



# Environmental Appeal Board

Fourth Floor, 747 Fort Street  
Victoria BC V8W 3E9  
Telephone: (250) 387-3464  
Facsimile: (250) 356-9923

**Mailing Address:**  
PO Box 9425 Stn Prov Govt  
Victoria BC V8W 9V1

Website: [www.eab.gov.bc.ca](http://www.eab.gov.bc.ca)  
Email: [eabinfo@gov.bc.ca](mailto:eabinfo@gov.bc.ca)

---

## **DECISION NO. EAB-WSA-19-A008(a)**

In the matter of an appeal under section 105 of the *Water Sustainability Act*, S.B.C. 2014, c. 15

<b>BETWEEN:</b>	Legacy Ridge Developments Squamish Ltd.	<b>APPELLANT</b>
<b>AND:</b>	Water Manager	<b>RESPONDENT</b>
<b>AND:</b>	District of Squamish	<b>THIRD PARTY</b>
<b>BEFORE:</b>	A Panel of the Environmental Appeal Board Brenda L. Edwards, Panel Chair	
<b>DATE:</b>	Conducted by way of written submissions concluding on August 6, 2021	
<b>APPEARING:</b>	For the Appellant:	Graham Walker, Counsel S. Luke Dineley, Counsel
	For the Respondent:	Paul Battin, Counsel
	For the Third Party:	Did not appear

## **APPLICATION FOR DOCUMENT DISCLOSURE AND PARTICULARS**

### **INTRODUCTION**

[1] On December 18, 2019, the Appellant, Legacy Ridge Developments Squamish Ltd. ("Legacy Ridge") appealed an order dated November 19, 2019 (the "Order"), issued by the Respondent (the "Water Manager") under section 93 of the *Water Sustainability Act*, S.B.C. 2014, c. 15 (the "WSA"). The Order required Legacy Ridge to submit a plan, for the Water Manager's approval, to restore an infilled wetland or provide offsite wetland compensation. The Order also required Legacy Ridge to implement the approved plan in accordance with the Water Manager's directions.

[2] On June 30, 2021, the Water Manager applied to the Board for an order requiring the Appellant to produce certain documents or categories of documents. This decision addresses that application.

[3] The hearing of the appeal has not yet been scheduled.

[4] The District of Squamish is a Third Party in the appeal but did not participate in the hearing of the document disclosure application.

**BACKGROUND**

[5] Legacy Ridge is the registered owner of Lot 58, DL 512, Group 1, New Westminster District Plan BCP27757 (the "Property"). The Property is approximately 4.83 hectares in size and has been subdivided into Lot A (2.87 hectares) and Lot B (1.96 hectares) in Subdivision Plan EPP74426.

[6] Legacy Ridge is developing the Property in a project that includes 39 single family residences, an 11-unit apartment building, and 30 townhouses (the "Project").

[7] From October 7, 2011, until mid-January 2017, the Property was owned by the Eden Glen Society (the "Previous Owner").<sup>1</sup>

[8] On November 16, 2017, staff in the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (the "Ministry") issued a letter to Legacy Ridge stating that there had been an unauthorized work in or about a stream on the Property, in contravention of section 105(2)(b)(ii) of the *WSA*. The letter requests that Legacy Ridge halt all development work at the Property and retain a Qualified Environmental Professional ("QEP") to prepare and submit a habitat restoration plan.

[9] In response, on December 14, 2017, Legacy Ridge submitted a restoration plan (the "Restoration Plan") prepared by Cascade Environmental Resource Group Ltd. ("Cascade"). In the Restoration Plan, Cascade concluded that 780 square meters of anthropogenic (human-made) wetland had been infilled as a result of clearing, grubbing, and deposition of fill on the Property. The Restoration Plan recommended compensating for the infilled wetland by creating an off-site wetland on Crown land under adjacent BC Hydro transmission lines, with a compensation ratio of 1.5:1 (i.e., creating 1.5 square metres of new wetland for every square metre of wetland that was infilled).

[10] On January 22, 2018, Ministry staff acknowledged receipt of the Restoration Plan, and agreed with the assessment of the infilled area (approximately 780 square metres) in the wetland, and an associated streamside protection and enhancement area (3,450 square metres). However, Ministry staff did not approve the Restoration Plan. Staff indicated that an on-site restoration plan would be preferable, but they provided criteria for an acceptable alternate location off-site subject to a requirement that there be a 2:1 compensation ratio.

[11] On February 27, 2018, Ministry staff advised Legacy Ridge that it was responsible for mitigating environmental impacts caused by infilling the wetland, and for any associated implementation costs. Staff further advised Legacy Ridge of the process and policy to apply for a tenure on Crown Land for its plans, and they raised concerns about the proposed Restoration Plan. The letter indicates that the

---

<sup>1</sup> Legacy Ridge has provided two dates for the change in ownership of the Property. In its Notice of Appeal, Legacy Ridge indicated that it bought the property on January 16, 2017. In its submissions, Legacy Ridge says the Previous Owner owned the Property until January 18, 2017. It is irrelevant for the purposes of this decision which date is correct.

proposed Restoration Plan was insufficient and outlines changes that needed to be made in order for the plan to be approved.<sup>2</sup>

[12] On September 11, 2019, Ministry staff informed Legacy Ridge that the compliance and enforcement file regarding the Property was still open, and they requested that a compensation plan be submitted by September 30, 2019.

[13] On September 30, 2019, Legacy Ridge advised the Water Manager that it would not be submitting an updated compensation plan as requested.

[14] On November 19, 2019, the Water Manager issued the Order that is the subject of this appeal. The Order alleges that by filling a wetland on the Property, Legacy Ridge made unauthorized changes in and about a stream, contrary to sections 11(2) and 106(2)(b)(ii) of the *WSA*. The Order requires Legacy Ridge to:

- submit a plan that meets the requirements of 1560 square meters of aquatic [habitat] and 6900 square meters of riparian [habitat] for offsite wetland compensation or a plan to restore the infilled wetland onsite with an area of 780 square meters aquatic [habitat] and 3,450 square meters of riparian [habitat] by December 20, 2019; and,
- implement the plan, once the Manager approves it, in accordance with any conditions the Manager sees fit to require and within the timeline the Water Manager will set.

[15] On December 19, 2019, Legacy Ridge appealed the Order. Attached to its Notice of Appeal is "Schedule B" titled, "Reasons for appeal and particulars". Within Schedule B, paragraph 76 contains six grounds of appeal, which I have summarized as follows:

- The Water Manager erred in determining that the subject area is a naturally occurring wetland and constitutes a stream for the purposes of the *WSA*. There is no evidence of any historic wetted area on the Property. Any ephemeral wet area on the Property is the recent result of anthropogenic activity in the vicinity of the Property.
- The Water Manager erred in requiring Legacy Ridge to comply with a 2:1 offset (compensation) ratio which has no basis in law and is invalid.
- The Water Manager fettered his discretion by relying on non-binding policies, guidance, or practices in determining the 2:1 offset ratio and requiring Legacy Ridge to comply with it.
- The Water Manager erred in determining that the Legacy Ridge is responsible for the alleged unauthorized works on the Property. At all material times, Ministry knew that Legacy Ridge was not the party that undertook the alleged unauthorized work in or about the stream and was not the owner or occupant of the Property at the time of the alleged unauthorized works.

---

<sup>2</sup> The concerns expressed were that the soil at the proposed compensatory wetland did not have an appropriate soil type for the long-term retention of water or sufficient space to achieve the same function as the infilled wetland. The letter also states that the maintenance of overhead power lines would require a maintenance agreement to ensure preservation of the wetland.

- The Water Manager erred in determining that there is a basis to pursue enforcement against Legacy Ridge under subparagraph 106(2)(b)(ii) of the *WSA*, as Legacy Ridge is not a “person” within the meaning of that provision.
- The Water Manager erred in determining he had the jurisdiction to issue the Order. It is proper for the Ministry to pursue the Previous Owner in respect of mitigation and enforcement measures. Any further investigation or prosecution of Legacy Ridge is an abuse of the Ministry’s mandate.

[16] Legacy Ridge requests an order “quashing” the Order, or alternatively, varying the Order by removing the requirement to comply with the 2:1 offset ratio. In the further alternative, it requests an order remitting the matter to the Water Manager with certain directions.

[17] In its Notice of Appeal, Legacy Ridge also requested a stay of the Order pending the Board’s decision on the merits of the appeal. On December 23, 2019, the Water Manager consented to an interim stay of the Order pending the Board’s decision on the stay application. On February 10, 2020, the Water Manager consented to a stay of the Order pending the outcome of the hearing on the merits of the appeal.

[18] Before the Water Manager filed the application for document disclosure, the parties exchanged numerous requests for documents, and document disclosure was discussed in phone calls between the parties’ legal counsel. Document disclosure was also discussed at case management conferences that the Board conducted with the parties.

[19] On June 30, 2021, the Water Manager applied to the Board for orders compelling Legacy Ridge to produce documents previously requested by the Water Manager in correspondence dated March 5, May 5, 8, 19, and 20, 2020; and provide particulars regarding certain representations in its Notice of Appeal (the “Application”).

## **ISSUES**

[20] The issues in this Application are whether I ought to order Legacy Ridge to:

1. produce the documents previously sought by the Water Manager in correspondence to Legacy Ridge dated March 5, May 5, 8, 19 and 20, 2020; and
2. provide particulars of its representations on page 3 of Schedule B to the Notice of Appeal that:
  - i. at the time of the transfer of the Property, Legacy Ridge was aware that a depression or ‘wet area’ that had been on the Property had been modified by the Previous Owner; and
  - ii. all historical reports available to Legacy Ridge indicated that there was not a naturally occurring wetland on the Property, and that there was no wetland at all on the Property in 2001.

**APPLICABLE LEGISLATION**

[21] Section 34 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (the "ATA"), authorizes the Board to order the production of material in certain circumstances:

**34** (3) Subject to section 29, at any time before or during a hearing, but before its decision, the tribunal may make an order requiring a person

...

(b) to produce for the tribunal or a party a document or other thing in the person's possession or control, as specified by the tribunal, that is admissible and relevant to an issue in an [appeal].

[22] Rule 16 of the Board's Rules directs that an application for production of documents must include the grounds for the application, the relief requested, whether the other parties agree to it, any evidence to be relied upon, and must describe the attempts made to have the person voluntarily produce the documents.

**DISCUSSION AND ANALYSIS****1. Whether the Panel ought to order Legacy Ridge to produce the documents sought by the Water Manager in correspondence dated March 5, May 5, 8, 19 and 20, 2020***The Water Manager's Submissions*

[23] The Water Manager submits that there are two main issues in the appeal:

Whether there was a body of water on the Property before or after Legacy Ridge purchased the Property; and if so,

Who is responsible for modifications that were made to that water body?

[24] The Water Manager submits that Legacy Ridge's knowledge of the physical status and value of the Property before and after it was purchased in January 2017 is relevant to the two main issues. The Water Manager asserts that a hearing on the merits of this appeal cannot occur until there has been full disclosure of all relevant material. The Board should order the disclosure (including the particulars sought) to ensure that the hearing can occur expeditiously.

[25] The Water Manager submits that the disclosure he seeks is relevant to the hearing of this appeal. The information sought would detail Legacy Ridge's knowledge of the state of the Property before and after purchasing it and, in particular, may explain Legacy Ridge's knowledge about the existence of a body of water on the Property.

[26] The Water Manager submits that he wrote Legacy Ridge on five occasions requesting documents (i.e., on March 5 and May 5, 8, 19, and 20, 2020). The

letters containing the document requests are appended to Brandon Brown's affidavit affirmed June 30, 2021.<sup>3</sup> Those requests are as follows:

Document Request #1 (March 5, 2020):

[27] In a letter dated March 5, 2020, counsel for the Water Manager (referred to after this simply as the Water Manager) requested documents of Legacy Ridge by stating, in part:

[Legacy Ridge] has possession or control of records of a group of entities engaged in land development including Legacy Ridge Developments Squamish Ltd., Bethel Lands Corporation Ltd, and BLC Construction, collectively, the BLC group. Including records created by officers and employees of the BLC Group and received by the BLC group. [Legacy Ridge] has possession or control of records and work product of consultants including Cascadia Environmental Resource Group Ltd.

The scope of disclosure should be tending to prove a material fact (as opposed to records relied on). The material facts include the presence of a wetland on the subject land at any material time, and whether the appellant as a developer of land benefitted from improvement of the land prior to the appellant's purchase.

The records containing information tending to prove material facts relate to the site, the value of the site, the cost or the benefit of removing or filling in a wetland or riparian area or referring to or assessing any slope or wetland on the site, or improving, developing or altering the site, including:

1. Records of planning or action to acquire and develop the site including communications between the BLC Group and:
  - 1.1 District of Squamish;
  - 1.2 Lenders, secured or unsecured;
  - 1.3 Investors or partners;
  - 1.4 Sea to Sky University or Quest University or any agent of same;
  - 1.5 Eden Glen Society or any agent or consultant of same including:
    - 1.5.1 Rostrum Development; and
    - 1.5.2 Shan Trouton; and
  - 1.6 Other developers that have inspected or considered acquiring the site including Dayhu Development.
2. Records of the acquisition and purchase of the site and the financing of the purchase and the proposed development; and
3. Reports of work product including maps, plans, drawings, images, charts, tables, spreadsheets of any surveyor, architect, engineer, project professional, accountant, financial adviser, planner, engineer or other any (sic) qualified professional, whether or not a member of a professional

---

<sup>3</sup> Mr. Brown is a paralegal who works at the Ministry of the Attorney General, which is representing the Water Manager in this appeal.

body or subject to legislation relating to professional bodies including the *Professional Governance Act*:

- 3.1 Design and construction plans, and drawings;
- 3.2 Budgets and estimates, including for
  - 3.2.1 Project planning,
  - 3.2.2 Procurement of financing or funding, or
  - 3.2.3 Procurement of good or services.

The time frame is from late 2000, when Cascade Environmental was retained for an Initial Environmental Review of the Sea to Sky University site, to November 19, 2019. ...

[28] The Water Manager further submits Legacy Ridge provided its List of Documents ("LOD") on April 20, 2020. The materials sought in Document Request #1 were not included in the LOD.

Document Request #2 (May 5, 2020)

[29] The Water Manager submits that he reiterated his disclosure request in a letter to Legacy Ridge dated May 5, 2020:

All parties are entitled to sufficient disclosure to participate in a meaningful manner in a hearing in an adversarial quasi-judicial civil proceeding on all issues including whether [Legacy Ridge] benefitted from activities to fill in a wetland on [the Property] in 2016 and to alter surface drainage on Crown land, within the tenure held by SCPP, in early 2017.

You did not accept the scope of disclosure proposed in my letter dated March 5, 2020; [Legacy Ridge] has not provided adequate disclosure.

Document Request #3 (May 8, 2020):

[30] On May 8, 2020, the Water Manager wrote to the Board, Legacy Ridge, and the District of Squamish in advance of a case management conference. This letter clarifies a request for Legacy Ridge to voluntarily disclose documents. The letter identifies the following categories of documents:

2a. List of Cascade QEP material, in the Affidavit of Ms. Lamont [the affidavit is referenced without further detail]:

The first column in the table identifies the pdf page in the pdf copy of the Affidavit (for screen navigation). The first Exhibit column identifies the Exhibit as marked; the second is the exhibit page number. The concordance column refers to List number in the respondent's list, indicating that the respondent had received the document from the appellant or directly from Cascade as the appellant's consultant from fall 2019 to the date of the order under appeal:

[a table is provided with information on pdf document numbers, exhibit numbers, authors, dates, concordance numbers, and notes]

2a - Further Cascade material relating to [the Property]; the respondent asks [Legacy Ridge] to produce if in its possession or control, or take a position on: 1. Colour copies of the Lamont Exhibits above;

2. Supporting material for the Lamont Exhibits above;
  3. 2016 work product for Dayhu – photographs, maps, RAR assessment;
  4. Additional Cascade work for [Legacy Ridge] 2017-2018 relating to [the Property] or the proposed offsite on Crown land under the power lines of power operators (BC Hydro, Skookum Creek Power Partnership).
- 2bi. Cascade shared email sent to respondent's counsel with [Legacy Ridge] and gave [Legacy Ridge]'s team access to a Dropbox containing the material Cascade shared up to this time, The disclosure by Cascade of the material created for Dayhu in 2016 is unresolved at this time.

Document request #4 (May 19, 2020):

[31] On May 19, 2020, the Water Manager wrote Legacy Ridge requesting that it list and disclose documents submitted under Crown Land Tenure Application, Tracking Number 100221818. Further documents requested were itemized as:

1. drainage along or appurtenant to the new road
  - 1.1 Profile drawings of the road and any drainage structures along or appurtenant to the road including ditches;
  - 1.2 Drawings or work product by the engineer, any other QP or the Bethel team;
    - 1.2.1 Catchment areas drained by the drainage structures along the new road, and the structures or features where the drainage structures will discharge;
    - 1.2.2 Specifications for work to build the drainage structures;
    - 1.2.3 Project plans for work to build the drainage structures;
    - 1.2.4 Authorizations to discharge or transport water along any road or highway;
2. Plans affecting Legacy Ridge/[the Property]:
  - 2.1 All plans for the diversion or drainage of surface water affecting the development as Legacy Ridge/[the Property] including storm water management plans whether prepared by engineers, QPs or [Legacy Ridge]'s team, at any time, for any purpose, including:
    - 2.1.1. The catchment areas drained by the plan, and the structures or features where the drainage structures are being or will be discharged;
    - 2.1.2 Specifications for work to build drainage structures either to divert water from flowing on to the property or direct water from the property;
    - 2.1.3 Project plans for work to build drainage structures;
    - 2.1.4 Authorizations to discharge water along any road or highway;
  - 2.2 Documents recording the work done by Legacy Ridge in 2017, 2018 or 2019 for the drainage of surface water from [the Property] including storm water management plans;
  - 2.3 Project Plans and records of progress on project plans; and



3. Documents given to the [Third Party] within the subdivision and land development processes of the [Third Party] of both 1 and 2 above.

Document request #5 (May 20, 2020):

[32] In a letter to Legacy Ridge dated May 20, 2020, the Water Manager stated that he had received "relevant material" from the Third Party and Cascade and was requesting that Legacy Ridge "list and disclose copies of this material in its possession or control before [Legacy Ridge] acquired the documents from the [Water Manager], the [Third Party] and Cascade in the period March-May 2020."

[33] The Water Manager further requested that Legacy Ridge disclose documents in its possession or control including:

1. Records of any planning or effort to acquire and purchase the [Property] before August 1, 2016, including inspections, valuations, project plans and feasibility studies;
2. Records of any inspection and assessment of the [Property] before August 1, 2016;
3. Records of the acquisition and purchase of the [Property] 2016-2018 and the financing of the purchase and the proposed development:
  - 3.1 Records of planning or action to acquire and develop the site including communications between the BLC Group and:
    - 3.1.1. [The Third Party];
    - 3.1.2 Lenders, secured or unsecured;
    - 3.1.3 Investors or partners;
    - 3.1.4. Sea to Sky University, Quest University, Eden Glen Society or any agent or consultant of the same;
  - 3.2 The agreement for the purchase of the Property with closing documents;
  - 3.3 Valuations and appraisals of the Property, whether made by professionals engaged by [Legacy Ridge] or the BLG group, or officers or employees;
4. [redacted]<sup>4</sup>
5. Documents regarding the work done at Legacy Ridge in 2017, 2018, or 2019 including project plans and records of progress on project plans; and
6. Documents including plans given to the [Third Party] within the subdivision and land development processes of the [Third Party].

[34] The Water Manager submits that Legacy Ridge provided its Supplementary List of Documents ("SLOD") on July 24, 2020. The SLOD did not address the documents sought in Document Requests #1 through #4.

[35] The Water Manager submits that the threshold for determining relevance is a low one. In *Greater Vancouver Sewerage v. British Columbia* (2017 CarswellBC

---

<sup>4</sup> The document was redacted before its submission to the Board.

271(EAB)) [*Greater Vancouver Sewerage*], the Board identified the factors for consideration at paragraph 30, which the Water Manager summarized as:

- whether it is reasonable to suppose that the requested documents may be relevant to proving or responding to an issue in the appeal;
- whether the requested documents are admissible (i.e., whether the requested documents are subject to a recognized form of privilege); and
- whether the person who is being asked to disclose the documents has possession and control of the documents. If there is no evidence before the Board regarding possession or control, the Board will consider the applicant's submissions on the basis of whether "the person is reasonably likely to be able to supply the information.

[36] The Water Manager submits that the material it sought from Legacy Ridge in March and May 2020 meets the threshold for determining relevance of documents requested stated by the Board in *Greater Vancouver Sewerage* at para. 30; i.e., that the documents "may be relevant." The Water Manager submits that documents sought would detail the knowledge that Legacy Ridge had of the state of the Property before and after Legacy Ridge purchased it and may explain its knowledge about a body of water on the Property.

Relief sought:

[37] The Water Manager seeks an order compelling Legacy Ridge to produce "the material sought in the [Water Manager]'s letters of March 5, May 5, May 8, May 19 and May 20 (all of the years 2020)".

[38] The Water Manager made no submissions on the admissibility of the documents that it seeks to have produced, or whether the documents are in the possession and control of Legacy Ridge.

*Legacy Ridge's Submissions*

[39] Legacy Ridge submits that the disclosure of documents in this matter has been a lengthy and complicated process.

[40] Legacy Ridge states that the Water Manager initially requested various documents on March 5, 2020. Legacy Ridge responded by delivering the LOD to the Water Manager on April 20, 2020. The Water Manager wrote on May 5, 2020, expressing his view that the disclosure was inadequate. No details or particulars of the inadequacy were provided, nor was a request for any documents made. On May 7, 2020, Legacy Ridge wrote again advising the Water Manager of a document that had been inadvertently excluded from the LOD and enclosing the document.

[41] Legacy Ridge submits that on May 8, 2020, the Water Manager wrote to the Board and Legacy Ridge in response to communication from the Board. In the letter, the Water Manager made an unclear request for further disclosure by Legacy Ridge. The Water Manager did not identify any specific documents that he was seeking, nor did he provide any rationale for the request. Further, on May 19, 2020, the Water Manager made further requests for documents related to "the new road", drainage plans for the Property, and a general request for "documents regarding

the work done at Legacy Ride (sic) in 2017, 2018, or 2019 for the drainage of surface water." No rationale was provided for the request.

[42] Then, on May 20, 2020, the Water Manager made additional document requests of Legacy Ridge, many of which duplicated requests made on March 5, 2020, without referencing which, if any, of the March requests remained outstanding and which are new requests. Again, the Water Manager offered no rationale for the requests. Legacy Ridge observed that in the Water Manager's letter dated May 5, 2020, he indicated that he had acquired copies of relevant material from the Third Party and Cascade. The Water Manager has not yet indicated whether the documents received from the Third Party and Cascade satisfy the previous document requests made to Legacy Ridge.

[43] Legacy Ridge submits that it provided the Water Manager with the SLOD of 94 documents on July 24, 2020. Since then, the Water Manager has not made any further requests of Legacy Ridge for documents, nor has he detailed which, if any, of his requests allegedly remain outstanding.

[44] Finally, on April 16, 2021, the Water Manager made a request to the Third Party for its records related to the Project under the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 ("*FIPPA*"). Legacy Ridge states that the status of that request is unknown.

[45] Legacy Ridge disagrees with the Water Manager's characterization of the main issues in the appeal. It submits that the issues in the appeal are better characterized as:

- a. whether there was a naturally occurring wetland to which the *WSA* applies;
- b. whether Legacy Ridge carried out work in and about a stream, and derived a benefit from the any changes in and about a stream under section 93(1) of the *WSA*; and
- c. whether the Order is arbitrary and unreasonable.

[46] Legacy Ridge also submits that the issues on appeal are whether the *WSA* applies to an anthropogenic (human-made) wet area; and whether Legacy Ridge benefitted from any work done in or about a stream on the Property. However, even if the issues as described in the Application are accurate, the disclosure that the Water Manager seeks is far too broad and the documents sought are not tied to the issues in the appeal.

[47] Legacy Ridge submits that it is not in dispute that there was "a wet area of pooling water" observed on the Property in 2016. Legacy Ridge submits that all historical reports establish that there was not a naturally occurring wetland on the Property, and that there was none at all in 2001. Legacy Ridge further submits that it is not in dispute that the wet area on the Property was modified by the previous owner of the Property. There is no allegation or suggestion that Legacy Ridge conducted work in relation to the wet area.

[48] Legacy Ridge submits that the Application is deficient, unnecessary, and seeks documents that are neither relevant nor can be used to prove a material fact and, as a result, it ought to be dismissed.

[49] Legacy Ridge further submits that the Application is deficient because it fails to set out the name of the person in possession and control of the documents, a detailed description of the documents to enable Legacy Ridge to know what is being sought, and reasons why the requested material is relevant to the appeal. Without more detail about what is being sought, Legacy Ridge submits that it cannot determine whether the documents are relevant to an issue in the appeal, are privileged, or are in its possession and control.

[50] Legacy Ridge submits that the Water Manager has asked that Legacy Ridge “be compelled to produce the material sought in (the Water Manager)’s letters of March 5, May 5, May 8, May 19 and May 20” but fails to consider the documentation already produced by Legacy Ridge as noted in the LOD and SLOD. Legacy Ridge submits that the Water Manager has not identified how the SLOD is incomplete or what additional documentation is being requested.

[51] Legacy Ridge submits that the Application is duplicative in seeking documents from Legacy Ridge that it has already disclosed, or that have been obtained or are in the process of being obtained, from the Third Party and Cascade.

[52] In the alternative, Legacy Ridge submits that even if the Board determines that the disclosure that the Water Manager seeks goes beyond what Legacy Ridge has already produced, the Application ought to be dismissed because the Water Manager has failed to establish that the documents are relevant.

[53] Legacy Ridge says the Water Manager has made ever-expanding document requests, ignored the documentation provided by Legacy Ridge and is now seeking an order for further disclosure, without establishing the relevance of the documents being sought. Legacy Ridge argues that the Application is a fishing expedition and is improper.

[54] Legacy Ridge submits that in *Greater Vancouver Sewerage*, the Board cited and relied on *Seaspan ULC v. Domtar Inc.*, 2013 CarswellBC 1781, at paras. 54 to 56 [*Seaspan*]. In *Seaspan*, the Board considered the wording of section 34(3) of the ATA and determined that “relevance,” in terms of document disclosure, means documents that are potentially relevant in proving or responding to an issue in the appeal.

[55] Legacy further submits that the Board in *Greater Vancouver Sewerage* and *Seaspan* determined that document disclosure applications cannot be overly broad, must be tied to an issue on appeal, and cannot be duplicative of documents (or information contained in documents) already received.

*The Water Manager’s Reply Submissions*

[56] In response to Legacy Ridge’s submissions, the Water Manager submits that the outstanding document requests can be summarized as per the table below.

Document Count	Document or Type of Document requested	Date of Request <sup>1</sup>
----------------	--	------------------------------

1.	Whether the appellant as a developer of land benefitted from the improvement of the land prior to the appellant's purchase	05/May/2020
2.	Records of a group of entities engaged in land development including Legacy Ridge Developments Squamish Ltd., Bethel Lands Corporation Ltd, and BLC construction, collectively the BLC Group	05/Mar/2020
3.	Records of communications between the BLC Group and lenders (secured or unsecured)	05/Mar/2020 20/May/2020 (#2)
4.	Records of communications between the BLC Group and Sea to Sky University or Quest University or agent of same	05/Mar/2020 20/May/2020 (#2)
5.	Records of communications between the BLC Group and other developers that have inspected or considered acquiring the site including Dayhu Development	05/Mar/2020
6.	Cascade material relating to Lot 58 – Supporting material for the Lamont Exhibits C, D, I, N and O	08/May/2020
7.	Documents submitted under Crown Land Tenure Application, tracking number 100221818	19/May/2020 (#1)
8.	Authorizations to discharge or transport water along any road or highway	19/May/2020 (#1)

- 
1. Items in this column reference the date of the correspondence from the Water Manager to Legacy Ridge, which is attached as exhibits to the affidavit of Brandon Brown (affirmed June 30, 2021). (05/May/2020” refers to Exhibit B; “08/May/2020” refers Exhibit C; “19/May/2020 (#1)” refers to Exhibit D; “20/May/2020 (#2)” refers to Exhibit E to the affidavit of Brandon Brown.)

[57] The Water Manager submits that while the parties were engaged in without prejudice discussions in the fall of 2020, he did not withdraw his disclosure requests at any time.

[58] The Water Manager states that his *FIPPA* request to the Third Party was framed as:

In relation to Lot 58, CL-512, Group 1, New Westminster District, Plan BCP27757 and in relation to what is now Aristotle Drive, the following documents: 1) storm water management plans; 2) storm water management

reports; 3) Qualified Environmental Professional (QEP) Reports in relation to subdivision approvals, site alteration permits or development permits.

[59] The Water Manager further states that the *FIPPA* request is a narrowing of the Water Manager's original request of April 16, 2021. According to the Water Manager, the Third Party indicated that it will make best efforts to respond to the request by September 3, 2021.

### *The Panel's Findings*

[60] In *Greater Vancouver Sewerage*, at paragraph 30, the Board adopted its earlier findings in *Seaspan* at paragraphs 56 to 64 regarding the key considerations when deciding a document disclosure application:

In paras. 56 to 64 of *Seaspan*, the Board identified the key considerations for ordering document disclosure in the pre-hearing context, as follows: (1) whether it is reasonable to suppose that the requested documents may be relevant to proving or responding to an issue in the appeal, based on the issues raised in the applicant's Notice of Appeal and (if available) statement of points; (2) whether the requested documents are admissible (i.e., whether the requested documents are subject to a recognized form of privilege); and (3) whether the person who is being asked to disclose the documents has possession and control of the documents. If there is no evidence before the Board regarding possession or control, the Board will consider the applicant's submissions on the basis of whether "the person is reasonably likely to be able to supply the information."

[61] Although I am not bound by the Board's past decisions, I consider the Board's approach in *Greater Vancouver Sewerage* and *Seaspan* to be appropriate and I adopt it in this matter. I turn next to a discussion of the key considerations in this application.

[62] The starting point for my analysis of the first key consideration must be to identify the "requested documents" as I cannot ascertain whether the documents are relevant without first understanding what is being sought. I have considered each of the document requests, separately and as a collective basis for the order the Water Manager seeks.

[63] Document Requests #1 to #5 seek a wide array of documents over a period of almost two decades. In his submissions in support of the application, the Water Manager states that neither the LOD nor the SLOD addressed the five document requests. The Water Manager asks the Board to order Legacy Ridge to produce the entirety of the documents requested in Document Requests #1 to #5, inclusive. The Water Manager is unclear as to whether his document requests were distinct or whether he was reiterating his initial request in his subsequent requests.

[64] The Water Manager implies that he has made repeated requests for documents and that Legacy Ridge has been unresponsive to those requests. I have reviewed the document requests and find them to be unclear in their language. Some of the requests are vague as to their scope, others are repetitive of earlier requests, and still others expand the scope of an earlier request. I find that Legacy Ridge has responded to the document requests by twice providing documents, but

the Water Manager has failed to account for the produced documents in subsequent requests and in this Application. I will expand on my reasoning for these findings below.

[65] Before I consider the document requests, individually, I wish to state that I am not persuaded that each of the letters identified by the Water Manager constitutes a document request which could form the basis for any document disclosure order. I find that the letter dated May 5, 2020, identified by the Water Manager as his second document request, does not in fact request documents. Instead, it summarizes the Water Manager's understanding of the parties' obligations to make disclosure in proceedings before the Board, before stating his conclusion that Legacy Ridge has not complied with its obligation. The relevant portions of the May 5, 2020 letter state:

The parties are entitled to sufficient disclosure to participate in a meaningful manner in a hearing in an adversarial quasi-judicial civil proceeding on all issues including whether [Legacy Ridge] benefited from activities to fill in a wetland on [the Property] in 2016 and to alter surface drainage on Crown land, within the tenure held by SCPP, in early 2017.

You did not accept the scope of disclosure proposed in my letter dated March 5, 2020; [Legacy Ridge] has not provided adequate disclosure.

[66] I find that the Water Manager's letter of May 5, 2020, is not a proper request for document disclosure, and I have not considered it in this application.

[67] I turn to the remaining four document requests (Document Requests #1, #3, #4 and #5). Again, I start with the premise that the documents sought must be identifiable before I can determine whether they may be relevant to an issue in the appeal.

[68] I have been unable to identify with any certainty whether any of the documents sought by the Water Manager in Document Request #1 (dated March 5, 2020) remain outstanding. Based on the evidence before me, I find that Legacy Ridge has produced 159 documents in response to the Water Manager's document requests (the LOD lists 65 documents provided to the Water Manager following Document Request #1, and the SLOD lists a further 94 documents provide on July 24, 2020). While I have not been provided with the documents and cannot compare what was provided with what was requested, on their face, the two lists of documents suggest that Legacy Ridge has provided at least some of the documents requested by the Water Manager.

[69] By way of example only, in Document Request #1 at item 1, the Water Manager requested documents described as "Records of planning or action to acquire and develop [the Property] including communications between the BLC Group and: a. [the Third Party]." In its LOD, Legacy Ridge lists at 1.6, 1.8, 1.15, 1.29, 1.47, and 1.58 records of communications that it had with the Third Party which appear to me to be responsive to that request.

[70] Further, in its SLOD, Legacy Ridge lists at 1.13, 1.44, 1.47, 1.53, 1.55, 1.56, 1.57, 1.59, 1.60, 1.61, 1.62, 1.64, 1.66, 1.67, 1.70, 1.72, 1.76, 1.78, 1.79, 1.81, 1.83, 1.87, 1.90, 1.91, and 1.93 further documents that appear to be

responsive to Document Request #1. Other listed documents may also be responsive to the request, but their descriptors are less clear.

[71] By way of further example, in Document Request #1 at item 2, the Water Manager requested documents described as, "records of the acquisition and purchase of the site and the financing of the purchase and the proposed development." In its LOD, Legacy Ridge lists at 1.3, "Lot 58 Purchase and Sale Agreement" dated November 1, 2016. Further, in its SLOD, Legacy Ridge lists as documents 1.1 to 1.5, further documentation regarding the purchase of the Property including drafts of the Contract of Purchase and Sale for the Property (and addendums to the contract), and a signed copy of the Contract (and Addendum 2). Still further documents regarding the purchase and sale of the property are listed in the SLOD at 1.22, 1.33, and 1.48.

[72] In sum, I find that Legacy Ridge has provided documents in response to Document Request #1, but the Water Manager had failed to clearly identify those documents that it has received and those that remain outstanding. Further, the Water Manager has failed to explain the relevance of any outstanding documents and what added ability the documents will provide him to respond to the issues under appeal.

[73] I have already stated why I do not consider the letter identified by the Water Manager as his second document request (dated May 5, 2020), to actually be a document request. I turn next to the Water Manager's Document Request #3.

[74] In Document Request #3 (dated May 8, 2020), the Water Manager referred to documents that he had received from Legacy Ridge or directly from Cascade (as Legacy Ridge's consultant). The Water Manager then sought "further Cascade material" and stated that the "disclosure by Cascade of the material created for Dayhu in 2016 is unresolved at this time." I understand this letter to be an acknowledgement by the Water Manager that by May 8, 2020, Legacy Ridge had disclosed at least some of the documents requested in Document Request #1 (March 5, 2020). I cannot ascertain precisely what documents were disclosed, and which documents the Water Manager viewed as outstanding at that date. I find that the category "further Cascade materials" together with the other information noted in the letter does not provide enough detail for me to determine what documents have been disclosed and which are still sought. The request is simply too vague for Legacy Ridge to be able to identify the documents the Water Manager is seeking, or for me to ascertain whether the documents may be relevant to an issue in the appeal. If I were to grant the Water Manager's request, the category of documents would be so broad that I consider it likely that it would include material that would be irrelevant, inadmissible, or not in the care and control of Legacy Ridge.

[75] In Document Request #4 (dated May 19, 2020), the Water Manager does not reference any previous document requests, nor does he acknowledge receiving any documents from Legacy Ridge. Instead, for the first time, the Water Manager makes a new request for documents including: 1) documents submitted under a Crown land tenure application; 2) documents regarding drainage along or appurtenant to "the new road" (including authorizations to discharge or transport water along any road or highway); 3) all plans affecting [the Property] regarding diversion or drainage of surface water, documents recording work done at Legacy



Ridge in 2017, 2018 or 2019 for the drainage of surface water, project plans and records of progress on project plans, and 4) documents provided to the Third Party's subdivision and land development processes for 2) and 3), above. The Water Manager does not provide any rationale for requesting these documents, in either the letter or in his submissions, nor does he identify how they may be relevant to any issues in the appeal. For this reason, I conclude that the Water Manager has failed to meet even the low burden for establishing relevance, as described in *Seaspan*, with respect to Document Request #4.

[76] Finally, in Document Request #5 (dated May 20, 2020), the Water Manager appears to rephrase, but largely duplicate, Document Request #1 before adding new requests. I note that in Document Request #5, item #5 seeks records of work done at Legacy Ridge in 2017, 2018, or 2019 (duplicative of item #3 in Document Request #1) but adds the phrase, "and records of progress on project plans". Again, the document request fails to reference any previous document requests, explain why the previous request has been rephrased, acknowledge any documents received in response to earlier requests, or identify how the requested documents may be relevant to any issue in the appeal. Furthermore, the Water Manager did not explain the relevance of these documents in this application. Again, I conclude that the Water Manager has not met even the low burden for establishing relevance, as described in *Seaspan*, with respect to Document Request #5.

[77] In his reply submissions, the Water Manager submitted that his "outstanding document requests" could be summarized into eight categories as described in the table which I have reproduced above. I do not find the table helpful to my determination of the Application for several reasons.

[78] First, the table begins in row 1, by listing the first category of "outstanding" document or type of document requested as "whether the appellant as a developer of land benefitted from the improvement of the land prior to the appellant's purchase." I find that that phrase does not describe a document or type of document. Instead, that phrase is a descriptor of one of the issues in the appeal, as defined by the Water Manager.

[79] Second, the remaining categories of documents or types of documents in the table are described in overly broad terms. For example, the second row in the table describes document outstanding as "Records of a group of entities engaged in land development including Legacy Ridge Developments Squamish Ltd., Bethel Lands Corporation Ltd, and BLC Constructions, collectively the BLC Group." That descriptor is extremely broad; it is not limited to the Property, an issue in the appeal, or a time frame that is relevant to the appeal. As described in the table, the documents that the Water Manager seeks to have compelled could include all of BLC Group's business documents since its inception. The documents described in rows 3, 4, and 8 are also overly broad and go beyond the scope of the appeal.

[80] The documents listed in row 5 of the table, described as "Records of communications between the BLC Group and other developers that have inspected or considered acquiring the site including Dayhu Development" is also overly broad. I have considered that the Water Manager may only be seeking documents related to communications "about the Property" that occurred during a certain time period but, as drafted, the descriptor is so broad as to include any communications

between the BLC Group and any other developers regarding any property, at any point in time, subject only to the qualifier that those developers at some point inspected or considered acquiring the Property.

[81] The documents listed in row 6 of the table, are described as “Cascade material relating to Lot 59 – Supporting Material for the Lamont Exhibits C, D, I, N and O.” I cannot ascertain from the document requests, the LOD, or the SLOD, what documents the Water Manager is seeking in the “Lamont Exhibits” or how those documents are relevant to issues in the appeal. The Water Manager may have assumed that the Board (including me) would know what this meant, given that it appears that the exhibits were provided to the Board previously, but those documents were not actually part of the submissions that are before me in this application. As I noted previously, the Board’s Rule 16 requires that an application for disclosure of documents include the relief requested (which includes identification of the documents requested). The Water Manager’s failure to do so makes it impossible for me to properly address the request. Further, while Legacy Ridge may understand what the Water Manager is referencing (and to the extent it does, the documents would be identifiable), I do not. Therefore, I cannot ascertain whether those documents may be relevant to an issue in the appeal.

[82] Finally, I have considered the documents listed in row 7. In this instance, the documents are described in more detail and ought to be identifiable, i.e., “documents submitted under Crown Land Tenure Application, tracking number 100221818”. The descriptor does not identify the party who submitted the documents but, in these circumstances, it is not unreasonable to assume that the Water Manager is seeking documents submitted by Legacy Ridge.

[83] The Water Manager has failed, however, to indicate how the requested documents may be relevant to an issue in the appeal. I note that the descriptor appears to be a restatement of documents previously requested in Document Request #4 (May 19, 2020). In his reply submissions, the Water Manager fails to identify whether his document requests have been met, in whole or in part, by Legacy Ridge’s LOD, SLOD or by disclosure that he has obtained, or is in the process of obtaining, from the Third Party or under the *FIPPA* application.

[84] I understand that the Water Manager’s application relies on the fact that he has previously requested documents from Legacy Ridge and has provided the letters setting out those requests. That said, it is not my role as Panel Chair to attempt to interpret an application for document disclosure by looking through previous documentation for evidence of information that is lacking in the application. I cannot remedy errors or omissions in the application for the Water Manager, and it would be inappropriate for me to attempt to clarify matters that are vaguely described in the application. Rather, my role is to consider whether the application addresses the key considerations in a request for document disclosure, as set out in *Greater Vancouver Sewerage* at paras. 30 to 31, above.

[85] In my view, the Water Manager’s submissions in support of his application for the document disclosure fail to clearly identify specific documents that he is seeking or provide vague and unworkably broad classes of documents. Clear identification of the documents sought (either individually or in well-defined classes) is an essential prerequisite to any document disclosure application. It is

simply not possible for me to determine whether the requested documents may be relevant to an issue in the appeal without a clear description of what is sought.

[86] The Water Manager's initial request for documents (March 5, 2020) made a blanket assertion that the documents he was seeking (listed later in the letter) were relevant to issues in the appeal (e.g., the value of the Property, the cost or benefit of removing or filling a wetland or assessing any slope or wetland on the Property, of improving, developing or altering the site). The letter did not particularize which of the requested documents relate to which of the issues in the appeal.

[87] Further, the Water Manager's subsequent requests for documents are broadly worded, fail to identify whether they are new requests, or duplications or expansions of earlier requests, and do not identify the relevance of any of the requested documents to any of the issues in the appeal. Still further, the Water Manager's subsequent requests fail to acknowledge the documents provided by Legacy Ridge or the deficiencies in the document production, to date.

[88] By his own accounting, the Water Manager made five requests for documents (four of which I accept as requests); each of which is flawed in the ways I have described above. This piecemeal and constantly evolving approach to document disclosure, that is not tied to specific issues in the appeal, strikes me as the very approach to pre-hearing document exchange that the Board sought to discourage in *Seaspan* and *Greater Vancouver Sewerage*.

[89] Absent a clear descriptor of the documents that the Water Manager seeks from Legacy Ridge, an articulated basis for the request that is grounded in the issues under appeal, and an unequivocal statement from the Water Manager that Legacy Ridge has been asked to voluntarily disclose the documents and has declined to do so, I have no basis to determine whether the documents requested meet the key considerations identified in *Greater Vancouver Sewerage*; i.e., whether they may be relevant to the issues in the appeal, are admissible, and are properly compellable.

[90] For all the reasons articulated above and based on the entirety of evidence before me in this application, the Water Manager's application for disclosure of the categories of documents requested in his application is denied.

**2. Whether the Panel ought to order Legacy Ridge to provide particulars of its representations at page 3 of Schedule "B" to the Notice of Appeal where Legacy Ridge asserted that:**

- (i) at the time of the transfer of the Property, Legacy Ridge was aware that a depression or 'wet area' that had been on the Property had been modified by the Previous Owner; and**
- (ii) all historical reports available to Legacy Ridge indicated that there was not a naturally occurring wetland on the Property, and that there was no wetland at all on the Property in 2001.**

*The Water Manager's Submissions*

[91] The Water Manager submits that he is asking Legacy Ridge to disclose particulars regarding two points in its representation in the Notice of Appeal. First,

the Water Manager submits that Legacy Ridge's Notice of Appeal states, at page 3, paragraph 20:

... all historical reports available to Legacy Ridge indicated that there was not a naturally occurring wetland on the Property, and that there was no wetland at all on the Property in 2001.

[92] The Water Manager submits that Legacy Ridge has not indicated what documents it is referencing when it refers to, "all historical reports." The Water Manager submits that this information is relevant to Legacy Ridge's understanding of the Property and its physical properties when Legacy Ridge purchased it. The Water Manager asks the Board to compel Legacy Ridge to produce these documents or identify which documents in the LOD and the SLOD represent these reports.

[93] The Water Manager further submits that on page 3 of Schedule B, in paragraph 2 (which appears to be a typographical error as the paragraph follows paragraph 19 but precedes paragraph 20), Legacy Ridge acknowledges being aware that a "wet area" that had been on the Property had been modified by the previous owner. The Water Manager asks the Board to compel Legacy Ridge to produce all information (including documentation) detailing how Legacy Ridge (incorrectly identified as the Respondent) was aware of the modifications to the Property by the previous owner, and to indicate which documents on the LOD and SLOD informed Legacy Ridge of this "depression or wet area."

#### *Legacy Ridge's Submissions*

[94] Legacy Ridge submits that the Water Manager's purported request for particulars is improper as it is actually an application for an order that Legacy Ridge produce documents in circumstances where the Water Manager has not requested those documents before bringing this application, as required by the Board.

[95] Legacy Ridge submits that the Supreme Court of British Columbia in *Sidhu v. Hiebert*, 2018 BCSC 401 [*Sidhu*] described the functions of particulars, in civil proceedings before that Court. Those functions are as to inform the other side of the nature of the case they have to meet, to prevent surprise at trial, to enable the other side to know what evidence they ought to prepare, to limit the generality of pleadings, to limit and decide the issues to be tried and as to which discovery is ordered, and to tie the hands of the other party. The Court is guided in the exercise of its discretion to order particulars, by whether particulars are necessary to achieve any of these functions.

[96] Legacy Ridge further submits that the Supreme Court in *Forgotten Treasures International Inc. v. Lloyd's Underwriters*, 2019 BCSC 485, held that particulars are not intended as a form of disclosure that relates to the manner in which issues will be proven.

[97] Legacy Ridge notes that the Board's Form 1, Notice of Appeal, describes particulars as the reasons the appellant believes a decision is wrong and should be changed. Legacy Ridge states that it provided its particulars in the Notice of Appeal and appended Schedules A and B. The Notice of Appeal provides sufficient information to inform the Water Manager of the nature of the case it has to meet, and no further particulars are required.

[98] Finally, Legacy Ridge submits that it has listed and produced “all the historical reports available to (it)” as set out in paragraph 20 of Schedule B to the Notice of Appeal.

### *The Panel’s Findings*

[99] The Panel finds that to the extent that the Water Manager is asking the Board to compel Legacy Ridge to produce “all the historical reports” referenced at paragraph 20 of Schedule B to its Notice of Appeal, that request is properly characterized as an application for the production of documents, rather than an application for particulars, and is premature.

[100] The Board’s *Practice and Procedure Manual* provides at page 34 for the exchange of documents. The Board encourages parties to cooperate in the exchange of information but provides for applications to the Board when a party has been unable to obtain the documents required through a voluntary exchange. The manual says, in part:

The Board encourages all those involved in the appeal to co-operate in the exchange of information as soon as possible in the appeal process to ensure that the matter proceeds in an informed and expeditious manner. A party, participant or intervener that is not able to obtain the documents provided through a voluntary exchange may apply to the Board for an order to produce documents or other things under section 34(b) of the *Administrative Tribunals Act* and Rule 16.

[Underlining added]

[101] The Water Manager has not provided me with any evidence that he has been unable to obtain from Legacy Ridge “all the historical reports” referenced in paragraph 20 of Schedule B to the Notice of Appeal, on a voluntary basis. Indeed, Legacy Ridge submits that the Water Manager has not requested these documents.

[102] Parties ought not to ask the Board to exercise its authority and compel the production of documents in the absence of a prior request. That said, as Legacy Ridge has stated that it has already produced the documents it references in paragraph 20 of Schedule B to the Notice of Appeal, I find that the matter is moot. It occurs to me that the Water Manager would be aware of this fact had he requested the reports before seeking an order compelling Legacy Ridge to produce them.

[103] Turning next to those parts of the Water Manager’s application which request particulars, I accept that the functions of particulars in civil proceedings, as described by Madam Justice Forth in *Sidhu*, are equally applicable to appeals before the Board. In *Sidhu*, at para. 33, the Supreme Court quoted from a decision of the British Columbia Court of Appeal in *Cansulex v. Perry*, [1982] B.C.J. No. 369, at para. 15, where the Court of Appeal identified six functions of particulars:

- (1) to inform the other side of the nature of the case they have to meet as distinguished from the mode in which that case is to be proved;
- (2) to prevent the other side from being taken by surprise at the trial;

- (3) to enable the other side to know what evidence they ought to be prepared with and to prepare for trial;
- (4) to limit the generality of the pleadings;
- (5) to limit and decide the issues to be tried, and as to which discovery is required; and
- (6) to tie the hands of the party so that he cannot without leave go into any matters not included.

[104] In my view, the main functions of particulars in matters before the Board are to inform the other party(ies) of the case they have to meet, and to assist the parties in preparing for the appeal. It is not the function of particulars to spell out the mode that a party will employ to prove its case.

[105] Legacy Ridge has made clear in its Notice of Appeal (in particular, Schedule B, paragraph 20) that it relied, at least in part, on historical reports for its assertion that there was not a naturally occurring wetland on the Property. Through its counsel in this application process, Legacy Ridge has notified the Water Manager that the reports it references have previously been disclosed. I find that representation and disclosure to be sufficient for the Water Manager to know the case he has to meet with respect to that aspect of the appeal, and therefore, I find that an order for particulars is not required. That said, in my view it is not unreasonable for the Water Manager to ask Legacy Ridge to voluntarily identify the "historical reports" by reference to the LOD or SLOD, and I would hope that Legacy Ridge would oblige in the spirit of cooperation and to move this matter forward in a timely fashion.

[106] I have also considered whether it is necessary to order Legacy Ridge to provide particulars of its assertion at page 3 of Schedule B in the paragraph numbered "2" (but which follows paragraph 19 and precedes paragraph 20). That assertion was that "At the time of the transfer of the Property, Legacy Ridge was aware that a depression or "wet area" that had been on the Property had been modified by the Previous Owner." The Water Manager asks that I compel Legacy Ridge to detail how it was aware of the depression or wet area. I am satisfied that better particulars of this assertion are required to prevent the Water Manager from being taken by surprise and to enable him to prepare for the appeal. These are two of the functions of particulars as described by the court in *Sidhu* and are a proper basis for an order for particulars.

[107] For all the above reasons, I decline to order Legacy Ridge to provide further particulars of the first of the two assertions identified by the Water Manager from page 3 of Schedule B to the Notice of Appeal (stated as being at paragraph 20). I order that Legacy Ridge provide further particulars of its second assertion in its Notice of Appeal (stated as being at paragraph 2). Specifically, I order that Legacy Ridge provide particulars of how (at the time of the transfer of the Property) it knew that there had been a depression or wet area on the Property that had been modified by the Previous Owner.

**DECISION**

[108] In making this decision, I have considered the entirety of the Parties' submissions and evidence in support of those submissions, whether or not specifically referenced in this decision.

[109] I wish to be clear that this decision has no bearing on the merits of the appeal. This decision applies solely to the Water Manager's application for document disclosure and further particulars.

[110] For the reasons provided above, the Water Manager's application for an order compelling Legacy Ridge to produce documents is denied, and its application to provide the particulars identified is allowed, in part. Specifically, the application for particulars as described above in paragraph 107, above, is allowed.

"Brenda L. Edwards"

Brenda L. Edwards, Panel Chair  
Environmental Appeal Board

October 4, 2021