

**1. LOCAL OFFICIAL PLAN AMENDMENT NO. 8 -
CITY OF NEPEAN (BARRHAVEN TOWN-CENTRE)**

COMMITTEE RECOMMENDATION AS AMENDED

That Council refuse Local Official Plan Amendment 8 to the City of Nepean Official Plan and that the Clerk issue the Notice of Decision.

DOCUMENTATION

1. Planning and Development Approvals Commissioner's report dated 25 Jul 2000 is immediately attached.
2. An Extract of Draft Minute, 08 Aug 2000, immediately follows the report and includes a record of the vote.

REGION OF OTTAWA-CARLETON
RÉGION D'OTTAWA-CARLETON

REPORT
RAPPORT

Our File/N/Réf. 14-00-0018
Your File/V/Réf.

DATE 25 July 2000

TO/DEST. Co-ordinator, Planning & Environment Committee

FROM/EXP. Planning and Development Approvals Commissioner

SUBJECT/OBJET **LOCAL OFFICIAL PLAN AMENDMENT 8**
CITY OF NEPEAN (BARRHAVEN TOWN-CENTRE)

DEPARTMENTAL RECOMMENDATION

That the Planning and Environment Committee recommend that Council approve Local Official Plan Amendment 8 to the City of Nepean Official Plan and that the Clerk issue the notice of decision attached as Annex 1.

BACKGROUND

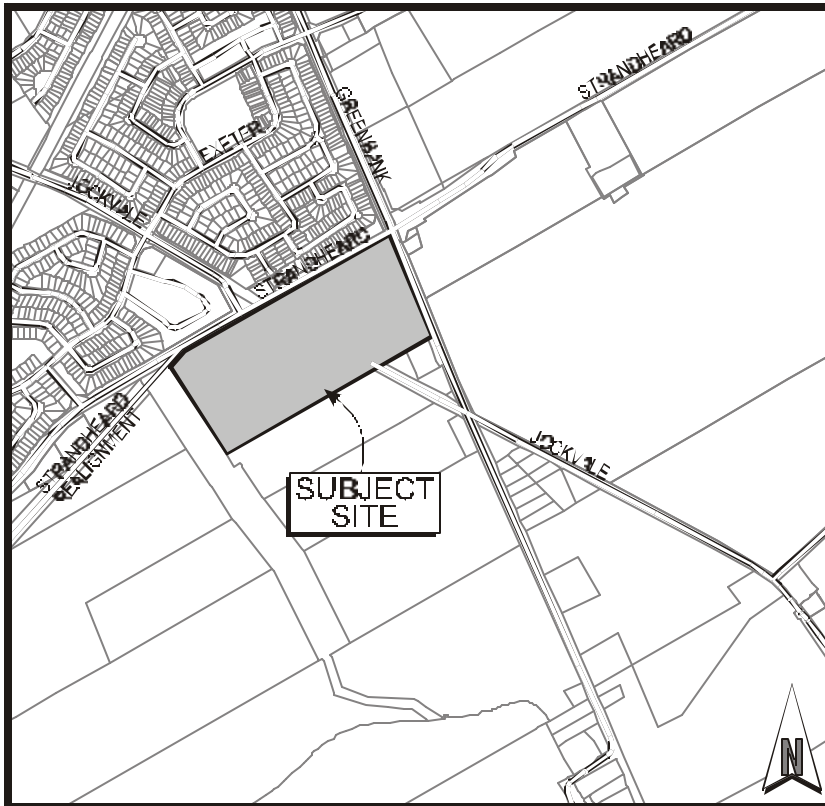
The City of Nepean adopted local Official Plan Amendment (LOPA) 8 on 04 May 2000 and subsequently submitted same to the Region for approval under Section 17 of the Planning Act, 1990 (i.e., the Bill 20 version) on 17 May 2000. LOPA 8, including relevant attachments, is attached as Annex 2. Nepean also approved a zoning by-law amendment for the subject lands which has been appealed to the Ontario Municipal Board by Alan Cohen (solicitor), on behalf of South Nepean Development Corporation (SNDC) - a land owner with land holdings in immediate proximity to the subject property and by Jeffrey Goldenberg (solicitor) on behalf of Trinity Development Group Inc. - a company interested in retail development on SNDC's property. Mr. Cohen, has also put the Region on notice that he intends to object to the passage of LOPA 8 by the Region.

Because of these objections, this application is deemed disputed and therefore is brought forward for the consideration of Planning and Environment Committee.

THE AMENDMENT

Location

Nepean's LOPA 8 applies to approximately 14 hectares of land located on the southwest corner of Strandherd Drive and Greenbank Road. (see location plan below). The subject lands are south of Barrhaven (an established residential community) and are located in lands designated "Town Centre" in the Region's Official Plan and as "South Nepean Activity Centre" in the Nepean Official Plan. The eastern portion of the site is currently developed with approximately 10,000 m² of retail space. It is designated to permit up to 21,900m² of retail based development.



Purpose

The purpose of LOPA 8 is to amend the restrictions on the maximum size of retail based development imposed by LOPA 7, an earlier amendment to the Nepean Official Plan. The current cap on retail development is 21,900 m² whereas the applicant is seeking to expand to 35,000m².

Basis

The subject property is located within the lands designated South Nepean Activity Centre. The Activity Centre is contemplated, in the long-term, to serve as a traditional downtown for South Nepean. Policies associated with the Activity Centre designation encourage mixed use development and include urban design guidelines intended to promote a more compact, urban form of development.

The current restriction of 21,900m² of retail development was imposed as a result of a design study conducted in 1994. Nepean staff now believe that the overall level of interest in retail space was underestimated and that current market analysis provides that additional retail space is warranted. Nepean concludes that the existing lack of retail facilities coupled with stronger than predicted employment growth have led to an accelerated demand for additional retail opportunities in South Nepean.

The applicant was required to submit a detailed market analysis to justify the additional retail space being proposed on the subject lands. The City contracted an independent marketing consultant to review the market analysis submitted by the applicant. This peer review supported the applicant's position - Nepean concluded that the proposed increase in retail permissions "would not undermine the planned commercial structure of South Nepean."

The applicant was also required to submit a transportation analysis in support of the proposed amendment. No problems were identified with respect to the transportation analysis, although a more detailed submission would be required in support of a final site plan.

EXTERNAL AGENCY AND PUBLIC COMMENTS

Nepean circulated LOPA 8 to the standard agencies and utilities. No objections were received from any of the circulated agencies. No letters or comments from local ratepayers were received. Copies of letters submitted by the applicant and appellant are included in Annex 3.

Regional staff attempted to broker a meeting between the applicant and the appellant to resolve issues and propose appropriate modifications. It was however the position of the parties that it was unlikely that such a meeting would assist in resolving the dispute.

OBJECTION AND STAFF COMMENT

No issues were raised regarding conformity with the Region's Official Plan. The objections submitted in respect to the proposed by-law amendment and, indirectly to the proposed LOPA, are primarily concerned with the adequacy of the transportation and market analysis submitted in support of the proposed by-law amendment. Nepean, in addition to having the benefit of its own market studies conducted in 1997, and 1999, contends that the studies submitted by the applicant are sufficient to recommend approval of the proposed amendments. Nepean also provides that appropriate updates to these studies will be required prior to the lifting of the holding zone proposed in the disputed by-law. The appellant disputes the legitimacy of this process and has provided contrary market analysis evidence in support of their appeal.

The issue, in its essence, is one of competition between the applicant and the appellant. Both are commercial landlords seeking to secure their share of the rapidly expanding retail development in South Nepean, both are attempting to secure key anchor tenants (possibly the same tenants), and both have appealed each others applications on the basis of their own market analysis. A separate report dealing with the disputed SNDC/ Trinity application (LOPA 24) is included on this agenda.

The issues and the staff response are summarized below.

1. Issue: The appellant contends that the approach of utilizing a holding zone violates the provisions of the Nepean Official Plan and that satisfactory transportation and market studies are required to be provided in support of a by-law amendment application.

Nepean responds that the transportation and market studies, which the applicant has provided in support of the application, are appropriate and that the proposed 2-tier holding zone will require that the applicant provide necessary updates at the time it chooses to pursue the lifting of the holding zone and proceed with approval of a final site plan.

Regional staff are satisfied that Nepean has respected the provisions of their Official Plan in processing the by-law amendment and LOPA and find no grounds on which to dispute the transportation study or market evidence which Nepean has relied upon. Indeed, Nepean supplementing its own market studies with an independent peer review of the applicants market analysis to confirmed that it was appropriate.

2. Issue: The appellant contends that the proposed zoning by-law amendment will slow down the commercial development on his client's property, which, in his opinion is prioritized in Nepean's Official Plan, and as such the subject amendment undermines the planned function of his clients property.

Nepean and the applicant respond that they dispute the notion that one site (or designation) is prioritized over the others, but rather that the intent of the Activity Centre policies is that the whole of the area function in the long-term as a "downtown" for South Nepean. Nepean also disputes the market analysis upon which the appellant bases this argument. Indeed the peer review conducted by the Corporate Research Group for Nepean concluded that "the additional amount of retail space being requested would not undermine the planned commercial structure of South Nepean, and would appropriately support the intensification of the primary commercial area, the Activity Centre." Nepean acknowledges that there may be some issues related to the short-term competing development interests, but that these matters are more appropriately left to the open market and that there was limited risk to the long-term planned function of either site.

Regional staff cannot concur with the appellant that his client's site has primacy over the subject lands. Regional staff are also not in a position to dispute the independent market analysis provided to Nepean and therefore cannot find appropriate grounds on which to recommend against the decision of Nepean to approve the proposed amendments.

It is the responsibility of the Region, as Minister, to ensure that Nepean follows the provisions of their Official Plan. Nepean staff (staff report) and the applicant's consultant have demonstrated that the proposed development is consistent with the provisions of the Nepean Official Plan. The required transportation and market studies have been submitted and endorsed as appropriate by Nepean. Nepean suggests that the use of the 2-tier holding zone was recommended primarily because it could be some time before the actual development of the site occurred and Nepean wanted to ensure that transportation and market reflect the conditions at that time.

CONSULTATION

Nepean held a public meeting on 20 April 1999, and 02 May 2000 as required by Section 17(15) of the Planning Act, 1990.

FINANCIAL IMPACT

Not applicable.

CONCLUSION

Regional staff find that the proposal conforms to the Regional and Nepean Official Plans. The proposed use is permitted in the Nepean Official Plan and Nepean has confirmed that it meets the criteria set out for assessing the appropriateness of new commercial uses. Nepean, in support of the rezoning application, requested and received appropriate transportation and market analysis studies to aid in assessing impact of proposed development.

Regional staff do not concur with the appellant that Nepean staff have erred in respecting the provisions of their Official Plan in processing the application and assessing the appropriateness of the proposed use. It is clearly the responsibility of Nepean to determine the compatibility of adjacent land uses (zoning) and to administer site plan control approval. It is staffs position that there are no reasonable grounds under which to use the powers delegated by the Province to deny the LOPA, nor was it appropriate to object to the passing of the zoning by-law.

*Approved by
N. Tunnacliffe, MCIP, RPP*

ANNEX 1

Date:
 Regional File: 14-00-0018
 Contact: Michael Boucher, Regional Planner

Applicable Planning Act: **Bill 20**

John LeMaistre, City Clerk
 City of Nepean
 101 Centrepointe Drive
 Nepean, ON K2G 5K7

Dear Mr. LeMaistre:

**Re: Barrhaven Town Centre Inc.
 Local Official Plan Amendment (LOPA) 8
 City of Nepean**

In accordance with Section 17(35) of the Planning Act, you are hereby notified of the Regional Council's decision to approve, under authority assigned to Regional Council by the Ministry of Municipal Affairs and Housing, Amendment 8 to the Official Plan of the City of Nepean.

PURPOSE OF THE AMENDMENT

The purpose of the amendment is to increase the restriction on maximum retail based development on the subject property. The current restriction is 21,900 m² - the application is to increase this to 35,000 m².

INFORMATION

Information on LOPA 8 can be obtained from the Regional Planning and Development Approvals Department at the above-noted address (attention: Michael Boucher at 560-6058, extension 1584) or the City of Nepean Planning Department at 101 Centrepointe Drive [attention: Dana Collings, MCIP, RPP at 727-6700 extension 337].

NOTICE OF APPEAL

Pursuant to Section 17(36) of the Planning Act, any person or public body may, not later than 4:30 p.m. on (date - 20 days after the giving of notice), appeal the decision by filing a notice of appeal to Amendment 8 with the Regional Planning and Development Approvals Department. Such appeal must identify, in writing, which section(s) is/are being appealed and the reasons for doing so. All appeals

must also be accompanied by a certified cheque in the amount of \$125.00 (to the Minister of Finance, Province of Ontario) to cover the Ontario Municipal Board's prescribed fee.

If no notice of appeal is received before or on (date - 20 days after giving of notice), the decision of Regional Council is final and Amendment 8 will come into effect on (date - the day after the last day for appeal).

Please note that only individuals, corporations or public bodies may appeal a decision of the approval authority to the Ontario Municipal Board. A notice of appeal may not be made by an unincorporated association or group. However, a notice of appeal may be made in the name of an individual who is a member of the association or group on its behalf.

RELATED PLANNING APPLICATIONS

The lands to which LOPA 8 applies are also the subject of 2 rezoning applications, both of which have been appealed to the Ontario Municipal Board.

Dated dd/mm/yyyy.

Sincerely

Mary Jo Woollam
Clerk

c.c.: Dana Collings, MCIP, RPP - City of Nepean Planning Department
Alan Cohen, Soloway Wright
Jeffrey Goldenberg, Fogler Rubinoff

AMENDMENT NO. 8

to the
Official Plan
of the
City of Nepean

THE CORPORATION OF THE CITY OF NEPEAN

BY-LAW NO. 037- 2000

Being a by-law of The Corporation of the City of Nepean to adopt Amendment No. 8 to the Official Plan of the City of Nepean

WHEREAS the Council of the Corporation of the City of Nepean, in accordance with the provision under Section 17 of the Planning Act, hereby enacts as follows:

1. Amendment No. 8 to the Official Plan of the City of Nepean, consisting of the attached explanatory text is hereby adopted.
2. That the City Clerk is hereby authorized and directed to make application to the Regional Municipality of Ottawa-Carleton for approval of Amendment No. 8 to the Official Plan of the City of Nepean.
3. This by-law shall not come into force or take effect until approved by the Regional Municipality of Ottawa-Carleton.

PASSED AND GIVEN under the Hands of the Mayor and City Clerk and the Corporate Seal of the Corporation of the City of Nepean this 4th day of May, 2000.

original signed by _____
John LeMaistre, City Clerk

original signed by _____
Mary Pitt, Mayor

CERTIFIED TRUE COPY

JOHN LEMAISTRE
City Clerk

AMENDMENT NO. 8
OFFICIAL PLAN OF THE
CITY OF NEPEAN

PURPOSE:

The purpose of Amendment No. 8 is to amend Section 4.4 of the Secondary Plan for Area 7 of the Nepean Official Plan to increase the amount of retail based development which can occur within the Major Commercial Designation of the subject lands only.

The affected lands are shown for information purposes on Schedule "A" to this Amendment.

BASIS:

The subject lands are situated within the City of Nepean's Activity Centre for the South Nepean area. The site is presently developed with approximately 10,000 square metres of space and was developed at a time prior to the adoption of detailed land use and urban design policies for the overall Activity Centre. Current Official Plan policies permit up to 21,900 square metres of retail based development for the Major Commercial designation within the Activity Centre. This development limitation was originally based on a 1994 design study and was formally incorporated into the City's Official Plan by the adoption of Official Plan Amendment No. 7 in 1997.

Since the adoption of the Activity Centre policies, the overall level of retail interest within and adjacent to the Activity Centre appears to have been underestimated. Included in this interest is a new Canadian Tire soon to be located north of the Activity Centre as well as significant interest in securing development approvals for both the subject lands and the District Retail designation located to the east of the subject lands. The existing lack of retail facilities within South Nepean as well as strong residential and employment growth rates have served to foster this interest.

Subsection 4.4 of the Secondary Plan for Area 7 requires the completion of a Market Study for any amendments to the retail limitations in the current policy. A detailed market analysis was prepared by the applicant to justify the additional retail space being proposed for the Activity Centre.

This review was also critiqued by an independent marketing consultant retained by the City. Key findings of importance to the City were that the proposed additional space fits within the long term warrants for South Nepean and that the increased permissions would not undermine the planned commercial structure of South Nepean.

A transportation analysis was also undertaken to support the application to increase the retail permissions. It was found that the planned network of streets within the overall South Nepean area would be able to accommodate the increase in levels.

THE AMENDMENT:

1. That Section 4.4 of the Secondary Plan for Area 7 be amended as follows:

By replacing "21,900 square metres" with "35,000 square metres" where it appears in Subsection 4.4.4.3 1.) of Section 4.4.



SCHEDULE 'A' TO AMENDMENT No. 8

LANDS AFFECTED BY
AMENDMENT No. 8



SCALE 1:10 000

100 0 100 200 300



METRES



ANNEX 5

SOLOWAY, WRIGHT LLP
BARRISTERS AND SOLICITORS

427 LAU

SUITE 200
OTTAWA, ONTARIO
K1R 7Y2

ALAN K. COHEN

DIRECT LINE: (613) 782-3217
EMAIL ADDRESS: cohena@soloways.com

TELEPHONE: (613) 236-0111
FAX: (613) 238-8507

FILE NO: 28268-1023

BY FACSIMILE

May 29, 2000

Mary Jo Woollam, Clerk
Regional Municipality of Ottawa-Carleton
111 Lisgar Street
Ottawa, ON K2P 2L7

Dear Ms. Woollam:

Re: Amendment No. 8 to the Official Plan of the City of Nepean

We are solicitors for South Nepean Development Corporation, the owner of extensive holdings in South Nepean and, more specifically, the owner of lands south of Strandherd Drive and east of Greenbank Road. These secondly described lands form the district retail portion of the Activity Centre of South Nepean.

Would you please be so kind as to accept this letter as a formal request pursuant to subsection 17(35) of the Planning Act, RSO, 1990 c. P.13 for Notice of the Decision made by your municipality respecting OPA No. 8 of the City of Nepean under subsection 17(34) of the Planning Act.

Would you please ensure that we receive written acknowledgment of this formal request.

Thank you for your kind attention to this matter.

Yours truly,


Alan K. Cohen
AKC/bc

cc: ✓ Nick Tunnacliffe, Planning Commissioner, R.M.O.C.
Jack Sterling, Commissioner Planning, City of Nepean
Jeffrey B. Goldenberg, Fogler, Rubinoff LLP
Dan Paquette, S.N.D.C.

Fogler, Rubinoff LLP
Suite 4400, P.O. Box 95, Royal Trust Tower
Toronto-Dominion Centre
Toronto, Ontario, Canada M5K 1G8
Telephone: 416 864-9700 Fax: 416 941-8852
www.foglerubinoff.com



Reply To: Jeffrey B. Goldenberg
Direct Dial: 416-941-8814
E-mail: jbg@foglerubinoff.com

May 26, 2000
99/3656 -- BY FAX ONLY (613-560-6006)

**Regional Municipality of
Ottawa-Carleton**
Planning and Development
Approvals Branch
111 Lisgar Street
Ottawa, Ontario
K2P 2L7

Dear Sirs:

**Re: Amendment No. 8 to the Official Plan
of the City of Nepean**

We are the solicitors for Trinity Development Group Inc., the purchaser of lands located in the southeast quadrant of Strandherd Drive and Greenbank Drive, being the lands designated "District Retail" and the activity centre pursuant to the Official Plan of the City of Nepean.

We are in hand with a copy of the notice of adoption of amendment No. 8 to the Official Plan of the City of Nepean which has been forwarded to the Region for approval by the said City.

Would you kindly ensure that the writer is given notice of the decision made by the Region pursuant to Section 17(34) of the Planning Act in respect of Amendment No. 8 of the Official Plan of the City of Nepean. Kindly consider this a request for notice pursuant to subsection 17(35) of the Planning Act.

Would you kindly acknowledge receipt of this letter.

Yours very truly,

FOGLER, RUBINOFF LLP

Per:


Jeffrey B. Goldenberg
JBG/tmn

cc by fax: Stefan Savelli (Trinity Development Group Inc.)

cc by fax: John Ruddy (Trinity Development Group Inc.)

cc by fax: Alan K. Cohen (Soloway, Wright LLP)

cc by fax: Bill Holzman (Holzman Consultants Inc.)

K:\GOLDENB\WpData\TRINITY\SOUTHNEPEAN\MunicipalMatters\tr-region1.wpd
--May 25, 2000 (12:34pm)

ONTARIO MUNICIPAL BOARD

**IN THE MATTER OF SUBSECTION 34(19) of the
Planning Act, RSO 1990, c. P.13, as amended;**

**AND IN THE MATTER OF an Appeal by South
Nepean Development Corporation against Zoning
By-Law 029-2000, adopted by the Corporation of the
City of Nepean on May 4th, 2000.**

NOTICE OF APPEAL

1. South Nepean Development Corporation (the,"Appellant") is the owner of approximately 1,000 acres in that portion of the City of Nepean known as South Nepean.
2. Among the 1,000 acres owned by the Appellant are approximately 37 acres recently designated commercial by the City of Nepean. These 37 acres form a part of a larger commercial area known as the "Activity Centre".
3. By-Law 029-2000 rezones another part of the Activity Centre which is owned by Barrhaven Town Centre Inc.(the "Lands") and which is located across the street from the commercial lands owned by the Appellant.
4. The City of Nepean adopted By-Law 008-2000 on February 10th, 2000. This Zoning By-Law Amendment was designed to rezone the Lands. That By-Law was appealed by the Appellant and is in the hands of the Ontario Municipal Board.
5. The Appellant alleges and the fact is that Zoning By-Law 008-2000 was and is premature and this can also be said of By-Law 029-2000. Indeed, there is a holding zone in By-Law 029-2000 which is not to be lifted until updated transportation and market studies have been filed with Nepean. This method of approving the zoning prohibits the Appellant from dealing with or challenging the studies when filed and precludes the possibility of an Appeal to the Ontario Municipal Board at that time.
6. Nepean's Official Plan contemplates such a rezoning as set out in By-Law 029-2000, only upon the provision of satisfactory transportation and market studies. As indicated, such updated studies , though required by Nepean, are not yet filed with Nepean.
7. The Appellant alleges all facts and grounds set out in its Appeal to By-Law 008-2000, as if contained herein, and asserts that they apply as well to By-Law 029-2000.
8. The Appellant alleges and the fact is that By-Law 029-2000 fails to comply with the Official Plan of the City of Nepean in that appropriate studies have not yet been filed and the best market evidence available to the City of Nepean is that the proposed Zoning By-Law Amendment 029-2000 will slow down the commercial development on the east side of Greenbank Road and south of Strandherd, which is the district

retail portion of the activity centre of South Nepean, which is prioritized. As such, By-Law 029-2000 undermines the planned function of the district retail portion of the Activity Centre on the east side of Greenbank Road, owned by the Appellant. The city of Nepean staff has admitted that this is the case and proposes to deal with the issue by the use of the holding by-law mechanism and has adopted an amendment to its official plan to allow for the growth of the retail component on the Lands. As a consequence of the foregoing, By-Law 029-2000, in addition to its being premature, is inappropriate, constitutes bad land use planning and is not in the public interest.

9. For such other reasons as Counsel may determine and the Board may permit.

All being respectfully submitted this 30th day of May, 2000.

SOLOWAY, WRIGHT LLP
Solicitors for the Appellant
South Nepean Development Corporation

Per: 
Alan K. Cohen

TO: John LeMaistre, Clerk
City of Nepean

AND TO: Ontario Municipal Board

AND TO: Jack Stirling, Planning Commissioner
City of Nepean

AND TO: Daniel Paquette, Senior Planner
South Nepean Development Corporation

Extract of Draft Minute
Planning and Environment Committee
08 August 2000

LOCAL OFFICIAL PLAN AMENDMENT NO. 8
CITY OF NEPEAN (BARRHAVEN TOWN-CENTRE)

- Planning and Development Approvals Commissioner's report dated 25 Jul 2000

Chair Hunter noted the relationship between City of Nepean's Local Official Plan Amendments (LOPAs) 8 and 24 and, with the Committee's concurrence, directed that staff make one presentation on both Amendments. Mike Boucher, Planner, Development Approvals Division, Planning and Development Approvals Department, then provided the Committee with an overview of staff reports pertaining to both of the Amendments.

Councillor McGoldrick-Larsen recalled Nepean LOPA 7 had received final approval in 1997, at which time the Barrhaven Town Centre had been approved for 21,900 square metres of development. She was puzzled that three years later, they were seeking an expansion to 35,000 square metres, and that this had been approved by the City of Nepean. Councillor McGoldrick-Larsen asked what had occurred within this short period of time to warrant the City's approval of such an expansion.

Mr. Boucher explained the 21,900 square metre cap imposed through LOPA 7 was based on the initial urban design study done for Nepean in the early 1990's. He noted the text of the LOPA and the planned function of the major commercial area was to recognize the existing commercial development and to accommodate additional retail that would serve the travelling public, area residents and pedestrians. He said despite the cap, LOPA 7 did contemplate additional retail on-site, and specifically, a westward expansion.

Councillor McGoldrick-Larsen then asked about the possibility of approving LOPA 8 conditional upon timing (e.g. within a year or two), as opposed to proceeding with an immediate expansion to the Barrhaven Town Centre. Mr. Boucher advised Committee did have authority to direct staff to modify the LOPA but pointed out this was not what was being applied for. Further, Mr. Boucher emphasized it was staff's position the holding zone accomplished what was required under Nepean's Official Plan, that no modifications were required, and that the application was appropriate. He said he would be wary of making such a recommendation based solely on planning grounds, as there were other issues involved relating to market and competition. He noted the phrase "planned function" had been used to involve land use planning arguments, but said staff were of the opinion there were no legitimate planning reasons not to approve the LOPA.

The Councillor then asked if it was Mr. Boucher's opinion that, regardless of any decision made by Committee or Council, the matter was likely to be decided at the Ontario Municipal Board (OMB) in any event. Mr. Boucher concurred with this.

Councillor van den Ham questioned why Nepean would have established a holding zone for LOPA 8 if the City felt confident in the studies, and that according to the City's own reports, growth had taken place to support additional retail space. Mr. Boucher explained the primary reason the holding zone provision was used in both cases was to ensure that Nepean (or the future City of Ottawa) would retain the ability to require certain studies. He noted the original application, approved to 21,900 square metres, had taken considerable time to develop. Using this example, he stated that if there was a five year lag between the time of approval and the time when an actual development proposal was brought forth, the use of the holding zone would allow Nepean to insist on market studies, etc., before dealing with the issue of a site plan.

Councillor van den Ham suggested if there was no desire by the proponent to build for five years, they could wait to apply until such time as the facts regarding required space were known. The Councillor felt the proponents were currently "guesstimating" their future needs. Alternatively, he suggested the proponent could build to the current allowable limit, and submit an application for expansion in future when the need arose. Mr. Boucher replied the application by the proponent of LOPA 8 had not been made entirely speculatively, and that a specific tenant might have been lined up for this extra space. He said that besides the issue of competition for anchor tenants, there was a possibility the proponents of both LOPAs were competing for the same tenant.

Responding to a question from the Chair as to how much resulting retail space would exist in the South Urban Community if both LOPAs were approved, Mr. Boucher said the existing cap in the district retail area was approximately 45,200 square metres, consisting primarily of the property under the control of the South Nepean Development Corporation (SNDC) and partially that of the Trinity Development Group. The inclusion of the upset limit of 35,000 square metres requested by the Barrhaven Town Centre would result in a total of about 77,500 square metres.

Chair Hunter then asked if this was equivalent to what the previous Regional Official Plan (ROP) had envisaged for the South Urban Community Regional shopping facility. Nick Tunnacliffe, Commissioner, Planning and Development Approvals Department, said he did not believe the Region had specified square metreage in new centres outside the greenbelt, i.e., Kanata Town Centre or South Nepean. However, he noted this would be comparable in size to Ottawa's St. Laurent Shopping Centre. Mr. Boucher said the afore-noted centres were all in the order of 70,000 square metres, St. Laurent comprising about 77,000 square metres.

Responding to further questions from the Chair, Mr. Boucher said that from the outset, the notion had been that the Town Centre and Activity Centre would collectively respond as a Regional shopping facility. Speaking to the objection launched by the appellants to LOPA 8 that one site or one designation had primacy over the other, Mr. Boucher said staff did not

agree. He outlined the long term objective was for the Town Centre or Activity Centre to function as a “downtown”, and in the short term, to function as a Regional shopping centre or Regional scale facility.

Chair Hunter said he found it difficult to get excited about either LOPA, as he felt Nepean had made a major mistake in allowing its major retail facilities for the South Urban Community to be located away from the highway.

At Councillor Stewart’s request, Mr. Boucher addressed transit serviceability for both parcels of land. Speaking first to the area encompassed by LOPA 24, Mr. Boucher noted the subject area consisted of 2.5 hectares of land but it is also part of a larger development (as shown in the concept plan on page 33 of the Agenda). He said one point of frustration in trying to deal with such a large piece of land was that the long term conceptualization envisioned an urban setting with streets and with street level activity. However, he noted this would not happen in the short term. He explained the City of Nepean and the Region have attempted to allow development which potentially allows a large department store or the types of retail likely to be seen in the short term, but in such a way that the long term expansion and “urbanization” of the lands is not compromised. He noted the public roads in the development have been taken up-front to ensure the City and the Region have some control over how this develops. As well, an extension of the Regional transit corridor was also planned to run behind the proposed Canadian Tire site on the north side of Greenbank Road. Mr. Boucher stated from the outset, the development of a grid pattern has been planned to allow the long term redevelopment of the site in such a way that in future, the contemplated urban uses could be achieved, while not compromising interim transit and the Regional road network. He noted the LOPA 24 site has gone through a plan of subdivision, a detailed master site plan, and submissions in support of zoning.

With regard to LOPA 8, Mr. Boucher explained an existing approved site plan and detailed transportation analysis had been submitted, and would be further refined once a final detailed site plan was brought forth. He further noted it would be possible to put a public road through the property. He was uncertain whether the alignment of the Jockvale Road extension had been established, but noted this could be reexamined. Responding to an observation from Councillor Stewart on the proximity of the LOPA 8 area to the proposed Transitway extension, Mr. Boucher confirmed the area was too far away to be served by the Transitway, and would likely be serviced by local buses.

Councillor Stewart asked if Amendment 8 would change the area from being a mid-sized shopping district into a major one. Mr. Boucher explained a major commercial facility was defined as being up to 35,000 square metres, and that above this, the range from 35,000 to

70,000 square metres was seen to be a Regional level facility. He noted LOPA 8 would be at the bottom limit of regional and the upper limit of major commercial.

Jane Ironside spoke on behalf of the Barrhaven Town Centre, owners of the land affected by LOPA 8. Ms. Ironside explained the Barrhaven Town Centre had applied to amend Nepean's Official Plan in 1996, prior to the approval of LOPA 7. She said a decision was made at that time to hold the application in abeyance pending the resolution of LOPA 7. Ms. Ironside said the Barrhaven Town Centre had been looking for a phased ability to expand. She noted LOPA 7 allowed the shopping centre, currently at 100,000 square *feet*, to expand to 250,000 square *feet*. She said even before LOPA 7 had been approved the proponents had wanted a fuller expansion, but decided to seek approval to expand to 250,000 square feet in the interim, then reactivate the application for the larger expansion. She emphasized the proponents had not simply gone through the LOPA 7 process and then realized more space was needed; more space had been desired at the outset, but the decision was made to allow the implementation of the expansion to occur in phases.

The speaker said the need for expansion was primarily geared to changing retail trends. She noted supermarkets that once occupied 50-60,000 square feet in a 250,000 square foot mall now wanted 90-100,000 square feet and junior department stores (i.e., Zeller's) that once occupied 60-70,000 square feet now wanted 100-120,000 square feet of retail space. Ms. Ironside stated more floor space was now required to provide the same types of stores and services to the community.

She said the proponents believed the earlier market studies were sufficient to support the requirements of both the City's and Region's Official Plans, and she did not believe allowing the expansion of the Barrhaven Town Centre would delay development at the SNDC/Trinity site. She believed initial studies underestimated the amount of retail space required, as housing and employment growth had occurred much faster than anticipated a decade earlier. She spoke against phasing being instituted in the LOPA, as she felt there was adequate phasing built into holding provisions instituted in the zoning by-law. She felt this included sufficient safeguards with regard to the studies required for marketing and transportation to allow Nepean to have control over the time and rate at which development would take place. Ms. Ironside asked the Committee to support LOPA 8.

Speaking to her objections to LOPA 24, Ms. Ironside felt that anticipated requirements for additional land were premature in that LOPA 24 dealt with a vacant site on which no development had taken place. She said it was premature to add more land to the district retail area on the subject property to accommodate a less compact form of development. She noted that with the amount of development proposed for the Barrhaven Town Centre site, benefits

included a more compact form of development and greater compliance with Nepean's urban design guidelines in terms of pedestrian-oriented development.

Chair Hunter noted the speaker's examples of the greater area required by a junior department store or grocery store showed a 10 to 15% increase in footprint size, yet the expansion from 21,000 to 35,000 square metres represented an approximate 40% increase in retail area. He asked Ms. Ironside to account for the difference. Ms. Ironside explained that each of the smaller retailers felt they needed more space to serve the market adequately.

The Committee Chair asked if studies undertaken by Ms. Ironside's clients had not concluded that once a junior size department store was constructed, there would be no need of another until the year 2016. Ms. Ironside believed this had been one of the conclusions, but she also felt that holding provisions in the bylaws would look after questions of timing. She said the proponents would prefer to have the market determine the distribution and timing of development rather than having this determined by Committee or Council.

Based on Ms. Ironside's client's own market study, Chair Hunter suggested the other proponent would be negatively affected if the Barrhaven Town Centre were to secure the first junior department store. Ms. Ironside did not agree. She said Trinity was contemplating a number of uses on its site besides a junior department store, which could proceed in advance of 2016. She felt there were other retail opportunities, and did not feel the junior department store should be the only use to determine whether expansion would take place on either site.

Councillor McGoldrick-Larsen noted the Barrhaven Town Centre's main opposition to LOPA 24 was on the basis that Trinity Developments was adding more land. However, the Councillor stated it was her understanding that because of the dedication of a residential street through the Trinity site, potential development space had been eliminated. Therefore the total square footage that was perceived for development of retail space, would not change. Mr. Boucher stated he had heard the argument that the expansion was partially motivated by some of the land being taken up for the public street. He said he could not agree with this argument 100% and felt this alone was not sufficient to warrant the expansion. Having said that, Mr. Boucher stated it is staff's recommendation there is no planning detriment to approval of the expansion proposed in LOPA 24.

Bill Holzman, a planning consultant for Trinity Development Group. Addressing LOPA 8, Mr. Holzman felt it important for the Committee to visualize the sizes of the shopping centres proposed. He advised the South Keys shopping centre occupied 42,500 square metres (450,000 square feet) and would be equivalent in size to the district retail area of the Trinity/SNDC site (LOPA 24). He said the Barrhaven Town Centre (LOPA 8), at 35,000 square metres, would be comparable in size to either the IKEA (Pinecrest) Mall or Billings

Bridge shopping centre. He believed that if both LOPAs were approved, there would be very little difference between the two sites.

Mr. Holzman said his clients supported the staff recommendation for LOPA 24. He said LOPA 24 would add a very small piece to the existing district retail site, and noted his client's site was very different from the Barrhaven Town Centre site. Speaking to some differences between LOPAs 24 and 8, he noted his clients were required to go through a plan of subdivision, whereas the proponents of LOPA 8 were not. Whereas the Trinity site requires transit service, the same obligation did not apply to the Barrhaven Town Centre. Mr. Holzman said the Trinity site incorporated a grid pattern of roads as part of the concept which was the subject of Council approval at the City of Nepean for a master site plan approval and agreement; a significant step not required of the Barrhaven Town Centre site. Mr. Holzman felt the application for LOPA 24 was straightforward. He said it did not add a square foot of building space, and did not impact negatively on the civic mixed-use lands to the south.

Mr. Holzman explained the boundary of the district retail area was established following studies by Nepean in the 1980's. He elaborated that a study commissioned in the late 1980's evolved into LOPA 7, which received final approval on 29 Oct 98. Subject to appeals, LOPA 7 was finalized in 1999. He noted his clients' concept, approved by Nepean Council, included elements that impacted the detailed design. He said the boundary of the district retail area, established through the 1990's, was taken by Nepean to be firm. However, Mr. Holzman stated that after filing a site plan application, determining the layout, and seeing how much land was to be taken up for road widenings, a transit corridor, future public roads, and pedestrian linkages, it was determined all the desired elements would not fit into the space allowed. He said City staff and Council had accepted Trinity's application as *bona fide*. Mr. Holzman emphasized the importance of his clients' regional shopping centre having a junior department store in order to achieve its planned function of a district retail area, and he noted that save for the landowners across the street, there had been no opposition to LOPA 24 from residents or other stakeholders throughout the whole public process

The speaker noted his clients did not support the staff recommendation on LOPA 8, and hoped Committee would leave the Barrhaven Town Centre at its 21,900 square metre cap. Mr. Holzman said the 40% increase in area would put it on an equal plane in terms of size, scale, and in terms of attracting the same type of tenants as the Trinity site, without imposing the same obligations the Trinity site proponents had to go through.

Regarding the issue of having the market determine development, Mr. Holzman said such a position had been taken by Nepean and by Regional staff, but he felt imposing specific caps through official plans and zoning limits development and serve to control the market. He said his

clients were prepared to accept such constraints, and he hoped Committee and Council would accept this as reasonable for the LOPA 8 site.

In conclusion, Mr. Holzman noted the City's and Region's Official Plans contained a hierarchy of commercial uses and he felt approval of LOPA 8 would conflict with both Official Plans. He agreed the whole activity centre was a regional scale shopping facility, but noted it was made up of different components, including a *regional* shopping centre site, a *major* shopping centre site, a civic main street commercial area, and residential, institutional and public space uses, which combined to create a healthy core for South Nepean. The speaker felt that if any of these components were weakened, a weaker regional scale shopping facility site would result. He said his clients believed that if the right tenants could be attracted, and with favourable economics, a three to five year build-out could be expected. However, he felt that competing interests attempting to secure the same tenants would result in a watered-down version of what was originally desired.

Dan Paquette, South Nepean Development Corporation (SNDC), explained the SNDC, made up of Minto Developments in partnership with the Shankman family, owned both the LOPA 24 site and 1,000 acres of land to the immediate east, and was marketing a community. He said that the SNDC had been happy from a marketing point of view to enter into a purchase and sale agreement with Trinity Developments. Mr. Paquette said the developers wanted to be able to tell prospective home buyers that a thriving shopping centre would soon be built at the corner of Greenbank Road and Strandherd Drive. He said his clients' efforts were directed towards providing the amenities that would bring South Nepean into a mature community. He was afraid the impact of increasing commercial permissions, as proposed by LOPA 8 would result in "two glasses that were half empty". He asked for recognition of the master plan which envisaged 42,500 square metres on the Trinity site and 21,900 on the Barrhaven Town Centre site. Mr. Paquette noted the Trinity site had been assigned larger build-out allowances for a variety of reasons, the main one being a Transitway corridor that would serve the site. He emphasized LOPA 24 was simply a land adjustment to accommodate the 42,500 square metres originally assigned to the site, noting the City had not originally assigned enough land to build out to the permitted square footage. He contrasted that LOPA 8, asking to build out to 35,000 square metres from 21,900, was a different type of application.

Noting Trinity Developments was faced with a number of subdivision requirements not required of the Barrhaven Town Centre, Councillor McGoldrick-Larsen questioned how such elements factored into the cost and timing of development. Mr. Boucher noted the two sites were different in that the LOPA 24 site was vacant and was in the path of a Transitway. He confirmed Mr. Holzman's assertion the site required transit, which would take up land. The site was also required to be based on a modified grid, imposed by a plan approved through consultation and years of development. Mr. Boucher said the function of the Barrhaven Town

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Centre (subject of LOPA 8), as outlined in the Nepean Official Plan and secondary plans, was to accommodate existing development. He noted this was an existing shopping centre already serving the public and area residents, which wished to expand westward.

He explained the LOPA 24 site had higher standards imposed on it because Nepean, in consultation with the Region, ratepayers and other agencies, decided it wanted to achieve something on these lands which could not be achieved by attaching onto an existing shopping centre. Mr. Boucher acknowledged that in all likelihood there would be either a public road through the LOPA 8 site or an extension of the Jockvale Road, and that there would be transit service in the area. However, he did not believe this would be the same as in the subject area of LOPA 24 and lands to the immediate north. He noted all the planning documents and work that had gone into creating the Official Plan and Secondary Plan recognized that the two were two entirely separate sites.

Councillor McGoldrick-Larsen asked Mr. Boucher to comment on the view that if both sites were allowed to proceed, it would be detrimental to both because it would take longer to develop. She asked if the market studies had not indicated otherwise. Mr. Boucher was wary of speaking to detailed market analyses as the Region had not hired an independent marketing consultant to critique the marketing studies that had been performed. He said that from what he had reviewed and from what was before Nepean Council before it made its decision, he understood that Nepean had its own marketing advice that it considered up-to-date, and that the applicants had submitted additional market analyses. Further, each applicant had submitted critiques of the other's market studies. Nepean took the position, supported by independent peer review, that there would be no impact to the long term planned function of either site. Mr. Boucher said Nepean acknowledged there might be interim competition issues, but it was felt these were not so much planning matters as they were matters falling within the purview of business cases for each of the facilities. He believed both Nepean and Regional staff were recommending that this was not a planning matter, and that arguments regarding the issue of planned function had not been made to the point where it could be said that Nepean had erred in making its decisions.

Councillor McGoldrick-Larsen felt that no matter what Committee and Council decided, one party or another would appeal any decision made on LOPA 8 to the OMB. Mr. Boucher's assessment was that the Amendment would go to the OMB in any case, as the zoning by-laws had been appealed. As Mr. Boucher believed there were no planning grounds with which the Region should involve itself at a hearing, he recommended that Regional staff not take part in the hearing, unless subpoenaed.

Councillor Hume asked Mr. Holzman to comment on why the market should not decide timing of development, and to explain his view as to how LOPA 8 offended the ROP. Mr. Holzman

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explained the ROP stipulated there should be a town centre. He noted a town centre is made up of a number of functions, and he felt that if one of the main functions was faulty, or if two of them suffered, he believed the whole planning area would be suspect. He felt it was up to Regional Council to determine whether the right decisions were being made in implementing its own Official Plan.

Regarding market driven development, Mr. Holzman believed substantial work had been done, and that there had been a great deal of influence by City planners and politicians in imposing market conditions by virtue of caps that had been placed on development. Mr. Holzman questioned why, when market studies were something of a gray area, updates were required as a condition of lifting the holding provisions. He believed this was beyond a market issue, and rather was a planned function issue of the whole Town Centre which included the district retail and major commercial areas.

Councillor Hume noted Mr. Holzman had indicated Nepean was placing a holding zone on the Barrhaven Town Centre pending an updated, or new market study. He asked why the Region would allow the Barrhaven Town Centre to move up into a similar scale of development when it seemed their market study did not justify this. Mr. Boucher suggested that Nepean staff, the independent consultant hired to review the market studies and the applicant submitting the studies felt they had met the tests of the Nepean Official Plan. He noted that market, and the feasibility and desirability of commercial structures, were issues that planners looked at every day, however, he said he could not concur the analyses and studies were designed to decide who would get a department store. Rather, he felt these were ways of ensuring that Regional facilities such as roads and transit were in place, and that the land was not over-designated.

Mr. Boucher went on to say it was his belief that each applicant, in objecting to the other's application, had failed to make the case that the market analysis was faulty or insufficient to allow the amendment to proceed. He said that rather than using the holding zone, Nepean could have refused both applications and made the final market study a requirement, but it was Nepean's position that development could take five years. He said Nepean thought it was responsible to proceed with the amendment and then, in response to a detailed submission, make the update, if later required, a condition of the lifting of the holding zone. Mr. Boucher said Nepean might have to answer for its decisions at the OMB, but said he did not believe either appellant had made the case that there was a problem.

Responding to another query from Councillor Hume as to whether he believed LOPA 8 offended the ROP in that it stratified commercial development, Mr. Boucher said he could not agree with Mr. Holzman's argument that one site was more important or had a primary interest over the other. He noted the whole of the area in the activity centre was to act as a Regional

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facility, that in the long term would be a “downtown” for South Nepean. He noted Nepean agreed with this assessment.

Councillor van den Ham saw the whole of the issue as a competition for square footage of retail space. He noted LOPA 8 was seeking to increase retail space after the master plan had been developed, whereas LOPA 24 sought an expansion to permit the proponents to do what had originally been allowed, and was now limited because of municipal requirements. The Councillor felt that if a doubt existed, he would prefer to remain with the original allocation of square footage both areas had started with. On this basis, he indicated he would support LOPA 24 and not support LOPA 8.

Chair Hunter pointed out that a Notice of Decision would have to be issued in either case, and he suggested that if refusal of the amendment was Councillor van den Ham’s intent, a Motion to amend the wording from “approve” to “refuse” LOPA 8 would be in order.

Councillor McGoldrick-Larsen said Barrhaven needed commercial development. She found the present situation regrettable, as without LOPA 8 and the appeals to LOPA 24, construction could otherwise have commenced shortly. She, too, felt it was prudent to return to the starting point. The Councillor acknowledged Mr. Boucher’s assertion that the Barrhaven Town Centre’s application for an expansion of its square footage occurred prior to LOPA 7. However, she recalled that the proponents had not decided to come forward with expansion plans until SNDC/Trinity were preparing to develop. She felt the community of 34,000 needed a junior department store, more services and new jobs to help support the community so it would not have to fulfill its retail needs elsewhere. Councillor McGoldrick-Larsen believed that at the present time, Trinity Developments would provide better retail and a more comprehensive development than the Barrhaven Town Centre could provide with the additional square footage it was applying for. She said that at Council, she would also support LOPA 24 but not LOPA 8.

There being no further discussion, Committee considered the amended recommendation.

Moved by R. van den Ham

That the Planning and Environment Committee recommend that Council refuse Local Official Plan Amendment 8 to the City of Nepean Official Plan and that the Clerk issue the Notice of Decision.

CARRIED as amended
(D. Beamish and G. Hunter
dissented)