



Office of the
Auditor General
City of Ottawa

Investigation of Allegations Related to Planning Activities for the Conservancy Development

November 2023



Acknowledgement

The team responsible for this investigation was comprised of Kevin Mahendran from the Office of the Auditor General and consultants from MNP, under the supervision of Joanne Gorenstein, Deputy Auditor General and my direction. My colleagues and I would like to thank those individuals who contributed to this project, and particularly, those who provided insights and comments as part of this investigation.

Respectfully,



Nathalie Gougeon, CPA, CA, CIA, CRMA, B.Comm
Auditor General

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Introduction

As a result of the reports received by the City's Fraud and Waste Hotline (FWHL), the Office of the Auditor General (OAG) undertook an investigation to assess allegations related to planning activities and approvals related to the Conservancy residential development within the City of Ottawa (City).

Background and context

The Conservancy Development

The Conservancy development (or the "development") is a 140-acre residential development community located in Barrhaven with over 3 km of river frontage, connecting to the Rideau River. As outlined in the Official Plan Amendment (OPA) request, the site is "located in Barrhaven, south of Strandherd Drive and north of the Jock River. To the north are retail and employment areas along Strandherd Drive/McKenna Casey Drive and residential neighbourhoods (including complementary community facilities such as schools, parks, etc.). To the east is the Barrhaven Town Centre. To the south is the Jock River and on the south side of the Jock River are residential neighbourhoods. To the west is Highway 416 and the urban boundary, and further west, are rural and agricultural areas and uses"¹.

Official Plan Amendment

A typical development application includes the following steps: pre-application consultations, development application review, community and agency notifications, decisions, objections and appeals and post approval processes. Within the development application, a number of studies and plans are submitted by the developer and then a cycle of reviews, questions and follow-ups are conducted by the City. A development application can go through a number of submissions before the City is satisfied that it can proceed to approval under the *Planning Act*. During this process, specific approvals may be needed including an OPA (which is required when a developer wishes to develop the land differently than the Official Plan

¹ Planning Committee Report 62 "Official Plan Amendment – 4305, 4345 and 4375 McKenna Casey Drive and 3285, 3288, 3300, 3305 and 3330 Borrisokane Road"; April 25, 2018.

designates) or a Zoning By-law Amendment (which is required when a developer wishes to develop property that deviates from the current zoning provisions), both of which require City Council approval prior to proceeding with the approval of the development application.

On April 25, 2018, City Council approved an OPA (OPA 212) to change the Secondary Plan designation of the specific land in this area from “commercial recreation” to “residential” to enable the development of this land for residential purposes.

A portion of this land had also been designated as Conservation as it represents a floodplain. Floodplain policies “seek to protect the natural drainage system function of floodplains. Development, other than public utilities and flood and drainage structures, is not permitted in floodplains in order to protect public health and safety and the natural environment”². In other words, typically, no development is allowed on a floodplain.

It was confirmed in the OPA that the boundary between the new residential designation and the conservancy designation would be based on the regulatory flood line for the Jock River. As part of the OPA, it was indicated that the City and Rideau Valley Conservation Authority (RVCA) would be undertaking a review of the Jock River floodplain mapping. That meant that should a floodplain mapping exercise result in the floodplain line moving, there could be the potential for development on this previously unavailable land.

Rideau Valley Conservation Authority

Unique to Ontario, Conservation Authorities are local watershed management agencies that deliver services and programs to protect and manage impacts on water and other natural resources in partnership with all levels of government, landowners and many other organizations.³

Under Ontario's *Conservation Authorities Act*, the RVCA is responsible for furthering the "conservation, restoration, development and management of natural resources in the

² Planning Committee Report 62 “Official Plan Amendment – 4305, 4345 and 4375 McKenna Casey Drive and 3285, 3288, 3300, 3305 and 3330 Borrisokane Road”; April 25, 2018.

³ <https://conservationontario.ca>.

watershed”⁴. They are responsible for protecting people and property from natural hazards like flooding and erosion⁵.

Under their mandate, the RVCA regulates construction in and along environmentally sensitive areas such as floodplains, steep slopes, wetlands, shorelines and waterways (Ontario Regulation 174/06 — Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation)⁶.

The City has a Memorandum of Agreement (MOA) with its conservation partners, including the RVCA. This includes the responsibility of the conservation partners to participate, as requested, in official plan and comprehensive zoning by-law reviews, special zoning studies and related by-laws, land use planning studies, community design plans, master servicing studies, environmental management plans, subwatershed studies and other similar studies as appropriate based on Conservation Partners’ interests.

Cut and Fill Application

The City and the RVCA agreed that their approach would be to update the floodplain mapping for this area. Despite the initiation of this process in 2018, we understand that this mapping was not completed at this time because it was believed by both parties that the results would not differ from the existing mapping at the time (last updated in 2005) and this would not be appropriate value for money.

Based on the OPA, had the floodplain mapping been completed and if the mapping determined that the floodplain line had moved, the boundary between residential and conservancy land could have potentially moved, leading to the ability for land to be developed. This did not occur because the floodplain mapping exercise was not completed at that time.

The developer decided on a different approach and initiated a cut and fill application under Section 28 of the *Conservancy Authorities Act*. A cut and fill (which involves filling a certain volume in the floodplain and then excavating volume from the floodplain), which, if approved, had the potential to allow development on the previously designated conservancy lands. This application required approval by the RVCA. As explained by

⁴ <https://www.rvca.ca>.

⁵ <https://www.rvca.ca>.

⁶ <https://www.rvca.ca>.

the RVCA, this cut and fill application was significant – 407,000 cubic meters – the largest that the organization had ever considered. Because this application was of significant magnitude and would not be a balanced cut and fill (i.e. filling more than cutting), it required the approval of the organization’s Executive Committee. It should be noted that there is no prerequisite for any *Planning Act* approval by the City before a cut and fill application can be granted by the RVCA under Section 28 of the *Conservancy Authorities Act*.

Once approved, the cut and fill essentially resulted in moving the floodplain line so that development could proceed in line with the OPA. It should be noted that the cut and fill was approved by the RVCA with specific conditions including the design and implementation of a monitoring plan over a 10-year period for any potential adverse conditions and erosion as a result of the cut and fill.

Investigation objective and scope

The objective of this investigation was to assess the concerns raised in the reports received through the FWHL related to planning activities undertaken for the Conservancy development.

The scope of our investigation was limited to assessing whether the allegations had merit, and if so, to determine the appropriate course of action that may be required for each of the issues. The scope of the investigation focused on activities related to the floodplain mapping, the cut and fill and specific planning application review activities undertaken between 2018 and 2021.

This investigation was limited to the City’s activities and does not include any third parties.

Readers are cautioned about the important distinction between an investigation and an audit. Audits are designed to provide a high level of assurance over its findings and will typically feature rigorous testing and analysis. While this investigation was conducted in a systematic and professional manner, the extent of activities undertaken by the OAG was narrow compared to an audit and focused solely on the allegations raised to our attention.

Conclusion

The Conservancy development application process has been very complex and technical in nature since it involves the Jock River floodplain. The work performed

highlighted gaps in City processes that could have resulted in decisions that were not in the best interest of the City or its residents, such as issuing a letter of endorsement for the cut and fill application to the RVCA and excluding key City specialists from certain steps of the application review process.

While we were able to substantiate a number of allegations reported, we were not able to fully prove or disprove the merit of the others. **No further information can be provided on these allegations as we were unable to conclude on them or they were outside the OAG's jurisdiction.**

Investigation findings and recommendations

Planning Activities

1.1 Floodplain Mapping

As noted above, in conjunction with OPA 212, the RVCA and City agreed on a process to update the floodplain mapping for the area. At the time, there was the consideration that should an updated floodplain mapping result in a lower floodplain than the baseline flood line established in 2005, this could result in the flood line changing. In conjunction with approved OPA 212, lands removed from the floodplain would change from “conservation” designation to “residential” designation and as a result, development could be contemplated in the area. We understand that a consultant was hired to conduct the first phase of the floodplain mapping.

In February 2019, the consultant hired by the City issued their report which ultimately concluded that the current peak flow rate was not significantly different than the previous result. Discussions between the City and the RVCA, based on this report, resulted in the two parties recommending that the floodplain mapping for the Jock River not be updated at this time as it would not significantly change the flood line.

Despite this decision and rationale made in February 2019, a letter was written co-signed by the Mayor and the General Manager, Planning, Infrastructure and Economic Development Department (PIED) (currently the Planning, Real Estate and Economic Development Department (PRED) on March 13, 2019 to the RVCA in an effort to “reemphasize the importance of completing the Barrhaven community” and to “reinforce the Floodplain mapping update with priority”. This letter further references previous work produced by consultants on behalf of the developer.

Such a letter attempting to convince the RVCA to proceed with an updated floodplain mapping was in misalignment with conclusions made by City staff and the RVCA based on independent analysis. Further, we understand that, despite the request for the updated floodplain mapping coming from Council, the decision to not proceed with the floodplain mapping at the time and the associated rationale was not brought back to City Council.

RECOMMENDATION 1 – UPDATING COUNCIL ON KEY DECISIONS AND RESULTS

The GM, PRED should ensure that key decisions and/or results associated with directions from City Council are communicated back to Council in a timely manner.

MANAGEMENT RESPONSE 1

Management agrees with this recommendation. A communication to staff will be issued to ensure key decisions and/or results associated with directions from City Council are communicated back to Council in a timely manner. This will be completed in Q4 2023.

1.2 Endorsement of Cut and Fill Application to RVCA

Once it was established that the floodplain mapping was not going to change the flood lines, in order to proceed with developing the conservancy land, the developer chose to pursue a different approach; a cut and fill application to the RVCA under Section 28 of the *Conservancy Authorities Act*. In a traditional “balanced cut and fill”, when a specific volume is filled within the floodplain, the same volume is then excavated. This cut and fill application was for filling 407,000 cubic meters but only undertaking a cut of 116,000 cubic meters.

Due to the significance of the cut and fill application (specifically the largest fill volume the RVCA had ever had to consider), the application was subject to a hearing before the RVCA’s Executive Committee in accordance with their policies for applications that cannot be approved at the staff level. We understand that the RVCA requested a letter of endorsement by the City for this cut and fill application.

On November 7, 2019, a letter was written by the Director of Planning Services within PIED to the RVCA confirming the City’s support for the approval of the cut and fill application. Further, the letter stated, “we want to reinforce the support Council has expressed for this file...”. While management has indicated that the use of this

statement was referring to Council’s approval of OPA 212 in 2018, the letter in question is responding to the placement of fill in sections of the Jock River floodplain. It is our understanding that most members of Council were not even aware that there was a cut and fill application being considered and still expected a floodplain mapping to be completed. The cut and fill permit was approved by RVCA’s Executive Committee on November 8, 2019.

It is not the City’s role as part of the planning process to endorse, support or advocate for a developer’s application with another regulatory body, such as the RVCA. As noted above, a cut and fill application is a standalone application to the RVCA under the *Conservancy Authorities Act* and is not necessarily tied to any City activity under the *Planning Act*. It was confirmed that the issuance of this letter was a violation of departmental processes as this external communication was not signed off on by the General Manager.

We believe that the letter from the City contributed to the RVCA’s Executive Committee approval of the cut and fill application, which was not appropriate for the City to have issued.

RECOMMENDATION 2 – POLICY ON ENDORSEMENT OR SUPPORT

The GM, PRED should establish a formal policy outlining that the City does not take an advocacy or endorsement position for any developer or development as input into a third-party’s decision making.

MANAGEMENT RESPONSE 2

Management agrees with this recommendation. Management will be issuing a communication to staff outlining City staff’s obligation to provide information, analysis and any applicable Council decision, and reiterate, staff does not take an advocacy or endorsement position for any developer or development as input into a third-party’s decision. This will be completed by Q4 2023.

1.3 Peer Review of Servicing Report

Typically, when a new community is being contemplated, a large-scale Community Design Plan (CDP) is developed. This is a Council-approved policy document that

focuses on the planning and design of the physical environment⁷. As part of a CDP, a Master Servicing Study (MSS) would be prepared which would lay out the options for the servicing of this new community, specifically related to water, wastewater and stormwater. Through the CDP, an MSS would typically be subject to City Council review and approval. Because specific land included as part of the Conservancy development was, at one time, conservancy designated land, it had not been subject to any MSS as it never was intended to be developed.

Once the RVCA approved the cut and fill permit and the development application could proceed, work was required to address the infrastructure and servicing of this new development (because the land had not been subject to an MSS). An alternative was proposed by the developer to perform a Master Infrastructure Review (MIR). This alternative was agreed to by the City. We understand that an MIR is not a standard study. Although the MIR included the primary elements of an MSS, it was specifically prepared for this smaller piece of land and was less focused on options, as this was only being established for one development.

The MIR, undertaken by the developer, was subject to a detailed review as part of the City's application review process. Within the Asset Management Branch (AMB) of the Infrastructure Planning Unit (organizational structure in place at the time), a team of experts was in place to participate in the development application process and conduct these reviews of servicing plans because of their expertise (and role) with the City infrastructure, and because it is AMB who becomes the manager of the new assets that are inherited from the developer.

We understand that, while the standard process would have the AMB conducting this review of the developer's MIR, due to certain complexities, management within Planning Services made the decision to hire a third-party consultant for this work and the AMB was removed from the file.

Interviews with representatives from the AMB indicated that it was surprising that management outsourced the review and confirmed that, despite this, they were informally asked for input because of their specialization and expertise and to bridge gaps in the understanding of the consultant. Interviews with others involved in the application review process (including those from the-then PIED and Public Works departments) also confirmed their surprise that the AMB did not conduct the review and indicated that, from their perspective, AMB staff tend to take a longer-term view as compared to an external consultant, who would have a short-term, technical

⁷ <https://ottawa.ca/en/planning-development-and-construction/community-design/community-plans-and-studies/community-design-plans>.

perspective. This was even more critical for this particular file because the stormwater management approach being proposed by the developer was not the traditional approach the City was accustomed to.

Removing key City representatives with the applicable technical skills and perspectives from the application review process increases the risk that equipment and processes being proposed by the developer may not be in the best interest of the City.

RECOMMENDATION 3 – FORMALIZE ROLE OF CITY EXPERTS

For all stages of the development application process, if a consultant is leveraged to conduct a peer review, the GM, PRED should establish a formal role for City subject matter experts to ensure the impact on City infrastructure is fully evaluated.

MANAGEMENT RESPONSE 3

Management agrees with this recommendation. When a consultant is leveraged to conduct a peer review a City subject matter expert will be assigned to fully capture the impact on City infrastructure. This will be completed by Q2 2024.

Appendix 1 – About the investigation

Investigation objective

The objective of this investigation was to assess the concerns raised in the reports received through the FWHL related to planning activities undertaken for the Conservancy development.

Scope

The scope of our investigation was limited to assessing whether the allegations had merit, and if so, determine the appropriate course of action that may be required for each of the issues.

It should be noted that the allegations presented involve some activities of a third party – the RVCA. The RVCA is a separate entity from the City of Ottawa and is governed by the province of Ontario and the *Conservancy Authorities Act*. The OAG has no jurisdiction to investigate allegations or concerns related to the activities of the RVCA and has not commented them.

Investigation approach and methodology

To assess the merit of the allegations outlined in the reports received, we undertook the following:

- **Review of information and documentation:** This included a detailed review of publicly available and City provided documents related to the development application.
- **Interviews with employees and discussions with management:** Interviews were conducted with City representatives and a limited number of third parties, including the RVCA.

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