

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 03-100

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF LOCAL SERVICES AGREEMENTS BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND AFFECTED LAND OWNERS PURSUANT TO THE LOGGERHEAD MARSH MANAGEMENT PLAN

WHEREAS the Council of The Corporation of the City of Peterborough has adopted the Loggerhead Marsh Management Plan as the storm water management strategy for development in the Jackson Creek West Secondary Planning Area;

AND WHEREAS the Loggerhead Marsh Management Plan incorporates a Local Services Agreement under which affected land owners will contribute to the costs of implementation of the Plan, in order to complete the local servicing of their lands;

NOW THEREFORE, THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be and they are hereby authorized to execute Local Services Agreements with affected land owners, in the form attached hereto as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first and second time this 2nd day of June, 2003

By-law read a third time and finally passed this 2nd day of June, 2003

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

SCHEDULE "A"

LOCAL SERVICES AGREEMENT executed this 22nd day of May, 2003.

BETWEEN:

(hereinafter called the "Owner")

OF THE FIRST PART

- and -

THE CORPORATION OF THE CITY OF PETERBOROUGH

(hereinafter called the "City")

OF THE SECOND PART

WHEREAS

- A.** The Owner is the owner of a parcel of land approximately * acres in size which parcel of land is more particularly described in Schedule "A" attached hereto (the "Lands") as confirmed by the Owner's Solicitor in a certificate attached hereto as Schedule "B";
- B.** The Lands have been, or will generally be, developed for residential purposes;
- C.** The Lands are located, in whole or in part, within that area of the City of Peterborough known as the Loggerhead Marsh Watershed, which area is outlined on Schedule "C" attached hereto (hereinafter referred to as the "Watershed Benefiting Area");
- D.** The Owner and all other landowners in the Watershed Benefiting Area seeking to develop their lands are required to provide financial contribution to the cost of implementing a storm water management plan which will permit development in the Watershed Benefiting Area;
- E.** In order to allocate, on an equitable basis among the Owner and the other landowners in the Watershed Benefiting Area, the cost of implementing such storm water management plan, the City has established a Watershed Stormwater Management Charge (the "WSM Charge");
- F.** The WSM Charge will apply to landowners in the Watershed Benefiting Areas who develop all or part of their lands for residential purposes;
- G.** The lands located within that portion of the Watershed Benefiting Area which is illustrated on Schedule "C" attached hereto, and identified as the "Special Benefit Area", will receive a greater benefit from the water storage function of the Loggerhead Marsh;
- H.** The Owner and all other landowners in the Special Benefit Area seeking to develop their property for residential purposes are required to provide an additional financial contribution towards the cost of acquiring certain lands, or a drainage easement therein, known as Marsh Cells A, B, and C and the surrounding floodplain lands within the Special Benefit Area, all of which are identified on Schedule "D1" and "D2" attached hereto (hereinafter referred to as the "SBA Floodplain Lands");

- I. In order to allocate on an equitable basis, among the Owner and the other landowners in the Special Benefit Area, their additional financial contribution to the acquisition of the SBA Floodplain Lands, or a drainage easement therein, the City has established a Special Benefit Charge (the “SB Charge”);
- J. The SB Charge will apply to landowners in the Special Benefit Area who develop all or part of their lands for residential purposes; and
- K. The Owner has agreed to convey such lands, easements, or other interests in land to the City and others as may be provided for herein;

NOW THEREFORE, in consideration of the matters agreed to herein and in consideration of one dollar (\$1.00) paid by each party to the other, the receipt and sufficiency of which is hereby acknowledged, the Owner and the City agree as follows:

ARTICLE 1.00 BASIS OF THE WSM CHARGE AND THE SB CHARGE

1.01 WATERSHED STORMWATER MANAGEMENT SERVICES

- (a) For the purposes of this agreement, Watershed Stormwater Management Services (“WSM Services”) means (and is limited to) the various matters, works and services set forth in Schedule “E1” attached hereto.
- (b) Each of the City and the Owner agree that the WSM Services are required to enable the lands within the Watershed Benefiting Area to be developed. Accordingly, in accordance with the provisions of this agreement, the City shall require owners of land in the Watershed Benefiting Area to pay the WSM Charge as a condition of the granting of any one of the following approvals (hereinafter referred to collectively as the “Approvals” and individually as an “Approval”): the final approval of a plan of subdivision under section 51 of the *Planning Act*, a consent under Section 53 of the *Planning Act*, the final approval of a description under Section 50 of the *Condominium Act*, or the issuance of a permit under the *Building Code Act, 1992*.
- (c) Each of the City and the Owner acknowledge and agree that the WSM Services are, in part, local services as contemplated by Section 59(2) of the *Development Charges Act*.

1.02 ACQUISITION OF THE SBA FLOODPLAIN LANDS OR EASEMENTS

- (a) Each of the City and the Owner agree that it is necessary for the City to acquire the SBA Floodplain Lands, or easements, or other interests in the said lands, for the purposes of water storage and storm water management, in order to enable the lands within the Special Benefit Area to be developed. In addition, the Owner agrees that the lands within the Special Benefit Area will receive a greater benefit from the water storage function of the SBA Floodplain Lands. Accordingly, in addition to the WSM Charge, in accordance with the provisions of this agreement, the City shall require owners of land in the Special Benefit Area to pay the SB Charge as a condition of the granting of an Approval .
- (b) Each of the City and the Owner acknowledge and agree that the acquisition of the SBA Floodplain Lands, or a drainage easement therein, for the purposes of water storage and management is, in part, a local service as contemplated by the section 59(2) of the *Development Charges Act*.

ARTICE 2.00 THE WSM CHARGE

2.01 WSM SERVICES COST

The total estimated cost of the WSM Services, as of the date of this Agreement, (such cost being hereinafter referred to as the "WSM Services Cost"), is set out in Schedule "F" attached hereto. Each of the City and the Owner acknowledge that a portion of the WSM Services Cost has been, or will be, recovered through Development Charges paid or payable in respect of existing or future development within the Watershed Benefiting Area. The portion of the WSM Services Cost which is to be recovered through the WSM Charge is estimated to be approximately Two Million Two Hundred Thousand Five Hundred Dollars (\$2,200,500.00), which amount, when divided by the estimated 1467 residential units to be developed in the Watershed Benefiting Area in the future (the "Unit Estimate"), results in a WSM Charge of \$1500 per residential unit (which amount is subject to increase or decrease as provided in section 2.02 of this agreement).

2.02 ADJUSTMENT OF WSM CHARGE, WSM SERVICES COST AND UNIT ESTIMATE

- (a) The WSM Charge shall be adjusted annually on September 1st in each year, commencing on September 1st, 2003, in accordance with the most recent change in the Statistics Canada Quarterly, Construction Price Statistics (catalogue number 62-007).
- (b) In addition, the City may, acting reasonably, adjust the WSM Services Cost, based upon revised cost estimates or the actual cost of completion of all or part of the WSM Services or interest on any payment made by the City in connection with this agreement, relating to WSM Services, at the City's usual borrowing rate. Further, in the event that the City, acting reasonably, requires the installation of services in relation to the stormwater management plan for the Watershed Benefiting Area which are in addition to, less than or different from those set out in Schedule "E1", then the WSM Services Cost shall be adjusted accordingly. In addition, the City may, from time to time, review and adjust, if necessary, the Unit Estimate. Whenever the WSM Services Cost or the Unit Estimate is adjusted, the WSM Charge shall be adjusted accordingly.

2.03 PAYMENT OF THE WSM CHARGE

The Owner hereby agrees that, as a condition of an Approval affecting all or part of the Lands, the City shall require the Owner to pay to the City the WSM Charge calculated at the rate which is in effect on the date of the granting of the Approval, multiplied by the number of residential units permitted by the Approval. The Owner consents to the City imposing, as a condition of the Approval, the requirement that the Owner pay to the City the WSM Charge in the manner provided for in this agreement.

2.04 PAYMENT BASED ON ESTIMATED COSTS

The Owner acknowledges that the WSM Charge is based upon estimated costs and the Unit Estimate, and that no adjustment shall be made between the City and the Owner once the WSM Charge has been paid (or becomes payable by the granting of an Approval) and the determination of the WSM Charge on the basis of estimated costs and the Unit Estimate shall be final and binding.

ARTICLE 3.00 THE SB CHARGE

3.01 THE SB COST

The estimated portion of the cost of acquiring the SBA Floodplain Lands, or a drainage easement therein, which shall be allocated among landowners within the Special Benefit Area (the "SB Cost") is set out in Schedule "G" attached hereto. The SB Charge is an allocation of the SB Cost among the owners of land in the Special Benefit Area based upon the area of land owned by each such owner expressed as a fraction of the total area of land in the Special Benefit Area, calculated in accordance with the following formula:

$$\text{SB Charge} = \text{SB Cost} \times \frac{\text{Total Area of Land owned by Owner in Special Benefit Area less SBA Floodplain Lands owned by Owner}}{\text{Total Area of land in Special Benefit Area less SBA Floodplain Lands.}}$$

For the purposes of compensation "owed" and "payable", Schedule "G" reflects the "net" amount to be paid to and by each owner of land, after deducting certain amounts payable by the owner from the amount payable to such owner.

3.02 PAYMENT OF THE SB CHARGE

The Owner hereby agrees that, as a condition of an Approval affecting all or part of the Lands, the City shall require the Owner to pay to the City, in addition to the WSM Charge, the full SB Charge, calculated at the rate which is in effect on the date of granting of the Approval. The Owner consents to the City imposing, as a condition of the Approval, the requirement of the Owner to pay to the City, in addition to the WSM Charge, the SB Charge, in the manner provided for in this agreement.

For greater certainty, the Owner shall pay the entire SB Charge in respect of all of the Owner's Land, regardless of whether or not all such lands are affected by the Approval. Notwithstanding this, it is specifically acknowledged that the "net" SB Charge payable by MacPherson and White is zero, as reflected on Schedule "G", and that no further contribution towards SB Charges shall be required of MacPherson or White in the future.

ARTICLE 4.00 THE WSM CHARGE FUND

- 4.01 (a) The City agrees to require and accept the payment of the WSM Charge, as and when due, from each owner of lands situated within the Watershed Benefiting Area. The funds so paid to the City shall be retained by the City in an account specifically designated for that purpose as the "WSM Charge Fund", and such funds shall be administered and used by the City only for the purposes of (i) constructing and implementing the WSM Services, (ii) reimbursing landowners within the Watershed Benefiting Area for the costs of WSM Services which have been constructed by them, and (iii) repaying itself for payments made by the City relating to the WSM Services, together with interest thereon, as provided for in this agreement. The reimbursement of such costs to such landowners shall be made at the City's discretion, exercised in an equitable and reasonable manner as funds are available, in the same order in which WSM Services were constructed. Provided, however, that the City shall, if necessary, provide such funds as are required to ensure that all such reimbursement is paid in full within five (5) years of the date that the WSM Services were completed. Once all of the WSM Services have been paid for in full, and the City has been repaid for all payments it has made relating to the WSM Services, together with interest thereon, if any monies are then remaining in the WSM Charge Fund, such monies shall belong to the City and shall be applied by it for the sole purpose of making improvements in the Watershed Benefiting Area.

- (b) The City hereby agrees that, unless and until the City is otherwise directed pursuant to a notice in writing given to the City by Owner, to the extent that the Owner is entitled to be paid any amounts out of the WSM Charge Fund as contemplated by the provisions of this Section 4.01 (a), such payment shall be made by the City directly to the Owner.

ARTICLE 5.00 CONVEYANCE OF LANDS TO CITY

5.01 CONVEYANCE OF SBA FLOODPLAIN LANDS

Concurrent with the execution of this agreement, the Owner shall convey to the City, without charge and free of encumbrances, the SBA Floodplain Lands, or a drainage easement therein, if described in Schedule "H" in accordance with the terms and conditions referred to therein. All conveyances of such lands or easements shall be in a registrable form acceptable to the City's solicitor. The Owners hereby give authority to the City to complete any requisite details in the documents referred to in this part including a change in legal description in order to permit registration.

5.02 CONVEYANCE OF ADDITIONAL LANDS FOR WSM SERVICES

In addition to the SBA Floodplain Lands, when the City, acting reasonably, subsequently determines the extent of the other lands, easements or other interests in land that are required for purposes of completing installations of the WSM Services (which lands are generally depicted on Schedule E2 attached hereto and are hereinafter referred to as the "WSM Lands"), the Owner shall convey same on demand, free of all prior liens, charges, claims or encumbrances, to the City. The owners of the WSM Lands shall be compensated for such lands at the rate per acre set out in Schedule "F" out of the WSM Charge Fund as funds become available. Provided, however, that the City shall, if necessary, provide such funds as are required to ensure that each owner is paid the full compensation for any WSM Lands it is required to convey to the City pursuant to this agreement, within five (5) years of the date on which such lands are transferred to the City.

ARTICLE 6.00 GENERAL PROVISIONS

6.01 DEVELOPMENT AGREEMENTS

The Owner agrees that the provisions contained in this agreement shall be incorporated into any Subdivision Agreement, Site Plan Agreement or other Development Agreement relating to an Approval in respect of the Lands, either by attaching this agreement as a Schedule or otherwise. Once the applicable provisions contained in this agreement are incorporated into any Subdivision Agreement, Site Plan Agreement or other Development Agreement relating to an Approval in respect of the Lands or part thereof, the provisions of this agreement applicable to the Lands or part thereof dealt with in such Subdivision Agreement, Site Plan Agreement or other Development Agreement shall be deemed to have merged in such Subdivision Agreement, Site Plan Agreement or other Development Agreement and the City shall provide the Owner with a registrable application to delete reference to this agreement for the Parcel Register for the Lands or part thereof dealt with in such Subdivision Agreement, Site Plan Agreement or other Development Agreement.

6.02 OTHER OWNERS

The City hereby agrees with the Owner that the City shall use all reasonable efforts to ensure that each owner of lands in the Watershed Benefiting Area enters into an agreement with the City, having substantially the same terms and conditions as are contained in this agreement, prior to granting approval of any plan of subdivision of such lands.

6.03 NOTICES

Except as otherwise specified herein, any notice hereunder shall be given in writing, by delivery in person or by registered mail (return receipt requested), or by facsimile transmission, properly addressed to the Party to whom such notice is given, with postage or charges, if any prepaid.

Notice shall be given at the following addresses, unless and until a Party gives written notice of a new address to the other Party:

City:	The Corporation of the City of Peterborough 500 George Street North Peterborough, Ontario K9H 3R9 Attention: Director, Planning and Development Services
Owner:	*

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6.04 AMENDMENTS ONLY IN WRITING

No modification, variation, amendment or termination by mutual consent of this agreement, and no waiver of the performance of any of the responsibilities of the parties shall be effective unless such action is taken in writing by instrument or document executed by the parties, excepting that the foregoing shall not apply where an express provision of this agreement permits such modification, variation, amendment or termination pursuant to any other means, and in such instance the said provision shall apply. All representations and understandings of the parties with respect to the subject matter of this agreement are contained in this agreement, and there are no other representations or understandings between the parties with respect to the subject matter of this agreement. This agreement supersedes any and all prior agreements and understandings between the parties with respect to the subject matter of this agreement.

6.05 ESTOPPEL

The Owner acknowledges and agrees, on its own behalf and on behalf of its successors and assignees, that none of them shall and they are hereby estopped from asserting in any proceeding at any time and in any forum, that the City does not or did not have lawful authority to enter into this agreement, or that any of the terms of this agreement are not within the jurisdiction or capacity of the City to enter into. The Owner acknowledges that it has voluntarily entered into this agreement.

6.06 NO EFFECT ON PLANNING ACT DELIBERATIONS

The Owner acknowledges that the City is obliged to duly consider applications under the *Planning Act* regarding the development of the Lands on the merits of such applications, to hear and consider any objections, comments or concerns with respect thereto, and to make appropriate determinations in the City Council's unfettered discretion on such applications in accordance with the provisions and procedures of the *Planning Act* and the City's Official Plan, without regard to this Agreement. The Owner further acknowledges and agrees that the City is under no obligation by virtue of this agreement, or otherwise, to grant any Approvals whatsoever for any contemplated development or use of the Lands.

6.07 SUCCESSORS AND ASSIGNS

This Agreement shall run with the Lands and shall enure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

SCHEDULE "A"

DESCRIPTION OF THE LAND

SCHEDULE "B"

CERTIFICATE OF OWNERSHIP

I, _____, of the City of Peterborough, in the County of Peterborough, DO HEREBY STATE that in my opinion, * is the true owner in fee simple of the lands described in Schedule "A" to this agreement.

Dated at Peterborough, Ontario, this _____ day of _____ 2003.

*

SCHEDULE "F"

WSM SERVICES COST

Land	\$ 659,550.00
Flood Plain Lands @ \$5,000/ac. (\$147,250.00)	
Management Boundary (excl. hedgerow from Marsh to Parkhill Road) @ \$20,000/ac. (\$153,200.00)	
SWM ponds outside of Management Boundary @ \$35,000/ac (\$359,100.00)	
Construction of SWM Facilities	\$1,600,000.00
Design Fees	\$ 240,000.00
3 rd Pipe	<u>\$ 200,000.00</u>
WSM Services Cost	\$2,699,550.00

SCHEDULE "G"

ALLOCATION OF THE SB COST

SBA Floodplain Ownership

SB Cost is \$15,000/ac

	Acre (ac)	%	Total Compensation Owed	Net Compensation Owed*
Smith & Smith	1.2	4.57	\$ 18,000.00	\$ 0.00
MacPherson	13.07	49.83	196,050.00	157,805.00
Meyers	0.43	1.64	6,450.00	0.00
White	11.53	43.96	172,950.00	53,655.00
Total	26.23	100.00	\$393,450.00	\$211,460.00

Ownership of Special Benefit Area Lands (not including SBA Floodplain Lands)

	Acre (ac)	%	Total Compensation Payable	Net Compensation Payable*
Smith & Smith	29.00	17.02	\$ 66,965.00	\$48,965.00
Danhew	24.93	14.63	57,560.00	57,560.00
MacPherson	16.56	9.72	38,245.00	-
Meyers	19.80	11.62	45,720.00	39,270.00
White	51.67	30.32	119,295.00	-
Keppler	20.61	12.09	47,570.00	47,570.00
Halminen/PTBO	4.23	2.48	9,755.00	9,755.00
Homes				
Other	3.61	2.12	8,340.00	8,340.00
Total	170.41	100.00	\$393,450.00	\$211,460.00

NOTE: The "net" compensation owed and payable is the amount to be paid to and by each owner of land, after deducting certain amounts payable by the owner from the amount payable to such owner.

SCHEDULE ‘H’

SBA FLOODPLAIN LANDS

The Owner shall convey the lands depicted generally as Parcel 2 on Schedule “D2” (the “SBA Floodplain Lands”), or a drainage easement therein, to the City for compensation calculated at the rate of \$20,000 per acre, being comprised of \$5000 per acre attributable to the WSM works (the “WSM Purchase Price”) and \$15,000 per acre attributable to the SBA cost (the “SBA Purchase Price ”). The SBA Floodplain Lands, or a drainage easement therein, shall be conveyed to the City free and clear of all liens, charges, claims or encumbrances whatsoever. The compensation shall be paid as follows:

- (1) The WSM Purchase Price , at the time the SBA Floodplain Lands, or a drainage easement therein, are transferred to the City; and
- (2) The SBA Purchase Price, as funds become available through the payment of SBA Charge by various owners. Such funds, as they become available, will be paid to the following owners in the following proportions:

MacPherson	56.08%*
White	43.92%*

***NOTE:** These percentages shall be adjusted once surveys are completed and the exact area of the subject lands is determined.