

EIS PRACTICES: THE CASE OF WATERLOO
Interview with Chris Gosselin, Manager of Environmental Planning
Regional Municipality of Waterloo
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by
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Background

The Region of Waterloo consists of the cities of Kitchener, Waterloo and Cambridge, plus four rural Townships. Until 2000, Regional Council consisted of members of the lower-tier municipalities (though the Chair has been directly elected since 1997). Since then, Council consists of nine directly elected members (including the Chair), plus the seven Mayors.

I.e., the push for amalgamation by the Conservative government was abandoned before it reached Waterloo. The fact that Waterloo continues to have two-tier government is important to keep in mind for several of the practices described below.

Questions

1. *Under what authority is the Region of Waterloo's Ecological and Environmental Advisory Committee formed? Given that the EEAC was created in 1973, has its role or composition changed over time? How are its members chosen (e.g., by invitation; confirmed by Council)? Is there a requirement for specific professional designations, accreditations or affiliations? Do they serve a fixed term? Is their term of service renewable? How many subcommittees are active at any given time? Do members receive an honorarium or are their expenses paid? How much time do members spend on EEAC work on average?*

The EEAC is referenced in one brief section of the Regional Official Policies Plan (ROPP):

- 3.6.1: <Regional Council will maintain an Ecological and Environmental Advisory Committee to advise the Region in the review of development applications relating to Environmentally Sensitive Policy Areas and other matters of environmental interest in accordance with terms of reference adopted and periodically reviewed by Regional Council.>

From time to time, membership applications are invited. In the early days, membership was allocated on the basis of place of residence, area of expertise, etc. but this did not work (became complicated and convoluted). Since 1983, the only requirements are expertise and ability to attend meetings and participate in subcommittee work (do site visits) and this works very well. Also initially, seats were reserved for developers but they never showed up so this class of membership was also dropped. Applications are screened by staff and approved by Regional Committee & Council. Terms are for 3 years, twice renewable; sometimes exceptions are made.

The members tend to be environmental consultants in the 20-30 year age bracket, i.e., on their way up in terms of seniority in their firm. Having served on the EEAC is considered an honour and a form of recognition by peers of solid expertise. The current EEAC includes 3 hydrogeologists, a botanist, a lawyer and a sociologist; there are also 2 Councillors, who have full voting rights.

At present there are 41 subcommittees active; some of these have existed for a long time and can be dormant for significant periods. See the last two pages of the attached document, the Agenda for the September 27, 2005 meeting. About five new subcommittees are created in any given year.

Members are paid \$20/meeting and are compensated for mileage to attend meetings and site visits (@42¢/km); they are also served supper before the monthly meeting.

Time spent on EEAC work varies, depending on how many subcommittees a member serves.

2. *What material support (e.g., secretarial, professional staff) does the EEAC receive from the Region? How many staff members at the Region are dedicated to environmental protection or management?*

The two environmental planning staff members attend the meetings as does a person from the Clerk's office to take Minutes.

Besides Chris and his colleague, environmental staff is spread throughout the regional bureaucracy – in Public Health, Water Treatment, etc. At one time the idea was floated to put all environmental staff together but it was decided not to do that, in favour of permeating the other departments with staff competent in environmental matters.

3. *Under what terms of reference does the EEAC operate? Given that the EEAC deals with both review of development proposals and advice on broader policy issues, what is the allocation of effort between the two types of activities? Is there overlap with the mandate of other advisory committees?*

Terms of reference for the EEAC have been approved by Council; the latest version, approved in 1995, is attached. (Earlier versions date from 1973, 1983 and 1993; the 1995 amendments were minor.)

About 75% of the EEAC's business deals with development reviews, the rest with policy issues.

Sometimes issues touch on the mandate of other Advisory Committees, e.g. Cultural Heritage. (Note: Parks are in the local municipalities' jurisdiction.)

4. *Given that the members of the EEAC tend to be environmental consultants, how does it deal with conflicts of interest? How does it avoid an 'I'll scratch your back if you scratch mine' syndrome?*

Conflict of interest is governed by provincial law, as well as by a Regional policy (attached). This is strictly adhered to: When a member declares a conflict of interest on a given item, he/she draws away from the table or even leaves the room and does not in any way participate in the discussion. At an informal level, backscratching is avoided as a result of the dynamics within a subcommittee and its interaction with staff; as well, any recommendation by a subcommittee is always reviewed by the full EEAC. I.e., the number of different people involved ensures that the analysis remains objective and fair.

5. *What are the key provisions in the Official Plan or other policy documents which serve as directions for the EEAC's work? In addition to the Planning Act and the Provincial Policy Statement, do you refer to the Province's Natural Heritage Manual (1999), the Significant Wildlife Habitat Technical Guide (2000) or other provincial or federal legislation? Are there other Regional by-laws that set out relevant parameters, e.g. on tree cutting, top soil removal? Are there municipal performance measures (e.g. maintenance/increase of forest cover) that must be addressed via the EIS procedure?*

The key provisions are sections 4.3.13 (on Environmentally Sensitive Policy Areas - ESPAs), 4.3.14 & 4.3.15. Also important are the definitions of "Adverse Environmental Impact" (which serves as a checklist) and "Area Contiguous to an

ESPA” where it is to be noted that “contiguous” does not necessarily mean “abutting.” Work is under way to focus on forests and Environmentally Sensitive Landscapes. (Note that lower-tier policies define locally significant areas.) The provincial manuals are not really used as such – “everything that is needed in terms of policy is in the Plan.” The sections and definitions referred to are attached, as is a map showing all ESPAs.

The Region has had tree by-laws since the 70s (at the regional level these refer to areas of at least 1 ha). Effectively, they prevent tree-cutting. Soil removal is under lower-tier jurisdiction; Waterloo and Cambridge have by-laws in this area.

The Region actively enforces its tree by-laws, thanks in no small part to a willing public prosecutor. It has been very successful in court.

There are no municipal performance measures to which development proposals have to adhere.

6. *Under what circumstances does an EIS have to be prepared? Are there guidelines for developers and consultants to assist in preparing EISs or are unique terms of reference prepared for each case? Could you explain the “three levels of EIS”? Are EIS authors required to have specific professional designations, accreditations or affiliations?*

An EIS is required when a proposal is in or contiguous to an ESPA. There is a Guideline, adopted by Regional Council (attached). This Guideline refers to all matters that have to be covered in a “full” EIS; as a rule of thumb, such a full EIS is required if the proposed development is within an ESPA. (Kitchener and Waterloo outright prohibit development within ESPAs on their territory.) More typically, the EIS is scoped (see Q8). The third possibility is that no EIS is required. Refer to sections 3.2.3, 3.2.4 and 3.2.5 of the ROPP.

There are no formal requirements which EIS authors have to meet. Quality is assured as a result of the process (see Q8).

7. *Are EISs all-encompassing, i.e. are they integrated with other technical studies such as stormwater management reports, hydrogeological studies, terrain analysis and fish habitat assessments?*

Yes. Sometimes an EIS is structured as an overview of these other studies. They

come as a package.

8. *Could you describe the process, from the initial approach of a developer to the Region, to ultimate disposition by Council? In general, how much time elapses for each stage?*

As a first step, Regional staff and the consultant (hired by the proponent) walk the site and identify the issues that have to be studied. Staff then writes a report to the EEAC, recommending the scope of the EIS required. The EEAC then approves the Terms of Reference for the EIS and sets up a subcommittee, typically consisting of 2 to 5 members. After the consultant has completed the work, his/her report is circulated to the members of the subcommittee; at that point the subcommittee typically conducts a field visit. The subcommittee then reports to the EEAC, recommending either approval, refusal or deferment of the EIS; deferment means that more work needs to be done.

The EEAC recommendation of approval or refusal goes, via staff, to the Commissioner of Planning, Housing and Community Services. Approval or refusal of most development proposals is delegated to the Commissioner; see the By-law on Delegation, attached.

(In post-meeting correspondence, where I sought further clarification on the way public input is brought to bear on development applications, Chris wrote: “In our two-tier system, there is ample opportunity for public input on development applications at the local level. Of course, members of the public may meet with anyone in our department to discuss issues prior to approval. As part of that process, the natural heritage issues are discussed concurrently at E.E.A.C. where interested members of the public may participate. In effect, E.E.A.C. acts like one more commenting agency on the application, and does not support it in advice to staff until all issues are appropriately dealt with. It is only at the end of the review process when all issues at the local and Regional levels have been dealt with and the approval falls within the parameters of the delegation by-law, that the Commissioner may approve it. This describes the great majority of approvals. I do not recall people complaining that they have too little opportunity for input into the decision. Fortunately, in this area, there is a relatively co-operative planning climate.”)

Over the years, the process has been improved such that the EEAC recommendations are in a form that can be readily incorporated as conditions of approval. In earlier years, the “translation” from environmental recommendation to planning approval would sometimes pose problems.

How much time is taken up by each stage of the process is case-specific.

9. *Are the conflicts between environmental protection and built development primarily in an urban context or are there significant rural areas in the Region? Is there much country lot estate development? What is the relationship between subwatershed studies (e.g. Laurel Creek) and EISs?*

The Regional Official plan shut down country lot estate development years ago, with strong support from the Waterloo chapter of the Federation of Agriculture.

The whole Region is within the Grand River watershed. The Laurel Creek subwatershed study was one of the first to be done, in 1993. Watershed studies are done cooperatively by all agencies involved (refer to ROPP, section 3.1). There is an approved list of studies, tied to the available budget (now much tighter since the province stopped paying for half of the cost). These studies have to be completed before a local municipality can do a community plan and before a development can be approved. If a developer balks, he is invited to pay for the cost of the study to get it done!

10. *What happens after the EEAC brings out its advice? Has any development ever been turned down as a result of EEAC advice or does the advice always tend to take the form of recommended mitigation measures? Are the EIS recommendations and peer review comments reflected in the final proposals or conditions of plans of subdivision? Does Council see the full text of the EIS recommendations and peer review comments or are they watered down, filtered or summarized?*

See Q8 above. Yes, development proposals have been turned down. In 30-40% of the cases, the subcommittee recommends deferral in order that further work be done. Sometimes some massaging of a subcommittee report has been required before it could go to the Commissioner; again, see Q8.

11. *If land is set aside from development, does the owner receive compensation? Does the Region own all its Environmentally Sensitive Policy Areas or does it buy the land if threatened by development? If the latter, does it pay “market price,” i.e. what the land is valued if it were developed?*

Waterloo tends to buy ESPAs on its territory. Kitchener tends to be content with a 5% dedication. There is no law that says a sale has to be at “market price”! (N.B.: At this point I referred to our woes with the NCC...)

12. *Has any proposal that was modified or denied as a result of EEAC advice ever been appealed to the OMB? Have members of the EEAC then been called as expert witnesses?*

Yes, a few proposals have ended up before the OMB, perhaps 3 or 4 in the last 16 years. EEAC members are then not called as witnesses, however, since they are volunteers in the process. Staff serve as expert witnesses.

13. *Does the EEAC get involved in follow-up or is follow-up and monitoring left to Regional staff? Is a bond posted by the proponent to ensure that the work is actually done according to plan?*

Follow-up is not as systematic as it could be, though the EEAC does have a “SWAT” team that is to do follow-up post-approval. Follow-up is mostly in the hands of the local municipality or results from alerts by citizens.

The local municipalities typically require bonds to ensure performance. The Region has done this in only one case, but there is no reason why it could not do this more often in the future.

14. *Could you provide us with some EISs that have been accepted by Council?*

Not feasible: These reports are part of the case file.

Attachments

Ecological and Environmental Advisory Committee, Terms of Reference, adopted by Regional Council, January 26, 1995, 4 pp.

Ecological and Environmental Advisory Committee, Agenda, September 27, 2005, 57 pp.

Conflict of Interest Policy for Citizen Appointees to Advisory Committees, 2 pp.

Excerpts from the Regional Official Policies Plan (December 1998 consolidation), 8 pp. [ss. 3.1, 3.2.1 to 3.2.9, 4.2.5 to 4.2.8, 4.2.10 to 4.2.12, 4.3.13 to 3.4.16, some definitions]

Regional Official Policies Plan, Map No. 1 - Natural Habitat Network, 1 p. (11x17")

Guideline for the Preparation of Environmental Impact Statements in the Regional Municipality of Waterloo, June 2002, 8 pp.

By-law Number 01-028 to Delegate Certain Authority under the *Planning Act*, 11 April 2001, 4 pp.

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