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VIA EMAIL – mwalshdoucette@irac.pe.ca

Michelle Walsh-Doucette
Commission Clerk
Island Regulatory and Appeals Commission
National Bank Tower, Suite 501
134 Kent Street, Charlottetown PE C1A 7L1

Re: **Appeal Docket # LA26011**
David Webster & Georgia Robinson v. Minister of Land and Environment
Our File: LS 28548

INTRODUCTION

1. We represent the Minister of Land and Environment (the “**Minister**”) in relation to the above noted appeal filed by David Webster and Georgia Robinson (the “**Appellants**”) on July 27, 2026 (the “**Appeal**”).
2. The Appeal arises from the Minister’s decisions to deny the following applications made by the Appellants in relation to PID# 835033, located at Wooten Lane, Murray Harbour, Kings County (the “**Subject Property**”):
 - (a) an application for a development permit dated March 11, 2026, in which the Appellants sought permission to place a 12’ x 16’ shed/storage building on the Subject Property (the “**0142 Application**”);¹ and
 - (b) an application for a development permit dated April 15, 2026, in which the Appellants sought permission to place a 7’ x 8’ shed/storage building on the Subject Property (the “**0143 Application**”, and collectively with the 0142 Application, the “**2026 Applications**”).²

¹ Appeal Record, Tab 2A

² Appeal Record, Tab 3A

3. The Minister's position with respect to the Appeal is as follows:
 - (a) The Subject Property has been designated for summer cottage use only.
 - (b) For the Appellants to be permitted to place the storage buildings referred to in the 2026 Applications on the Subject Property, each of these buildings would need to be either a "summer cottage" or an "accessory building", as defined in clauses 1(v.2) and 1(a) of the *Subdivision and Development Regulations*, PEI Reg EC693/00 (the "**Regulations**"), respectively.³
 - (c) The storage buildings referred to in the 2026 Applications meet neither of these definitions and are therefore not permitted on the Subject Property. The Minister denied the 2026 Applications accordingly.

BACKGROUND AND DECISIONS

The 2025 Applications

4. The Subject Property was approved as a lot and designated for summer cottage use only in 1995.⁴
5. In January 2025, the Appellants filed a Development Permit Application (the "**0025 Application**"), requesting permission to place a 12' x 16' pavilion on the Subject Property. In the 0025 Application, the Appellants noted that a "12x16' *bunkee*" had already been built on the Subject Property.⁵
6. The Appellants were subsequently advised by personnel in the Department of Land and Environment (the "**Department**") that a development permit would be required for the existing structure on the Subject Property. The Appellants then filed a second Development Permit Application in March 2025 (the "**0024 Application**") in relation to the 12' x 16' structure they had already built on the Subject Property. In the 0024 Application, the Appellants stated that:

³ *Subdivision and Development Regulations*, PEI Reg EC693/00, <https://canlii.ca/t/56knk>, clauses 1(v.2) and (a)

⁴ Appeal Record, Tab 10

⁵ Appeal Record, Tab 12A

"This is already built as discussed – 12 x 16 bunkee we call a "wooden tent" – contains 2 beds and storage (paddles, lifejackets...) – no utilities".⁶

7. On May 12, 2025, Cindy MacMillan ("**MacMillan**"), Permit Coordinator with the Department, advised the Appellants via email that, as the Subject Property was approved for summer cottage use only, a residential structure would need to be in place first, before accessory structures could be permitted. MacMillan further advised that any residential structure would require septic and water services, and that before a septic system could be installed, a site suitability assessment would need to be completed. Following this conversation, the Appellants withdrew the 0025 Application.⁷⁸
8. In the following months, the Appellants canvassed their options with respect to the 0024 Application, and then, in a September 8, 2025 email to personnel with the Department, the Appellants made a proposal to construct a new building on the Subject Property, approximately 7' x 8' in size, to be the Subject Property's primary dwelling, complete with a toilet, sink and septic system. This would allow for the 12' x 16' building already on the Subject Property to remain as an accessory building."⁹
9. On November 18, 2025, Dean Lewis, Senior Development Officer with the Department ("**Lewis**") wrote to the Appellants, stating, in part:

"We have the application for a building with 2 beds that we received March 10/2025. Your lot is approved for Residential Single (Summer Cottage) use. After visiting with you in the building and seeing the makings of a kitchen (cupboard/counter) I believe if you were to add a bathroom to the building and attach it to a septic system, I could issue the Development Permit.

Building an 8 x 10 that includes a toilet and kitchen with the intent of calling it a dwelling is not in keeping with the intent of the regulations.

⁶ Appeal Record, Tab 12B

⁷ Appeal Record, Tab 29A

⁸ Appeal Record, Tab 29D

⁹ Appeal Record, Tab 29I

It is unfortunate that you proceeded with building the existing structures without permits. I am trying to find the easiest way for you to now bring them into compliance.”¹⁰

10. In December 2025, the Appellants submitted a third Development Permit Application (the “**Revised 0024 Application**”), wherein the Appellants described the use of the buildings that currently existed on the property at that time as follows:

“Two buildings currently used for storage (12 x 16, 7 x 8).

Proposal to change use of 12 x 16 building into dwelling (seasonal).”¹¹

11. The Appellants had a site suitability assessment done on the Subject Property in December 2025, which was provided to the Department on January 8, 2026.¹²

12. On January 22, 2026, the Revised 0024 Application was approved, and Development Permit No. M-2025-0024 (the “**Permit**”) was issued to the Appellants, subject to a series of conditions, including:

- 3) *The sewage disposal system must be installed before any habitable buildings are occupied. The sewage disposal system being designed in accordance with the Category 1 requirements of the Sewage Disposal System Regulations, with an assumed permeable soil depth of 140 cm.*¹³

The 2026 Applications

13. In February 2026, the Appellants filed an appeal with the Commission in relation to the Permit.¹⁴ The reasons for this were later set out in an April 15, 2026 email from the Appellants to Lewis and MacMillan. In this email, the Appellants advised that they would be unable to carry out the necessary renovations to convert one of the existing structures on the Subject Property into a seasonal dwelling, and that they wished to appeal the Department’s determination that the Appellants would either need to remove the sheds from the Subject Property or build a cottage, but

¹⁰ Appeal Record, Tab 29I

¹¹ Appeal Record, Tab 12C

¹² Appeal Record, Tab 20

¹³ Appeal Record, Tab 14

¹⁴ Appeal Record, Tab 28A

due to the way in which the application process was handled, the Appellants were prevented from having a “*clean appeal process*”.¹⁵

14. In March and April 2026, respectively, the Appellants filed the 0142 Application and the 0143 Application.¹⁶
15. In June 2026, Eugene Lloyd, Manager of the Department's Division of Development Control, advised the Appellants and the Commission that the Department would not consider the 2026 Applications until the active appeal in relation to the Permit was addressed and a decision issued.¹⁷ The parties agreed that the Appellants would withdraw their appeal in relation to the Permit, and that the Department would then process the 2026 Applications within 30 days of receipt of the applicable application fees.¹⁸
16. On July 22, 2026, the Minister issued two decisions, denying the 2026 Applications (the “**Decisions**”).¹⁹ The Appellants then filed the Appeal in relation to Decisions, on July 27, 2026.

MINISTER'S RESPONSE TO THE APPEAL

17. The Minister's response to the Appeal is set out below. Should the Appellants expand on, provide further explanation for, or otherwise provide submissions on their grounds of appeal, the Minister reserves the right to provide a further reply thereto.

Legislation – The Act and the Regulations

18. Clause 6(c) of the Act provides that the Minister shall generally administer and enforce the Act and its Regulations.²⁰

¹⁵ Appeal Record, Tab 29K

¹⁶ Appeal Record, Tabs 2A and 2B

¹⁷ Appeal Record, Tab 28A

¹⁸ Appeal Record, Tab 28A

¹⁹ Appeal Record, Tabs 9A and 9B

²⁰ *Planning Act*, RSPEI 1988, c P-8, <https://canlii.ca/t/5652r>, clause 6(c)

19. The Regulations recognize the following standard classes of use for a parcel of land: "...residential, commercial, industrial, resource (including agriculture, forestry and fisheries), recreational and institutional...".²¹
20. The Regulations define "accessory building", "dwelling", "single-unit dwelling", "shed" and "summer cottage" as follows:
 - (a) **"accessory building"** means a building whose use is incidental and subordinate to, and consistent with, the main or approved use of the lot upon which the building is located;
 - (g.1) **"dwelling"** means a building or portion of a building designed, arranged or intended for residential occupancy, and
 - ...
 - (ii) **"single-unit dwelling"** means a building containing one dwelling unit and does not include mobile homes, but does include mini homes, modular homes, single-family dwellings and summer cottages,
 - (t.3) **"shed"** means an accessory building under 215 square feet intended for residential storage, but does not include a car port, pergola, gazebo, doghouse, trellis, arbour or garage;
 - (v.2) **"summer cottage"** means a single-unit dwelling that is intended to be occupied primarily during the summer months;²²
21. The Regulations prohibit any deviation from an existing land use unless an application for a change of use has been submitted to, and approved by, the Minister. Subsection 29(1) of the Regulations states:

29. Change of use

(1) No person shall deviate from an existing land use or an approved plan of subdivision, including changing the use of a lot from the approved use, unless a revised plan of subdivision, where applicable, and an application for a change of use has been submitted to, and has been approved by, the Minister.²³

²¹ *Subdivision and Development Regulations*, supra note 3, subclause 1(d)(i)

²² *Ibid*, clauses 1(a), (g.1), (t.3) and (v.2)

²³ *Ibid*, subsection 29(1)

22. The Minister is prohibited, under subsection 3(2) of the Regulations, from issuing a development permit where a proposed building or structure, or the location or use of a building or structure, would not conform to the Regulations.²⁴
23. This is the legislative framework through which the Minister received and considered the 2026 Applications.

The Test

24. In Order LA25-02 ("**Aftab**"), the Commission outlined the appropriate two-part test (the "**Test**") to be applied when exercising its appellate authority under the Act in relation to a decision of the Minister:
 - i. *Whether the Minister followed the proper procedure as required by the Planning Act, the Regulations and the law in general, including the duty of procedural fairness, in making the decision; and*
 - ii. *Whether the Minister's decision was made in accordance with the Planning Act, the Regulations and was based on sound planning principles in the field of land use planning.*²⁵
25. In *Aftab*, the Commission reiterated previous decisions in stating that it "*does not lightly interfere with decisions made by a planning authority.*"²⁶

Part 1 of the Test – Process

26. The Minister satisfied the first part of the test. The Decisions and supporting evidence demonstrate that the Minister followed the proper process and procedure, as well as the applicable legislation when considering the 2026 Applications. The Decisions were not overly broad or arbitrary and were grounded in the principles of natural justice, as well as the Act and the Regulations.
27. The Minister's assessment of the 2025 Applications should also be considered when applying the Test to the Minister's assessment of the 2026 Applications. From the time the Appellants filed the 0025 Application in January 2025, to the time the Minister issued the Decisions in July 2026, the Minister carried out multiple

²⁴ *Ibid*, subsection 3(2)

²⁵ *Parry Aftab and Allan McCullough v. Minister of Housing, Land and Communities*, 2025 PEIRAC 16 (CanLII), <https://canlii.ca/t/kbjqk>, para. 27

²⁶ *Ibid*, para 28

inspections of the Subject Property, consulted with environmental personnel within the Department and also completed multiple Pre-Development and Subdivision Inspection Reports.

28. In both of the Pre-Development and Subdivision Inspection Reports prepared for the 2026 Applications, Dean notes that he reviewed and considered the *Accessory Buildings and Sea Can Usage Policy* (the “**Policy**”).²⁷ Procedure Statement 4.2 of the Policy states:

4.2 *There shall be no accessory buildings/structures permitted on a vacant parcel of land. All accessory buildings/structures must be associated and consistent with, as well as ancillary and subordinate to, the main building already existing on the parcel.*²⁸

29. In addition, as a matter of procedural fairness, before denying the 2026 Applications, the Minister outlined her concerns with the Appellants’ plans for the Subject Property on several occasions via email and during in-person meetings. Throughout the process, the Minister attempted to work with the Appellants to come up with a solution that would be compliant with the Act and the Regulations. The Minister took these steps despite the fact that the Appellants had already erected multiple structures on the Subject Property without first receiving the necessary development permits, in contravention of subsection 24(2.1) of the Act. It was only after the Appellants made clear that they would not accept any of the options offered by the Minister that the Minister denied the 2026 Applications.
30. For these reasons, the Minister has satisfied the first part of the Test.

Part 2 of the Test – “*accessory building*”, “*shed*” and “*summer cottage*”

31. The Minister also satisfied the second part of the Test, as the Decisions were made in accordance with the Act, the Regulations and the Policy, and were based on sound planning principles. The Commission states in *Stringer (Re)*, 2017 CanLII

²⁷ Appeal Record, Tabs 3A and 3B

²⁸ Appeal Record, Tab 11

153317 (PE IRAC) ("**Stringer**") that "*sound planning principles require regulatory compliance*".²⁹

32. Subsection 31(1) of the Regulations prohibits the Appellants from constructing or placing any building or structure on the Subject Property without first receiving a development permit, and the Minister cannot issue a development permit to the Appellants unless the proposed building or structure conforms to the Regulations.³⁰
33. In the 2026 Applications, the Appellants sought permission to place two storage buildings on the Subject Property. The Appellants refer to these buildings as "*sheds*" to be used for storage in the 2026 Applications. However, with respect to the existing 12' x 16' building on the Subject Property, in the 0025 Application, the Appellants described the use of this building as follows: "*12 x 16' bunkie – we call a wooden tent – contains 2 beds and storage – no utilities*".³¹
34. The Subject Property has been approved for summer cottage use only. Accordingly, to conform with the Regulations, each of the Appellants' storage buildings must meet the definition for either "*summer cottage*" or "*accessory building*" set out in clauses 1(v.2) and (a) of the Regulations, respectively.
35. To be a "*summer cottage*", a building must have cooking and toilet facilities. In *Stringer*, the Commission held that, before a summer cottage could be occupied by its owners, a septic system must be "*installed, inspected and approved*".³²
36. Neither of the Appellants' storage buildings contain a septic system, and the Appellants disagree that they are required to have one installed. These storage buildings are therefore not summer cottages.
37. To be an "*accessory building*", as is made clear in the Regulations and the Policy: a building must be (a) incidental to, (b) subordinate to, and (c) consistent with the

²⁹ *Stringer (Re)*, 2017 CanLII 153317 (PE IRAC), <https://canlii.ca/t/jswkl>, at page 15

³⁰ *Subdivision and Development Regulations*, supra note 3, subsection 31(1) and clause 3(2)(a)

³¹ Appeal Record, Tab 12A

³² *Stringer (Re)*, supra note 27, page 13

main or approved use of a building on the lot upon which the accessory building is to be located.

38. As there is no summer cottage on the Subject Property, there is no approved building for the Appellants' storage buildings to be both incidental and subordinate to. These storage buildings are therefore not accessory buildings.
39. As the Appellants' storage buildings are neither summer cottages nor accessory buildings, approving their placement on the Subject Property would not conform with the Regulations, and the Minister was therefore prohibited from approving the 2026 Applications pursuant to clause 3(2)(a) of the Regulations.
40. For these reasons, the Minister has satisfied the second part of the Test.

CONCLUSION

41. For the reasons outlined above, the Minister submits that the Appeal must be dismissed.
42. We trust that the foregoing is satisfactory; however, if you have questions about these submissions, please do not hesitate to contact the undersigned.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Yours truly,



Stephen Flanagan & Christiana Tweedy
Lawyers for the Minister of
Land and Environment