



OAKVILLE

REPORT

PLANNING AND DEVELOPMENT COUNCIL MEETING

MEETING DATE: FEBRUARY 12, 2018

FROM: Legal Department

DATE: January 29, 2018

SUBJECT: **Legal Context for Town Process and Decision on ClubLink's Application for Demolition and Removal under section 34 of the Ontario Heritage Act – 1313 and 1333 Dorval Drive**

LOCATION: 1313 and 1333 Dorval Drive

WARD: 4

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RECOMMENDATION:

That the Legal report "*Legal Context for Town Process and Decision on ClubLink's Application for Demolition and Removal under section 34 of the Ontario Heritage Act – 1313 and 1333 Dorval Drive*" be received.

KEY FACTS:

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

- On November 21, 2017, ClubLink submitted to the Town a purported Section 34 Application under the Ontario Heritage Act (OHA) to demolish or remove the entirety of the golf course at 1313 and 1333 Dorval. That purported Section 34 Application is being addressed in a report from the Heritage Planner elsewhere on this Heritage Oakville Advisory Committee Agenda.
- The purpose of this report is to explain the legal issues related to that purported Section 34 Application under the OHA.
- The Parties' agreement in the court proceedings, confirmed by court order, includes the requirement that the Town render a decision on the purported Section 34 Application under subsection 34(2) of the OHA.
- Soley and only for the purpose of responding to ClubLink's purported Section 34 Application, as required by the court order, the Town will assume that ClubLink has the authority under Section 34 to make the purported application.

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- The Town confirms and maintains its position that the purported Section 34 Application is improper as described in the court proceedings. The staff report from the Heritage planner elsewhere on this agenda, the Town's receipt of advice from the Heritage Oakville Advisory Committee with respect to the purported Section 34 Application, and any Town Council decision on February 12, 2018 or any other day on the purported Section 34 Application are all made without prejudice to this position.
- In the present circumstances, any Town decision with respect to the purported Section 34 Application will be limited to the heritage and planning merits of the purported Section 34 Application.
- The report explains why the staff report from the Heritage planner elsewhere on this agenda, the Town's receipt of advice from the Heritage Oakville Advisory Committee and any Town Council decision will not respond to ClubLink's comments on the merits of the Heritage Designation.
- The report also explains the Town's proposed approach to document management for the purported Section 34 Application, and, in particular, the purpose and importance of stamping or marking all Town documents(draft, final, paper, electronic) with the statement "Subject to court order and pending court applications."

BACKGROUND:

In September 2017, ClubLink advised that it intended to apply to the Town under section 34 of the Ontario Heritage Act to demolish or remove the golf course in its entirety.

The Town was concerned that what ClubLink proposed was not a proper section 34 application. On November 1, 2017, the Town initiated a court proceeding to determine its obligations and jurisdiction under the Ontario Heritage Act regarding what ClubLink had proposed in September. On November 21st, ClubLink delivered a purported section 34 application to demolish or remove the golf course in entirety and started its own court proceeding for direction from the court that it has the right under section 34 to make the application.

On December 4, 2017, legal counsel for the Town and ClubLink appeared in court to schedule the hearings for the litigation. Legal counsel agreed to a court schedule and a process to deal with the purported section 34 application while the parties waited for the court to determine the disputes. The court issued an order confirming the parties' agreement. The hearing to determine the court proceedings is scheduled on July 16 and 17, 2018.

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COMMENT/OPTIONS:**A. Explanation Of The Parties' Agreement in the Court Proceedings, Confirmed by Court Order**

As part of the agreed-upon court schedule, to avoid delay the Town agreed to render a decision on the purported section 34 application before February 19, 2018. Several important conditions surround this decision because it is part of the court order. Of particular relevance to the Town process on the section 34 application, the court ordered:

- i. The Town will consider and respond to ClubLink's purported Ontario Heritage Act (OHA) section 34 application, based on the materials delivered to the Town on November 21, 2017, without prejudice to the Town's position that it has not received a valid section 34 application and has the right to refuse to receive it;
- ii. Town Council will render a decision under subsection 34(2) by February 19, 2018, without prejudice to its position that ClubLink's application is not a valid section 34 application;
- iii. The parties agree not to file or rely upon in court any section 34(2) decision made by Town Council pursuant to this agreement, including all related Town minutes, agendas, reports, and correspondence;
- iv. ClubLink is entitled to file a notice of appeal to the OMB (since renamed the Local Planning Appeal Tribunal (LPAT)) under s.34.1(2) of the OHA if Council either refuses the application or consents to the application, but imposes terms and conditions that are not acceptable to ClubLink; and
- v. The parties agree that the section 34 appeal to the LPAT will be held in abeyance until the final determination of the court applications.

Should the court agree with ClubLink that it is entitled to make the application under section 34, and ClubLink disagrees with the Town's February 2018 decision, then ClubLink can use the Town's decision as the basis for an appeal to the LPAT. If the Town is successful at court, it will be as if there was no Town decision on the purported section 34 application.

B. Explanation Of The Town's Approach To Reviewing and Deciding Upon ClubLink's Purported Section 34 Application

In order to respond to ClubLink's purported section 34 application as required by the court order, the Town must assume that ClubLink has the authority under section 34 to make this application.

¹ since renamed the Local Planning Appeal Tribunal (LPAT)

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This means that Town staff and Council must not focus on whether ClubLink's application is properly brought under section 34 of the OHA. The Town has initiated a court proceeding to address this point and ClubLink has agreed to have this issue determined by the Court.

C. Confirmation That The Town Maintains Its Position that the ClubLink Application Is Improper, And That Any Decision By Council by February 19th Is Made Without Prejudice To That Position

The court order makes the Town's February 2018 decision on the ClubLink application unusual.

Most Town Council decisions are unconditional. They take effect the day they are made; however, this decision is conditional on the outcome of the Town's court application. If the court agrees with the Town on the Town's application, the February Council decision will have no status: the situation will be as if Council never made the decision. Conversely, ClubLink may rely on the February decision only if ClubLink succeeds in court. If ClubLink does not succeed in court, then ClubLink cannot rely on it for any appeal to the LPAT.

Town Council should reference the conditional nature of this February 2018 decision in the body of the decision.

Further, the February 2018 Council decision should also provide that the decision is without prejudice to the Town position that the application is improper as described in the court proceedings.

D. Confirmation That The Town Decision Will Be Limited to The Heritage and Planning Merits Of The Purported Section 34 Application

Town staff and Council must address the heritage and planning merits of the purported section 34 application by the February 19th deadline.

A first key task is thus for the Town to review the purported application and understand what is being requested.

For reference, ClubLink set out its application in a November 21st letter to the Town. In this letter, ClubLink described its application as follows:

"ClubLink Corporation ULC and ClubLink Holdings Limited ("ClubLink") hereby submit an application under section 34 of the Ontario Heritage Act (the "OHA") for demolition and removal in respect of the lands municipally known as 1313 and 1333 Dorval Drive in the Town of Oakville (the "Lands")."

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The Lands are subject to a Notice of Intention to Designate that was issued by the Town of Oakville (the "Town") on August 24, 2017 under section 29 of the OHA.

More specifically, this application seeks the consent of Town Council for the demolition/removal of the existing golf course on the Lands (Glen Abbey Golf Club) in its entirety, including all existing trees, greens, hazards, fairways, cart paths, etc., together with all related infrastructure, such as the underground irrigation and drainage system, as well as the demolition of sixteen buildings that form part of the golf course.

For clarity, this application does not seek permission to demolish/remove either of the following buildings: (1) the RayDor Estate house, which is currently leased to Golf Canada for its offices and the Canadian Golf Hall of Fame and Museum, together with three other tenants; and (2) the main Stables building and two adjacent sheds, which are currently used as maintenance buildings for the golf course and are proposed to be repurposed.

... [T]he Town has been well aware of ClubLink's ultimate intention to remove the entirety of the golf course, including the demolition of most of the buildings on the Lands, in order to accommodate its redevelopment proposal for at least the past year..."

ClubLink's purported section 34 application also included other documents that address the scope of the purported application. For example, the application attached an addendum report by its cultural heritage consultants, ERA, dated November 20, 2017 (the "ERA Addendum"). ERA describes the section 34 application at pages 2 and 12 of the ERA Addendum as follows:

"This addendum to the CHLA/HIA forms part of an application by ClubLink to the Town under Section 34 of the Ontario Heritage Act (Notice of Intention to Demolish) to remove the golf course in its entirety and demolish all buildings on the site other than those that are proposed to be retained as part of ClubLink's redevelopment proposal... The application under Section 34 of the Ontario Heritage Act is intended to facilitate the redevelopment of the property that is proposed through ClubLink's Planning Act applications, which are now before the Ontario Municipal Board on appeal.

ClubLink's application under section 34 of the Ontario Heritage Act proposes the "removal/demolition of the golf course in its entirety, including all existing greens, hazards, fairways, cart paths, etc., together with all related infrastructure, such as the underground irrigation and drainage system". Likewise, ClubLink proposes to demolish all existing buildings on the

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property, other than those that are proposed to be retained as part of the redevelopment proposal..."

A second key task is to assess the purported application for its heritage and planning merits. This will involve applying relevant law and policy and considering whether or not the application satisfies the relevant guidance. Examples of legal guidance to be considered include Part IV of the Ontario Heritage Act, which includes section 34, and the Planning Act requirements set out in section 3 regarding consistency with policy statements issued under this section and conformity with provincial plans in effect at the time of the decision.

E. Address What Is Not Part of Town Review in a Public Report from Town Legal

The court order does not address the Town's August 2017 section 29 notice of intention to designate (NOID) the Glen Abbey for its cultural heritage value.

The August 2017 NOID described the property, stated its cultural heritage value or significance, and described its heritage attributes. Under the Ontario Heritage Act, a person may file an objection to this notice within 30 days. In this case, an objection was required to be filed on or before September 25, 2017. ClubLink was aware of the notice and the deadline and advised the Town by letter dated September 25, 2017 that it would not be serving an objection in response to the proposed designation, and would not require that the matter be referred to the Conservation Review Board (CRB) for a hearing. There was a single objection filed by another party, and that party withdrew its objection on December 18, 2017. This resulted in the CRB cancelling the hearing and closing the file on this matter. Following this closure, the Town passed a by-law designating the property using the same terms as the August 2017 NOID.

The ClubLink section 34 application includes responses to the contents of the NOID in the November 21st application letter, attachments that provide previous letters from ClubLink's legal counsel, and the ERA Addendum.

ClubLink had an opportunity under the Ontario Heritage Act to object to the NOID and deliberately decided not to do so within the statutory timeframe. The section 29 process for ClubLink to object to the NOID was completed at the time of the November 21st application. It is not necessary or appropriate for the Town to deal with ClubLink objections to the NOID as part of the Town response to the section 34 application.

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F. Document Management

Another important aspect of the court order is its direction to prohibit use in court of any documents relevant to the Town’s February 2018 decision on the purported section 34 application.

The parties agreed not to use or rely on the decision itself and all related Town minutes, agendas, reports, and correspondence.

To implement this order, it is appropriate for the Town to mark every document (i.e., internal, public, paper, or electronic) related to the Town’s decision on the demolition application as:

“Subject to court order and pending court applications”

This will ensure there is no confusion over which documents the Town claims are subject to the order. These documents should be carefully maintained in a separate file.

CONSIDERATIONS:

(A) PUBLIC

This Report may be considered in public.

(B) FINANCIAL

There is no financial impact from this report.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

The purpose of this report is to provide information to the public and guidance to other departments involved in the consideration of the purported Section 34 Application from ClubLink.

(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS

This report addresses the corporate strategic goal to:

- be accountable in everything we do

(E) COMMUNITY SUSTAINABILITY

N/A

Prepared by:
 Dennis Perlin
 Assistant Town Solicitor

Submitted by:
 Douglas Carr
 Town Solicitor