146293 (Civic 29 Railroad Street), PID 15146301 (Civic 31 Railroad Street), PID 15146319 (Civic 35 Railroad Street), PID 15146327 (Civic 39 Railroad Street), PID 15146335 (Civic 41 Railroad Street), PID 15146343 (Civic 43 Railroad Street) and PID 15146350 (Civic 45 Railroad Street) to the South Western corner of the property line of the property known as PID 15146350 (Civic 45 Railroad Street).

THEN travelling in a Northerly direction along the Western property line of the property known as PID 15146350 (Civic 45 Railroad Street) to where the prolongation of the line intersects with the centre line of Railroad Street.

THEN travelling in a North Westerly direction along the centre line of Railroad Street to where it intersects with the prolongation of the Southern property line of the property known as PID 15138977 (No Civic).

THEN travelling in a Westerly direction along the Southern property line of the properties known as PID 15138977 (No Civic), PID 15138969 (Civic 30 Henry Street) and PID 15138951 (Civic 26 Henry Street) to the South Western corner of the property line of the property known as PID 15138951 (Civic 26 Henry Street).

THEN travelling in a Northerly direction along the Western property line of the property known as PID 15138951 (Civic 26 Henry Street) to the North Eastern corner of the property line of the property known as PID 15625478 (No Civic).

THEN travelling in a Westerly direction along the Northern property line of the property known as PID 15625478 (No Civic) to the North Western corner of the property line of the property known as PID 15625478 (No Civic).

THEN travelling in a Northerly direction along the Eastern property line of the property known as PID 15625429 (No Civic) to the North Eastern corner of the property line of the property known as PID 15625429 (No Civic).

THEN travelling in a North Westerly direction along the Western property line of the properties known as PID 15137797 (No Civic) and PID 15696586 (Civic 1 Henry Street) to the North Western corner of the property line of the property known as PID 15137797 (No Civic).

THEN travelling in a Northerly direction along the Eastern property line of the property known as PID 15625346 (No Civic) to the South Eastern corner of the property line of the property known as PID 15625353 (No Civic).

THEN travelling in a North Westerly direction along the Eastern property line of the property known as PID 15625353 (No Civic) to the Northern corner of the property known as PID 15625353 (No Civic).

THEN travelling in a Northerly direction along the Eastern property line of the properties known as PID 15625338 (No Civic) and PID 15625320 (No Civic) to the Southern property line of the property known as PID 15160849 (Civic 102 Matilda Street).

THEN travelling in a Westerly direction along the Southern property line of the properties known as PID 15160849 (Civic 102 Matilda Street) and PID 15625387 (No Civic) to the South Western corner of the property line of the property known as PID 15625387 (No Civic).

THEN travelling in a North Westerly direction along the Eastern property line of the property known as PID 15625320 (No Civic) to the South Eastern corner of the property line of the property known as PID 15160328 (No Civic).

THEN travelling in a Westerly direction along the Northern property line of the property known as PID 15625320 (No Civic) to the South Western corner of the property line of the property known as PID 15160278 (Civic 54 & 56 Dominion Street).

THEN travelling in a Northerly direction along the Western property line of the property known as PID 15160278 (Civic 54 & 56 Dominion Street) to the South Eastern corner of the property line of the property known as PID 15160260 (No Civic).

THEN travelling in a Westerly direction along the Southern property line of the property known as PID 15160260 (No Civic) to the South Western corner of the property line of the property known as PID 15160260 (No Civic).

THEN travelling in a Northerly direction along the Western property line of the property known as PID 15160260 (No Civic) to where the prolongation of the line intersects with the centre line of Dominion Street.

THEN travelling in an Easterly direction along the centre line of Dominion Street to where it intersects with the centre line of St. Anns Street.

THEN travelling in a Northerly direction along the centre line of St. Anns Street to where it intersects with the prolongation of the Northern property line of the property known as PID 15157761 (No Civic).

THEN travelling in a Westerly direction along the Northern property line of the property known as PID 15157761 (No Civic) to where the prolongation of the line intersects with the centre line of Shore Road.

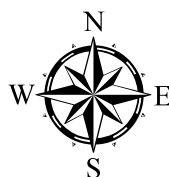
THEN travelling in a Northerly direction along the centre line of Shore Road to where it intersects with the centre line of Argosy Street.

THEN travelling in a Westerly direction along the prolongation of the centre line of Argosy Street to the high water mark of Sydney River.

THEN travelling along the high water mark of Sydney River and Sydney Harbour until the point of beginning.



# North Zone



0 100 200 400 600  
1:3,200  
Meters

Legend

Railroad

Streets

North Zone Boundary

Property Boundaries

Park

Playground

Sports Field

Accessory

Commercial

Industrial

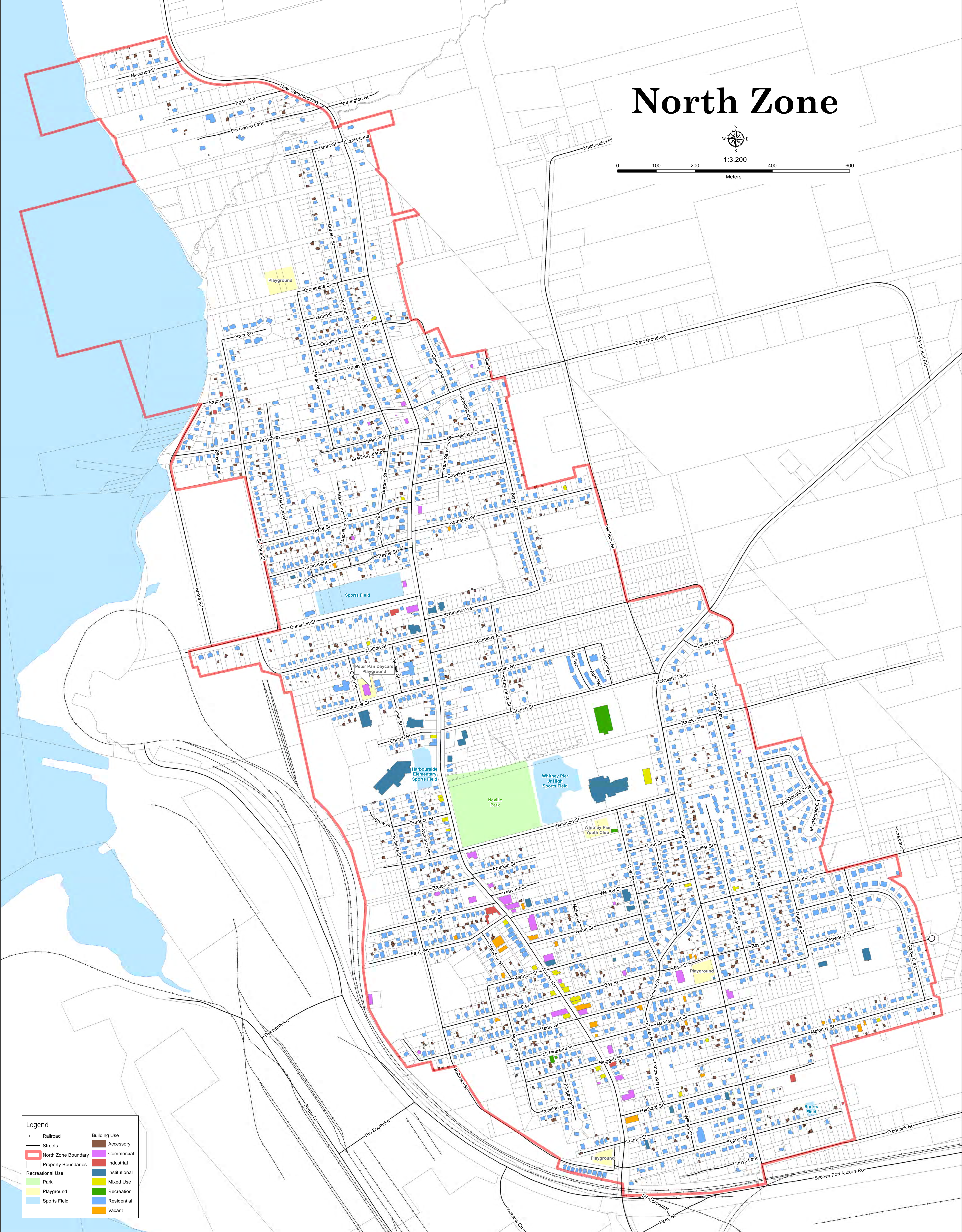
Institutional

Mixed Use

Recreation

Residential

Vacant





**Sydney Class Action**  
**Class Boundaries Definition**  
**Southern Zone**

COMMENCING at a point at Sydney Harbour at the high water mark where it intersects the prolongation of the centre line of Desbarres Street.

THEN travelling in an Easterly direction along the centre line of Desbarres Street to where it intersects with the centre line of George Street.

THEN travelling in a North Westerly direction along the centre line of George Street to where it intersects with the prolongation of the Northern property line of the property known as PID 15516412 (No Civic).

THEN travelling in an Easterly direction along the Northern property line of the properties known as PID 15516412 (No Civic), PID 15055502 (Civic 11 Louisa Street), PID 15055510 (Civic 15 Louisa Street), PID 15055528 (Civic 19 Louisa Street), PID 15055536 (Civic 21 Louisa Street), PID 15055544 (Civic 27 Louisa Street), PID 15055551 (Civic 33 Louisa Street), PID 15055569 (Civic 37 Louisa Street), PID 15055577 (Civic 41 Louisa Street) and PID 15671258 (Civic 45 and 47 Louisa Street) to the North Eastern corner of the property line of the property known as PID 15671258 (Civic 45 and 47 Louisa Street).

THEN travelling in a South Easterly direction along the Eastern property line of the property known as PID 15671258 (Civic 45 and 47 Louisa Street) to the South Eastern corner of the property line of the property known as PID 15671258 (Civic 45 and 47 Louisa Street).

THEN travelling in a Westerly direction along the Southern the property line of the property known as PID 15671258 (Civic 45 and 47 Louisa Street) to where it intersects with the geographical end of Louisa Street.

THEN travelling in a South Easterly direction along the geographical end of Louisa Street to where it intersects with the North Eastern corner of the property known as PID 15055601 (Civic 50 Louisa Street).

THEN travelling in a South Easterly direction along the Eastern property line of the properties known as PID 15055601 (Civic 50 Louisa Street), PID 15636426 (Civic 24 Cross Street), PID 15055635 (Civic 26 Cross Street), PID 15055643 (Civic 28 Cross Street), PID 15055650 (Civic 30 Cross Street), PID 15516446 (Civic 36 Cross Street), PID 15055658 (Civic 38 Cross Street), PID 15055684 (Civic 35 Cossitt Street), PID 15577711 (No Civic) and PID 15056047 (Civic 44 Cossitt Street).

THEN travelling in a South Easterly direction along the Eastern property line of the property known as PID 15056047 (Civic 44 Cossitt Street) to where the prolongation of said line intersects with the prolongation of the centre line of Desbarres Street.

THEN travelling in a Westerly direction along the prolongation of the centre line of Desbarres Street to where it intersects with the prolongation of the Eastern property line of the property known as PID 15056260 (Civic 3 Fairview Street).

THEN travelling in a South Easterly direction along the Eastern property line of the properties known as PID 15056260 (Civic 3 Fairview Street), PID 15056278 (Civic 5 Fairview Street), PID 15056286 (Civic 7 Fairview Street), PID 15056294 (Civic 9 Fairview Street), PID 15617194 (No Civic), PID 15796162 (No Civic), PID 15056302 (Civic 27 Fairview Street), PID 15056310 (No Civic), PID 15056328 (Civic 31 Fairview Street), PID 15056336 (Civic 37 Fairview Street), PID 15056286 (Civic 41 Fairview Street), PID 15056286 (Civic 45 Fairview Street), PID 15056369 (Civic 47 Fairview Street) and PID 15056377 (Civic 49 Fairview Street) to the South Eastern corner of the property line of the property known as PID 15056377 (Civic 49 Fairview Street).

THEN travelling in a South Easterly direction along the prolongation of the Eastern property line of the property known as PID 15056377 (Civic 49 Fairview Street) to where it intersects with the centre line of Amelia Street.

THEN travelling in a South Westerly direction along the centre line of Amelia Street to where it intersects with the prolongation of the Eastern property line of the property known as PID 15056674 (Civic 51 Fairview Street).

THEN travelling in a South Easterly direction along the Eastern property line of the properties known as PID 15056674 (Civic 51 Fairview Street), PID 15056682 (Civic 53 Fairview Street), PID 15056690 (Civic 55 Fairview Street) and PID 15056708 (No Civic) to the South Eastern corner of the property line of the property known as PID 15056708 (No Civic) to where the prolongation of the Eastern property line of the property known as PID 15056708 (No Civic) intersects with the centre line of York Street.

THEN travelling in a North Easterly direction along the centre line of York Street to where it intersects with the centre line of Walker Street.

THEN travelling in a South Easterly direction along the centre line of Walker Street to where it intersects with the centre line of Ferry Street.

THEN travelling in a South Westerly direction along the centre line of Ferry Street to where it intersects with the centre line of Intercolonial Street.

THEN travelling in a South Easterly direction along the centre line of Intercolonial Street to where it intersects with the centre line of Dodds Street.



THEN travelling in a South Easterly direction along the centre line of Dodds Street to where it intersects with the centre line of Prince Street.

THEN travelling in an Easterly direction along the centre line of Prince Street to where it intersects with the prolongation of the Eastern property line of the property known as PID 15642028 (Civic 214 Prince Street).

THEN travelling in a Southerly direction along the Eastern property line of the property known as PID 15642028 (Civic 214 Prince Street) to where it intersects with the centre line of Townsend Street.

THEN travelling in an Easterly direction along the centre line of Townsend Street to where it intersects with the prolongation of the Western property line of the property known as PID 15086838 (Civic 259 Townsend Street).

THEN travelling in a Northerly direction along the Western property line, then in an Easterly direction along the Northern property line and then in a Southerly direction along the Eastern property line of the property known as PID 15086838 (Civic 259 Townsend Street) to where it intersects with the North Western corner of the property line of the property known as PID 15629447 (Civic 263, 265, 269 & 273 Townsend Street).

THEN travelling in an Easterly direction along the Northern property line of the properties known as PID 15629447 (Civic 263, 265, 269 & 273 Townsend Street), PID 15086754 (No Civic), PID 15086747 (Civic 279 Townsend Street), PID 15086739 (Civic 281 Townsend Street), PID 15086721 (Civic 285 Townsend Street), PID 15086713 (No Civic), PID 15086705 (Civic 293 Townsend Street), PID 15086697 (No Civic), PID 15086689 (No Civic), PID 15086671 (No Civic) and PID 15086663 (Civic 311 Townsend Street) to the South Western corner of the property line of the property known as PID 15658008 (No Civic).

THEN travelling in a North Easterly direction along the Western property line of the properties known as PID 15658008 (No Civic), PID 15086655 (Civic 128 Inglis Street), PID 15009467 (No Civic) and PID 15086630 (Civic 118 Inglis Street), to the Southern property line of the property known as PID 15086580 (Civic 450 Styles Lane).

THEN travelling in a Westerly direction along the Southern property line of the properties known as PID 15086580 (Civic 40 Styles Lane), PID 15086572 (Civic 34 Styles Lane), PID 15086564 (Civic 30 Styles Lane), PID 15086549 (No Civic), PID 15086531 (Civic 22 & 24 Styles Lane), PID 15086523 (No Civic), PID 15086515 (No Civic), PID 15086507 (No Civic), PID 15060908 (Civic 297 Townsend Street) and PID 15060635 (No Civic) to the South Western corner of the property line of the property known as PID 15060635 (No Civic).

THEN travelling in a North Westerly direction along the Western property line of the property known as PID 15060635 (No Civic) to where it intersects with the prolongation of the centre line of Styles Lane.

THEN travelling in an Easterly direction along the centre line of Styles Lane to where it intersects with the intersection of Inglis Street and High Street.

THEN travelling in a South Easterly direction along the centre line of High Street to where it intersects with the prolongation of the South Western corner of the property line of the property known as PID 15086119 (7 High Street).

THEN travelling in a North Easterly direction along the Eastern property line of the property known as PID 15086119 (7 High Street) to where the prolongation of said intersects with the centre line of Terrace Street.

THEN travelling in a North Westerly direction along the centre line of Terrace Street to where it intersects with the Southern property line of the property known as PID 15086002 (Civic 55 Inglis Street).

THEN travelling in a North Easterly direction along the Southern property line of the properties known as PID 15086002 (Civic 55 Inglis Street), PID 15107519 (No Civic) and PID 15605652 (Civic 420 Prince Street) to where the prolongation of the Eastern property line of the property known as PID 15605652 (Civic 420 Prince Street) intersects with the centre line of Prince Street.

THEN travelling in a Westerly direction along the centre line of Prince Street to where it intersects with the centre line of Disco Street.

THEN travelling in a North Easterly direction along the centre line of Disco Street to where it intersects with the centre line of Massey Drive.

THEN travelling in a Northerly direction along the centre line of Massey Drive to where it intersects with the centre line of Cape Breton Street.

THEN travelling in a North Easterly direction along the centre line of Cape Breton Street to where it intersects with the centre line of Victoria Road.

THEN travelling in a South Easterly direction along the centre line of Victoria Road to where it intersects with the prolongation of the Northern property line of the property known as PID 15129208 (Civic 228 Victoria Road).

THEN travelling in a North Easterly direction along the Northern property line of the property known as PID 15129208 (Civic 228 Victoria Road) to the Western property line of the property known as PID 15699689 (No Civic).

THEN travelling in a South Easterly direction along the Western property line of the properties known as PID 15699689 (No Civic) and PID 15517980 (No Civic) to the South Western corner of the property line of the property known as PID 15517980 (No Civic).

THEN travelling in an Easterly direction along the Southern property line of the property known as PID 15517980 (No Civic) to where it intersects with the prolongation of the Eastern property line of the property known as PID 15124597 (No Civic).

THEN travelling in a Southerly direction along the Eastern property line of the properties known as PID 15124597 (No Civic), PID 15009442 (No Civic), PID 15009434 (No Civic) and PID 15124605 (Civic 215 Vulcan Avenue) to the South Eastern corner of the property line of the property known as PID 15124605 (Civic 215 Vulcan Avenue).

THEN travelling in a Southerly direction from the South Eastern corner of the property line of the property known as PID 15124605 (Civic 215 Vulcan Avenue) to where it intersects with the centre line of Vulcan Avenue.

THEN travelling in a Westerly direction along the centre line of Vulcan Avenue to where it intersects with the centre line of Forrest Street.

THEN travelling in a South Easterly direction along the centre line of Forrest Street to where it intersects with the centre line of Welton Street.

THEN travelling in a South Westerly direction along the centre line of Welton Street to where it intersects with the centre line of St. Peter's Road.

THEN travelling in a South Westerly direction along the centre line of St. Peter's Road to where it intersects with the centre line of Lisgard Street.

THEN travelling in a South Easterly direction along the centre line of Lisgard Street to where it intersects with the centre line of Royal Avenue.

THEN travelling in a South Westerly direction along the centre line of Royal Avenue to where it intersects with the centre line of Cottage Road.

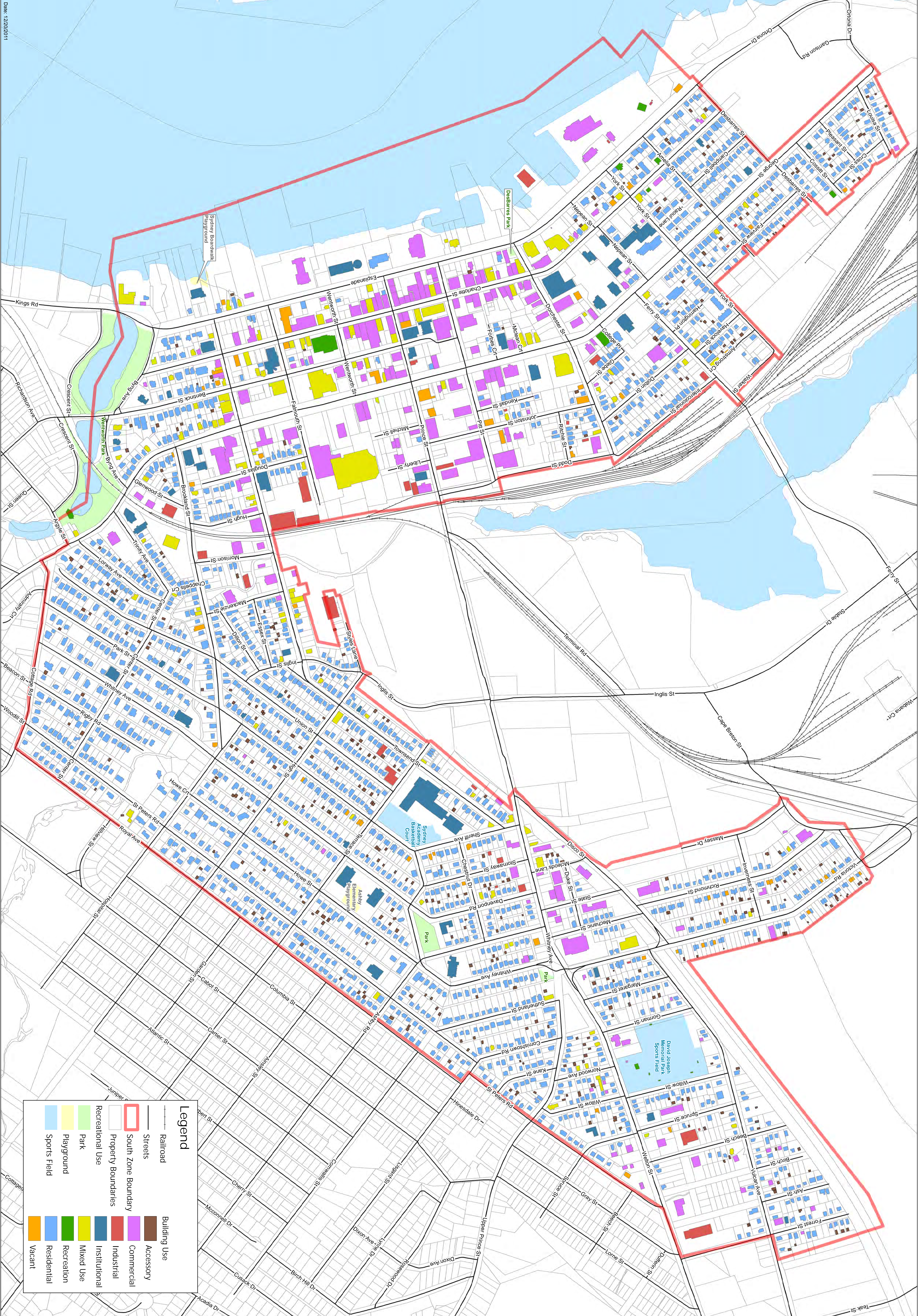
THEN travelling in a Westerly direction along the centre line of Cottage Road to where it intersects with the centre line of George Street.

THEN travelling in a North Westerly direction along the centre line of George Street to where it intersects with the centre line of Argyle Street.

THEN travelling in a Westerly direction along the centre line of Argyle Street to where it intersects with the prolongation of the high water mark of the body of water in Wentworth Park.

THEN travelling in a Westerly direction along the centre line of the high water mark of the body of water in Wentworth Park to the high water mark of Sydney Harbour until the point of beginning.

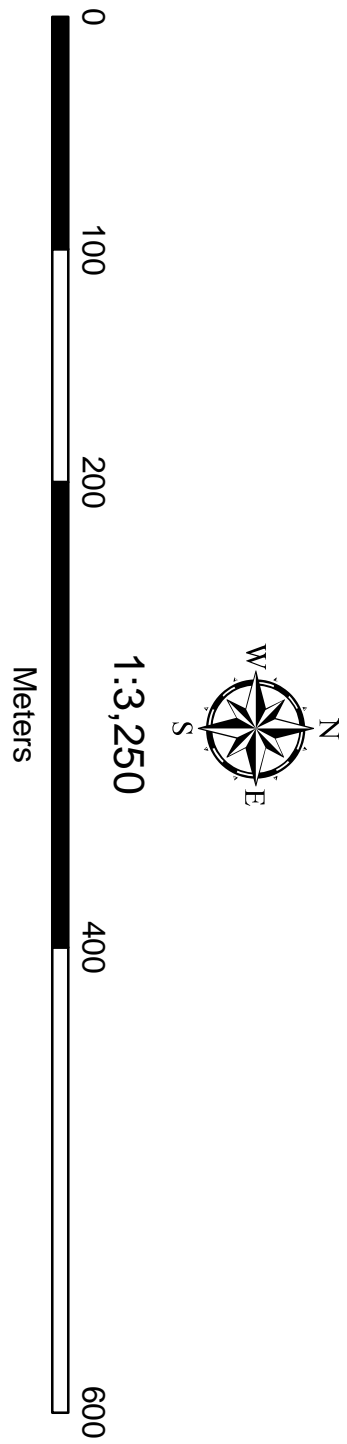




**Legend**

South Zone Boundary	Accessory Building Use
Streets	Commercial Building Use
Railroad	Institutional Building Use
Property Boundaries	Mixed Use Building Use
Park	Recreation Building Use
Playground	Residential Building Use
Sports Field	Vacant Building Use

# South Zone



Date: 12/20/2011