

## REPORT

### Special Council

Meeting Date: July 6, 2021

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**FROM:** Legal Department

**DATE:** June 29, 2021

**SUBJECT:** Request for Minister Zoning Order to Protect Glen Abbey

**LOCATION** 1333 Dorval Drive

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**WARD:** Ward 2

Page 1

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#### RECOMMENDATION:

1. That the letter to Mayor Burton, from the Minister of Municipal Affairs and Housing, dated June 16, 2021, assuring that the future use, heritage protection and related matters concerning the Glen Abbey Golf Course lands are not only of significant local interest, but are also matters of provincial interest, and requesting Town Council identify, through a Council resolution, if there is a specific proposal for the use of any provincial tool in relation to the lands, be received;
2. That the letter to Mayor Burton, from Member of Provincial Parliament Stephen Crawford, dated June 21, 2021, urging Town Council to formally request, through a Council resolution, that Minister Clark issue a Minister's Zoning Order to protect the Glen Abbey Golf Club, be received;
3. That the report from the Legal Department, dated June 29, 2021, be received;
4. That the Mayor be authorized to write to the Minister of Municipal Affairs and Housing, in response to the Minister's letter, to make a formal request on behalf of Council, should Council determine to make such a request for the use of any provincial tool in relation to the Glen Abbey cultural heritage landscape; and
5. That any Council resolution on this matter be forwarded to: Clublink Corporation ULC and Clublink Holdings Ltd., Premier Doug Ford, the Honourable Steve Clark, Minister of Municipal Affairs and Housing, the Honourable Lisa MacLeod, Minister of Heritage, Sport, Tourism and Culture

Industries, Hon. Doug Downey, Attorney General, the City of Burlington, the Town of Halton Hills, the Town of Milton, the Association of Municipalities of Ontario, the leaders of the Provincial opposition parties, Halton's MPPs, the Greater Golden Horseshoe municipalities, Conservation Halton and the Fairway Hills Community Association.

### **KEY FACTS:**

The following are key points for consideration with respect to this report:

- Glen Abbey golf course is a significant cultural heritage landscape, which is designated by the Town as a property of cultural heritage value or interest under the *Ontario Heritage Act*
- Both the Provincial Policy Statement and Growth Plan require significant cultural heritage landscapes to be conserved
- ClubLink's applications under the *Planning Act* and *Ontario Heritage Act* propose the demolition of Glen Abbey
- ClubLink's applications propose to replace Glen Abbey with mainly high density development including 3,222 residential units
- The Town's urban structure is based on strategic growth areas as the focus for higher-density mixed uses, aligned with planned transit infrastructure, as required by the Provincial Policy Statement and Growth Plan
- ClubLink's appeals of its development applications and other related matters are scheduled for a hearing before the Ontario Land Tribunal of approximately 19 weeks commencing on August 9, 2021, plus an additional 5 weeks in 2022
- June 16, 2021, Mayor Burton received a letter from the Minister of Municipal Affairs and Housing with respect to the protection of the Glen Abbey golf course cultural heritage landscape
- June 21, 2021, Mayor Burton received a letter from Member of Provincial Parliament Stephen Crawford, urging Town Council to formally request that Minister Clark issue a Ministerial Zoning Order to protect Glen Abbey.

### **BACKGROUND:**

The Ontario Land Tribunal (OLT) has scheduled a hearing (approximately 19 weeks) to commence August 9, 2021 to determine the Glen Abbey development applications and the following appeals:

- OPA 24 (Cultural Heritage Special Policy Areas, including Glen Abbey)
- Zoning By-law 2018-016 (site-specific zoning for Glen Abbey)

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- OPA 15 (Urban Structure)
  - OPA 16 (Cultural Heritage Policy Updates)
  - ClubLink's appeal of their development application fees
  - ClubLink's appeal of Council's refusal of their s.34 *Ontario Heritage Act* (demolition) application

Additionally, the OLT has scheduled an additional three days of hearing in January, 2022 for closing submissions, and five weeks of hearing commencing June 1, 2022, to address any outstanding technical issues regarding the Glen Abbey development applications.

On June 16, 2021, Mayor Burton and Regional Chair Carr received a letter from the Minister of Municipal Affairs and Housing (Minister) with respect to the protection of the Glen Abbey golf course cultural heritage landscape (Appendix A). The Minister indicated that he understands the significant local interest in these matters and also that these matters are of provincial interest as well. As the Minister indicated, any decisions on the use of provincial tools in relation to Glen Abbey lies with the Minister and Cabinet. However, the Minister has requested if Town Council has a specific proposal for the use of any provincial tool in relation to Glen Abbey, that such request be formally identified through a Council resolution.

On June 21, 2021, Mayor Burton also received a letter from Member of Provincial Parliament Stephen Crawford, urging Town Council to formally request, through a Council resolution, that Minister Clark issue a Ministerial Zoning Order to protect Glen Abbey.

The purpose of this report is to provide Council with information regarding various provincial tools that are available to the Minister<sup>1</sup> and Cabinet to protect the Glen Abbey cultural heritage landscape, including the following discussed below:

1. Minister's Zoning Order
2. Special Legislation
3. Provincial Development Plan

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<sup>1</sup> In addition to the tools available to the Minister of Municipal Affairs and Housing, after consultation with the Ontario Heritage Trust, the Minister of Heritage, Sport, Tourism and Culture Industries may, by order, designate any property within a municipality as property of cultural heritage value or interest of provincial significance if the property meets the criteria prescribed by *Ontario Heritage Act* Regulation 10/06. The final decision on provincial designation is made by the Minister of Heritage, Sport, Tourism and Culture Industries. Provincially designated heritage property is subject to the process set out in section 34 of the *Ontario Heritage Act*, which provides an appeal to the OLT of any refusal of a demolition application.

#### 4. Declaration of Provincial Interest

### COMMENT/OPTIONS:

#### 1. Minister's Zoning Order

The *Planning Act* has long afforded the Minister of Municipal Affairs and Housing the authority to directly zone land through a Minister's Zoning Order (MZO). The approval of an MZO is at the sole and absolute discretion of the Minister, which can be used for supporting local planning priorities that align with provincial planning objectives. Although most recently, MZOs have mainly been used to expedite development on certain lands, an MZO may be used to restrict certain types of development. MZOs have the effect of establishing land use permissions and development controls that can be implemented in any area of the province, regardless of the underlying Regional or local municipal official plan designation. Once issued, an MZO prevails in case of a conflict with the local zoning bylaw or interim control by-law.

In this instance, the Minister could issue an MZO that establishes the primary permitted use of Glen Abbey as a golf course, in accordance with existing zoning of the property.

MZOs do not require any public or municipal engagement and can be issued at any time. While there is no requirement to give notice or undertake a hearing prior to the Minister's decision, the Minister shall give notice within 30 days after an MZO is issued.

Members of the public may request the Minister to amend or revoke in whole or in part an MZO. Once such a request is received, the Minister may refuse to consider or refer the matter to the OLT for a hearing. If referred, the OLT shall conduct a hearing and make a recommendation to the Minister for their final decision.

#### 2. Special Legislation

Special legislation can be enacted by the Provincial Legislature to protect Glen Abbey. Special legislation could include a range of provisions to address such protections, for example by altering or supplementing the provisions of the *Planning Act* or *Ontario Heritage Act* as they relate to Glen Abbey, on a site-specific basis. At present, the Legislature is not scheduled to resume again until September 13, 2021.

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### 3. Provincial Development Plan

The *Ontario Planning and Development Act* (ODPA) allows the Minister to designate an area as a development planning area, and then prepare a development plan for consideration and approval by the Lieutenant Governor in Council (i.e., Cabinet). The development plan can contain “policies for the economic, social and physical development of the area covered by the plan”, in respect of various matters including: “such other matters as are, in the opinion of the Minister, advisable”.

After establishing a development planning area, the Minister must carry out an investigation and survey of the environmental, physical, social and economic conditions affecting the area. The Minister must ensure there is public participation in the preparation of a development plan, which must include posting a draft of the development plan for comment by the public and affected municipalities. After considering all comments received, the Minister may propose modifications for further consultation, and may ultimately prepare a final development plan for consideration by Cabinet. Cabinet may approve the development plan, with such modifications as they consider desirable.

Once in effect, a development plan becomes a provincial plan to which all decisions respecting planning matters have to conform (under section 3(5)) of the *Planning Act*). Further, the provisions of a development plan prevail to the extent of any conflict with an official plan or zoning by-law. There are currently two plans currently in force under the OPDA: 1. Parkway Belt West Plan and 2. Central Pickering Development Plan (Seaton).

In this instance the Minister could establish a development planning area in respect of Glen Abbey and consider the preparation of a development plan that contains policies for its protection for approval by Cabinet.

### 4. Matters of Provincial Interest

Under the *Planning Act*, where an appeal of certain matters are made to the OLT, the Minister has the authority to declare that in their opinion a matter of provincial is, or is likely to be adversely affected by the matter under appeal. Such a declaration can be made in respect of:

- official plans or official plan amendment initiated by a municipality (section 17(51))
- official plan amendments proposed by third parties (section 22(11.1))
- zoning by-laws or amendments either initiated by a municipality or proposed by a third party (section 34(27))

When making a declaration of provincial interest in a hearing, the Minister is required to advise the OLT in writing not later than 30 days before the day fixed by the OLT for the hearing, and the Minister shall identify:

- provisions of the plan/amendment/by-law or any part of the plan/amendment/by-law by which the provincial interest is, or is likely to be, adversely affected, and
- general basis for the opinion that a matter of provincial interest is, or is likely to be, adversely affected.

If the OLT has received a notice from the Minister under aforementioned sections of the *Planning Act*, a decision of the OLT is not final and binding in respect of the provisions under appeal identified in the notice unless the Lieutenant Governor in Council has confirmed the decision in respect of those provisions.

In this instance, the Minister could issue a declaration of provincial interest in respect of the official plan and zoning by-law appeals before the Tribunal.

By way of comparison, where a declaration of provincial interest is made the Lieutenant Governor in Council must confirm any decision on an official plan or zoning by-law amendment made by the Tribunal. Where an MZO is issued the Minister makes the final determination on the zoning of a property without any decision by the Tribunal.<sup>2</sup>

## **CONSIDERATIONS:**

### **(A) PUBLIC**

Any advice regarding the implications of any provincial tool on the Ontario Land Tribunal hearing scheduled to consider the Glen Abbey-related appeals is subject to solicitor-client privilege and communications necessary for that purpose should be done in the absence of the public.

### **(B) FINANCIAL**

External legal counsel and consultants continue to assist the town. There have been significant costs for both town-wide matters relating to cultural heritage landscapes and those relating to the Glen Abbey development applications. The magnitude of costs reflects the multiplicity of prior legal proceedings together with the complexity of this case, the outcome of which will have a significant impact on this community.

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<sup>2</sup> The Minister may refer a request to revoke or amend an MZO to the OLT for a hearing and recommendation, but the decision to refer and final decision on the request is made by the Minister in their discretion.

**(C) IMPACT ON OTHER DEPARTMENTS & USERS**

The Legal Department and Planning Services are directly involved in the hearing together with Engineering and Construction.

**(D) CORPORATE STRATEGIC GOALS**

This report addresses the corporate strategic goal(s) to:

- be the most livable town in Canada

**(E) CLIMATE CHANGE/ACTION**

The town's urban structure based on established strategic growth areas is inherently supportive of climate change mitigation and is a direct response in adapting to a changing climate.

**APPENDICES:**

Appendix A – Minister's letter dated June 16, 2021

Appendix B – MPP's letter dated June 21, 2021

Prepared by:

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Submitted by:

Douglas Carr, Town Solicitor