

RESPONSES TO COMMUNITY QUESTIONS-COMMENTS

At the Summer Dock Meeting held September 4, 2021, the Land Stewardship Committee made a presentation regarding its recommendation that the Club enter into a conservation agreement with a land trust in order to enhance the protection of the Club's Open Lands. In doing so, the LSC responded to some of the questions/comments that had been received during individual discussions with community members and posted on the Club's social media platform. Not all of the questions/comments were addressed in the meeting due to time constraints, so the LSC promised to publish written responses to all of the questions/comments. The following are those responses:

1. How would the Club's ownership of the Open Lands be affected by the proposed arrangements with GBLT or another suitable land trust?

The Club will continue to be the owner of the Open Lands in fee simple. The Club will enter into a Conservation Agreement with a land trust pursuant to which the Club will make promises restricting the development and use of the Open Lands (the "Proposed Restrictions"). In conjunction with the making of the Proposed Restrictions, the Club will grant an access easement to the land trust. The access easement will authorize the land trust to enter onto the Open Lands periodically in order to monitor and ensure that the Club is honouring its promise to abide by the Proposed Restrictions. The access easement will not provide the land trust with any other rights of access or control over the Open Lands so long as the Club abides by the Proposed Restrictions.

2. What kind of restrictions on development and use would be included in the Conservation Agreement?

The LSC anticipates that the Proposed Restrictions would be as follows:

- (a) The Club would agree not to subdivide the Open Lands or seek any zoning change that would permit the Open Lands to be used for residential or commercial purposes.
- (b) The Club would agree not to build or erect structures on the Open Lands beyond those that would be expressly contemplated in the Conservation Agreement. The LSC contemplates that the Club will reserve the right to construct certain structures on the Open Lands (benches, huts and likely at least one community facility), the size and location of which would be determined by the Club so long as those structures did not detrimentally affect the Natural Values and Features of the Open Lands. *
- (c) The Club would agree not to alter the natural features of the Open Lands by dumping, depositing fill, introducing invasive plants or species or altering the topography, ponds or watercourses.

(d) The Club would agree not to allow commercial activities, such as hunting, camping, logging, operating a trailer park or the storing of boats, vehicles, trailers or campers on the Open Lands.

** In settling the terms of a Conservation Agreement with a land trust, Club members will have an opportunity to express their views and provide input into the nature of any structures or buildings that the Club should be entitled to construct on the Open Lands.*

3. How do we ensure that the Club and its members can continue to use the Open Lands in a manner consistent with our current and historical uses? What about uses that we do not currently foresee?

The Conservation Agreement will provide that certain activities which have occurred on the Open Lands will remain as Permitted Activities and cannot be objected to by the land trust. These include use of the land for environmental and ecological research, recreation (including walking (including with pets), hiking, cross-country skiing, snowmobiling, frisbee golf, yoga and other exercise activities, art, sport hunting and fishing, social gatherings and maintenance of the Open Lands using good forestry practices). The Conservation Agreement will provide that the Club will be entitled to use the lands for any new activity that is consistent with the Club's conservation intent and which is not destructive to the Natural Value and Features of the Open Lands. The Club will not need the permission of the land trust in order to authorize a new activity.

4. Won't the involvement of a third party inevitably lead to litigation?

No. The Club will only agree to restrictions on development and use that it is prepared and able to comply with. The LSC believes that the Proposed Restrictions will be clear and not subject to ambiguity. So long as the Club abides by the Proposed Restrictions, there will be no basis for litigation. Further, as recently suggested by a member, the LSC is considering whether or not the Conservation Agreement should include a mediation and arbitration provision as the method for resolving any disputes that might arise and thereby avoid the litigation process.

5. Has it been determined that the land trust will be the GBLT?

No. That decision has not been made. There are other land trusts, such as the Nature Conservancy of Canada, that could be considered. That said, the LSC believes that GBLT is the logical land trust to consider. GBLT is recognized as an outstanding land trust within Canada. Its principle activities are along the eastern shore of Georgian Bay so that it has the required expertise to be a good contracting party. GBLT is financially sound and its Board is populated by Georgian Bay cottagers.

6. What happens if the identity of the conservation body changes?

If for any reason the land trust with whom the Club initially enters into the Conservation Agreement could not continue as the contracting conservation body, it does have the right to assign the agreement to another conservation body. The Conservation Agreement will provide that the Club would have some say in who that could be in order to ensure that the new conservation body operates in a manner consistent with our Conservation Intent. In any event, the new conservation body will be bound by the terms of the agreement and would only acquire the right to access that property to confirm that the Club is abiding by the restrictive covenants. As we have discussed in other answers, the rights of the conservation body are very limited and so long as the Club abides by its restrictions, there is no material risk of interference.

7. Will this proposed arrangement result in greater public access to the Open Lands?

No. The Conservation Agreement will clearly acknowledge that the Open Lands remain private property and that the Club will have the sole right to determine who is permitted access to the Open Lands. GBLT has indicated that it would not publicize the location of the lands governed by the Agreement. The Conservation Agreement will expressly provide that third parties do not acquire any rights as a result of the Club entering into the Conservation Agreement. Under Canadian law, third parties who are not privy to an agreement do not acquire rights in respect of the agreement where the parties to the agreement expressly state that third parties are not to benefit from the agreement.

8. What about unintended consequences?

It is true that the term of a conservation agreement is traditionally for a very long time – typically not less than 500 years. We can all agree that none of us can foresee with any accuracy what events might occur during such a long time. The Conservation Agreement will provide that the Club and the land trust will review the Proposed Restrictions and other terms of the agreement (including permitted activities) periodically (likely every 25 years) to ensure that the conservation arrangement still works as intended. Neither party will be able to force a change upon the other party without consent. But that periodic review will allow both parties to take into account unforeseen changes. The timing of that review is something that will be discussed with the land trust in settling the form of the Conservation Agreement.

As noted below in the comment responding to comments about the Club's experience in the Galbraith case, one of the principal benefits of a conservation arrangement is that should an unforeseen event occur that forced the Club to sell all, or a portion of the Open Lands, any new owner acquiring such lands would be bound by the Proposed Restrictions.

9. Won't the existence of the proposed arrangement result in future members of the Club taking a lesser interest in stewarding the Open Lands?

There is no reason for the Club to lessen its interest in stewarding the Open Lands. Under a conservation arrangement, the Club will continue to initiate all decisions relating to the use of the Open Lands. The Club will not require the input, consent or approval of the land trust with respect to those decisions so long as it abides by the Proposed Restrictions and so long as those future decisions do not detrimentally impact the Natural Values and Features of the Open Lands. The land trust will not have ability or right under the Conservation Agreement to impose further restrictions without the agreement of the Club. So, the Club remains in control of the stewardship of the Open Lands, with the result that we expect that club members will remain actively engaged.

10. Some members have referenced the Galbraith case as evidence that restrictive covenants can be overturned by a Court and therefore suggest that the Club would be better off by strengthening its by-laws rather than considering a Conservation Agreement.

The Supreme Court of Canada decided in the Galbraith case that the restrictive covenants included in the Club's by-laws did not bind a subsequent owner of a site who did not agree to abide by those restrictive covenants. In property law terms, the SCC decided that the restrictive covenants did not "run with the land". As a result, the Club's by-laws were not effective to enforce those restrictive covenants.

The restrictive covenants that the Club will make under a Conservation Agreement will be registered on title. The Conservation Land Act provides that those restrictive covenants will "run with the land" and thus would bind any subsequent owner of the Open Lands should the Club decide or be forced by circumstances to sell the Open Lands or any portion of the Open Lands. The current restriction in the Club's by-laws, requiring a special resolution of members to approve any sale or change in use of the Open Lands, will not bind any subsequent owner. Accordingly, the implementation of a Conservation Agreement provides more permanent protection against the development of the Open Lands.

11. Won't the proposed arrangement facilitate the expropriation of the Open Lands by government?

The Committee is not aware of any reason why the federal, provincial or municipal government would want to acquire the Open Lands or lands adjacent to them. That said, from a value and tax perspective, the benefit of the Conservation Agreement is that the property taxes on the Open Lands would be afforded the same kind of tax treatment which the Club currently enjoys by virtue of the lands being subject to Open Space zoning which precludes development and the managed forest tax incentive programme. The LSC does not expect taxes to be reduced. In addition, as we have pointed out, if the Club proceeds with this proposed arrangement, it will be falling in step with its neighbours in Cognashene and Tadenac who have already made these

arrangements so that the suggestion that our lands would have a lower value than neighbouring properties is not factually correct.

12. What about the lawsuit regarding the Kawartha Lakes Land Trust?

The Committee is aware of this lawsuit but does not have full details. Our understanding is as follows. This does not involve a conservation easement but instead deals with a property that was donated to the land trust. Prior to the donation, the owner of the property had a private road which he used to access his waterfront property. It may be that some of his neighbours also used the private road with his consent. When the owner donated the land to the land trust, he transferred full title to the land trust without any reservation of a right of way in favour of his waterfront property or anyone else. The neighbours have commenced a suit against the land trust. The land trust did not commence the lawsuit. The lawsuit alleges that the neighbours are entitled to a right of way over the donated land. That is disputed by the land trust. This situation appears materially different from the concern that the proposed conservation agreement will be subject to disagreements over its interpretation. It does not deal with a conservation easement. It is a situation where parties who did not own the land and did not participate in the donation are seeking rights that apparently were not reserved in the donation. The LSC does not believe that this situation illustrates a concern that the Club should have.