

9 June 2008

By e-mail to [carpriver@ottawa.ca](mailto:carpriver@ottawa.ca)

Comments to

Sandra Stone  
City of Ottawa

on

Draft Terms of Reference for Third Party Review of the Carp River Restoration Plan and related Projects

My comments fall mainly in two categories:

- 1) the process followed;
- 2) the proposed Terms.

The process of this Third Party Review

It seems odd that the very same senior management that was critically reviewed by the Audit report takes it upon itself to draft terms of reference for a review of its own record to date. This appears to me not conducive to “clearing the air once and for all” as the City Manager expressed it at Council on May 14. As noted by Councillor Qadri, what good is a review dictated by one of the parties – the City – that is not even the final arbiter, this being the Minister of Environment in adjudicating the Part II Order Requests.

That senior management developed these draft terms has its consequences, e.g. in the formulation of the narrow objective (more about the substance of the Terms below). The bias takes on ludicrous proportions when these Terms propose to review the AG’s analysis!

I propose that these Terms of Reference be finalized by the Auditor General and that the AG present them to Planning and Environment Committee on June 24. I further propose that the Auditor General’s Office be tasked with being the manager, recipient and rapporteur of the Third Party Reviewer’s work. And, I suggest that Ted Cooper and/or Darlene Conway be seconded to the AG’s Office for the purpose of this review.

As several Councillors emphatically noted on May 14, the citizenry's (and MOE's) confidence in the City's handling of the Kanata West file is severely damaged. There is a need to take clear and transparent action that will restore that confidence.

What's wanting in these Terms of Reference

1. If this Third party review is to "clear the air" it should start with taking stock of the positions of all stakeholders. The consultant should begin with one-on-one interviews with city project staff; the AG & his engineering consultant; technical agency staff (the Conservation Authority and three provincial Ministries); the Part II Order Requesters; the KWOG consultants; and KWOG Ltd.
2. Totally absent is the fundamental policy issue: Is defining a "fringe" and filling it appropriate here? The Audit report raised significant points in this regard but this discussion doesn't make it here beyond the FAQs.
3. A key question – what the scope should be of a Restoration Plan for the Carp River – is not asked. This blindness is consistent with the continuing refusal to recognize the wisdom of the Ontario Court of Appeal in 1909 which confirmed that the "sufficient outlet" for the then proposed drainage was below the Village of Carp. I strongly believe that any restoration work that stops at Richardson Sideroad will in time (and perhaps in a short time) prove to be for naught and that it is therefore in the self-interest of the Kanata West developers to support a more comprehensive scope. As to who should pay, the Drainage Act provides an attractive framework. Besides the City and KWOG, MTO would appear to be a key beneficiary. In any case, as a minimum for this Review, the consultant should be asked to assess the evidence about the status of the Carp River as a Municipal Drain and the implications for the Restoration Plan if this status is confirmed.
4. Use of an "adaptive management" approach is not acceptable in this project. The reality is that, at present, the location of the 100-year flood plain is not known. The 1983 lines are clearly outdated. Field surveys were undertaken for the Kanata West project but the other half of the exercise – applying water events to the topography and measuring how far the water rises and over how many hours and days – is what has been shown to be faulty, not just because of the so-called egregious error but for a string of reasons spelled out in the Audit report and in Darlene Conway's Witness Statement at the OMB Trinity hearing in February (available from <http://www.greenspace-alliance.ca/node/389>). A firm "Existing Conditions" basis has to be established, based on a properly calibrated model. Only then can a reliable impact analysis be conducted. Any development, whether inside or outside the flood plain, in advance of the results of such an analysis cannot reasonably be undone should later monitoring data indicate that it wasn't a smart idea to begin with. (See point 5 for a qualifier with regard to development outside the flood plain.) Alternatively, if the approvals are given subject to certain conditions to be

determined later, the developers are no further ahead and the City is wasting their time.

5. As the Kanata West development has dragged on for years – in no small part, might I say, as a result of mismanagement – it is understandable that the pressure for interim development is strong. The consultant should be asked to develop conservative conditions under which development of lands outside the 1983 flood plain could be permitted, including storm water management criteria. In this regard it has come to my attention that for the latest Certificates of Approval quantitative storm water controls have been stipulated, contrary to earlier conclusions in reports that have been filed with the Ministry and on the basis of which Part II Orders have been requested. This is a most disturbing finding and again puts into question the integrity of the development approval process.

This morning I was sent a copy of the submission by Darlene Conway to [carpriver@ottawa.ca](mailto:carpriver@ottawa.ca). Her alternative Terms of Reference are clearly superior to those on the City's web site. Her draft should be the basis for final Terms to be recommended to Planning and Environment Committee. Truly, it is unconscionable that a qualified City employee, who is familiar with the file, should have to do this on her own time.

On a final note, I requested of Sandra Stone three documents that were referenced in the draft Terms of Reference. It turns out that two are still “under review” and not accessible to the public. The third, an “Implementation Plan Final Draft” by Delcan, has July 2007 on the cover, December 2007 in the header of every page and the last seven pages, apparently originating from the City, are dated March 2007. My first question is why this document was not shared with the Part II Order Requesters (of which I am one). My second question is what the status is of this document. It appears to be completely oblivious to the many questions that have been raised about development in Kanata West. On the whole, the inability to produce relevant documents does not speak well for the transparency of the process for this Third Party Review.

These are my comments to date.

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