

NTARIO MUNICIPAL BOARD

Motion for Dismissal of Appeal Without a Hearing

Appeal of City of Ottawa OPA 77

AFFIDAVIT

I, Ted Cooper, M.A.Sc., P.Eng., of Eganville ON, **MAKE OATH AND SAY:**

1. That my residence is located in Eganville, Ontario at the municipal address known as 500 Lake Clear Road, K0J 1T0.
2. That I am a Professional Engineer, as designated by Professional Engineers Ontario. I have 22 years of experience in water resources and municipal engineering, both in the public and private sectors. I am currently employed by the City of Ottawa and have been since 2002, but provide this affidavit as a private citizen. My curriculum vitae is attached as **Exhibit 1**.
3. That I have been asked and have agreed to give expert testimony on behalf of the appellant, Friends of the Greenspace Alliance in regard to Issues 1 and 2 in their Appeal of Official Plan Amendment No. 77 (OPA No. 77). I have prepared a Witness Statement that has been filed with the OMB, and is included as **Exhibit 2**.
4. That I have reviewed the Affidavits of Ms. Wendy Nott, FCIP, MCIP and Mr. John Riddell, P.Eng. both dated November 16, 2009 prepared in support of the Motion for Dismissal of the subject Case without a Hearing.
5. That I disagree with the positions taken by Ms. Nott and Mr. Riddell in this matter, in particular as it relates to:
 - A) Their apparent (mis)understanding of the Municipal Class Environmental Assessment (MCEA) process, and the jurisdiction of the OMB in matters contained in the Appeal of the Friends of the Greenspace Alliance of OPA No. 77;
 - B) Their position taken with respect to use of “flood risk” associated with OPA No. 77, whether the use of the criterion, and how they define it, is consistent with the Provincial Policy Statement (PPS); and
 - C) Inconsistencies in the implementation of flood hazard policies in Carp River watershed.

A) Municipal Class Environmental Assessment process:

Jurisdiction of OMB in situations involving “Integration Provisions”

6. The subject Case concerns an Appeal of OPA No. 77, the Fernbank Community Design Plan, and supporting studies (the Environmental Management Plan (EMP) and Master Servicing Study (MSS)). The Public Notice of Completion for OPA No. 77 is attached as **Exhibit 3**.
7. At point 4 of his Affidavit, Mr. Riddell takes the position that the “MSS and EMP are Master Plans within the meaning of the Municipal Class Environmental Assessment. Accordingly, they “outline a framework for planning subsequent projects and/or developments” (Section A.2.7, Municipal Class Environmental Assessment).”
8. At point 5 of his Affidavit, Mr. Riddell refers to a quote from page 54 of the EMP: “A key objective of the Environmental Management Plan is to establish stormwater management criteria for the Fernbank community that can be implemented through stormwater site management plans”.
9. At point 7 of his Affidavit, Mr. Riddell states “When development application (sic) comes forward on the Fernbank Lands after the approval of OPA 77 the applicant will need to demonstrate that the stormwater facilities meet these criteria.”
10. According to the Notice of Completion in **Exhibit 3**, the Approval of OPA No. 77 and the use of the integration provisions of the MCEA accomplish much more than Mr. Riddell’s claims in points 4,5, and 7. According to **Exhibit 3**, 24 projects are being approved under the *Environmental Assessment Act* and Planning Act using the Integration with the *Planning Act* provisions outlined in Section A2.9 of the MCEA process. This is much more than the approval of a “Master Plan”.
11. According to Section 1.1.3.9 b) of the PPS

“A planning authority may identify a *settlement area* or allow the expansion of a *settlement area* boundary only at the time of a *comprehensive review* and only where it has been demonstrated that:

 - b) the *infrastructure* and *public service facilities* which are planned or available are suitable for the development over the long term and protect public health and safety;
12. According to Section 2.2.1 a) of the PPS:

Planning authorities shall protect, improve or restore the *quality and quantity of water* by:

 - a) using the *watershed* as the ecologically meaningful scale for planning;
13. When OPA No. 77 was approved by City Council on June 24, 2009, the planning of projects listed in **Exhibit 3** were concurrently being approved under the *Environmental Assessment Act*. As noted in **Exhibit 3**:

The City of Ottawa and the Fernbank CDP Project Team have planned to ensure infrastructure capacity is available for all proposed and subsequent developments in the Fernbank CDP area. This process has been conducted in accordance with Section A.2.9 of the *Municipal Class Environmental Assessment* to integrate approvals under the *Environmental Assessment Act* and the *Planning Act*.

Since the City is following an integrated planning and environmental assessment process, there is no opportunity for a Part II Order under the *Environmental Assessment Act*. However, any person or public body with objections to any of the projects identified in the Plans and/or to the OPA may file an appeal to the Ontario Municipal Board.

14. Section A.2.9 of the MCEA document outlines the Integration with the *Planning Act* process (**Exhibit 4**). Note the following from page A40:

“This Class EA recognizes the desirability of coordinating or integrating the planning processes and approvals under the *EA Act* and the *Planning Act*, as long as the intent and requirements of both Acts are met.” [emphasis added].

Also on page A40, the MCEA document notes:

“While the option of using this integrated approach provides the proponent with increased flexibility to stream line approvals processes, it also comes with added responsibility by the proponent to accurately reflect the needs of the Class EA process in the *Planning Act* application.”

15. There is more than one development (plan of subdivision, etc.) located within the catchment areas of SWM ponds Wet Pond #1, Wet Pond #2, and Wet Pond #3 being approved, and therefore the projects need to be coordinated with land use, servicing and grading of all development areas in their respective catchment areas. This is consistent with Section 2.2.1 of the PPS. Unforeseen / unplanned changes in land use, servicing or grading in the separate development areas could have ripple effects on upstream and downstream infrastructure which could increase risks to health and safety. This is why Section 1.1.3.9 b) of the PPS requires infrastructure to be planned to be suitable over the long-term. The same policies apply to the planning of the SWM ponds with respect to impacts that are external to OPA No. 77, for example, impacts on flood levels in the Carp River, and how that could affect public health and safety.
16. The Appeal of OPA No. 77 is disputing the claims by the City of Ottawa and Fernbank developers that the impact assessment and design criteria for infrastructure projects listed in the Notice of Completion are adequate or appropriate.
17. Points 25 and 26 of Ms. Nott’s Affidavit refer to a July 21, 2009 letter that I submitted to Minister of Environment John Gerretsen and his October 22,

2009 response. In my letter to Minister Gerretsen, I was seeking an Order under Section 16 of the *Environmental Assessment Act* to be issued to the proponents of a list of projects requiring the planning of the projects to be coordinated. One of the projects I listed in the July 21, 2009 letter was the Fernbank MSS.

18. Minister Gerretsen's response did not address the need for the planning and approval of the Fernbank MSS to be consistent with Policies 1.1.3.9 b) and 2.2.1 a) of the PPS. The proper Tribunal to determine this issue is the Ontario Municipal Board.

B) Flood Risk – Is the approach to servicing OPA No. 77 consistent with the PPS and in the Public Interest?

19. On the surface, the Fernbank Master Servicing Study (MSS) and the Fernbank Environmental Management (EMP) appear to be very comprehensive documents, if anything, because of their sheer size. The main argument advanced in the witness statements of Mr. Riddell and Ms. Nott is that the infrastructure projects approved in OPA No. 77 will not result in increased 'flood risk'. I disagree with this finding. Close examination of the planning and design of stormwater and wastewater projects reveals the projects approved in OPA No. 77 are misdirected from a planning policy basis, particularly as it applies to protection of public health and safety as required by Section 1.1.3.9 b) of the PPS and the failure to recognize the watershed as the ecologically meaningful scale for planning, as required by Section 2.2.1 a) of the PPS.

Stormwater

20. Table 10.2 of the EMP (now revised in the Witness Statements of Mr. John Riddell, P.Eng., and Mr. Mike Petepiece, P.Eng.) (**Exhibit 5**) documents peak flows and peak water levels in the Carp River under post-development conditions. The values recorded in Table 10.2 were calculated in computer models updated by Novatech Engineering Consultants Ltd. on behalf of the proponents of OPA No. 77. The computer models used by Novatech were adapted from the computer models prepared by CH2M Hill Limited, and checked by Greenland International Consulting Ltd. (the Third Party Review consultant) for the Kanata West Class EAs, and factor in the control provided by the stormwater projects (wet ponds #1, #2, and #3) approved in OPA No. 77. From Table 10.2 in **Exhibit 5** the 100-year peak flow calculated in the Carp River at Richardson Sideroad (under future development conditions that account for the combined impact of urban runoff from the Fernbank and Kanata West development areas) is 46.68 - 46.91 m³/s. Richardson Sideroad is at the urban-rural boundary of the Carp River watershed.
21. CH2M Hill documented peak flows and peak water levels under existing development conditions in their October 2005 'Existing Conditions: Flow

Characterization and Flood Level Analysis – Carp River, Feedmill Creek, and Poole Creek.’ Table 4-4 of that report (**Exhibit 6**) shows the existing 100-year peak flow upstream of Richardson Sideroad to be 35.77 m³/s. (Table 10.1 in **Exhibit 5** shows predevelopment flows calculated at Richardson Sideroad in the Fernbank EMP, but the flows in this table are not peak flows. The pre-development peak flow from the CH2M Hill document is referenced because there is no information available about peak flows at the urban-rural boundary available in the OPA No. 77 documentation that would allow a comparison with post-development flows to be made).

22. Comparing the post-development 100-year peak flow at Richardson Sideroad (**Exhibit 5**) with the existing condition 100-year peak flow at the urban-rural boundary (**Exhibit 6**), drainage from the near 10 km² of future urban lands in the Kanata West and Fernbank communities will result in an increase in the 100-year peak flow by more than 30%. This increase will occur despite the proposed stormwater management projects Approved in OPA No. 77, and the yet to be approved stormwater management projects and the Carp River Restoration Plan in Kanata West, that still need to satisfy conditions of the MOE Minister’s July 21, 2008 Order (**Exhibit 7**).
23. The differences between pre-development and post-development peak flows (m³/s) documented in Table 8.2 on page 66 of the EMP for drainage outletting to the Jock River tributaries contrast noticeably from the differences in pre-development and post-development flows tabulated in **Exhibit 5** and **Exhibit 6** for the Carp River. The stormwater management projects (wet ponds #4, #5, #6, #7, #8 from the Notice of Completion in **Exhibit 3**) approved in OPA No. 77 in the Jock River watershed have been designed such that pre-development flows for all design storms up to the 100-year storm are not exceeded. This is the standard stormwater management criterion that I have applied in my 22 years of water resources experience across the Province of Ontario, particularly in the upper or headwater area of a watershed. The City’s approval of wet pond projects in the Jock River watershed in OPA No. 77 were premised on ensuring pre-development flows will be sustained in the long-term at the urban-rural boundary that exists at Fernbank Road. The same cannot be said about the effectiveness of the City’s approved projects in OPA No. 77 and for projects being planned in the Carp River watershed in the Kanata West Class EAs at sustaining pre-development peak flows at Richardson Sideroad.
24. The documented increases in peak flows that downstream rural riparian landowners in the Carp River watershed are expected to be willing to accept, according to the EMP and MSS approved in OPA No. 77, are the result of the engineered approach to minimize flood level increases through the urban reaches of the Carp River. Following is an excerpt from page 97 of the EMP:

“SWM Facilities P2 & P3 have been designed for storms up to a 10-year event. Runoff from larger storms will not be attenuated prior to outletting to the Carp River. This design allows peak flows from the Fernbank Lands to enter the Carp River in advance of peak flows from the upstream area (Glen Cairn), and significantly

mitigates the impact of development. Model results indicate a slight reduction in the 100- year flood elevations under post-development conditions (refer to **Tables 10-1 and 10-2**.)” [emphasis added]

In my opinion, increases of 30% in the 100-year peak flow outletting to the downstream rural watershed where no improvements to the Carp River are being planned will aggravate the downstream flooding condition. I disagree with the statement in the EMP that the impact of development is “significantly mitigate[d]”, given that flows will increase by 30%. Further, it is my understanding that burdening riparian landowners with such increases in flow is illegal unless the affected property owners provide written consent allowing the flow increase.

25. The Fernbank EMP and MSS only document peak flows and peak water elevations in the Carp River for the 100-year event. The Carp River Third Party Review only documents 100-year flood elevations. There is no documentation available that is approved by the City of Ottawa that establishes a record of 2-year, 5-year, 10-year, 25-year, or 50-year post-development peak flows in the Carp River at the urban-rural boundary (such as what exists in Table 8.2 of the EMP for the Jock River watershed) from which the impact of development can be assessed, or monitored in the future. If the premise in the excerpt from page 97 (above) of the EMP is true, that is, that the impact of development on peak flows can be mitigated by advancing peak flows for events greater than the 10-year event from Fernbank without attenuation to avoid having peak flows coincide from areas in the upstream watershed, there is no reason to believe the same premise would not apply to events smaller than the 10-year event. Given that the stormwater projects in the Carp River watershed approved in OPA No. 77 do not advance peak flows for events up to the 10-year event creates the possibility that increases in peak flows for events up to the 10-year event at Richardson Sideroad could be larger than the 30% increase in the 100-year peak flow documented in the EMP.
26. Mr. Riddell refers to the no increase in runoff volume beyond 40,000 m³ criterion, and the “worst case scenario” storage volume of 85,600 m³ proposed in the Third Party Review at points 12 and 13 of his Affidavit. He states “The inclusion of the criteria related to the 40,000 and 85,600 cubic metre figures in the EMP and MSS is intended to provide a mechanism for development to proceed in the interim before model calibration.” These criteria are premised on the presumption that increases in peak flows of 30% or greater will protect public health and safety, and are legal. Furthermore, there is no documentation provided in the Third Party Review or Fernbank EMP and MSS concerning pre-development flows at the urban-rural boundary of the Carp River that would enable an impact assessment to be conducted for events smaller than the 100-year event. In my opinion, there is inadequate information from which approval of OPA No. 77 could proceed that is consistent with Section 1.1.3.9 b) of the PPS (the *infrastructure* and *public*

service facilities which are planned or available are suitable for the development over the long term and protect public health and safety.)

27. According to Section 2.2.1 a) of the PPS, the watershed is the ecologically meaningful scale for planning. The planning and design of stormwater management projects in OPA No. 77 needs to ensure that the public's health and safety is protected not only in the urban portion of the Carp River watershed, but that public health and safety is protected in the downstream rural portion of the watershed. More stringent stormwater controls are required to avoid the 30% increase in peak flows downstream as a result of urbanization in the OPA No. 77 and Kanata West development areas. It is noted that the City has yet to satisfy the conditions of the MOE Minister's Order (**Exhibit 7**). When the City approved OPA No. 77 there existed a need for the City to coordinate the planning and design of stormwater management projects in the Fernbank development area with the on-going work in Kanata West to ensure pre-development flows downstream of the urban boundary are sustained in the long-term. The City has failed to do so in its approval of OPA No. 77.
28. Section 1.6.1 of the PPS requires infrastructure to be provided in a "coordinated, efficient and cost-effective manner to accommodate projected needs". "Planning for infrastructure and public service facilities shall be integrated with planning for growth". Section 1.6.1 of the PPS requires the City to coordinate the planning of growth in the Kanata West and Fernbank development areas. The magnitude of post-development flows at Richardson Sideroad documented in the Fernbank EMP brings into question the effectiveness of the stormwater management criteria established in the Third Party Review, used in the planning and design of the stormwater projects approved in OPA No. 77. Furthermore, the increase in post-development flows documented in the Fernbank EMP demonstrates that there is a need for additional coordination of stormwater management between the Kanata West and Fernbank development areas. The burden of implementing the required stormwater management projects required to sustain existing flow conditions in the long-term at the urban-rural boundary in the Carp River watershed is a shared responsibility of all proponents of growth in the watershed.
29. It is worth noting that the Glen Cairn Flooding Investigation (**Exhibit 8**) that is investigating the causes of flooding during the July 24, 2009 flood and possible solutions to the persistent flooding problems in the community is another factor that warrants consideration in the preparation of the Fernbank EMP and MSS. After the last flood of the Carp River in Glen Cairn in 2002, the City undertook a comprehensive study that resulted in a \$7 Million flood remediation project being completed. According to a January 2009 Superior Court Decision (**Exhibit 9**), the City of Ottawa has taken the position that when calculating flood flows in urban areas, the '24-hour Chicago Design Storm' should be used, and, given the urbanization that exists in the Carp River watershed, it is not appropriate to calculate flood flows using the '12-hour SCS Design Storm' - which is the design storm used in the Fernbank EMP and MSS and Kanata West Class EAs.

30. Given the serious flooding incident that occurred on July 24, 2009 in which more than 500 homes were flooded, if the possibility exists that flood levels in the Carp River at the outlet of the Glen Cairn stormwater pond could in any way be impacted by drainage from development approved in OPA No. 77, the impact assessment being undertaken in the Fernbank EMP and MSS should be based on the 24-hour Chicago Design Storm. According to Section 2.2.1 a) of the PPS, the watershed is the appropriate unit for planning. Impact assessment being undertaken in the Glen Cairn, Fernbank and Kanata West communities, all located in close proximity within the Carp River watershed, needs to be undertaken using a coordinated approach. Impact assessments proceeding in separate studies for separate study areas, using different design storms is bound to result in inconsistencies and confusion and unnecessarily complicate the process of identifying the appropriate projects required to protect the health and safety of existing residents, and future residents from flooding in the Carp River watershed.

Wastewater

31. Following the same principles as discussed in Points 20-30 above, the approval of the Trunk Wastewater project in OPA No. 77 should be based on a “sewershed approach”. Under the MCEA, the sewershed approach requires planning of the complete project required to provide, in this case, the necessary sanitary sewers and outlet for the Fernbank development area. The project cannot be “piecemealed” in the MCEA process (**Exhibit 10**), as discussed in my Witness Statement at Points 12 and 13 (**Exhibit 2**).
32. Based on the infrastructure projects approved in OPA No. 77, sanitary servicing of the Fernbank development area relies on the Hazeldean pump station (PS) to pump sewage to collector sewers downstream, eventually outletting to the City’s sewage treatment plant. When it comes to assessing flooding risk of development areas serviced by a sanitary pump station, it is necessary to assess the level of service not only when the pump station is operating, but also under a complete station failure scenario. Under a station failure scenario, an emergency overflow from the pump station is required and is to be designed to overflow the peak sewage flow from the upstream sewershed before basements would be flooded with sewage. This is described in Section 7.2.1.6.8 of the City of Ottawa’s Sewer Design Guidelines (**Exhibit 11**).
33. **Exhibit 12** shows schematically the present emergency overflow from the Hazeldean PS. As illustrated, the overflow connects to a storm sewer in the Glen Cairn community on Glamorgan Drive, and eventually outlets to the Glen Cairn SWM pond. As summarized on Exhibit 7, the existing overflow is connected to the storm sewer system at elevation 94.2m, however the 100-year flood elevation in the Glen Cairn SWM pond is 1.45m higher than the overflow elevation. Under extreme wet weather conditions, such as in 1996, 2002, and more recently, on July 24, 2009, extraneous stormwater entered the sanitary sewers leading to the Hazeldean PS. The Hazeldean PS could

not keep up to the rate of flow entering the station. The flooding of 500 or more houses in Glen Cairn with raw sewage on July 24th did not occur because the Hazeldean PS failed or shut-off. These houses flooded because the current overflow is inadequate, and does not protect existing residents from flooding.

34. The Fernbank MSS discusses the need for improving the “grossly undersized” emergency overflow of the Hazeldean PS at page 62. The Fernbank MSS includes a schematic of an overflow and states “This configuration would protect the Hazeldean Pump Station, all of the development lands within the Fernbank CDP, and much of the pump station sewershed from sanitary backup.” In other words, the MSS prepared, at a conceptual level, a plan that only solves part of the problem. No City project is planned or approved that will improve the capacity or performance of the emergency overflow at the Hazeldean PS. Despite the admission in the Fernbank MSS that the present overflow at the Hazeldean PS is grossly undersized, OPA No. 77 was approved without ensuring “the *infrastructure* and *public service facilities* which are planned or available are suitable for the development over the long term and protect public health and safety”, as required by Section 1.1.3.9 b) of the PPS.
35. One month to the day after OPA No. 77 was approved, 500 or more homes had sewage in their basements because of the ‘grossly undersized’ and inadequate overflow. OPA No. 77 should not be approved until the overflow problem with the Hazeldean PS is fixed. Approving additional development that will increase the sewershed area and flows outletting to the Hazeldean PS without ensuring an adequate overflow exists or is planned does not constitute good planning. The frequency of basement flooding, based on recent experience, is once in 4.3 years. Any development approvals that could lead to increasing this already unacceptable frequency of basement flooding would be aggravating public health and safety risks, and is not in the public interest.

C) Inconsistent Approach to Flood Management in Carp River Watershed

36. Development of the Glen Cairn community commenced in the 1960's. All of the Glen Cairn area drains to the Carp River. The early phases of development occurred prior to the time a need for stormwater management became common practice. By the early 1970's the former Township of Goulbourn recognized that continued development in the Glen Cairn area would result in increased flows outletting to the Carp River, and that this could result in flooding impacts downstream of the development area.

37. The Township commissioned a study in 1975 entitled the "Glencairn Subdivision Drainage and Flood Control Investigation" that was undertaken by Crysler & Lathem Associates. Their findings were documented in a June 17, 1975 report that is included in **Exhibit 13**. The following is noted on page 7 of the report:

"In order to fulfill the objective of controlling increased flows due to urbanization it is necessary to provide storage areas which will temporarily store a portion of the runoff close to the site and then release it as downstream flows subside."

The investigation also discovered problems with the capacity of the Carp River channel downstream from Glen Cairn. Note the following comments on Page 8 of the report:

"In our analysis, it is assumed that further studies and remedial measures would be carried out in the river channel north of Highway No. 7 [Hazeldean Road] so that proper outlets for drainage of Glencairn and other urbanizing areas can be realized. A cursory examination of the watershed indicates that channel improvements are required a distance of some 15,000 feet downstream to a point where the river has sufficient energy to be self cleaning."

38. Flood control works were subsequently constructed consisting of three parts:

- i) Channelization works to collect urban runoff through the Glen Cairn community;
- ii) Glen Cairn stormwater pond to detain urban runoff and control the post-development flows from the Glen Cairn community; and
- iii) Downstream channel improvements in the Carp River.

Although the investigation indicated that improvements to the Carp River would need to extend downstream for 15,000 feet, which would be somewhere near Richardson Sideroad, the improvements completed by the Township of Goulbourn appear to have only been extended downstream for about 5,000 feet, to Maple Grove Road, which was the former Township boundary.

39. Since the completion of the Glen Cairn flood control works in the 1970's, there have been three major floods in Glen Cairn – in 1996, 2002, and on July 24, 2009. A flooding investigation now underway (**Exhibit 8**) is examining the causes of the persistent flooding problems in the community. The Terms of Reference note:

“Should undue constraints to improved system performance be imposed by water levels on the river or in the Glen Cairn Pond, opportunities to address this constraint would also have to be addressed.”

40. In my opinion the Glen Cairn flood control ‘experience’ establishes the following key considerations:

- (i) The need to control runoff following development in the Carp River watershed was understood more than 30 years ago;
- (ii) Due to the moderate slope of the Carp River, improvements to the Carp River channel are required well downstream of the urban boundary to function properly (and as the urban boundary gets extended further downstream, so too is the distance where channel improvements have to be extended); and
- (iii) Hydrologic conditions in a watershed can change that can adversely affect the performance of engineered structures that are relied upon to protect public health and safety.

41. Exhibit 14 shows a schematic diagram of the existing Glen Cairn community and the future Fernbank and Kanata West development areas and the impact on flows in the Carp River and Jock River watersheds approved in OPA No. 77. In my opinion, the stormwater management plan approved by the City of Ottawa that shows an increase in downstream flood flows in the Carp River of more than 30% will become a (illegal) burden for existing riparian landowners, and if not dealt with properly through the current *Planning Act* approvals, will be a burden put off for future generations to solve. That is not good planning.

42. The computer models applied by the OPA No. 77 consultant to assess impacts on flood levels in the Carp River were prepared by CH2M Hill for the City and Kanata West Owners Group. **Exhibit 15** is an excerpt from the 2006 CH2M Hill Report “Post Development Flow Characterisation and Flood Level Analysis for Carp River, Feedmill Creek, and Poole Creek”:

“With regards to the inclusion of the potential Del and Brookfield lands, it is premature to include this new urban area in the post development analysis being conducted for the KWDA. The City, through its authority, will ensure that the commitments made in the Kanata West Class EAs will not be jeopardized by future development such as Del and Brookfield. These lands have recently been approved by the Ontario Municipal Board for urban development. A community design plan will be prepared for these lands through a public process, and will include preparation of infrastructure servicing studies related to sanitary, water, stormwater management and transportation. An Environmental Management Plan (EMP) will be prepared to address environmental and stormwater management requirements associated with this new developing community. The EMP for new urban lands will need to confirm the stormwater management design criteria recommended in the subwatershed study, applying the updated existing conditions and post-development model developed by CH2M Hill. The stormwater management solution for the Del and Brookfield will have to demonstrate no

negative impacts on-site or downstream, consistent with the process followed for the KWDA.”[emphasis added]

43. On July 21, 2008 MOE Minister Gerretsen issued the Order (**Exhibit 7**) to the City of Ottawa and Kanata West Owners Group. At Page 3 of the letter the Minister states:

“Due to the uncertainties about the stormwater management and floodplain impacts to the Kanata West development area, I am imposing several conditions on the City and KWOG under Section 16(3) of the EAA, requiring the City and KWOG to complete additional work before continuing to proceed through the Class EA process. This decision was made after giving careful consideration to the issues raised in the Part II Order requests, the recent turn of events with respect to the errors found, the Auditor General Report, and the City’s insufficient rationale for determining the impact of these errors on the Kanata West projects, and to ensure that the environment will be protected, as required under the EAA.”

The City has yet to satisfy the conditions of the Minister’s Order – issued more than 16 months ago. One of the conditions requires re-posting of Notices of Completion of several Class EAs that could result in another round of Part II Order Requests. There will also be several *Planning Act* approvals forthcoming in the Kanata West area related to development limits along the Carp River floodplain. The concerns about a lack of consistency of the planning of development in OPA No. 77 with respect to Section 1.1.3.9 c) and 2.2.1 a) of the PPS, could also result in future appeals to the OMB on subsequent *Planning Act* approvals. It is my opinion that the Approval of OPA No. 77 has not been consistent with the PPS on these policies in particular. By hearing this Appeal, and deciding on these issues the OMB can provide clarity and direction to other *Planning Act* processes underway, that would also warrant consideration in the City and KWOG’s response to the MOE Minister’s Order.

44. The Appeal filed by the the Friends of the Greenspace Alliance (included as Exhibit 12 in Ms. Nott’s Affidavit) identifies four main concerns with the Approval of OPA No. 77:

- i) An integrated planning and environmental assessment process not appropriate for a development of this magnitude;
- ii) The Fernbank CDP is not in accordance with the Province’s recognition of a watershed as the appropriate area from which planning should proceed;
- iii) The elevation of flood levels will be increased by the implementation of the Fernbank CDP; and
- iv) Inconsistent SWM standards applied in the implementation of the Fernbank CDP.

45. In my opinion, the concerns raised in this Appeal relate to the inconsistency of OPA No. 77 with Sections 1.1.3.9 b), 1.6.1, and 2.2.1 a) of the PPS.

Summary

- 46. It is my opinion that the Friends of the Greenspace Alliance have raised valid planning issues in their Appeal of OPA No. 77.**
- 47. It is my opinion that the Fernbank EMP and MSS failed to recognize the watershed as the appropriate ecological scale for planning, and have failed to ensure that adequate infrastructure is available, is planned, or is being properly coordinated with other studies underway. I disagree with Mr. Riddell's and Ms. Nott's Affidavits, in particular with their position on the issue of flood risk. The planning and approval of infrastructure projects in OPA No. 77 is inconsistent with sections 1.1.3.9 b), 1.6.1, and 2.2.1 a) of the PPS, is not based on the principles of good planning, will aggravate flood risks and risks to health and safety, and is not in the public interest.**
- 48. The Notice of Completion for OPA No. 77 has indicated that Part II Order Requests of projects planned in the EMP and MSS cannot be filed with the MOE Minister. Furthermore, the Notice of Completion indicated that the approval of stormwater and wastewater infrastructure projects using the integration provisions of the MCEA could be appealed to the OMB.**
- 49. Therefore, it is my opinion that the Appeal is properly before the OMB, and the Appeal should not be dismissed without a Hearing.**

SWORN BEFORE ME at the)
City of Ottawa, Province of Ontario)
This 30th day of November, 2009)
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_____)
A Commissioner for taking Affidavits

Ted Cooper

ONTARIO MUNICIPAL BOARD

Motion for Dismissal of Appeal Without a Hearing

Appeal of City of Ottawa OPA 77

List of Exhibits

Exhibit No. 1 – Curriculum vitae – Ted Cooper	4 pages
Exhibit No. 2 – Witness Statement Ted Cooper OMB Case No. PL090678	13 pages
Exhibit No. 3 – OPA No. 77 Notice of Completion	4 pages
Exhibit No. 4 – Section A2.9 of MCEA Integration with the Planning Act	5 pages
Exhibit No. 5 – Revised Table 10.1 and Table 10.2 of EMP	1 page
Exhibit No. 6 – Table 4.4 of CH2M Hill October 2005 Report Existing Flow Rates and Flow Levels	1 page
Exhibit No. 7 – July 21, 2008 MOE minister’s Order	6 pages
Exhibit No. 8 – Glen Cairn Flooding Investigation Terms of Reference (Final Draft)	8 pages
Exhibit No. 9 – Ontario Superior Court of Justice January 15, 2009 Decision Robinson et. al vs. City of Ottawa	25 pages
Exhibit No. 10 – Page G6 of MCEA – Piecemealing	1 pages
Exhibit No. 11– Section 7.2.1.6.8 of City of Ottawa Sewer Design Guidelines Emergency Provision for Flood Protection	1 pages
Exhibit No. 12 – Existing Hazeldean PS Emergency Overflow	1 page
Exhibit No. 13 – 1975 Glen Cairn Flood and Drainage Investigation	33 pages
Exhibit No. 14 – Schematic of Major Development Areas & their impact on flows in the Carp River & Jock River watersheds	1 page
Exhibit No. 15 – Excerpt from 2006 CH2M Hill Report	1 page