

ONTARIO LAND TRIBUNAL

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

| | |
|-------------------------------|---|
| Applicant and Appellant: | ClubLink Corporation ULC |
| Subject: | Application to amend Zoning By-law No. 2008-250 - Refusal or neglect of the City of Ottawa to make a decision |
| Existing Zoning: | O1A (Open space, subzone A) |
| Proposed Zoning: | R1T (Residential First Density Zone), R3V (Residential Third Density Zone), and R5A (Residential Fifth Density Zone) as well as O1 (Parks and open spaces). |
| Purpose: | To permit the redevelopment of the lands for residential and open space uses, including 1502 residential units which will be mixed between detached, townhouse and mid-rise apartments. |
| Property Address/Description: | 7000 Campeau Drive |
| Municipality: | City of Ottawa |
| Municipality File No.: | D02-02-19-0123 |
| OLT Case No.: | PL200195 |
| OLT File No.: | PL200195 |
| OLT Case Name: | ClubLink Corporation ULC v. Ottawa (City) |

PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

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| Applicant and Appellant: | ClubLink Corporation ULC |
| Subject: | Proposed Plan of Subdivision - Failure of the City of Ottawa to make a decision |
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| Municipality: | City of Ottawa |
| Municipality File No.: | D07-16-19-0026 |
| OLT Case No.: | PL200195 |
| OLT File No.: | PL200196 |

MOTION RECORD OF CLUBLINK CORPORATION ULC

REGARDING THE WITNESS STATEMENT OF DOUGLAS NUTTALL

December 29, 2021

DAVIES HOWE LLP

Lawyers
The Tenth Floor
425 Adelaide Street West
Toronto, Ontario
M5V 3C1

Mark R. Flowers

markf@davieshowe.com

Kyle Gossen

kyleg@davieshowe.com

416-977-7088 (t)

416-977-8931 (f)

Counsel to ClubLink Corporation ULC

TO:

ONTARIO LAND TRIBUNAL

655 Bay Street, Suite 1500
Toronto, Ontario
M5G 1E5

Jason Kwan

jason.c.kwan@ontario.ca

437-231-5651 (t)

416-326-5370 (f)

AND TO:

CITY OF OTTAWA

Office of the City Solicitor
110 Laurier Avenue West
Ottawa, Ontario
K1P 1J1

Timothy C. Marc

Timothy.Marc@ottawa.ca

613-580-2424, ext. 21444 (t)

Counsel to the City of Ottawa

AND TO: **WEIRFOULDS LLP**
4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, Ontario
M5K 1B7

Sylvain Rouleau
srouleau@weirfoulds.com

416-947-5016 (t)

Counsel to the Kanata Greenspace Protection Coalition

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Tab 1

PL200195

ONTARIO LAND TRIBUNAL

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MOTION OF CLUBLINK CORPORATION ULC**REGARDING THE WITNESS STATEMENT OF DOUGLAS NUTTALL**

NOTICE OF MOTION

ClubLink Corporation ULC (“**ClubLink**”) will make a motion to the Ontario Land Tribunal (the “**Tribunal**”) at 10:00 a.m. on January 17, 2022 by videoconference, or as soon thereafter as the motion can be heard.

THE MOTION IS FOR:

1. An Order of the Tribunal that evidence in relation to the Restrictive Covenant (defined below) is not admissible at the hearing of ClubLink’s Appeals (defined below).
2. An Order of the Tribunal striking portions of paragraphs 5, 15, 16, 18, 19, 33.h., 40.a. and 40.e. and Attachment 4 of the Witness Statement of Douglas Nuttall (the “**Nuttall Witness Statement**”), prepared on behalf of the Kanata Greenspace Protection Coalition (the “**KGPC**”), so as to remove all references to the Restrictive Covenant.
3. An Order of the Tribunal that the Parties may not introduce the Restrictive Covenant into evidence at the Tribunal hearing of the Appeals through the examination or cross-examination of any witness.
4. An Order of the Tribunal striking the responses to Issue 30 (regarding Section 51(24)(c) of the *Planning Act*) and Issue 34 (regarding Section 4.10 of the City’s Official Plan) in the “Conclusions” section of the Nuttall Witness Statement, as constituting opinion evidence that is outside of Mr. Nuttall’s area of expertise.

5. An Order of the Tribunal directing the KGPC to provide the other Parties and the Tribunal with a revised version of the Nuttall Witness Statement, amended to reflect the Orders requested in paragraphs 2 and 4 above, to replace the Nuttall Witness Statement.
6. Such other and further relief as ClubLink may request and the Tribunal will allow.

THE GROUNDS TO BE RELIED UPON IN THE MOTION ARE:

Background

7. ClubLink is the owner of the lands municipally known as 7000 Campeau Drive in the City of Ottawa (the “**ClubLink Lands**”).
8. The ClubLink Lands are currently occupied by the Kanata Golf and Country Club.
9. On October 8, 2019, through its planning consultant, Bousfields Inc., ClubLink submitted Zoning By-law Amendment and Plan of Subdivision applications to the City of Ottawa (the “**City**”) to permit the redevelopment of the ClubLink Lands for residential and open space uses, including approximately 1,500 residential units in a range of detached, townhouse and mid-rise apartment dwellings (the “**Applications**”).
10. By notice of appeal dated March 6, 2020, ClubLink appealed the Applications to the former Local Planning Appeal Tribunal pursuant to subsections 34(11) and 51(34) of the *Planning Act* on the basis of the City’s failure to make a decision on

either of the Applications within the time periods provided under the *Planning Act* (the “**Appeals**”).

11. A Case Management Conference for the Appeals was held on October 9, 2020, at which the KGPC was granted party status on consent.
12. The hearing of ClubLink’s Appeals is scheduled to commence on January 17, 2022.
13. Pursuant to the Procedural Order issued on November 3, 2020, as amended, ClubLink, the City and the KGPC exchanged Witness Statements on November 12, 2021.
14. On this date, the KGPC produced the Nuttall Witness Statement, which contained inadmissible and improper evidence.

References to Restrictive Covenant in the Nuttall Witness Statement

15. First, the Nuttall Witness Statement refers to and attaches (as Attachment 4) a restrictive covenant between ClubLink Capital Corporation and Imasco Enterprises Inc., which was registered on title to the ClubLink Lands on January 8, 1997 (the “**Restrictive Covenant**”).
16. As of March 2020, Imperial Tobacco Canada Limited was/is the successor to Imasco Enterprises Inc.
17. A restrictive covenant is a question of private contract and land title. It is not relevant to the public planning process over which the Tribunal has jurisdiction,

or to the Tribunal's task of determining whether a proposed development meets the applicable statutory tests under the *Planning Act* or otherwise constitutes good planning.

18. Likewise, the Tribunal does not have jurisdiction to interpret, enforce or apply a restrictive covenant, or to determine whether the use of land is, or is not, in compliance with a restrictive covenant.
19. Accordingly, the existence and/or interpretation of the Restrictive Covenant is not an appropriate planning consideration in deciding the Appeals.
20. It is therefore improper for Mr. Nuttall to:
 - a. Refer to the Restrictive Covenant in paragraphs 5, 15, 16, 18, 19, 33.h., 40.a. and 40.e. of the Nuttall Witness Statement;
 - b. Provide his opinion regarding the interpretation of the terms of the Restrictive Covenant in paragraphs 15 (i.e. the term "storm water management plan in respect of the Transferor's Benefitted Lands as such plan exists as at November 1, 1996") and 19 (i.e. the term "materially adverse") of the Nuttall Witness Statement; and
 - c. Attach the Restrictive Covenant as Attachment 4 to the Nuttall Witness Statement.
21. Further, the Restrictive Covenant is not mentioned in the Issues List at Attachment 3 of the Tribunal's Procedural Order.

22. Had the KGPC originally sought to include reference to the Restrictive Covenant on the Issues List, ClubLink would have objected, just as it objected to certain proposed issues that referenced various other agreements, which were subsequently deleted and not included in the final Issues List.
23. Finally, in response to the City of Ottawa's application to the Superior Court of Justice in Court File No. 19-81809, the KGPC initially sought, among other things, a declaration from the Court that section 3(i) of Schedule "B" of the Restrictive Covenant is "valid and enforceable". However, no such declaration was provided by the Court.

Parkland Dedication Opinions in the Nuttall Witness Statement

24. Second, in response to Issues 30 and 34 in the "Conclusions" section of the Nuttall Witness Statement, Mr. Nuttall purports to provide his opinions regarding Section 51(24)(c) of the *Planning Act* and Section 4.10 of the City's Official Plan. Specifically, he states that the Official Plan "lists 40% parkland dedication" and that "this land is part of the 40% parkland dedication".
25. These statements are inaccurate.
26. However, regardless of their accuracy, Mr. Nuttall is not qualified to provide an expert opinion regarding parkland dedication matters.
27. Mr. Nuttall is a water resources engineer. He does not, in the Nuttall Witness Statement or his *curriculum vitae*, claim to have any expertise in relation to land use planning matters generally, or parkland dedication specifically.

28. These statements by Mr. Nuttall are inappropriate, and contrary to his signed Acknowledgement of Expert's Duty wherein he confirmed that he would provide opinion evidence that is related only to matters within his area of expertise.

Legislative and Regulatory Provisions

29. The *Planning Act*, R.S.O. 1990, c. P.13.
30. The Tribunal's *Rules of Practice and Procedure*.
31. Such further and other grounds as counsel may advise and the Tribunal may permit.

THE FOLLOWING DOCUMENTS WILL BE USED AT THE HEARING OF THE MOTION:

32. The Affidavit of Christina Fracassi, affirmed December 24, 2021.
33. Such further and other documentary evidence as the Tribunal may permit.

December 29, 2021

DAVIES HOWE LLP

Lawyers
The Tenth Floor
425 Adelaide Street West
Toronto, Ontario
M5V 3C1

Mark R. Flowers

markf@davieshowe.com

Kyle Gossen

kyleg@davieshowe.com

416-977-7088 (t)

416-977-8931 (f)

Counsel to ClubLink Corporation ULC

TO: **ONTARIO LAND TRIBUNAL**

655 Bay Street, Suite 1500
Toronto, Ontario
M5G 1E5

Jason Kwan

jason.c.kwan@ontario.ca

437-231-5651 (t)

416-326-5370 (f)

AND TO: **CITY OF OTTAWA**

Office of the City Solicitor
110 Laurier Avenue West
Ottawa, Ontario
K1P 1J1

Timothy C. Marc

Timothy.Marc@ottawa.ca

613-580-2424, ext. 21444 (t)

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AND TO: **WEIRFOULDS LLP**
4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, Ontario
M5K 1B7

Sylvain Rouleau
srouleau@weirfoulds.com

416-947-5016 (t)

Counsel to the Kanata Greenspace Protection Coalition

Tab 2

PL200195

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AFFIDAVIT OF CHRISTINA FRACASSI

I, Christina Fracassi, of the City of Toronto, Province of Ontario, SOLEMNLY AFFIRM:

1. I am a Legal Assistant with the law firm of Davies Howe LLP, counsel to ClubLink Corporation ULC ("**ClubLink**"). As such, I have knowledge of the matters contained in this Affidavit.
2. Attached to this Affidavit as **Exhibit "A"** is a copy of the covering letter from Bousfields Inc. submitting applications by ClubLink to the City of Ottawa (the "**City**") for a Zoning By-law Amendment and Plan of Subdivision in October 2019 to permit the proposed redevelopment of the lands municipally known as 7000 Campeau Drive, Ottawa (the "**Applications**").
3. Attached to this Affidavit as **Exhibit "B"** is a copy of a letter dated March 3, 2020 from Deborah Glendinning of Osler, Hoskin & Harcourt LLP, counsel for Imperial Tobacco Canada Limited ("**Imperial Tobacco**"), to Mark Flowers of Davies Howe LLP, counsel for ClubLink, and others, advising that Imperial Tobacco (successor to Imasco Enterprises Inc.) intended to seek to be added as a party to the City's application to the Superior Court of Justice in Court File No. 19-81809 (the "**Court Application**"). I am advised by Mr. Flowers and believe that Ms. Glendinning subsequently advised that Imperial Tobacco would not seek to participate in the Court Application.
4. Attached to this Affidavit as **Exhibit "C"** is a copy of a letter dated March 6, 2020 from Mr. Flowers to the City appealing the Applications to the former Local Planning Appeal Tribunal.

5. Attached to this Affidavit as **Exhibit “D”** is a copy of an email of September 29, 2020 from Mr. Flowers to Sylvain Rouleau of WeirFoulds LLP, counsel for the Kanata Greenspace Protection Coalition (the “**KGPC**”), enclosing comments on the KGPC’s initial draft Issues List (other enclosures are excluded).
6. Attached to this Affidavit as **Exhibit “E”** is a copy of an email of October 6, 2020 from Mr. Rouleau to Mr. Flowers, enclosing the KGPC’s revised draft Issues List.
7. I am advised by Mr. Flowers and believe that after receiving the KGPC’s revised draft Issues List, he spoke with Mr. Rouleau on October 6, 2020 and reiterated ClubLink’s concerns with the references to various agreements in the KGPC’s revised draft Issues List.
8. Attached to this Affidavit as **Exhibit “F”** is a copy of an email of October 7, 2020 from Mr. Rouleau to Mr. Flowers, enclosing the KGPC’s further revised draft Issues List.
9. Attached to this Affidavit as **Exhibit “G”** is a copy of the Tribunal’s Decision and Order issued on November 3, 2020, attaching the final version of the Issues List as Attachment 3 to the Procedural Order.
10. Attached to this Affidavit as **Exhibit “H”** is a copy of excerpts of the KGPC’s Factum in the Court Application, dated February 11, 2020.
11. Attached to this Affidavit as **Exhibit “I”** is a copy of extracts of the Reasons for Decision of the Superior Court of Justice, issued on February 19, 2021.

12. Attached to this Affidavit as **Exhibit “J”** is a copy of the Witness Statement of Douglas Nuttall, which was prepared on behalf of the KGPC and delivered to the other Parties and the Ontario Land Tribunal on November 12, 2021.
13. Attached to this Affidavit as **Exhibit “K”** is a copy of a letter dated November 22, 2021 from Mr. Flowers to Mr. Rouleau regarding the Nuttall Witness Statement.
14. Attached to this Affidavit as **Exhibit “L”** is a copy of a letter dated November 24, 2021 from Mr. Rouleau to Mr. Flowers regarding the Nuttall Witness Statement.
15. Attached to this Affidavit as **Exhibit “M”** is a copy of a letter dated November 27, 2021 from Mr. Flowers to Mr. Rouleau regarding the Nuttall Witness Statement.
16. Attached to this Affidavit as **Exhibit “N”** is a copy of a webpage titled “eNews – Facts You Need and Our Next Steps”, posted on the KGPC’s website on November 29, 2021. On the webpage, Barbara Ramsay, Chair of the KGPC, posted a message which included the following statement: “We are also reviewing legal remedies that support our original arguments around restrictive covenants that have the ability to force ClubLink to respect its obligations under the 40PA.”
17. Attached to this Affidavit as **Exhibit “O”** is a copy of an email exchange on November 29, 2021 between Mr. Flowers and Jason Kwan, Caseworker at the Tribunal, in which Mr. Flowers requested a hearing date for this motion on an expedited basis, and in which Mr. Kwan advised that there were no available dates on the Tribunal’s calendar for this motion prior to the commencement of

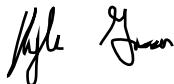
the hearing of the Appeals. Mr. Kwan further advised that ClubLink may bring a motion to be heard at the commencement of the hearing of the Appeals.

Affirmed before me at the

City of Toronto,

in the Province of Ontario,

on the 24th day of December, 2021



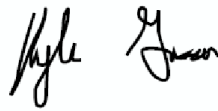
Commissioner for Taking Affidavits, etc.

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Christina Fracassi

Christina Fracassi

**THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT
OF CHRISTINA FRACASSI SWORN BEFORE ME THIS
24th DAY OF DECEMBER, 2021.**

A handwritten signature in black ink, appearing to read "Kyle Jensen". The signature is written in a cursive, flowing style.

A Commissioner, etc.



Project No. 18245

October 4, 2019

Laurel McCreight, Planner
Development Review West
Planning Services
City of Ottawa
Ottawa City Hall
110 Laurier Avenue West
Ottawa, Ontario K1P 1J1

Dear Ms. McCreight:

***Re: Zoning By-law Amendment & Draft Plan of Subdivision Applications
7000 Campeau Drive, City of Ottawa***

We are the planning consultants for ClubLink Corporation ULC, with respect to its property at 7000 Campeau Drive, located on the north side of Campeau Drive in the former City of Kanata, in the City of Ottawa (the “subject site”).

On behalf of our client, we are pleased to submit Zoning By-law Amendment & Draft Plan of Subdivision applications to permit the redevelopment of the subject site, a large, strategically-located property immediately north of the Kanata Town Centre. The Zoning By-law Amendment is required to rezone the site from Parks and Open Space, Subzone A (O1A), to a mix of R1T, R3V, R5A and O1 zones, in order to permit the proposed residential uses and built forms. The Draft Plan of Subdivision application is being submitted concurrently to establish the different types of development blocks, as well as new public roads, public parks, landscaped buffers, and stormwater management ponds.

The subject site, which is currently used as the Kanata Golf and Country Club, has an area of approximately 71.0 hectares (175.4 acres) and is occupied by a private golf course, a 2-storey club house, maintenance buildings and a large surface parking lot along the Campeau Drive frontage. Given the size of the subject site and its proximity to existing transit infrastructure, the site represents an opportunity to create new housing in a transit-supportive manner in proximity to the Kanata Town Centre. In this regard, the Terry Fox transit station is located approximately 900-1,000 metres walking distance south of the subject site, and is served by bus rapid transit, local bus service and Greyhound bus service.

As set out in our Planning Rationale, it is our opinion that the proposed development represents good planning and reflects an exciting and unique opportunity to integrate the subject site into the Kanata Lakes community in an urban, transit-oriented approach. The subject site has been planned to efficiently use existing urban land and infrastructure through a mix of building types and densities that will urbanize an underutilized site.

As you are aware, a pre-application consultation meeting was held with staff on March 19, 2019. Following this meeting, staff provided comments as well as the Applicant's Study and Plan Identification List. In support of the applications, please find enclosed the following materials which includes the materials identified by staff:

- Zoning By-law Amendment Application Form (1 copy);
- Draft Plan of Subdivision Application Form (1 copy);
- Applicant's Study and Plan Identification List and related correspondence with staff (1 copy);
- Compiled Survey Plan, prepared by Stantec, dated September 20, 2019 (2 copies);
- Description/Summary of Existing Easements, prepared by Davies Howe LLP, dated September 20, 2019 (1 copy);
- Draft Plan of Subdivision, prepared by Stantec, dated September 30, 2019 (15 copies);
- Planning Rationale, prepared by Bousfields Inc., dated September 2019 (3 copies);
- Public Consultation Strategy, prepared by Bousfields Inc., dated September 2019 (1 copy);
- Design Brief, prepared by NAK Design Strategies, dated September 2019 (3 copies);
- Site Servicing Study, prepared by DSEL, dated September 2019 (3 copies);
- Grade Control and Drainage Plan, prepared by DSEL, dated August 2019 (15 copies);
- Geotechnical Study / Slope Stability Study, prepared by Paterson Group Inc., dated July 30, 2019 (3 copies);
- Transportation Impact Assessment, prepared by BA Group, dated September 2019 (4 copies), and Transportation Synchro Files (digital copy only);
- Pedestrian, Cycling and Traffic Calming Concept Plans, prepared by BA Group, dated September 2019 (4 copies);
- Stormwater Management Report prepared by JFSA Consultants, dated September 30, 2019 (3 copies) and the SWM Hydro Modeling Files (digital copy only);
- Monitoring and Hydrologic Model Calibration Report, prepared by JFSA Consultants, dated September 2019 (3 copies);


- Surface Infiltration Testing prepared by JFSA Consultants, dated February 6, 2019 (3 copies);
- Geomorphological Study, prepared by Matrix Solutions Inc., dated August 2019 (3 copies);
- Phase 1 Environmental Site Assessment, prepared by Paterson Group Inc., dated December 11, 2018 (3 copies);
- Phase 2 Environmental Site Assessment, prepared by Paterson Group Inc., dated May 23, 2019 (3 copies);
- Combined Environmental Impact Statement and Tree Conservation Report, prepared by McKinley Environmental Solutions (MES) and Muncaster Environmental Planning (MEP), dated August 2019 (3 copies);
- Roadway Traffic Noise Feasibility Assessment, prepared by Gradientwind Engineers and Scientists, dated September 27, 2019 (3 copies);
- A USB with all materials identified above; and
- A cheque in the amount of \$98,051.55 to satisfy the combined application fees for the two applications.

Although we note that the Applicant's Study and Plan Identification List requested Roadway Modification Functional Designs, given that the Transportation Impact Assessment prepared by BA Group concludes that these are not required, we have not included Roadway Modification Functional Designs with these applications.

We trust that the foregoing is satisfactory. However, if you have any questions or require additional information, please do not hesitate to contact the undersigned. We look forward to receiving confirmation that the applications are complete as soon as possible.

Yours very truly,

Bousfields Inc.



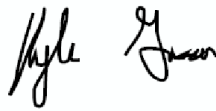
Peter F. Smith, MCIP, RPP



Mike Dror, MCIP, RPP

cc. Robert Visentin, ClubLink Corporation ULC
Beth Henderson, Minto Communities
Kevin Yemm, Richcraft Homes

**THIS IS EXHIBIT "B" REFERRED TO IN THE AFFIDAVIT
OF CHRISTINA FRACASSI SWORN BEFORE ME THIS
24th DAY OF DECEMBER, 2021.**

A handwritten signature in black ink, appearing to read "Kyle J. Gannon", is written above a horizontal line.

A Commissioner, etc.

Osler, Hoskin & Harcourt LLP
 Box 50, 1 First Canadian Place
 Toronto, Ontario, Canada M5X 1B8
 416.362.2111 MAIN
 416.862.6666 FACSIMILE

OSLER

Toronto

March 3, 2020

Deborah Glendinning
 Direct Dial: 416.862.4714
 DGlendinning@osler.com

Montréal

SENT BY ELECTRONIC MAIL

Calgary

Ottawa

Vancouver

New York

Kirsten Crain
 Emma Blanchard
 Neil Abraham
BORDEN LADNER GERVAIS LLP
 World Exchange Plaza
 100 Queen Street, Suite 1300
 Ottawa, ON K1P 1J9

Matthew P. Gottlieb
 James Renihan
LAX O'SULLIVAN LISUS GOTTLIEB LLP
 145 King Street West, Suite 2750
 Toronto, ON M5H 1J8

Mark R. Flowers
DAVIES HOWE LLP
 The Tenth Floor
 425 Adelaide Street West
 Toronto, ON M5V 3C1

Alyssa Tomkins
 Charles R. Daoust
CAZA SAIKALEY S.R.L./LLP LAWYERS
 350-220 Laurier Avenue West
 Ottawa, ON K1P 5Z9

Dear Counsel:

Re: City of Ottawa and ClubLink Corporation ULC; Kanata Greenspace Protection Coalition, Intervener; Court File No. 19-81809 (the "Application")

Further to my email to Mr. Justice MacLeod on February 24, 2020, please be advised that Imperial Tobacco Canada Limited ("ITCAN"), successor to Imasco Enterprises Inc., will seek to be added as a party to the Application. However, as ITCAN is currently under creditor protection pursuant to the Companies' Creditors Arrangement Act (the "CCAA"), it must first obtain the leave of the CCAA court for a lift of the stay in the CCAA proceedings. We will be filing a motion to request that the stay be lifted for the purposes of the Application this week.

For your information, FTI Consulting, the Monitor for ITCAN is supporting the motion to lift the stay

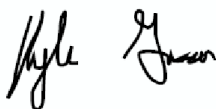
Yours very truly,



Deborah Glendinning
 Partner

DG:ta

**THIS IS EXHIBIT "C" REFERRED TO IN THE AFFIDAVIT
OF CHRISTINA FRACASSI SWORN BEFORE ME THIS
24th DAY OF DECEMBER, 2021.**

A handwritten signature in black ink, appearing to read "Kyle G. Gannon".

A Commissioner, etc.

Mark Flowers
 markf@davieshowe.com
 Direct: 416.263.4513
 Main: 416.977.7088
 Fax: 416.977.8931
 File No. 703120

March 6, 2020

By Courier

M. Rick O'Connor, City Clerk
 City of Ottawa
 Ottawa City Hall
 110 Laurier Avenue West
 Ottawa, Ontario K1P 1J1

Dear Mr. O'Connor:

**Re: Notice of Appeals to the Local Planning Appeal Tribunal
 Zoning By-law Amendment and Plan of Subdivision Applications
 7000 Campeau Drive, City of Ottawa
 City File Nos. D02-02-19-0123 and D07-16-19-0026
 Applicant / Appellant: ClubLink Corporation ULC**

We are counsel to ClubLink Corporation ULC ("ClubLink"), the owner of lands municipally known as 7000 Campeau Drive, Ottawa, which is currently the site of the Kanata Golf & Country Club (the "Lands").

On October 8, 2019, through its planning consultant, Bousfields Inc., ClubLink submitted Zoning By-law Amendment (City File No. D02-02-19-0123) and Plan of Subdivision applications (City File No. D07-16-19-0026) to the City of Ottawa (the "City") to permit the redevelopment of the Lands for residential and open space uses, including 1,502 residential units in a range of detached, townhouse and mid-rise apartment dwellings (the "Applications").

By letter dated October 17, 2019, City Planning staff confirmed that the Applications were "complete" for the purposes of the *Planning Act*, regulations under the *Planning Act*, and the City's submission requirements as of the date they were submitted.

The Lands are designated *General Urban Area* on Schedule B of the Ottawa Official Plan, which permits "many types and densities of housing". Further, in accordance with Policy 3.6.1.5 of the Official Plan, "the City supports intensification in the General Urban Area where it will complement the existing pattern and scale of development and planned function of the area". The Applications conform to and implement the Official Plan and, accordingly, no Official Plan Amendment is required to permit the proposed redevelopment of the Lands.

The Lands are currently zoned O1A, Parks and Open Space Zone, Subzone A, under the City's Zoning By-law 2008-250. The Zoning By-law Amendment application proposes to rezone the Lands to various residential zone categories, including R1T (Residential First Density Zone), R3V (Residential Third Density Zone), and R5A (Residential Fifth Density Zone), as well as O1 (Parks and Open Space Zone).

On November 25, 2019, the City hosted a public meeting to consider the Applications. The Applications have also been subject to other public meetings hosted by the City Councillor and the community, to which ClubLink was not invited.

Despite the passage of more than 120 days since the Applications were submitted to the City, the City has failed to make a decision on either of the Applications. Accordingly, pursuant to subsections 34(11) and 51(34) of the *Planning Act*, ClubLink hereby appeals the Applications to the Local Planning Appeal Tribunal ("LPAT").

The reasons for these appeals include the following:

1. City Council failed to make a decision regarding the Zoning By-law Amendment application within 90 days of the date upon which the complete application was submitted;
2. The City failed to make a decision regarding the Plan of Subdivision application within 120 days of the date upon which the complete application was submitted;
3. The Applications propose a redevelopment of the Lands that is consistent with the *Provincial Policy Statement* and conforms to the relevant policies of the Ottawa Official Plan, as set out in the Planning Rationale report prepared by Bousfields Inc., dated September 2019, which was submitted to the City in support of the Applications. Among other things, the proposed redevelopment would appropriately intensify the Lands in a manner that would implement provincial planning policies, including those promoting residential intensification and a broad mix of housing types across neighbourhoods, the efficient use of land and infrastructure, and increased densities in proximity to public transit. The proposed redevelopment also conforms to the City's Official Plan, recognizing that the proposed residential dwelling types are permitted by the *General Urban Area* designation and the form of development proposed would complement the existing pattern and scale of development and the planned function of the surrounding area; and
4. The requested zoning amendments and proposed plan of subdivision would permit a redevelopment of the Lands that is appropriate, in the public interest, and constitutes good planning.

Enclosed with this notice of the appeals is a completed LPAT Appellant Form (A1) for the two appeals, together with our firm cheque in the amount of \$600.00, payable to the Minister of Finance, representing the prescribed filing fee for these appeals.

We trust that this is satisfactory. However, please do not hesitate to contact us if you have any questions or if you require anything further.

Yours truly,
DAVIES HOWE LLP



Mark R. Flowers
Professional Corporation

Encls.

copy: Client
Peter Smith and Mike Dror, Bousfields Inc.



Environment and Land Tribunals Ontario
Local Planning Appeal Tribunal

655 Bay Street, Suite 1500

Toronto ON M5G 1E5

Telephone: 416-212-6349

Toll Free: 1-866-448-2248

Website: www.elto.gov.on.ca

Appellant Form (A1)

Receipt Number (LPAT Office Use Only)

Date Stamp Appeal Received by Municipality/Approval Authority

To file an appeal, select one or more below

- ☒ Appeal of *Planning Act* matters for Official Plans and amendments, Zoning By-Laws and amendments and Plans of Subdivision, Interim Control By-laws, Site Plans, Minor Variances, Consents and Severances, proceed to Section 1A
- ☐ Second appeal of a *Planning Act* matter for Official Plans and amendments, Zoning By-Laws and amendments, proceed to Section 1B. NOTE: Bill 139, *Building Better Communities and Conserving Watersheds Act, 2017*, allows appeals to the Tribunal of some *Planning Act* matters previously determined by LPAT.
- ☐ Appeals of other matters, including Development Charges, *Education Act*, *Aggregate Resources Act*, *Municipal Act* and Ontario Heritage, proceed to Section 1C

1 A. Appeal Type (Please check all applicable boxes)

| Subject of Appeal | Type of Appeal | Reference (Section) |
|---|--|---------------------|
| Planning Act Matters | | |
| Official Plan or Official Plan Amendment | <input type="checkbox"/> Appeal a decision by local council that adopted an OP or OPA (exempt from approval by Minister or Approval Authority) | 17(24) |
| | <input type="checkbox"/> Appeal a decision of an Approval Authority that approved or did not approve all or part of a plan or amendment | 17(36) |
| | <input type="checkbox"/> Approval Authority failed to make a decision on the plan within 120 days | 17(40) |
| | <input type="checkbox"/> Council failed to adopt the requested amendment within 120 days | 22(7) |
| | <input type="checkbox"/> Council refuses to adopt the requested amendment | |
| Zoning By-law or Zoning By-law Amendment | <input type="checkbox"/> Appeal the passing of a Zoning By-law | 34(19) |
| | <input checked="" type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 90 days | 34(11) |
| | <input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision within 120 days where the application is associated with an Official Plan Amendment | |
| | <input type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality | |
| Interim Control Zoning By-law | <input type="checkbox"/> Appeal the passing of an Interim Control By-law within 60 days (Minister only) | 38(4) |
| | <input type="checkbox"/> Appeal the passing of an extension of an Interim Control By-law within 60 days | 38(4.1) |
| Site Plan | <input type="checkbox"/> Application for a site plan – council failed to make a decision within 30 days | 41(12) |

| Subject of Appeal | Type of Appeal | Reference (Section) |
|---------------------|--|---------------------|
| | <input type="checkbox"/> Appeal requirements imposed by the municipality or upper tier municipality | 41(12.01) |
| Minor Variance | <input type="checkbox"/> Appeal a decision of the Committee of Adjustment that approved or refused the application | 45(12) |
| Consent/Severance | <input type="checkbox"/> Appeal a decision that approved or refused the application | 53(19) |
| | <input type="checkbox"/> Appeal conditions imposed | |
| | <input type="checkbox"/> Appeal changed conditions | 53(27) |
| | <input type="checkbox"/> Application for consent – Approval Authority failed to make a decision on the application within 90 days | 53(14) |
| Plan of Subdivision | <input checked="" type="checkbox"/> Application for a plan of subdivision – Approval Authority failed to make a decision on the plan within 120 days | 51(34) |
| | <input type="checkbox"/> Appeal a decision of an Approval Authority that approved a plan of subdivision | 51(39) |
| | <input type="checkbox"/> Appeal a decision of an Approval Authority that did not approve a plan of subdivision | |
| | <input type="checkbox"/> Appeal a lapsing provision imposed by an Approval Authority | |
| | <input type="checkbox"/> Appeal conditions imposed by an Approval Authority | |
| | <input type="checkbox"/> Appeal conditions - after expiry of 20 day appeal period but before final approval (only applicant or public body may appeal) | 51(43) |
| | <input type="checkbox"/> Appeal changed conditions | 51(48) |

1 B. Appeal Type (Please check all applicable boxes) Only for appeal(s) of a new decision or non-decision by municipality or Approval Authority following a previous LPAT Decision (i.e., second appeal).

For matters subject to Bill 139 and the associated transition regulation (the second appeal).

| Subject of Appeal | Type of Appeal | Reference (Section) |
|--|---|-----------------------|
| Planning Act Matters | | |
| Official Plan or Official Plan Amendment | <input type="checkbox"/> Appeal of a decision by Approval Authority on an OP or OPA (exempt from approval by Minister or Approval Authority) following a LPAT decision | 17(24) and 17(49.6) |
| | <input type="checkbox"/> Appeal of a decision by Council or Approval Authority on an OP or OPA following a LPAT decision | 17(36) and 17(49.6) |
| | <input type="checkbox"/> Appeal of a refusal within 90 days by Council following a LPAT decision | 22(7) and 22(11.0.12) |
| | <input type="checkbox"/> Appeal of a non-decision within 90 days by Council following a LPAT decision | |
| Zoning By-law or Zoning By-law Amendment | <input type="checkbox"/> Appeal of a refusal within 90 days by Council following a LPAT decision | 34(11) and 34(26.5) |
| | <input type="checkbox"/> Appeal of a non-decision within 90 days by Council following a LPAT decision | |
| | <input type="checkbox"/> Appeal of a decision by Council following a LPAT decision | 34(19) and 34(26.5) |

| Subject of Appeal | Type of Appeal | Reference (Section) |
|---|--|---------------------|
| Development Charges Act Matters | | |
| Development Charge By-law | <input type="checkbox"/> Appeal a Development Charge By-law | 14 |
| | <input type="checkbox"/> Appeal an amendment to a Development Charge By-law | 19(1) |
| Development Charge Complaint | <input type="checkbox"/> Appeal municipality's decision regarding a complaint | 22(1) |
| | <input type="checkbox"/> Failed to make a decision on the complaint within 60 days | 22(2) |
| Front-ending Agreement | <input type="checkbox"/> Objection to a front-ending agreement | 47 |
| | <input type="checkbox"/> Objection to an amendment to a front-ending agreement | 50 |
| Education Act Matters | | |
| Education Development Charge By-law | <input type="checkbox"/> Appeal an Education Development Charge By-law | 257.65 |
| | <input type="checkbox"/> Appeal an amendment to an Education Development Charge By-law | 257.74(1) |
| Education Development Charge Complaint | <input type="checkbox"/> Appeal approval authority's decision regarding a complaint | 257.87(1) |
| | <input type="checkbox"/> Failed to make a decision on the complaint within 60 days | 257.87(2) |
| Aggregate Resources Act Matters | | |
| Aggregate Removal Licence | <input type="checkbox"/> One or more objections against an application for a 'Class A' aggregate removal licence | 11(5) |
| | <input type="checkbox"/> One or more objections against an application for a 'Class B' aggregate removal licence | |
| | <input type="checkbox"/> Application for a 'Class A' licence – refused by Minister | 11(11) |
| | <input type="checkbox"/> Application for a 'Class B' licence – refused by Minister | |
| | <input type="checkbox"/> Changes to conditions to a licence | 13(6) |
| | <input type="checkbox"/> Amendment of site plans | 16(8) |
| | <input type="checkbox"/> Minister proposes to transfer the licence – applicant does not have licensee's consent | 18(5) |
| | <input type="checkbox"/> Minister proposes to refuse transfer of licence – applicant is licensee or has licensee's consent to transfer | |
| | <input type="checkbox"/> Minister proposes to refuse transfer of licence – applicant does not have licensee's consent to transfer | |
| | <input type="checkbox"/> Revocation of licence | 20(4) |
| Municipal Act Matters | | |
| Ward Boundary By-law | <input type="checkbox"/> Appeal the passing of a by-law to divide the municipality into wards | 222(4) |
| | <input type="checkbox"/> Appeal the passing of a by-law to redivide the municipality into wards | |

| Subject of Appeal | Type of Appeal | Reference (Section) |
|---------------------------------------|---|---------------------|
| | <input type="checkbox"/> Appeal the passing of a by-law to dissolve the existing wards | |
| Ontario Heritage Act Matters | | |
| Designation of Property | <input type="checkbox"/> Appeal a Notice of intention to designate property | 29(11) |
| | <input type="checkbox"/> Appeal of an amendment to a by-law designating property | 30.1(10) |
| | <input type="checkbox"/> Appeal a Notice of Intention to repeal a designating by-law or part of a designating by-law | 31(9) |
| | <input type="checkbox"/> Appeal a council's decision to approve or refuse the repealing of a designating by-law or part of a designating by-law | 32(7)/32(8) |
| | <input type="checkbox"/> Appeal council's decision to alter a heritage designated property | 33(9) |
| Heritage Conservation District | <input type="checkbox"/> Appeal the passing of a by-law designating a heritage conservation study area | 40.1(4) |
| | <input type="checkbox"/> Appeal the passing of a by-law designating a heritage conservation district | 41(4) |
| Other Act Matters | | |
| Subject of Appeal | Act/Legislation Name | Section Number |

2. Location Information

Address and/or Legal Description of property subject to the appeal
7000 Campeau Drive

Municipality
City of Ottawa

Upper Tier (Example: county, district, region)

3. Appellant/Objector Information

Note: You must notify the LPAT of any change of address or telephone number in writing. Please quote your LPAT Case/File Number(s) after they have been assigned.

Last Name

First Name

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation)
ClubLink Corporation ULC

Email Address

Daytime Telephone Number

ext.

Alternate Telephone Number

Mailing Address

Unit Number

Street Number

15675

Street Name

Dufferin Street

PO Box

City/Town
King City

Province
Ontario

Country
Canada

Postal Code
L7B 1K5

4. Representative Information

35

☒ I hereby authorize the named company and/or individual(s) to represent me

Last Name
Flowers

First Name
Mark

Company Name
Davies Howe LLP

Professional Title
Lawyer

Email Address
markf@davieshowe.com

Daytime Telephone Number
416-263-4513

ext.

Alternate Telephone Number
416-843-4884

Mailing Address

Unit Number
10th Fl.

Street Number
425

Street Name
Adelaide Street West

PO Box

City/Town
Toronto

Province
Ontario

Country
Canada

Postal Code
M5V 3C1

Note: If you are representing the appellant and are not licensed under the *Law Society Act*, please confirm that you have written authorization, as required by the LPAT's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

☐ I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

5. Appeal Reasons

Municipal Reference Number(s)
File Nos. D02-02-19-0123 and D07-16-19-0026

For all appeal types, please outline the nature of the appeal and the reasons for your appeal.

Please see the attached covering letter.

For appeals of Official Plans, Official Plan Amendments, Zoning By-laws and Zoning By-law Amendments, please indicate if you intend on arguing one or more of the following:

A: A decision of a Council or Approval Authority is:

- ☐ Inconsistent with the Provincial Policy Statement, issued under subsection 3(1) of the *Planning Act*
- ☐ Fails to conform with or conflicts with a provincial plan
- ☐ Fails to conform with an applicable Official Plan

And

B: For a non-decision or decision to refuse by council:

- ☒ Consistency with the provincial policy statement, issued under subsection 3(1) of the *Planning Act*
- ☐ Conformity with a provincial plan
- ☒ Conformity with the upper-tier municipality's Official Plan or an applicable Official Plan

If you intend on arguing on one or more of the above throughout a proceeding, please explain:

Please see the attached covering letter.

Oral/written submissions to council

If applicable, did you make your opinions regarding this matter known to council?

- ☐ Oral submissions at a public meeting of council
- ☐ Written submissions to council

6. Related Matters

Are there other appeals not yet filed with the Municipality?

- ☐ Yes ☒ No

Are there other matters related to this appeal? (For example: A consent application connected to a variance application)

- ☐ Yes ☒ No

If yes, please provide LPAT Case Number(s) and/or Municipal File Number(s)

7. Mediation

Mediation is a confidential process in which the parties to an appeal talk about their differences and, with the facilitative assistance of an impartial individual, a mediator, negotiate a consensual resolution of the appeal. Unless the Tribunal determines that there is a good reason for not addressing the appeal with mediation, all parties shall presume that their differences will first be addressed through a mediation directed by the Tribunal. As such, parties shall act and prepare accordingly, meaning good faith negotiation and collaboration are a priority and are expected by the Tribunal.

- ☒ I have read and understand the above statement.

8. Witness Information

Detail the nature and/or expertise of witnesses you will have available.

For all other appeal types :

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.).


To be determined based on issues of parties

9. Required Fee


Total Fee Submitted \$ 600

Payment Method ► ☐ Certified cheque ☐ Money Order ☒ Lawyer's general or trust account cheque

I solemnly declare that all of the statements and the information provided, as well as any supporting documents are true, correct and complete.

| Name of Appellant/Representative | Signature of Appellant/Representative | Date (yyyy/mm/dd) |
|----------------------------------|--|-------------------|
| Mark R. Flowers, Davies Howe LLP |  | 2020/03/06 |

Personal information or documentation requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990 c. P. 13 and the *Local Planning Appeal Tribunal Act*. After an appeal is filed, all information relating to this appeal may become available to the public.

Davies Howe 

LAND DEVELOPMENT ADVOCACY & LITIGATION

The Tenth Floor • 425 Adelaide Street West
Toronto • Ontario • M5V 3C1

CANADIAN IMPERIAL BANK OF COMMERCE
ONE QUEEN STREET EAST
TORONTO, ONTARIO M5C 2W5



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PAY
TO THE
ORDER OF

Minister of Finance

DAVIES HOWE LLP
GENERAL ACCOUNT

PER _____



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DAVIES HOWE
LAND DEVELOPMENT ADVOCACY & LITIGATION

028749

DATE : Mar-05-20

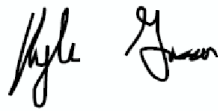
AMOUNT : \$600.00

028749

Minister of Finance

LPAT Appeal Fee

**THIS IS EXHIBIT "D" REFERRED TO IN THE AFFIDAVIT
OF CHRISTINA FRACASSI SWORN BEFORE ME THIS
24th DAY OF DECEMBER, 2021.**

A handwritten signature in black ink, appearing to read "Kyle J. Quinn", is written above a horizontal line.

A Commissioner, etc.

Christina Fracassi

From: Mark Flowers
Sent: September 29, 2020 1:36 PM
To: 'Sylvain Rouleau'; Marc, Timothy C
Subject: RE: Procedure Order - City Issues.docx
Attachments: Draft Issues List of KGPC with MF comments - September 29 2020 (01588699xCDE1C).docx; Draft Procedural Order - September 29 2020 (01588402xCDE1C).docx; PL200195_Applicant_OMB Decision re PL040801_Sept 26 2005 (01588826xCDE1C).pdf; PL200195_Applicant_Agenda for CMC_Sept 29 2020 (01588821xCDE1C).pdf; PL200195_Applicant_Aerial Photos_Sept 29 2020 (01588865xCDE1C).pdf; PL200195_Applicant_Concept Plan_May 24 2020 (01588817xCDE1C).pdf

Sylvain - we've reviewed your client's draft issues list and have concerns with a number of the proposed issues. In some cases, it is the proposed wording of the issues - that could likely be resolved with some amended language, and in other cases we don't accept the proposed issue. Please see the attached with my comments that explains the nature of the concerns.

Although I am hopeful that we will be able to resolve these differences, at least for some of the proposed issues, I don't realistically think that will happen this afternoon. Thus, for today, I intend to send the attached draft Procedural Order to the Tribunal, which includes the City's issues list (with our comments where greater specificity is being sought), but does not include the Coalition issues, recognizing that you sent your draft list to the Tribunal yesterday so they will already have it for the CMC. We can use the next week to see if we can narrow the disputed items, and if there are any items that need to be addressed with the Member(s) at the CMC we can then do so. Thus, I will simply advise the Tribunal today that ClubLink has expressed concerns with some of the Coalition's proposed issues and may need to address this at the CMC, together with some other aspects of the draft Procedural Order. With specific reference to the 40% Agreement, I also intend to provide the Tribunal with the attached OMB decision from 2005.

Tim - For the City's issues, please note that I added reference to the Court File number in Issue 1, and specific reference to "stormwater" in Issue 12 - I trust both of those minor changes are acceptable, but please advise if otherwise.

The other documents I will send to the Tribunal this afternoon are the attached Agenda, Air Photos and the current Concept Plan.

Mark

Mark Flowers

Direct Line: 416.263.4513|[Bio](#)



Davies Howe LLP
 The Tenth Floor
 425 Adelaide Street West
 Toronto, Ontario M5V 3C1
 416.977.7088

Novae Res Urbis #1 Development Law Firm in the GTHA for 2010, 2013, 2014 and 2017
Novae Res Urbis #1 Development Law Firm in Toronto for 2014
 Top three *NRU* ranking for both Toronto and the GTHA since 2008

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From: Sylvain Rouleau <srouleau@weirfoulds.com>
Sent: September-28-20 3:56 PM
To: Marc, Timothy C <Timothy.Marc@ottawa.ca>; Mark Flowers <markf@davieshowe.com>
Subject: RE: Procedure Order - City Issues.docx
 Hi Mark and Tim,
 Please find attached the Kanata Greenspace Protection Coalition's draft issues list for this matter.
 Regards,
 Sylvain

SYLVAIN ROULEAU | Partner | T. 416-947-5016 | C. 647-449-8638 | srouleau@weirfoulds.com

WeirFoulds LLP

66 Wellington Street West, Suite 4100, P.O. Box 35, TD Bank Tower, Toronto, Ontario, Canada. M5K 1B7 | T. 416-365-1110 | F. 416-365-1876 | www.weirfoulds.com

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From: Marc, Timothy C <Timothy.Marc@ottawa.ca>
Sent: Monday, September 28, 2020 2:45 PM
To: 'markf@davieshowe.com' <markf@davieshowe.com>; Sylvain Rouleau <srouleau@weirfoulds.com>
Subject: RE: Procedure Order - City Issues.docx
[External Message]

If I had waited two minutes, I would have had the KNL file number. Such is included now.

Tim Marc

(613) 580-2424x21444 (Tel)

(613) 560-1383 (Fax)

timothy.marc@ottawa.ca

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City of Ottawa | Ville d'Ottawa

Certified Specialist in Municipal Law (Land Use Planning)

Spécialiste agréé – Droit municipal (Planification et aménagement du territoire)

From: Marc, Timothy C
Sent: September 28, 2020 2:43 PM
To: 'markf@davieshowe.com' <markf@davieshowe.com>; Sylvain Rouleau <srouleau@weirfoulds.com>
Subject: Procedure Order - City Issues.docx

Further to the discussion I had with Mark on Saturday, I have eliminated some repetition in the City issues. I have added one addition issue (it is in italics).

I acknowledge Mark's request on Saturday for additional particulars.

This e-mail originates from the City of Ottawa e-mail system. Any distribution, use or copying of this e-mail or the information it contains by other than the intended recipient(s) is unauthorized. Thank you.

Le présent courriel a été expédié par le système de courriels de la Ville d'Ottawa. Toute distribution, utilisation ou reproduction du courriel ou des renseignements qui s'y trouvent par une personne autre que son destinataire prévu est interdite. Je vous remercie de votre collaboration.

DRAFT ISSUES LIST OF THE KANATA GREENSPACE PROTECTION COALITION

Issue 1: Conformity with the Planning Act

1. Does the proposed zoning amendment have appropriate regard to Section 2 with particular reference to Subsections (a), (h), (i), (o), (p) and (n)?
2. Does the proposed zoning amendment conform to Section 2.1 as it relates to decisions by the Councils of the former Regional Municipality of Ottawa-Carleton, the former City of Kanata and the now amalgamated City of Ottawa related to the approval of official plan amendments and zoning amendments to allow the prior development of the Marchwood-Lakeside Community which includes the subject lands. Said decisions also relate to entering into the following legal agreements:
 - a. the 1981 40% Agreement registered as Instrument No. NS140350 dated January 8, 1982
 - b. the 1985 40% Agreement registered as LT606245 dated March 21, 1989
 - c. the Subdivision Agreement registered as LT568244 dated July 8, 1988
 - d. the 1988 Golf Club Agreement registered as LT606426 dated March 21, 1989
 - e. along with numerous other related agreements that trace the transfer of lands from this time forward to January 17, 2019 as described in the sworn Affidavit of Eileen Adams-Wright dated October 24, 2019 and filed with the Ontario Superior Court of Justice.
3. Does the proposed zoning amendment conform to Section 3(5) with respect to the proposed by-law being consistent with the Provincial Policy Statement 2020 as approved under this Section?
4. Does the approval of a zoning amendment or a draft plan of subdivision with related public works conform to Section 24 given an official plan amendment is necessary to Section 4.10 Greenspace Requirements Subsection 5 wherein any development in the subject lands must maintain the requirements for dedication in accordance with the 40% agreement?
5. Does the proposed plan of subdivision have appropriate regard to the provisions of Section 51(24) with particular reference to Subsections (a), (b), (c), (d), (e), (f), (g), (h) and (k)?

Deleted: conform and

Commented [MF1]: Section 2 requires one to “have regard” to the matters, not “conformity”

Commented [MF2]: ClubLink requests that this issue be removed, as s.2.1 does not require conformity and, in any event, the appeals are from a non-decision of City Council in which case the applicable subsection is 2.1(2). Further, previous decisions of councils of municipalities (some of which don't even exist anymore) dating back nearly 40 years are not covered by s.2.1 regardless.

Commented [MF3]: ClubLink requests that this issue be removed, as being unnecessary – the issues of consistency with the PPS are dealt with below under Issue 2.

Deleted: ning

Commented [MF4]: ClubLink requests that this issue be removed, as the issue of Official Plan conformity and the potential need for an OPA is dealt with below under Issue 3.1 – further, we don't accept the premise of the issue, that “an official plan amendment is necessary”.

Commented [MF5]: Tracking the language in s.51(24)

Deleted: conform

Issue 2. Consistency with the Provincial Policy Statement 2020

Is the proposed zoning amendment and plan of subdivision consistent with the PPS 2020 with particular reference to Section 1.1.1 b) and c); 1.1.3.4; 1.6.6.7; 2.2.1 a) and i); 2.2.2; and 3.2.2?

Issue 3: Conformity with the Official Plan

1. Does the approval of a zoning amendment require a supporting amendment to the Official Plan with respect to Section 4.10 Greenspace Requirements Subsection 5 wherein any development in the subject lands must maintain the requirements for parkland dedication in accordance with the 40% Agreement?
2. Is the proposed zoning amendment and plan of subdivision in general conformity with the Official Plan with particular reference to the following sections:
 - a) 2.2 / 2.2.2 – Managing Growth within the Urban Area/ Managing Intensification within the Urban Area
 - b) 2.3.3 - Drainage and Stormwater Management Services
 - c) 2.4 / 2.4.5 – Maintaining Environmental Integrity / Greenspaces
 - d) 2.5 / 2.5.1 – Building Liveable Communities / Designing Ottawa
 - e) 3.6.1 – General Urban Area
 - f) 3.6.3 – Mainstreets
 - g) 4.10 – Greenspace Requirements
 - h) 4.11 – Urban Design and Compatibility

Issue 4: Appropriateness for Development

1. Is the property an appropriate site for intensification given its defined role as open space in the 40% Agreement and the related policies in the Official Plan?
2. Does the redevelopment of the existing golf course and related natural areas represent good planning and is it in the public interest?
3. Does the proposed development have the potential to cause undue adverse impacts on adjacent properties due the scale and density of the proposal?

Issue 5: Premature Development

Are the applications to develop the subject property premature given the ongoing Superior Court challenges with respect to the 40% Agreement?

Issue 6: Public Health

Is it appropriate to develop land that has been identified as containing potentially harmful levels of mercury, arsenic, cadmium and lead when said development will require significant disturbance of these hazardous materials with potentially harmful and unavoidable health impacts on the adjacent residents and lands through airborne and groundwater transmission once disturbed?

Commented [MF6]: ClubLink requests that this issue be removed, as the validity/enforceability of the 40% Agreement, which the OMB has previously found constitutes a “private agreement” is being addressed through the City’s court application. Further, it’s not clear what “related policies in the Official Plan” you are referring to, as the lands are not designated “open space” in the Official Plan.

Deleted: Notwithstanding the 40% Agreement, d

Commented [MF7]: No need to reference the 40% Agreement in this issue, and see comments above.

Commented [MF8]: It is not appropriate to question the prematurity of the “applications” as ClubLink has complete applications, which have been appealed and are the basis of this proceeding. Do you mean to say “Would the approval by the Tribunal of the applications to develop the subject property be premature ...”? – which would be similar to the City’s Issue No. 1.

Commented [MF9]: ClubLink does not accept the issue, as worded, as it makes unproven statements using inflammatory language. We request that you reword the issue using neutral language and does not presuppose facts that may be contested.

Issue 7: Storm Water Management

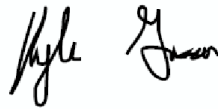
1. Is it appropriate to consider the development of lands that will place further strain through additional storm water run-off on a watershed that has exhibited historical flooding, damage to tributaries and impacts on natural wildlife?
2. Is it appropriate to consider draft approval of the proposed plan of subdivision prior to, or even in conjunction with, KNL Phases 7 and 8?

15239690.1

Commented [MF10]: Similar to the last issue, ClubLink requests that you reword the issue using neutral language that does not presuppose facts that may be disputed.

Deleted: which are areas already designated for residential development but have not yet determined a suitable manner for addressing stormwater management from said developments

**THIS IS EXHIBIT "E" REFERRED TO IN THE AFFIDAVIT
OF CHRISTINA FRACASSI SWORN BEFORE ME THIS
24th DAY OF DECEMBER, 2021.**

A handwritten signature in black ink, appearing to read "Kyle J. Gannon".

A Commissioner, etc.

Christina Fracassi

From: Sylvain Rouleau <srouleau@weirfoulds.com>
Sent: October 6, 2020 5:52 AM
To: Mark Flowers; 'Timothy Marc (Timothy.Marc@ottawa.ca)'
Subject: RE: Appeals by ClubLink Corporation ULC re 7000 Campeau Drive, Ottawa - LPAT Case No. PL200195
Attachments: Issues-list-draft-finalOctober5.docx

Hi Mark,

Further to my last e-mail, please find attached the revised draft issues list.

Do you have time for a call later today to discuss any concerns you still have?

Thanks,

Sylvain

SYLVAIN ROULEAU | Partner | T. 416-947-5016 | C. 647-449-8638 | srouleau@weirfoulds.com

WeirFoulds LLP

66 Wellington Street West, Suite 4100, P.O. Box 35, TD Bank Tower, Toronto, Ontario, Canada. M5K 1B7 | T. 416-365-1110 | F. 416-365-1876 | www.weirfoulds.com

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From: Sylvain Rouleau
Sent: Monday, October 5, 2020 6:08 PM
To: Mark Flowers <markf@davieshowe.com>; 'Timothy Marc (Timothy.Marc@ottawa.ca)' <Timothy.Marc@ottawa.ca>
Subject: RE: Appeals by ClubLink Corporation ULC re 7000 Campeau Drive, Ottawa - LPAT Case No. PL200195

Hi Mark,

I am hoping to have a revised list to you tomorrow morning. We can then discuss what, if any, issues you still have.

Regards,

Sylvain

SYLVAIN ROULEAU | Partner | T. 416-947-5016 | C. 647-449-8638 | srouleau@weirfoulds.com

WeirFoulds LLP

66 Wellington Street West, Suite 4100, P.O. Box 35, TD Bank Tower, Toronto, Ontario, Canada. M5K 1B7 | T. 416-365-1110 | F. 416-365-1876 | www.weirfoulds.com

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From: Mark Flowers <markf@davieshowe.com>
Sent: Monday, October 5, 2020 9:10 AM

To: 'Timothy Marc (Timothy.Marc@ottawa.ca)' <Timothy.Marc@ottawa.ca>; Sylvain Rouleau
<srouleau@weirfoulds.com>

Subject: Appeals by ClubLink Corporation ULC re 7000 Campeau Drive, Ottawa - LPAT Case No. PL200195

[External Message]

Tim – when do you anticipate that you will be able to provide us with the particulars we had requested in relation to the references in the City’s draft issues list to section 2 of the Planning Act, the PPS and the City’s Official Plan?

Sylvain – when do you expect to be able to respond to our comments on the Coalition’s draft issues list? If you think a call would be helpful to walk through some of the concerns we had identified, I’d be happy to do so.

With the CMC on Friday, I’m wondering whether we will be able to provide the Tribunal with a revised consolidated issues list in advance (and ideally not late Thursday afternoon), recognizing that there may still be some proposed issues that will require discussion with the Member(s).

Mark

MarkFlowers

Direct Line: 416.263.4513|[Bio](#)



Davies Howe LLP
The Tenth Floor
425 Adelaide Street West
Toronto, Ontario M5V 3C1
416.977.7088

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DRAFT ISSUES LIST – OCTOBER 1/20

Issue 1: Conformity with the Planning Act

1. Does the proposed zoning amendment have appropriate regard to Section 2 with particular reference to Subsections (a), (h), (i), (o), (p) and (r)?
2. Does the proposed zoning amendment have appropriate regard to Section 2.1 as it relates to decisions by the Councils of the former Regional Municipality of Ottawa-Carleton, the former City of Kanata and the now amalgamated City of Ottawa related to the approval of official plan amendments and zoning amendments to allow the prior development of the Marchwood-Lakeside Community which includes the subject lands. Said decisions also relate to entering into the following legal agreements:
 - a. the 1981 40% Agreement registered as Instrument No. NS140350 dated January 8, 1982
 - b. the 1985 40% Agreement registered as LT606245 dated March 21, 1989
 - c. the Subdivision Agreement registered as LT568244 dated July 8, 1988
 - d. the 1988 Golf Club Agreement registered as LT606426 dated March 21, 1989
 - e. along with numerous other related agreements that trace the transfer of lands from this time forward to January 17, 2019 as described in the sworn Affidavit of Eileen Adams-Wright dated October 24, 2019 and filed with the Ontario Superior Court of Justice.
3. Does the proposed zoning amendment have appropriate regard to Section 3(5) with respect to the proposed by-law being consistent with the Provincial Policy Statement 2020 as approved under this Section?
4. Does the approval of a zoning amendment or a draft plan of subdivision with related public works have appropriate regard to Section 24?
5. Does the proposed plan of subdivision have appropriate regard to the provisions of Section 51(24) with particular reference to Subsections (a), (b), (c), (d), (e), (f), (g), (h) and (k)?

Issue 2. Consistency with the Provincial Policy Statement 2020

Is the proposed zoning amendment and plan of subdivision consistent with the PPS 2020 with particular reference to Section 1.1.1 b) and c); 1.1.3.4; 1.6.6.7; 2.2.1 a) and i); 2.2.2; and 3.2.2?

Issue 3: Conformity with the Official Plan

1. Would development of the subject lands render it impossible for the City of Ottawa to achieve the parkland dedication requirements of Section 4.10 Subsection 5? If so, is an official plan amendment required to alter the requirements?

2. Is the proposed zoning amendment and plan of subdivision in general conformity with the Official Plan with particular reference to the following sections:
 - a) 2.2 / 2.2.2 – Managing Growth within the Urban Area/ Managing Intensification within the Urban Area
 - b) 2.3.3 - Drainage and Stormwater Management Services
 - c) 2.4 / 2.4.5 – Maintaining Environmental Integrity / Greenspaces
 - d) 2.5 / 2.5.1 – Building Liveable Communities / Designing Ottawa
 - e) 3.6.1 – General Urban Area
 - f) 3.6.3 – Mainstreets
 - g) 4.10 – Greenspace Requirements
 - h) 4.11 – Urban Design and Compatibility

Issue 4: Appropriateness for Development

1. Is the property an appropriate site for intensification given that these lands are part of the parkland dedication as required by Section 4.10 of the Official Plan?
2. Does the redevelopment of the existing golf course and related natural areas represent good planning and is it in the public interest?
3. Does the proposed development have the potential to cause undue adverse impacts on adjacent properties due the scale and density of the proposal?

Issue 5: Premature Development

Would the approval by the Tribunal of the applications to develop the subject property be premature given the ongoing Superior Court challenge with respect to the 40% Agreement?

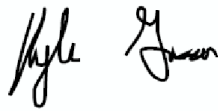
Issue 6: Public Health

1. Do the Phase 1 and 2 Environmental Site Assessments have sufficient scope in testing and analysis to adequately review and consider the historical land use impacts on the subject lands to have had appropriate regard to Planning Act with particular reference to Section 2 (a), (h) and (o)?
2. Do the Phase 1 and 2 Environmental Site Assessments have sufficient scope in testing and analysis to adequately review and consider the potential adverse impacts on the proposed use of the subject lands and on adjacent land uses to be consistent with the Provincial Policy Statement 2020 with particular reference to Section 3.2.2?
3. Is it appropriate to develop land that has been identified as containing potentially harmful levels of soil contaminants when said development will require significant disturbance of these hazardous materials through regrading and preparation of the subject lands for development?

Issue 7: Storm Water Management

Is it appropriate to consider the development of lands that will drain both overland and through piped infrastructure passing through a watershed that has exhibited historical flooding, erosion damage to tributaries and adverse impacts on natural wildlife until such time as the drainage problems in that watershed have been resolved?

**THIS IS EXHIBIT "F" REFERRED TO IN THE AFFIDAVIT
OF CHRISTINA FRACASSI SWORN BEFORE ME THIS
24th DAY OF DECEMBER, 2021.**

A handwritten signature in black ink, appearing to read "Kyle G. Gannon".

A Commissioner, etc.

Christina Fracassi

From: Sylvain Rouleau <srouleau@weirfoulds.com>
Sent: October 7, 2020 2:37 PM
To: Mark Flowers; 'Timothy Marc (Timothy.Marc@ottawa.ca)'
Subject: RE: Appeal by ClubLink Corporation ULC re 7000 Campeau Drive, Ottawa - LPAT Case No. PL200195
Attachments: KGPC_Issues-list-final-October7.docx

Hi Mark,

Please find attached a further revised draft issues list. Let me know if you still have any concerns with any of the issues.

With regard to your questions in the e-mail below, my client has a board meeting tonight, and I should be in a position to respond tomorrow morning.

Regards,

Sylvain

SYLVAIN ROULEAU | Partner | T. 416-947-5016 | C. 647-449-8638 | srouleau@weirfoulds.com

WeirFoulds LLP

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From: Mark Flowers <markf@davieshowe.com>
Sent: Tuesday, October 6, 2020 4:56 PM
To: 'Timothy Marc (Timothy.Marc@ottawa.ca)' <Timothy.Marc@ottawa.ca>; Sylvain Rouleau <srouleau@weirfoulds.com>
Subject: Appeal by ClubLink Corporation ULC re 7000 Campeau Drive, Ottawa - LPAT Case No. PL200195

[External Message]

Tim / Sylvain,

Owing to my scheduling conflicts in 2021 (including a 20-week hearing between August – December) and acknowledging the “prematurity” issues raised by both the City and Coalition in relation to the litigation, our client is prepared to request that the Tribunal schedule a hearing for the above appeals in the first quarter of 2022 at the CMC on Friday. Please advise if you would consent to a hearing being scheduled in this timeframe?

In terms of hearing length, I am estimating a hearing of approximately 6 weeks based on the issues identified and the expected number of witnesses. Without holding any party to the exact number, it seems as though we will have approximately 15 expert witnesses (approx. 8 for ClubLink, 4 for the City and 3 for the Coalition), as well as the potential for 1-2 lay witnesses. Thus, I’m thinking it could take approximately 2-3 weeks for ClubLink to present its case (and recognizing there would be two cross-examining parties), I’m assuming about the same amount of time total for the evidence of both the City and the Coalition, and then adding a couple days total for opening statements, overview evidence, potential reply evidence and final argument. Comments?

Also, assuming that the issue of potential mediation will be discussed during the CMC, would the City and Coalition consent to mediation?

Mark

Mark Flowers

Direct Line: 416.263.4513|[Bio](#)



Davies Howe LLP

The Tenth Floor

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Toronto, Ontario M5V 3C1

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KANATA GREENSPACE PROTECTION COALITION ISSUES LIST – OCTOBER 7/20

Issue 1: Conformity with the Planning Act

1. Does the proposed zoning amendment have appropriate regard to Section 2 with particular reference to Subsections (a), (h), (i), (o), (p) and (r)?
2. Does the proposed zoning amendment have appropriate regard to Section 3(5) with respect to the proposed by-law being consistent with the Provincial Policy Statement 2020 as approved under this Section?
3. Does the approval of a zoning amendment or a draft plan of subdivision with related public works have appropriate regard to Section 24?
4. Does the proposed plan of subdivision have appropriate regard to the provisions of Section 51(24) with reference to Subsections (a), (b), (c), (d), (e), (f), (g), (h) and (k)?
5. Further to Section 51(24) Subsections (d) and (h), is it appropriate to consider the development of lands that will drain both overland and through piped infrastructure passing through a watershed with potential risk of flooding, erosion damage to tributaries and adverse impacts on natural wildlife given the unresolved pre-existing conditions as noted under Comments numbered 136, 140, 170, 171, 177, 178, 180, 181 and 191 in the City of Ottawa's letter dated December 19, 2019 in that watershed?

Issue 2: Consistency with the Provincial Policy Statement 2020

Is the proposed zoning amendment and plan of subdivision consistent with the PPS 2020 with particular reference to Section 1.1.1 b) and c); 1.1.3.4; 1.6.6.7; 2.2.1 a) and i); 2.2.2; and 3.2.2?

Issue 3: Conformity with the Official Plan

1. Would development of the subject lands render it impossible for the City of Ottawa to achieve the parkland dedication requirements of Section 4.10 Subsection 5? If so, is an official plan amendment required to alter the requirements?
2. Is the proposed zoning amendment and plan of subdivision in general conformity with the Official Plan with particular reference to the following sections:
 - a) 2.2 / 2.2.2 – Managing Growth within the Urban Area/ Managing Intensification within the Urban Area
 - b) 2.3.3 - Drainage and Stormwater Management Services
 - c) 2.4 / 2.4.5 – Maintaining Environmental Integrity / Greenspaces
 - d) 2.5 / 2.5.1 – Building Liveable Communities / Designing Ottawa
 - e) 3.6.1 – General Urban Area
 - f) 3.6.3 – Mainstreets
 - g) 4.10 – Greenspace Requirements

h) 4.11 – Urban Design and Compatibility

Issue 4: Appropriateness for Development

1. Is the property an appropriate site for intensification given that these lands are part of an area specific land dedication as required by Section 4.10 of the Official Plan?
2. Does the redevelopment of the existing golf course and related natural areas represent good planning and is it in the public interest?
3. Does the proposed development have the potential to cause undue adverse impacts on adjacent properties due the scale and density of the proposal?

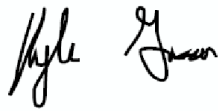
Issue 5: Premature Development

Would the approval by the Tribunal of the applications to develop the subject property be premature given the ongoing Superior Court challenge with respect to the 40% Agreement?

Issue 6: Public Health

1. Do the Phase 1 and 2 Environmental Site Assessments have sufficient scope in testing and analysis to adequately review and consider the historical land use impacts on the subject lands to have had appropriate regard to Planning Act with particular reference to Section 2 (a), (h) and (o)?
2. Do the Phase 1 and 2 Environmental Site Assessments have sufficient scope in testing and analysis to adequately review and consider the potential adverse impacts on the proposed use of the subject lands and on adjacent land uses to be consistent with the Provincial Policy Statement 2020 with particular reference to Section 3.2.2?
3. Is it appropriate to develop land that has been identified in the Phase 2 ESA as containing levels of mercury that exceed MECP Table 7 and Table 3 levels in shallow pockets in various locations when said development will require significant disturbance of this potentially harmful material through regrading and preparation of the subject lands for development?

**THIS IS EXHIBIT "G" REFERRED TO IN THE AFFIDAVIT
OF CHRISTINA FRACASSI SWORN BEFORE ME THIS
24th DAY OF DECEMBER, 2021.**

A handwritten signature in black ink, appearing to read "Kyle Jensen".

A Commissioner, etc.

Local Planning Appeal Tribunal

Tribunal d'appel de l'aménagement local



ISSUE DATE: November 03, 2020

CASE NO(S):

PL200195

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

| | |
|-------------------------------|---|
| Applicant and Appellant: | ClubLink Corporation ULC |
| Subject: | Application to amend Zoning By-law No. 2008-250 - Refusal or neglect of the City of Ottawa to make a decision |
| Existing Zoning: | O1A (Open space, subzone A) |
| Proposed Zoning: | R1T (Residential First Density Zone), R3V (Residential Third Density Zone), and R5A (Residential Fifth Density Zone) as well as O1 (Parks and open spaces). |
| Purpose: | To permit the redevelopment of the lands for residential and open space uses, including 1502 residential units which will be mixed between detached, townhouse and mid-rise apartments. |
| Property Address/Description: | 7000 Campeau Drive |
| Municipality: | City of Ottawa |
| Municipality File No.: | D02-02-19-0123 |
| LPAT Case No.: | PL200195 |
| LPAT File No.: | PL200195 |
| LPAT Case Name: | ClubLink Corporation ULC v. Ottawa (City) |

PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

| | |
|--------------------------|--|
| Applicant and Appellant: | ClubLink Corporation ULC |
| Subject: | Proposed Plan of Subdivision - Failure of the City of Ottawa to make a decision |
| Purpose: | To permit the redevelopment of the lands for residential and open space uses, including 1502 |

| | |
|-------------------------------|--|
| Property Address/Description: | residential units which will be mixed between detached, townhouse and mid-rise apartments. |
| Municipality: | 7000 Campeau Drive |
| Municipality File No.: | City of Ottawa |
| LPAT Case No.: | D07-16-19-0026 |
| LPAT File No.: | PL200195 |
| | PL200196 |

Heard: October 9, 2020 by video hearing

APPEARANCES:

Parties

Counsel

City of Ottawa

T. Marc

ClubLink Corporation ULC

M. Flowers

Kanata Greenspace Protection
Coalition

S. Rouleau

**MEMORANDUM OF ORAL DECISION DELIVERED BY R.G.M. MAKUCH ON
OCTOBER 9, 2020 AND ORDER OF THE TRIBUNAL**

[1] ClubLink Corporation ULC (“Applicant/Appellant”) seeks a Zoning By-law Amendment and approval of a plan of subdivision in order to permit the development of the site currently known as the Kanata Golf and Country Club (7000 Campeau Drive) for residential and open space uses, including 1502 residential units, consisting of a mix of detached, townhouse and mid-rise apartments.

[2] The application was deemed complete on October 17, 2019.

[3] The appeal is based on City Council’s failure to make a decision on the applications within the time limits prescribed by the *Planning Act*.

[4] The Kanata Greenspace Protection Coalition has been granted party status on consent.

[5] The following individuals have been granted participant status:

- Desmond Taljaard
- Kathy Black
- Marianne Wilkinson
- Jason Wu
- David Fisher
- Nancy Brown
- David McKeen
- Mary and Paul Fehrenbach

[6] The hearing of these matters is scheduled to commence on **Monday, January 17, 2022 at 10 a.m.** Six weeks have been set aside.

[7] The hearing will take place at:

**Ottawa City Hall
Keefer Room, 2nd Floor
110 Laurier Avenue West, Cartier Square
Ottawa, Ontario**

[8] The proceeding will be governed by Attachment 1 hereto.

[9] There will not be any further notice.

[10] It is so ordered.

“R.G.M. Makuch”

R.G.M. MAKUCH
VICE-CHAIR

If there is an attachment referred to in this document,
please visit www.olt.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal
A constituent tribunal of Ontario Land Tribunals
Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

PL200195

LOCAL PLANNING APPEAL TRIBUNAL

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

| | |
|-------------------------------|---|
| Applicant and Appellant: | ClubLink Corporation ULC |
| Subject: | Application to amend Zoning By-law No. 2008-250 - Refusal or neglect of the City of Ottawa to make a decision |
| Existing Zoning: | O1A (Open space, subzone A) |
| Proposed Zoning: | R1T (Residential First Density Zone), R3V (Residential Third Density Zone), and R5A (Residential Fifth Density Zone) as well as O1 (Parks and open spaces). |
| Purpose: | To permit the redevelopment of the lands for residential and open space uses, including 1502 residential units which will be mixed between detached, townhouse and mid-rise apartments. |
| Property Address/Description: | 7000 Campeau Drive |
| Municipality: | City of Ottawa |
| Municipality File No.: | D02-02-19-0123 |
| LPAT Case No.: | PL200195 |
| LPAT File No.: | PL200195 |
| LPAT Case Name: | ClubLink Corporation ULC v. Ottawa (City) |

PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

| | |
|-------------------------------|---|
| Applicant and Appellant: | ClubLink Corporation ULC |
| Subject: | Proposed Plan of Subdivision - Failure of the City of Ottawa to make a decision |
| Purpose: | To permit the redevelopment of the lands for residential and open space uses, including 1502 residential units which will be mixed between detached, townhouse and mid-rise apartments. |
| Property Address/Description: | 7000 Campeau Drive |
| Municipality: | City of Ottawa |
| Municipality File No.: | D07-16-19-0026 |
| LPAT Case No.: | PL200195 |
| LPAT File No.: | PL200196 |

PROCEDURAL ORDER

1. The Tribunal may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The hearing will begin on **Monday, January 17, 2022** at 10:00 a.m. at Ottawa City Hall, Keefer Room, 110 Laurier Avenue West, Ottawa, Ontario.
3. The length of the hearing will be approximately **6 weeks**, concluding on **Friday, February 25, 2022**. The length of the hearing may be shortened as issues are reordered as settlement is achieved.
4. The parties and participants identified at the case management conference are set out in **Attachment 1** (see **Attachment 2** for the meaning of these terms).
5. The Issues are set out in the Issues List attached as **Attachment 3**. There will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.
6. The order of evidence shall be as set out in **Attachment 4** to this Order. The Tribunal may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Tribunal.
7. Any person intending to participate in the hearing should provide a mailing address, email address and a telephone number to the Tribunal as soon as possible. Any person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address, email address and the phone number as soon as possible.

Requirements Before the Hearing

8. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal and the other parties a list of the witnesses and the order in which they are intended be called. This list must be delivered on or before **Friday, October 8, 2021**. A party who intends to call an expert witness must include a copy of the witness' Curriculum Vitae and the area(s) of expertise in which the witness is intended to be qualified with the list of witnesses.
9. Expert witnesses in the same field shall have one or more meeting(s), with at least one meeting to occur after the exchange of expert witness statements in section 12 below and prior to the exchange of reply witness statements in section 14 below, to try to resolve or reduce the issues for the hearing. If any agreement is reached, the experts must prepare a list of agreed facts and the remaining

issues to be addressed at the hearing and provide this list to all of the parties on or before **Wednesday, December 8, 2021**.

10. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, and any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section 12. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Tribunal may refuse to hear the expert's testimony.
11. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence as in section 12. A party who intends to call a witness who is not an expert must file a brief outline of the witness' evidence, as in section 12.
12. On or before **Friday, October 29, 2021**, the parties shall provide copies of their witness statements and expert witness statements to the other parties.
13. On or before **Friday, October 29, 2021**, a participant shall provide copies of their written participant statement to the other parties. A participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.
14. On or before **Friday, November 26, 2021**, a party shall provide to all other parties any reply witness statements, responding any written evidence received under sections 12 and 13.
15. On or before **Friday, December 17, 2021**, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
16. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal. (See Rule 10 of the Tribunal's Rules with respect to Motions, which requires that the moving party provide copies of the motion to all other parties 15 days before the Tribunal hears the motion.)
17. A party who provides written evidence of a witness to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal and the other parties at least 7 days before the hearing that the written evidence is not part of their record.
18. The parties shall prepare and file a hearing plan with the Tribunal on or before **Friday, December 10, 2021** with a proposed schedule for the hearing that identifies, as a minimum, the parties participating in the hearing, the preliminary matters (if any to be addressed), the anticipated order of evidence, the date each witness is expected to attend, the anticipated length of time for evidence to be presented by each witness in chief, cross-examination and re-examination (if

any) and the expected length of time for final submissions. The parties are expected to ensure that the hearing proceeds in an efficient manner and in accordance with the hearing plan. The Tribunal may, at its discretion, change or alter the hearing plan at any time in the course of the hearing.

19. Documents may be delivered by personal delivery, facsimile or registered or certified mail or email, or otherwise as the Tribunal may direct. The delivery of documents by fax and email shall be governed by the Tribunal's Rules (Rule 7) on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
20. The parties shall cooperate in preparing a Joint Document Book for the hearing.
21. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

So orders the Tribunal.

ATTACHMENT 1 – LIST OF PARTIES / PARTICIPANTS**Parties****1. ClubLink Corporation ULC**

Mark R. Flowers
Davies Howe LLP
The Tenth Floor
425 Adelaide Street West
Toronto, Ontario M5V 3C1
Email: markf@davieshowe.com
Tel: 416-263-4513

2. City of Ottawa

Timothy C. Marc, Senior Legal Counsel
City of Ottawa, Office of the City Solicitor
110 Laurier Avenue West
Ottawa, Ontario K1P 1J1
Email: Timothy.Marc@ottawa.ca
Tel: 613-580-2424 Ext. 21444

3. Kanata Greenspace Protection Coalition

Sylvain Rouleau
WeirFoulds LLP
4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, Ontario M5K 1B7
Email: srouleau@weirfoulds.com
Tel: 416-947-5016

Participants

1. Paul Fehrenbach and Mary Fehrenbach (Email: fehrmp@sympatico.ca)
2. Desmond Taljaard and Monica Taljaard (Email: taljaard55@hotmail.com)
3. Kathy Black and David McKeen (Email: KathyL.Black@sympatico.ca)
4. Marianne Wilkinson (Email: marianne@rogers.com)
5. David Fisher and Kay Fisher (Email: david.a.fisher@outlook.com)
6. Nancy Brown (Email: nbbrown23@hotmail.com)

7. Chung Yu Wu (Email: wujas@hotmail.com)

ATTACHMENT 2 – MEANING OF TERMS USED IN THE PROCEDURAL ORDER

Party is an individual or corporation permitted by the Tribunal to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorization from the party.

NOTE that a person who wishes to become a party before or at the hearing, and who did not request this at the case management conference (CMC), must ask the Tribunal to permit this.

A **Participant** is an individual, group or corporation, whether represented by a lawyer or not, who may make a written submission to the Tribunal. A participant cannot make an oral submission to the Tribunal or present oral evidence (testify in-person) at the hearing (only a party may do so). Subsection 33(2) of the *Local Planning Appeal Tribunal Act* states that a person who is not a party to a proceeding may only make a submission to the Tribunal in writing. The Tribunal may direct a participant to attend a hearing to answer questions from the Tribunal on the content of their written submission, should that be found necessary by the Tribunal. A participant may also be asked questions by the parties should the Tribunal direct a participant to attend a hearing to answer questions on the content of their written submission.

A participant must be identified and be accorded participant status by the Tribunal at the CMC. A participant will not receive notice of conference calls on procedural issues that may be scheduled prior to the hearing, nor receive notice of mediation. A participant cannot ask for costs, or review of a decision, as a participant does not have the rights of a party to make such requests of the Tribunal.

Written evidence includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material.

Visual evidence includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing.

An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing.

A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant wishes to address and the submission of the participant on those issues; and a list of reports, if any, which the participant wishes to refer to in their statement.

Additional Information:

Summons: A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties (see Rule 13 on the summons procedure.) If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

The order of examination of witnesses: is usually direct examination, cross-examination and re-examination in the following way:

- direct examination by the party presenting the witness;
- direct examination by any party of similar interest, in the manner determined by the Tribunal;
- cross-examination by parties of opposite interest;
- re-examination by the party presenting the witness; or
- another order of examination mutually agreed among the parties or directed by the Tribunal.

ATTACHMENT 3 – ISSUES LIST

City of Ottawa

General

1. Should the proposed subdivision be given draft approval and/or the zoning approved pending a final determination in *City of Ottawa v. Clublink Corporation ULC* (Court File No. 19-81809)?

Subdivision

2. Is the proposed plan of subdivision consistent with the Provincial Policy Statement, particularly policies 1.1.1 b), 1.1.3.4, 1.6.6.7, 2.2.1 i) and 2.2.2?
3. Does the proposed plan of subdivision have regard for matters of provincial interest pursuant to the *Planning Act*, section 2, particularly clauses (h), (o), (q) and (r)?
4. Does the proposed plan of subdivision conform to the Official Plan of the City of Ottawa, particularly policies 2.2.2.22, 2.2.2.23, 2.3.3.1, 2.3.3.3, 2.4.5.4, 2.5.1.1, 3.6.1.5, 4.10.5, 4.11.5, 4.11.19 and 4.11.20, and is it compatible with adjacent plans of subdivision (s.51(24)(c))?
5. Is the subdivision premature (s.51(24)(b))?
6. Is the lotting pattern appropriate (s.51(24)(f))?
7. Are the lots compatible with the surrounding community / adjacent plans of subdivision (s.51(24)(c))?
8. Is the proposed right-of-way width of 16.5 metres appropriate (s.51(24)(e))?
9. Are conditions of draft approval necessary to ensure the long term viability of the landscape buffers?
10. Are the grading and drainage, and tree preservation plans consistent with one another? Will they provide effective protection for the trees in the landscape buffer and will they maintain positive drainage routes?
11. Is the proposed amount of open space and mid-block connections appropriate?
12. Does the plan of subdivision have a legal outlet for stormwater from the proposed development (s.51(24)(h) and (i))?

13. Is any modification to the draft plan of subdivision necessary if permission to modify existing easements is refused?
14. Is it appropriate to grant draft approval before the means by which stormwater for both the proposed plan of subdivision in this matter and that for KNL Phases 7 and 8 (City File D07-16-03-0025) have been determined?
15. Has the major overland flow from the proposed draft plan of subdivision lands, and connecting existing residential lands, into the Beaver Pond been accounted for?
16. Are draft conditions of approval necessary to address repair or replacement of existing stormwater infrastructure?
17. Does the technique for low impact development means of dealing with stormwater need to be determined prior to draft approval?
18. Is the proposed use and number of oil and grit separators appropriate?
19. What is the appropriate number and location of stormwater ponds and should they be for both quality and quantity control?
20. Are sump pumps proposed as briefly mentioned in the JFSA report? If so, sump pump related draft plan conditions are to be included.
21. Is a monitored surcharging/preloading program anticipated and timelines accounted for in order to achieve the grade raise exceedances?

Zoning

22. Are the proposed three metre front and corner yard setbacks and the proposed six metre rear yard setbacks appropriate and compatible with the surrounding community?
23. Is the proposed zoning consistent with the Provincial Policy Statement, particularly policies 1.1.1 b), 1.1.3.4, 1.6.6.7, 2.2.1 i) and 2.2.2?
24. Does the proposed zoning have regard for matters of provincial interest pursuant to the *Planning Act*, section 2, particularly clauses (h), (o), (q) and (r)?
25. Does the proposed zoning conform to the Official Plan of the City of Ottawa, particularly policies 2.2.2.22, 2.2.2.23, 2.3.3.1, 2.3.3.3, 2.4.5.4, 2.5.1.1, 3.6.1.5, 4.10.5, 4.11.5, 4.11.19 and 4.11.20?

26. Are provisions in the zoning by-law sufficient to ensure the long term viability of the landscape buffers?

Kanata Greenspace Protection Coalition

Conformity with the Planning Act

27. Does the proposed zoning amendment have appropriate regard to Section 2 with particular reference to Subsections (a), (h), (i), (o), (p) and (r)?
28. Does the proposed zoning amendment have appropriate regard to Section 3(5) with respect to the proposed by-law being consistent with the Provincial Policy Statement 2020 as approved under this Section?
29. Does the approval of a zoning amendment or a draft plan of subdivision with related public works have appropriate regard to Section 24?
30. Does the proposed plan of subdivision have appropriate regard to the provisions of Section 51(24) with reference to Subsections (a), (b), (c), (d), (e), (f), (g), (h) and (k)?
31. Further to Section 51(24) Subsections (d) and (h), is it appropriate to consider the development of lands that will drain both overland and through piped infrastructure passing through a watershed with potential risk of flooding, erosion damage to tributaries and adverse impacts on natural wildlife given the unresolved pre-existing conditions as noted under Comments numbered 136, 140, 170, 171, 177, 178, 180, 181 and 191 in the City of Ottawa's letter dated December 19, 2019 in that watershed?

Consistency with the Provincial Policy Statement 2020

32. Is the proposed zoning amendment and plan of subdivision consistent with the PPS 2020 with particular reference to Section 1.1.1 b) and c); 1.1.3.4; 1.6.6.7; 2.2.1 a) and i); 2.2.2; and 3.2.2?

Conformity with the Official Plan

33. Would development of the subject lands render it impossible for the City of Ottawa to achieve the parkland dedication requirements of Section 4.10 Subsection 5? If so, is an official plan amendment required to alter the requirements?

34. Is the proposed zoning amendment and plan of subdivision in general conformity with the Official Plan with particular reference to the following sections:
- a) 2.2 / 2.2.2 – Managing Growth within the Urban Area/ Managing Intensification within the Urban Area
 - b) 2.3.3 - Drainage and Stormwater Management Services
 - c) 2.4 / 2.4.5 – Maintaining Environmental Integrity / Greenspaces
 - d) 2.5 / 2.5.1 – Building Liveable Communities / Designing Ottawa
 - e) 3.6.1 – General Urban Area
 - f) 3.6.3 – Mainstreets
 - g) 4.10 – Greenspace Requirements
 - h) 4.11 – Urban Design and Compatibility

Appropriateness for Development

35. Is the property an appropriate site for intensification given that these lands are part of an area specific land dedication as required by Section 4.10 of the Official Plan?
36. Does the redevelopment of the existing golf course and related natural areas represent good planning and is it in the public interest?
37. Does the proposed development have the potential to cause undue adverse impacts on adjacent properties due the scale and density of the proposal?

Premature Development

38. Would the approval by the Tribunal of the applications to develop the subject property be premature given the ongoing Superior Court challenge with respect to the 40% Agreement?

Public Health

39. Do the Phase 1 and 2 Environmental Site Assessments have sufficient scope in testing and analysis to adequately review and consider the historical land use impacts on the subject lands to have had appropriate regard to Planning Act with particular reference to Section 2 (a), (h) and (o)?
40. Do the Phase 1 and 2 Environmental Site Assessments have sufficient scope in testing and analysis to adequately review and consider the potential adverse impacts on the proposed use of the subject lands and on adjacent land uses to

be consistent with the Provincial Policy Statement 2020 with particular reference to Section 3.2.2?

41. Is it appropriate to develop land that has been identified in the Phase 2 ESA as containing levels of mercury that exceed MECP Table 7 and Table 3 levels in shallow pockets in various locations when said development will require significant disturbance of this potentially harmful material through regrading and preparation of the subject lands for development?

ClubLink Corporation ULC

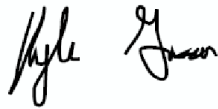
42. If a zoning by-law amendment is to be approved, what is the appropriate form and content of the amendment?
43. If a draft plan of subdivision is to be approved, what are the appropriate conditions of approval?

Note: The identification of an issue on this list does not mean that all parties agree that such an issue, or the manner in which it is expressed, is appropriate or relevant for the proper determination of the appeals. The extent of the appropriateness and/or relevance of the issue may be a matter of evidence and/or argument at the hearing.

ATTACHMENT 4 – ORDER OF EVIDENCE

1. ClubLink Corporation ULC
2. City of Ottawa
3. Kanata Greenspace Protection Coalition
4. Reply by ClubLink Corporation ULC

**THIS IS EXHIBIT "H" REFERRED TO IN THE AFFIDAVIT
OF CHRISTINA FRACASSI SWORN BEFORE ME THIS
24th DAY OF DECEMBER, 2021.**

A handwritten signature in black ink, appearing to read "Kyle G. Jones".

A Commissioner, etc.

Court File No.: 19-81809

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CITY OF OTTAWA

Applicant

- and -

CLUBLINK CORPORATION ULC

Respondent

- and -

KANATA GREENSPACE PROTECTION COALITION

Intervenor

**FACTUM OF THE INTERVENOR
KANATA GREENSPACE PROTECTION COALITION**

February 11, 2020

CAZA SAIKALEY S.R.L./LLP
Lawyers | Avocats
350-220 Laurier Ave West
Ottawa, ON K1P 5Z9

T: 613-565-2292
F: 613-565-2087

Alyssa Tomkins (LSO #54675D)
atomkins@plaideurs.ca
Charles R. Daoust (LSO #74259H)
cdaoust@plaideurs.ca

Counsel for the Intervenor
Kanata Greenspace Protection Coalition

TO: **BORDEN LADNER GERVAIS LLP**
 World Exchange Plaza
 100 Queen St., Suite 1300
 Ottawa, ON K1P 1J9

T: 613-237-5160
 F: 613-230-8842

Kirsten Crain
kcraib@blg.com
Emma Blanchard
eblanchard@blg.com
Neil Abraham
nabraham@blg.com

Lawyers for the Applicant
 City of Ottawa

AND TO: **LAX O'SULLIVAN LISUS GOTTLIEB LLP**
 145 King St. W., Suite 2750
 Toronto, ON M5H 1J8 Canada

T: 416-598-1744
 F: 416-598-3730

Matthew Gottlieb
mgottlieb@lolg.ca
James Renihan
jrenihan@lolg.ca

DAVIES HOWE LLP
 The Tenth Floor
 425 Adelaide St. W.
 Toronto, ON M5V 3C1

T: 416-263-4513
 F: 416-977-8931

Mark R. Flowers
markf@davieshowe.com

Lawyers for the Respondent
 Clublink Corporation ULC

PART I - OVERVIEW

1. This case is about whether commitments made by a developer in order to secure municipal approval of its residential development must be honoured by its successor in interest which freely and voluntarily assumed those commitments. As part of securing planning approval for its proposed development in the Marchwood Lakeside community of Kanata (now known as “Kanata Lakes”), Campeau Corporation [“**Campeau**”] signed an agreement with the former City of Kanata [“**Kanata**”] in 1981 premised on the principle that 40 percent of the total development area would remain as open space for recreational and environmental purposes [“**40% Principle**”]. The 18-hole Kanata Lakes golf course formed a substantial part of that open space.
2. Thousands of people later became homeowners in this new development relying on the promise that the 40% Principle would be respected, and they would be able to reside in a community with 40 percent greenspace.
3. ClubLink bought the Kanata Lakes golf course in 1996, assumed the commitments made by the original developer and operated the course for over 20 years. Now, in blatant disregard of the commitments it assumed, ClubLink is attempting to develop the golf course and replace the 175 acres of open space with 1,500 houses. The proposed development would drastically change the nature of the Kanata Lakes community, deprive landowners of their cherished greenspace, violate the 40% Principle and frustrate the intent of the original parties.
4. The Kanata Greenspace Protection Coalition [“**Coalition**”] supports and adopts the position of the City of Ottawa [the “**City**”] that the contractual obligations assumed by ClubLink Corporation ULC [“**ClubLink**”] in relation to the operation of the golf course are valid and enforceable.

5. In addition to the contractual obligations relating to the golf course, the Coalition submits that the development is also subject to a restrictive covenant running with the land which requires that the 40% Principle remain intact. In facts remarkably similar to the seminal case of *Tulk v. Moxhay*,¹ equity should intervene again in this case to enforce a covenant to maintain property as open space where a developer seeks to disregard its common law obligations.

6. The Coalition also seeks a determination from the Court as to the validity and enforceability of another restrictive covenant registered on title by ClubLink relating to grading and stormwater management on the golf course lands. This question is addressed at the end of the Factum as a separate issue.

PART II - FACTS

A. 1981 Agreement

7. The 40% Principle was first set out and codified in the 1981 Agreement between Campeau and Kanata relating to the development of the “‘Marchwood Lakeside Community’ in the City of Kanata.”²

8. The Coalition represents the interests of many of the landowners in what was known as the Kanata Marchwood Lakeside Community, which now includes the Kanata Lakes neighbourhood, Country Club Estates, CCC575, Catherwood and Nelford Court.³

¹ [1848] 41 E.R. 1143 (Eng. Ch. Div.).

² Preamble, 1981 Agreement, Exhibit “F” of the Affidavit of Eileen Adams-Wright sworn October 24, 2019 [“**Adams-Wright October Affidavit**”], Application Record of the Applicant, City of the Ottawa [“**AR**”], Vol. I, Tab 2 at p. 48.

³ Exhibit 1 of the Affidavit of Barbara Ramsay sworn February 10, 2020 [“**Ramsay February Affidavit**”], AR, Vol. VI, Tab 11 at p. 1774; see also Exhibit “C” to the Affidavit of Donald Kennedy sworn October 25, 2019 [“**Kennedy October Affidavit**”], AR, Vol. VI, Tab 6 at p. 1595, which includes maps detailing the Kanata Marchwood Lakeside Community as encompassing these neighbourhoods.

in land, i.e. a restrictive covenant, which binds and runs with the land.⁴⁰

f) The covenantee must be a person other than the covenantor

44. In this case, the covenantor is Campeau/ClubLink. The covenantees are the eventual landowners of the Marchwood Lakeside Community.

45. In 1996, when the covenant was restated and registered by ClubLink, the covenantees were Imasco and the homeowners who had purchased lots within the Current Lands.

g) Conclusion

46. The Coalition submits that all of the requirements for a restrictive covenant are met, such that the Current Lands should be held to be subject to a restrictive covenant (the 40% Principle).

B. The Restrictive Covenant Registered on Title in January 1997 is Valid and Enforceable

i. Restrictive Covenant Relating to Grading

47. On the same day that the ClubLink Assumption Agreement was registered, ClubLink also registered a further list of covenants and restrictions it agreed would run with and bind the Golf Course Lands (referred to as the “Golf Lands” in the ClubLink Assumption Agreement).⁴¹

48. Schedule 1 to Schedule “B” describes the “Benefited Lands” to which the restrictive covenant is to attach.⁴² The legal description of the properties in question confirm that they are largely the lots comprising the “Current Lands.”

49. The additional covenants relate to the grading and storm water management facilities on

⁴⁰ See *Qureshi v. Gooch*, 2005 BCSC 1584 at para. 21, citing *Nylar Foods Ltd. v. Roman Catholic Episcopal Corp. of Prince Rupert* (1988), 48 D.L.R. (4th) 175 at pp. 176-77, per McLachlin J.A. (as she then was) (B.C. C.A.).

⁴¹ See Exhibit “R” to the Adams-Wright October Affidavit, AR, Vol. III, Tab 2 at p. 782.

⁴² *Ibid.* at p. 786. Paragraph 3(ii) of Schedule “B” notes that the “Benefitted Lands” are the lands owned by Imasco that were primarily intended for residential development.

the Golf Course Lands. In particular, ClubLink agreed as follows:

3. Each and every part of the Golf Lands shall be subject to the following restrictions and covenants:

(i) [ClubLink] agrees that:

(a) it shall not alter the grading of the Golf Lands or any of the storm water management facilities on or serving the Golf Lands; and

(b) there should be no construction of any buildings, structures or other improvements on the Golf Lands which may cause surface drainage from the Golf Lands to be discharged, obstructed or otherwise altered,

in a manner that materially adversely affects [Imasco]'s or the City of Kanata's storm water management plan in respect of [Imasco's] Benefitted Lands as such plan exists as at November 1, 1996. [Emphasis added]

ii. Validity and Enforceability of the Covenant

50. ClubLink has not advised of any basis upon which the above-listed covenant would not be valid and enforceable.

51. The Coalition seeks a declaration from this Honourable Court that section 3(i) of Schedule “B” of the instrument LT1020194 is valid and enforceable. The question of whether ClubLink’s proposed development breaches this covenant is not before the Court and would need to be determined at a later time.

52. Instrument LT1020194 clearly complies with the requirements for a restrictive covenant: **1)** the restriction is both negative and a burden on the Golf Course Lands; **2)** the covenant touches and concerns land (dealing specifically with grading and stormwater management); **3)** the burdened lands are expressly identified in Box (6) of the Form 4 Document General and the benefited lands are legally described at Schedule 1 to Schedule “B”; **4)** section 1 of Schedule “B” expressly provides that the covenant is intended to benefit the Benefitted Lands; and **5)** the title to the Golf Course Lands is registered, and the covenantor (ClubLink) is a person other than the covenantee

(Imasco and the owners of the lots comprising the Benefitted Lands).

PART IV - ORDER SOUGHT

53. The Kanata Greenspace Protection Coalition requests that this Honourable Court:

- i. Declare that the Current Lands are subject to a restrictive covenant requiring that 40 percent of the total development area for the Kanata Marchwood Lakeside Community be left as open space for recreation and natural environmental purposes;
- ii. Declare that the restrictive covenant set out at s. 3 of instrument LT1020194 remains valid and enforceable;
- iii. Such further and other relief as counsel may advise and this Honourable Court may order.

February 11, 2020

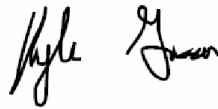
ALL OF WHICH IS RESPECTFULLY SUBMITTED



CAZA SAIKALEY S.R.L./LLP

Alyssa Tomkins
Charles Daoust

**THIS IS EXHIBIT "I" REFERRED TO IN THE AFFIDAVIT
OF CHRISTINA FRACASSI SWORN BEFORE ME THIS
24th DAY OF DECEMBER, 2021.**

A handwritten signature in black ink, appearing to read "Kyle Gerson".

A Commissioner, etc.

CITATION: *City of Ottawa v. ClubLink Corporation ULC*, 2021 ONSC 1298

COURT FILE NO.: 19-81809

DATE: 2021/02/19

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

CITY OF OTTAWA

Applicant

Kirsten Crain, Emma Blanchard, and Neil
Abraham, for the Applicant

– and –

CLUBLINK CORPORATION ULC

Respondent

Matthew P. Gottlieb, James Renihan,
John Carlo Mastrangelo and Mark R.
Flowers, for the Respondent

– and –

KANATA GREENSPACE PROTECTION
 COALITION

Intervener

Alyssa Tomkins, and Charles R. Daoust, for
the Intervener

HEARD: July 13-15, 2020

REASONS FOR DECISION

LABROSSE J.

OVERVIEW

[1] The rule against perpetuities (the “Rule”) is a legal principle taught in law schools and rarely applied thereafter by those who studied it. The purpose of the Rule is to limit the time that title to a property can be controlled after a person is no longer the rightful owner. Thus, a contingent interest in land must vest within 21 years. The Rule remains good law today.

[2] In the early 1980s, development in the former City of Kanata (“Kanata”) was slow. Kanata wanted to stimulate growth and entered into a series of agreements with a developer to permit residential development in an area which included natural environment lands. Those agreements required the developer to maintain and operate a golf course in perpetuity in the area of the residential development. The main question in issue is if the agreements entered into by Kanata and the developer continue to be binding on the developer and its successors in title beyond the 21-year vesting period.

[3] On this application, the City of Ottawa (the “City”) asks the Court to confirm that the Rule does not apply and that the agreements remain in force and effect in order to prevent the current owner from redeveloping the golf course lands without first offering the lands to the City. The outcome on this application turns on the interpretation of a series of agreements related to the golf course lands and the surrounding area.

[4] Specifically, the City applies for a determination of rights with respect to contractual agreements dating back to 1981. The agreements gave rise to the development of the Kanata Lakes Golf and Country Club (the “Golf Course”) and the surrounding residential developments.

[5] The early agreements were between the former landowner, Campeau Corporation (“Campeau”), and the former local municipality, Kanata. The initial intent was to allow for the development of Campeau’s lands, while ensuring that 40% of the area remained as open space. Within that open space would be a golf course, to be operated in perpetuity, subject to certain alternative scenarios.

[6] Fast forward almost 40 years, the original lands have been subdivided by various developers, including Campeau, and the land on which the golf course is situated (the “Golf Course Lands”) has changed ownership three times. ClubLink Corporation ULC (“ClubLink”) is the current owner of those lands. In addition, Kanata has amalgamated with other local municipalities and all of its rights under the various agreements have passed to the City.

[7] This Court is asked to interpret these agreements to determine (a) whether ClubLink is currently in breach of the agreements and, if so, (b) whether it is required to convey the Golf Course Lands to the City at no cost or to withdraw several development applications currently under appeal at the Local Planning Appeal Tribunal (“LPAT”).

[8] The Kanata Greenspace Protection Coalition (“Coalition”) has been granted leave to intervene. The Court is asked to consider the parties’ respective rights and obligations going forward to determine if the Golf Course Lands are subject to a restrictive covenant.

THE EVIDENCE

[9] In the 1970s, there was little residential development in the area of the former City of Kanata. Purchasers were induced, with cash incentives, to buy homes in remote and rural Kanata.

[10] By 1979, Campeau had assembled 1400 acres of farmland and green space in Kanata, including a 9-hole golf course (the “Campeau Lands”), with a view to creating a residential development. That development was to be called the Marchwood-Lakeside Community.

[11] Campeau’s development could not proceed unless both the Regional Municipality of Ottawa-Carleton (“RMOC”) and Kanata amended their respective Official Plans to allow for residential development. Campeau’s development also required amendments to secondary plans and the Kanata zoning by-law, as well as the approval of draft plans of subdivision. For its part, Kanata had an interest to maintain open spaces and natural areas, including the golf course.

[12] In 1980, Campeau began meeting with the members of Council for both the RMOC and Kanata to gain support for its development concept. Part of Campeau’s proposal was that it would preserve up to 40% of the “attractive portions” of the Campeau Lands as open green space. This percentage represented a greater portion of the Campeau Lands than the City could otherwise require be maintained as dedicated parkland pursuant to the registration of a plan of subdivision.

[13] Campeau’s offer to designate 40% of the Campeau Lands as recreation and open space was conditional on the requisite amendments being made to the Official Plans of both the RMOC and Kanata.

[42] ClubLink's planning applications envision the redevelopment of the Golf Club lands for single family homes, townhouses and other medium-density housing. The redevelopment plans also include significant amounts of new, permanent, publicly accessible green space – much more than is currently available to the public. The applications, if granted, would permit the construction of 545 detached dwellings, 586 townhouse dwellings and 371 apartment dwellings.

[43] The redevelopment proposal includes a large neighbourhood park (8.6 acres), two parkettes (0.98 and 1.01 acres), five stormwater management ponds surrounded by green space and a variety of other open green spaces. The parks would accommodate a variety of different public uses, such as play structures, splash pads, trails and dog parks. None of these facilities exist at the Golf Course, a private club that generally operates from April to October each year.

[44] As of the date of this hearing, the City had not yet rendered a decision on either of the planning applications. In 2020, ClubLink appealed to LPAT the City's failure to make a decision on the planning applications.

[45] ClubLink maintains that it has never provided notice to the City that it desires to discontinue the operation of the Golf Club; ClubLink asserts that no such decision has been made.

Claim for Restrictive Covenant

[46] The Coalition has intervened in this proceeding. The Coalition seeks a declaration that the "Current Lands" (as defined in the 1988 Agreement) are subject to a restrictive covenant which requires that 40% of the total development area for the Kanata Marchwood-Lakeside Community remain as open space for recreation and natural environment purposes.

[47] The Coalition represents the interests of many landowners in what was known as the Kanata Marchwood-Lakeside Community. That community now includes the Kanata Lakes neighbourhood, Country Club Estates, CCC575, Catherwood and Nelford Court.

[48] The factual matrix on which the Coalition relies in support of the claim for a restrictive covenant is the following:

- a. The 40% principle was set out in the 1981 Agreement and required further study to determine exactly where the open space land would be located;
- b. The 1988 Agreement adopted and amended the 1981 Agreement to limit the application of the 40% principle to the lands “described as Schedule ‘A’”, which the 1988 Agreement defines as the “Current Lands”;
- c. The Current Lands were to be developed in accordance with a Concept Plan approved by Kanata by resolution, which was incorporated by reference into the 1988 Agreement. The Concept Plan described generally the proposal for designation and development of the lands in accordance with the 1981 Agreement;
- d. Section 7 of the 1988 Agreement states that the 1981 Agreement and the 1988 Agreement shall run with and bind the Current Lands for the benefit of the Kanata Marchwood-Lakeside Community;
- e. Pursuant to the ClubLink Assumption Agreement, ClubLink agreed to be bound by the covenants and obligations set out in the 1981 Agreement and 1988 Agreement;
- f. Section 11 of the ClubLink Assumption Agreement includes the following:

If the use of the Golf Course Lands as a golf course or otherwise as Open Space Lands is, with the agreement of the City, terminated, then for determining the above 40% requirement, the Golf Course Lands shall be deemed to be and remain Open Space Lands.
- g. The 1988 Agreement is registered on title of every residential lot in Kanata Lakes.

Coalition’s Motion to File Additional Evidence

[49] Following the argument of this application, and while the decision of the Court was under reserve, the Coalition filed a Motion Record for leave to introduce additional evidence. Specifically, the Coalition seeks to introduce into evidence the affidavit of Peter van Boeschoten, sworn November 25, 2020. A concept plan is attached as an exhibit to that affidavit.

[50] In his affidavit, Mr. van Boeschoten states that he participated in a 2005 hearing before the Ontario Municipal Board (“the 2005 OMB Hearing”). The evidence before the Board on that hearing is said to have included a concept plan for the Kanata Lakes development area prepared by Campeau Corporation and dated December 4, 1987 (the “December 1987 Concept Plan”).

[51] The Coalition's Motion Record includes the Affidavit of Barbara Ramsay dated November 25, 2020. In her affidavit, Ms. Ramsay provides the explanation as to why the December 1987 Concept Plan was not found until now.

[52] In response to the Coalition's motion, ClubLink takes the position that it would be inappropriate to admit new evidence at this point, more than four months after the conclusion of the hearing. That position is set out in a letter from ClubLink's counsel and sent to the court.

[53] ClubLink states that the December 1987 Concept Plan has no bearing on the issues in this application. It does not, however, oppose the admission of that concept plan provided that the Court does not conclude that it is the same as the Concept Plan referred to in the 1988 Agreement. ClubLink submits that the Court is not in a position to reach a finding in that regard without a full contested hearing following the delivery of additional affidavit materials and, in all likelihood, cross-examinations on the additional affidavits.

[54] ClubLink relies on the preamble to the 1988 Agreement, wherein the Concept Plan is defined in the following way:

AND WHEREAS the City, by Council Resolution has approved a concept plan submitted by Campeau describing generally the proposal for designation and development of the lands in accordance with the Forty Percent Agreement, (the "Concept Plan") a copy of which Concept Plan is retained in the offices of the Municipal Clerk of the City;

[55] The Concept Plan is not attached to the 1988 Agreement and there is no mention of the date of the Concept Plan in the 1988 Agreement.

[56] The Coalition's motion is dealt with as part of the analysis on the restrictive covenant.

THE ISSUES

[57] The issues to be determined on this application are as follows:

Issue 1: The Validity of the 1981 Agreement.

1(a): Does the 1981 Agreement create interests in land that are void for perpetuities?

1(b): Was the 1981 Agreement *ultra vires* the powers of Kanata when it was authorized by By-law?

1(c): Was the entering of the 1981 Agreement an unlawful fettering of Municipal Council Discretion?

Issue 2: If s. 5(4) and/or s. 9 of the 1981 Agreement are void for perpetuities, can they be severed from the 1981 Agreement so that the rest of the 1981 Agreement remains valid and binding?

Issue 3: Has ClubLink determined that it desires to discontinue the golf course use?

Issue 4: Is the City required to continue to operate a golf course on the Golf Course Lands?

Issue 5: Is ClubLink bound by a restrictive covenant which prevents it from redeveloping the Golf Course Lands?

Issue 1: The Validity of the 1981 Agreement

Interpretation of Contracts

[58] In determining what a party's contractual obligations are, the role for the reviewing court is to identify the shared intention of the parties at the time of contracting: see *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at para. 47. The Supreme Court of Canada in *Sattva* identified that the "interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction": at para. 47.

[59] The approach recommended in *Sattva* was applied by the Court of Appeal for Ontario in *Weyerhaeuser Company Limited v. Ontario (Attorney General)*, 2017 ONCA 1007, 77 B.L.R. (5th) 175, at para. 65, rev'd in part on other grounds *Resolute FP Canada Inc. v. Ontario (Attorney General)*, 2019 SCC 60. The Court of Appeal described, as follows, the steps to be taken when interpreting a contract:

- (i) determine the intention of the parties in accordance with the language they have used in the written document, based upon the "cardinal presumption" that they have intended what they have said;

[167] This is the commercially reasonable interpretation that affords the most common sense with the intention to maintain 40% of the Campeau Lands as open space. While the City would have to operate or cause to be operated a golf course if it accepts conveyance of the golf course in a *bona fide* manner, it is not required to do so in perpetuity and it would later be available to it to continue owning the Golf Course Lands provided that the lands are used for recreation or natural environment purposes.

Issue 5: Is ClubLink bound by a restrictive covenant which prevents it from redeveloping the Golf Course Lands?

Concept Plan

[168] I begin the analysis of this issue by dealing with the concept plan submitted as part of the affidavit of Peter van Boeschoten. In that affidavit, Mr. van Boeschoten does not state that the concept plan attached to his affidavit is one and the same as the Concept Plan referred to in the 1988 Agreement. He only states that it formed part of the evidence at the 2005 OMB Hearing.

[169] I agree with the submission of ClubLink that while Mr. van Boeschoten's affidavit may be admitted as part of the record of this application, possibly for future reference, I am unable to conclude that the plan provided by Mr. van Boeschoten is one and the same as the Concept Plan incorporated by reference into the 1988 Agreement. The Coalition has advised that to accept the plan into evidence without a finding that it is one and the same as the Concept Plan from the 1988 Agreement would be an error.

Analysis

[170] ClubLink's submission on the restrictive covenant is that the declaratory relief requested by the Coalition is superfluous to the issues before the Court. If the City succeeds, the 1981 Agreement is valid. There is no need to determine if the 1988 Agreement creates a restrictive covenant requiring that 40% of the total development area for the Kanata Marchwood-Lakeside Community be left as open space for recreation and natural environment purposes.

[171] The Coalition highlights that if the City is successful and the 1981 Agreement is valid, the Court may find that a declaration on the restrictive covenant is no longer necessary as it does not settle a live controversy between the parties: see *Children's Aid Society of the Regional Municipality of Waterloo v. C.T.*, 2017 ONCA 931, [2018] 4 C.N.L.R. 31, at paras. 74-75. However, if ClubLink is successful and ss. 5(4) and 9 are severable, the Coalition seeks a declaration that the remainder of the 1981 Agreement and 1988 Agreement are valid and that they act together to create the restrictive covenant. If the remaining provisions of the 1981 Agreement are not severable, the claim for a restrictive covenant fails.

[172] Given my conclusion that ss. 5(4) and 9 of the 1981 Agreement remain valid and enforceable, there is no "live controversy" between the Coalition and ClubLink that requires adjudication.

[173] In addition, I am of the view that the evidentiary record in relation to the claim for a restrictive covenant is lacking. One of the requirements for a restrictive covenant is that the dominant tenement, which is meant to receive the benefit of the covenant, must be clearly described. The questions surrounding the Concept Plan continue to be unresolved. The 1981 Agreement was drafted at a time when the lands meant to benefit from the alleged restrictive covenant still had to be better defined. Even the 1988 Agreement refers to the "Kanata Marchwood Lakeside Community" and describes the Concept Plan as "generally the proposal for designation and development of the lands in accordance with the Forty Percent Agreement." The Concept Plan is identified as being "retained in the offices of the Municipal Clerk of the City."

[174] The Coalition's motion material to admit the Concept Plan includes a concept plan titled "Kanata Lakes Concept Plan" and stamped "Campeau Corporation". This plan is dated December 4, 1987, and the Coalition seeks a finding that it is the same concept plan as is referenced in the 1988 Agreement. I am unable to make such a finding as there is insufficient evidence to confirm that they are one and the same. The evidence filed on the motion states that this Kanata Lakes Concept Plan was an exhibit to an affidavit filed in the 2005 OMB Hearing. However, that originating affidavit was not produced to see how this exhibit was actually referred to.

[175] I am unable to conclude that the Kanata Lakes Concept Plan dated December 4, 1987 is likely one and the same as the Concept Plan attached to the 1988 Agreement. The Concept Plan referenced in the 1988 Agreement does not include the date or the full title “Kanata Lakes Concept Plan” in its description. Also, the Coalition seeks to rely on this Concept Plan to define the dominant tenement but there is no opinion evidence which properly interprets what is shown on the Concept Plan. I am unable to properly interpret it on my own. In particular, the legend refers to the Golf Course as “GC”, but those initials are not actually found on the Kanata Lakes Concept Plan except in the list of abbreviations. These issues should be determined on a more fulsome evidentiary record.

[176] Consequently, the Coalition’s motion to file the Kanata Lakes Concept Plan dated December 4, 1987 is denied.

[177] As previously stated, the issues surrounding the declaratory relief are superfluous to the issues as determined in this decision. Given that the 1981 Agreement continues to be a valid and enforceable contractual agreement between the parties, there is no need for a finding to be made on the claim for a restrictive covenant. Furthermore, there are shortcomings in the evidence surrounding that claim. The claim for a restrictive covenant should form part of a more fulsome hearing with better evidence to support the Coalition’s claims.

CONCLUSION

[178] For the reasons stated herein, the Court concludes:

- a. Issues #1-2: The 1981 Agreement continues to be a valid and binding contract and ss. 5(4) and 9 are not void as contrary to the rule against perpetuities. The 1981 Agreement was *intra vires* Kanata and the entering of the 1981 Agreement was not an unlawful fettering of Kanata’s discretion. Consequently, the issue of severance is not relevant.
- b. Issue #3: ClubLink has not determined that it desires to discontinue the golf course use.
- c. Issue #4: While the City is required by s. 5(4) of the 1981 Agreement to operate the golf course, it must not do so in perpetuity. The City’s obligations under s. 9 of the 1981 Agreement are not triggered if the City discontinues the golf course use provided that it continues to use the land for recreational and natural environment purposes.

- d. Issue #5: The questions surrounding the restrictive covenant are superfluous to this application and should be decided on a more fulsome evidentiary record.

COSTS

[179] If the parties are unable to agree on the issue of costs, they may make written submissions on costs. Any party seeking an order for costs will have 30 days from the date of this decision to serve and file its written submissions and a party against whom a request for costs has been made will have 30 days thereafter to respond. Those submissions will not exceed three pages in length (excluding attachments) and will comply with Rule 4 of the *Rules of Civil Procedure*.



Justice Marc R. Labrosse

Released: February 19, 2021

CITATION: *City of Ottawa v. ClubLink Corporation ULC*, 2021 ONSC 1298

COURT FILE NO.: 19-81809

DATE: 2021/02/19

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

CITY OF OTTAWA

Applicant

– and –

CLUBLINK CORPORATION ULC

Respondent

– and –

KANATA GREENSPACE PROTECTION
COALITION

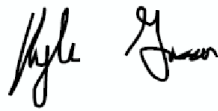
Intervener

REASONS FOR DECISION

Labrosse J.

Released: February 19, 2021

**THIS IS EXHIBIT "J" REFERRED TO IN THE AFFIDAVIT
OF CHRISTINA FRACASSI SWORN BEFORE ME THIS
24th DAY OF DECEMBER, 2021.**

A handwritten signature in black ink, appearing to read "Kyle G. Mason".

A Commissioner, etc.

Ontario Land Tribunal

IN THE MATTER OF an appeal pursuant to Subsection 34 (11) and Subsection 51(34) of the *Planning Act*, RSO 1990, c. P. 13, as amended.

| | |
|---------------------------------|---|
| Applicant and Appellant: | Clublink Corporation ULC |
| Property Location: | 7000 Campeau Drive |
| Municipality: | City of Ottawa |
| Municipality File No.: | D02-02-19-0123 (Zoning Amendment) D07-16-19-0026 (Plan of Subdivision) |
| OLT Case No.: | PL200195 |
| OLT File No.: | PL200195, PL2001196 |

WITNESS STATEMENT – DOUGLAS NUTTALL

Qualification

1. I am a Professional Engineer and a member of the Professional Engineers of Ontario. I have a Bachelor of Science in Civil Engineering from the University of Alberta, which I received in 1994. I have been a practicing Professional Engineering in Ontario since 2001.
2. I am a Senior Water Resources Engineer with HDR, having started with them in 2021. My role with this firm is as the Technical Lead for a team of Water Resources engineers.
3. I have been qualified in the past as an expert witness on issues related to flooding and erosion at the Ontario Provincial Offences Court. More detailed information regarding my qualifications and experience are contained in my Curriculum Vitae, which is attached as **Attachment 1**. An executed copy of the Tribunal's Acknowledgement of Expert's Duty is attached as **Attachment 2**.
4. In my professional practice, I have undertaken hundreds of technical reviews of stormwater management plans relating to urban development proposals.
5. When I worked for Mississippi Valley Conservation Authority between 2005 and 2014, I had reviewed numerous applications within the same watershed as the Subject Lands. I am well acquainted with the Beaver Pond, Kizell Drain, and development in the area.

Retainer

5. The Kanata Greenspace Protection Coalition (KGPC) retained me on January 1, 2021, to provide professional advice related to the proposed development. I reviewed the background materials relating to this file and provided the board of the KGPC with detailed comments on the existing drainage system, the effect of the Restrictive Covenant (discussed further, below), and the current planning application from a perspective of Stormwater Management.
6. On July 19, 2021, I was hired by HDR as a Senior Water Resources Engineer.

7. On July 30, 2021, HDR was engaged by KGPC to provide professional advice related to the proposed development, and comments related to my review of the project were submitted to the City of Ottawa on August 4, 2021. This letter, and their response, are attached as **Attachment 3**.
8. I have reviewed the background materials relating to stormwater management of the Subject Property and the downstream system that were submitted to the City in support of this project and others in the watershed. I have considered these reports, where appropriate, in my professional opinions.
9. I have met with representatives from the City and the proponent's consultants on November 2, 2021, specifically to discuss the issues identified.
10. I have reviewed the work of the other expert witnesses who have been retained by KGPC on this file, and have included comments based on their work, where appropriate.
11. A full list of the documents that I have considered, reviewed, and/or evaluated in my opinions in relation to this matter is provided below. I may expand on any documents reference therein, or make reference to other documents, as may be necessary at the Hearing.

Summary of Findings

11. It is my opinion that the consultants for the proposed development have not demonstrated that the proposed works will not negatively impact the performance of the existing stormwater management system by the materials presented to the City of Ottawa in support of their application.
12. It is my opinion that the receiving water body (Beaver Pond) does not have capacity to receive the change in volume and flow that would come from the increase in imperviousness expected with development.
13. It is my opinion that the downstream channel (Kizell Municipal Drain) does not have capacity for any increase in flow, due to the presence of numerous structures (buildings, roads) within the existing floodplain that would be at more risk of damage from any increase in flow.

Location & Site Info

14. Description of Subject Lands
 - a) The Subject Lands are located within the City of Kanata, south of the Kizell Drain, north of Campeau Drive, and east of Terry Fox Drive, at 7000 Campeau Drive.
 - b) The Subject Lands have an area of 70.9 ha, which are intended by the Proponent for development of approximately 1500 new homes.
 - c) The subject lands are currently used as an 18-hole golf course that was constructed/expanded as part of the surrounding residential development.

History of Studies on Subject Lands

15. A restrictive covenant exists on the deed for the Subject Lands that indicates future work shall not be 'materially adverse' to the conclusions and recommendations relating to the stormwater management plans that were in place in 1996. This covenant is provided in **Attachment 4**. In my opinion, the reports that establish those stormwater management plans are:
 - a. *Master Drainage Plan – Storm Water Management Study for Marchwood Lakeside Community*, by Cumming-Cockburn & Associates Limited, dated April 25, 1984, prepared for and approved of by the City of Kanata

- b. *Kanata Lakes Storm Drainage Report*, by Oliver Mangione McCalla & Associates, dated March 1985, prepared for the Campeau Corporation, and approved of by the City of Kanata in April 1985
 - c. *Addendum to Kanata Lakes Storm Drainage Report*, by Oliver Mangione McCalla & Associates, dated September 1986.
 - d. *Kanata Lakes Dam & Outlet Structure Operation & Maintenance Manual*, by Oliver, Mangione, McCalla & Associates Limited. dated April 1990
 - e. *Kanata Lakes. Beaver Pond Urban Stormwater Quality Control*, by Cumming Cockburn Limited, dated November 16, 1994, prepared for the Ministry of Natural Resources
16. There have been several additional studies that provide background information relating to the current application that were reviewed for to develop my opinions that were published after the 1996 threshold for the restrictive covenant but before the current application:
- a. *Kanata Lakes North Serviceability Study*, IBI 2006
 - b. *Certificate of Approval for Municipal and Private Sewage Works*, MOE 2008
 - c. *Shirley's Brook and Watt's Creek Phase 1 Stormwater Management Study*, AECOM 2011
 - d. *Shirley's Brook and Watt's Creek Phase 2 Stormwater Management Study*, AECOM 2013-1
 - e. *Shirley's Brook and Watt's Creek Phase 2 SWM Study, Additional Hydrologic Model Calibration and Verification Assessment*, AECOM 2013-2
 - f. *SBWC Ph.2 - Beaver Pond Theoretical Storage Assessment email*, AECOM 2014-1
 - g. *SBWC Ph.2- Revised Shirley's Brook Calibration Assessment email*, AECOM 2014-2
 - h. *SBWC Ph.2 – Incorporation of Additional Storage in Upper Kizell Subwatershed Hydrologic Model*, AECOM 2014-3
 - i. *SBWC Ph.2 – Revised Draft*, AECOM 2014-4
 - j. *Meeting notes – Kanata Lakes Existing Conditions – Continuous Modelling*, IBI 2015
 - k. *Shirley's Brook and Wats Creek Phase 2 Stormwater Management Study – revised*, AECOM 2015 (includes modelling files).
 - l. *Continuous Modelling of Beaver and Kizell Ponds Under Existing Conditions*, JSFA 2015.
 - m. *KNL Lands – Proposed Drainage Diversion to the Kizell Municipal Drain*, City of Ottawa, Kanata North Ward, Stantec 2016.
 - n. *Watts Creek/Kizell Drain Flood Plain Mapping Study*, MVCA 2017.
17. The Current Application for development of the Subject Lands is supported by a number of reports that have been reviewed.
- a) Concept Plan – NAK 2021
 - b) Functional Servicing Plan – DSEL 2021
 - c) Geomorphological and Erosion Report – GeoMorphix 2021
 - d) Monitoring and Calibration Report – JSFA 2020
 - e) Stormwater Management Plan – JSFA 2021-1
 - f) Hydrologic Assessment – JSFA 2021-2
 - g) Geotechnical – Patterson 2021-1
 - h) Phase 1 ESA – Paterson 2021-2
 - i) Phase 2 ESA – Paterson 2021-3
 - j) Geo Response Memo – Paterson 2021-4

k) Subsurface Infiltration Review - Paterson 2021-5

Summary of Findings – prior to 1996

18. The restrictive covenant on Title, registered as Instrument No. LT1020194, as provided in Attachment 4, reads in part:

3. *Each and every part of the Golf Course Lands shall be subject to the following restrictions and covenants:*

(i) *The Transferee agrees that:*

- a. *It shall not alter the grading of the Golf Course Lands or any of the storm water management facilities on or serving the Golf Course Lands; and*
- b. *There should be no construction on any buildings, structures or other improvement on any of the Golf Lands which may cause surface drainage from the Golf Lands to be discharged, obstructed or otherwise altered*

in a manner that materially adversely affects the Transferor's or the City of Kanata's storm water management plan in respect of the transferor's Benefited Lands as such plan exists as at November 1, 1996. Without limiting the generality of the foregoing, the Transferee in respect of the Golf Lands shall comply with all applicable municipal agreements, by-laws, and regulations affecting the Golf Lands with respect to grading and storm water management.

Transferee = ClubLink Capital Corporation

Transferor = Imasco Enterprises

Benefitted Lands = provided in Schedule 1 of the Instrument.

19. It is my opinion that the concept of “materially adverse” would mean a change to the system of collection and conveyance of storm water so that it would increase the frequency of severe events or increase the magnitude of flows within the receiving stream, that were considered in the plan. Specifically, between the point of discharge from the Golf Course Land to a point where the upstream response time of the river is as long as the duration of the peak response in the Kizell Pond, plus the travel time to that point (normally expected to be between 6 and 24 hours), it would be considered materially adverse if;

- a) the long-term average channel factor of safety is reduced to be lower than 1.0.
- b) the elevation of the calculated flood line for any given event is increased by ½ of the precision of the predicted elevation.
- c) water diverts from the system into a neighbouring watershed (Watts Creek or Shirley's Brook).
- d) there is a reasonable expectation of an increase in required maintenance activity.
- e) there is an increase in flows for a given event where there is a known flood hazard.

20. The documents listed in 15. above have several recommendations, and these are:

| Report | Recommendation | |
|----------|----------------|---|
| CCL 1984 | 7.2.1.a | Minor sized for 1:5 year, major sized for 1:100 year events |
| | 7.2.1.b | Channel stabilization where erosion is increased |

| | | |
|----------|-------------|---|
| | 7.2.2.a | Outflow into Kizell Drain not to exceed 3.6 m ³ /s |
| | 7.2.2.b | Distributed storage and pond modifications are required |
| | 7.2.3.a | Diversion to Kizell from Shirley's Brook a better choice than no diversion |
| | 7.2.3.c | An on-line detention facility to be located downstream on Shirley's |
| OMM 1985 | 5a | Minor system to carry 1:5 year without overtopping |
| | 5b | Minor system has invert at Beaver pond of 89.1m |
| | 5c | CB Orifices to be used to limit inflows into minor system |
| | 5d | Dam and outfall structure will limit flow to 0.7cms and 1.1 cms leaving the Beaver Pond in 1:5 year and 1:100 year events, respectively. |
| | 5e | Flows leaving site are 1.1 cms and 3.1 cms |
| | 5f | Water levels in Beaver Pond will be 91.7m in 1:5 year event, and 92.8m during 1:100 year event. Normal water level to be 91.0m. Storage volumes will be 8.29 ha.m, and 18.71ha.m, for the 1:5 year and 1:100 year events, respectively. |
| | 5g | Major system flows will be conveyed overland to 11 storage locations, for a total of 5.02 ha.m of storage |
| OMM 1986 | Nothing new | The addendum provides clarification of some details, but no new recommendations |
| OMM 1990 | | Operating stage/storage/discharge for the various events are: |
| | | 90.5m/0 ha.m/0 m ³ /s |
| | | 91.5m/7.01 ha.m/0.63 m ³ /s |
| | | 92.6m/17.80 ha.m/1.07 m ³ /s |
| CCL 1994 | | No further dredging required – meets both MNR 1992 and MOE 1994 |
| | | Sediment forebays to be constructed for ease of maintenance |
| | | Shoreline maintenance activities to be minimized to avoid further destruction of existing habitat |
| | | Quality sampling to be done for 2 years after construction |
| | | Outlet structure built with an invert elevation of 90.47m, baseflow brings water level to 90.55m |

21. CCL 1984 relied on a 12 hr, 1:100 year event of 78.5mm storm event to design the volume of the Beaver Pond to manage flows. This was applied to:
- 240 ha of urban land to produce 33.9 cms to drain directly to the Beaver Pond and 143 ha of undeveloped land to produce 14.4 cms to drain directly to the Beaver Pond
 - A portion of the Shirley's Brook watershed to be diverted to the Beaver Pond, with an additional 114ha of urban land to produce a combined flow of 43.3 cms from urban land and an additional 255ha of undeveloped land to produce a combined flow of 18.7 cms from undeveloped land.
22. The 12hr 1:100 year event that Ottawa uses today is 93.89mm, based on data collected from 1967 through 1997, an increase of 20%. The imperviousness used is also increased, by as much as 25% for the 1:100 year event. This significantly increases the required design volume for the pond.

23. It is well understood that climate change is decreasing the level of service for any given storm event, so in my opinion, this value likely does not represent the design event that would be prudent to use into the future. No effort was described in the reports to ensure that the pond has the capacity for the change in volume the development would produce in the pond, in either current or expected future conditions.
24. It is my opinion that the change in the amount of runoff expected from the design event mean that any development within the watershed of the Beaver Pond must consider both volume and flow rate reaching the Beaver Pond to ensure that the available capacity in the pond will still be available after other planned development and diversion is in place, and that has not been done in the application that was made.

Summary of Findings – reports between 1996 and 2018

25. Of the list provided in 16. above, MOE 2008, JSFA 2015, Stantec 2016, MVCA 2017 were reviewed in detail. Each of these are summarized below:
 - a. MOE 2008 describes the pond as it was designed at the time. The volumes that were available at the time are not available in the recent surveys (LIDAR and Topographic) referenced in JSFA 2015. The flow rates in MOE 2008 are in excess of what was calculated in both JSFA 2015 and MVCA 2017 – MVCA 2017 provides the formula used, and it is correct for simple modelling in a free-flow condition with a submerged outlet. JSFA 2015 predicts a lower outflow for the same water level – this is credible if the 1200mm outlet pipe is flowing under a significantly surcharged condition (such as a flood) or if the orifice is not fully submerged (which would be the case for frequent events).
 - b. The JSFA modelling includes the surveyed surface storage, under-utilized golf-course storage, and subsurface storage. The MVCA modelling included the surface storage, but not the subsurface storage, and didn't consider routing between the storage in the golf course and the Beaver Pond. Surface storage in the golf course appears not to be holding water – either surface grading doesn't bring water to it, or there is ample sub-surface percolation bypassing flow controls.
 - c. Stantec 2016 describes how the existing Kizell Drain downstream of Beaver Pond doesn't have the capacity for any increase in flows. Downstream works will be required prior to any increase of flow. While the restricted culvert under March Road is the obvious starting point (failing in structure and capacity), the crossing at Leggett Drive is identified in MVCA 2017 as having substantial road flooding during the 1:100 year. There are 10 other locations that indicate the channel is overloaded (either flooding buildings or roads) to varying degrees.
 - d. MVCA 2017 also identified that the 1:100 year rain-on-snow event would produce substantially more flow than the pond can handle, and it would overtop the weir, and increase flows significantly downstream. This is not unexpected, due to the amount of rural land and the response time of the system – any event that is of a comparable duration as the response time of the system should be checked to see if it produces the peak outflow, and the pond responds for 5 days. So, in addition to the 12 locations with roadway and building flooding issues, the channel could also experience higher flows than the regulatory event, without considering the effects of climate change. The flows the MVCA model predicts are intended to identify the regulatory limit of the flood plain, rather than predict a specific response to a specific event.

26. It is my opinion that there are technical problems downstream of the Beaver Pond at this time that prevent a significant increase in peak volume within the Beaver Pond, and thus the runoff rate entering Kizell Drain. These include the presence of flood prone structures and roads downstream, existing areas of channel instability, etc. They are all potentially resolvable by the City of Ottawa, but several are outside of the direct influence of the development. It is not obvious that the improvements that the City would undertake would include sufficient capacity to allow for sufficient additional upstream development for both the proposed KNL development and the proposed development of the Subject Lands. This is consistent with the conclusion of Stantec 2016.
27. It is my opinion that, even after the technical problems are addressed downstream, any new development would have to have sufficient storage to prevent an increase in flows downstream beyond the new channel improvements, for both the peak flow or the channel forming flow. Increasing the channel forming flow will change the morphodynamics of Kizell Drain and potentially Watts Creek. Increasing the peak flow will change the flooding limits and the potential of water spilling into adjacent watersheds. This is potentially a very restrictive condition, and would require unusual SWM, due to the very long response time (due to the wetland-dominated nature of the upstream area) and trailing limb (due to the quantity of storage) of the pond.

Summary of findings – current application

28. Monitoring and Calibration Report, JSFA 2020
- a. Sections 1-4 provide the method undertaken to collect the data and can be accepted without comment.
 - b. Section 5 refers to MVCA modelling of 2017 and AECOM modelling of 2015. No reference is made of the JSFA modelling of 2015 and the prediction of many thousands of cubic meters of subsurface storage that must be connected to the pond by a restricted outlet. AECOM 2015 includes a letter to Darlene Conway from March 2014, that states, in part "...a minimum additional storage of approximately 72,190m³ (17mm equivalent depth over the entire Study Area) would have to exist... to achieve these results." This is roughly ½ to ⅓ of the volume that is expected to reach the pond outlet. In the absence of that storage in the model, the results of the model would not predict existing conditions with accuracy.
 - c. Per the XPSWMM online support materials found here <https://help.innovyze.com/display/xps2016/Infiltration>, the Horton infiltration values are typical for loamy sand with an HSG of "A". While porous fill is found in some places in the development, as evidenced by the on-site infiltrometer tests and the geotechnical report, perched water, bedrock, and silty clays are also present at the surface, so it is my opinion that applying these values across the whole of the watershed can induce significant errors, since the watershed has a variety of land uses and soil properties. This would have the effect of under-estimating the runoff reaching the pond during the storm response.
 - d. All events monitored and calibrated for from 2019 are frequent, significantly below anything that would be considered 'flooding'. It is my opinion that volumes, peaks, and timing at the upper gauges seem reasonable, with the magnitude & timing of the peaks, and volume of the runoff events, being close to observed. It is my opinion that volumes, peaks, and timing at the pond do not seem reasonable; the actual decay curve is much longer than the predicted, and magnitudes are not close – with a ratio between the predicted and the observed of between 1/3 and 4. It is my opinion that this is not a 'good' fit, as described in the text. The modelling effort

- by the same firm in 2015 using more data and including lower frequency events produced results that more closely matched the observed response of the system during infrequent events. The absence of this calibration data limits the accuracy of this model to predict the effects of the larger, more infrequent events.
29. It is my opinion that the existing conditions must be modelled with the subsurface storage included, and in the absence of information on the long-term availability of that subsurface storage, it must not be used to model the proposed conditions.
 30. It is my opinion that in the absence of subsurface storage in the proposed condition model, the Beaver Pond will not have the capacity to accept additional flows from the subject site without risking over-topping and thus releasing uncontrolled flows.
 31. It is my opinion JSFA 2020 has not demonstrated that the proposed works will not negatively impact the performance of the existing stormwater management system.
 32. Functional Servicing Plan – DSEL 2021. Section 4 and 6 are germane to stormwater management
 - a. Section 4.1: Impacts Downstream of the Beaver Pond.
 - i. No discussion has been provided about the at-risk structures and properties downstream of the Beaver Pond identified in MVCA 2017.
 - ii. Subsurface storage identified in JSFA 2015 does not appear to be included in the model.
 - iii. No conclusions have been provided relating to the calculated value of the critical flow in Kizell Drain.
 - iv. No information has been provided on the long-term factor of safety for the channel. No information has been provided on the potential for aggradation in the absence or erosion.
 - v. Modelling suggests flows will reach the pond more slowly (thus total volume increases but peak flow drops) but it is my opinion that the model used does not reflect the trailing limb well, so the effect of changes in timing can't be well predicted.
 - b. Section 4.2: Infiltration
 - i. The questions relating to the suitability of site for using LIDs to provide storm water management have been copied from the TRCA/CVC LID Guideline, but not answered. It is my opinion that these questions should be answered at this time due to the importance of the proposed LID system in the performance of the SWM system as a whole.
 - ii. I have answered the questions based on the information provided in the various Patterson reports from 2021 listed above in 17.
 - (i) ***Does the site have a pollution hot spot (location on the site with high potential for contaminated runoff)?*** Phase 2 ESA says potential exists due for mercury contamination, but not hazardous if the site is to be used as a golf course. No opinion was provided relating to a change in land use or the impact of the expected grade changes.
 - (ii) ***What is the Soil Texture and borehole data? Can the underlying soils infiltrate runoff?*** Due to the presence of sensitive marine fine-grained soils with wildly varying depths, and bedrock outcrops identified in the Geotechnical Report, it is my opinion that infiltration may be problematic. Infiltration was not investigated at the depth of the proposed LID.
 - (iii) ***What is the water table depth? If water table depth is less than 1m from grade, LID should not be implemented and/or should be flagged for further assessment.***

Geotechnical report indicates the water table varies, but is present above existing grade in places, and above the expected infiltration elevation in places.

- (iv) ***What is the bedrock depth? If too high, infiltration will be difficult. Should be more than 1 m from the lowest point of the LID measure.*** Bedrock varies but is present above the infiltration elevation in places.
 - (v) ***How does the topography of the site affect the flow?*** Geotechnical report indicates topology highly variable, with standing water, steep subsurface hydraulic gradients, rocky outcrops, etc. It is my opinion that it likely has pockets of perched water table, and very complex subsurface flow paths due to the presence of blasting to create the existing subdivision.
 - (vi) ***Any trees or other features that might affect the installation of an LID measure?*** The presence of sensitive marine fine-grained soils and the presence of 10s of thousands of cubic meters of subsurface storage will both affect LID applicability. Trees are not recommended for significant portions of the site due to the potential of dewatering and destabilizing the existing soils.
 - (vii) ***Is there a receiving system that could be connected via buried pipes or under drains?*** Yes. To some extent.
 - (viii) ***Is the available space for LID measures too small to yield any benefit of controlling inflows?*** It is my opinion that this is likely No, but this is not quantified in the available reports.
- iii. An effort to answer these questions would show whether LIDs would be suitable for this site – this was not done - and yet the assumption was made that LIDs would manage the vast majority of runoff from the site. While it is possible that these questions can be addressed in more detail, it is my opinion that it is unlikely that LIDs would be appropriate to be applied generally through the Subject Lands, and thus the assumption is ill-advised.
- c. Section 4.2.1 Etobicoke Exfiltration System
 - i. 22mm of rainfall is used as the target rainfall depth for sizing the system. This is not consistent with the Draft MOE LID Design Guideline, which recommends 27mm of rainfall.
 - ii. The measured depth to groundwater varies from 0.1 to 3.5m below grade. 11 out of the 12 boreholes identified in Table 2 of Paterson 2021(1) show the groundwater would be intersected by the minimum depth of the proposed EES. It is my opinion that the presence of effectively permanent water bodies suggests groundwater elevation come to the surface in these locations.
 - iii. Long-term groundwater elevations are expected to be 2-3m below grade, generally above the 2.85m minimum depth to the drainage layer and well above the 5.3m maximum depth of the drainage layer.
 - iv. Dewatering the ground as part of the SWM of a site is not consistent with the TRCA/CVC LID design guideline or City policy regarding water balancing.
 - v. It is my opinion that where sensitive marine soils are present, there should be no draining of the groundwater as this has the potential of destabilizing the soils in a fairly large area, potentially past the limits of the development.
 - vi. Due to the weakness of the soils identified in Paterson 2021(1), there are restrictions to grade raise that would prevent raising the bottom of the infiltration to be above the sensitive clay soils.
 - vii. It is my opinion that where bedrock exists, and in the absence of a more detailed understanding of where the existing subsurface storage is occurring, there should be no

- draining of the groundwater to prevent increasing the conveyance of the subsurface storage into the pond.
- viii. It is my opinion that the use of the EES for this site is not appropriate.
- d. Section 4.2.2 Etobicoke Exfiltration System Quality Control
- i. The MOE SWMP&D manual indicates that 33.3 m³/ha of storage would be required for infiltration to achieve 80% TSS removal, while 108m³/ha is made available. That assumes that all of the water that exfiltrates from the EES is prevented from moving downstream and into the Beaver Pond within the clear stone. As there is currently the potential of 10x as much subsurface storage as the proposal provides being utilized in the system, it is my opinion that it must be assumed that enhancing interflow has a substantial risk changing the performance of the system as a whole.
 - ii. The MOE Storm Water Management Planning and Design Manual (MOE 2004) indicates that 33.3 m³/ha of storage would be required for infiltration to achieve 80% TSS removal, and DSEL 2021 indicates that 108m³/ha is available. This assumes that all of the water that percolates into the EES is prevented from moving downstream into the Beaver Pond. Due to the presence of low permeability soils and bedrock, it is my opinion that approximately 2/3 of flow will travel as interflow within the granulars and reach the Beaver Pond within 24 hours of the storm event. 1500m travel path, 4m of fall, gravel represented with 25mm spheres = approximately 24 hour draw down, while the infiltration would require 72 hours.
 - iii. It is my opinion, based on a simple calculation of residency time within the clear stone that 80% TSS removal cannot be achieved with the conveyed flow. 2/3 at 60% treatment + 1/3 at 100% treatment = 73% TSS removal.
 - iv. No information has been provided on how the change in flows and volume reaching the Beaver Pond will affect quality treatment in the pond. The ESS can be expected to produce just better than 70% TSS removal for a portion of the flows reaching the Beaver Pond, but that does not mean that it would have sufficient additional residency to deposit the remaining TSS within the Beaver Pond itself.
 - v. It is my opinion that the change in flows and volume of runoff will have the potential of an impact on the quality treatment performance of the Beaver Pond, and the performance of the pond would have to be reconsidered with the change in flows included.
- e. Section 4.2.3 Etobicoke Exfiltration System Maintenance
- i) Maintenance activities are discussed within Appendix D, based on a study for a different site by a different author. It is not clear where the 80% TSS that is expected to be removed will accumulate. It is my opinion that the obvious answer is both within the clear stone and within the pipe system, wherever there are decreases in velocity. The coarsest materials will accumulate in the catch basins – it is my opinion that this would not exceed 20% of the total mass if CB clean-outs were very frequent. The remainder is implied to accumulate in the pipe itself, if there is sufficient retention time to cause settling.
 - ii) It is my opinion that it can be expected that a significant amount would exit the perforated pipe during normal operation due to the relatively low settling velocity, and this would be impossible to clean out of the clear stone. If the water velocities in the clear stone trench are low enough, the fines can be expected to settle out on the bottom of the trench, and would have a comparable permeability as the clays. If the water velocities are higher, such as would be expected if there was longitudinal conveyance, the fines would accumulate in

- places where there is a sudden reduction in velocity, creating localized reductions in the available conveyance. In either case, the accumulated sediment cannot be removed with normal maintenance operations, as it would be outside of the pipe.
- iii) It is my opinion that the use of ESS without any form of quality pre-treatment has to potential of incurring significant replacement costs when the accumulated sediment fills the available pore space in the clear stone. The rate of accumulation should be estimated, and the City, as the ultimate owner of the infrastructure, has to confirm that the replacement cycle duration is appropriate.
- f. Section 6 Site Grading
- i) Substantial fill is required through much of the site, with light-weight fill recommended, and substantial cut is required at several of the ponds, as much as 8m. It is my opinion that this is expected to produce meaningful impacts of groundwater flow and storage.
 - ii) Existing ponds indicate where surface water/groundwater interactions occur – the piping in these areas will definitely be below the groundwater table since less than 2.5m of fill is recommended by the geotechnical report.

It is my opinion DSEL 2021 has not demonstrated that the proposed works will not negatively impact the performance of the existing stormwater management system.

33. Preliminary Stormwater Management Plan – JSFA 2021-1

- a. It is my understanding that the Draft Plan of Subdivision requires approval of, and conditions that are derived from, the Conceptual Stormwater Management Plan. In that Plan, the criteria of approval are provided by all of the approval authorities, the developer describes their proposed system, and it is shown how each of the various criteria can be met. There must be sufficient detail to be confident that the plan can be followed without revising lot lines (knowing of course that the lines could change in the future as the process continues) – essentially showing that the system as proposed can work. The conditions provided by the approval authorities generally require the developer to show how the system will work, and ensures that all of the various regulations and policies are adhered to. With each phase of development, the developer shows how they are following the Draft Plan of Subdivision, and how they have met the conditions with the detailed design – typically using tender-ready drawings and reports. JSFA 2021-1 does not provide either the criteria or the correspondence with the approval authorities where the criteria were discussed.
- b. A flow monitoring program was instituted in 2019, and it produced no events that exceeded the 1:2 year IDF curve. It is my opinion that this calibration exercise therefore does not represent flood conditions and it would be more useful if the data from JSFA 2015 and other subsequent monitoring was also included.
- c. The proposed site was separated from the surrounding lands, with the site run as a dynamic model. City default Horton's infiltration values of 76.2 mm/hr, 13.2 mm/hr, 4.14 1/hr & a 7 Day drying time were used. Per the XPSWMM online support materials found here <https://help.innovyze.com/display/xps2016/Infiltration>, these values are typical for pebbly loamy sand with an HSG of "A". It is my opinion that this does not reflect the site as described in the Patterson 2021 reports. The Horton parameters used are inconsistent with JSFA 2020.
- d. It is not obvious what the results of the pre-consultation with the approval authorities are. It is my opinion that this should be clarified.

- e. AECOM 2011 has been referenced, but it was superseded or amended by other reports including AECOM 2013-1, AECOM 2013-2, AECOM 2014-1, AECOM 2014-2, AECOM 2014-3, AECOM 2014-4, IBI 2015, AECOM 2015, JSFA 2015 and the new reports include a significant quantity of sub-surface storage that would need to be included in the existing conditions to complete the calibration exercise.
 - f. There is no indication that the City has been consulted on how they would expect the subsurface storage to be treated in the model. It is my opinion that the modelling would have to be calibrated with the missing storage in place to predict the existing conditions, and then the subsurface storage removed from the model for the future conditions unless it can be shown that it would continue to be available for the proposed development in perpetuity.
 - g. Ponds 1 and 3 require substantial excavation within bedrock to create. Pond 2 and 4 requires significant false grading to retain water. It is not clear what elevation the invert of the tank or the final ground surface is expected to be. It is my opinion that the reduction of the groundwater elevation is expected to reduce the available subsurface storage, and this in turn would produce a higher peak and shorter trailing limb in the Beaver Pond hydrograph.
 - h. As the Beaver Pond is not sensitive to velocities but rather total volumes, a reduction of peak flow but an increase in total runoff will have a meaningful negative downstream impact. This is not consistent with the restrictive covenant, or the existing MOE ECA.
34. It is my opinion that the conclusions made in the report are not fully supported by the materials presented. Specifically:
- a. The conclusion that the minor system (eg, the pipe system) can convey the 1:5 through 1:100 year event to the designated SWM facilities is not supported by material presented in the report. The report indicates that the minor system has been designed for the 1:2 year event, and up to 35 cm of surface ponding is required to convey the overland flows (major system) of the 1:100 year event.
 - b. The conclusion that the major system can convey beyond the 1:100 year event is not supported by the material presented in the report. The report indicates that the major system will convey beyond the 1:2 year, since the minor system has been designed to carry the 1:2 year event. The capacity of the major system beyond the 1:100 year event has not been discussed in the report.
 - c. The conclusion that quality control will come from EES is not supported by the material presented in the report. The expected performance can only occur when the invert of the lowest pipe in the EES is meaningfully above the groundwater elevation. That is not expected for the vast majority of the site. The cross-sectional area of storage required would have to average close to 1m² above the water table, which is substantially more than what has been proposed in the report.
 - d. The conclusion that no HGL increases will occur in the existing SWM infrastructure is partially supported by the material presented. The discussion on the SWM infrastructure relating to the Beaver Pond is not credible in the absence of subsurface storage or calibration data that includes less frequent events.
 - e. The conclusion that the peak flows into the Beaver Pond are equal to or less than predevelopment flows is supported by the materials presented, but it is of little value as the total volume in the pond governs the release rate from the pond, rather than the incoming flow rate. And one can not infer that the volume would not increase, as this requires shifting the peak response from the site by significantly more than existing response time of the pond. The on-site ponds will delay the peak flow leaving in the minor system, but the interference with the

groundwater will accelerate the peak flow that would be leaving via sub-surface drainage and this is not discussed.

35. It is my opinion JSFA 2021-1 has not demonstrated that the proposed works will not negatively impact the performance of the existing stormwater management system.

36. Hydrologic Assessment Downstream of 7000 Campeau JSFA 2021-2

- a. Flows into and out of the Beaver Pond have been calculated and are tabulated, together with total flows. A partial summary is here, showing contributing areas (eg., not infiltrating) in ha, Peak Flows in and out in m³/s, Runoff Volume in 1000 m³, the ratio between the peak flow out proposed /peak flow out existing, and the ratio between runoff volume proposed/runoff volume existing:

| Event | Existing | | | | Proposed | | | | | |
|-----------------|----------|--------|-------|-------|----------|--------|-------|-------|---------------------------------|------------|
| | area | Q in | Q out | Vol.X | area | Q in | Q out | Vol. | Q _p /Q _{pX} | Vol/ Vol X |
| 25mm4hr | 415.85 | 4.626 | 0.139 | 14.8 | 320.66 | 4.593 | 0.131 | 16.7 | 0.942 | 1.13 |
| 12 hr SCS | 415.85 | 4.644 | 0.314 | 30.6 | 362.97 | 4.609 | 0.283 | 39.1 | 0.901 | 1.28 |
| 12 hr SCS | 415.85 | 7.164 | 0.486 | 48.6 | 382.23 | 6.941 | 0.463 | 63.7 | 0.953 | 1.31 |
| 12 hr SCS | 415.85 | 9.686 | 0.599 | 65.2 | 390.47 | 9.071 | 0.578 | 85 | 0.965 | 1.30 |
| 12 hr SCS | 415.85 | 13.964 | 0.718 | 90.3 | 397.17 | 12.648 | 0.689 | 115.3 | 0.960 | 1.28 |
| 12 hr SCS | 415.85 | 17.893 | 0.792 | 109.5 | 400.3 | 15.935 | 0.749 | 137.6 | 0.946 | 1.26 |
| 12 hr SCS | 415.8 | 24.521 | 0.854 | 129.9 | 402.35 | 22.183 | 0.805 | 160.5 | 0.943 | 1.24 |
| 24 hr SCS | 415.85 | 6.603 | 0.358 | 39 | 365.28 | 6.502 | 0.322 | 48 | 0.899 | 1.23 |
| 24 hr SCS | 415.85 | 10.871 | 0.548 | 63.5 | 383.14 | 10.398 | 0.521 | 79.2 | 0.951 | 1.25 |
| 24 hr SCS | 415.85 | 14.605 | 0.642 | 82.5 | 390.21 | 13.588 | 0.618 | 102.2 | 0.963 | 1.24 |
| 24 hr SCS | 415.85 | 19.1 | 0.745 | 108.5 | 395.75 | 17.526 | 0.714 | 132.3 | 0.958 | 1.22 |
| 24 hr SCS | 415.48 | 23.303 | 0.813 | 129.9 | 397.92 | 20.855 | 0.776 | 155.6 | 0.954 | 1.20 |
| 24 hr SCS | 415.01 | 34.161 | 0.881 | 153.8 | 400.19 | 30.8 | 0.833 | 181.4 | 0.946 | 1.18 |
| 3 hr CHI | 415.85 | 7.098 | 0.238 | 22 | 352.07 | 7.039 | 0.219 | 28.2 | 0.92 | 1.28 |
| 3 hr CHI | 415.85 | 12.18 | 0.437 | 38.4 | 377.97 | 11.954 | 0.419 | 52.2 | 0.959 | 1.36 |
| 3 hr CHI | 415.85 | 15.175 | 0.533 | 50.5 | 386.48 | 14.594 | 0.513 | 69.1 | 0.962 | 1.37 |
| 3 hr CHI | 415.68 | 19.916 | 0.626 | 66.5 | 392.22 | 18.503 | 0.603 | 90.6 | 0.963 | 1.36 |
| 3 hr CHI | 415.09 | 25.585 | 0.692 | 79.4 | 395.33 | 23.931 | 0.659 | 107.6 | 0.952 | 1.34 |
| 3 hr CHI | 414.44 | 29.457 | 0.75 | 93.9 | 397.84 | 27.321 | 0.711 | 126 | 0.948 | 1.14 |
| 24 hr SCS + 20% | 413.86 | 50.926 | 1.007 | 207.7 | 403.28 | 46.667 | 0.95 | 237.4 | 0.943 | 1.14 |

- b. It is my opinion that these results demonstrate problems with the modelling. For example, with 25mm of rainfall (highlighted in the first row of the table), if the first 22mm are to be captured

from the 70.9 ha development, then the contributing area can not decline by nearly 100 ha. The expected value would be approximately $22/25 \times 70.9 \text{ ha} = 62 \text{ ha}$. There must be other, undocumented changes to the model between Existing and Proposed. The table also demonstrates that while the peak flow rate is reduced, the total runoff reaching the pond is increased by 13% to 37%. As the pond performance is governed by volume, not flow rate, this has the potential to interfere with the performance of the pond.

37. It is my opinion that JFSA 2021-2 has not been demonstrated that the receiving water body (Beaver Pond) has the capacity to receive the change in volume that would come from the increase in imperviousness expected with development, and thus has not demonstrated that there would be no increase in downstream water levels.

38. Preliminary Water Balance and Water Quality Controls JSFA 2021-3

- a. The math used to predict TSS removal is incorrect. It makes the assumption that the pre-treatment in the deep sump will remove the same particle size distribution as will pass the structure. It is my opinion that sumps will preferentially capture coarse materials. If it captures 25% of the TSS, it will be in the coarsest fraction of sands and gravels. If the finest 20% of sediment passes through the ESS, putting deep sumps will not decrease that. The only significant benefit of the deep sumps is the cost of cleaning the sump is significantly lower than cleaning the pipe. – it can not increase quality treatment.
- b. The estimated benefits from thermal mitigation are overstated. The stone trench acts as a thermal capacitor, capturing the heat from the stormwater runoff. But this heat is then released into and carried away by the interflow, so that over a few days, all of the heat ends up in the stormwater pond, anyway. Due to the response time of the pond, there is only a very small impact at the beginning of the response in Kizell Drain where a difference could be expected.
- c. Patterson 2021-1 provides the initial infiltration rate (Fc) and from that, the SCS soil group has been assigned. The method used is not consistent with the USDA Part 630 Hydrology, Chapter 7 Hydrologic Soil Groups, which is the original source material. Silty clay, for example, is shown in table B1-1 of JSFA 2021-3 as HSG B, while bedrock is shown as HSG C – both of these are inappropriate, as Fc alone cannot be used to assign HSG. Tables 7-1 and 7-2 of USDA provide the criteria for assessing the soil properties, and relies on permeability, depth to groundwater, and depth to bedrock observed together. Where there is water on the surface, for example, the depth to groundwater is 0, and therefore is HSG D, regardless of the soil type. Where the bedrock is at the surface, the depth to rock is 0, so therefore is HSG D. As indicated in Paterson 2021(1), the assessment of soil properties is to be done at the depth of the intended infiltration, which is generally immediately above the proposed ground water elevation.
- d. It is my opinion that Table B1 needs to be re-evaluated to consider the presence of surficial bedrock, subsurface bedrock, the elevation of the intended infiltration, and the groundwater elevation.
- e. A report is referenced to assign the 90th %ile rainfall event as 22mm. This is not consistent with the Provincial draft MOE LID manual, which indicates 27mm is the appropriate rainfall depth to utilize for LID sizing in this area.
- f. Infiltration via the ESS is expected to be 21% of the rainfall. This does not consider how much of the runoff will be conveyed to the pond as interflow in the clear-stone pipe bedding. In my

opinion, based on a calculation of flow through the interstitial spaces with 4m of fall in 1500m of length, it is expected that 7% of the rainfall, or about 45mm per year, will end up infiltrating. It is not clear how much groundwater would be intercepted, as the groundwater elevation is expected to drop as a result of the development.

39. It is my opinion that JSFA 2021-3 has not demonstrated that the proposed works will not negatively impact the performance of the existing stormwater management system.
40. It is my opinion that the supporting materials presented are inadequate and lacking, and when they are resubmitted, they should include:
 - a. The criteria for approval as provided by the approval authorities, the restrictive covenant, and any other applicable policies.
 - b. Modelling that shows that post-development flow rates within the Kizell Drain are not increased over pre-development flows. The existing conditions model must be calibrated with the largest rainfall events available, rather than only the smallest ones. The existing conditions model should include all estimated storage required to model the existing pond performance. The future conditions model should only include quantifiable storage – even if subsurface storage is required for calibration in the existing conditions model. If it cannot be determined that this volume and the release rate will be available in perpetuity, then it cannot be relied on in the future conditions model.
 - c. Demonstration that the change in flows and volume within the Beaver Pond does not impact the performance of the quality treatment of the Beaver Pond.
 - d. Documentation from the City of Ottawa that the use of EES for quantity and quality treatment is supported and under what conditions. If ESS is supported, it must be shown where it will be able to be used effectively – changing groundwater conditions in sensitive marine clays is known to be hazardous.
 - e. An analysis that demonstrates that all of the criteria for approval, including the restrictive covenant, can be met using acceptable techniques.

Conclusions - Expert Witness Statement
Douglas Nuttall P. Eng.

| <u>Issue</u> | <u>Issue Description</u> | <u>Conclusion</u> |
|---------------------|---|---|
| 5 | Is the subdivision premature (s.51(24)(b))? | Yes. The Conceptual Stormwater Management Plan for the site does not provide the criteria for approval as provided by the approval authorities, makes conclusions that are not supported by the studies provided, and relies of infrastructure that is not appropriate to the site. The Conceptual SWM plan has to be substantially reworked prior to resubmission. |
| 10 | Are the grading and drainage, and tree preservation plans consistent with one another? Will they provide effective protection for the trees and the landscape buffer and will they maintain positive drainage routes? | This can not be determined, because the fundamental principal of SWM for this site – the use of EES – is inappropriate and the entire concept needs to be reworked. |
| 12 | Does this plan of subdivision have a legal outlet for stormwater from the proposed development (s.51(24)(h) and (i))? | Not in its current form. The proposal does not demonstrate how the water level in the Beaver Pond would change as a result of the development, so the capacity of the downstream channel to convey the change in flows can not be determined. The Drainage Act defines “sufficient outlet” as “. . . a point at which water can be discharged safely so that it will do no damage to lands or roads . . .”. As existing roads and lands downstream are exposed to flood risk currently, any increase in flow has the potential of causing damage. Legal outlet would be contingent on not increasing water levels in the Beaver Pond. |
| 15 | Has the major overland flow from the proposed draft plan of subdivision lands, and connecting existing residential land, into the Beaver Pond been accounted for? | The model being used is not sufficient to answer this question. With the absence of the subsurface storage from the existing conditions model, any calibration exercise for infrequent, large magnitude events (as one would expect to produce Major flows) will be necessarily imprecise. |
| 17 | Does the technique for low impact development means of dealing with stormwater need to be determined prior to draft approval. | Yes. Many forms of LID would not be appropriate for this site, and it is not assured that there would be at least one that would be appropriate. |
| 19 | What is the appropriate number and location of stormwater ponds and should they be for both quality and quantity control? | They should be for both quantity and quality – adding flows to the Beaver Pond will defacto reduce the existing SWM quality treatment. And adding volume to the Beaver Pond will increase peak water levels, and therefore peak |

- downstream flows. The correct number and placement is of less importance than sufficient performance.
- 27 Does the proposed zoning amendment have appropriate regard to Section 2 with particular reference to Subsections (a), (h), (i), (o), (p) and (r)?
- a) Protection of ecological systems – supporting documentation that downstream flows will not be increased, and thus not increase river morphodynamics, has not been provided.
- o) protection of public health and safety – supporting documentation that downstream flows will not be increase, and thus not increase current flood risks, has not been provided.
- 28 Does the proposed zoning amendment have appropriate regard to Section 3(5) with respect to the proposed by-law being consistent with the Provincial Policy Statement 2020 as approved under this Section?
- Section 1.1.1.c** - protection of public health and safety – supporting documentation that downstream flows will not be increase, and thus not increase current flood risks, has not been provided.
- Section 1.1.1.j** preparing for the regional and local impacts of a changing climate – supporting documentation that lowering groundwater will not adversely affect vegetative communities has not been provided
- Section 1.1.3.4** mitigating risks to public health and safety – supporting documentation that downstream flows will not be increase, and thus not increase current flood risks, has not been provided.
- Section 1.6.6.7 c** minimize erosion and changes to water balance - supporting documentation that lowering groundwater will not adversely affect vegetative communities and soil stability has not been provided.
- Section 1.6.6.7 d** mitigate risks to human health, safety, property, and the environment — supporting documentation that downstream flows will not be increase, and thus not increase current flood risks or river morphodynamics, has not been provided.
- Section 1.6.6.7 f** promote stormwater re-use – no effort has been made to retain water on-site for irrigation, rainwater harvesting, etc.
- Section 2.2.1 d&e)** identify water resources systems – supporting documentation that the subsurface storage would be not negatively impacted from the proposed development has not been provided.

- 2.2.2 site alteration** will be restricted near sensitive surface and groundwater features - supporting documentation that the surface/groundwater interactions would be not negatively impacted from the proposed development has not been provided.
- 30 Does the proposed plan of subdivision have appropriate regard to the provisions of Section 51(24) with reference to Subsections (a), (b), (c), (d), (e), (f), (g), (h) and (k)?
- b) yes, premature – insufficient information to draw required conclusions.
- c) no, OP lists 40% parkland dedication.
- d) no, sensitive marine clays and shallow bedrock prevent the proposed SWM approach.
- h) no, modelling of flood effects is inadequate.
- 31 Further to Section 51(24) Subsections (d) and (h), is it appropriate to consider the development of lands that will drain both overland and through piped infrastructure passing through a watershed with potential risk of flooding, erosion damage to tributaries and adverse impacts on natural wildlife given the unresolved pre-existing conditions as noted under Comments numbered 136, 140, 170, 171, 177, 178, 180, 181 and 191 in the City of Ottawa's letter dated December 19, 2019 in that watershed?
- These City comments are requesting additional information on flows, flooding, erosion, fish populations and habitat, geomorphology, riparian rights holders' concerns, and the strategy to mitigate the associated challenges. While additional information has been provided, it does not completely address all of these concerns, so it is therefore not appropriate to consider re-development of the land.
- 32 Is the proposed zoning amendment and plan of subdivision consistent with the PPS 2020 with particular reference to Section 1.1.1 b) and c); 1.1.3.4; 1.6.6.7; 2.2.1 a) and i); 2.2.2; and 3.2.2
- Section 1.1.1.c** - protection of public health and safety – supporting documentation that downstream flows will not be increase, and thus not increase current flood risks, has not been provided.
- Section 1.1.1.j** preparing for the regional and local impacts of a changing climate – supporting documentation that lowering groundwater will not adversely affect vegetative communities has not been provided.
- Section 1.1.3.4** mitigating risks to public health and safety – supporting documentation that downstream flows will not be increase, and thus not increase current flood risks, has not been provided.
- Section 1.6.6.7 c** minimize erosion and changes to water balance - supporting documentation that lowering groundwater will not adversely affect vegetative communities and soil stability has not been provided.

Section 1.6.6.7 d mitigate risks to human health, safety, property, and the environment — supporting documentation that downstream flows will not be increase, and thus not increase current flood risks or river morphodynamics, has not been provided.

Section 1.6.6.7 f promote stormwater re-use – no effort has been made to retain water on-site for irrigation, rainwater harvesting, etc.

Section 2.2.1 d&e) identify water resources systems – supporting documentation that the subsurface storage would be not negatively impacted from the proposed development has not been provided.

Section 2.2.1 i) ensuring stormwater management practices minimize stormwater volumes and contaminant loads, and maintain or increase the extent of vegetative and pervious surfaces – supporting documentation does not demonstrate stormwater volumes are minimized, extent of vegetative surfaces no increased.

2.2.2 site alteration will be restricted near sensitive surface and groundwater features - supporting documentation that the surface/groundwater interactions would be not negatively impacted from the proposed development has not been provided.

34 Is the proposed zoning amendment and plan of subdivision in general conformity with the Official Plan with particular reference to the following sections:

b) 2.3.3 - Drainage and Stormwater Management Services

g) 4.10 – Greenspace Requirements

2.3.3,1. Development will be in accordance with the system capacity for drainage – material provided does not demonstrate that the Beaver Pond has capacity for the change in volume.

2.3.3.3 applicable standards will be subject to consultation between City, CA, affected landowners, etc. – material provided does not demonstrate what standards or the effect of that consultation.

4.10.5.2 This land is part of the 40% parkland dedication. So, no.

Appendix

Attachment 1
Curriculum Vitae

Douglas Nuttall, P.Eng.

Senior Water Resources Engineer

EDUCATION

University of Alberta
BSc Civil Engineering 1994

PROFESSIONAL MEMBERSHIPS

P.Eng. (Ontario)

INDUSTRY TENURE

26 years

EMPLOYMENT HISTORY

Senior Civil Engineer JP2G
Apr 2016 to Oct 2020

Senior Water Resources
Engineer Parish
Geomorphic July 2014 to
January 2016

Water Resources Engineer
Mississippi Valley
Conservation Authority
Sept 2005 to July 2014

Project Engineer Robinson
Consultants 1999 to 2005

Doug is a broad-spectrum civil engineer with 26 years of professional experience. He has extensive experience in the planning and approval process and is skilled in providing in-depth technical review and quality control. He has performed numerous technical regulatory reviews of stormwater management plans, flood plain studies, channel modifications, and similar projects. Doug is an expert in modern hydrologic and hydraulic modelling software packages.

He will be leading technical investigation, analysis, modelling, and documentation for various planning studies and detailed design projects relating to stormwater management facilities, drainage infrastructure, and other surface water management systems, provide quality control, training and mentorship to junior staff, and participate in business development.

RELEVANT EXPERIENCE

Town of Perth, Western Annex Infrastructure Master Plan

Perth, Ontario

Engineering lead on Infrastructure Master Plan, intended to allow a 10% increase in the residential capacity of the Town. 2017 to 2019. Designed method to discharge stormwater into PSW using dispersed percolation. Attended meetings, liaised with Town officials, public. Compiled report.

City of Ottawa, Flood Plain Mapping Project

Ottawa, Ontario

Team lead for peer review of 22 flood plain mapping studies prepared by the 3 local Conservation Authorities in 2019. Checked modelling and reporting against project objectives.

Royal Military College, Flood Line Delinication

Kingston, Ontario

Team lead for flood plain mapping, wave uprush assessments of existing infrastructure, and recommendations for projects to reduce risk. Completed detailed uprush analysis for 12 reaches, directed mapping, wrote report, 2020.

Stantec, Riverside South Stormwater Management Conceptual Design

Ottawa, Ontario

Design Engineer. Provided channel capacities and cost estimates of changes in capacity to Stantec for Urbandale development, to allow them to find most efficient distribution of flows from ponds into existing drainage network. 2015

City of Ottawa, Kanata North Urban Expansion Area

Ottawa, Ontario

Design Engineer. Provided Headwater Drainage Feature assessments throughout the urban expansion area, quantified impacts of discharge into Shirley's Brook. 2015.

National Capital Commission, Shirley's Brook Realignment

Ottawa, Ontario

Design Engineer. Provided advice on historic planform restoration of Shirley's Brook as a means of improving ecosystem and reducing continuous road maintenance costs, 2015.

Attachment 2

Acknowledgement of Expert's Duty



Ontario

Ontario Land Tribunal

Tribunal ontarien de l'aménagement du territoire

Acknowledgment Of Expert's Duty

| OLT Case Number | Municipality |
|-----------------|----------------|
| PL200195 | City of Ottawa |

1. My name is.....**Douglas Nuttall, P.Eng.**
I live at theVillage of McDonalds Corners
in the.....Lanark County
in theProvince of Ontario
2. I have been engaged by or on behalf of The Kanata Greenspace Protection Coalition (KGPC) to provide evidence in relation to the above-noted Ontario Land Tribunal ('Tribunal') proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - a. to provide opinion evidence that is fair, objective and non-partisan;
 - b. to provide opinion evidence that is related only to matters that are within my area of expertise;
 - c. to provide such additional assistance as the Tribunal may reasonably require, to determine a matter in issue; and
 - d. not to seek or receive assistance or communication, except technical support, while under cross examination, through any means including any electronic means, from any third party, including but not limited to legal counsel or client.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date...November 12, 2021


Signature

Attachment 3
Comments to City & Reply



August 4, 2021

Laurel McCreight MCIP, RPP
Planner II

Planning Services

Planning, Infrastructure & Economic Development Department

110 Laurier Avenue West, 4th Floor

Ottawa ON K1P 1J1

sent by email: Kanatalakes@ottawa.ca

Re: Rezoning File #D02-02-19-0123; Subdivision Application #D07-16-19-0026
7000 Campeau Drive
Peer Review for Stormwater Management

Dear Ms. McCreight

I have been retained by the Kanata Greenspace Protection Coalition (KGPC) to conduct a peer review assessment of the Stormwater proposals included in the above applications.

I have been a Professional Engineer in Ontario for 20 years, and the last 16 years of my career has focused on stormwater management systems and riverine processes, with much of my career being at the Mississippi Valley Conservation Authority, providing technical reviews on precisely this kind of development. A copy of my resume is attached to this letter for your reference.

Several concerns are identified within the supporting materials provided by the consultants JFSA, Paterson Group, and DSEL to support the proposed SWM design for this proposal.

1) Design Criteria

There are a number of existing documents which provide the constraints relating to stormwater management for this site. While there are some design criteria identified in earlier versions of the existing reports, in my opinion a concern exists that some of the documents that provide relevant constraints to stormwater management for this site have not been considered. For example, a restrictive covenant on the deed of the property that specifically addresses stormwater management is not listed. The developer should provide the complete list of the constraints obtained during the mandatory pre-consultation for this project.

2) Sensitive Soils

Much of the development is identified as having sensitive fine-grained marine soils (e.g., Leda Clay). As such, changes in the groundwater conditions have a risk of producing unstable soil conditions. While tree restrictions, preloading, and limited grade raise can reduce the risks to future developments, those controls cannot be expected to decrease the risks to the existing properties immediately surrounding the site. Changes in groundwater conditions do not stop at property lines. The developer must demonstrate that the proposed site alterations will not negatively impact adjacent properties.

3) Groundwater Mounding

The geotechnical report indicates that there is a groundwater surface observed at and near the existing ground surface, to as deep as 3m below the ground surface. It also indicates that this is present only because of the presence of overland drainage coming from off-site, and that once that flow is directed into a subsurface sewer system, the surficial groundwater will drop down to 2-3m below ground surface. In my opinion, this strongly implies that groundwater mounding can be expected to reach up to 2m above the groundwater surface. When designing the Etobicoke Exfiltration System (EES), the invert of the clearstone trench is to be a minimum of 1.0m above the groundwater or bedrock elevation, and due to the presence of significant groundwater mounding, this could be considered an absolute minimum clearance, with 2m being a more appropriate average value.

Within the clay soils, the geotechnical report indicates there are grade change limitations that require that the finished ground surface is not increased beyond 2 or 2.5m above the existing grade, due to the inherent weakness of the sensitive marine soils. The minimum depth to invert on the storm sewer is 1.8m, the invert of the clear stone trench is a minimum of 1.05m below the invert of the storm sewer, and there is to be 2m to the groundwater surface. This puts the highest acceptable groundwater elevation to be 2.35m below the existing ground, which is 0.35m lower than the top of the range of expected groundwater. The lowest expected invert (not necessarily within the clays soils) is significantly deeper.

Existing ground + 2.5m of grade raise – 1.8m of frost protection – 1.05m to bottom of EES = 0.35m of excavation below existing ground

Existing ground – 2m down to future GW elevation + 2m of mounding = impeded infiltration if the bottom of excavation is below existing grades

As this is below the top of the expected range of groundwater, there will be places where infiltration can be impeded, making those areas inappropriate for the use of this approach. In my opinion, the consultant must identify where infiltration will be impeded (ideally graphically), and remove the EES from these areas.

4) LID design

The proposed EES is expected to infiltrate up to approximately 7000m³ during a 'typical' rainfall event and to capture the runoff from a 22mm rainfall event. This is inconsistent with the MECP Draft LID manual, which would recommend 27mm of treatment in this location. The LID system as proposed in all roads, can be expected to convey water as interflow. By my calculation, the flow rate within the clear stone trench would cause approximately 2/3 of the captured water to reach the Beaver Pond while the Beaver Pond was still responding to the storm event. This suggests that the interflow has the potential of impacting the total volume in the pond and, as a result, the flow rate downstream through the balance of the Kizell Drain. Placing clay plugs within the clear stone trench to reduce longitudinal flow would be of limited value, due to the requirement of blasting and shattering within the bedrock to create the trench. In my opinion, there will be flow paths around the clay.

Likewise, there is approximately 72000m³ of subsurface storage within the catchment of the Beaver Pond, however its location and description is not well defined. It is assumed to be within the pore spaces created by shattering stone subsequent to blasting in the previous phases of development of the golf course and the existing residential community. If the proposed development interferes with the existing storage by increasing subsurface conveyance to the Beaver Pond, then the potential exists to further increase the pond elevation, and thus the downstream flows into the receiving stream.

5) SWM design

4 ponds and 1 subsurface storage unit are proposed. 2 of the 4 ponds (Ponds 1 and 3) will require extensive rock excavation (up to 8m), which will, by necessity, interfere with existing groundwater flows. Ponds 1 and 3 are proposed as dry ponds with an impervious liner constructed within surrounding bedrock. This design runs the risk of experiencing an upward hydraulic gradient from the groundwater, unless there are specific efforts made to lower the groundwater table, by increasing the rate of subsurface conveyance. Interfering with groundwater has the potential of destabilizing sensitive soils and decreasing groundwater recharge.

6) Hydrologic modelling

The design as proposed by the consultant is based on a hydrologic model that was calibrated in 2019 with no infrequent events included and does demonstrate a high accuracy when limited to the site lands. When extended to the entire watershed, it produces, in my opinion, a poor representation of the existing system response. The Beaver Pond has a well-defined, mostly linear response for about 5 days after a major event, and the hydrologic model used does not reflect this well. In addition, there is no discussion of the previous work done by the consultant in 2015 that explored both the subsurface storage and the Beaver Pond response. Without defining both the storage capacity within the model and including infrequent events in the calibration, the model cannot be relied on to predict the existing conditions during severe events. In the absence of a predictive model for severe events, forward-looking conclusions will be of limited value.

SWM systems designed for infill development must demonstrate two functionalities. They can neither introduce new problems to an existing system nor can they exacerbate existing problems. In this case, I am of the opinion that the proposed works have the potential to increase water levels in the receiving water body (downstream Kizell Drain) and negatively impact unstable soils. No development proposal should be considered for the 7000 Campeau site unless the proponents can adequately address these concerns.

Sincerely,
HDR - Transportation



Douglas Nuttall, P.Eng.
Senior Water Resources Engineer

Nuttall, Douglas

From: Kanata Lakes <KanataLakes@ottawa.ca>
Sent: Tuesday, October 19, 2021 7:52 AM
To: Nuttall, Douglas
Cc: Barbara Ramsay
Subject: RE: KGPC WR Peer Review.pdf

CAUTION: [EXTERNAL] This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Mr. Nuttall,

Thank you for your comments on behalf of Kanata Greenspace Protection Coalition (KGPC). Your comments have been well received and match with many of the comments the City has made in the past and has made in this submission's review.

We agree that there are several stormwater management (SWM) constraints for this infill subdivision and all need to be considered. If this subdivision were to achieve draft plan approval of subdivision after future submission(s), several stormwater management conditions are expected. The need for restrictive covenants will be considered at that time and they will be dependent on their need given the final and agreed upon stormwater management approach at that time.

The underground soil, bedrock and groundwater profile, as well as slope stability, of the existing and proposed site is an area of focus for the City's review as well; particularly where the site abuts existing residential lots. Since the applicant is proposing use of a low-impact development technique (LIDs), several City comments relate to the stability of the soils, appropriateness of the proposed LIDs given the site conditions, correctness of the LID calculations and request for additional geotechnical information. Please note that the City has not accepted the blanket use of the Etobicoke exfiltration system (EES) and more information has been requested before considering its use in localized areas.

The City has requested a hydrogeological analysis of the soils and groundwater as they relate to the SWM design among several other related comments. Ideally, this report will address several of the City's, and therefore KGPC's, concerns.

The City has made several comments and has had a meeting with the applicant's consultants related to the site SWM model and the subwatershed model used to support this proposal. This is an area that still needs to be refined and the City will continue to discuss the appropriate approach with the applicant's consultants.

We are in agreement that developments are to neither introduce new problems to an existing system nor should they exacerbate existing ones. These are some of very reasons for Development Review's involvement in privately led projects and we take our work seriously and professionally. All of KGPC's concerns have already been identified by the City and we will continue to review this file with these and other concerns in mind.

Thank you again for your comments.

Please do not hesitate to contact me with any questions.

Regards,
 Laurel

Laurel McCreight MCIP, RPP

Planner
Development Review West
Urbaniste
Examen des demandes d'aménagement ouest

City of Ottawa | Ville d'Ottawa
☎ 613.580.2424 ext./poste 16587
ottawa.ca/planning / ottawa.ca/urbanisme

From: Nuttall, Douglas <Douglas.Nuttall@hdrinc.com>
Sent: August 04, 2021 11:59 AM
To: Kanata Lakes <KanataLakes@ottawa.ca>
Cc: Barbara Ramsay <barbararamsay@me.com>
Subject: KGPC WR Peer Review.pdf

CAUTION: This email originated from an External Sender. Please do not click links or open attachments unless you recognize the source.

ATTENTION : Ce courriel provient d'un expéditeur externe. Ne cliquez sur aucun lien et n'ouvrez pas de pièce jointe, excepté si vous connaissez l'expéditeur.

Attached, please find my peer review of the documents relating to Water Resources for the Kanata Lakes Golf Course redevelopment.

Douglas Nuttall, P.Eng.
Senior Water Resources Engineer

HDR
100 York Boulevard, Suite 300
Richmond Hill, Ontario, Canada L4B 1J8
☎ 289 695 4761
Douglas.Nuttall@hdrinc.com

hdrinc.com/follow-us

This e-mail originates from the City of Ottawa e-mail system. Any distribution, use or copying of this e-mail or the information it contains by other than the intended recipient(s) is unauthorized. Thank you.

Le présent courriel a été expédié par le système de courriels de la Ville d'Ottawa. Toute distribution, utilisation ou reproduction du courriel ou des renseignements qui s'y trouvent par une personne autre que son destinataire prévu est interdite. Je vous remercie de votre collaboration.

Attachment 4
Restrictive Covenant

| | | | |
|--|--|--|---|
| <p style="text-align: center; font-weight: bold;">1020194</p> <p style="text-align: center;">CERTIFICATE OF RECEIPT (RÉCEPISSE OTTAWA-CARLETON (4)</p> <p style="text-align: center;">'97 01 8 14 18</p> <p style="text-align: center;"><i>MONICA WASAG</i> MONICA WASAG CERTIFICATION OFFICER</p> | <p>(1) Registry <input type="checkbox"/> Land Titles <input checked="" type="checkbox"/> (2) Page 1 of 1 pages</p> | <p>(3) Property Block Property Identifier(s) 04513 0027(LT) 04512 0840(LT)</p> | <p>Additional: See Schedule <input checked="" type="checkbox"/></p> |
| | <p>(4) Nature of Document APPLICATION TO REGISTER RESTRICTION AND COVENANTS (Subsection 119(1) of the Act)</p> | | |
| | <p>(5) Consideration</p> <p style="text-align: right;">Dollars \$</p> | | |
| | <p>(6) Description In the City of Kanata, in the Regional Municipality of Ottawa-Carleton:</p> <p>FIRSTLY: Block 69, Plan 4M-510</p> <p>SECONDLY: Block 126, Plan 4M-651</p> <p>As continued on Schedule "A" attached hereto.</p> | | |
| | <p>(7) This Document Contains: (a) Redescription New Easement Plan/Sketch <input type="checkbox"/> (b) Schedule for: Description <input checked="" type="checkbox"/> Additional Parties <input type="checkbox"/> Other <input checked="" type="checkbox"/></p> | | |
| <p>New Property Identifiers</p> <p>Additional: See Schedule <input type="checkbox"/></p> | <p>Executions</p> <p>Additional: See Schedule <input type="checkbox"/></p> | | |

(8) This Document provides as follows:

CLUBLINK CAPITAL CORPORATION, the registered owner of the land described in Box (6) of this Document General, HEREBY REQUESTS you to register as annexed to the aforesaid land the restrictions and covenants set out in the attached Schedule "B"

Continued on Schedule ☐

(9) This Document relates to instrument number(s)

| | | |
|---|--|--|
| <p>(10) Party(ies) (Set out Status or Interest) Name(s) CLUBLINK CAPITAL CORPORATION (owner) I have authority to bind the Corporation</p> | <p>Signature(s) Per: <i>[Signature]</i> Name: Justin A. Connidis Title: Vice President & Secretary</p> | <p>Date of Signature Y M D 1997 01</p> |
|---|--|--|

(11) Address for Service c/o ClubLink Corporation, 15675 Dufferin Street, King City, Ontario, L7B 1K5 Attn: Justin A. Connidis

| | | |
|---|---------------------|------------------------------------|
| <p>(12) Party(ies) (Set out Status or Interest) Name(s)</p> | <p>Signature(s)</p> | <p>Date of Signature Y M D</p> |
|---|---------------------|------------------------------------|

(13) Address for Service

| <p>(14) Municipal Address of Property 7000 Campeau Road Kanata, Ottawa</p> | <p>(15) Document Prepared by: WEIR & FOULDS Suite 1600, Exchange Tower 2 First Canadian Place Toronto, Ontario M5X 1J5 (Attn: R. Wayne Rosenman)</p> | <p style="text-align: center;">276</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: left;">Fees and Tax</th> </tr> <tr> <td style="width: 70%;">Registration Fee</td> <td style="width: 30%; text-align: center;"><i>[Signature]</i></td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td>Total</td> <td> </td> </tr> </table> | Fees and Tax | | Registration Fee | <i>[Signature]</i> | | | | | | | Total | |
|---|--|--|--------------|--|------------------|--------------------|--|--|--|--|--|--|-------|--|
| Fees and Tax | | | | | | | | | | | | | | |
| Registration Fee | <i>[Signature]</i> | | | | | | | | | | | | | |
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| | | | | | | | | | | | | | | |
| Total | | | | | | | | | | | | | | |

Additional Property Identifier(s) and/or Other Information

Schedule "A"

In the City of Kanata, in the Regional Municipality of Ottawa-Carleton:

- THIRDLY:** PIN 04513-0091 (LT)
Block 132, Plan 4M-651.
- FOURTHLY:** PIN 04511-0214 (LT)
Block 183, Plan 4M-652.
- FIFTHLY:** PIN 04511-0700 (LT)
Part Block 184, Plan 4M-652, being designated as Part 2 on Plan 4R-7217.
- SIXTHLY:** PIN 04511-0659 (LT)
Block 185, Plan 4M-652.
- SEVENTHLY:** PIN 04511-0658 (LT)
Block 186, Plan 4M-652.
- EIGHTHLY:** PIN 04512-0357 (LT)
Block 160, Plan 4M-739.
- NINTHLY:** PIN 04511-0779 (LT)
Block 76, Plan 4M-741.
- TENTHLY:** PIN 04512-0740 (LT)
Block 76, Plan 4M-828, save and except Plan 4M-925.
- ELEVENTHLY:** PIN 04512-0140 (LT)
Block 1, Plan 4M-881, save and except for (i) Plan 4M-925; and (ii) Parts 1, 2, 3, 4, 5 and 6, inclusive, on Plan 4R-12476.
- TWELFTHLY:** PIN 04512-0683 (LT)
Block 55, Plan 4M-883.
- THIRTEENTHLY:** PIN 04512-0676 (LT)
Block 56, Plan 4M-883, save and except for Part 7 on Plan 4R-12476.
- FOURTEENTHLY:** Part of PIN 04511-1007 (LT)
Part of Lots 5 and 6, Concession 3 and part of the road allowance between Lots 5 and 6, Concession 3 of the geographic Township of March designated as Part 2, Plan 4R-7987.
- FIFTEENTHLY:** Part of PIN 04511-1003 (LT)
Part of Lot 6, Concession 3, designated as Part 1, Plan 4R-7987.
- SIXTEENTHLY:** PIN 04511-1002 (LT)
Part road allowance as widened between Lots 5 and 6, Concession 3 of the geographic Township of March, being that part of Beaverbrook Road and Richardson Side Road (as stopped up and closed by LT552228) being designated as Part 4, Plan 4R-6557.
- SEVENTEENTHLY:** PIN 04512-0358 (LT)
Part Block 192, Plan 4M-652, designated as Part 2, Plan 4R-7259.

Schedule "B"

RESTRICTIONS AND COVENANTS

1. To the intent that the burden of these covenants and restrictions shall run with each and every part of the Golf Lands (as hereinafter defined) and to the intent that the benefit of these covenants and restrictions may be annexed to and run with each and every part of the Benefited Lands (as hereinafter defined), ClubLink Capital Corporation covenants and agrees with Imasco Enterprises Inc. and its successors and assigns that ClubLink Capital Corporation and its successors and assigns entitled from time to time of all or any portion of the lands described in Box (6) will keep, observe, perform and comply with the stipulations, provisions and covenants set forth in this Schedule.
2. The following definitions shall apply for the purposes of this Schedule:
 - (a) **"Benefited Lands"** means all or any portion of the lands and premises described in Schedule 1 hereto;
 - (b) **"Golf Lands"** means all or any portion of the lands and premises described in Box (6) of the Form 4 Document General to which this Schedule is annexed;
 - (c) **"Transferor"** means Imasco Enterprises Inc. and its successors and assigns; and
 - (d) **"Transferee"** means ClubLink Capital Corporation and any transferee of any of the Golf Lands affected by these restrictions and covenants and their respective heirs, administrators, executors, successors and assigns.
3. **Each and every part of the Golf Lands shall be subject to the following restrictions and covenants:**
 - (i) The Transferee agrees that:
 - (a) it shall not alter the grading of the Golf Lands or any of the storm water management facilities on or serving the Golf Lands; and
 - (b) there should be no construction of any buildings, structures or other improvements on any of the Golf Lands which may cause surface drainage from the Golf Lands to be discharged, obstructed or otherwise altered,

in a manner that materially adversely affects the Transferor's or the City of Kanata's storm water management plan in respect of the Transferor's Benefitted Lands as such plan exists as at November 1, 1996. Without limiting the generality of the foregoing, the Transferee in respect of the Golf Lands shall comply with all applicable municipal agreements, by-laws and regulations affecting the Golf Lands with respect to grading and storm water management.
 - (ii) The Transferee acknowledges that the Transferor as the owner of the Benefitted Lands, which Benefitted Lands are intended primarily for residential development, may require from time to time access to and the use of parts of the Golf Lands for the purpose of providing underground water drainage, sewage and other water management and municipal services and utilities serving the Benefitted Lands. The Transferee agrees to act reasonably in considering any such request from the Transferor on its behalf or on behalf of any governmental authority for such access and use and in granting any such access and use the Transferee, acting reasonably, may impose appropriate conditions including, without limitation, that such access and use does not materially interfere in any way with the playing of golf on the Golf Lands or otherwise materially interfere with the business carried on by the Transferee



of the ownership, operation and management of a golf club, that any damage caused by the Transferor's activities be promptly repaired to the Transferee's satisfaction, acting reasonably, and that the Transferee be indemnified by the Transferor against all costs and damages relating to such access and use. The Transferor agrees that it shall not enter on or install any of the services or utilities referred to above on or under any part of the Golf Lands except in accordance with the prior written agreement of the Transferee obtained in accordance with the provisions of this Schedule.

- (iii) To the extent that any of the restrictions and covenants contained in this Schedule may create an interest in the Golf Lands, such interest shall be effective only if the subdivision control provisions of the *Planning Act*, R.S.O. 1990, Chap. P.13 as amended, are complied with. The Transferor shall be responsible for obtaining at its expense any required consent under the said *Planning Act* and the Transferee shall cooperate with and assist the Transferor in obtaining any such required consent and the Transferor shall reimburse the Transferee for any reasonable costs incurred by the Transferee in so doing in favour of an arm's length third party. Without limiting the generality of the foregoing, the Transferor at its expense shall be responsible for preparing any necessary descriptions required to implement and confirm the rights granted by this Schedule.
- (iv) The Transferee covenants and agrees that it shall not sell, encumber, transfer or lease any portions of the Golf Lands unless it shall obtain from any such purchaser, transferee, encumbrancer or tenant a covenant in favour of the Transferor to comply with all of the restrictions and covenants contained in this Schedule, including without limiting the generality of the foregoing, a covenant to obtain a similar covenant from any subsequent purchaser, transferee, encumbrancer or tenant.
- (v) The Transferor and the Transferee from time to time at the request and at the expense of the other party and without further consideration shall execute and deliver such other documents and take such further steps as the other party may reasonably require to more effectively implement the intent of this Schedule.
- (vi) If any covenant or restriction contained herein, or the application thereof, to any person, corporation, partnership, trustee or unincorporated organization or circumstance shall, to any extent be invalid or unenforceable, the remainder of the covenants and restrictions or the application of such covenants and restrictions to persons, corporations, partnerships, trustees or unincorporated organizations or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each such covenant and restriction contained herein shall be separately valid and enforceable to the fullest extent permitted.

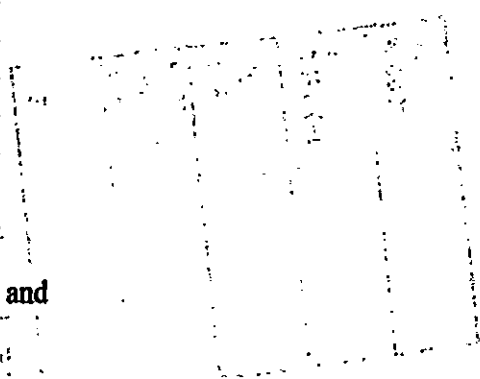
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Schedule 1 to Schedule "B"**BENEFITTED LANDS**

In the City of Kanata, in the Regional Municipality of Ottawa-Carleton:

FIRSTLY: All lots and blocks on each of the following plans of subdivision:

- (a) Plan 4M-510;
- (b) Plan 4M-651;
- (c) Plan 4M-652;
- (d) Plan 4M-653;
- (e) Plan 4M-739;
- (f) Plan 4M-741;
- (g) Plan 4M-827;
- (h) Plan 4M-828;
- (i) Plan 4M-847;
- (j) Plan 4M-881;
- (k) Plan 4M-883;
- (l) Plan 4M-884;
- (m) Plan 4M-909; and
- (n) Plan 4M-925.



SECONDLY: Those portions of the following lands registered in the name of Genstar Development Company Eastern Ltd. as of November 1, 1996:

- (a) Part of Lot 5, Concession 3 of the geographic Township of March;
- (b) Part of Lot 6, Concessions 2 and 3 of the geographic Township of March;
- (c) Part of Lot 7, Concessions 2 and 3 of the geographic Township of March;
- (d) Lot 8, Concessions 2 and 3 of the geographic Township of March; and
- (e) Part of Lot 9, Concessions 2 and 3 of the geographic Township of March.

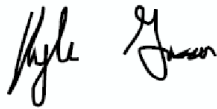
THIRDLY: Part of Block 1, Plan 4M-881, designated as Parts 1, 2, 3, 4, 5 and 6, inclusive, Plan 4R-12476.

FOURTHLY: Part of Block 56, Plan 4M-883, designated as Part 7, Plan 4R-12476.

FIFTHLY: *Part* Lot 3, Concession 2 and 3 of the geographic Township of March.

5

**THIS IS EXHIBIT "K" REFERRED TO IN THE AFFIDAVIT
OF CHRISTINA FRACASSI SWORN BEFORE ME THIS
24th DAY OF DECEMBER, 2021.**

A handwritten signature in black ink, appearing to read "Kyle G. Gannon".

A Commissioner, etc.

Mark Flowers
markf@davieshowe.com
Direct: 416.263.4513
Main: 416.977.7088
Fax: 416.977.8931
File No. 703120

November 22, 2021

By E-Mail

Sylvain Rouleau
WeirFoulds LLP
4100 – 66 Wellington Street West
Toronto, Ontario M5K 1B7

Dear Mr. Rouleau:

Re: Appeals by ClubLink Corporation ULC
7000 Campeau Drive, Ottawa
OLT Case No. PL200195

We have reviewed the Witness Statement of Douglas Nuttall, which was delivered on November 12, 2021 on behalf of your client, the Kanata Greenspace Protection Coalition (the “KGPC”).

On behalf of ClubLink Corporation ULC (“ClubLink”), we are writing to advise that we have concerns with certain aspects of Mr. Nuttall’s Witness Statement, as detailed below.

First, it is improper for Mr. Nuttall to be referring in his Witness Statement to the restrictive covenant that he has appended as Attachment 4 to his Witness Statement (the “Restrictive Covenant”) and, more specifically, for Mr. Nuttall to be providing his opinion regarding the interpretation of the terms of that document. Based on our review, it appears that Mr. Nuttall explicitly references the Restrictive Covenant at paragraphs 5, 15, 16, 18, 19, 33.h., 40.a. and 40.e. of his Witness Statement.

As you know, the Restrictive Covenant is not mentioned in the Issues List at Attachment 3 of the Tribunal’s Procedural Order for the upcoming hearing. Had the KGPC originally sought to include reference to the Restrictive Covenant on the Issues List, ClubLink would most certainly have objected, just as we objected to certain proposed issues that referenced various other agreements, which were subsequently deleted and not included in the final Issues List.

Further, in response to the City of Ottawa’s application to the Superior Court of Justice in Court File No. 19-81809, the KGPC initially sought, among other things, a declaration from the Court that section 3(i) of Schedule “B” of the Restrictive Covenant is “valid and enforceable”. However, no such declaration was provided by the Court.

Second, in response to Issues 30 and 34, Mr. Nuttall purports to provide his opinions regarding Section 51(24)(c) of the *Planning Act* and Section 4.10 of the City's Official Plan, by stating that the Official Plan "lists 40% parkland dedication" and that "this land is part of the 40% parkland dedication". Putting aside the fact that we maintain that such statements are clearly inaccurate, we fail to understand why Mr. Nuttall, as a water resources engineer, is purporting to provide expert opinion evidence on matters of parkland dedication, which are outside of his area of expertise. In our view, these responses by Mr. Nuttall are inappropriate, and contrary to his signed Acknowledgement of Expert's Duty wherein he confirmed that he would provide opinion evidence that is related only to matters within his area of expertise.

To address the concerns identified above, we are requesting the following:

1. That you obtain from Mr. Nuttall a revised Witness Statement in which he removes all references to the Restrictive Covenant, deletes Attachment 4, and removes his responses to Section 51(24)(c) of the *Planning Act* and Section 4.10 of the City's Official Plan in response to Issues 30 and 34, respectively;
2. That you deliver Mr. Nuttall's revised Witness Statement in paragraph 1 above to all parties and the Tribunal, and confirm that the revised Witness Statement replaces the Witness Statement delivered on November 12, 2021; and
3. That you confirm to the parties, in writing, that the KGPC will not seek to introduce the Restrictive Covenant into evidence at the Tribunal hearing through Mr. Nuttall or any other witness to be called by the KGPC, nor will the KGPC seek to introduce the Restrictive Covenant through cross-examination of any witness called by another party.

We look forward to hearing from you in response to the requests above. If we have not heard from you by end of day on Thursday, November 25, 2021, or if the KGPC is not prepared to agree to the requests above, please be advised that we have instructions to seek a motion date from the Tribunal on an expedited basis to address these matters.

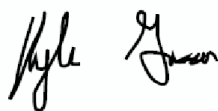
Yours truly,
DAVIES HOWE LLP



Mark R. Flowers
Professional Corporation

copy: Tim Marc, Senior Legal Counsel, City of Ottawa
Client

**THIS IS EXHIBIT "L" REFERRED TO IN THE AFFIDAVIT
OF CHRISTINA FRACASSI SWORN BEFORE ME THIS
24th DAY OF DECEMBER, 2021.**

A handwritten signature in black ink, appearing to read "Kyle Jensen".

A Commissioner, etc.

November 24, 2021

Sylvain Rouleau
t. 416-947-5016
srouleau@weirfoulds.com

VIA E-MAIL
MARKF@DAVIESHOWE.COM

File 20895.00001

Mark R. Flowers
Davies Howe LLP
The Tenth Floor
425 Adelaide Street West
Toronto ON M5V 3C1

Dear Mr. Flowers:

Re: PL200195 - ClubLink Corporation, City of Ottawa

We write in response to your letter dated November 22, 2021.

In your letter, you raise concerns with references to the Restrictive Covenant and the 40% Agreement in Douglas Nuttall's expert witness statement.

We disagree that it is improper for Mr. Nuttall to refer to the Restrictive Covenant in his Witness Statement. The Restrictive Covenant is a component of the factual matrix which explains the situation at the time the stormwater management system for the existing development in the area was designed, approved and constructed. The stormwater management system in place today has been both respected and implemented through approvals that similarly rely on its existence. This historical context is both relevant and necessary to a proper understanding of the history of development in this area. It is a relevant consideration for a number of the issues identified in the Issues List.

To be clear, Mr. Nuttall does not intend on opining on the validity or enforceability of the Restrictive Covenant itself. While we agree that the Superior Court of Justice declined to make any ruling on the Restrictive Covenant, it was on the basis that the proceeding before it was focused on the other matter, the 40% Agreement. The Restrictive Covenant was put on title and remains there, and the Court has made no finding that it is not valid and enforceable. However, our client is not asking the Tribunal to enforce the Restrictive Covenant – that would be the role of the Courts. In any event, the Restrictive Covenant relates to the conditions and intentions in place in prior development of this area, which is important as it assists the Tribunal in how to approach the issues which it has to decide currently.

Regarding the concerns that you raise with regard to the 40% Agreement, Mr. Nuttall is not providing his opinion but rather relying on the opinion of Mr. Dennis Jacobs. It is perfectly appropriate for Mr. Nuttall to review Mr. Jacobs' statement and adopt the findings where it is relevant to his review.

I trust that this clarifies the position of the Kanata Greenspace Protection Coalition as well as the opinion and anticipated evidence of Mr. Nuttall. Should you have any further questions or concerns, I would be happy to have a call to further discuss them.

Yours truly,

WeirFoulds LLP

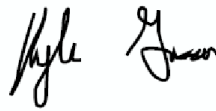


Sylvain Rouleau

SR/PC/lb

c. Tim Marc – City of Ottawa

**THIS IS EXHIBIT "M" REFERRED TO IN THE AFFIDAVIT
OF CHRISTINA FRACASSI SWORN BEFORE ME THIS
24th DAY OF DECEMBER, 2021.**

A handwritten signature in black ink, appearing to read "Kyle Jensen".

A Commissioner, etc.

November 27, 2021

By E-Mail

Sylvain Rouleau
WeirFoulds LLP
4100 – 66 Wellington Street West
Toronto, Ontario
M5K 1B7

Dear Mr. Rouleau:

Re: Appeals by ClubLink Corporation ULC
7000 Campeau Drive, Ottawa
OLT Case No. PL200195

We are writing in reply to your letter of November 24, 2021, in which you responded to our letter of November 22, 2021.

We acknowledge your confirmation that Mr. Nuttall “does not intend on opining on the validity or enforceability of the Restrictive Covenant itself” and that your client is “not asking the Tribunal to enforce the Restrictive Covenant”. Nonetheless, those confirmations do not address the concerns identified in our letter.

More specifically, although Mr. Nuttall may not be opining on the validity or enforceability of the Restrictive Covenant, he does opine on what he believes to be the proper interpretation of certain portions of the Restrictive Covenant. See, for example, paragraph 15, in which he offers his opinion on what is meant by the phrase “the Transferor’s or the City of Kanata’s storm water management plan ... as such plan exists as at November 1, 1996”; or paragraph 19, in which Mr. Nuttall offers his opinion on what the term “materially adversely affects” means in the context of the Restrictive Covenant.

Further, in paragraph 33.h. of his Witness Statement, Mr. Nuttall makes an assertion regarding certain aspects of the stormwater management proposal being “not consistent with the restrictive covenant”, and in paragraphs 40.a. and 40.e., he opines on the adequacy of our client’s supporting materials in reference to the Restrictive Covenant.

Accordingly, we do not accept that the numerous comments and opinions regarding the Restrictive Covenant in Mr. Nuttall’s Witness Statement merely reflect the historical context and form part of the factual matrix.

With respect to the comments in Mr. Nuttall's Witness Statement regarding the 40% Agreement and, more specifically, concerning parkland dedication, no where does he say that he is relying on the opinions of Mr. Jacobs. Rather, in response to Issue 30 and subsection 51(24)(c) of the *Planning Act*, he states: "no, OP lists 40% parkland dedication", and in response to Issue 34, Policy 4.10.5.2, he states: "This land is part of the 40% parkland dedication. So, no.". Moreover, even if these statements were simply intended to "adopt the findings" of Mr. Jacobs (which is certainly not apparent), we fail to see how these statements regarding parkland dedication are of any relevance to Mr. Nuttall's review and his opinions regarding stormwater management as a water resources engineer.

Thus, we continue to have concerns with portions of Mr. Nuttall's Witness Statement, as set out in our letter of November 22, 2021. Consequently, as discussed, our instructions are to proceed by requesting that the Tribunal schedule a motion hearing as soon as possible.

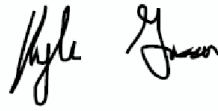
Yours truly,
DAVIES HOWE LLP



Mark R. Flowers
Professional Corporation

copy: Tim Marc, Senior Legal Counsel, City of Ottawa
Client

**THIS IS EXHIBIT "N" REFERRED TO IN THE AFFIDAVIT
OF CHRISTINA FRACASSI SWORN BEFORE ME THIS
24th DAY OF DECEMBER, 2021.**

A handwritten signature in black ink, appearing to read "Kyle G. Gannon".

A Commissioner, etc.



Kanata Greenspace Protection Coalition
A Not-for-Profit Corporation established in 2019

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eNews – Facts You Need and Our Next Steps

The situation is just not as bleak as media reporting began to sound on Friday. We're writing today with a step by step review of where the community really sits after the Court of Appeal decision. Your team at the Kanata Greenspace Protection Coalition (lawyers and all) has been working through the weekend, setting our next steps in motion for the coming week, and reassessing our short and medium term plans given Friday's decision.



Kanata Greenspace Protection Coalition
A Not-for-Profit Corporation established in 2019

Let's Slow this Down and Take One Step at a Time...

We truly hope you have been able to find a few moments to take a deep breath and relax somewhat since the tumultuous release of the decision by the Court of Appeal on Friday. It is fair to say that we all hoped for a full-throated rebuke of ClubLink and everyone is disappointed that it did not happen.

But the situation is just not as bleak as media reporting began to sound on Friday. We sent you our [Press Release](#) as quickly as we could to give you some correct information and to try to confirm for you what is most important ... **the 40 Percent Agreement (40PA) remains alive and enforceable.**

We were truly saddened by the anguish our supporters shared in emails and phone calls that continued to come in to us throughout Friday and into Saturday. Houses being put up for sale this weekend. People seeing no future. Folks exhausted by the up and down of this rocky ride. It was shocking and terribly difficult to both read and hear. We do understand your anguish. It has been a roller coaster ride for the last three years. It is about your home and family and cherished memories and the environment too. For most of us, these are the most valuable and irreplaceable aspects of our lives.

So, we're writing today with a step by step review of where the community really sits after Friday's Court of Appeal decision. Your team at the Kanata Greenspace Protection Coalition (lawyers and all) has been working through the weekend, setting our next steps in motion for the coming week and reassessing our short and medium term plans given Friday's decision. Remember, we have said all along...this was always going to be a marathon and not a sprint! Let's get at it!

Where are We... after the Court of Appeal decision

What did the court actually decide on Friday?

The Court of Appeal ruled in ClubLink's favour on a narrow legal principle by finding that two clauses in the 40PA were invalid because they violated the "rule against perpetuities".

Clause 5(4), the first clause ruled invalid by the Court of Appeal, states that if the golf course owner wishes to stop operating the golf course and cannot find a new buyer or someone to operate the land as a golf course, the owner is obligated to transfer the property to the City at no cost. ClubLink successfully convinced the Court of Appeal that this clause created a "contingent interest in land" and, as a result, invoked the "rule against perpetuities" which requires the transfer of the land within a 21 year period or the interest in the land expires. We remind you that ClubLink has owned the land for 24 or more years.

Should the City accept that transfer of land from ClubLink, it would continue to operate the golf course, subject to clause (9) which, as an alternative, would allow the City to keep the property as greenspace only (i.e. as a space for recreational and natural environment purposes). In the Court's mind, as with 5(4), Clause 9 became invalid because it also is premised in this concept of an expired interest in the land after 21 years.

So, the Court allowed the appeal by ClubLink with the limited acknowledgement that Justice Labrosse had erred in concluding that clauses 5 (4) and 9 of the 40PA did not violate the "rule against perpetuities". In fact, the decision granted actually fell well short of what ClubLink had requested which was the invalidation of the entire 40PA. **The Court limited its ruling to clauses 5 (4) and 9 only, specifically declining to invalidate the entire 40PA.**

The Court of Appeal did leave the parties to discuss what, if any, impact the now invalid clauses have on the 40PA and subsequent agreements relating to the golf course lands. If the parties cannot now agree on where any issue(s) stand, the Court of Appeal stated that they should then return to Justice Labrosse's court, the lower court judge who heard the original application in July 2020, for a decision.

Where does that leave the 40PA and you and our community?

Until another court rules differently, the **40PA stands and the following remain enforceable:**

1. The obligation of ClubLink and the City to respect the Forty Percent Principle to maintain 40% of the original development area including the golf course, as greenspace [clauses 3 and 10].
2. The obligation of ClubLink to operate the golf course in perpetuity [clause 5 (1)].
3. Should ClubLink find a buyer for the golf course, the City's right of first refusal to purchase the golf course on the same terms and conditions as agreed to with the buyer [clause 5 (3)].
4. Should ClubLink sell the golf course to a buyer other than the City, its obligation to require the buyer to sign an agreement to operate the golf course in perpetuity on the same terms and conditions as laid out in the 40PA [clause 5 (2)].

Is our greenspace including the golf course lands safe from the bulldozers?

It was reported by some media outlets that Friday's Court of Appeal decision cleared the way for ClubLink to develop the golf course and build its proposed 1,480 plus homes.

This is incorrect. ClubLink's development proposal remains incompatible with its legal obligations under the 40PA despite the changes resulting from the decision.

Here are a few reasons why:

1. The Court of Appeal decision to invalidate clause 5(4) may eliminate ClubLink's sole legal path in the 40PA [clause 5(5)] to end its obligation to operate the golf course in perpetuity and to apply to develop the property under the Planning Act. Our legal team will follow up on this.
2. The City rejected the ClubLink zoning and subdivision applications to support development of the golf course based on important issues in two key areas, planning and stormwater management (SWM). As you already know, ClubLink is taking that rejection to the Ontario Land Tribunal (OLT) for consideration at a hearing in January 2022. Unless that hearing is 'stayed' or put on hold, its Chairperson will have to confront the fact that the restrictions on the use of the golf course property imposed by the 40PA (e.g., that it must be operated as a golf course in perpetuity) prevent the residential development that is being proposed.
3. The golf course property is also subject to restrictive covenants which limit the way the property can be used.

What is the KGPC doing?

We appreciate that at times our supporters must wonder "What's the City doing?" "Does the Coalition have a plan for this?"

The KGPC wants to confirm that our legal and planning experts put all of these issues on our radar two years ago as we strategized a path forward to shut ClubLink down. Our plans, on both the planning and legal fronts are robust. We have amassed considerable work along the way to backstop solutions for the many roadblocks we could see. (i.e. stormwater and environmental expert opinions, legal opinions)

Unfortunately, while we see the finish line too...there are hurdles between here and there. We cannot just run around them, we must jump them. First off, the legal system is defined by processes that opposing parties must respect, and work through the courts to get issues resolved and final decisions made. In our case, we face additional challenges. For example, a key stumbling up until now, the community is not a party to the original 40PA. It forces us to sit back and let the process come to us and wait for our opportunities to intervene. But, our plan is ready and so is our team.

So, what can you expect next?

The KGPC board met on Saturday afternoon with our entire legal team to review Friday's decision and its impact on our plan. Now that the decision is finally out, our lane opens up and a new race begins.

On Friday, David White, City Solicitor released a Memo to Council on the matter ([excerpt here](#)). The City also stated that it was "disappointed" with the Court of Appeal decision to invalidate clauses 5(4) and 9 of the 40PA; there were errors in the Court's decision and; as a result, they would seek leave to appeal the decision to the Supreme Court of Canada (SCC). The KGPC appreciates the City's commitment to the integrity and protection of the entire 40PA and, fully supports its application for leave to appeal to the SCC.

The KGPC will join the other parties to discuss the impact that the invalidated clauses have on the remainder of the 40PA and we will stay involved if the matter is returned to Justice Labrosse for a decision. We are also reviewing legal remedies that support our original arguments around restrictive covenants that have the ability to force ClubLink to respect its obligations under the 40PA.

On the planning side, we are in the last strides of finalizing our work and we will be at the OLT hearing in January to ensure no opportunity to shut ClubLink down is missed.

We have meetings set up early this week with our **Councillor Cathy Curry**, the **Mayor's office** and with **City legal staff** to understand where they are after Friday's decision. We remain willing to work with the City and are always looking for ways to be collaborative.

MPP Merrilee Fullerton reached out to us on Friday to discuss ways in which she can help and engage support at Queen's Park. We'll work on that together. We reached out to **MP Jenna Sudds** requesting a meeting as well.

We expect to be able to provide you with an update by early next week. We know this is a priority for you ... and we're on it!

GIVING TUESDAY... Tuesday, November 30

"We have two days that are good for the economy.

Now we have a day that is good for the community too." ~ Giving Tuesday Canada

- **Help KGPC secure your environmental rights and STOP CLUBLINK.**
- **Help KGPC protect our trees and greenspace and STOP THE CLIMATE CHAOS going on around us.**
- **Help KGPC support and PROTECT OUR NEIGHBOURHOODS embedded in nature.**

Thank you for considering a gift to support the KGPC this GIVING TUESDAY.



DONATE NOW

Please continue to reach out with your questions and concerns. We are always pleased to hear from you. We hope that our message today has helped both correct misinformation and provide some encouragement along the way. As we said, you will hear from us very soon.

In the meantime, please take care of yourself and those around you given the latest pandemic news and the newest challenge we face in the Omicron variant.

Remember, you are not alone in this fight. We're ALL better if we stay together!

Barbara

Barbara Ramsay

Chair, Kanata Greenspace Protection Coalition

T – 613-725-6595

E – chair@ourkanatagreenspace.ca

Posted in [Uncategorized](#).

← **eNews – Time for Thanksgiving**

Tweets by [@OurKanasGreen](#)



Kanata Greenspace Protection Coalition

@OurKanasGreen

Golf clubs in Toronto have benefited from an app developed by the [@USGA](#) that will allow people to utilize their five municipal golf courses during the winter months. [@cityoftorontousga.org/content/usga/h...](#)

USGA Helps Toronto Courses Plot Ski Trails

Using GPS data provided by the USGA, the City of Toronto created alternate uses for its five public golf courses... [usga.org](#)

13h



Kanata Greenspace Protection Coalition

@OurKanasGreen

"There's not a single resident that is in favour of this development," said Ken Dick, whose home backs onto the course. "[@ClubLink](#) are showing total disrespect and disregard for a community." [#keepkanatagreenottawa.ctvnews.ca/clublink-wins-...](#)

ClubLink wins Kanata golf course appeal, dealing residents legal blow
The owner of the Kanata Golf and Country Club has the right to build a housing development on the land, Ontari...
ottawa.ctvnews.ca

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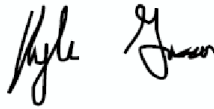
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This site is managed by the **Kanata Greenspace Protection Coalition**, formed in July 2019 as a not-for-profit corporation by committed community representatives and Kanata residents to ensure the protection of and access to the open and green spaces that exist throughout our neighbourhoods as well as ensure that the longstanding 40 Percent Agreement is honoured by its signatories, ClubLink and the City of Ottawa.

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A DodgeInk Website

**THIS IS EXHIBIT "O" REFERRED TO IN THE AFFIDAVIT
OF CHRISTINA FRACASSI SWORN BEFORE ME THIS
24th DAY OF DECEMBER, 2021.**

A handwritten signature in black ink, appearing to read "Kyle Green".

A Commissioner, etc.

From: [Kwan, Jason C \(MAG\)](#)
To: [Mark Flowers](#)
Cc: ["Sylvain Rouleau"](#); [Marc, Timothy C](#); [Kyle Gossen](#)
Subject: RE: Appeals by ClubLink Corporation ULC re 7000 Campeau Drive, Ottawa - LPAT Case No. PL200195 - Request for Motion Date
Date: November 29, 2021 11:34:50 AM
Attachments: [image001.png](#)

Good Morning Mr. Flowers,
 Thank you for your email and request.
 The Tribunal has reviewed it's calendar and is not able to find a date for a Member to hear and rule on a motion prior to the commencement of the hearing.
 The Tribunal will not be scheduling a motion to determine the contested portions of Mr. Nuttall's statement prior to the hearing of this matter.
 You may bring a motion to be heard at the commencement of the hearing, where the presiding panel can make such a determination. Alternatively, you can raise the issue at the hearing and request the presiding Member to make a ruling.
 If you have any questions please feel free to contact me.
 Thank you.

Jason Kwan

437-231-5651 | jason.c.kwan@ontario.ca

From: Mark Flowers <markf@davieshowe.com>
Sent: November 29, 2021 9:19 AM
To: Kwan, Jason C (MAG) <Jason.C.Kwan@ontario.ca>
Cc: 'Sylvain Rouleau' <srouleau@weirfoulds.com>; Marc, Timothy C <Timothy.Marc@ottawa.ca>; Kyle Gossen <KyleG@davieshowe.com>
Subject: Appeals by ClubLink Corporation ULC re 7000 Campeau Drive, Ottawa - LPAT Case No. PL200195 - Request for Motion Date

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Mr. Kwan,
 As you know, we are counsel to ClubLink Corporation ULC, the applicant/appellant in the above matter.
 In accordance with Rule 10.2 of the Tribunal's *Rules of Practice and Procedure*, we are writing to request the scheduling of a motion date. In general terms, the motion to be brought by ClubLink pertains to concerns with certain statements and opinions in the witness statement of Douglas Nuttall, one of the witnesses being called by the Kanata Greenspace Protection Coalition, as well as the admissibility of a restrictive covenant that is appended to Mr. Nuttall's witness statement. We corresponded with Mr. Rouleau last week to advise of our concerns with Mr. Nuttall's witness statement, and he is aware that we would be making this request.
 Given that the hearing of ClubLink's appeals is scheduled to commence on January 17, 2022, we request that a motion hearing be scheduled on an expedited basis, and we anticipate that the motion could be completed within 1-2 hours.
 If the Tribunal is prepared to grant our request, kindly advise as to potential dates when the motion could be heard – thank you.

Mark Flowers *

Cellphone: 416.843.4884 | [Bio](#)



Davies Howe LLP
The Tenth Floor
425 Adelaide Street West
Toronto, Ontario M5V 3C1
416.977.7088

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