



# LOOPSTRA NIXON LLP

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City of Vaughan  
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C	<u>2</u>
Item #	<u>6</u>
Report No.	<u>2 (cw)</u>
<u>Council - January 19/16</u>	

**Attention: Your Worship Maurizio Bevilacqua and Members of Council**

Dear Your Worship and Members of Council:

**Re: Item 6: Committee of the Whole Meeting, January 12, 2016**  
**OMB Case No. PL111184**  
**Proposed Amendment to Schedule 2 of the Vaughan Official Plan, 2010**  
**Kirbywest Ltd. (Appellant No. 66)**  
**Part of the East Half of Lot 30, Concession 6, City of Vaughan**  
**3893 Kirby Road, City of Vaughan**

I am the solicitor for Kirbywest Ltd. ("Kirbywest"). Kirbywest is the owner of approximately 42 hectares of land located in Block 41 of the City of Vaughan (the "City"), legally described as Part of the East Half of Lot 30, Concession 6, City of Vaughan and municipally known as 3893 Kirby Road, City of Vaughan.

Kirbywest is appellant No. 66 in OMB Case No. PL111184. Kirbywest's appeal includes several policies of the Vaughan Official Plan 2010 ("VOP 2010") and Schedule 2 as it applies to the entirety of Blocks 27, 34, 35, 41, and 42. In addition, Kirbywest has been actively involved in the natural heritage network study process ("NHN Study"), making written submissions, working with City staff, and attending at Council meetings and public meetings both as a member of the Block 41 Landowners Group ("Landowners Group") and as an individual property owner.

The purpose of this letter is to request that the matter of the proposed amendments to Schedule 2 of the VOP 2010 ("Proposed Amended Schedule 2") be deferred and referred back to staff for further consultation with stakeholders.

There are significant problems with the Proposed Amended Schedule 2 and the process leading to Council's consideration of this matter which should be addressed prior to the amendments being adopted by this Council, including those outlined below.

**1. City Staff Have Not Followed the Direction of Council:**

On June 23, 2015, Council directed City Staff to report back in quarter 4 of 2015 on the NHN



Inventory and Improvements Study Completion, Recommendations and associated amendments to the VOP 2010 ("NHN Proposed Amendments"). To our knowledge no report has been made by City Staff to date. Rather City Staff now asks Council to endorse the Proposed Amended Schedule 2 in a vacuum.

**2. Proper Process Has Not Been Followed:**

According to City Staff, the Proposed Amended Schedule 2 will add an additional 1,368 hectares of Core Features to the previously adopted Schedule 2. This constitutes an amendment to the previously adopted Schedule 2 and to the VOP 2010 which should be brought forward as part of a comprehensive Official Plan Amendment ("OPA") under the *Planning Act*, together with related policy amendments. While there is no doubt that the City can make modifications to the previously adopted Schedule 2 and the Policies of the VOP 2010 as part of a settlement of individual appeals, making amendments to the previously adopted Schedule 2 on lands that are not currently under appeal without adequate notice to those affected and without the proper public process being followed is inappropriate.

In its report to Council, Staff have suggested that the Proposed Amended Schedule 2 is the result of an appropriate public process, being the NHN Study. The NHN Study process did not meet the statutory requirements of an OPA as set out in the *Planning Act*, which requirements are meant to protect the public and ensure a robust and appropriate public process. Even worse, my client had been assured that the current proposed amendments to Schedule 2 would be made as part of a separate OPA and not lumped into the existing VOP 2010 appeals.

**3. The City Has Not Provided Sufficient time to Review the Proposed Amended Schedule 2:**

Kirbywest has serious concerns respecting the speed with which the City is proceeding. The Proposed Amended Schedule 2 is being brought before the Committee just after the holiday break with very little time for review of the proposed amendments and the resulting impact. The staff report was only available to the public on Thursday January 7, 2016, with no notice to those who are not already monitoring the NHN Study or VOP 2010 Appeals. This has not provided a practical opportunity for my client or its consultants to review and provide comments respecting the proposed amendments. Further, it makes a meaningful dialogue between my client and City Council/City staff all but impossible.

**4. Attachment 3 to the Staff Report Is Incorrect:**

Attachment 3 to the Staff Report, which purports to show the extent of the appeals to the previously adopted Schedule 2, is incorrect. As is mentioned above, my client has the entirety of Blocks 27, 34, 35, 41, and 42 under appeal and this is not accurately reflected Attachment 3 to the staff report.

City staff have acknowledged this error and have advised that Attachment 3 will be corrected prior to being considered by the Committee of the Whole, however, as of the time of writing this letter we are not in receipt of a revised Attachment 3 and therefore cannot comment the accuracy of any such revision.



**5. The Proposed Amended Schedule 2 Purports to Thwart Appeal Rights and Fetter Council's Discretion:**

The notation included in the legend to the Proposed Amended Schedule 2 compounds the concerns regarding process and lack of notice. The notation suggests that additional changes will be brought forward. It reads:

*This Schedule is subject to change based on the results of the Natural Heritage Network Study, undertaken by North-South Environmental Inc. (2015), which will define the Natural Heritage Network by both its natural features and as a Natural Heritage System in accordance with the Provincial Policy Statement.*

The above reference notation suggests that the City's Official Plan can be amended from time to time, without the benefit of public consultation, council consideration, or the appeal rights available under the *Planning Act*. The Official Plan is intended to be a clear statement of applicable policies and all relevant matters should be included in it.

City staff have advised that this text will be removed from the Proposed Amended Schedule 2 prior to being considered by the Committee of the Whole, however, as of the time of writing this letter we are not in receipt of a revised Schedule 2.

**6. The Proposed Amended Schedule 2 Is Incomplete:**

The staff recommendations currently before Council include a recommendation that Council approve the Proposed Amended Schedule 2, save and except for those lands that are subject to a site-specific or area-specific appeal to the VOP 2010, as it appears in Attachment 2 to the staff report. The Proposed Amended Schedule 2 does not show the lands currently under appeal. It is our recommendation that if Council does approve staff's recommendations despite my client's objections herein, that the lands under appeal be appropriately shown on the approved Schedule and that the underlying designations be removed as they are not currently before Council for its consideration.

**7. The Proposed Amended Schedule 2 Contains Inconsistencies and Raises Additional Concerns:**

Despite the limited time available to review the Proposed Amended Schedule 2 our client's consultants have already identified several concerns with the Proposed Amended Schedule 2, including:

1. New Core Features not previously included have been added to Schedule 2 without justification being provided;
2. There are no accompanying policy revisions proposed;
3. There is disconnect between the Chapter 3 policies before the Ontario Municipal Board (the "Board") and the amended Schedule 2; and,
4. New Core Features (e.g. headwater drainage features) have been added to Schedule 2 but are not defined in the VOP 2010.



The piecemeal approach taken by City Staff is creating additional inconsistencies between Proposed Amended Schedule 2 mapping and the policies, which are not being brought forward at the same time. Our client has been consistent in the request that Proposed Amendments and NHN mapping, including the Compensation Protocol must be considered at the same time, and must be part of a comprehensive OPA. The NHN is an interconnected system which stretches throughout the City. Bringing forward parts of Schedule 2 without the complimentary policies is a mistake.

We respectfully ask that City Staff be directed to meet with our client and our client's consultants and that the NHN mapping be considered at the same time as the Proposed Amendments and a Compensation Protocol, and/or principles related to it, and as part of a comprehensive OPA.

There is mention in the staff report that the Proposed Amended Schedule 2 will assist with the resolution, withdrawal, or scoping of outstanding VOP 2010 Appeals to the OMB. This is a very curious statement since Council is not being asked to consider or approve any amendments to lands that are subject to appeal. In any event, the deferral of this matter and continuing discussions with stakeholders and appellants should not delay the resolution of appeals as site or area-specific resolutions can proceed through the regular board process despite the deferral.

My client remains hopeful that its concerns can be resolved and looks forward to continuing to work with the City respecting this matter.

Should you have any questions with respect to the foregoing, please do not hesitate to contact the undersigned.

Yours truly,

LOOPSTRA NIXON LLP

Per:

*Brian Riddick*  
For Quinto M. Annibale

cc Ms. Dawne Jubb, Solicitor, City of Vaughan  
Mr. John Mackenzie, Commissioner of Planning, City of Vaughan  
Mr. Roy McQuillan, Acting Director Policy, City of Vaughan  
Client