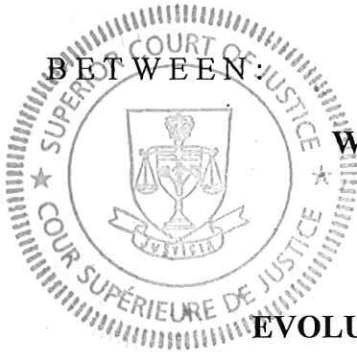


Court File No.

DC-26-00000007-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**



BETWEEN:

WEST CARLETON COMMUNITY ALLIANCE

Applicant

-and-

**THE CITY OF OTTAWA,
EVOLUGEN DEVELOPMENT LIMITED PARTNERSHIP,
BROOKFIELD RENEWABLE POWER INC. and
STANTEC CONSULTING LTD.**

Respondents

**NOTICE OF APPLICATION
TO DIVISIONAL COURT FOR JUDICIAL REVIEW**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following pages.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar by the method of hearing requested by the Applicant unless the court orders otherwise. The Applicant requests that this application be heard:

at the following location:

**ONTARIO
SUPERIOR COURT OF JUSTICE
80 Dundas Street
London, Ontario N6A 6A3**

at a date and time to be set by the Registrar.

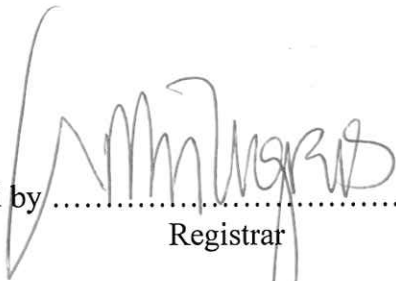
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the Applicant's application record, or at least four days before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, judgment may be given in your absence and without further notice to you. If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

TAKE NOTICE: THIS APPLICATION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for hearing or terminated by any means within five (5) years after the notice of application was filed with the court, unless otherwise ordered by the Court.

Date **JAN 12 2026**

Issued by 
Registrar

Address of 80 Dundas Street
Court office: London, Ontario N6A 6A3

JILLIAN ZEGERS

TO: THE CITY OF OTTAWA
110 Laurier Avenue West
Ottawa, Ontario K1P 1J1

Superior Court of Justice
Ground Floor, Unit "A"
80 Dundas Street
London, Ontario N6A 6A3

AND TO: BROOKFIELD RENEWABLE POWER INC.
181 Bay Street
Brookfield Place 300
Toronto, ON M5J 2T3

AND TO: EVOLUGEN DEVELOPMENT LIMITED PARTNERSHIP
181 Bay Street
Brookfield Place 300
Toronto, ON M5J 2T3

AND TO: STANTEC CONSULTING LTD.
1331 Clyde Avenue, Suite 300
Ottawa, Ontario, K2C 3G4

AND TO: ATTORNEY GENERAL OF ONTARIO
Crown Law Office – Civil
720 Bay Street, 8th Floor
Toronto, ON M7A 2S9

APPLICATION

THE APPLICANT MAKES APPLICATION FOR:

1. An Order, pursuant to s. 2 of *The Judicial Review Procedure Act*, R.S.O. 1990 c. J.1 quashing and setting aside City of Ottawa By-law 2025-493 amending the City of Ottawa Zoning By-law 2008-250. The rezoning of part of municipal addresses 2555 Marchurst Road and 2625 Marchurst Road in the geographical confines of the City of Ottawa from and existing zoning code RU (“Rural Countryside”) and EP3 (“Environmental Protection Zone, Subzone 3”) to RG [961] (Rural General Industrial Exception Zone 961r) to permit a Battery Energy Storage System (“BESS”) facility as a permitted use.
2. In the alternative, or in addition, an Order, pursuant to s. 273 of the *Municipal Act* quashing the aforesaid By-law.
3. An Order quashing a Municipal Support Resolution, passed by Ottawa City Council on June 11, 2025, in support of the South March BESS project described below.
4. An Interlocutory Injunction restraining the Applicant, the proponent, the City of Ottawa, and any of their respective officers, employees, agents, contractors, affiliates, or anyone acting on their behalf or under their direction, from undertaking any site alteration, tree removal, grading, excavation, construction, or other development activity on the subject lands, pending the final determination of this application.

5. In the alternative, an interim Order staying implementation of the aforesaid Zoning By-law amendment until final disposition of this application.
6. An award of costs of this application to the Applicant, as this Honourable Court deems just, having regard to the public interest and community-funded nature of this proceeding.
7. Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE APPLICATION ARE:

The Applicant

8. The Applicant is a not-for-profit corporation representing residents living in the vicinity of 2555 Marchurst Road and 2625 Marchurst Road, in Ward 5 (West Carleton-March), City of Ottawa who rely on private groundwater wells as the sole source of potable water, surrounding environmental features, the proper identification and protection of species at risk habitat, and effective fire and emergency risk management to protect their health, safety, enjoyment, and lawful use of their properties, including agricultural and livestock uses. Residents living in the vicinity of the subject lands are directly affected by the zoning approval for the proposed industrial-scale Battery Energy Storage System (“BESS”). The site in question will be referred to as both the Marchurst BESS, and the marketed name, the South March BESS.

The Respondents

9. The City of Ottawa is a municipality who exercises statutory powers of decision respecting the exercise of the land use zoning powers pursuant to s. 34 of the Planning Act, R.S.O. 1990 c. P.13.

10. The Respondents, Brookfield Renewable Power Inc. and Evolgen Development Limited Partnership, are the proponents of the BESS project located at the subject site.

11. The Respondent, Stantec Consulting Ltd., acted as the authorized planning consultant and applicant for the zoning by-law amendment. Stantec Consulting Ltd. prepared and advanced the planning materials relied upon by Council in approving the amendment permitting a BESS.

The Development

12. The Application for a zoning by-law amendment in respect of the lands municipally known as 2555 and 2625 Marchurst Road sought permission to permit the construction of a BESS, consisting of approximately 256 battery storage containers housing lithium-iron-phosphate batteries, containing lithium in quantities measured in thousands of metric tonnes, together with associated electrical and site infrastructure, on rural lands dependent on groundwater for potable use. The amendment at issue proposed to rezone a portion of the lands from Rural Countryside (RU) to a new Rural General Industrial (RG) exception zone to permit the BESS as a principal use.

13. The subject site is a road-accessed rural site located on Marchurst Road and approximately 600 meters east of the Marchurst Road and Thomas A. Dolan Parkway intersection. Small scale commercial activities in the area include an ecowellness center, an apple orchard, a chemical-free farm, artisan market and clay studio. Land designated as Agricultural Resource Area is located approximately 800 metres from the subject lands. A portion of the 2625 Marchurst lot is located within the Carp Hills area, a large contiguous natural area within the City of Ottawa that has been identified through provincial and municipal

planning instruments as environmentally significant. The area includes extensive forest cover, rock barrens, wetlands, and associated ecological features, and has been recognized by the Ministry of Natural Resources as an Area of Natural and Scientific Interest (“ANSI”). The area is a well-documented home to nine Species at Risk in Ontario (“SARO”): Blanding’s turtle, eastern whip-poor-will, common nighthawk, wood thrush, eastern wood-pewee, golden-winged warbler, butternut tree, black ash tree and monarch butterfly. The surrounding landscape includes provincially significant wetlands and woodlands and supports environmentally sensitive and hydrologically connected systems relevant to land-use compatibility and environmental protection.

14. The two subject properties have a combined area of approximately 84.46 hectares and the subject site has approximately 927 meters of frontage on Marchurst Road. Nine (9) hectares are proposed to be rezoned into an industrial use zoning classification. The 9 hectares include the BESS facility footprint and an additional 30m swath of land, closer to the EP3 zone, to accommodate potential modifications to the design at the site plan control stage. There is a discrepancy in the supporting planning studies as to how many hectares are to be rezoned: the public developer application proposed 14.7 hectares.

15. The adjacent land uses include agricultural lands and environmental protection areas. The property has portions of the Natural Heritage Features Overlay, Natural Heritage System Core Area and Natural Environment Area to the south as per Schedule C11-A of the Official Plan, including significant wetlands. The woodlot at 2555 Marchurst Road is part of the Provincial Natural Heritage System, a designation that falls outside of municipal authority. There are unevaluated wetlands present on the land lease of subject properties, including towards the front

of the property, one along the West boundary of 2625 Marchurst Road, and one along the east boundary of 2555 Marchurst Road. A Hydro One transmission corridor easement runs through the rear of the two parcels. Both properties contain forested and vegetated areas. A portion of 2625 Marchurst Road is used as pasture lands.

16. The proposal required the planned diversion and realignment of an existing watercourse, that crosses the middle of the project site and drains into a lake that supports a warm water fishery, through the construction of a new channel, with portions of the existing creek rendered superseded under the proposed development design. The watercourse, a surface water feature, is proposed to be diverted and the revised alignment is planned to be set back 30 meters from the proposed BESS footprint.

17. 2625 Marchurst Road contains a century-old, inhabited, residential dwelling and storage structure. The residential dwelling on site is located approximately 168 meters from the proposed BESS facility. There are four other existing residences within 500 meters from the proposed BESS facility and other residences along Marchurst Road. The surrounding area comprises rural residential settlement and estate-style residential communities, including the community of Dunrobin and nearby subdivisions such as Saddlebrooke Estates, Ravenview, Vance Farm, Ridgeside Farm, among others, within the vicinity of the subject lands.

Authority of the City of Ottawa Over Land Use Zoning Under the Planning Act

18. Pursuant to s. 34 of *The Planning Act*:

- a) Before passing a zoning by-law, council shall ensure that sufficient information and material is made available to the public to understand generally the zoning proposal that is being considered by council;

- b) at least one public meeting must be held for the purpose of giving the public an opportunity to make representations in respect of the proposed bylaw;
- c) notices of the public meeting shall be given to prescribed persons in the prescribed manner and shall be accompanied by the prescribed information;
- d) an open house as required by this section shall be held no later than 7 days before the public meeting;
- e) the public meeting required shall be held no later than 20 days after the requirements for giving notice have been complied with;
- f) every person who attends a public meeting shall be given an opportunity to make representations in respect to the proposed by-law;
- g) at a public meeting council shall ensure that the information is made available to the public regarding who is entitled to appeal;
- h) council should ensure that written notice of the passing of the bylaws given in a prescribed manner no later than 15 days after the bylaw is passed to each person that filed a written request to be notified of the decision; and
- i) the notice shall contain a brief explanation of the effect, if any, are the written and oral submissions received and any other prescribed information.

19. Pursuant to s. 61 of the *Planning Act*, council is mandated to afford any persons appearing before them in respect of a zoning by-law amendment a fair opportunity to make representations.

20. Site plan control under s. 41 of the *Planning Act* as a limited implementation tool. It is generally confined to matters of site design and the external relationships of a proposed development to the public realm and adjacent lands, and it cannot be used as a surrogate zoning

regime to control land use, density, height, or other core “what/where/how much” permissions that must be established through zoning or other statutory instruments.

21. In Ontario, provincial policy statements (now principally the Provincial Planning Statement, 2024 (“PPS 2024”)) are the province’s primary province-wide land use planning policy instruments issued under s. 3 of the *Planning Act*. They are significant because they establish the mandatory policy baseline against which land use planning and rezoning decisions must be made. In substance the PPS 2024:

- a) Sets the Province’s priorities for growth management, housing supply, infrastructure, environmental protection, hazards, agriculture, etc.;
- b) constrains and guides municipal discretion on official plans and zoning by-laws; and
- c) supply a central yardstick on whether a planning decision is legally sustainable.

The Municipal Support Resolution

22. On or about September 29, 2023, Independent Electricity System Operator (IESO) issued a Long Term Request for Proposals (“RFP’s”) for the provision of and construction of BESS facilities.

23. The Respondents, Brookfield/Evolugen, submitted two proposals to the IESO in response to a competitive procurement process for a BESS, one to be located at Fitzroy Harbour (Rural Ward 5 - West Carleton-March), and a second to be located at Trail Road (Rural Ward 21 - Rideau-Jock), within the City of Ottawa.

24. Under the applicable IESO procurement and contract framework, evidence of municipal support, commonly in the form of a Municipal Support Resolution (“MSR”) of the host municipality, is a mandatory contractual requirement. While municipal support is not required to be submitted as part of the initial proposal, proponents are required to obtain and deliver a MSR within a prescribed post-award period (18 months).

25. Failure to obtain and provide a MSR within that prescribed period constitutes a supplier event of default under the IESO framework.

26. In addition to the evidence of municipal support, the LT1 RFP requires applicants to submit a community and Indigenous engagement plan, a summary of community consultations that must include documenting at least one public meeting, providing notifications and proof of meeting summaries and a project website.

27. Brookfield/Evolugen made a request for an MSR for the Fitzroy Harbour and Trail Road sites from the City of Ottawa. The requests went before the Agricultural and Rural Affairs Committee (“ARAC”) of Council on November 30, 2023. Included in the meeting materials was a description of the Fitzroy Harbour site. The City of Ottawa preliminary development review comments were noted as follows: There is potential for threatened or endangered species, significant woodlands and significant wildlife habitat on the site. Unevaluated wetlands will require further evaluation. Any development within 120 metres of a significant wetland or natural heritage system or within 30 metres of a surface water feature triggers an Environmental Impact Study (EIS). Impact of noise and lighting will need to be considered for the adjacent residences and natural features. Area identified as having a highly vulnerable aquifer. Groundwater recharge, erosion and sediment protection, runoff and spills to groundwater,

surface water and the wetland need to be considered. Moderate and high-level risk to wildland fire at and adjacent to the site. Approval from the Mississippi Valley Conservation Authority will be required. At the ARAC meeting, the motion for a request for an MSR for the Fitzroy Harbour site failed, while the Trail Road site was granted an MSR.

28. At the City Council meeting on December 6, 2023, the motion to request an MSR for the Fitzroy Harbour site failed.

29. Although no Municipal Support Resolution had been granted for the Fitzroy Harbour site, Brookfield/Evolugen was awarded a contract by the Independent Electricity System Operator on May 9, 2024, with municipal support required to be obtained within a prescribed post-award period in order to avoid contractual default.

30. Publicly announced in January 2025, Brookfield changed its intention to pursue a BESS project on the Fitzroy Harbour site and instead proposed the Marchurst Road site.

31. On April 15, 2025, Ontario Minister of Energy and Mines, Hon. Stephen Lecce, wrote to the Mayor of Ottawa regarding land-use planning for Battery Energy Storage Systems. The correspondence referenced the South March (Marchurst Rd) BESS project and urged the City to avoid site-specific zoning by-law amendments and to expedite municipal approvals in light of applicable IESO contractual timelines, including the January 8, 2026 requirement to obtain a MSR.

32. On Sunday, May 25, 2025, Brookfield/Evolugen sent a letter to the Mayor and Council requesting an MSR. The basis of this early request was "... *in the context of the uncertainty created by the appeal...*" (referring to the appeal to the Ontario Land Tribunal (OLT) concerning

amendments to the Official Plan of the City of Ottawa respecting the siting of BESS units) “... to the city’s process relating to BESS approvals, a support resolution from the City of Ottawa will provide us a clear signal to continue advancing our work.” In fact, the OLT appeal was withdrawn on May 21, 2025.

33. On or about Monday, May 26, 2025, the Mayor announced his intention to city councillors to include an MSR request as a walk-on motion, suspending the rules of procedure for the council meeting on May 28, 2025.

34. Residents immediately launched a letter campaign to attempt to persuade the Mayor not to use his mayoral powers to ignore the perspectives of residents.

35. On May 27, 2025, Registered Lobbyist and Senior Vice President of Brookfield BRP (DbA Evolugen), Geoff Wright, held a meeting with the City of Ottawa, as indicated by the lobbyist registry. The issue listed was “zoning changes and municipal support resolution to build two battery energy storage systems in the City of Ottawa”. The following councillors attended: Cathy Curry: Councillor, Ward 4, Brockington, Riley : Councillor, Ward 16, Leiper, Jeff : Councillor, Ward 15, Brown, David : Councillor, Ward 21, Hubley, Allan : Councillor, Ward 23, Devine, Sean : Councillor, Ward 9, Kitts, Catherine : Councillor, Ward 19, King, Rawlson : Councillor, Ward 13, Tierney, Timothy : Councillor, Ward 11, Bradley, Jessica : Councillor, Ward 10, Hill, David : Councillor, Ward 3, Troster, Ariel : Councillor, Ward 14, Desroches, Steve : Councillor, Ward 22, Kavanagh, Theresa : Councillor, Ward 7, Plante, Stéphanie : Councillor, Ward 12, Gower, Glen : Councillor, Ward 6, Johnson, Laine : Councillor, Ward 8, Luloff, Matt : Councillor, Ward 1, Carr, Marty : Councillor, Ward 18, Menard, Shawn : Councillor, Ward 17, Lo, Wilson : Councillor, Ward 24, Dudas, Laura : Councillor, Ward 2. The

only councillor who did not attend the meeting was Clarke Kelly, of Ward 5, the affected ward for the South March BESS.

36. On May 28, 2025, a petition containing 1,421 wet signatures against the Marchurst BESS site was submitted to impacted Ward 5 Councillor, Clarke Kelly, to submit to the City Clerk.

37. On June 5, 2025, at ARAC the motion to approve a MSR for the South March BESS failed.

38. On June 11, 2025, the motion to approve an MSR was carried by City Council. Councillors voted 20 to 3 in favour of granting the municipal support resolution. The MSR process and the City's statutory land-use approval processes are legally distinct. However, at the time City Council considered and approved the Municipal Support Resolution on June 11, 2025, unlike in the presentation of the Fitzroy Harbour BESS, for the South March BESS Council had before it no site-specific information regarding the physical characteristics, environmental constraints, surrounding land uses, or planning context of the subject lands beyond the proponent's MSR request, a Council motion, and correspondence from the Ontario Minister of Energy and Mines.

The Public Meeting Hosted by the Proponent

39. Section 34(12) of the *Planning Act* imposes a mandatory precondition to the enactment of a zoning by-law amendment, requiring council to ensure the provision of sufficient public information and the holding of at least one statutory public meeting at which the public is afforded an opportunity to make representations on the proposed by-law.

40. No statutory public meeting convened by Council was held pursuant to section 34(12) of the *Planning Act*. The only meeting offered to the community was a proponent-hosted information session on November 25, 2025, from 5:30 p.m. to 7:30 p.m., the same day the City of Ottawa released its Staff Planner's Report recommending approval of the zoning by-law amendment to Council.

41. By proceeding without a Council-convened statutory public meeting and by releasing a recommendation for approval contemporaneously with the only proponent-hosted session, the City deprived the public of a meaningful opportunity to participate in a manner capable of influencing the decision, contrary to section 34(12) of the *Planning Act* and the principles of procedural fairness.

The By-Law Zoning Amendment

42. On July 14, 2025, Brookfield/Evolugen submitted an application for a zoning bylaw amendment for the subject site to the City of Ottawa.

43. On October 22, 2025, the City posted the zoning bylaw amendment application on their Development Application (DEV APPS) online portal. This triggered a firm 28-day window to receive public comments through the portal. The introductory text on the first page stated that "the reports, studies and related documentation provided in support of the application are preliminary and have not received the endorsement or approval of the City of Ottawa. The reports, studies and related documentation are under technical review by City staff and other applicable agencies, and may be subject to significant revisions. The City will make every effort

to post new information on development applications on this site as the information becomes available; however, users must be aware that some delays may occur.”

44. On December 1, 2025, the ARAC meeting agenda included the zoning by-law amendment for the subject site. Opportunities to delegate in advance of the called vote were limited to five minutes, per the guidelines on public delegations at Committee at the City of Ottawa. ARAC voted to deny the motion for the application for the South March BESS zoning bylaw amendment.

45. On December 10, 2025, the zoning by-law amendment went before City Council. Affected Ward Councillor Kelly moved a motion to add a Holding symbol provision to the site, which if it had passed, would have meant the zoning could not have been in full effect until an Emergency Response Plan, Noise Study, and Environmental Impact Study had been received and met the requirement of the City as part of a Site Plan Control Application. The vote failed 16-9 against the Holding symbol provision. Notwithstanding the ARAC recommendation to refuse the application, Council approved the subject zoning bylaw amendment with a vote of 21-4 in favour of the re-zoning.

Fettering of Discretion and Pre-Judgment:

46. By approving a site-specific Municipal Support Resolution for the proposed Battery Energy Storage System prior to the commencement or consideration of any application under s.34 of the Planning Act, City Council effectively committed itself in advance to the acceptability of the proposed use of the subject lands. In doing so, Council prejudged matters that it was later required to determine in the exercise of its statutory planning authority and

unlawfully fettered its discretion in the subsequent zoning by-law amendment process. The Municipal Support Resolution operated as a determinative endorsement of the Project, materially constraining the scope of independent and meaningful consideration at the zoning stage.

Procedural Unfairness and Denial of Meaningful Public Participation:

47. The decision-making process leading to the enactment of the Zoning By-law Amendment was procedurally unfair and failed to provide affected landowners and members of the public with a meaningful opportunity to understand, review, and respond to the proposal, in the following particulars:

- a) Council proceeded on the basis of deficient, incomplete, and in some cases entirely absent supporting studies or studies submitted that were written for different sites entirely, while simultaneously advancing the application to decision.
- b) Key technical materials necessary to assess land-use compatibility, environmental risk, and public safety were either incomplete, internally inconsistent, or expressly deferred to later stages of approval, such as Site Plan Control.

48. As a result, despite significant public engagement and efforts by residents to make informed submissions affected landowners and members of the public were not provided with adequate notice and adequate information to do so. Public consultation was conducted on a moving and unsettled record, undermining the statutory purpose of consultation under the *Planning Act* and depriving the process of procedural fairness.

49. This procedural unfairness is compounded by the City's reliance on future approvals to cure present informational deficiencies, including the absence of studies required to demonstrate compliance with governing land-use and environmental frameworks, including the National Capital Commission's Greenbelt Master Plan.

50. Further, legal professionals expressly advised decision-makers, prior to the vote on the zoning by-law amendment, that the record was incomplete and that proceeding would expose the City to legal risk. Despite this knowledge, Council elected to proceed. This conscious disregard of identified legal deficiencies aggravates the breach of procedural fairness.

The Decision Under Review Was, in all the Circumstances, and Unreasonable Exercise of a Statutory Power of Decision:

51. When viewed as a whole, the decision to approve the zoning by-law amendment was unreasonable in light of the full factual, statutory, and policy context before Council in the following particulars:

a) *Decision Made on an Incomplete and Unsettled Record*

52.1 Council approved the zoning by-law amendment on the basis of an application that lacked finalized, consistent, and settled information regarding impacts to the health and safety of residents, the scale, footprint, siting, and physical configuration of the proposed BESS. Material elements, including site area, foundation design, noise impacts, servicing, environmental mitigation measures, and construction impacts, remained fluid, disputed, or were promised to be revised late in the land-use consultation process.

52.2 The record before Council confirmed the presence of unresolved flooding and geomorphological hazards affecting the subject lands. The proponent's own consultant materials identified floodplain encroachment, low-lying lands requiring fill, and development within areas subject to erosion and meander belt constraints, while acknowledging that key analyses necessary to assess flooding impacts and channel stability had not been completed. Notwithstanding these unresolved hazards, Council proceeded without determining whether the proposed industrial use complied with applicable floodplain management standards or hazard avoidance requirements, leaving the record incomplete on matters determinative of land-use permissibility and public safety.

b) *Failure to Apply the Statutory Test of Compatibility*

52.3 While the City acknowledged applicable policy instruments, including the Official Plan and Provincial Planning Statement (PPS 2024), it failed to meaningfully apply those instruments to the site-specific evidence before it.

52.4 The record contains clear evidence of environmental constraints, groundwater sensitivity, proximity to wetlands and headwater features, and a surrounding population reliant on private wells and agricultural uses. The decision does not explain how a grid-scale, industrial battery facility is compatible with these conditions, nor how risks associated with fire, explosion, toxic-off-gassing, noise, light, fire-water runoff, and contamination pathways are acceptably mitigated.

52.5 In approving the zoning by-law amendment, the City of Ottawa failed to apply the mandatory statutory test of land use compatibility under PPS 2024. Chapter 5. Section 5.2(6)(c) of the PPS expressly prohibits development in hazardous lands where the proposed use is associated with the storage of hazardous substances. The subject lands are affected by flooding and erosion hazards, bringing them within the definition of hazardous lands under PPS 2024.

52.6 In approving the zoning by-law amendment, the City of Ottawa failed to apply the statutory test of compatibility required by the PPS 2024, s. 4.1.8, which prohibits development in or adjacent to significant wetlands, significant woodlands, and unevaluated wetlands unless it has been demonstrated that there will be no negative impact on the natural heritage features or their ecological functions. Although the presence of significant wetlands and woodlands is expressly acknowledged in the proponent's Planning Rationale, the City approved a development that proposes diversion of a natural watercourse and construction in proximity to sensitive wetland habitats without complete hydrological, ecological, or impact studies capable of demonstrating no negative impact.

52.7 In approving the zoning by-law amendment, the City of Ottawa failed to apply the statutory test of compatibility mandated by the PPS 2024, s. 3.6, which requires that water, sewage, and stormwater services be planned, provided, and coordinated in a manner that is efficient, safe, and protective of public health, safety, and the natural environment, including the quality and quantity of water. The City approved the rezoning in the absence of demonstrated, site-specific evidence that adequate water supply, stormwater management, or emergency response infrastructure exists to safely manage a BESS failure in a rural, well-dependent context.

52.8 In approving the impugned zoning by-law amendment, the City of Ottawa failed to apply the statutory test of compatibility required by the PPS 2024, s. 4.2.1(e), which

mandates that planning authorities protect, improve, or restore the quality and quantity of water, including the protection of designated vulnerable areas. The subject lands are identified as containing a highly vulnerable aquifer, a significant groundwater recharge area, and an Intake Protection Zone 3 (IPZ-3), yet the rezoning authorizes extensive impermeable surface coverage over these features, creating a foreseeable risk of long-term groundwater contamination. The City approved the rezoning without demonstrating that groundwater quality and quantity would be protected in a rural context where residents in Ward 5, with the exception of Carp Village, rely on private wells for drinking water.

52.9 In approving the impugned zoning by-law amendment, the City of Ottawa failed to apply the statutory test of compatibility required by the PPS 2024, s. 2.9, which directs planning authorities to improve resilience to climate-related risks by protecting the environment and improving air quality. The approved development interrupts ecological connectivity and threatens species reliant on adjacent wetlands and woodlands, while requiring tree and soil removal, introducing extensive impermeable surfaces, and increasing heat reflection and fire risk in a rural, environmentally sensitive area. These impacts also impair the carbon sequestration and storage functions of wetlands and forested lands, which are integral to climate mitigation and resilience. By authorizing development that degrades natural systems essential to air quality, carbon capture, and climate adaptation, the City of Ottawa undermined the climate resilience objectives of PPS 2024 and failed to lawfully discharge its obligations under the *Planning Act*, rendering the decision unreasonable.

52.10 The decision fails to apply the statutory compatibility framework governing rural designations under the Official Plan. The Official Plan provides that rural land-use planning is intended to protect and enhance rural character, limit the fragmentation of rural lands, and ensure the preservation of health. The decision does not demonstrate that these mandatory objectives were applied to the proposed development, resulting in an incomplete application of the statutory planning test and an unreasonable decision.

c) *Internal Inconsistencies and Contradictory Rationale*

52.11 The City's own materials acknowledge the presence of natural heritage features, environmental overlays, unevaluated wetlands, and source-water protection considerations. At the same time, the zoning by-law permits a principal industrial use that is dependent on detailed siting, grading, and mitigation measures that remain unresolved.

52.12 A decision that simultaneously recognizes serious constraints while authorizing a use that depends on their displacement, alteration, or future resolution lacks the internal coherence required of reasonable administrative decision-making.

d) *Disregard of Central Public and Technical Concerns*

52.13 Residents raised specific, technical concerns regarding groundwater contamination pathways, differential settlement, erosion hazards, bearing capacity, emergency response limitations, fire-water runoff, noise impacts, and cumulative environmental effects. These concerns were grounded in site conditions listed within the applicant's reports and in documented risks associated with lithium-battery installations.

52.14 The decision does not demonstrate that these issues were weighed or resolved. Central concerns were deferred or dismissed rather than addressed. Reasonableness requires engagement with the core issues raised by the record.

e) *Unreasonable Exercise of Zoning Authority and Error of Law*

52.15 Council deferred critical safety and environmental determinations to future approvals, particularly Site Plan Control. Zoning establishes the acceptability of a use in principle. Approving the use while deferring fundamental compatibility questions constitutes improper sequencing and renders the decision unreasonable.

52.16 In approving the zoning by-law amendment, Council unreasonably exercised its zoning authority and erred in law by granting land-use permission for an intensive industrial use without the information required to assess the nature, scale, and impacts of that use. Council relied on the mistaken premise that such matters could be addressed through Site Plan Control, contrary to s. 41 of the *Planning Act*, which confines site plan control to implementation and site design and does not permit it to determine land use, intensity, or fundamental compatibility. By deferring zoning-level impacts to a later stage, Council failed to consider relevant factors central to the permission granted and acted on an incomplete record. The resulting By-law is therefore unreasonable and contrary to the statutory scheme of the *Planning Act*.

Reasonable Apprehension of Bias and Bad Faith

52. The circumstances surrounding the approval of the Zoning By-law Amendment give rise to a reasonable apprehension of bias and demonstrate that the process was driven by improper considerations rather than an impartial assessment of the planning merits.

53. The enactment of the impugned Zoning By-law Amendment gives rise to a reasonable apprehension of bias and was undertaken for an improper purpose. The City approved the amendment in reliance on an Environmental Impact Study prepared by the ZBL Applicant, notwithstanding acknowledged impacts to an Endangered species protected under *Ontario's Endangered Species Act*, and without requiring demonstrated statutory compliance, thereby signalling a predetermined outcome that subordinated mandatory environmental protections to the advancement of the Project. As a result, the decision was made for an improper purpose and outside the scope of lawful municipal authority.

54. The process was demonstrably rushed to accommodate the proponent's stated timeline, a fact expressly acknowledged by City staff during the December 10, 2025, Council meeting. The City admitted that it advanced the application to decision in order to meet the proponent's schedule, rather than because the evidentiary record was complete. Public confidence in the neutrality of the process was undermined.

55. The record further reveals a pattern of reliance on assurances provided by the proponent, despite the absence of supporting evidence and despite the proponent's own admissions that key studies were incomplete and would only be finalized later. Proceeding in the face of these deficiencies suggests that decision-makers relied on improper assurances rather than independent scrutiny.

56. There is also evidence of bad faith conduct by the proponent, including materially misleading statements made during the November 25, 2025, proponent-hosted public town hall, regarding emergency preparedness, toxins in the plume analysis, increases in property values, uncertainty about the barrier intended to prevent groundwater contamination, and oversights in hazard mitigation analysis. These representations were not supported by the record and were contradicted by the absence of corresponding plans or documentation. Council's reliance on such representations further taints the integrity of the decision.

57. Undisclosed or unmanaged conflicts of interest, including relationships between senior municipal officials and individuals or firms directly involved in advancing the project, contribute to a reasonable apprehension of bias.

58. The passing of the MSR prior to the submission and consideration of any materials and studies assessing the suitability of the site for the proposed change in use, the interference of the Minister of Energy and Mines advocating support for the resolution, the haste with which it was run through council and the complete lack of any assessment of the suitability of the site for its intended purpose, constituted a biased and bad faith exercise of a statutory power of decision.

59. Finally, the broader chronology of events including promotional disclosure preceding formal notice, incomplete applications repeatedly advanced, rejection of key motions at committee followed by reversal at Council, and systematic deferral of substantive issues beyond political oversight supports the inference that the outcome was pre-determined.

60. Taken together, these circumstances would lead an informed and reasonable observer to conclude that the decision-making process was not impartial and was driven by improper considerations.

Illegality: Loss of Decision-Maker Control and Unlawful Deferral of Essential Safety and Environmental Determinations

61. Council's approval of the zoning by-law amendment resulted in a loss of control over the approval process and constituted an unlawful abdication of essential safety and environmental determinations.

62. At the time of the zoning decision, Council did not know and had not determined the safety standards, mitigation measures, or risk controls that would govern the construction and operation of the proposed Battery Energy Storage System. The record demonstrates that fundamental matters affecting public safety, environmental protection, and land-use compatibility were unresolved, contested, or expressly deferred to later stages of approval. In particular, Council approved the use without determining:

- a) Which editions of critical fire, electrical, and safety standards would apply;
- b) whether proposed containment and protection measures were capable of protecting groundwater and natural features;
- c) whether emergency response, fire suppression, air monitoring, and containment systems were adequate for the site conditions; and
- d) whether the facility could be safely operated given the site's environmental constraints, proximity to sensitive lands, and reliance on private groundwater supplies.

63. Zoning establishes the acceptability of a land use in principle. By approving the zoning while leaving these foundational matters unresolved, Council effectively delegated and abdicated

its statutory responsibility to future processes and third parties, without retaining meaningful control over whether the use could ever be made safe or compatible with the site.

64. A decision that authorizes an intensive industrial use while deferring core safety and environmental determinations to later stages is unreasonable, procedurally unfair, and contrary to the purpose of zoning control under the *Planning Act*.

Miscellaneous:

65. Such further and other grounds that counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

- a) The Affidavits of Catherine Spotswood and Sharon Podlesny, and exhibits thereto, to be filed;
- b) Further Supplementary Affidavits to be filed;
- c) Such further materials as Counsel may advise and this Honourable Court may permit.

January 9, 2026

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-and-

THE CITY OF OTTAWA et al
Respondents
Court File No.

DC-26-0000007-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

Proceeding commenced at London, ON.

**NOTICE OF APPLICATION
TO DIVISIONAL COURT FOR JUDICIAL REVIEW**

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