



Greenspace Alliance of Canada's Capital
Alliance pour les espaces verts dans la capitale du Canada

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Planner II
Natural Systems
Infrastructure Services and Community Sustainability
City of Ottawa

Dear Amy,

Here are our comments on the draft second edition of the Environmental Impact Statement Guidelines.

We are supportive of many of the proposed changes, including:

+ the requirement that the EIS be revised when development takes place in phases or when the project has not proceeded promptly after draft approval (section 2.5, Step 5). We see this as being in the spirit of the 2006 amendment to the *Planning Act*, section 3(5), which requires that planning decisions be consistent with the PPS that is in effect on the date of the decision and conform with provincial plans that are in effect on that date;

+ a requirement to report historic land uses (section 3.1);

+ more emphasis on adjacent lands (*passim*);

+ new text, references and better guidance on habitat for species at risk (section 3.2.6);

+ more focus on the definition of "no negative impact" (section 3.4.1); and

+ the general format and content of Appendix 1.

There is, however, still much room for improvement. In addition, these Guidelines give clear evidence of how Ottawa needs to go beyond the policy in section 4.7.8 of the Official Plan. We deal with the latter first. Then we comment on areas where the Guidelines should be strengthened. Attachments provide some minor corrections and miscellaneous comments, and a list of passages where the language is dependent on finalization of amendments made in OPA 76.

The larger picture

In the Official Plan the requirement for an EIS is focused exclusively on impact on environmentally designated lands or other natural heritage system features. But assessment of environmental impact can and should go well beyond that. Other jurisdictions do not approach impact assessment from a natural heritage perspective but rather look at the nature of the proposed development. Attachment 1 provides some examples.

As well, broad City practices stand in the way of genuine environmental protection, including ongoing urban sprawl and continuing road building. Only the LRT project and the general policy of intensification (in so far as it is being adhered to) are a major push in the other direction. Assessments through an EIS must be seen in that context.

Finally, even narrowing one's focus on land use concerns, these Guidelines make it glaringly obvious that the City is in dire need of:

- a) a tree preservation by-law for rural areas; and
- b) a soil alteration by-law.

For example, in section 1.5 it is noted that a Tree Conservation Report is required for subdivisions and site plans, whether in the rural or urban area but in the absence of a *Planning Act* instrument there is no protection for trees in the rural part of Ottawa. In Appendix 10, the advice to protect trees and woodlands is to "Ensure that all protective measures identified in the approved Tree Conservation Report (included as part of the EIS) are in place prior to any vegetation removal or site alteration activities" but this is an empty assurance since a rural landowner can do anything he/she wants prior to initiating a development process.

Room for improvement

1.

The major weakness in this draft is that there is no process of validation of an EIS report submitted by a consultant for the proponent. In Appendix 1, section 6, the submitter is asked only to provide the names of contributors to the report and their qualifications. This should be strengthened by requiring that professionals sign off on the information and conclusions they provided so they can be held accountable. Further, the qualifications of City staff that review the report should become part of the record. Finally, while staff has the option of having the report peer-reviewed, there may be none. The City's Advisory Committees perform some of that role but their resources and abilities can be quite restrictive. We attach a description of the EIS review process in Waterloo, written for the purpose of informing the City's first try at establishing an EIS process in 2005. We believe it has great merit.

2.

Section 2.5 (Step 5) states: "...changes may be made to the development plans, or to the legislation and policies that apply. When such changes occur, it is appropriate to revisit the EIS prior to allowing the project to proceed further." What tool is available to disallow proceeding, once a plan of subdivision has received final approval?

If changes are in order, we are not convinced that making them to the original EIS report is more efficient than requiring an Addendum. The latter is the standard process for provincial or federal

environmental assessment reports. The argument that the original document might get lost or overlooked is rather weak in this age of digital storage and retrieval.

3.

The new language in section 2.1 about staff's ability to wave or defer the requirement for an EIS is very loose, introduces a lot of discretion and gives the appearance it is all based on "conversations" with staff. In contrast, Appendix 2, Part C is much more specific. We suggest that more specific language be used in section 2.1, stating the criteria according to which a wave or deferment of the requirement may be granted.

4.

In some instances the draft Guidelines deviate from the definition of adjacency suggested in MNR's Natural Heritage Reference Manual (2010), including:

- 30 m around Urban Natural Features (section 1.2 and Appendix 2, Part A, 1(b));
- 100 m away from a natural feature (Appendix 2, Part B)

The Reference Manual recommends 120 m in all cases except areas significant for earth science where a 50 m width is recommended (Table 4-2, page 42). If a municipality seeks to require less, it needs to be confident that there will be no negative impacts and it notes that sometimes a larger width is required (page 43). We find no rationale in the Guidelines for the lesser distance and no signal that a larger distance may be required.

As a general rule, we would suggest that an EIS needs to provide a brief description of lands within a width of 1 km around a proposed development site and provide a detailed description of adjacent lands within 120 m.

Further, the general instructions for describing the site and the natural environment state: "At a minimum, the description of the site and the surrounding area must identify, locate and describe the feature(s) that triggered the requirement for the EIS" (page 56). Such a minimum requirement is not acceptable as there may be other natural heritage features on the site or adjacent lands in addition to the feature(s) that triggered the requirement.

5.

Section 1.4 states that "City staff and the applicant will determine the preliminary qualifications required for completion of the EIS during pre-consultation ... These qualifications will be relevant to the scope of work." We wonder, however, who has the last word on what level of expertise is required. What leverage does City staff have?

For example, section 2.3 of Appendix 1 asks to list the kinds of fish present "(if known)". Unless the applicant or contributor to this part of the EIS is a fish biologist, a simple "not to my knowledge" would be acceptable. It is not. Similarly for vegetation cover (section 2.4 of Appendix 1), the most common species are to be listed "where known." Such an easy way out should not be acceptable.

6.

Section 3.2.4 states that vegetation cover identification "should be consistent with the MNR's Ecological Land Classification (ELC) for Southern Ontario; this approach will be required for all Detailed EIS reports." We suggest that vegetation cover descriptions use the ELC for all but the very simplest EISs.

7.

Finally, we have received a copy of the comments provided by the Ottawa-Carleton Wildlife Centre and the Ontario Wildlife Coalition. We support their recommendations, in particular:

- the Guidelines need to pay more attention to mammals. Similar to the useful list of breeding birds in Appendix 7.1, Appendix G-4 of MNR's Significant Wildlife Habitat Technical Guide should be made readily available;
- ideally, sites should be field-investigated in all seasons but for the sake of mammals one of the seasons should be early winter after fresh snowfall;
- as suggested in the Significant Wildlife Habitat Technical Guide, a community-based Conservation Advisory Committee should be established to assist staff in their advice to applicants. There is much local expertise available and the OCWC/OWC submission cites some instances where staff's understanding is revealed to be less than adequate.

Naturally, we also endorse the call for adoption and implementation of a Wildlife Strategy for Ottawa. This would be highly supportive of the objectives of the EIS process.

Thank you for the opportunity to provide comments.

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Greenspace Alliance of Canada's Capital

Attachment 1

Beyond section 4.7.8: The project approach

While in many instances projects like those listed below would require environmental assessments under federal or provincial legislation, the lesson to be drawn for Ottawa is that environmental impact is about more than impact on our precious natural areas. It would behove the City to adopt a broader perspective. Using the type of project as a trigger could help in that regard. Examples of other jurisdictions follow.

Environmental Assessment Office, B.C., User Guide
http://www.eao.gov.bc.ca/pdf/EAO_User_Guide%20Final-april2010CI.pdf

"Large industrial, mining, energy, water management, waste disposal, food processing, transportation and resort developments typically require an environmental assessment in British Columbia."

Actions likely to require the preparation of an EIS include:

- a project or action that involves the physical alteration of 10 acres;
- parking for 1,000 vehicles;
- any structure exceeding 100 feet above original ground level in a locality without any zoning regulation pertaining to height;

- any Unlisted action that includes a nonagricultural use occurring wholly or partially within an agricultural district (certified pursuant to Agriculture and Markets Law, article 25-AA, sections 303 and 304) and exceeds 25 percent of any threshold established in this section.

Stampe, J., W. (2009) "Lessons Learned from Environmental Impact Assessments: A Look at Two Widely Different Approaches – The USA and Thailand", *The Journal of Transdisciplinary Environmental Studies*, vol. 8, no. 1

Stampe writes that "In Thailand all projects which are of a type or size specified on a list drawn up by the Ministry of Natural Resources and Environment are required to go through the EIA process" and that "this method of using a list for specification is part of the European Union's (EU) directive on EIA's. This directive is mandatory for all EU countries; however, countries are allowed to go further than the directive requires. The directive has two annexes that determine which projects have to have an EIA."

Department for Communities and Local Government, UK, "Environmental Impact Assessment: Guide to Procedures," (2000)

"The following types of development require environmental impact assessment in every case:

- Integrated chemical installations, that is to say, installations for the manufacture on an industrial scale of substances using chemical conversion processes;
- Construction of lines for long-distance railway traffic and of airports ... with a basic runway length of 2100 metres or more;
- Construction of motorways and express roads;
- Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres;
- Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 millimetres and a length of more than 40 kilometres;

and others."

Attachment 2

Minor corrections and miscellaneous comments

On page 66 of the Guidelines and elsewhere there is reference to the 1997 NESS reports, as well as to the 2005/2006 UNA reports. None of these reports are available on the City's web site. They should be.

In section 3.2.4, 3rd line of the new paragraph, rather than an EIS "involving significant wetlands" we would suggest "with potential impact on significant wetlands."

In section 3.2.6, in the new paragraph, 2nd line, replace "They have" with "It has".

In Appendix 1, section 5, the NOTE ("*residual negative impacts to significant natural features or ecological functions may mean that the project cannot be approved as proposed.*") surely guarantees

that no consultant worth his pay will identify residual negative impacts. A subtler way of making a consultant make note of residual impacts should be found.

On page 70 there is still a reference to "Annex 14" and there are implicit references to it as well -- see Attachment 3.

Attachment 3

Dependency on OPA 76 amendments

Many of the words used in these draft Guidelines are taken from OPA 76 amendments that have been decided in principle -- OMB Decision of 21 July 2012, re the Flewellyn and Environmental Issues hearing -- but are not yet law even if they are uncontested. This is a handicap that presumably time will resolve.

Some of the OPA 76 changes involved are not contested, others are. Not contested are:

- the definition of site alteration (section 1.2)
- "Significant woodlands..." (page 68): This OPA 76 change is not contested but it is incorrect that such woodlands are "designated" in the OP -- that was the plan (with Annex 14), but the OMB Decision squashed references to "Annex 14."
- similarly on page 87, for each element of the (uncontested) definition of Significant Woodlands the text says "...has been identified." Again, that was the plan, but we now have to see what comes out of changes to Schedules A and B instead.
- "Significant Wildlife Habitat" - again this wording is an uncontested amendment of OPA 76 (Appendix 9, page 89)

Possibly still contested is:

- "Forest remnants and natural corridors..." (Appendix 2, bottom of page 60; and page 69).

While we await final wording on this amendment, this particular clause is not among those an Appellant is seeking clarification on from the Board.