

From: [Richard Collier](#)
To: [McKenna, Melanie \(Charlottetown\)](#); [Jessica Gillis](#); [Philip Rafuse](#)
Cc: [Andrea Matters](#); [Caroline Davison](#); [Hooley, David \(Charlottetown\)](#); [Janine MacLean](#)
Subject: RE: Record - LA23-021 - Currie//Minister of HLC
Date: Thursday, November 30, 2023 3:56:16 PM
Attachments: [image001.png](#)

Hello all,

Thank you all for your patience and time to provide this position.

The Minister respectfully requests that at this juncture the Commission not require further disclosure be provided beyond the Record that was already filed. The reasons for this position are as follows:

- The Record relating to Case#56807, the application dated July 17, 2023 and which is under appeal, was provided.
- At this time, the parties are preparing to address the preliminary issue of the Commission's jurisdiction to hear the Appeal. Either the Commission has jurisdiction or it does not.
- To order further documentation be provided at this stage puts the cart before the horse. The advantage of dealing with this issue on a preliminary basis (as opposed to at the same time as a hearing on the merits) from a time or efficiency perspective will fade.
- If the Commission orders the further disclosure sought by the Appellants and ultimately finds that it does not have jurisdiction to hear this appeal, this broad disclosure would have been under a proceeding that the Commission ultimately did not have jurisdiction to hear. This could prejudice this Minister generally and on any subsequent proceedings should they occur. The Appellants would receive documents they might not otherwise be entitled to receive.
- Although the Minister remains of the position that further documentation is not required to decide the preliminary issue of the Commission's jurisdiction to hear this appeal, the Commission has provided with the Appellants with the opportunity to file additional documents. The Appellants are able to do so now based on the records they currently have. Alternatively, it is noted they have made a *FOIPP* request.

Should the Commission see fit to require further disclosure, the Minister appreciates the suggested adjustment to timelines for the submissions that Melanie makes below. Likewise, if the Commission determines not to require further disclosure the Minister would also be agreeable to the requested adjustments to submission filing timelines as requested in the Appellants alternative request below.

Best Regards,

Richard

RICHARD A. COLLIER
Departmental Solicitor
Justice and Public Safety
Legal Services Section

th

Shaw Building, 4 Floor South
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From: McKenna, Melanie (Charlottetown) <mmckenna@coxandpalmer.com>
Sent: Thursday, November 30, 2023 2:59 PM
To: Jessica Gillis <jgillis@irac.pe.ca>; Richard Collier <racollier@gov.pe.ca>; Philip Rafuse <PJRafuse@irac.pe.ca>
Cc: Andrea Matters <atmatters@gov.pe.ca>; Caroline Davison <carolinedavison@gov.pe.ca>; Hooley, David (Charlottetown) <dhooley@coxandpalmer.com>; Janine MacLean <jmaclean@irac.pe.ca>
Subject: RE: Record - LA23-021 - Currie//Minister of HLC

Good afternoon:

Following up on the below to see if Richard has been able to obtain instructions, given the deadline for our submissions tomorrow. I acknowledge the late request on our part so I sincerely appreciate everyone's efforts.

Best regards,
Melanie

Melanie McKenna
she/her
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From: Jessica Gillis <jgillis@irac.pe.ca>
Sent: Wednesday, November 29, 2023 10:09 AM

To: 'Richard Collier' <racollier@gov.pe.ca>; McKenna, Melanie (Charlottetown) <mmckenna@coxandpalmer.com>; Philip Rafuse <PJRafuse@irac.pe.ca>
Cc: Andrea Matters <atmatters@gov.pe.ca>; Caroline Davison <carolinedavison@gov.pe.ca>; Hooley, David (Charlottetown) <dhooley@coxandpalmer.com>; Janine MacLean <jmaclean@irac.pe.ca>
Subject: RE: Record - LA23-021 - Currie//Minister of HLC

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Thank you, Richard.



Jessica M. Gillis (she/her)
General Counsel
D. 902.368.7860
irac.pe.ca/about/contact/

From: Richard Collier <racollier@gov.pe.ca>
Sent: Wednesday, November 29, 2023 6:40 AM
To: Jessica Gillis <jgillis@irac.pe.ca>; McKenna, Melanie (Charlottetown) <mmckenna@coxandpalmer.com>; Philip Rafuse <PJRafuse@irac.pe.ca>
Cc: Andrea Matters <atmatters@gov.pe.ca>; Caroline Davison <carolinedavison@gov.pe.ca>; Hooley, David (Charlottetown) <dhooley@coxandpalmer.com>; Janine MacLean <jmaclean@irac.pe.ca>
Subject: RE: Record - LA23-021 - Currie//Minister of HLC

Good morning Jessica,

I have followed up with my client. I am in hearings all day today but I am hopeful that I will have instructions and be able to by the end of the week.

Best Regards,

Richard

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From: Jessica Gillis <jgillis@irac.pe.ca>
Sent: Tuesday, November 28, 2023 10:56 AM
To: Richard Collier <racollier@gov.pe.ca>; McKenna, Melanie (Charlottetown) <mmckenna@coxandpalmer.com>; Philip Rafuse <PJRafuse@irac.pe.ca>
Cc: Andrea Matters <atmatters@gov.pe.ca>; Caroline Davison <carolinedavison@gov.pe.ca>; Hooley, David (Charlottetown) <dhooley@coxandpalmer.com>; Janine MacLean <jmaclean@irac.pe.ca>
Subject: RE: Record - LA23-021 - Currie//Minister of HLC

Morning, all.

Melanie, thank you for your email.

Richard, when do you expect you will be in a position to provide the Minister's comments in response?

Jessica



Jessica M. Gillis (she/her)
General Counsel
D. 902.368.7860
irac.pe.ca/about/contact/

From: Richard Collier <racollier@gov.pe.ca>
Sent: Monday, November 27, 2023 7:42 PM
To: McKenna, Melanie (Charlottetown) <mmckenna@coxandpalmer.com>; Jessica Gillis <jgillis@irac.pe.ca>; Philip Rafuse <PJRafuse@irac.pe.ca>
Cc: Andrea Matters <atmatters@gov.pe.ca>; Caroline Davison <carolinedavison@gov.pe.ca>; Hooley, David (Charlottetown) <dhooley@coxandpalmer.com>; Janine MacLean <jmaclean@irac.pe.ca>

Subject: RE: Record - LA23-021 - Currie//Minister of HLC

Good evening all,

Melanie, thank you for outlining your clients' position below.

Jessica and Philip, I am in the process of seeking instructions to respond to the below request. I respectfully request that the Minister be provided with an opportunity to provide brief comments before the Commission makes a determination on the Appellants' request.

Best Regards,

Richard

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From: McKenna, Melanie (Charlottetown) <mmckenna@coxandpalmer.com>

Sent: Monday, November 27, 2023 4:42 PM

To: Richard Collier <racollier@gov.pe.ca>; Jessica Gillis <jgillis@irac.pe.ca>; Philip Rafuse <PJRafuse@irac.pe.ca>

Cc: Andrea Matters <atmatters@gov.pe.ca>; Caroline Davison <carolinedavison@gov.pe.ca>; Hooley, David (Charlottetown) <dhooley@coxandpalmer.com>; Janine MacLean <jmaclean@irac.pe.ca>

Subject: RE: Record - LA23-021 - Currie//Minister of HLC

Good Afternoon:

Thank you for sending the additional record. Respectfully, we remain of the view that the

Record remains incomplete. The record does not include any communications whatsoever prior to October 6, 2022 when West River adopted its Official Plan (“OP”) and Bylaw. Yet, we know from the Currie’s records that there had been an ongoing dialogue between the Department, the Currie’s and their surveyor’s for some time prior to October 6, 2022. These documents are integral to the genesis or history of the final application.

Our client’s final subdivision application was submitted on July 17, 2023, a few days prior to the Minister’s approval of West Rivers’ OP and Bylaw and as shown at Tab 6 of the Record. However, we have appealed correspondence from the Minister which encompasses more than the bare July 17, 2023 Subdivision Application. There were many iterations of conversations and applications that were before the Minister for PIDs 201509 and 201517 before July 23, 2023 and indeed before October 6, 2022. We believe that all information from the Minister’s files regarding the various stages of this application are relevant and required for a complete understanding of an issue - as per Rule 46 of the Commission’s Rules of Practice and Procedure.

By way of example, we have attached several earlier emails between our clients and different personnel from the Province. These are the types of communications that are, in our opinion, relevant to this appeal and should form part of the record. None of these appear in the record. We believe there are likely more such communications which ought reasonably form part of the Minister’s record. Without this correspondence, and any applications associated with it, our client is not able to fully evaluate their position. As to the relevance of documents forming part of the genesis of the S/D application itself, see *Smith’s Field Manor Development Ltd. v Halifax (City)*, 1988 CarswellINS 67.

As a result, we are requesting that the Commission request a further full and complete record from the Minister that includes all correspondence leading to and related to applications for PID 201509 and 201517. Given that the Minister will require some time to collect this information, we would request an adjournment to our submissions on the jurisdiction issue to two (2) weeks from the date the Minister’s complete record is submitted.

In the alternative, if the Commission denies our request for further disclosure via the Minister’s record, we request an adjournment for receipt of our submissions on jurisdiction until January 5, 2024. We have submitted a FOIPP request to the Province on behalf of our clients, which is scheduled to be received on December 22, 2023. We are hopeful that the disclosure from the FOIPP request will provide us a full picture and we will then be in a position to finalize our submissions on jurisdiction.

We thank you for your consideration and look forward to hearing from you.

Best,
Melanie

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From: Richard Collier <racollier@gov.pe.ca>

Sent: Friday, November 17, 2023 4:03 PM

To: Jessica Gillis <jgillis@irac.pe.ca>; Philip Rafuse <PJRafuse@irac.pe.ca>

Cc: Andrea Matters <atmatters@gov.pe.ca>; Caroline Davison <carolinedavison@gov.pe.ca>;

Hooley, David (Charlottetown) <dhooley@coxandpalmer.com>; McKenna, Melanie (Charlottetown) <mmckenna@coxandpalmer.com>; Janine MacLean <jmaclean@irac.pe.ca>

Subject: Record - LA23-021 - Currie//Minister of HLC

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Good afternoon folks,

Please see attached the Record relating to the above-noted appeal. It is right about the size limit for attachments for some organizations so if there are any issues with opening, please let me know.

Best Regards,

Richard

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