

C A N A D A

PROVINCE OF PRINCE EDWARD ISLAND

IN THE MATTER OF THE PLANNING ACT, R.S.P.E.I. 1988, c. P-8
AND IN THE MATTER OF APPEAL LA26008 BEFORE THE
PRINCE EDWARD ISLAND REGULATORY AND APPEALS COMMISSION

BETWEEN:

JAMES JORDAN and SUZANNE JORDAN

Appellants

AND:

MINISTER OF LAND AND ENVIRONMENT

Respondent

AND:

STICKS AND STONES DEVELOPMENTS INC.

Developer

APPELLANTS' RESPONSE TO THE MINISTER'S PRELIMINARY SUBMISSIONS
AND REQUEST FOR PROCEDURAL DIRECTIONS

PART I – OVERVIEW

1. These submissions respond to the preliminary submissions dated August 11, 2026 filed by the Minister of Land and Environment (the "Minister's Submissions") and are based on the 594-page Record of Decision filed the same day (the "Minister's Record" or "MR"). They also identify targeted deficiencies in the Record and the procedural directions required before the appeal can be fairly determined.
2. The Minister makes three concessions that materially narrow the preliminary issues. The Minister takes no position against acceptance of the Amended Notice of Appeal, does not contest the Appellants' standing in light of the common boundary between PID 921791 and the subject lands,

and accepts that the Commission has jurisdiction over the final subdivision approval and approval of the change of use. (Minister's Submissions, paras. 2, 19 and 67)

3. The remaining dispute is not whether the Appellants may bring a Planning Act appeal. It is whether the June 4, 2026 final approval was lawfully and properly made on a complete application, complied with statutory prerequisites, and had merit based on the professional planning evidence actually relied upon.
4. The Minister's own Record discloses a central contradiction. The Minister says the Decision was made in reliance on Alex O'Hara's professional Planning Report and expressly recites his recommendations. (Minister's Submissions, paras. 61-62) The Planning Report recommended approval only with a comprehensive Development Agreement, completion of all outstanding permits before construction, and financial security for environmental performance, erosion mitigation and decommissioning. (MR, pp. 47-48 and 58)
5. The actual Decision did not impose any of those three safeguards in the form recommended. It imposed only a general statement that further approvals or permits may be required before construction, together with a condition concerning use of the existing highway access. (MR, pp. 7-9) The Record contains no executed Development Agreement, no financial security, and no reasons explaining why the Minister omitted the conditions that made the planner's recommendation supportable.
6. The Record also confirms that essential planning information remained unresolved when final approval issued. The Planning Report states that topography was indeterminate because of extensive prior and ongoing grading, that no stormwater-management plan had been provided, that the groundwater permit remained pending, and that a formal traffic-impact assessment would strengthen the application. (MR, pp. 49, 52 and 56)
7. Those are not merely construction details. Sections 3 and 13 of the Planning Act Subdivision and Development Regulations require the Minister to determine whether the subdivision and intended golf-course use are suitable having due regard to compatibility, topography, drainage and effects on adjoining land, traffic, utilities and services, wastewater, water supply and natural features. The statutory suitability inquiry cannot be completed by deferring the evidence required to answer it.
8. The Record further discloses unresolved statutory and title issues. Two Executive Council orders authorized acquisition of the principal lands subject to conditions that the real property not be subdivided. (MR, pp. 544 and 555) The June 4 Decision is expressly an approval to subdivide by consolidation, while the Record contains no variation, suspension or cancellation of those conditions under subsection 9(2) of the Prince Edward Island Lands Protection Act.
9. The Old Queens Road issue was also treated internally as a prerequisite to approval. Planning staff stated that the road had to be resolved before approval because the course design crossed it, yet the Record shows only permission for the Developer to acquire the road strip and preparation of a quit-

claim deed. (MR, pp. 388-390, 401-407 and 557) The Record does not establish that the conveyance was completed and registered before June 4.

10. The Appellants accept that the Commission cannot award private-nuisance damages, prosecute alleged regulatory offences, or re-decide the Environmental Impact Assessment approval as a free-standing appeal. That does not remove from the Planning Act appeal the statutory questions of compatibility, detrimental impact, topography, drainage, water supply, traffic, public safety, natural features, enforceable mitigation and the completeness of the planning process.
11. The Minister's request for summary dismissal should therefore be rejected. The proper course is to direct targeted supplementation and certification of the Appeal Record, establish a timetable for the Appellants' affidavit and expert evidence, and proceed to a de novo hearing on the procedural and substantive merits of the subdivision and change-of-use approvals.

PART II – ISSUES

12. The preliminary and merits issues may now be stated as follows:
 - a. First, what is the proper appellate framework, and when is deference owed to a planning decision in a de novo Planning Act appeal?
 - b. Second, can the Minister rely on the Planning Report while omitting the conditions that the professional planner identified as necessary to make approval supportable?
 - c. Third, was final approval premature because the application and site remained materially indeterminate in relation to topography, stormwater, irrigation, water supply, servicing, traffic, safety and the controlling final plan?
 - d. Fourth, did the approval satisfy section 5 of the Regulations in light of the Lands Protection Act conditions and the unresolved Old Queens Road acquisition and parcel configuration?
 - e. Fifth, did the process provide meaningful participation in relation to the actual twelve-hole, three-parcel proposal, and does the Record disclose intelligible reasons for the conditions selected and omitted?
 - f. Sixth, are the Appellants' concerns about noise, errant balls, drainage, water, traffic, trespass and prior grading properly characterized as planning evidence bearing on compatibility and suitability, rather than as tort or enforcement claims?
 - g. Seventh, what further disclosure, evidence and procedural directions are required before the Commission can fairly determine the appeal?

PART III - STATUTORY AND APPELLATE FRAMEWORK

13. Planning Act appeals before the Commission are heard de novo. The Commission is not confined to the Minister's Record and may receive new evidence and legal argument as the context requires. *Judy Shaw v. Rural Municipality of West River*, Order LA26-09, para. 24.
14. The Commission applies its familiar two-part guideline: whether the planning authority followed the required procedure, including procedural fairness, and whether the decision has merit based on the Planning Act, the applicable planning instruments and sound planning principles. *Stringer v. Minister of Communities, Land and Environment*, Order LA17-06, para. 52; *Aftab and McCullough v. Minister of Housing, Land and Communities*, Order LA25-02, para. 27.
15. The Commission does not lightly interfere with planning decisions, but that principle does not create presumptive immunity. Deference is ordinarily shown only to a decision that was properly made and is supported by objective and reliable professional planning evidence confirming compliance with the governing law and sound planning principles. *Shaw*, para. 25; *Queens County Condominium Corporation No. 40 v. City of Charlottetown*, Order LA18-02, para. 41.
16. Where the initial decision is procedurally invalid or not supported by the professional evidence relied upon, there is no valid decision to which the Commission must defer. The Commission then performs its statutory appellate function and may decide the matter anew. *Charlottetown (City) v. Island Regulatory and Appeals Commission*, 2013 PECA 10, paras. 50-65.
17. The Planning Act is directed to efficient planning, sustainable and planned development, protection of the natural and built environment, resolution of land-use conflicts, public participation and compatibility between land uses. Planning Act, s. 2.
18. The Minister must also have regard to matters of provincial interest that include protection of coastal areas and ecological systems, conservation of water, efficient provision of water, sewage and stormwater services, public health and safety, safe and healthy communities, and adaptation to climate change. Planning Act, s. 2.1.
19. The Regulations prohibit a subdivision that does not conform to governing regulations, precipitates premature development or unnecessary public expenditure, places pressure on public services, or has a detrimental impact. Regulations, s. 3(1).
20. Section 13 is more specific. It requires subdivision designs to be based on sound planning, engineering and environmental principles and to demonstrate that the subdivision is suited to the intended use, having due regard to compatibility, topography, drainage and impacts on adjacent parcels, traffic, utilities and services, lot suitability, wastewater, water supply and natural features.

21. The fact that this application created one consolidated lot does not excuse the absence of information needed to determine suitability. For a subdivision of five lots or fewer, subsection 14(2)(b) expressly authorizes the Minister to require any additional information considered necessary. The planner's report demonstrates that additional topographic, stormwater, traffic and water information was in fact material.
22. The Regulations also authorize conditions necessary to ensure compliance and specifically permit a requirement that the developer enter into a development agreement specifying special measures required for compliance. Regulations, s. 4. The planner's recommendation was therefore not aspirational or outside the statutory scheme; it identified a mechanism the Regulations expressly contemplate.
23. Section 5 prohibits approval until specified outside approvals have been obtained as appropriate, including approvals required under the Environmental Protection Act, the Lands Protection Act and the Roads Act. This requirement is not satisfied merely by locating an approval document in the file. The approval must be operative for the transaction and project actually being authorized and must be consistent with any conditions imposed under the governing enactment.
24. The June 4 Decision was final subdivision approval and approval of a change of use. It immediately created a new legal parcel and established Recreational Use. The Minister cannot characterize it as both a narrow administrative step that need not resolve planning impacts and, at the same time, rely on a project-specific golf-course planning report to establish sound planning merit.

PART IV - THE MINISTER CANNOT RELY SELECTIVELY ON THE PLANNING REPORT

25. The Minister places the Planning Report at the centre of the defence. The submissions say that the Minister sought professional planning advice, relied on Mr. O'Hara's analysis, and approved the application in reliance on his conclusions and recommendations. Minister's Submissions, paras. 45, 53, 57-62.
26. The Record must therefore be read accurately. The Executive Summary warns that it is condensed, does not replace the complete report, and that decision-makers must review and rely on the full report before taking action. MR, p. 47.
27. The recommendation was not unconditional. It was approval subject to: (a) execution of a comprehensive Development Agreement legally binding the Developer to full EMP/EPP implementation, monitoring and adaptive management; (b) completion and approval of every outstanding permit before construction; and (c) appropriate financial security for environmental performance, erosion mitigation and decommissioning. MR, pp. 48 and 58.

28. The report also recommended ongoing 30-day reporting and third-party verification of key commitments, including erosion rates, wetland mitigation and public access. MR, p. 57. Those safeguards responded to the report's own recognition of uncertainty, policy gaps, long-term coastal risk and the need for a precautionary approach.
29. The final Decision did not require execution of a Development Agreement. It did not incorporate the EMP/EPP into a planning agreement, did not require third-party verification, did not require financial security, and did not expressly require all outstanding permits to be completed before any construction. MR, pp. 7-9.
30. Instead, the Decision says only that additional approvals and permits will be required before the start of construction and that these may include construction plans, comprehensive site plans, a stormwater-management plan, a water-usage plan and a building permit. The language is non-exhaustive and does not identify which approvals are mandatory, the standards they must meet, the controlling plan, or the consequence of a material redesign.
31. The Minister cannot convert the omitted safeguards into implicit conditions by pointing to the EIA approval or EMP. The planner specifically recommended a Development Agreement to make those commitments legally binding in the planning process. Treating the EMP alone as sufficient would render that recommendation meaningless.
32. Nor can the Minister rely on the generic future-permit condition as equivalent to financial security. Security for erosion, environmental performance and decommissioning is a distinct protection directed at the risk that promises cannot be performed or that the project is abandoned. The Record discloses no security instrument, amount, analysis or decision.
33. The submissions do not acknowledge this divergence. At paragraph 61, the Minister accurately lists the planner's three recommended conditions. At paragraph 62, the Minister says the Decision was made in reliance on those recommendations. The actual Decision contradicts that proposition.
34. Planning staff recommendations are not invariably binding. A decision-maker may depart from them, but the record must clearly demonstrate the factors considered and the sound-planning reasons for doing so. *Landfest Company Ltd. v. Town of Stratford*, Order LA22-07, paras. 41 and 48; *Derek French v. City of Charlottetown*, Order LA25-01, paras. 17-18.
35. That principle applies with particular force where the Minister invokes professional expertise as the basis for deference. The Minister cannot obtain deference from the favourable conclusion while silently discarding the conditions that made the planner willing to recommend approval.
36. The Decision contains no reasons explaining why the Development Agreement, financial security, third-party verification and complete-permit condition were omitted. The Record discloses no decision memorandum, routing note or approval analysis resolving those recommendations. The omission is substantive, not merely a drafting irregularity.

37. The result is that the Decision is not supported by the professional opinion in the form in which it was given. At minimum, the Minister must produce the decision-maker's notes, draft conditions, any proposed agreement or undertaking, and the record explaining whether the recommendations were rejected, modified or left for another process.
38. The Planning Report's treatment of public benefit raises a further evidentiary issue. Mr. O'Hara stated that the project was expected to generate tourism, seasonal employment and local economic activity through the pro shop, concession and maintenance operations, and to support PEI's tourism economy. MR, p. 55. The Record does not identify a market study, employment projection, tourism analysis, business plan, financial feasibility material or other evidence supplied by the Developer to support those asserted benefits. If the Minister relied on those projected benefits as part of the sound-planning analysis, the supporting material should be produced; if none was provided, that fact should be confirmed.
39. The same section also identifies a reservation rather than an unqualified benefit. Mr. O'Hara stated that direct public access to the shore or significant new public amenities were not clearly detailed in the EMP and described this as a noted gap relative to the 1992 Coastal Policy's public-access requirements. MR, p. 55. The Appellants had raised shore-access concerns during the approval process. The Decision does not address that gap or impose a condition preserving or providing public access. This is a further example of the Minister relying on the Planning Report's favourable conclusion without explaining how an identified planning reservation was resolved.
40. Absent that evidence, the Minister has not established the objective and reliable foundation required for deference. The Commission must assess the Decision as actually issued, not the stronger decision that the professional planner recommended but the Minister did not make.

PART V - THE APPLICATION WAS INDETERMINATE AND CORE DESIGN WAS IMPROPERLY DEFERRED

41. The application history evolved from a nine-hole course on two parcels, to a twelve-hole course on three parcels, to File 64362 seeking consolidation and Recreational Use. MR, pp. 26-45. The changes affected the course footprint, parcel configuration, routing, setbacks, infrastructure and environmental interfaces.
42. The Decision purports to grant final approval to consolidate three parcels and approve the new lot for Recreational Use. The heading and most of the Record identify the third parcel as PID 115519, while the operative approval sentence refers to PID 115599. MR, pp. 7 and 9. The Minister's Submissions repeat 115599. Minister's Submissions, para. 3.

43. The discrepancy must be formally corrected and the final controlling legal description identified. A final subdivision approval cannot be left uncertain as to the land included. The Record should also identify the exact course plan and project description that the Minister treated as controlling on June 4.
44. There is a further analytical fork. If the Decision approved only a broad Recreational class, the project-specific golf-course report cannot establish that every recreational use of the consolidated parcel is compatible and suitable. If, as the Minister submits, the Decision approved this specific golf-course use, the Minister had to possess enough final design information to assess that actual use.
45. The Planning Report states that topography was indeterminate because of extensive prior and ongoing site grading. MR, p. 49. Section 13 nevertheless required due regard to topography and surface drainage, including effects on adjacent parcels.
46. The report further states that no stormwater-management plan was provided. MR, p. 52. Although the report referred to the detailed information requirements for larger subdivisions, the present legal point does not depend on treating subsection 14(3) as automatically applicable to a one-lot consolidation. Topography and drainage remained mandatory suitability factors under section 13, and subsection 14(2)(b) permitted the Minister to demand the information necessary to assess them.
47. The groundwater extraction permit was pending. MR, pp. 47, 52 and 56. The EMP contemplated two wells, approximately 60 litres per minute of pumping capacity and annual irrigation demand in the range of approximately five to twelve million litres. MR, pp. 143-144. Yet the final water-use plan, aquifer testing, sustainable yield and neighbouring-well analysis were not part of the Decision.
48. The report says a formal traffic-impact assessment would strengthen the application and recognizes that the course's proximity to agricultural and residential uses requires careful management of pesticide drift, trespass and nuisance complaints. MR, p. 56. The Decision contains no project-specific traffic, operational, security or neighbour-protection conditions.
49. The report also relies on future ponds, tanks, grading, engineered septic systems and internal infrastructure. MR, pp. 51-56. Those features are not incidental where their design determines drainage, water demand, servicing, wetland avoidance, course routing and the effects on adjoining lands.
50. In *PEI Energy Corporation v. Rural Municipality of Eastern Kings*, Order LA20-03, the Commission held that a permit should not issue until it was known whether an access approval was required, even though it later turned out that no permit was necessary. *Eastern Kings*, para. 64. The defect was making the decision before the relevant prerequisite was known.
51. The Commission also held that failure to obtain grade, site-plan and runoff information before issuing a permit was a procedural error and that a generic tentative approval subject to later compliance did not cure the defect. *Eastern Kings*, paras. 69-70.

52. Eastern Kings further emphasizes that the decision-maker and developer must have a common and sufficiently precise understanding of what was applied for and approved. An incomplete application that does not permit an informed decision should not be approved. Eastern Kings, paras. 74-79.
53. The same reasoning applies with greater force to a sixty-acre coastal golf course beside an occupied residence, wetlands and an eroding shoreline. The Minister could not rationally determine section 13 suitability while the site's topography was described as indeterminate and the stormwater, water and servicing designs remained unresolved.
54. Later permitting may properly address detailed construction specifications after the planning entitlement is established. It cannot be used to postpone the core evidence necessary to decide compatibility, drainage, water supply, public safety, natural features and the final layout that the entitlement authorizes.
55. The Minister's position also fragments appeal rights. If foundational plans are finalized only through later administrative permits, affected owners may have no meaningful opportunity to challenge material design changes within this appeal. The Decision contains no plan-change threshold, renewed-notice requirement or direction that a materially different layout must return for a fresh change-of-use or subdivision decision.
56. The Commission should therefore require a plan-version crosswalk and production of all final or draft topographic, grading, stormwater, irrigation, groundwater, septic, traffic, safety and site plans that existed by June 4, together with express confirmation of which did not exist.

PART VI - STATUTORY PREREQUISITES: LANDS PROTECTION ACT AND OLD QUEENS ROAD

57. The Minister submits that the Developer received Executive Council approvals under the Prince Edward Island Lands Protection Act. Minister's Submissions, para. 44. That is incomplete. The relevant orders granted permission to acquire the principal lands subject to express conditions that the real property not be subdivided, binding the Developer and successors in title. MR, pp. 544 and 555.
58. The Planning Act and the Regulations define subdivision to include consolidation of contiguous parcels into a new parcel. Planning Act, s. 1(k); Regulations, s. 1(v.1). The June 4 Decision is expressly styled as final approval to subdivide by consolidation.
59. Section 9 of the Lands Protection Act separately authorizes a condition that land not be subdivided and a condition that land be consolidated with adjoining land. Lands Protection Act, s. 9(1)(a) and

- (c). That distinction confirms that a no-subdivision condition cannot simply be treated as an implied direction to consolidate.
60. Subsection 9(2) provides a formal mechanism by which the Lieutenant Governor in Council may cancel, suspend or amend a permit condition upon application by the permit holder. The Minister's Record contains no such order, no application for variation and no legal or administrative analysis concluding that the June 4 consolidation was permitted notwithstanding the conditions.
 61. Section 5(c) of the Planning Regulations prohibited approval until any Lands Protection Act approval required for the transaction was obtained in compliance with that Act and its applicable regulations. A permit subject to a no-subdivision condition does not establish authorization to carry out the very subdivision being approved.
 62. The Appellants do not ask the Commission to exercise the Lands Protection Act jurisdiction assigned elsewhere. They ask the Commission to determine whether the Minister complied with the Planning Regulations' own prerequisite and whether the final subdivision approval was legally available on June 4.
 63. This issue should not be summarily resolved against the Appellants on the present Record. The Commission should direct production of the complete Lands Protection Act applications, recommendations, notices, conditions and any variation, cancellation, interpretation or expiry analysis, and should determine the issue preliminarily if the facts are not agreed.
 64. The Record establishes that the old road crossed the subject properties and affected the golf-course design. Staff questioned whether it was a privately owned public road, how it could be crossed and what setbacks applied. MR, pp. 388-390.
 65. On March 25, 2026, the Development Control Manager stated that the road's status was an important part of the evaluation and assumed it needed to be dealt with before proceeding or the course redesigned. The Senior Development Officer responded that the road issue would need to be resolved before approval. MR, p. 401.
 66. Environmental staff similarly advised that an approval could be conditioned on resolution only if redesign would not be necessary; otherwise, the approval would be invalid. MR, pp. 402-403. This was therefore not a collateral title curiosity. It was a project-design and approval-sequencing issue identified by the responsible officials.
 67. By mid-May, a quit-claim deed had been prepared and reviewed, but the Developer still required permission to acquire the strip. MR, pp. 405-406. Executive Council granted permission on May 27 to acquire approximately 1.17 acres. MR, p. 557.
 68. Permission to acquire is not proof that the conveyance closed, the deed was executed and registered, the road was legally closed, or the parcels were legally contiguous when final approval issued. The Record contains no registered conveyance or final title update establishing completion before June 4.

69. Because the Decision approved a single consolidated lot and a course plan crossing the road area, the Minister was required to establish the legal parcel configuration and the Developer's authority over the land necessary to implement the plan. The Commission should direct production of the road-closure instrument, executed conveyance, survey, registration particulars and current parcel register.

PART VII - PROCEDURAL FAIRNESS AND REASONS

70. The Appellants accept that section 11 of the Regulations makes a public meeting discretionary. Their position is not that a second meeting was automatically required in every case.
71. The process chosen by the Minister nevertheless had to be fair and meaningful. The October 10, 2025 notice concerned a nine-hole course on two parcels and invited comment on that proposal. The later proposal added a third parcel, increased the course to twelve holes and altered the routing and environmental footprint.
72. An internal December 1, 2025 email confirms that the revised proposal involved a greater shoreline setback, a third property and an increase from nine to twelve holes. Government planned to post it and reopen written comments but had no plan to require another public information session. MR, p. 392.
73. The Minister relies on the fact that the Jordans attended the October meeting and submitted written comments. Minister's Submissions, paras. 47-50. That answers prejudice relating to complete exclusion from the process, but it does not answer whether the only oral presentation concerned the materially different proposal that was ultimately approved.
74. The Commission need not decide at this stage that the process was necessarily unfair. It should require the full public-process record, including the revised posting, any presentation or recording, comment matrix, staff notes and evidence showing how the Appellants' later submissions were considered in relation to the final twelve-hole plan.
75. The Minister says the Decision clearly identifies the decision, reasons and conditions. Minister's Submissions, para. 51. The two-page approval letter identifies the legal result and two conditions, but does not explain why the statutory suitability factors were satisfied or why the planner's principal conditions were omitted.
76. Reasons are assessed in context and the record as a whole may supplement a brief decision. But reasons must still explain why the decision-maker reached the result. Lafontaine, 2004 SCC 48, para. 12; French, paras. 17-18.

77. Here the Record creates rather than resolves the central contradiction. The Planning Report recommends approval only with a binding agreement, all permits before construction and financial security. The final Decision omits those terms. No other document explains that departure.
78. The lack of explanation matters because the Minister seeks deference precisely on the basis of professional planning advice. A decision cannot be sustained by asking the Commission to infer that the Minister adopted the favourable portions of the report and silently rejected the safeguards without any recorded planning rationale.
79. The Record should therefore be supplemented with the decision-maker's approval routing, draft conditions, notes, any proposed agreement or undertaking, and any document explaining which recommendations were accepted, rejected or transferred to another approval process.

PART VIII - THE DECISION HAS NOT YET BEEN SHOWN TO HAVE MERIT BASED ON SOUND PLANNING PRINCIPLES

80. The Minister relies on general statements in the Planning Report that a low-intensity golf course is compatible with the rural setting. MR, p. 56. The same passage recognizes that proximity to agricultural and residential uses requires careful management of pesticide drift, trespass and nuisance complaints.
81. The Appellants' occupied residence shares a boundary with the subject lands. The Record does not disclose a measured site-specific analysis of the location and orientation of tees, landing areas, greens, parking, maintenance, pumps, wells or access relative to the residence, well, septic system and principal outdoor-use areas.
82. There is no professional errant-ball or shot-dispersion analysis, no acoustic assessment, no site-specific traffic assessment, and no comprehensive security or trespass-prevention plan in the planning file. The absence of each study is not automatically fatal in isolation. Collectively, however, it leaves the compatibility conclusion dependent on generalized assertions rather than objective evidence tailored to the adjoining use.
83. The Decision also fails to secure many representations on which the report appears to rely, including low-input fescue, limited irrigation, walking-focused operation, electric equipment, restrictions around sensitive areas, monitoring and adaptive retreat. If those features are necessary to make the project compatible, they must be identified in enforceable conditions or an agreement.
84. The statutory inquiry is not satisfied by saying that later technical permits will address all concerns. Section 13 required the Minister to determine that the lot and intended use were suited having due

regard to topography, drainage, water supply, wastewater and natural features before final subdivision approval.

85. The Planning Report's admission that topography was indeterminate and that no stormwater plan had been provided is incompatible with a finding that the drainage and adjacent-property effects were already known. The Record does not identify the post-grading contours or a final stormwater design that the decision-maker assessed.
86. Likewise, a pending groundwater permit and later water-use plan may regulate extraction, but they do not retrospectively establish that the Minister had a sufficient planning basis to assess water supply, cumulative demand, coastal aquifer vulnerability and the relationship to neighbouring wells at the time of the Decision.
87. The Environmental Approval and EMP are important evidence, but they do not eliminate the Minister's independent Planning Act duties. The Minister had to establish that the planning Decision concerned the same final plan, that the plan was sufficiently definite, and that the mitigation assumptions on which compatibility depended were carried into enforceable planning conditions.
88. The Minister cites Queens County Condominium Corporation No. 40, New Homes Plus and Dorgan for the proposition that neighbour concerns cannot displace objective professional evidence. Minister's Submissions, paras. 63-65. The Appellants do not invite the Commission to decide this appeal by public opposition or subjective preference.
89. Those authorities reinforce the Appellants' point. Deference depends on objective and reliable professional evidence supporting the decision actually made. In New Homes Plus, the Commission intervened where the decision-maker departed from professional planning advice without sound planning reasons. Order LA23-03, paras. 41 and 48.
90. Here the planner did not recommend the unconditioned decision that issued. He recommended a materially more protective approval and identified missing information and residual risks. The Commission must compare the final Decision with the professional opinion in its full form, not treat the existence of a planner's signature as conclusive.
91. The Commission should also resist the Minister's attempt to collapse the merits inquiry into regulatory box-checking. Stringer holds that sound planning requires regulatory compliance but goes beyond it, requiring informed, principled consideration of broader implications. Stringer, paras. 58 and 64.
92. On the present Record, the Minister has not yet demonstrated that the broader implications were resolved, that the planner's safeguards were implemented, or that the final legal and technical configuration was known. The appeal therefore cannot be dismissed on the strength of the Planning Report alone.

PART IX - JURISDICTION: THE APPELLANTS ADVANCE PLANNING GROUNDS, NOT TORT OR ENFORCEMENT CLAIMS

93. The Commission is a statutory tribunal. The Appellants accept the holdings in *Brian R. MacKay v. Minister of Agriculture and Land*, Order LA22-03, and *Clare Fagan v. City of Summerside*, Order LA22-09, that the Commission cannot award tort remedies for nuisance, contract or misrepresentation and does not exercise the Minister's enforcement discretion.
94. The Appellants therefore do not seek damages, an injunction founded in private nuisance, a declaration of civil liability, prosecution of the Developer, or a free-standing order enforcing the EIA approval. Any such relief would have to be pursued in the proper forum.
95. The Minister's argument goes too far when it treats every reference to noise, traffic, hours, dust, errant balls, trespass, drainage or water as beyond jurisdiction. Those facts may be components of a future tort, but they are also evidence bearing directly on compatibility, detrimental impact, traffic, drainage, water supply, public safety and suitability under sections 3 and 13 of the Regulations.
96. Fagan itself distinguished legitimate concerns outside the Commission's remedial authority from the Commission's continuing duty to decide procedure and sound planning. Fagan, paras. 9-10 and 21-31. The Appellants rely on the impacts only for the latter purpose.
97. For example, the question is not whether player or equipment noise has already created an actionable nuisance. The planning question is whether the Minister had objective evidence and enforceable conditions sufficient to determine that a golf course operating near an occupied residence would be compatible with surrounding use.
98. The question is not whether an errant ball will necessarily establish negligence. It is whether the routing and setback assessment adequately addressed public safety and the suitability of the intended use beside an existing residence.
99. Similarly, the Appellants do not ask IRAC to punish prior grading or clearing. The Record itself says prior and ongoing grading rendered topography indeterminate. MR, p. 49. The site-work history is relevant because it bears on the reliability of the application, the baseline used by consultants, and whether the Minister could assess drainage and final site conditions.
100. The Environmental Approval is not under appeal, but it remains relevant evidence. Section 5 required the Minister to verify prerequisite approvals as appropriate, and the Planning Report relied extensively on the EMP and environmental conditions. The Commission may examine whether the planning Decision addressed the same project and whether the mitigation relied upon was secured without re-deciding the environmental approval.

101. Properly characterized, the Appellants' grounds fall within the Commission's acknowledged jurisdiction to determine whether the subdivision and change-of-use approvals followed lawful procedure and had merit based on the Act, Regulations and sound planning principles. Minister's Submissions, paras. 67-68.

PART X - APPEAL RECORD DEFICIENCIES AND FURTHER EVIDENCE

102. The Commission's Practice Direction requires the decision-maker to file all documents it has that are relevant to the appeal, including the application, decision, reports, recommendations, applicant materials, correspondence with the applicant, relevant internal correspondence, public-process materials and other relevant documents. Practice Direction, paras. 1-3.
103. Where privilege is claimed, the decision-maker must list and describe the withheld documents and the grounds for the claim. In a dispute about completeness, the Commission may require certification by a representative of the decision-maker. Practice Direction, paras. 5 and 9.
104. The Record is substantial but not self-provingly complete. It does not contain an executed Development Agreement, financial security, a final plan crosswalk, a final topographic or stormwater plan existing before June 4, a Lands Protection Act variation, a registered Old Queens Road conveyance, or reasons explaining the departure from the planner's proposed conditions.
105. The absence of a document may mean that it did not exist, that it was omitted, or that it is withheld. Those possibilities have different legal consequences. The Minister and Developer should be directed to state expressly which requested documents do not exist, which post-date the Decision, which are outside their custody or control, and which are withheld on a stated basis.
106. The Practice Direction does not confine the appeal to the Minister's Record. The Commission retains discretion to receive all relevant evidence and to request further material required for a complete understanding of an issue. Practice Direction, paras. 11-14; Commission Rules 45-46.
107. Because the appeal is de novo, the Appellants may tender affidavits, authenticated photographs, surveys, professional measurements and expert evidence relevant to standing, site conditions, compatibility, water, drainage, safety and appropriate relief. Shaw, para. 24.
108. The Appellants do not ask to file an undifferentiated document collection. They propose a structured timetable under which the Record deficiencies are addressed first, followed by sworn factual evidence and targeted expert reports after the parties know what technical work was and was not before the Minister.
109. This sequencing is proportionate. It avoids unnecessary expert expense, gives the Minister and Developer fair notice, and permits the Commission to identify any preliminary legal question -

including the Lands Protection Act conditions, road conveyance, scope of the Decision or record completeness - that should be decided before a full merits hearing.

110. Schedule B identifies the targeted supplemental production and directions presently sought. The Appellants reserve the right to refine that list after the Minister and Developer respond to the deficiencies and after any privilege log is served.

PART XI - RELIEF AND PROCEDURAL DIRECTIONS

111. The Appellants respectfully request that the Commission reject the Minister's request for dismissal at this preliminary stage.
112. The Commission should record that the Minister does not oppose acceptance of the Amended Notice of Appeal and does not contest the Appellants' standing, subject to the Commission's own determination.
113. The Commission should direct the Minister to supplement the Appeal Record in accordance with Schedule B, provide a privilege or withholding log, identify documents that do not exist, and certify completeness if the remaining dispute cannot be resolved by agreement.
114. The Commission should direct the Developer to produce relevant documents within its possession or control that were supplied to government, referred to in the Record, or necessary to identify the final controlling plan, outstanding permits, post-decision design changes and the status of the recommended safeguards.
115. The Commission should establish a timetable for: (a) completion of supplementary production; (b) any preliminary submissions on the Lands Protection Act conditions, Old Queens Road, scope of approval or jurisdiction; (c) the Appellants' affidavits and evidence book; (d) expert reports; (e) responding evidence; and (f) the merits hearing.
116. If a preliminary hearing is required, the Appellants submit that the principal questions should be whether the Minister's Record is complete, whether the Lands Protection Act conditions were varied or permitted the consolidation, whether the road conveyance was complete before final approval, and which plan and legal parcel were actually approved.
117. On the ultimate merits, the Appellants continue to seek an order allowing the appeal and rescinding the June 4, 2026 Decision, or alternatively remitting the application for a fresh determination on a complete and current application.
118. If the Commission concludes that variation rather than rescission is appropriate, no varied approval should issue until the evidentiary record is complete and the Commission can impose lawful, precise and enforceable conditions. Those conditions should include, at minimum, a controlling final plan,

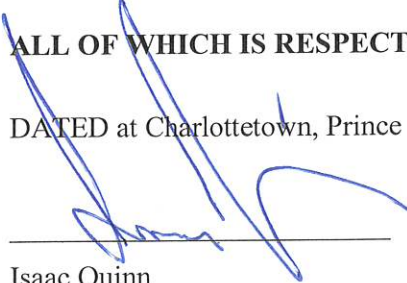
material-change controls, a comprehensive Development Agreement, completion of prerequisite permits, final topographic and stormwater plans, water and servicing requirements, neighbouring-property safeguards, monitoring and reporting, and appropriate security where authorized.

119. The Appellants reserve the right to reply to any further submissions or evidence filed by the Minister or Developer and to amend or further particularize their grounds with Commission direction if the supplemental record discloses additional material facts.

120. The appeal should proceed to a fair evidentiary hearing rather than be dismissed on a preliminary record that, on its face, discloses material omissions, unresolved statutory prerequisites and a Decision materially less protective than the professional recommendation invoked to sustain it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Charlottetown, Prince Edward Island, this 20th day of August, 2026.



Isaac Quinn

Quinn Law Inc.

Counsel for James Jordan and Suzanne Jordan

SCHEDULE A - INDEX OF AUTHORITIES AND LEGISLATIVE SOURCES

All source names below are active hyperlinks to the official legislation, Commission order, court decision or publicly available authoritative source.

Authority / source	Provisions or paragraphs relied upon
Legislation and procedural sources	
Planning Act, R.S.P.E.I. 1988, c. P-8	ss. 1, 2, 2.1, 6, 27.1 and 28
Planning Act Subdivision and Development Regulations, EC693/00	ss. 1, 3-5, 11, 13, 14, 27-29
Prince Edward Island Lands Protection Act, R.S.P.E.I. 1988, c. L-5	ss. 5 and 9
Land Identification Regulations, EC606/95	general statutory context
Environmental Protection Act, R.S.P.E.I. 1988, c. E-9	ss. 9 and 28; prerequisite approval context

Authority / source	Provisions or paragraphs relied upon
Water Act	groundwater and water-withdrawal permitting context
Roads Act, R.S.P.E.I. 1988, c. R-15	road closure, conveyance and prerequisite approval context
Island Regulatory and Appeals Commission Act, R.S.P.E.I. 1988, c. I-11	Commission powers and appeal structure
IRAC Rules of Practice and Procedure	Rules 32, 34, 45-48 and 56-59
IRAC Practice Direction on Appeal Records	paras. 1-14
Cases and Commission orders	
Judy Shaw v. Rural Municipality of West River, Order LA26-09	paras. 23-25
Parry Aftab and Allan McCullough v. Minister of Housing, Land and Communities, Order LA25-02	paras. 27-28 and 42
Stringer v. Minister of Communities, Land and Environment, Order LA17-06	paras. 52, 58 and 64
PEI Energy Corporation v. Rural Municipality of Eastern Kings, Order LA20-03	paras. 64, 69-70, 74-79 and 94-99
Derek French v. City of Charlottetown, Order LA25-01	paras. 17-18 and 26-29
Landfest Company Ltd. v. Town of Stratford, Order LA22-07	paras. 32, 41, 46 and 48
New Homes Plus Inc. v. City of Charlottetown, Order LA23-03	paras. 33-35, 41 and 48
Queens County Condominium Corporation No. 40 v. City of Charlottetown, Order LA18-02	paras. 41-42
Dorgan et al. v. Town of Tignish, Order LA25-07	paras. 27-28 and 51
Brian R. MacKay v. Minister of Agriculture and Land, Order LA22-03	paras. 11-16

Authority / source	Provisions or paragraphs relied upon
Clare Fagan v. City of Summerside, Order LA22-09	paras. 9-10, 21-31
Charlottetown (City) v. Island Regulatory and Appeals Commission, 2013 PECA 10	paras. 50-65
Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine, 2004 SCC 48	para. 12

SCHEDULE B - TARGETED RECORD DEFICIENCIES AND REQUESTED DIRECTIONS

The following requests are targeted to the issues disclosed by the Minister's own Record. They replace any need to address every category in the Appellants' earlier broad disclosure letter at this stage.

- 1. Development Agreement and undertaking:** Produce every draft or executed Development Agreement, undertaking, quasi-agreement, instrument or condition intended to implement the Planning Report. If none exists, confirm that fact and identify the decision-maker and reason for not adopting the recommendation.
- 2. Financial security:** Produce all analysis, correspondence, draft instruments and decisions concerning environmental, erosion and decommissioning security. If no security was required, confirm that fact and identify who made the decision and on what planning basis.
- 3. Final controlling plan and PID correction:** Identify the exact parcel plan, course plan and project description legally approved on June 4, provide a plan-version crosswalk for the EIA, change-of-use and subdivision processes, and formally correct or explain the references to PID 115519 and PID 115599.
- 4. Foundational engineering and servicing material:** Produce every topographic, grading, stormwater, drainage, irrigation, water-use, groundwater, septic, traffic, entrance, safety and construction plan in existence before June 4. Confirm expressly which categories did not exist at the decision date.
- 5. Post-decision plans and permits:** Produce the June 23 preliminary stormwater plan and later revisions, together with all groundwater, water-withdrawal, watercourse/wetland, development, building, septic, access and related permit applications, approvals and conditions, for the limited purpose of identifying what was deferred and whether the design materially changed.
- 6. Lands Protection Act file:** Produce the complete application and recommendation files for EC2025-229, EC2025-1023 and EC2026-629, including notices, conditions, correspondence and any application or order under subsection 9(2) cancelling, suspending or amending the no-subdivision conditions.

- 7. Old Queens Road and title completion:** Produce the road-closure instrument, executed conveyance or quit-claim deed, survey, registration particulars, parcel register and the date on which the Developer acquired legal title. Confirm whether the parcels were legally contiguous when final approval issued.
- 8. Reasons for departing from the Planning Report:** Produce the decision-maker's notes, approval routing, draft conditions and any document addressing why the Development Agreement, all-permits condition, financial security and third-party verification were not included in the final Decision.
- 9. Public benefit and shore access:** Produce any market study, employment projection, tourism analysis, business plan, financial feasibility material or other evidence supplied by the Developer or relied upon by Mr. O'Hara to support the anticipated tourism, seasonal-employment, local-economic-activity or other public benefits stated at MR p. 55. Produce any plan, condition, analysis or decision addressing the Planning Report's noted gap concerning direct public access to the shore, significant new public amenities and the 1992 Coastal Policy's public-access requirements, including any record showing how the Appellants' prior submissions on shore access were considered. If no such material exists, confirm that fact.
- 10. Public-process record:** Produce any audio, transcript, verbatim minutes, revised twelve-hole posting, comment matrix, planner notes and other record showing how the Appellants' submissions were considered in relation to the final twelve-hole, three-parcel proposal.
- 11. Archaeology and technical referrals:** Produce any Archaeological Impact Assessment or decision not to require one, and the complete technical comments and responses concerning wetland, coastal, water, traffic, public safety and neighbouring-property compatibility.
- 12. Studies that do not exist:** Confirm expressly whether any hydrogeological, traffic, acoustic, errant-ball, security or site-specific compatibility study existed before June 4. The confirmed absence of a study is relevant and should not be obscured by a general assertion of completeness.
- 13. Privilege log and certification:** Serve the list and description required by paragraph 5 of the Practice Direction for any document withheld on privilege or another basis. If the parties cannot agree on completeness, require a representative of the Minister to certify the Appeal Record under paragraph 9.
- 14. Procedural timetable:** After supplementation, establish dates for any preliminary legal submissions, the Appellants' affidavits and evidence book, expert reports, responses, objections and the merits hearing. Preserve a right of reply where new evidence or particulars are advanced by the Minister or Developer.

**PRINCE EDWARD ISLAND
REGULATORY AND APPEALS
COMMISSION**

APPEAL LA26008

**PROCEEDING COMMENCED AT
CHARLOTTETOWN, QUEENS COUNTY,
PRINCE EDWARD ISLAND**

**APPELLANTS' RESPONSE TO THE
MINISTER'S PRELIMINARY SUBMISSIONS**



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