

Distributed at the Planning and Development Council Meeting of November 4, 2019
Re: Item 5 – Cultural Heritage Landscape Strategy Implementation - Erchless Estate
- Heritage Designation and Conservation Plan, Plus Public Meeting and
Recommendation Report for Official Plan and Zoning By-law Amendments (Cultural
Heritage Special Policy Areas, including Erchless Estate) - File Nos. 42.24.22,
OPA.1714.27 and Z.1714.27 - By-law 2019-057, By-law 2019-107 (OPA 32) and By-law
2019-108

From: Mark Flowers [<mailto:markf@davieshowe.com>]

Sent: Monday, November 04, 2019 1:22 PM

To: Town Clerk <TownClerk@oakville.ca>

Cc: Nadia Chandra <nadia.chandra@oakville.ca>

Subject: Erchless Estate Draft Official Plan and Zoning By-law Amendments - Planning and Development Council Agenda Item 5

Please find attached a written submission on behalf of ClubLink Corporation ULC and ClubLink Holdings Limited regarding Agenda Item 5 for this evening's Planning and Development Council meeting.

Kindly ensure that a copy of this submission is circulated to all members of Council prior to this evening's meeting.

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



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November 4, 2019

By E-Mail to *townclerk@oakville.ca*

Mayor Rob Burton and Members of Council
Town of Oakville
1225 Trafalgar Road
Oakville, Ontario
L6H 0H3

Attention: Vicki Tytaneck, Town Clerk

Dear Ms. Tytaneck:

**Re: Cultural Heritage Landscape Strategy Implementation for Erchless Estate
Draft Official Plan and Zoning By-law Amendments
Town File Nos. 42.24.22, OPA.1714.27 and Z.1714.27
Planning and Development Council Meeting – Agenda Item 5**

Background

We are counsel to ClubLink Corporation ULC and ClubLink Holdings Limited (collectively, “ClubLink”) the owners of the Glen Abbey Golf Club property at 1313 and 1333 Dorval Drive in the Town of Oakville (the “Glen Abbey property”).

On behalf of ClubLink, we are writing to express our concerns with the draft official plan and zoning by-law amendments being proposed by staff of the Town’s Planning Services Department in their report to Council regarding the above and related matters (the “Staff Report”).

Although the Staff Report is dated October 25, 2019, we understand that the report was only made available to the public on Friday, November 1, 2019, just one business day prior to this evening’s public meeting at which the report is to be considered by Council.

ClubLink first learned of these and related matters shortly before the October 22, 2019 meeting of the Heritage Oakville Advisory Committee (the “Committee”). In response, we made a written submission to the Committee dated October 21, 2019, in which we identified a number of concerns regarding the Town-initiated instruments. A copy of our written submission to the Committee is attached to the Staff Report as Appendix C.

In addition, Robert Visentin of ClubLink appeared at the Committee on October 22, 2019 and made an oral submission, reiterating a number of ClubLink's concerns. However, we have reviewed the minutes of the Committee's meeting on October 22, 2019, which is included as Agenda Item 11 for this evening's Council meeting, and note that the Town has failed to include any reference in the minutes to Mr. Visentin's oral submission to the Committee. The minutes of the Committee also fail to confirm that our written submission was received in response to the Committee's Agenda Item 6.c.

In our written submission to the Committee, we also noted concerns regarding the Town's failure to notify ClubLink that these matters were being brought forward for consideration when the Town knew, or certainly ought to have known, that ClubLink would have an interest in these matters given its current involvement in related matters.

Likewise, despite ClubLink being actively involved with these matters at the Committee, the Town failed to notify ClubLink that the Staff Report was being released, apparently relying instead upon ClubLink to monitor the Council agenda itself. By contrast, we note that the Staff Report indicates that the report was sent by email to "residents associations", and other stakeholders with a potential interest.

Draft Official Plan Amendment 32

As noted in our written submission to the Committee, the "basis" of the draft Official Plan Amendment 32 includes reference to Council's adoption of Official Plan Amendment 24 ("OPA 24") on January 30, 2018. OPA 24, in its entirety, remains under appeal by ClubLink to the Local Planning Appeal Tribunal ("LPAT") (LPAT Case No. PL180158), and is also the subject of an application by ClubLink to the Superior Court of Justice to quash the instrument, which is scheduled to be heard by Justice Schabas in April 2020 (Court File No. CV-19-613440). In particular, as noted in the Town's current draft amendment: "OPA 24 includes the framework to recognize special policy areas for heritage conservation districts and cultural heritage landscapes protected under the *Ontario Heritage Act*, which is proposed again through this OPA". [emphasis added]

Likewise, footnote 1 to the Staff Report reads as follows:

It is noted that [a general Town-wide framework to establish special policy areas for heritage conservation districts and cultural heritage landscapes] was first proposed through Official Plan Amendment Number 24 (OPA 24) to the Livable Oakville Plan, which was adopted by Council on January 30, 2018, but is subject to an appeal that has yet to be adjudicated. The general policy framework has to be in place in order to establish site-specific policies for the Erchless Estate special policy area, so it is being reintroduced through OPA 32. [emphasis added]

Similarly, footnote 3 to the Staff Report states the following:

On January 30, 2018, Council adopted OPA 24 (Cultural Heritage Special Policy Areas including Glen Abbey Golf Course), which is subject to one appeal. OPA 24 includes the framework to recognize special policy areas for heritage conservation districts and cultural heritage landscapes protected under the *Ontario Heritage Act*, which is proposed again through OPA 32. The general policy framework must be in place to establish site-specific policies for the Erchless Estate special policy area. [emphasis added]

Indeed, in Item Nos. 1 and 2 respectively, the draft Official Plan Amendment 32 proposes to amend the introductory paragraph of section 26 of the Livable Oakville Plan and to insert a new section 26.6 regarding "Heritage Conservation Districts and Cultural Heritage Landscapes". These proposed amendments are identical to Item Nos. 1 and 2 in OPA 24, which remain subject to ClubLink's appeal to the LPAT and its application to the Superior Court of Justice.

In our view, the Town's proposal to re-adopt / reintroduce the very same policies that remain subject to both an active appeal and an application to quash by ClubLink amounts to a colourable attempt by the Town to circumvent the adjudicative process.

Further, Item No. 6 of the Town's draft Official Plan Amendment 32 proposes to amend Schedule A1, Urban Structure, of OPA 15, which is also currently under appeal to the LPAT by ClubLink (LPAT Case No. PL180580). In fact, in support of the proposed amendment to Schedule A1, the Staff Report relies upon Section 3.10, Cultural Heritage Resources, of OPA 15, which is a proposed policy that also remains under appeal by ClubLink.

On page 36 of the Staff Report, Planning Services staff acknowledges ClubLink's concerns as identified in our written submission to the Committee, but nonetheless asserts that the draft planning instruments are appropriate. With respect to the draft Official Plan Amendment 32, staff comments as follows:

It is noted that the proposed OPA 32 has been modified to indicate on the "Proposed Schedule A1, Urban Structure" that Schedule A1, Urban Structure, of OPA 15 is subject to appeal, as indicated on the "Existing Schedule A1, Urban Structure" (see By-law 2019-107, Appendix 1, Changes to Schedules to the Livable Oakville Plan). This clarifies that Schedule A1, Urban Structure, of OPA 15 is not in effect. Staff is recommending, through OPA 32, that Council identify the town-owned Erchless Estate as "Heritage Conservation Districts/Cultural Heritage Landscapes" on Schedule A1, Urban Structure, of the Livable Oakville Plan, as amended by OPA 15, once OPA 15 is in effect. [emphasis added]

With respect, it is improper for Town staff to assume that Schedule A1, Urban Structure, of OPA 15, or at least the identification of “Heritage Conservation Districts/Cultural Heritage Landscapes” on Schedule A1 of OPA 15, will be in effect at any time in the future given ClubLink’s outstanding appeal and the LPAT’s authority to refuse to approve a proposed official plan amendment.

If the above statement in the Staff Report constitutes a recognition by Town staff that the amendment to Schedule A1, as proposed in draft Official Plan Amendment 32, cannot come into effect unless and until ClubLink’s outstanding appeal of OPA 15 is resolved and Schedule A1, Urban Structure, of OPA 15 comes into effect, there is no reason to proceed to adopt the draft Official Plan Amendment 32 at this time. Indeed, there is no apparent urgency to proceed with the draft Official Plan Amendment 32 at all, recognizing that the Erchless Estate is Town-owned property. Rather, at a minimum, Council should defer its consideration of this matter until after ClubLink’s related appeals to the LPAT and court proceedings have been adjudicated and resolved.

With respect to the portions of the draft Official Plan Amendment 32 that are intended to be specific to the Erchless Estate property (i.e., Item Nos. 3 to 7), we note that the Staff Report states that:

... a general policy framework has to be in place in order to establish – or “house” – site-specific policies related to a cultural heritage special policy area (i.e., heritage conservation district or cultural heritage landscape) in Section 26, Special Policy Areas, of the Livable Oakville Plan. This was first proposed through OPA 24 (Cultural Heritage Special Policy Areas including Glen Abbey Golf Course) to the Livable Oakville Plan, which was adopted by Council on January 30, 2018, but is subject to an appeal by ClubLink that has yet to be adjudicated.

On that basis, no portion of the draft Official Plan Amendment 32 should proceed to adoption.

Draft Zoning By-law No. 2019-108

According to the Staff Report, the proposed site-specific amendments in draft Zoning By-law No. 2019-108 are intended to “implement the site-specific provisions for the Erchless Estate property in the proposed official plan amendment”.

On that basis, Council should not proceed to enact the proposed zoning by-law. If the draft zoning by-law amendment relies upon the approval of Official Plan Amendment 32, and given our comments above regarding the draft official plan amendment, proceeding to enact the proposed zoning by-law now would contravene section 24 of the *Planning Act*.

Conclusion

For the reasons set out above, we urge Council to reject the recommendations in the Staff Report regarding the draft Official Plan and Zoning By-law Amendments; namely, recommendation numbers 3, 4 and 5.

Alternatively, Council could defer its consideration of these matters until ClubLink's related LPAT appeals and court applications have been resolved.

Kindly ensure that we receive notice of Council's decision(s) regarding the above matters.

Yours truly,
DAVIES HOWE LLP



Mark R. Flowers
Professional Corporation

copy: Nadia Chandra, Assistant Town Solicitor, Town of Oakville
Client