

CITATION: West Carleton Community Alliance v. The City of Ottawa et al, 2026 ONSC 1372
DIVISIONAL COURT FILE NO.: DC-26-00000007-0000
DATE: 20260311

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: WEST CARLETON COMMUNITY ALLIANCE Applicant

AND:

THE CITY OF OTTAWA, EVOLUGEN DEVELOPMENT LIMITED
PARTNERSHIP, BROOKFIELD RENEWABLE POWER INC., AND STANTEC
CONSULTING LTD. Respondents

BEFORE: L. Brownstone J.

COUNSEL: *Raymond Colautti*, for the Applicant(s)

Stuart Huxley, for the Respondent City of Ottawa

Kirsten Crain, Emma Blanchard, and Bhreagh Ross, for the Respondents Evolgen
Limited Partnership and Brookfield Renewable Power Inc.

Michael Finley for the Respondent Stantec Consulting Ltd.

HEARD at Toronto: March 5, 2026

ENDORSEMENT

Introduction

[1] In September 2023, Ontario’s Independent Electricity System Operator (the "IESO"), the authority responsible for managing the province’s electrical power system, issued a request for proposals to procure new electricity capacity across the province. One type of resource contemplated by the IESO is a Battery Energy Storage System (“BESS”).

[2] An affiliate of the Respondents Evolgen Development Limited Partnership and Brookfield Renewable Power Inc.¹ (“the Proponent”) pursued the opportunity to build a BESS in Ottawa. Under the Proponent’s contract with the IESO, the Proponent was required to obtain a Municipal Support Resolution (“MSR”) from Ottawa City Council, indicating that Ottawa was willing to host the proposed BESS. The Proponent was required to provide proof of municipal support within 20 months of the date of its contract with the IESO.

[3] Ottawa City Council passed the MSR on June 11, 2025. The recitals to the MSR express that the MSR does not constitute planning approval and does not commit Council to any future land use decisions.

[4] The Proponent owns land known municipally as 2555 and 2625 Marchhurst Road. In order to build the BESS on the Marchhurst property, the site’s zoning had to be changed. The Proponent worked with the City’s experts and on October 20, 2025, City staff deemed the zoning bylaw amendment application complete.

[5] On December 10, 2025, Ottawa City Council approved the requested amendment to bylaw 2008-250 (“the Amendment”) that made a site-specific zoning amendment to nine out of eighty-one hectares of the Marchhurst property. The Amendment changed the zoning of those nine hectares from “rural countryside” to “rural general industrial exception zone”. The Amendment was made to permit a BESS to be established on the identified nine hectares.

[6] The Applicant is a not-for-profit Ontario corporation created eight days after the Amendment passed. It has four directors who live within four kilometers of the Marchhurst property. There are no members of the organisation, but the directors state that they represent residents living in the vicinity of the property who oppose the BESS. One of the Applicant’s directors has hosted community meetings about the BESS and there is evidence that local residents, organised by one of the Applicant’s directors, wrote letters and signed a petition in opposition to the BESS.

[7] The Applicant issued its application for judicial review in early January 2026. The application seeks to quash both the Amendment and the MSR.

[8] There are two motions before the court. First, the Applicant seeks a stay of the Amendment’s implementation pending the hearing of its application. The City and the Proponent oppose the stay. Second, the Proponent moves to strike portions of the application and portions of

¹ The issue of whether these Respondents’ affiliate, Fitzroy BESS Inc., and not these two named Respondents, is the proper party to this application shall be reviewed by the parties before the application proceeds. The Respondent Stantec Consulting was retained to act as a consultant for the Proponent. Counsel for the Applicant expressed the view during the hearing that Stantec should “probably be let out” of these proceedings. The parties should also determine whether this will be done on consent prior to the scheduling of the application. Stantec attended but did not participate in these motions.

the Applicant's record. The City did not bring a motion or file materials on the Proponent's motion to strike, but advised the court that it supports an appropriate narrowing of the record.

[9] For the reasons that follow, the Applicant's motion for a stay is dismissed. The Proponent's motion to strike is granted in part.

The stay motion

[10] The parties agree that the stay motion is governed by the three-part test in *R.J.R.-Macdonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311: Is there a serious issue to be tried? Would the Applicant suffer irreparable harm if the stay is not granted? Does the balance of convenience favour a stay?

[11] Although strength in one part of the test may make up for weakness in another, the Applicant must meet all three prongs of the test in order to succeed: *Haudenosaunee Development Institute v. Metrolinx*, 2023 ONCA 122, at para. 6.

[12] The Proponent and the City submit that the Applicant fails on each branch of the test.

i) Is there a serious issue to be tried?

[13] The notice of application seeks to challenge the Amendment on many grounds. The grounds can usefully be grouped into the following general categories:

- a. There was a lack of procedural fairness in the process leading up to and resulting in City Council's vote on the Amendment, improperly denying meaningful public participation;
- b. City Council closed its mind to arguments against the Amendment and proceeded in bad faith after it had passed the MSR. It approached the December council rezoning resolution with a closed mind;
- c. The Amendment displays a failure to comply with provincial planning directions and requirements;
- d. City Council failed to consider important issues in making its decision to pass the Amendment, instead it improperly left these issues and decisions to the site plan implementation stage;
- e. The passing of the Amendment was an unreasonable exercise of the City Council's statutory power of decision;
- f. The Proponent made materially misleading statements on which the City Council erroneously relied.

[14] The parties agree that the threshold on this part of the test for a stay is a low one. The court is to make a preliminary assessment of the merits of the case. If the court is satisfied that the application is not frivolous or vexatious, it is to go on to consider the second and third parts of the test, even if the court believes the application is unlikely to succeed. The court is not to engage in a prolonged assessment of the merits unless the stay would have the effect of determining the issue on a final basis, or the question at issue is one of law alone: *R.J.R.-Macdonald Inc.*

[15] The Applicant submits that its application easily passes this branch of the test. It submits that it has raised significant issues about fettering, bias, and illegality.

[16] The Proponent and the City submit that the Applicant's issues are all, as a matter of law, frivolous and vexatious and do not pass this first branch of the test. Their arguments can be summarized as follows.

[17] First, the Respondents submit that the law is clear that decisions of the kind under review here are accorded a high degree of deference by the courts. The courts' ability to review bylaws is severely restricted: *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 SCR 5; *Friends of Lansdowne Inc. v. Ottawa (City)*, 2012 ONCA 273, 110 O.R. (3d) 1, at para.13; *Guzar v. The Corporation of the Township of Puslinch*, 2019 ONSC 3511 at paras. 43-44.

[18] This restriction is codified in s. 272 of the *Municipal Act, 2001*, S.O. 2001, c. 25, which provides:

272. A by-law passed in good faith under any Act shall not be quashed or open to review in whole or in part by any court because of the unreasonableness or supposed unreasonableness of the by-law.

[19] The Court of Appeal for Ontario in *Equity Waste Management of Canada v. Halton Hills (Town)*, (1997) 35 O.R. (3d) 321 (C.A.), at p. 340 has noted that bad faith in the context of a municipality has a particular meaning:

“Bad faith by a municipality connotes a lack of candour, frankness and impartiality. It includes arbitrary or unfair conduct and the exercise of power to serve private purposes at the expense of the public interest...”

[20] Second, the Respondents submit that it is well established that the City Council does not owe any common law duty of procedural fairness to people who may be affected by its actions: *Toronto Taxi Alliance Inc. v. City of Toronto*, 2015 ONSC 685, which cites a long line of cases from the Supreme Court of Canada. The City met and exceeded its statutory consultation requirements.

[21] Third, the test for bias for a city council is exceptionally high. The Applicant would have to show that “there is a prejudgment of the matter, in fact, to the extent that any representations at variance with the view, which has been adopted, would be futile”: *Old St. Boniface Residents*

Assn. Inc. v. Winnipeg (City), [1990] 3 SC.R. 1170. The MSR specifically states that it does not predetermine the issue.

[22] Finally, the Applicant's arguments about improper delegation to the site planning process and failure to comply with provincial planning directions reveal a failure to properly understand the planning process. In fact, it is clear that the process unfolded exactly as it was meant to do, in accordance with the *Planning Act*, R.S.O. 1990, c. P.13 and all other applicable requirements.

[23] The Respondents submit that, at their heart, the Applicant's arguments all come down to disagreement with the decision taken by City Council. That does not form a proper basis for the court's involvement and does not establish a serious issue to be tried.

[24] I will consider some of the Applicant's grounds in more detail when determining the motion to strike, below. The case law above demonstrates that the Applicant has a difficult road ahead in its challenge. However, it is not the job of this court on a stay motion to decide the merits of the application. This court is to determine whether the Applicants have crossed the low threshold of a serious issue to be tried.

[25] I do not find that the grounds of fettering, bias and illegality are frivolous and vexatious. Subject to my decision on the motion to strike, I do not find that the issues are clear questions of law that can be determined at this stage without a significant review of the voluminous record, something that I am not to do at this stage of the test.

[26] I therefore find the Applicant meets the threshold of this branch of the test.

ii) Will the Applicant suffer irreparable harm if there is no stay?

[27] Irreparable harm refers to the nature, not the magnitude, of the harm suffered: *R.J.R.-Macdonald Inc.*. The Court in *R.J.R.-Macdonald Inc.* included the "permanent loss of natural resources" as an example of harm that may be irreparable. The evidence is required to be clear and not speculative.

[28] In a case involving environmental damage, the court should not insist on irrefutable evidence of irreparable harm. Evidence that would support a finding that irreparable harm would be suffered is sufficient. *Ottawa (City) v. Ottawa (City) (Chief Building Official)*, (2003) 67 O.R. (3d) 490 (S.C.), at para. 24.

[29] The Applicant submits that failure to grant a stay will result in irreparable harm to the environmental habitat and species at risk, have potential impacts on fire safety and emergency responses, and result in potential harm to the groundwater, which affects the residents' well water. The application record reveals that the individual directors rely on private groundwater wells as their sole source of potable water. It submits that, viewed in the context of environmental harm cases, it has provided sufficient evidence to meet this branch of the test.

[30] The Applicant relies on *Prince Edward County Field Naturalists v. Ostrander Point GP Inc.*, 2014 ONCA 227, 119 O.R. (3d) 704, at para. 17, in which the Court of Appeal noted that “[o]nce a habitat is destroyed, it is destroyed, -- for at least short-term purposes, in any event – and the species sought to be protected here is a vulnerable and endangered species.” The court is not to parse the evidence and draw fine distinctions in a case of this kind: *Ostrander Point* at para. 17.

[31] The Proponent submits that the Applicant is required to show that the Applicant itself will suffer irreparable harm, not that others will. The Applicant as a not-for-profit corporation will not suffer any harm. There is no evidence the Applicant speaks on behalf of anyone but its four directors. Further, the evidence shows that no irreparable harm will result from the Amendment or the BESS.

[32] The Proponent, relying on *Aware Simcoe: Environmental and Social Solutions Inc. v Corporation of the County of Simcoe*, 2015 ONSC 5344 (Div. Ct.), at para. 78, submits that “Elected municipal officials, [county councils] and public agencies [Nottawasaga conservation authority and the ministry of natural resources and forestry] are best situated to address the public interest and protection of the environment [internal citations omitted].” The Applicant has no knowledge or expertise in environmental impact assessment. The only expert evidence in the record, that was before the City when it made its decision, indicates no harm will result from the BESS.

[33] The Applicant fears adverse impact from the BESS. In *Ostrander Point*, the Court had before it evidence that the project in question would “cause serious and irreversible harm to Blanding’s turtle.” The evidence in the case before me does not rise to that level and does not demonstrate that irreparable harm will result if the stay is not granted. The injunction will have no effect on the removal of the trees, which the evidence demonstrates the Proponent is entitled to remove as owner of the property. The expert evidence in the record concludes that as long as the proposed mitigation strategies are undertaken, no species at risk will be adversely affected.

[34] I find the Applicant has not satisfied this branch of the test. That is enough for its stay motion to fail. However, in the event I am incorrect, and for the sake of completeness, I will consider the third branch of the test.

iii) Does the balance of convenience favour granting the stay?

[35] The Applicant, relying on *R.J.R.-MacDonald*, submits that the City is not the exclusive representative of the public interest. The Applicant can reveal the public interest of an identifiable group. The Applicant submits that the *status quo* of no development on the land should be maintained until the application can be heard on its merits. The Applicant asks the court to infer, based on the Proponent’s refusal to answer questions about this issue, that the Proponent does not yet have its site plan approvals. Therefore, the Applicant submits that a delay in getting started will not have a significant effect on the Proponent.

[36] The Proponent states that if the operation of the bylaw is stayed, the site plan approvals cannot proceed. The site plan approvals can only be undertaken in conformity with a valid bylaw. Therefore, the stay would put the approvals and therefore the project in jeopardy.

[37] The Proponent estimates its costs of delay at five million dollars per month. It notes that June 30, 2027, is the “in-service” date for the BESS. The Proponent’s affiant attests that the project is currently on schedule to meet that date. Any delay in the site plan approvals puts that date at risk and could result in the Proponent being liable for damages to IESO.

[38] The Applicant pointed to portions of the Proponent’s affidavit to suggest that the Proponent’s contentions about both the cause and the effect of delay are incorrect. The Applicant suggested that previous delay was the cause of the potential harm to the Proponent, and that the timelines in the Proponent’s project plans are “a fiction”. I do not read the Proponent’s evidence that way. The Proponent’s affiant was quite clear that it is the current potential delay that could cost the Proponent five million dollars monthly, and that the Proponent is currently on track to meet its deadline.

[39] Like the Proponent, the City also submits that the balance of convenience favours the Respondents. The City notes that it is balancing the public interest of not only the community that includes the Applicants, but the greater region that is in need of the BESS. There is also the public interest in ensuring legislative bodies, who have passed presumptively valid legislation, are able to function effectively.

[40] The City relies on comments made by the Supreme Court of Canada, albeit not in the context of a stay motion, in *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 19:

The case law suggests that review of municipal bylaws must reflect the broad discretion provincial legislators have traditionally accorded to municipalities engaged in delegated legislation. Municipal councillors passing bylaws fulfill a task that affects their community as a whole and is legislative rather than adjudicative in nature. Bylaws are not quasi-judicial decisions. Rather, they involve an array of social, economic, political and other non-legal considerations. “Municipal governments are democratic institutions”, *per* LeBel J. for the majority in *Pacific National Investments Ltd. v. Victoria (City)*, 2000 SCC 64, [2000] 2 S.C.R. 919, at para. 33. In this context, reasonableness means courts must respect the responsibility of elected representatives to serve the people who elected them and to whom they are ultimately accountable.

[41] The following comments from *Aware*, at para. 84 are apt here:

A further considerable inconvenience is argued by the County that an injunction granted in circumstances of a procedural mistake to the Applicant with no interest in the property, no evidence or special expertise in the significance of the trees, no

irreparable damage to any legal interest, would compromise the County in exercising its authority under The Municipal Act...

[42] I have noted above the deferential posture the courts will take when reviewing bylaws passed by a democratically elected body, absent illegality. I have found the Applicant does not have a frivolous and vexatious case, but I have noted the high bar the Applicant will have to meet to have a chance of success. In weighing the matter, I find the balance of convenience favours the Proponent and the City. The interim inconvenience to those bodies outweighs the interim inconvenience to the Applicant.

[43] I find the Applicant fails on this branch of the test.

[44] I therefore dismiss the motion to stay the operation of the Amendment.

The motion to strike

[45] The Proponent moves to dismiss a portion of the application because it is out of time. It also moves to strike portions of the notice of application because it is plain and obvious the grounds asserted cannot succeed, and it seeks to strike some of the Applicant's affidavit evidence as improper opinion evidence.

[46] A single judge is permitted to strike materials in advance of an application being heard by the panel. In doing so, the motion judge balances competing interests. There is an interest in defining the record, removing impermissible argument, and avoiding the proliferation of the record and collateral issues. However, the motion judge should also be cognizant of the panel's role in determining the matter, including the panel's assessment of the tenability of the various grounds for the application and of the evidence in support of those grounds. If the motion judge is uncertain about the relevance of certain material, the issue may be left to the panel to determine: *Sierra Club Canada v. Ontario (Ministry of Natural Resources and Ministry of Transport)*, 2011 ONSC 4086; *Humberplex Developments v Attorney General for Ontario*, 2023 ONSC 2962 (Div. Ct.), *City of Toronto v. CUPE Local 79 and Mathew Wilson*, 2022 ONSC 6971, *Lockridge v. Director, Ministry of the Environment*, 2012 ONSC 2316, 350 D.L.R. (4th) 720 (Div. Ct.).

i) Should the application to review the MSR be struck as statute-barred?

[47] As detailed above, City Council passed the MSR on June 11, 2025. The notice of application, commenced in January 2026, seeks to quash not only the December 2025 bylaw but also the MSR. Subsection 5(1) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1 provides as follows:

(1) Unless another Act provides otherwise, an application for judicial review shall be made no later than 30 days after the date the decision or matter for which judicial review is being sought was made or occurred, subject to subsection (2)

[48] Subsection 5(2) permits the court to extend the time if it is satisfied that there are apparent grounds for relief and no substantial prejudice will result from granting the extension.

[49] In oral argument, the Applicant acknowledged that it does not need to seek to strike the MSR. The history of the MSR is relevant as a factual matter to its application to strike the bylaw, but the Applicant agrees there is no need to quash the MSR itself. There is therefore no reason to extend the time for review.

[50] Therefore paragraph 3 of the notice of application is struck.

ii) Should specified paragraphs of the Notice of Application that challenge the bylaw on reasonableness grounds and grounds of procedural fairness be struck?

[51] The Proponent moves to strike portions of the notice of application on the basis that it is plain and obvious the Applicant cannot succeed on those grounds. Bylaws are not reviewable on

grounds of reasonableness, and the City Council owes the Applicant no common law duty of procedural fairness. The record of proceedings on its own is over 8000 pages. If the Applicant is permitted to proceed with grounds of reasonableness and procedural fairness, the proceeding, including the potential need for further materials and cross-examinations, risks becoming completely unwieldy.

[52] The threshold on a motion to strike an application under rule 21.01 is a high one. The moving party must show it is plain and obvious the application cannot succeed: *Lockridge*, at para. 25

[53] The Proponent submits that the complaints of procedural fairness, outside the allegation of failure to abide by statutory requirements, cannot stand. As set out above in paragraph 20 above, municipalities owe no common law duty of procedural fairness to those affected by its actions. For this reason, it submits that the last six words of paragraph 41 of the notice of application “and the principles of procedural fairness” should be struck, as well as the entire section entitled “Procedural Unfairness and Denial of Meaningful Public Participation” (paragraphs 47-50).

[54] Subsection 34(12) of the *Planning Act* requires councils to ensure the public has sufficient information to be able to understand generally the zoning proposal that the council is considering, and to hold at least one public meeting to give the public an opportunity to make representations about the proposed bylaw. The Respondents submit that these statutory requirements were met or exceeded. The inquiry into procedural fairness is destined to fail.

[55] The grounds raised in this portion of the application allege that the public had no meaningful opportunity to be heard, because the information underlying council’s decision was incomplete. The Applicant alleges it was not provided with adequate information to make meaningful submissions.

[56] I find this issue should be left to the panel to decide. The Applicant can be taken to be alleging that the *Planning Act*’s statutory requirement was not complied with because insufficient information was provided, in breach of s. 34(12). This is not an argument about the common law duty of fairness. The Applicant is entitled to make this argument to the panel.

[57] I therefore strike only the last six words of paragraph 41 of the Notice of Application, as I find they refer only to common law procedural fairness. The section entitled “Procedural Unfairness and Denial of Meaningful Public Participation” (paragraphs 47-50) is not struck.

[58] Next, the Proponent seeks to strike those portions of the notice of application that, in its submission, seek a review of the bylaw on reasonableness grounds. As set out above, the case law and s. 272 of the *Municipal Act* are clear that bylaws are not reviewable on grounds of reasonableness. For ease, I reproduce s. 272 again here:

272 A by-law passed in good faith under any Act shall not be quashed or open to review in whole or in part by any court because of the unreasonableness or supposed unreasonableness of the by-law

[59] The Applicant submits that once it demonstrates the bylaw was not passed in good faith, the court may engage in a reasonableness review of the bylaw. The Proponent disagrees, and points to s. 273(1), which provides:

273 (1) Upon the application of any person, the Superior Court of Justice may quash a by-law of a municipality in whole or in part for illegality.

[60] The Respondents submit that under s. 273(1), if the panel determines the bylaw was not passed in good faith or is in some other way illegal, the remedy is for the court to quash the bylaw. This court is not to take City Council's work into its own hands and assess the myriad considerations that go into a legislative decision of this kind. Therefore, the Proponent submits that the entirety of paragraph 51 and its subheadings and subparagraphs should be struck, as it is plain and obvious the attack on the bylaw on this ground cannot succeed.

[61] The opening sentence of paragraph 51 reads as follows: "When viewed as a whole, the decision to approve the zoning by law-amendment was unreasonable in light of the full factual, statutory, and policy context before Council in the following particulars." The notice of application then provides a series of subparagraphs under various subheadings. I find that the following subheadings and subparagraphs should be struck: subheading c) Internal Inconsistencies and Contradictory Rationale, and paragraphs 52.11 and 52.12 that follow it; subheading d) Disregard of Central Public and Technical Concerns and paragraphs 52.13 and 52.14 that follow it. These paragraphs are an impermissible attempt to have this court review the bylaw on reasonableness grounds, something it is prohibited from doing.

[62] I do not strike subheading a) and the paragraphs that follow it (paragraphs 51.1 and 52.2). I read these parts of the notice of application as being related to the Applicant's complaint, addressed above, that there was no meaningful consultation because the public was not provided with sufficient information. I make no comment, of course, on the likelihood of this ground succeeding. At this stage, I am concerned only with whether the Applicant ought to be able to make this submission to the panel. Because I view this ground as being tied to the consultation ground, addressed above, I do not strike it.

[63] I also do not strike subheading b) and the paragraphs that follow it (52.2-52.10). Read generously, the Applicant's complaint is that the zoning bylaw does not comply with provincial directives and requirements. The merits of that submission belong with the panel.

[64] Subheading e) is entitled "Unreasonable Exercise of Zoning Authority and Error of Law" and is followed by paragraphs 52.15 and 52.16. The first six words of the subheading are struck, so that it is to read simply "Error of Law". These paragraphs refer to improper delegation or deferral of aspects of the City's decision. The Proponent submits that the paragraphs represent a misunderstanding of how planning authorizations work. Again, I leave this determination to the panel hearing the application. The same analysis applies to paragraphs 61-64 of the notice of application, which I therefore also decline to strike.

iii) Should portions of the Applicant's affidavit evidence be struck?

[65] The general rule on applications for judicial review is that material that was not before the decision-maker at first instance should not be before the court on review. The task of the court is to review the decision below based on the materials that were before it: *Sierra Club*, at para. 13.

[66] In exceptional circumstances, affidavit evidence may be permitted. The three recognized exceptions are i) where the evidence seeks to provide general background information, which does not include information that goes to the merits of the matter; ii) where the affidavit is designed to demonstrate that there was a complete absence of evidence before the tribunal below on a certain issue; and iii) where the evidence goes to the issue of natural justice, procedural fairness, improper purpose or fraud that could not have been put before the original decision-maker: *Keeprite Workers' Independent Union v. Keeprite Products Ltd.* (1980), 29 O.R. (2d) 513 (C.A.).

[67] Evidence must also meet the usual rules of admissibility.

[68] Here, the Applicant has amassed a substantial record that it says meets all three exceptions set out in *Keeprite*.

[69] The Proponent submits that the affidavit material is replete with improper opinion evidence that should be struck. The affidavits are submitted by nearby residents who have no expertise, yet who purport to analyze and critique actual expert reports obtained by the Proponent. The Proponent obtained reports that included, among others, an archaeological assessment, a noise report from acoustic engineers, a tree conservation report, an emissions report, a hydrogeological and terrain analysis, a fluvial geomorphology assessment, an environmental impact study, and a hazard mitigation analysis.

[70] The Proponent asserts the Applicant is seeking to adduce opinion evidence that is not provided by a duly qualified expert, that is partisan, and that improperly critiques technological methodologies. Nor have the affiants complied with the duties of an expert in rules 4.1.01 and 53.03.

[71] The Applicant denies the evidence is opinion evidence, submitting that the evidence resides in the unclear space between fact and opinion. If the affiants have personal observations, they may share them. Further, some of the affiants have engineering qualifications so they may properly proffer their evidence.

[72] As noted by Harvison Young J. (as she then was) in *Lockridge*, at para. 94, “[o]pinion evidence may only be tendered through the evidence of a properly qualified expert. Unqualified expert opinion is impermissible and should be struck (citations omitted)”. In *Lockridge*, Harvison Young J. struck affidavits of scientists who in effect provided expert opinion without signing an acknowledgement of expert’s duty, nor claiming to be neutral, unbiased or non-partisan. Rather, they had taken on the role of advocates. The witnesses were not properly tendered as experts, so their affidavits that contained opinion evidence were improper.

[73] The Proponent seeks to strike:

- (a) Affidavit of Michael D'Asti sworn February 12, 2026 (paras 25-26);
 - (b) Affidavit of Brian Parisien sworn February 5, 2026;
 - (c) Affidavit of Catherine Leigh Spotswood sworn February 11, 2026 (paras 16-23, 28-31, 69-74, part of 164);
 - (d) Supplementary Affidavit of Catherine Leigh Spotswood sworn February 12, 2026 (paras 3-4, 11-15, 18, 26, 29-30, 40, 45-48);
 - (e) Second Supplementary Affidavit of Catherine Spotswood sworn February 18, 2026;
 - (f) Affidavit of Sharon Podlesney sworn February 19, 2026; and
 - (g) Affidavit of Simon Rix sworn February 3, 2026;
- a. Affidavit of Michael D'Asti

[74] Michael D'Asti is a security officer at a diplomatic mission in Ottawa and lives just over two kilometers from the Marchhurst property. He does not claim to have any expertise in technical matters but has researched and reviewed publicly available information about, among other things, BESS safety. Paragraph 25 of his affidavit provides an opinion about the correctness of a prevailing wind study and an alleged discrepancy with another study. Mr. D'Asti is not qualified to provide an opinion on whether such a discrepancy exists. Permitting such an opinion to stand in the record would place the Respondents in the position of having to obtain further expert evidence in response to Mr. D'Asti's views as a layperson. This is not appropriate. Should the Applicant have wished to raise technical concerns about the wind studies undertaken, it needed to provide expert evidence to support those concerns. Paragraphs 25 and 26 of Mr. D'Asti's affidavit are struck.

- b. Affidavit of Brian Parisien

[75] Mr. Parisien was formerly a licensed electrical engineer, now retired, who lives within 3.2 kilometers of the Marchhurst property. He is a member of the community group that opposes the BESS. He deposes that because of his technical background, he "was asked to review the Hydrogeological and Terrain Analysis Guidelines from the City of Ottawa and compare it to the submitted Hydrogeological and Terrain Analysis Report by Hatch Brookfield dated March 17, 2025." His affidavit sets out the results of this comparison.

[76] Mr. Parisien candidly acknowledged that he is not an expert in the types of studies referenced in these documents and states he is simply engaging in a comparison of the two documents. However, Mr. Parisien clearly acknowledged at the outset of his affidavit that he was asked to undertake this comparison owing to his technical background. The affidavit clearly

expresses Mr. Parisien’s opinions. For example, he claims a conclusion in the reports he reviewed was “nonsensical”. He speaks of the impact of potential excavation on the reliability of another conclusion in the report. Again, these are critiques that, if important to the Applicant, needed to be put forward by a duly qualified expert in conformity with the rules. Mr. Parisien acknowledges he does not have the requisite expertise to provide opinion evidence in this area. This puts an end to the Applicant’s submission that he could be considered a participant expert. Further, Mr. Parisien is clearly an advocate for the Applicant’s position; he finds the actions of a city department “astonishing”, “disconcerting”, and indicating a “blatant lack of transparency”.

[77] I do not for a moment doubt the sincerity with which Mr. Parisien holds his views and concerns. However, I find the evidence he seeks to give is impermissible opinion evidence. The affidavit of Mr. Parisien is struck.

(c) Affidavit of Catherine Leigh Spotswood sworn February 11, 2026 (paras 16-23, 28-31, 69-74, part of 164);

(d) Supplementary Affidavit of Catherine Leigh Spotswood sworn February 12, 2026 (paras 3-4, 11-15, 18, 26, 29-30, 40, 45-48) and

(e) Second Supplementary Affidavit of Catherine Spotswood sworn February 18, 2026

[78] Ms. Spotswood is a director of the Applicant who lives 2.6 kilometers from the Marchhurst site. She swore three affidavits. She has no expertise in land use, environment, engineering or related fields. The Proponent moves to strike portions of two of her affidavits and the entirety of the third affidavit.

[79] Paragraphs 16-23 of Ms. Spotswood’s Feb 11, 2026, affidavit describe the lands at issue and contain a mix of observation and opinion. The following portions of those paragraphs contain impermissible opinion evidence and shall be struck: paragraph 16, the last sentence of paragraph 17, paragraphs 19-22, the first two sentences of paragraph 23. Paragraphs 28-31, 69-74, and 164.k.i.-viii describe the *Planning Act* and regulations and contain argument about whether the decision complies with other planning instruments. They are impermissible and are struck.

[80] In her supplementary affidavit sworn February 12, 2026, Ms. Spotswood provides opinion evidence about the materials before Council, including that conditions “should have triggered zoning implications under rural hazard regulations” (paragraphs 3-4), critiques and interprets the Environmental Impact Study (paragraphs 11-15), attaches and explains a planning regulation (paragraph 26a) and opines about the purpose and use of a screening process (45-47). Those paragraphs are impermissible opinion evidence and shall be struck. The Proponents also object to paragraphs 18, 26b and 48. I do not strike these paragraphs.

[81] In her second supplementary affidavit sworn February 18, 2026, Ms. Spotswood “describes the environmental conditions of the subject lands and the potential consequences of site preparation prior to final determination of this application.” Ms. Spotswood reviews, interprets, and comments on the environmental impact study, the tree conservation report, the City of Ottawa

staff report, the archeological assessment, the Migratory Birds Convention Act, and the physical and ecological effects of activities on the land. Ms. Spotswood is not qualified to provide any of this opinion evidence. Only paragraph 25 is proper affidavit evidence. The affidavit, other than paragraph 25, is struck.

f) Affidavit of Sharon Podlesney sworn February 19, 2026

[82] Sharon Podlesney swore an affidavit dated February 19, 2026. She lives within 1.5 kilometres of the Marchhurst site. Ms. Podlesney has a degree in civil engineering and is a member of the Professional Engineers Ontario. Ms. Podlesney deposed that she worked as senior estimator for a heavy construction contractor and worked for a professional engineering firm. Ms. Podlesney has been involved as an opponent of the proposed BESS. She deposes that the purpose of her affidavit is to provide a detailed critique of the BESS project based on her knowledge and the study of various documents. Ms. Podlesney identifies issues of inadequate public consultation, deficient and inconsistent technical studies, public safety concerns, environmental risks, project inconsistencies, lack of transparency and accountability, community burden, and bonus clauses in the contract. Ms. Podlesney's affidavit does not demonstrate that she has expertise in these areas. The affidavit demonstrates advocacy for the Applicant's position.

[83] Some of Ms. Podlesney's evidence relates to the procedure leading up to the Amendment. These are contained in Exhibit A at paragraphs 1-45, and 351, and are permissible. The remainder of Exhibit A and all of Exhibit B contain evidence that, if wished to be adduced, would need to come from a properly qualified (or several properly qualified) neutral experts. I order them struck.

[84] Because it is difficult to isolate this issue in the body of her affidavit, Ms. Podlesney may re-swear the body of her affidavit to refer to the procedural issues only, and may annex thereto paragraphs 1-45 and 351 of Exhibit A.

g) Affidavit of Simon Rix sworn February 3, 2026

[85] Simon Rix swore an affidavit dated February 3, 2026. He lives within 3 kilometres of the Marchhurst site and has a diploma in broadcast engineering. Mr. Rix deposed that "[a]s a result of my training and experience I understand and can speak about audio noise measurement, and understand technical reports related thereto." Mr. Rix was asked by the Applicant to identify gaps in technical information that could affect the completeness of technical reports about sound measurements. Mr. Rix states he is not offering an expert opinion, but is identifying problems with the engineer's noise report that was filed with the city. Mr. Rix proceeds to attach and critique the noise study provided to and considered by City Council.

[86] Evidence that substantively critiques an opinion is itself opinion evidence. An affiant must be properly qualified whether he is substantively critiquing an opinion or offering a positive one of his own. Mr. Rix expresses his opinion about the noise study, as well as about the City's noise guidelines. I do not agree with the Applicant's submission that he is not providing expert evidence. Mr. Rix has not complied with the rules governing expert evidence. He is a neighbour, not a neutral

provider of evidence. His qualifications to provide the evidence are unclear. Again, had the Applicant been of the view that expert evidence critiquing the noise report or providing one of its own was important, it needed to obtain that evidence from a neutral qualified expert. Mr. Rix's affidavit is struck.

Disposition

[87] The Applicant's motion for a stay is dismissed.

[88] The motion to strike is allowed in part. The following portions of the notice of application are struck:

- a. paragraph 3;
- b. the last six words of paragraph 41;
- c. under paragraph 51, subheading c) Internal Inconsistencies and Contradictory Rationale, and paragraphs 52.11 and 52.12 that follow it; subheading d) Disregard of Central Public and Technical Concerns and paragraphs 52.13 and 52.14 that follow it, and the first six words of the subheading e);
- d. the first six words of subheading

[89] The following affidavit evidence is struck:

- a. Paragraphs 25 and 26 of Mr. D'Asti's affidavit
- b. The affidavit of Mr. Parisien;
- c. paragraph 16, the last sentence of paragraph 17, paragraphs 19 -22, the first two sentences of paragraph 23. Paragraphs 28-31, 69-74, and 164.k.i.-viii of Ms. Spotswood's February 11, 2026 affidavit;
- d. paragraphs 3-4, 11-15, 26(a), and 45-47 of Ms. Spotswood's February 12, 2026, affidavit;
- e. Ms. Spotswood's February 18, 2026, affidavit, other than paragraph 25;
- f. Exhibit A of Ms. Podlesney's affidavit, other than paragraphs 1-45 and 351; Exhibit B of Ms. Podlesney's affidavit. Ms. Podlesney may re-swear the body of her affidavit to refer to the procedural issues only, and may annex thereto paragraphs 1-45 and 351 of Exhibit A; and
- g. The affidavit of Mr. Rix.

[90] The parties were unable to agree on costs. The Respondents may provide three double-spaced pages of costs submissions within five business days of this decision's release. The Applicant may respond with the same page limits within five business days of receiving the Respondents' submissions.

[91] Finally, the parties shall agree on a timetable for the exchange of revised materials that comply with the orders above. They shall also confer about the identity of the proper respondents to this proceeding, as explained in footnote 1. They may provide me with their proposed schedule and, if possible, agreed-upon order regarding the title of proceedings, after which a date for the hearing of the application can be set.

L. Brownstone J.

Released: March 11, 2026