

Report No. 1 of the Commissioner of Corporate Services and Chief Planner was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on June 29, 2017.

Court Application to Permit Appeal of the Town of Georgina  
Official Plan 2016 (OPA 129)

Regional Council recommends adoption of the following recommendations contained in the report dated June 27, 2017 from the Commissioner of Corporate Services and Chief Planner:

1. Council receive written submissions from Mr. Mark F. Flowers, Davies Howe Partners LLP, dated April 19, 2016 and April 26, 2016, related to the Town of Georgina Official Plan 2016.
2. Council maintain its decision of October 20, 2016 regarding Amendment No. 129 to the Town of Georgina Official Plan.
3. The Director of Community Planning and Development Services be authorized to provide notice of Council's decision on Amendment No. 129 to the Town of Georgina Official Plan to only 1965870 Ontario Inc., their legal counsel, and the Town of Georgina legal counsel and Director, Development Services Department.

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Report dated June 27, 2017 from the Commissioner of Corporate Services and Chief Planner now follows:

1. Recommendations

It is recommended that:

1. Council receive written submissions from Mr. Mark F. Flowers, Davies Howe Partners LLP, dated April 19, 2016 and April 26, 2016, related to the Town of Georgina Official Plan 2016.
2. Council maintain its decision of October 20, 2016 regarding Amendment No. 129 to the Town of Georgina Official Plan.

3. The Director of Community Planning and Development Services be authorized to provide notice of Council's decision on Amendment No. 129 to the Town of Georgina Official Plan to only 1965870 Ontario Inc., their legal counsel, and the Town of Georgina legal counsel and Director, Development Services Department.

## 2. Purpose

This report advises Regional Council of a landowner's successful court application on consent for a right to appeal York Region's decision to modify and approve Amendment No. 129 to the Official Plan of the Town of Georgina (OPA 129), to the Ontario Municipal Board (OMB). This report also presents the landowner's written submissions for Council consideration and recommends issuance of a decision on OPA 129, in keeping with the directives issued by the court.

## 3. Background and Previous Council Direction

The subject lands, northeast of the intersection of Woodbine Avenue and Ravenshoe Road, were previously designated "Keswick Business Park Study Area"

The subject lands are municipally known as 2354 Ravenshoe Road in the Town of Georgina. They are approximately 10.4 hectares in size and are located northeast of the intersection of Woodbine Avenue and Ravenshoe Road, both Regional roads. The previous Official Plan for the Town of Georgina (2002), included the subject lands in the "Keswick Business Park Study Area" (KBPSA) overlay (Attachment 1). The lands are undeveloped. Current mapping shows the entire site within a floodplain with a woodland and wetlands located on a portion of the property, and wetlands surrounding the property to the north and east. The proposed Highway 404 extension runs along the easterly boundary of the subject property.

The Town of Georgina adopted a new Official Plan in April 2016, which was approved, with modifications, by York Region in October 2016

The Town of Georgina prepared a new Official Plan in accordance with the *Planning Act* requirements for a five year official plan. The Town's new Official Plan (OPA 129) was adopted by Town Council on April 20, 2016 and sent to York Region for approval on May 12, 2016. Pursuant to a [report](#) dated October 13, 2016, Regional Council approved, with modifications, OPA 129 on October

20, 2016. A notice of decision was issued by York Region on November 2, 2016, in accordance with the *Planning Act*. OPA 129 came into force on November 23, 2016, save and except for the sections relating to two site-specific appeals received.

OPA 129, as modified by York Region, removed the “Keswick Business Park Study Area” overlay to ensure conformity with the Greenbelt Plan

The KBPSA overlay designation and associated policies resulted from an OMB approval of a settlement on the appeal of the Keswick Business Park Secondary Plan in 2008 and were applied to certain lands in the northwest quadrant of Woodbine Avenue and Ravenshoe Road. The policies allowed the landowners within the study area to submit appropriate studies to pursue the possibility of extending the community boundary of Keswick for employment uses. These lands are within the Natural Heritage System of the Protected Countryside designation of the Greenbelt Plan.

The Greenbelt Plan (2005) provided an opportunity to expand settlement areas within a limited timeframe. In adopting the Town of Georgina Official Plan 2016, Town Council granted an extension of that timeframe for landowners within the KBPSA to submit complete development applications by January 1, 2020. Town staff had recommended removal of the KBPSA overlay; however, it was re-instated at the time of adoption. Regional planning staff are of the opinion the proposed policy to extend the timeframe of the conformity exercise did not conform to the Greenbelt Plan and recommended modifications to remove the KBPSA overlay and corresponding policies to ensure conformity with both the York Region Official Plan 2010 (YROP-2010) (Attachment 2) and the Greenbelt Plan. This matter, along with the proposed modifications, was outlined in detail in the previous staff report to Regional Council.

The landowner provided written submissions to the Town regarding adoption of OPA 129

The owner of the subject lands, Nizza Enterprises Limited (Nizza), through its legal counsel, sent two written submissions to Georgina Council, in which it specifically requested that it be provided with notice of Town Council’s decision on the new official plan. The first letter was dated April 19, 2016 (Attachment 3), submitted a day before the Georgina Council meeting and adoption of OPA 129. The second was dated April 26, 2016 (Attachment 4). These letters were copied to Regional planning staff.

The landowner's written submissions were not included in the record of adoption forwarded to the Region

As part of the approval process, the *Planning Act* requires Town Council to compile, and forward to the Region, a record of prescribed information and material. In this context, prescribed information and material includes all written and oral submissions received by Town Council. The Town provided the Region with a record of the written submissions it received, but that record did not include the submissions from Nizza.

The landowner did not receive notice of the Town's decision or the Region's decision on OPA 129

The Town did not provide notice of Town Council's decision regarding the adoption of OPA 129 to counsel for Nizza, as requested. Nizza did not request notice from York Region of its decision regarding OPA 129, nor did it make any submissions directly to the Region, prior to approval of OPA 129. Since Nizza did not receive notice of Georgina Council's decision to adopt OPA 129 or notice of the Region's decision to approve OPA 129, Nizza did not file a notice of appeal to the OMB within the prescribed period under the *Planning Act*.

#### 4. Analysis and Implications

The new landowners of the Nizza lands undertook a Court Application to allow an additional appeal to the Ontario Municipal Board

Nizza recently sold the subject lands to 1965870 Ontario Inc. who retained the same legal counsel. The new owner commenced a court application to permit an appeal of OPA 129, outside the statutory period for an appeal. The basis for the court application is that the landowner sent written submissions to the Town Council, prior to the adoption of OPA 129, and those submissions were not provided to York Region prior to the approval of OPA 129, as required by the *Planning Act*. Town and Regional staff have consented to the court application on the basis that the landowner's appeal is limited to the subject lands, rather than potentially subjecting the entire Town of Georgina Official Plan 2016 to an appeal. The court application has proceeded on consent, and 1965870 Ontario Inc. has obtained a court order permitting them, and no other entity, to file an appeal within 20 days of Regional Council's consideration of this matter (Attachment 5).

Nizza supported maintaining the Keswick Business Park Study Area overlay on their lands in OPA 129

In their letter dated April 19, 2016, Nizza expressed opposition to Town staff's recommendation regarding the removal of the KBPSA and associated policies, along with the proposed designation for the subject lands. They maintained the subject lands should form part of a settlement area boundary expansion with the developable portion of the lands re-designated to permit an appropriate range of employment uses, alleging their position is supported by the YROP-2010 and Greenbelt Plan. They also outlined the reports and studies they previously submitted to the Town in 2015 in support of a request for a settlement area expansion. Their letter, dated April 26, 2016 (after Town's adoption of OPA 129 retaining the KBPSA overlay and extending the submission deadline to January 1, 2020 for lands within the KBPSA) advised that they were not in support of the inclusion of the sunset provision for the KBPSA.

Regional Council must consider Nizza's written submissions in relation to its previous decision on OPA 129

As outlined in the attached judgement, the landowner's previous written submissions are to be considered by Regional Council. The submissions of Nizza (Attachments 3 & 4) are enclosed for Regional Council's consideration as required by the *Planning Act*. The *Planning Act* requires an approval authority to explain the effect, if any, written submissions had on its decision.

The recommended Regional modifications to remove the KBPSA overlay and associated policies from OPA 129 were made to ensure conformity with the YROP-2010 and the Greenbelt Plan. The previous staff report provided detailed justification for these modifications, which included the removal of the KBPSA overlay and associated policies. On this basis, in considering these written submissions, Regional planning staff recommends that Regional Council's original [decision](#) of October 20, 2016, with respect to Amendment No. 129 of the Town of Georgina Official Plan be maintained, including the Region's modification to remove the KBPSA overlay.

Should Council maintain its decision from October 20, 2016, a notice will be re-issued only to Ontario 1965870 Inc. providing only them the opportunity to appeal and limiting any further appeal opportunity to the entire plan.

We anticipate that 1965870 Ontario Inc. will appeal the Region's decision to remove the KBPSA from the Town of Georgina Official Plan 2016. There are currently two appeals of OPA 129 before the OMB in respect of policies which are unrelated to those affecting the subject lands.

## 5. Financial Considerations

In the event 1965870 Ontario Inc. appeals the Region's decision, there would be costs associated with defending the Region's position including staff resources and other costs of participation in OMB proceedings.

## 6. Local Municipal Impact

Town staff are aware of, and have consented to, the court application to permit an additional appeal of OPA 129 solely by 1965870 Ontario Inc., relating to the subject lands.

## 7. Conclusion

Regional Council approved, with modifications, Amendment No.129 to the Official Plan of the Town of Georgina on October 20, 2016. The approved modifications to OPA 129 removed the Keswick Business Park Study Area overlay and associated policies to ensure conformity with the YROP-2010 and the Greenbelt Plan.

Nizza Enterprises Limited, landowners within the Keswick Business Park Study Area provided written submission to the Town requesting notice of the Town's decision on OPA 129 be provided to them. Their written submissions did not form part of the adoption record sent to the Region. Consequently, the landowner was not notified of the Town's decision to adopt OPA 129 or the Region's decision to approve OPA 129. The new landowner, 1965870 Ontario Inc., submitted a court application, and was successful, for a right to appeal the Region's decision. York Region now must consider the landowner's written submissions as it relates to the decision on OPA 129 and issue notice. The notice will be only to the landowner who will then have 20 days to submit an appeal with respect to matters related to the subject lands.

Regional planning staff recommends Council maintain its decision of October 20, 2016 regarding Amendment No. 129 to the Town of Georgina Official Plan 2016 for the reasons set out in this report, and the October 13, 2016 report related to the Keswick Business Park Study Area, and provides notice in accordance with the recommendations of this report.

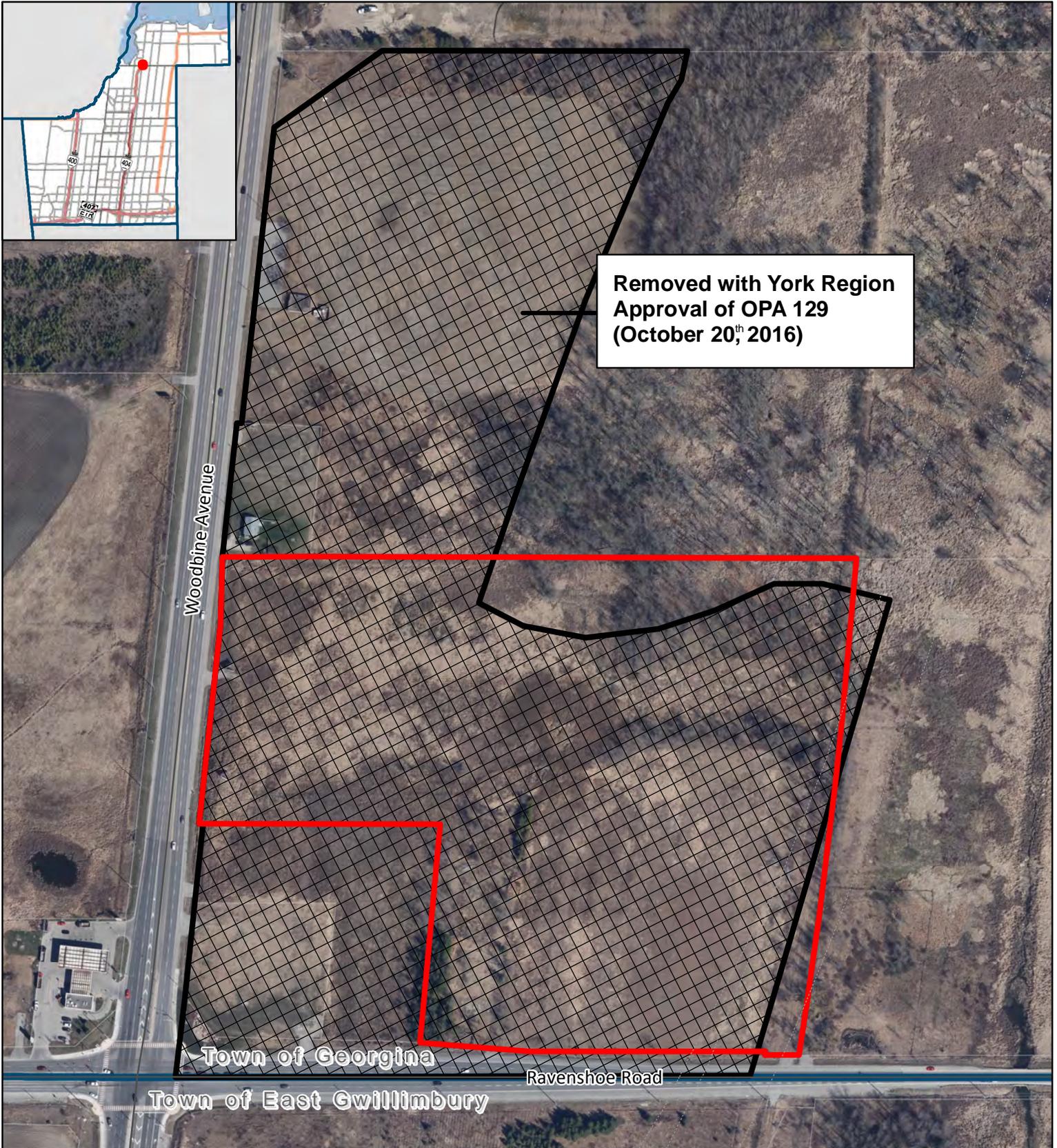
For more information on this report, please contact Sara Brockman, Senior Planner at 1-877-464-9675 ext. 75750.

June 27, 2017

Attachments (5)

7689364

Accessible formats or communication supports are available upon request



Removed with York Region  
Approval of OPA 129  
(October 20<sup>th</sup>, 2016)

Woodbine Avenue

Town of Georgina

Ravenshoe Road

Town of East Gwillimbury



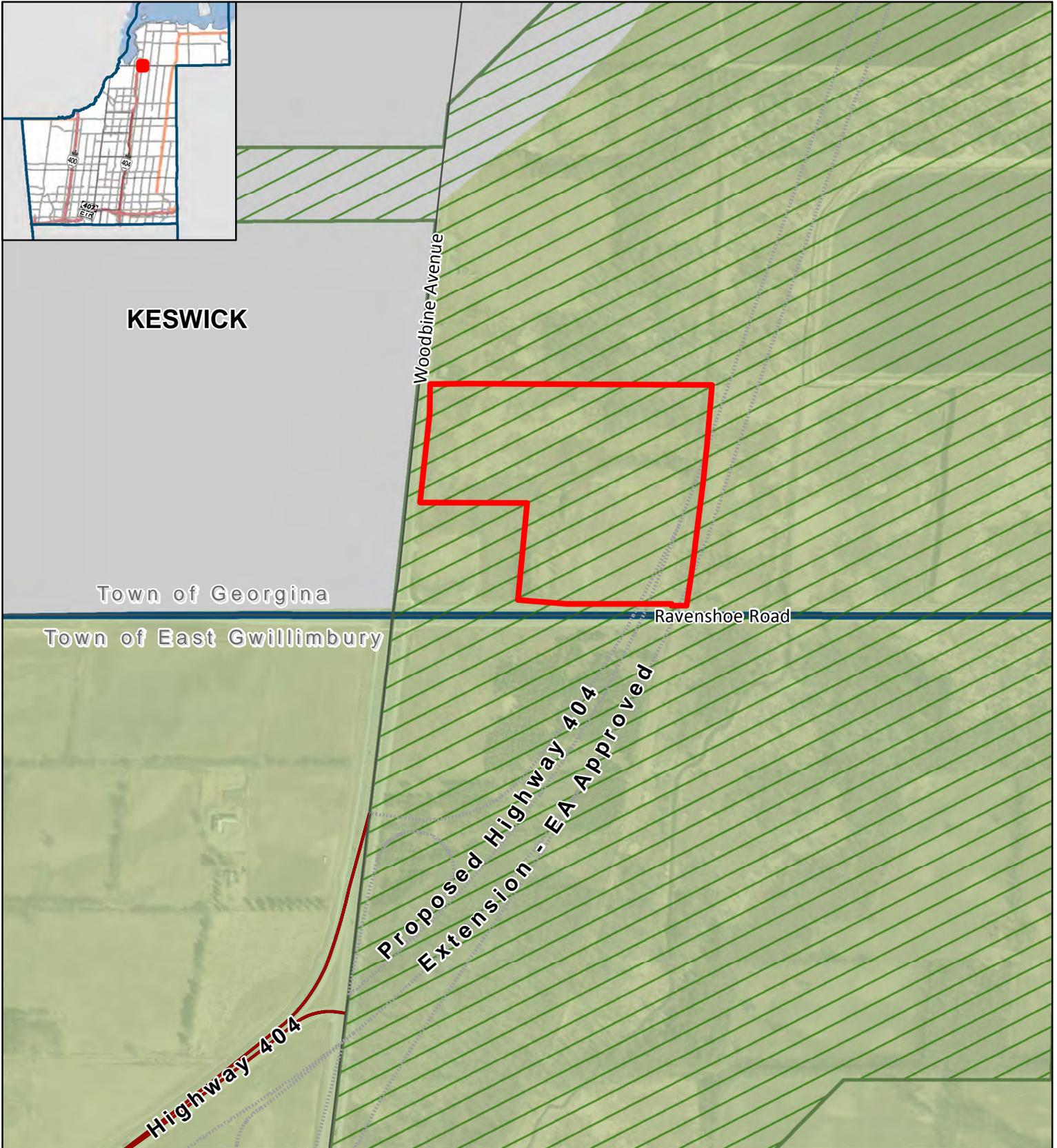
**Lands on 2354 Ravenshoe Road**  
Town of Georgina

-  Subject Lands
-  Keswick Business Park Study Area (Georgina Official Plan 2002)

Produced by:  
The Regional Municipality of York  
Planning & Economic Development Branch  
Corporate Services Department  
June 2017

Data: © Queen's Printer for Ontario 2003-2017





Produced by:  
The Regional Municipality of York  
Planning & Economic Development Branch  
Corporate Services Department  
June 2017

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**YROP-2010 Land Use  
2354 Ravenshoe Road  
Town of Georgina**



- Subject Lands
- YROP-2010 Designations
- Urban
- Greenbelt Protected Countryside
- Regional Greenland System



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Lawyers

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Please refer to: **Mark Flowers**  
e-mail: [markf@davieshowe.com](mailto:markf@davieshowe.com)  
direct line: 416.263.4513  
File No. 702835

April 19, 2016

**By E-Mail Only to [jespinosa@georgina.ca](mailto:jespinosa@georgina.ca)**

Mayor Margaret Quirk and Members of Town Council  
Town of Georgina  
Georgina Civic Centre  
26557 Civic Centre Road  
Keswick, Ontario  
L4P 3G1

**Attention: John Espinosa, Town Clerk**

Dear Mr. Espinosa:

**Re: Town of Georgina Proposed Official Plan, April 2016  
Town File No. 02.180  
Submissions on behalf of Nizza Enterprises Limited**

We are counsel to Nizza Enterprises Limited (“Nizza”), the owner of lands municipally known as 2354 Ravenshoe Road in the Town of Georgina (the “Lands”). The Lands are approximately 10.4 hectares and are located northeast of the intersection of Woodbine Avenue and Ravenshoe Road in the community of Keswick, within the Keswick Business Park Study Area (“KBPSA”).

Through its planning and engineering consultant, MMM Group Limited (“MMM”), Nizza has actively participated in the Town’s Official Plan Review process to date and, in particular, has made a number of written submissions to the Town.

More specifically, by letter dated July 18, 2014, MMM provided the Town with initial comments regarding the Official Plan Review, including confirming its support for maintaining the KBPSA overlay designation through the Town’s Official Plan Review process and advising of our client’s intention to proceed with various studies in support of the development of the Lands for employment purposes.

By letter dated July 30, 2015, and in the context of the Town’s Official Plan Review, MMM provided the Town with the following studies and reports in support of a request for a settlement area boundary expansion for the lands within the KBPSA and to demonstrate the development potential of the Lands: (1) Planning



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Justification Report, including an Employment Land Needs Analysis (July 2015); (2) Floodplain Analysis (July 2015); (3) Preliminary Natural Environmental Report (July 2015); and (4) Preliminary Site Servicing Report (June 2015). Copies of this submission package were also circulated to the Regional Municipality of York ("York Region") and the Lake Simcoe Region Conservation Authority ("LSRCA") in August 2015.

Finally, by letter dated October 14, 2015, MMM made further submissions to the Town on behalf of Nizza, affirming its support for the settlement area boundary expansion request.

In the meantime, MMM has been in discussions with the LSRCA regarding the results of the most recent floodplain analysis for the Lands (July 2015).

We recently received a copy of Report No. DS-2016-0029 (the "Staff Report"), prepared by the Town's Planning Division, which we understand will be considered by Town Council at its meeting on April 20, 2016.

Among other things, the Staff Report recommends that the "KBPSA overlay designation and associated policies be removed from the Official Plan". In addition, the Staff Report recommends that the Lands be designated 'Rural Area' and 'Environmental Protection Area'.

On behalf of Nizza, we are writing to express our opposition to the staff recommendations in relation to both the KBPSA and the Lands.

Regarding the KBPSA, the Staff Report fails to provide any sound planning rationale to support its recommendation for the removal of the KBPSA and associated policies.

Moreover, the Staff Report neglects to even mention Policy 6.1.10 of the York Region Official Plan ("YROP"), which states as follows:

*"That the Keswick Business Park Study Area is subject to Section 3.4.4 of the Greenbelt Plan and special provisions in the Official Plan of the Town of Georgina. Any development of these lands will require an amendment to this Plan and the local official plan."*



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For reference, Section 3.4.4 of the *Greenbelt Plan* specifically provides for a settlement area expansion to be considered through a municipality's exercise to bring its official plan into conformity with the *Greenbelt Plan*; in this case, that exercise is the Town's current Official Plan Review.

Thus, Town staff's suggestion that permitting a settlement area expansion of the lands within the KBPSA would be "contrary to the *Greenbelt Plan*" appears to ignore both Section 3.4.4 of the *Greenbelt Plan* and Policy 6.1.10 of the YROP.

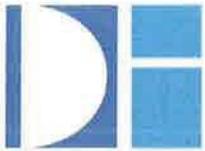
By way of background, Policy 6.1.10 of the YROP was adopted by York Region Council as part of the YROP on December 16, 2009, and subsequently endorsed by the Ministry of Municipal Affairs and Housing ("MMAH") as part of its approval of the YROP on September 7, 2010. Nonetheless, it is our understanding that this policy had not come into force until recently as a result of an outstanding appeal of Section 6.1 of the YROP. Late last year, Policy 6.1.10 came into effect as a result of an Order of the Ontario Municipal Board ("OMB") arising from a motion for partial approval of the YROP brought by York Region.

In August 2015, York Region filed motion materials with the OMB requesting the approval of various policies, including Policy 6.1.10. That motion was supported by a sworn affidavit of a Senior Planner, Policy and Environment with York Region's Planning and Economic Development Branch. Among other things, the affidavit concluded that Policy 6.1.10 of the YROP:

- (i) is consistent with the *Provincial Policy Statement 2014*;
- (ii) conforms to the *Greenbelt Plan*;
- (iii) conforms to the *Growth Plan for the Greater Golden Horseshoe*; and
- (iv) represents good land use planning.

As a result of York Region's motion, the OMB issued an Order dated November 5, 2015, approving various policies in Chapter 6 of the YROP, including Policy 6.1.10.

To our knowledge, the Town did not oppose the approval of Policy 6.1.10 of the YROP at the time that York Region Council adopted the YROP in 2009, nor when MMAH approved the YROP in 2010, nor when the OMB recently approved Policy 6.1.10 at the request of York Region.



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Given that Policy 6.1.10 of the YROP explicitly states that the KBPSA is “subject to ... special provisions in the Official Plan of the Town of Georgina”, it is our position that removing the KBPSA designation and associated policies would not only be inappropriate from a land use planning and policy perspective, but it would also fail to conform to the YROP, as required by the *Planning Act*.

With respect to the proposed redesignation of the Lands, our client opposes the designations recommended in the Staff Report. Instead, Nizza continues to maintain that the Lands should form part of a settlement area boundary expansion and, accordingly, that the developable portion of the Lands should be redesignated to permit an appropriate range of employment uses. In support of this request, we direct Council’s attention to the numerous studies and reports prepared by MMM and previously submitted to the Town.

We appreciate Council’s consideration of this submission. Kindly ensure that we receive notice of any decision(s) made by Town Council concerning this matter.

Yours truly,

**DAVIES HOWE PARTNERS LLP**

A handwritten signature in black ink, appearing to read "Mark R. Flowers".

Mark R. Flowers  
Professional Corporation

copy: Client  
Chad John-Baptiste / Christina Addorisio, MMM Group Limited  
Harold Lenters / Andrea Furniss, Town of Georgina  
Karen Whitney / Valerie Shuttleworth, York Region  
Mike Walters / Charles Burgess, LSRCA



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Please refer to: **Mark Flowers**  
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direct line: 416.263.4513  
File No. 702835

April 26, 2016

**By E-Mail Only to [jespinosa@georgina.ca](mailto:jespinosa@georgina.ca)**

Mayor Margaret Quirk and Members of Town Council  
Town of Georgina  
Georgina Civic Centre  
26557 Civic Centre Road  
Keswick, Ontario  
L4P 3G1

**Attention: John Espinosa, Town Clerk**

Dear Mr. Espinosa:

**Re: Town of Georgina Proposed Official Plan, April 2016  
Town File No. 02.180  
Submissions on behalf of Nizza Enterprises Limited**

We are counsel to Nizza Enterprises Limited ("Nizza"), the owner of lands municipally known as 2354 Ravenshoe Road in the Town of Georgina (the "Lands").

By letter dated April 19, 2016, we made submissions on behalf of Nizza in relation to the Town's proposed Official Plan. Among other things, we provided comments in response to Town staff's recommendations regarding the proposed designation of the Lands in the Official Plan as well as the potential removal of the overlay designation and associated policies for the Keswick Business Park Study Area ("KBPSA").

We understand that at its meeting on April 20, 2016, Town Council discussed the KBPSA and is now contemplating retaining the KBPSA in the Official Plan for the time being but establishing a "sunset" provision whereby the overlay designation and associated policies would effectively expire in January 2020.

With respect, the proposed date of January 2020 appears to be entirely arbitrary and the approach being contemplated is not supported by any legitimate planning justification. Moreover, as we noted in our letter of April 19, 2016, the policy in the York Region Official Plan ("YROP") that recognizes the KBPSA (Policy 6.1.10) was only approved by the Ontario Municipal Board ("OMB") less than six months



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ago, and nowhere in the materials filed with the OMB in support of the approval of the policy did York Region suggest that the KPBSA designation and associated policies should in any way be time-limited. In fact, Policy 6.1.10 of the YROP specifically states that development of the lands within the KBPSA will require amendments to both the YROP and the Town's Official Plan, and Town Council will undoubtedly appreciate that securing the approval of Regional and local official plan amendments can often be a complex and very time-consuming process.

As a result, we are writing to advise that Nizza does not support the inclusion of a sunset provision for the KBPSA, which we understand is being contemplated.

We appreciate Council's consideration of this submission.

Yours truly,

**DAVIES HOWE PARTNERS LLP**

A handwritten signature in black ink that reads "Mark R. Flowers".

Mark R. Flowers  
Professional Corporation

copy: Client  
Chad John-Baptiste / Christina Addorisio, MMM Group Limited  
Harold Lenters , Town of Georgina  
Karen Whitney / Valerie Shuttleworth, York Region  
Mike Walters / Charles Burgess, LSRCA

Court File No. CV-17-131298

ONTARIO  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT

THE HON:

Madam Justice A.M. Mullins

)  
) *Monday*, the *19<sup>th</sup>* day  
)  
) of June, 2017  
)

BETWEEN:

1965870 ONTARIO INC.

Applicant

– and –

THE REGIONAL MUNICIPALITY OF YORK and  
THE CORPORATION OF THE TOWN OF GEORGINA

Respondents



Application under section 2 of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1

JUDGMENT

THIS APPLICATION FOR JUDICIAL REVIEW made by the Applicant, on the consent of the Respondents, was read this day at the Newmarket Courthouse, 50 Eagle Street West, Newmarket, Ontario L3Y 6B1.

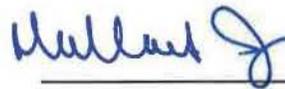
ON READING the Notice of Application for Judicial Review, the Affidavit of Mark Flowers, the Consent to Judgment, and the Factum of the Applicant, filed,

1. THIS COURT DECLARES that the Applicant's lawyer was entitled under subsection 17(23)(b) of the *Planning Act*, R.S.O. 1990, c. P.13 to

written notice of the adoption by the Town of Georgina (the "Town") of amendments to the Official Plan for the Town of Georgina on April 27, 2016 (the "Official Plan Amendment");

2. **THIS COURT DECLARES** that the Applicant's predecessor in title was entitled under subsection 17(31) of the *Planning Act*, R.S.O. 1990, c. P.13 to have the written submissions made on its behalf through letters to the Town dated April 19, 2016 and April 26, 2016 (the "Written Submissions") forwarded by the Town to the Regional Municipality of York (the "Region") for consideration by the Regional Council before the Region modified and approved the Official Plan Amendment;
3. **THIS COURT DECLARES** that the Applicant's lawyer would have been entitled under subsection 17(35)(b) of the *Planning Act*, R.S.O. 1990, c. P.13 to written notice of the approval of the modified Official Plan Amendment by the Region on October 20, 2016, had he received notice in accordance with paragraph 1 above and requested notice of the approval of the modified Official Plan Amendment by the Region;
4. **THIS COURT ORDERS** that Regional Council consider the Written Submissions at the next Regional Council meeting following the date of this Judgment, and that it maintain or modify its decision of October 20, 2016 regarding the Official Plan Amendment as it relates to the matters raised in the Written Submissions;

5. **THIS COURT ORDERS** that the Region provide the Applicant, the Applicant's lawyer, the Town and the Town's lawyer, and no other person, with notice of Regional Council's decision regarding the Official Plan Amendment, made in accordance with paragraph 4 above;
  
6. **THIS COURT ORDERS** that the Applicant, and no other person, has 20 days from the date of receipt of notice of Regional Council's decision, delivered in accordance with paragraph 5 above, to appeal the Region's decision regarding the Official Plan Amendment to the Ontario Municipal Board in accordance with subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13; and
  
7. **THIS COURT ORDERS** that there shall be no costs of this Application.





**1965870 ONTARIO INC.**

Applicant

- and -

**THE REGIONAL MUNICIPALITY OF YORK and  
THE CORPORATION OF THE TOWN OF GEORGINA**

Respondents

Court File No. CV-17-131298

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT**

**PROCEEDINGS COMMENCED AT  
NEWMARKET**

**JUDGMENT**

**DAVIES HOWE LLP**

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Lawyers for the Applicant