

Brief for Ottawa City Council:

Development of Kanata West along the Carp River and in the Carp River Floodplain

Prepared by: the Carp River Coalition, May 23, 2006



Date: May 23, 2006

To: Ottawa City Councillors

**Subject: May 24, 2006 City Council Meeting
Environmental Assessments and Infrastructure Projects for
Kanata West Along the Carp River and in the Carp River Floodplain**

Please find attached a document outlining the most pressing concerns of the Carp River Coalition with the proposed Kanata West development along the Carp River and in the Carp River floodplain.

The Coalition has not been given the opportunity to review the environmental assessments underlying the development plans. However, we have diligently constructed a reasonably comprehensive picture of what is being proposed, based on information gleaned from public meetings and discussions with consultants and city staff. This picture leaves us convinced that there are serious issues that need to be addressed before this development can go forward.

Given these deficiencies, we were most surprised to learn that city staff are requesting approval of the infrastructure projects for Kanata West in advance of the completion of the environmental assessments. We are convinced that rushing the approval process for a development, 28 hectares of which will be in a floodplain, is irresponsible, given current fiscal and climatic conditions.

We submit that the concerns raised in this brief constitute a more-than-sufficient basis for deferring the approval of the Kanata West infrastructure projects until such a time as the environmental assessments are completed and all outstanding concerns are addressed. By way of this letter we are requesting that you not approve the infrastructure projects at Council on May 24.

Sincerely,

The Carp River Coalition

John Almstedt, Erwin Dreessen, Carol Gudz, Amy Kempster,

Michael Kostiuik, David Spence, Lisa Zucchiatti,

Brief to the Council of the City of Ottawa
by the
Carp River Coalition
re:

**Development of Kanata West along the Carp River
and in the Carp River Floodplain**

May 23, 2006

Introduction

1. The Carp River Coalition consists of a group of citizens who have come together out of concern about plans to fill and develop 28 hectares of the floodplain in Kanata West along the Carp River. The Carp River Coalition draws members from Friends of the Carp River, the Greenspace Alliance of Canada's Capital, the Ottawa Group of the Sierra Club of Canada and Ottawa Riverkeeper. Our goal is to ensure that development of Kanata West along the Carp River does not pose risks of flooding to upstream and downstream communities and also furthers the long-term health of the river and the various species it supports.
2. We are somewhat shocked to find ourselves, in this modern age, in the position of having to challenge the city on plans to fill and develop 28 hectares of the Carp River floodplain. Common sense dictates that building in a floodplain should be a last resort and, even then, it should only be done with the utmost care to ensure against any harm to upstream and downstream communities. We have met with city staff and the developers' consultants to learn more about these plans. However, what we have learned has not convinced us that what is being proposed meets the "common sense" test, nor do we believe it meets the technical requirements set out in the legislation governing this type of development. We also believe that proceeding with this development may leave the city open to legal challenges. We feel that city staff has been disingenuous in how it phrases the degree of consensus obtained from the provincial agencies. In fact, consistent with a proponent-driven environmental assessment process, the agencies appear to be reserving their judgement until after the Environmental Assessment Reports are completed.
3. Our concerns cover a number of areas, including the unacceptable impacts on peak water levels and flows, unacceptable loss of floodwater storage capacity, inappropriate application of policies governing flood hazards, inappropriate exclusion from the analysis of certain lands that

also drain to the Carp River, long-term implications of the incremental chipping away at the floodplain, and legal precedents contradicting the plans.

4. Since the Class Environmental Assessment process is self-directed, there are no absolute right or wrong ways of completing the process. Rather, the success of the process can be measured by the expedience in which outstanding issues can be resolved and sustainable projects can be completed.

The River Restoration EA, as proposed:

- 1) challenges a 1909 Decision of the Ontario Court of Appeal;
- 2) does not demonstrate applicability of a 2-zone floodplain policy;
- 3) will raise flood levels causing water to trespass onto existing developed properties; and
- 4) will require City Council to re-zone Hazard land to enable development of 28 ha of floodplain.

At present, Provincial Agencies – MTO, MNR, and MOE – have only “concurred” that if the City wishes, it can post Notices of Completion, in advance of agencies completing their review and approval of the supporting technical studies.

5. We are advising you that what you are being asked to do today is something that to us is totally irresponsible – to approve the projects before the Environmental Assessment Reports are completed. We suspect high brinkmanship and suggest that you should not tolerate it. ***At the Joint Committee meeting of May 3, despite persistent questioning, staff had no substantive answer to why they are seeking approval of the preferred projects before the assessments are final.*** We are asking you to reject the recommendations at this time, and direct staff to return when the EAs are final. Only then should staff ask you for permission to post Notices of Completion. Project approval (with at least order-of magnitude dollar values attached) should follow after appeals of the EA approvals have been concluded. It is not appropriate for Council to approve these projects when so many issues remain unresolved and the timing and substance of the final outcome is far from certain.

6. We are surprised that staff is not more forthcoming with you about the financial implications of these projects. The city is shown to have a 30% share in the cost of the Carp River Restoration. However, the city is also an adjacent landowner. What is its liability in that capacity? As well, is development charges revenue going to cover the cost of all projects except those mentioned (storm water ponds and trunk storm sewers)? Is there not a "benefit to existing" that the city would have to contribute for some of these projects? ***We urge you to demand that staff explain what the total financial liability to city tax payers would be for these projects.***

Concerns

- Acceptability of a 15% loss of flood water storage capacity
According to city staff and developers' consultants, there will be a 15% loss in the water storage capacity as a result of the filling of the Carp River floodplain in Kanata West. We ask how this can be an acceptable outcome from the point of view of protecting the rights of riparian landowners downstream. How did they arrive at 15% and who decided that this is okay? Why not 5% or 25%? To give some idea of the order of magnitude, the 15% loss of flood water storage capacity is equivalent in size to the Glen Cairn Storm Water Management facility! We submit that any filling of the floodplain must be balanced by a compensating cut, such that there is zero change in the total storage capacity. Furthermore, the fact that stormwater management ponds are to be located in unfilled parts of the floodplain will increase the overall loss in water storage capacity since ponds full of water from previous storms are essentially useless for a current rain event and should therefore be considered as encroachments in the calculation of flood storage capacity. Our understanding is that this is not how these calculations have been made. As a result, the 15% is an understatement of the loss of stormwater storage, in our estimation.
- Precedent Set by Accepting the Chipping Away at the Floodplain
We wonder how the city will answer the next landowner who wants to fill another piece of the Carp River floodplain? If 15% loss of storage for Kanata West is okay, how much is okay for the next landowner? How can you say "yes" to Kanata West but "no" to others who want the same opportunity to increase the development potential of their property? Under all of this, how will the city protect those living upstream or downstream from the cumulative impact of these piece-meal encroachments on the river's ability to store flood waters?

Reference: **Attachment A** - Excerpt from the Decision of the Mining and Lands Commissioner in Chalmers v. Grand River Conservation Authority, April 25, 1997

Not only would storage capacity be lost under these proposals, but the peak flow rate also would increase from 21 to 42 % between Hazeldean Road and Richardson Sideroad. Both the loss of storage and the increase in flow rates contribute to rising water levels. If Kanata West owners are allowed to do this, why not others?

- Failure to Meet the Conditions for Applying a Two-Zone Floodplain Policy
The model results we have been given show increases in flood levels of up to 18 cm along the Carp River between Hazeldean Road and Richardson Sideroad. Increases of that magnitude, along with the increases in peak flow rates, we submit, constitute at least an aggravation of an existing hazard if not the creation of a new hazard. Furthermore, one would question any assertion that such increases in peak flow rates would have no negative environmental impacts.

Staff has yet to come forward with a proposal to allow a 2-zone policy in Kanata West. Yet, the 2-zone distinction is at the core of the proposal before you today. This is yet another example of staff putting the cart before the horse. Should Council eventually allow a 2-zone policy here, then an appeal to the OMB is highly likely. We are not aware of any recent OMB decisions that have allowed filling and development of floodplains.

References: **Attachment B** - 1997 Provincial Policy Statement on Natural Hazards
Attachment C - Table 2, Exhibit 11, provided by the Proponents; water level and percentage peak flow changes calculated by the Coalition.

On May 3, staff gave assurances that increases in water levels of up to 18 cm would cause no flooding in Walter Baker Park and the Sensplex because the river bank there would contain the water. They seem to be unaware of the fact that the stormwater sewer pipes for the Sensplex reach the channel at normal water levels. A rise in the water level during a storm would therefore cause these sewer pipes to back up and the parking lot would become inundated. Because of the duration of flooding on the Carp River, such incidents would significantly affect use of the parking lot at the Sensplex.

Reference: **Attachment D** - photo of sewer pipes at the Sensplex.

- Status of the Carp River as a Drain

We submit that, contrary to the position of staff, there is more than sufficient documentary evidence to support the claim that the Carp River is a Municipal Drain under the Drainage Act. By-laws have been passed, and Engineering Drawings show the configuration of the Drain adopted in the By-laws. The municipality or its successors are responsible for keeping copies of their by-laws. The onus is on the City to locate either the Engineer's Report and establish the original record of landowners in the area requiring drainage to determine if they are in support of the proposed alterations to the Municipal Drain, or else the records showing that the Drain was abandoned through a By-law as per s. 84 of the *Drainage Act*. If the City remains uncertain about its position it could turn to the Referee under the *Act* (an Ontario Supreme Court judge) for a Ruling. This is in fact what the City's Drainage Manager, Dave Ryan, advised at the May 3 Joint Meeting.

We submit that, by modifying the profile of the main channel of the Carp River, the city and developers may be subject to legal challenges from downstream landowners.

While the rights of riparian landowners are comparable, the significance of recognizing the status of the Carp River as a Drain is that the legal framework of the restoration work is quite different from that of a Class EA undertaking. Under s. 74 of the *Act*, the City has a duty to maintain the Drain. Under s. 78 of the *Act*, the City must appoint an Engineer to improve or repair a Drain; in so doing it may bypass the petition process. Unless a new Engineer's Report would determine otherwise, the Sufficient Outlet for drainage into the Carp River remains downstream of Carp Village, as confirmed in the 1909 Ontario Court of Appeal decision.

Sections 29 to 38 of the *Act* specify how Allowances and Assessments are to be determined. The value of land provided by riparian owners for the restoration work would qualify as Allowances.

While works under the *Act* are exempt from the *Environmental Assessment Act*, under s. 6 of the *Drainage Act*, an environmental appraisal may be ordered. As well, as Mr. Ryan explained at the May 3 Joint Meeting, drain construction has evolved from being just straight ditches. He cited examples even in our own City of drainage works in the form of natural channels and wetlands.

Reference: **Attachment E** - Coalition handout dated April 20, 2006.

- Inappropriate Exclusion of Other Urban Lands from Environmental Assessments
- We continue to question the exclusion of the Del/Brookfield lands from the environmental assessment of Kanata West. The testimony of the Del/Brookfield Engineering Consultant at the OMB was that a review of the Carp River Watershed/Subwatershed Study would be required if the Del/Brookfield lands were brought into the urban boundary. Now that the urban boundary has been expanded to include the Del/Brookfield lands, and given that as much as 200 additional hectares of development may drain to the Carp River, these two development areas must be included in the full build-out scenario. It is ridiculous to be “willfully blind” and ignore the impact of this future development area on a \$4 million river restoration project. We submit that the exclusion of the Del/Brookfield lands from the environmental assessments is an important flaw and that the suggestion that somehow the urbanization of the Del/Brookfield lands will have to be made to have zero impact on flood levels is not credible and irresponsible.

Reference: **Attachment F** - Excerpt from OMB Decision #2092, August 11, 2005, City of Ottawa v. Brookfield, Del, Loblaw, Westpark and Minto, page 20: comments by Mr. Riddell.

Conclusions

1. We wish to remind Council that this development in the Carp River floodplain is a high risk undertaking for the city and taxpayers. There is potential liability, not to mention health and safety issues, related to flooding. The Deputy City Manager was heard commenting last month on how we are not ready to address the challenges of climate change in Ottawa. With three so-called 100-year events just in the last few years, there is little doubt in the mind of the average person that moving ahead with development in a floodplain would be a move in the wrong direction. We believe that development should either stay out of the floodplain entirely or should be supported by a clear demonstration that all of the conditions surrounding this type of development are being met. What we have learned so far has not convinced us of this. As former Regional Councillor Wendy Stewart, who chaired the Rideau Valley Conservation Authority for some time, famously said: “It is far more cost effective to keep people away from water, than to keep water away from people.” Prior to amalgamation, by the way, the Region did not allow application of a two-zone floodplain policy except for existing lots. An informal survey conducted by the Coalition has demonstrated that this is still the practice in all Conservation Authorities in Ontario that were contacted.

Reference: **Attachment G** - Regional Council, May 10, 2000, Planning and Environment Committee, Minutes of 25 April 2000.

2. You are being asked today, on this high risk undertaking, to approve the infrastructure projects underlying the development of Kanata West (the roads, sewers, stormwater systems, filling of the floodplain, and some of the restoration work). You are being asked for your approval of these projects before the environmental assessments have been completed and without being fully informed about the financial implications of these projects for the city tax payer. We submit that the public interest will not be at all well served should you choose to approve these projects today, even conditionally, before the environmental assessments are complete. To do otherwise, we believe, would increase the possibility that environmentally unsound projects could be the result. Our belief, based on the information we have seen to date, is that the research that has been done in these environmental assessments does not support your giving the go-ahead to this development at this time. Completion of these environmental assessments has been delayed by 5 months so far, as a result of our and provincial agencies' questioning. The issues we have raised have not been resolved. We submit that the active involvement of the Councillors in the approval of the environmental assessments may be what is required to get this development on the right track and ensure that the public interest is served. To this end we wish to propose a motion for a deferral of the approval of these infrastructure projects, and deferral of approval to post Notices of Completion of the Environmental Assessment Reports, until the Reports are complete.