

August 27, 2010

The Honourable John Wilkinson
Minister of the Environment
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Toronto, ON M7A 2T5

BY FAX to 416-314-7337
BY E-MAIL to minister.moe@ontario.ca

Dear Minister:

Re: Kanata West Environmental Assessment Notices of Completion

The undersigned request that you issue an Order under section 16 of the Ontario *Environmental Assessment Act* regarding the assessments and supporting studies and reports put forward for development in Kanata West and restoration works in the Carp River and tributaries.

We object to the seven projects which are proposed to receive the go-ahead. Moreover, we object to the other 15 projects which were not part of the 2006 Part II Order requests but which had to be re-examined as per your predecessor's 21 July 2008 Order.

We first state our key bases for the request. We then provide additional rationale, first, regarding matters of substance, followed by matters of process. We conclude with the relief sought.

Key Bases

1. The proponents have put forward a "worst case" volumetric approach that is purported to provide a sufficient level of assurance that the projects and subsequent development in Kanata West and the Fernbank lands will not cause additional flooding. It is claimed that this approach is an adequate substitute for the absence of sufficient data with which the hydrologic and hydraulic models could be calibrated. The logic of this approach is fatally flawed since non-calibrated models cannot provide a base line against which the impact of development could be measured.

The proponents' conclusion that the 15 projects not subject to the 2006 Part II Order Requests remain approved depends on acceptance of the validity of the outcome of the Third Party Review (TPR). Given the fundamental flaw in the TPR's work this conclusion cannot be accepted. Significant uncertainty about the impact of development remains, in part due to the unacceptable standard of reporting – see #3 below. In the face of such uncertainty and absence of input data and results, none of the 22 projects should be allowed to proceed.

2. Most of the undersigned (writing as the Carp River Coalition) requested a Part II Order in 2006. One of our key objections then was that the scope of the Carp River Restoration project was too narrow as it does not extend to the River's "sufficient outlet" below the Village of Carp. This objection stands. Without improvement in the conveyance of water below Richardson Sideroad nature will soon undo whatever restoration is attempted upstream. Conveyance will remain sluggish downstream of the works and part of the effort will be for naught.

We note that the 1974 Carp River Channelization Study by MVC proposed works to improve drainage that would begin downstream of Richardson Sideroad. What made sense 36 years ago would make even more sense today, especially if 900 hectares at the upper reaches are allowed to be developed causing additional run-off.

3. There is a disturbing absence of key model input (Manning's 'n') and performance (peak flow) data in the TPR and Update reports, in sharp contrast to what the public could find in the 2005 and 2006 flood level analysis reports.
 - a. *Peak Flows*: In the 2005 and 2006 reports, both the main texts and appendices contained tables that clearly showed peak flows and peak water levels, including, in the post-development report, comparisons between Existing and Post-Development Conditions. Regardless of the validity of the model results (critiqued in our 2006 Part II Order request and by many others), the tables and discussion allowed the public to readily see what the models claimed to have found. In fact, peak flow and peak water level tables were, in abbreviated form, shown at the public meeting of January 2005. A Memo in 2008 about the effects of modifications to the Carp River watershed area by the original consultant likewise contained a table summarizing peak flows.

In sharp contrast, the 'phase 01' and 'phase 02' TPR reports make virtually no mention of peak flows. The Widening Alternatives report of 18 May 2010 has not a single table of peak flows, instead showing the results of its various iterations in terms of water levels only. Only in an Appendix 4 – in a 50-page table of detailed data with unexplained headings – does one find "Q" values which a layperson, from a careful reading of the 2005 and 2006 reports, might recognize as being peak flow results. Even so, there is no comparison between results of the modified Existing and Post-Development models.

Similarly, the Restoration Update report discusses peak flows only with regard to Feedmill Creek and offers no new tables. The Implementation Plan discusses peak flows only with regard to the Fernbank Lands.

- b. *Manning's 'n'*: The 2005 and 2006 reports show roughness parameters for all key cross-sections and the texts clearly explain what was done with them and why. In contrast, the 'phase 01' TPR report only discusses 'n' values at Richardson Sideroad and at the

Bridges; the 'phase 02' report makes no mention of 'n' values at all. Similarly, the Widening Alternatives report shows two tables of 'n' values at the Bridges only. There are no comprehensive tables in any of these or the other Update reports.

- c. Yet, in the Public Consultation Update report one finds 105 pages devoted to a discussion between water resources engineer Darlene Conway and the TPR consultant, a discussion that largely centers around the choice of the Manning's 'n' parameter and the effect it has on peak flows. When Ms. Conway corrected the models in accord with her professional judgement she found that post-development peak water levels increased almost everywhere, from 15 cm to more than 30 cm, and that peak flows also increased everywhere, mostly by 40% or more. If nothing else, this debate and the contrasting results show that the choice of the 'n' parameter is extremely critical. This is also evident from the Widening Alternatives report where modifications of 'n' around the Bridges strongly affect the flood level results.

This glaring absence of transparent and traceable reporting is clearly contrary to the requirements of Class EAs and gives rise to the suspicion that the proponents have something to hide. On that basis alone, these Updates are not acceptable.

4. Kanata West is a greenfield development. The unambiguous interpretation of the Provincial Policy Statement (PPS) everywhere else in Ontario is that a 2-zone flood plain policy may apply only in areas of historical development. Ottawa's recently revised Official Plan makes this explicit: Under the policy no new lots can be created. (We have heard of recent attempts to get around this restriction by proposing a condominium-type development. We trust that the authorities will see through this and disallow such development.) In order to justify "floodproofing" up to 28 hectares of the River's flood plain the public has been presented with much misleading, incomplete and even non-factual information, including the idea of a "modified one-zone" – a concept which is nowhere to be found in law or in any technical guidelines. The clearest statement of the proponents' deceptive argumentation was given in response to a comment from the public at the time of presentation of the Third Party Review report to Committee and Council:

"The purpose of the restoration plan is not to create developable land from flood plain lands. The purpose is to restore a more natural channel/flood plain system, increase/restore fish habitat and achieve a sediment balance/transport. The mechanism to achieve the restoration project (funding and landownership) is the filling of some of the flood fringe areas."

More recently, talk of a "modified one-zone" has been dropped. Instead, the intent now is to adopt an Official Plan Amendment which would designate the area as a Carp River Restoration Policy Area, proceed to "floodproofing" the 28 hectares (or slightly less if widening of the River corridor proves necessary) and then revert the area to one subject to a

one-zone policy. Again, this is sheer deception: The discussion of this proposal in the Implementation Plan refers to the flood plain fringe, which is a concept that only exists where a 2-zone policy is in effect. In fact, except for a few sites where MVC has allowed filling of the flood plain, the corridor is not and cannot be 2-zone. Such sleight-of-hand should not be allowed. The proposal runs counter to the clear intent of the PPS.

Additional Grounds - Substance

1. As we stated in 2006:

“We believe that there is ample documentary evidence that the Carp River, from around Hazeldean Road to beyond Carp Village, became a Municipal Drain early in the 20th Century and that there is no evidence that the Drain has been abandoned. We refer not only to newspaper reports of the time, but also to the Decision of Referee G. F. Henderson (5-7 January 1909), the Ontario Court of Appeal Decision of November 22, 1909, and the Decision of the Drainage Court (December 14, 1910). Despite having been made aware of this evidence, the proponents continue to remain in denial about it (see, e.g., Restoration EA, pages 19, 34 and 61).

Based on the evidence, we believe that modification of the main channel of the Carp River under a framework other than the *Drainage Act* is unlawful.”

This argument stands.

2. One of our key objections in 2006 was that the Fernbank lands were not included in the analysis. The models still do not fully integrate the impact of development on these lands (insofar as they drain to the Carp River). Instead, their impact is accommodated in the analysis of phasing of the development and by requiring that, in the “worst case scenario,” 40,000 m³ of volume be foreseen on account of the Fernbank lands. The failure to simply include the Fernbank lands in the models appears to be motivated by a desire not to intrude in the work of the consultant for Fernbank. Such crass “turf protection” should not be permitted. The proponents of both developments should be ordered to integrate their work as that is in the greater public interest.
3. The key constraint for a proper flow and flood analysis remains the absence of measured flow data. As we noted in 2006, the need for such data had been identified in the 2004 Carp River Watershed/Subwatershed Study. Even as the 24-25 July 2009 storm rolled in, only one flow gauge was in place (at Richardson Sideroad). The proponents should be forced to pay the price for their failure to collect vital data in a timely manner. Quite simply, the Kanata West development should be put on hold until sufficient field data have become available and the

models are demonstrably calibrated as per the provincial guidelines; Addenda should be filed when the assessments have been completed. The proponents have only themselves to blame for the ensuing delays.

4. We pointed out inconsistencies in the Transportation Master Plan and questioned the advisability of creating numerous crossings of Feedmill Creek:

“There are apparent inconsistencies in the design data of some of the proposed transportation projects. E.g., Figure 7-1 (Campeau Drive Extension), at the bridge over the Carp River, shows a water level of 93.75 m, while at the bridge of the local road over Feedmill Creek, upstream, the level shown is 93.70 m.”

and

“On the same Figure, details of two road crossings over Feedmill Creek are shown. These would be in addition to a Rapid Transit Corridor crossing, and the existing crossing of Huntmar Drive. To the west of Huntmar Drive, no planned roads are put forward to serve the areas between Highway 417 and Feedmill Creek. Presumably at a later stage at least two more crossings will be proposed there. This multitude of crossings puts into question the advisability of the transportation plan north of Highway 417 and east and west of Huntmar Drive, except perhaps for the location of the Campeau Drive Extension.”

We find nothing in the Addendum that addresses these matters.

5. We concur with some of the comments made by the Ministry of Transport in its letter dated 4 September 2009 and have seen nothing in the documentation that addresses the concerns raised:
 - a. “It is indicated in Ottawa’s letter [of 24 August 2009] that the additional water volume to be accounted for in the worst case scenario (85 600 m³) provides flexibility to deal with potential increases in rainfall events (+ 15% rainfall) due to climate change. The worst case scenario investigated in the Third Party Review of Hydrology / Hydraulic modeling (TPR) reflected the uncertainty with respect to infiltration parameters in the upper watershed. The issues of parameter uncertainty and potential climate change effects are not mutually exclusive. However, it appears that the same “collateral” is proposed to address both potential “debts”. If it is ultimately determined that both situations will come to pass, how will this be addressed?”
 - b. “...it is noted that there is an option to reserve additional land adjacent to proposed SWM facilities to accommodate increased storage volumes if needed. If these lands are not protected from the outset, these opportunities could be precluded by development and not be available when needed.”

- c. "...development applicants must demonstrate through an interim analysis that any incremental changes to the floodplain / SWM pond design do not have a detrimental impact on water levels. It is not evident how cumulative impacts are addressed in the instance of multiple concurrent development applications?"

Additional Grounds - Process

1. In all the new documentation provided we find only one Professional Engineer's signature (that of Donald Moss, at the end of the Widening Alternatives report and on the Errata Sheet of the 'phase 01' and 'phase 02' reports on the TPR). We believe this to be contrary to the *Professional Engineers Act*. Who signed off on the Signature Ridge Pump Station upgrade and for Stormwater ponds 1, 2 and 5?
2. The 24-25 July 2009 storm caused extensive flooding in the Glen Cairn and other neighbourhoods – the third such occurrence in the last several years. A report on the causes and remedies is expected to be released in October 2010. City staff has told us that this report will be fully informed by the reports on Kanata West currently submitted for public comment. Given our lack of faith in them, that is little assurance. Clearly, the reports on the Glen Cairn investigation and on Kanata West should be considered together. A Minister's Order would be an appropriate mechanism to ensure that this be done.

Further, in July 2010, City Council endorsed placing a Holding provision on lands served by the Hazeldean Pump Station, which includes lands in Kanata West.

In addition, Sections A.4.1.1 and A.4.2.2 of the 2000 Municipal Class Environmental Assessment Manual require that Schedule B and C projects need to be revised if a change in the environmental setting of the projects has occurred. Clearly, the Glen Cairn flooding and the Holding provision for developments to be served by the Hazeldean Pump Station are such a change in environmental setting that warrants the proposed Schedule B and C projects to be revised. This is another reason why all 22 projects should be reviewed and new Notices of Completion for them filed.

3. As we did in our 2006 Request, we would go further and argue that a Class EA process is not appropriate for the Restoration project because it does not purport to be a solution for a flooding or erosion problem. Its nature, scale and purpose dictate that it should be assessed as an Individual EA, with the Conservation Authority, the City of Ottawa and the Kanata West Land Owners Group as co-proponents. Please refer to section 6.2 of our 2006 Request for further details.
4. As we already indicated in #3 under Key Bases above, the documentation provided is remarkably incomplete. It is also misleading in several respects. For example, an Appendix to several of the reports is entitled "Response to MOE Order October 2009" but contains a

letter from the City dated 24 August 2009. The apparently final version of the Response, dated 15 October 2009, is buried deep in the 821-page Public Consultation Update. (As an aside, this Update contains a lot of material totally irrelevant to the Kanata West file.)

As well, it is not at all clear whether the 46-page Implementation Plan provided to the public is the final version of the Plan: Comments by Ministry of the Environment officials, dated 20 November 2009, identify the existence of an August 2009 and an October 2009 version of the Plan. Comments by other MoE officials, dated 24 November 2009, refer to sections of the Plan which do not exist in the version provided. That the Plan provided to the public has a "July 2010" date on its front cover carries no weight: Most of the Updates provided have that date on the cover. What is missing is a paper trail between the comments and the final version.

Further doubt is cast upon the vintage of the Implementation Plan in light of a letter from MoE's Steve Burns dated 12 March 2010 which clarifies that the Restoration projects are sewage works requiring permits under section 53 of the *Ontario Water Resources Act*. The letter asks that the Implementation Plan be updated accordingly. Yet, on page 33 of the Implementation Plan made available, under Project Approval Summary ("Status - 2009"), one finds that the section 53 application requirements are "to be determined". Clearly, therefore, the Implementation Plan is not up to date to "July 2010."

Such playing fast and loose with the documentation amounts to a demonstration of contempt for the public.

5. Also missing from the Public Consultation Update are the notes from meetings of City officials and the TPR consultant with the 2006 Part II Order requesters. As ordered by Council, several of the undersigned were invited to such a meeting on 6 October 2008 when we again set out our key concerns with the proposals. One of the other requesters made an extensive presentation to the TPR Project Advisory Committee. There is no indication that any of these discussions have had any effect. Again, this amounts to contempt for the concerns of the public.
6. The current Notices of Completion were posted without prior consultation with the 2006 Part II Order requesters to see whether this time around they are satisfied with the reports. Not only does this indicate poor risk management on the part of the proponents, it also shows disrespect for their concerns.
7. Council did not explicitly direct that these Notices of Completion be posted. The normal procedure is that such direction is sought when the documents subject to the Notices are ready. Instead, the "direction" is found in the Disposition section of the staff report that presented the TPR report to Committee and Council 14 months earlier, in May 2009. Such "back door," anticipatory direction should not be tolerated.

We request that these Environmental Assessments be elevated to one coordinated and comprehensive Individual Assessment. In the alternative, we request a Minister's Order imposing further conditions on the proposals so that our concerns may be alleviated.

Respectfully submitted by Janet Mason (for Friends of the Carp River), David Spence (for Ottawa Riverkeeper), Carol Gudz (for Sierra Club Canada), Mikelis Svilans, John Almstedt and Erwin Dreessen.

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