



MEMO / NOTE DE SERVICE

To / Destinataire Mayor & Members of Council File/N° de fichier: _____

From / Expéditeur Stuart Huxley, City Solicitor _____

Subject / Objet Kanata Lakes Golf Course Lands Date: June 23, 2026
Development – Follow-up _____

This memorandum responds to Council’s Motion No. 2026-73-28, adopted on January 28, 2026, and to the inquiry raised at the Environment and Climate Change Committee on February 17, 2026, by Councillor Curry. Both relate to the lands commonly referred to as the Kanata Lakes Golf and Country Club (the “Subject Lands”). The memorandum outlines the City’s current legal and planning position, identifies potential options for securing long-term open space protection, and addresses questions concerning potential municipal liability arising from environmental conditions on the site. The Office of the City Solicitor, in conjunction with external environmental and planning law counsel, continues to advise staff on this matter. A copy of an external legal opinion is on file with the Office of the City Clerk.

Background

The Subject Lands have historically formed part of the open space system associated with the original Kanata Lakes development concept. In the early 1980s, a planning framework commonly referred to as the “40% Agreement” (the “Agreement”) contemplated that approximately 40 percent of the broader development area would be preserved as open space, including the golf course. The 1981 Agreement, as amended in 1985 and 1988, imposed obligations on Campeau and its successors to operate a golf course in perpetuity, to convey the lands to the City at no cost if that use ceased, and to ensure that any conveyed lands would be used for recreational or environmental purposes, failing which they would revert.

ClubLink acquired the property in 1997. Its 2019 applications for a zoning by-law amendment and draft plan of subdivision led to litigation initiated by the City to enforce the Agreement. The central issue concerned the rule against perpetuities and whether certain provisions created invalid future interests in land.

Court Proceedings

At first instance in February 2021, the Superior Court ruled in favour of the City, holding that the Agreement created enforceable contractual obligations rather than interests in land. The Court required ClubLink either to continue operating the golf course or to convey the lands to the City if that use ceased.

That decision was overturned by the Court of Appeal on November 26, 2021. The Court concluded that key provisions violated the rule against perpetuities and were therefore void. The matter was returned to the Superior Court for further determination, and the City's application for leave to appeal to the Supreme Court of Canada was denied in August 2022.

On remand, the Superior Court determined that once the offending provisions were severed, the remaining provisions relating to the golf course lands were inoperative. The City appealed that ruling, but on January 21, 2025, the Court of Appeal dismissed the appeal and declared that all provisions of the 1981 Agreement relating to the golf course lands were void. The Supreme Court of Canada denied leave to appeal in September 2025, thereby bringing the litigation to a close.

Current Legal Status

As a result of these decisions, all contractual protections specific to the Subject Lands are now void and without legal effect. Any remaining provisions affecting the broader development lands have either been discharged, are no longer operative, or have no practical application. Accordingly, the future use of the Subject Lands is governed fundamentally by the applicable planning framework, including the City's zoning by-law and the draft plan of subdivision approved by the Ontario Land Tribunal (OLT) on March 22, 2022, and brought into effect by the OLT in January 2026.

Options for Long-Term Open Space Protection

Opportunities for long-term protection of the lands are now limited to planning and statutory tools. At the municipal level, these include voluntary acquisition or expropriation pursuant to the *Expropriations Act*, both of which would require Council approval, a valid municipal purpose, and the payment of compensation.

The Province retains broader authority and may intervene through mechanisms such as expropriation or a Minister's Zoning Order (MZO), under section 47 of the *Planning Act*. An MZO allows the Minister of Municipal Affairs and Housing to directly regulate land use, override municipal zoning, and impose binding conditions, including requirements for agreements registered on title. Such tools have been used in recent years by the Province to direct land use outcomes.

Environmental Context

The Environment & Climate Change Committee inquiry focused on potential liability associated with environmental conditions on the Subject Lands, particularly the presence of mercury-contaminated soils identified in a 2021 Phase II Environmental Site Assessment. That assessment confirmed localized exceedances of regulatory standards in shallow soils, generally within the upper 0.3 to 0.6 metres, while groundwater conditions were found to be compliant and not impacted by downward migration. The consultant recommended that remediation be undertaken as part of redevelopment.

Following an OLT hearing process, final zoning and draft plan approval were granted in January 2026, notwithstanding the City's opposition to the finalization of the zoning. Since that approval, the developer has undertaken preliminary site investigation activities, raising concerns among members of the community regarding potential off-site impacts arising from soil disturbance.

Several draft plan conditions are directly relevant. These include the requirement for a Record of Site Condition confirming suitability for the proposed use, the preparation of a remedial action plan addressing contamination, and the implementation of mitigation measures for dust, odour, noise, and sediment control during excavation. These requirements are to be secured through a future subdivision agreement, which has not yet been executed. The necessary Record of Site Condition and supporting documentation have also not yet been provided.

In the interim, limited site work has been undertaken to support preliminary engineering design. These activities were subject to mitigation measures reviewed by WSP, the City's independent peer reviewer. Available information indicates that mercury concentrations remain generally consistent with prior findings and do not represent a significant risk to surrounding receptors, although remediation will be required.

Municipal Liability Analysis

The central issue raised is the extent to which the City may be exposed to liability where site preparation activities occur before key environmental conditions have been satisfied. The draft plan conditions do not expressly prohibit all early works and certain investigative activities are necessary to inform engineering design and ultimately enable compliance with those conditions. In this context, the City's legal exposure is limited and largely dependent on whether it can demonstrate that it has exercised appropriate due diligence in its regulatory role. Based on current external legal advice, the City's approach—particularly its active oversight, requirement for mitigation measures, and retention of independent peer review—meets that standard.

The OLT-imposed conditions provide significant protection, but they are not absolute. The City must continue to take reasonable steps to ensure compliance with applicable conditions and to address potential environmental risks arising from authorized site activities. Standard financial

and legal protections, including insurance, indemnities, and securities, will be incorporated into the subdivision agreement once executed.

It is consistent with industry practice for developers to retain qualified environmental consultants to undertake testing and monitoring. In this case, the City has taken the extra step to supplement that model with independent peer review by WSP, including on-site observation and review of mitigation measures. On other issues of concern to the community, such as the management of stormwater and drainage, the City is also undertaking a proactive approach. By developing its own assessment of the site's drainage conditions, prior to receiving a submission from the proponent, the City can fully understand any limitations or challenges associated with providing satisfactory drainage and stormwater management.

This approach represents a best practice and further reduces potential exposure. Ultimate responsibility for environmental conditions and their management rests with the developer, while the City's role is confined to regulatory oversight. Other agencies, such as MECP, which regulates the assessment and clean-up of contaminated lands, and Ottawa Public Health, generally do not assume an active oversight role absent specific concerns or complaints substantiated through their respective processes.

Summary and Next Steps

The presence of mercury-contaminated soils presents risk to be managed. This will be addressed through the regulatory framework governing any redevelopment of the site. The primary responsibility for these risks lies with the developer. The City's liability exposure remains low, provided it continues to exercise diligence in enforcing draft plan conditions and overseeing site activities.

One area of residual risk relates to limited pre-construction activities that may occur before the execution of a subdivision agreement, completion of remediation, and filing of a Record of Site Condition. These activities are necessary in part to advance engineering design, but they require careful oversight and appropriate mitigation measures.

To address this, staff will formalize a protocol requiring advance notice of any future site activities, a clear explanation of their purpose, and detailed mitigation plans sufficient to allow for independent peer review. Staff will also seek full disclosure of environmental testing results, including recent sampling data for which only summary information has been provided. In addition, staff will confirm that recommendations made by WSP in respect of earlier site works have been fully implemented.

With these measures in place, and given the requirement for remediation, approval of mitigation measures, execution of a subdivision agreement, and filing of a Record of Site Condition prior to construction, the City's exposure to environmental liability is expected to remain low.

Conclusion

The City's role in relation to the Subject Lands is that of a regulator with respect to applicable statutory planning instruments. The City's duty of care is discharged through adherence to these regulatory frameworks ensuring oversight compliance with applicable legal and statutory obligations, with the subdivision agreement serving as a principal implementation mechanism. The Office of the City Solicitor, through the coordinated and strategic use of internal legal resources and specialized environmental counsel, will continue to provide advice and support to City staff to ensure that all such oversight obligations continue to be met.

A copy of the external legal opinion that is subject to solicitor-client privilege is on file with the Office of the City Clerk.



Stuart Huxley
City Solicitor

c.c. Senior Leadership Team