

**9. FLEWELLYN SPECIAL STUDY AREA AND GOULBOURN WETLAND
OFFICIAL PLAN AMENDMENT AND ZONING BY-LAW AMENDMENT**

**MODIFICATION DU RÈGLEMENT DE ZONAGE ET DU PLAN OFFICIEL
CONCERNANT L'AIRE D'ÉTUDE SPÉCIALE DE FLEWELLYN ET LES
TERRES HUMIDES DE GOULBOURN**

COMMITTEE RECOMMENDATIONS, AS AMENDED

That Council:

1. approve the proposed Official Plan amendment to remove Policy 3.2.5 – Flewellyn Special Study Area, to remove the Flewellyn Special Study Area Overlay from Schedule A of the Plan, and to change the designated significant wetland boundaries of the Goulbourn Wetland Complex on Schedules A and B of the Plan, as shown in Document 1.
2. approve the proposed Zoning By-law amendment to change the zoning to reflect the revisions to designated boundaries of to the Goulbourn Wetland Complex, as shown in Document 2.
3. replace Flewellyn Maps A to I found in Document 2 and OPA Schedule 1a, 1b, and 1c, found in Document 1 with the-replacement maps per Motion N° ARAC 2020 11/2

RECOMMANDATIONS DU COMITÉ, TELLES QUE MODIFIÉES

Que le Conseil:

1. approuve les modifications proposées au Plan officiel qui visent à supprimer la politique 3.2.5 - Aire d'étude spéciale de Flewellyn, afin d'enlever la désignation générale d'aire d'étude spéciale de Flewellyn de l'annexe A du Plan, et de modifier les limites désignées du complexe de terres humides d'importance de Goulbourn dans les annexes A et B du Plan, comme le montre le document 1.

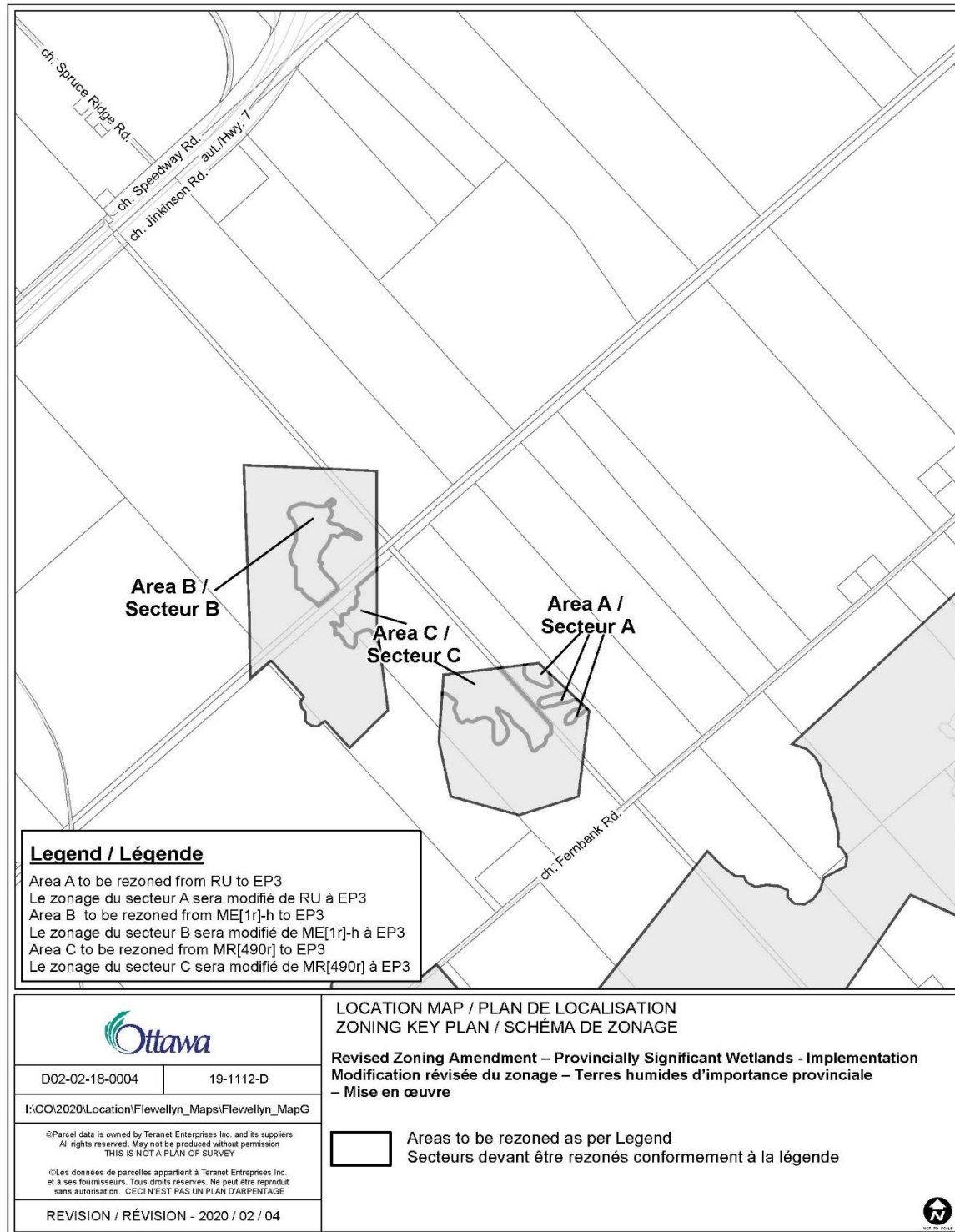
2. approuve la modification du Règlement de zonage proposée afin de changer le zonage en fonction des révisions apportées aux limites désignées du complexe de terres humides de Goulbourn, comme le montre le document no 2.
3. remplace les cartes de A à I de Flewellyn (document 2) et les annexes 1A,1B et 1C de la MPO (document 1) par les cartes de remplacement conformément à la motion n°CAAR 2020 11/2.

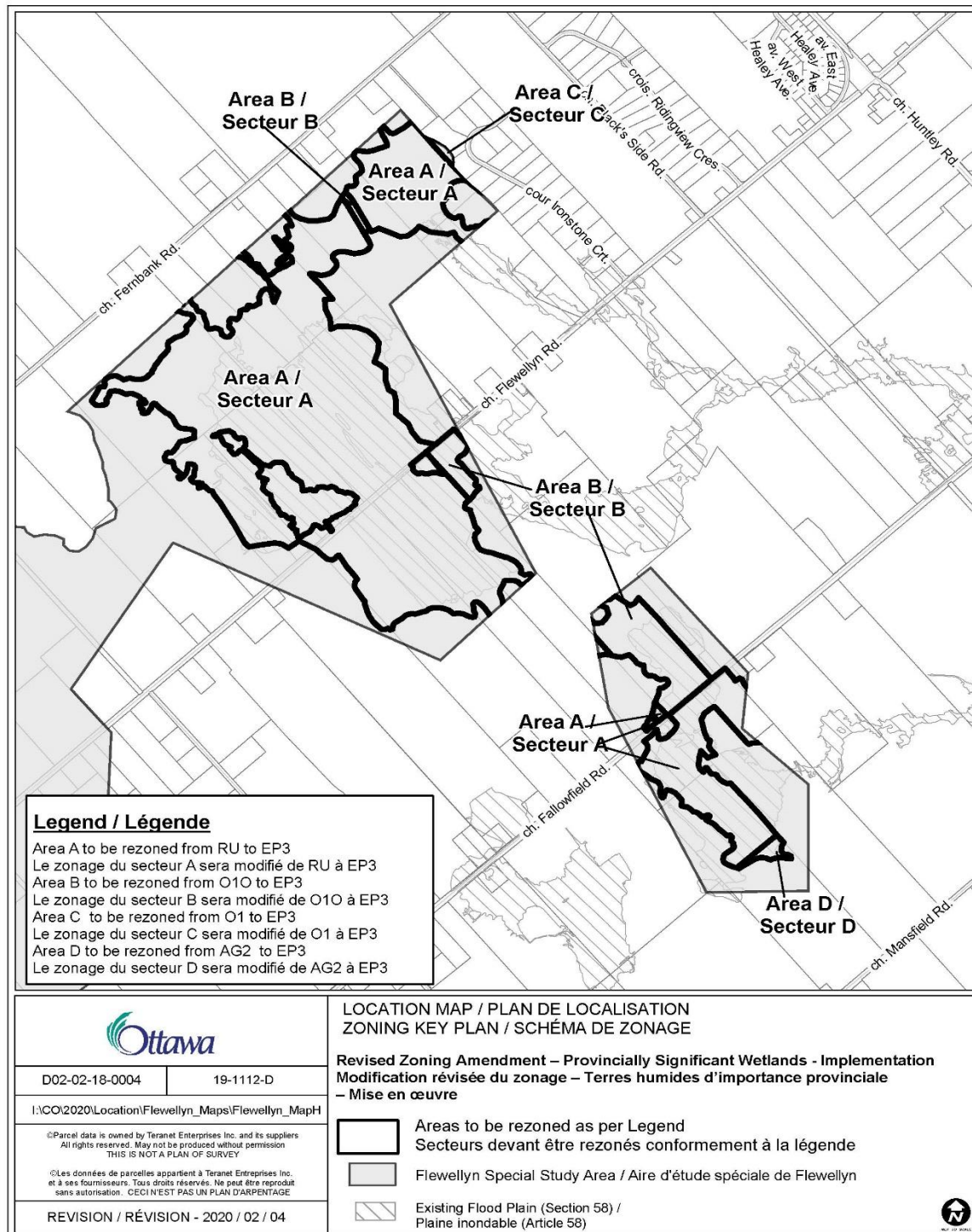
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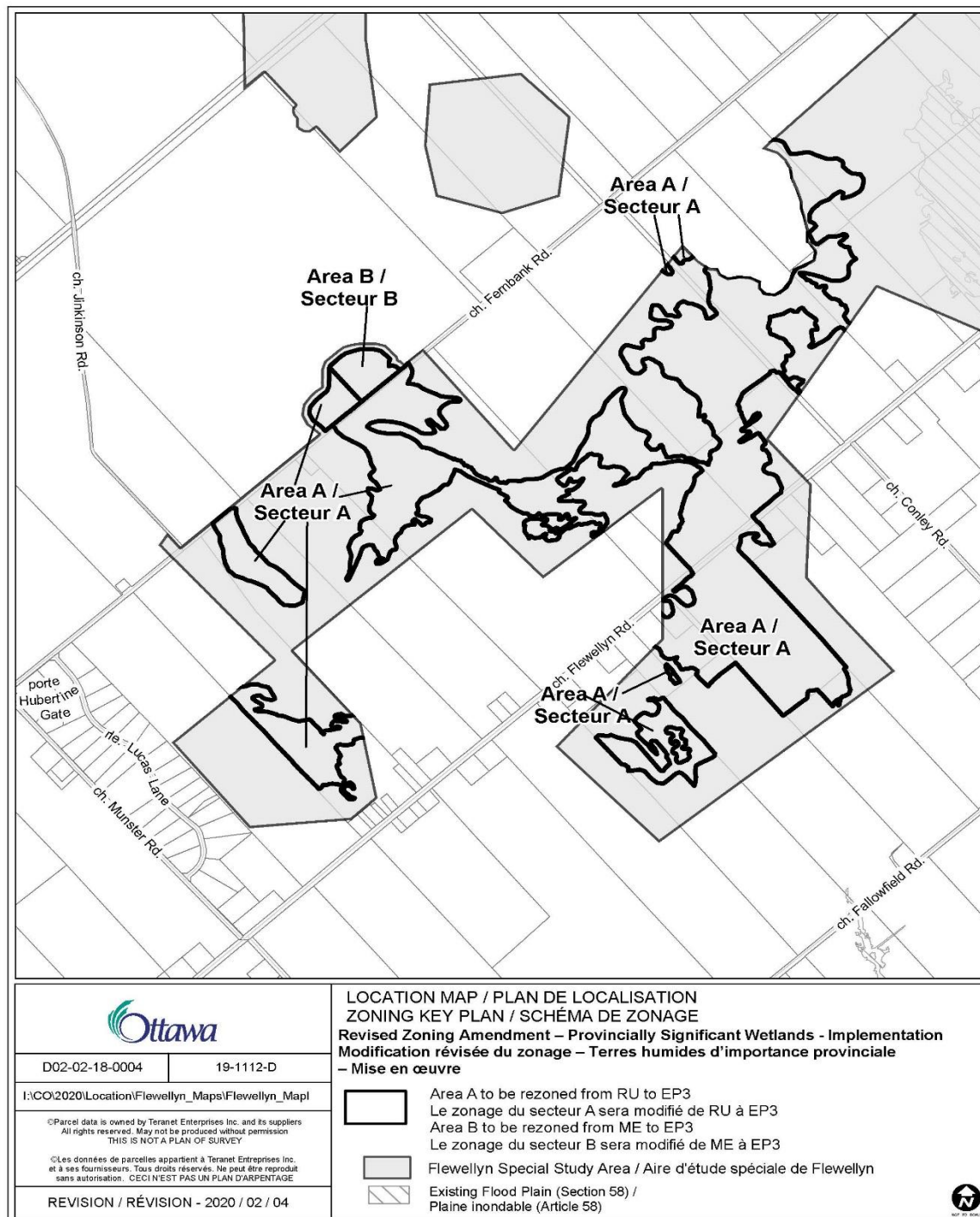
1. Director's report, Economic Development and Long Range Planning, Planning, Infrastructure and Economic Development Department, dated January 15, 2020 (ACS2020-PIE-EDP-0003)

Rapport du Directeur, Développement économique et Planification à long terme, Direction générale de la planification, de l'infrastructure et du développement économique, daté le 15 janvier 2020 (ACS2020-PIE-EDP-0003)
2. Extract of draft Minutes, Agriculture and Rural Affairs Committee, February 6, 2020

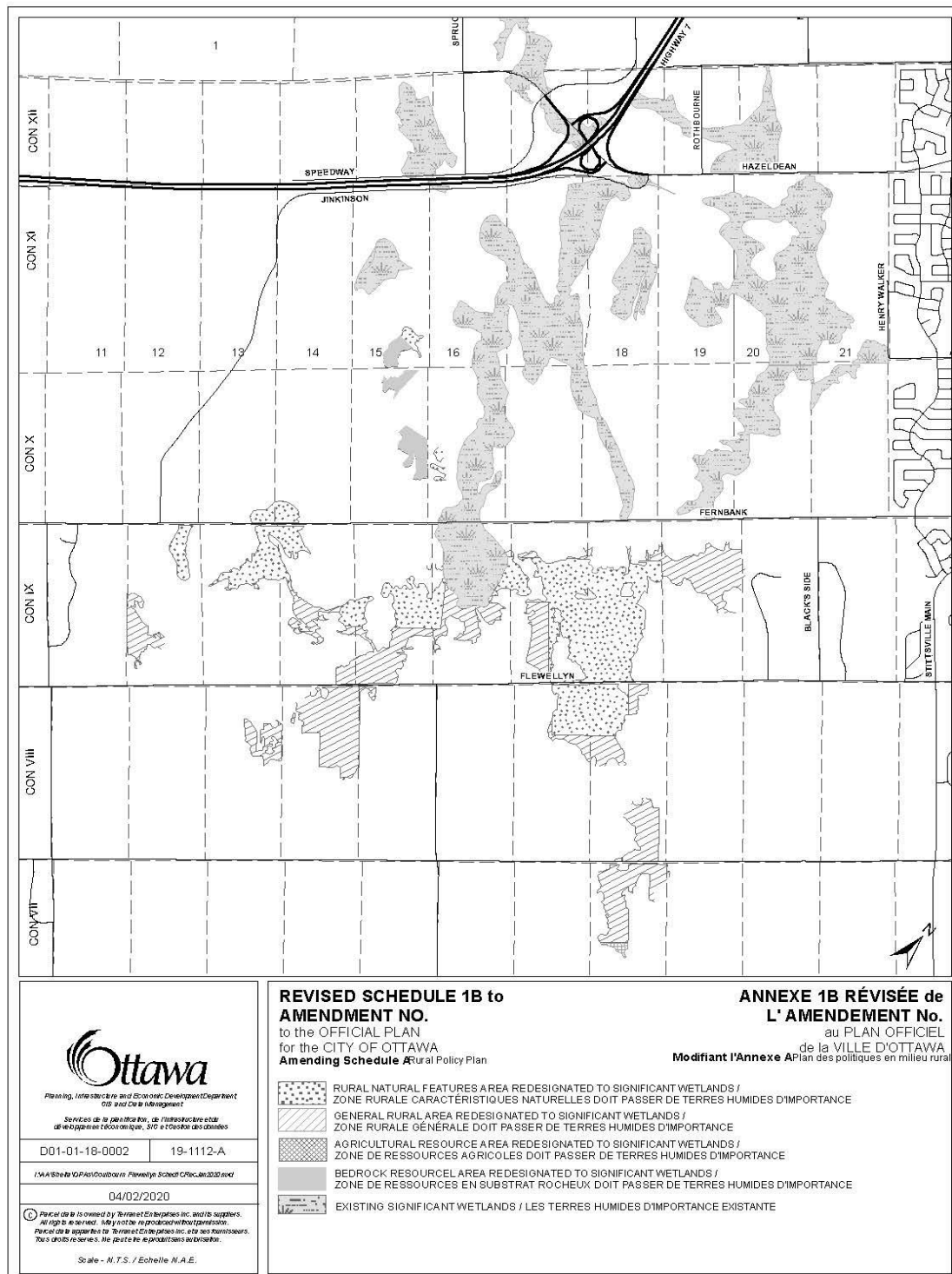
Extrait de l'ébauche du procès-verbal, Comité de l'agriculture et des affaires rurales, le 6 février 2020











**AGRICULTURE AND RURAL
AFFAIRS COMMITTEE
REPORT 10
FEBRUARY 12, 2020**

107

**COMITÉ DE L'AGRICULTURE ET
DES AFFAIRES RURALES
RAPPORT 10
LE 12 FÉVRIER 2020**

**Report to
Rapport au:**

**Agriculture and Rural Affairs Committee / Comité de l'urbanisme
February 6, 2020 / 6 février 2020**

**and Council / et au Conseil
February 12, 2020 / 12 février 2020**

**Submitted on January 15, 2020
Soumis le 15 janvier 2020**

**Submitted by
Soumis par:
Don Herweyer,
Director / directeur**

**Economic Development and Long Range Planning / Développement économique
et planification à long terme**

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**Ward: WEST CARLETON-MARCH (5)
STITTSVILLE (6) RIDEAU-**

GOULBOURN (21)

File Number: ACS2020-PIE-EDP-0003

**SUBJECT: Flewellyn Special Study Area and Goulbourn Wetland Official Plan
Amendment and Zoning By-law Amendment**

**OBJET: Modification du Règlement de zonage et du Plan officiel concernant
l'aire d'étude spéciale de Flewellyn et les terres humides de
Goulbourn**

REPORT RECOMMENDATIONS

That the Agriculture and Rural Affairs Committee:

- 1. Recommend that Council approve the proposed Official Plan amendment to remove Policy 3.2.5 – Flewellyn Special Study Area, to remove the Flewellyn Special Study Area Overlay from Schedule A of the Plan, and to change the designated significant wetland boundaries of the Goulbourn Wetland Complex on Schedules A and B of the Plan, as shown in Document 1.**
- 2. Recommend that Council approve the proposed Zoning By-law amendment to change the zoning to reflect the revisions to designated boundaries of to the Goulbourn Wetland Complex, as shown in Document 2.**

RECOMMANDATIONS DU RAPPORT

Que le Comité de l'agriculture et des affaires rurales :

- 1. recommande au Conseil d'approuver les modifications proposées au Plan officiel qui visent à supprimer la politique 3.2.5 - Aire d'étude spéciale de Flewellyn, afin d'enlever la désignation générale d'aire d'étude spéciale de Flewellyn de l'annexe A du Plan, et de modifier les limites désignées du complexe de terres humides d'importance de Goulbourn dans les annexes A et B du Plan, comme le montre le document 1.**
- 2. recommande que le Conseil approuve la modification du Règlement de zonage proposée afin de changer le zonage en fonction des révisions apportées aux limites désignées du complexe de terres humides de Goulbourn, comme le montre le document no 2.**

BACKGROUND

The Province of Ontario requires municipalities to identify and protect “provincially significant wetlands” from “development and site alteration”. The City of Ottawa meets this requirement by designating “significant wetlands” in its Official Plan and giving those wetlands protective zoning that restricts almost all development (but allows existing agricultural uses). Under a decision by the Ontario Municipal Board (OMB, now the Local Area Planning Tribunal), the City has six months to designate significant

wetlands, once the province has identified them.

From 2005 to 2006, the City conducted a re-evaluation of the boundaries of the provincially-significant Goulbourn Wetland Complex, in response to development applications in the area. In 2006, as a result of this re-evaluation, the province expanded the boundaries of the Goulbourn Wetland Complex to include 20 additional wetland areas. The City subsequently notified the affected property owners of its intent to designate the additional areas as “significant wetland” in the Official Plan and to give the wetlands protective zoning.

A number of affected property owners objected to the City’s intentions. In particular, they argued that many of the wetlands did not originate naturally but were the result of increased inundation caused by human changes to drainage in the area, pumping by quarries, and negligent ditch maintenance by other landowners and the City. Some affected quarry operators also objected to the designation of significant wetlands in areas already designated in the Official Plan as Limestone Resource Area.

In a series of meetings between 2006 and 2009, the City and a group of affected property owners reached an initial compromise. Under the *Drainage Act*, the most affected property owners would petition the City for a municipal drain to improve drainage on their lands. The City would delay any re-designation of the affected lands for five years following the completion of the drainage works, then carry out another re-evaluation of the wetland boundaries. In 2010, however, the landowners withdrew their municipal drain petition due to escalating costs of the proposed drain work.

The withdrawal of the municipal drain petition occurred during appeals of the City’s 2009 Comprehensive Official Plan Amendment (OPA) 76. Several of these appeals concerned the City’s policies for significant wetlands, and its failure to designate the expanded area of the Goulbourn Wetland Complex. The Ministry of Municipal Affairs and Housing, on behalf of the province, had also expressed its concern to the City regarding the delay in designation of the additional wetland areas. The province indicated that it might impose a solution through a ministerial modification to the Official Plan, if the City could not provide certainty regarding a process and timeline for resolution of the issue.

In response to these appeals and the concerns of the province, the City proposed Official Plan Policy 3.2.5 – Flewellyn Special Study Area Flewellyn (SSA) as part of

OPA 76. The province agreed with the proposed policies, and the OMB approved them on April 26, 2012 (OMB File #PL100206).

Policy 3.2.5 – Flewellyn Special Study Area created an “overlay designation” in the Rural Policy Plan, Schedule A of the Official Plan. This overlay designation applies to the disputed wetland areas and adjacent 120-metre upland areas. Policy 3.2.5 says that:

- Existing lawful uses within the overlay area can continue.
- No new development will be permitted until removal of the overlay designation.

Policy 3.2.5 established the following process for removal of the overlay designation:

- Completion of a Mineral Resources Study.
- Completion of a Cumulative Effects Study identifying changes to the drainage in the area.
- A re-evaluation of the wetland boundaries in 2016.
- An OPA to confirm the appropriate land use designations and policies and to remove the overlay designation.

The City has completed the Mineral Resources Study and the Cumulative Effects Study. The Mineral Resources Study did not result in changes to the City’s identification of bedrock aggregate resources on Schedule A of the Plan. The Cumulative Effects Study concluded that the wetlands in the area are natural, long-standing features; they are not the result of changes to drainage patterns, quarry operations, or negligent ditch maintenance.

In 2016, the City contracted Dillon Consulting to re-evaluate the boundaries of the Goulbourn Wetland Complex using the Ontario Wetland Evaluation System (OWES). Following discussions with the Ministry of Natural Resources and Forestry (MNR), the City directed Dillon Consulting to re-evaluate the full wetland boundaries, not just those within the Flewellyn SSA. It appeared likely that the disputed wetland areas within the Flewellyn SSA were contiguous with other areas of the Goulbourn Wetland Complex outside the SSA. Therefore, limiting the re-evaluation to the SSA would have been impractical and a violation of the OWES methodology, which maps wetlands according

to their ecological boundaries.

Through their re-evaluation, Dillon Consulting identified an approximate 50 per cent increase in the area of the Goulbourn Wetland Complex. As per the requirements of the OWES, Dillon submitted the revised wetland boundaries directly to the MNRF for review and confirmation in 2016. In late July 2017, the MNRF notified the City of Ottawa and affected property owners of the results of their review. The MNRF approved the wetland boundary mapping without changes.

Shortly after the notice by the MNRF, the City of Ottawa sent a letter to property owners in the area of the Goulbourn Wetland Complex advising them of the next steps, including the City's intention to bring forward an Official Plan Amendment (OPA) and Zoning By-law amendment (ZBA). However, the City advised property owners that the OPA and ZBA would be delayed to enable any affected owners to commission their own wetland boundary reviews for the summer of 2018, fulfilling a previous commitment made by the City at a public meeting in 2016.

Several property owners notified the City of their intent to commission their own wetland boundary reviews in the summer of 2018. In addition, City staff carried out additional on-the-ground verification of the Dillon mapping on several properties for which they had permission to access. The City submitted the results of its review to the MNRF in autumn 2018, and a number of property owners advised City staff that they had done the same. The MNRF began to notify the City and property owners of the results of their review of this new information in May 2019.

The proposed OPA and ZBA are based upon the official MNRF-confirmed boundaries, as reflected in the province's electronic Land Information Ontario (LIO) database. The exceptions are:

- a. 7315 Fernbank Road, the Fernbank Quarry: The owners of this property accepted the wetland boundaries identified in 2005 – 2006. They subsequently applied for and received a Zoning By-law amendment and Aggregate License from the province based upon those boundaries. Section 66 of the *Aggregate Resources Act* states that the provisions of the aggregate license and Site Plan override the provisions of the *Planning Act*.
- b. 6736 Rothbourne Road: The owners of this property stripped and drained the wetland on this property in contravention of the regulations of the Mississippi

Conservation Authority (MVCA). Consequently, Dillon Consulting removed the area from their wetland mapping, and the MNRF confirmed the removal. However, the owners were subsequently charged under the MVCA regulations, convicted, and ordered to restore the wetland. The City is maintaining the significant wetland designation and the Environmental Protection (EP) zoning in anticipation of the restoration work.

- c. 6776 Rothbourne Road: The owners of this property stripped the wetland on this property in contravention of the regulations of the MVCA. The owners cooperated with the MVCA on mitigation and restorative measures. In the interim, however, Dillon Consulting removed the area from their wetland mapping, and the MNRF confirmed the removal. During this period, the owners approached the City of Ottawa and the MVCA on a pre-consultation for a development application. The owners, the City of Ottawa, and the MVCA mapped and agreed upon a new wetland boundary, with the City and the MVCA agreeing to consider a crossing of the wetland at a point where the wetland narrows to the width of the municipal drain. The MNRF confirmed the new boundary. The owners have submitted a development application based upon the agreement regarding the crossing of the municipal drain. The City is not applying the wetland designation or EP zoning to the location of the crossing.

DISCUSSION

Notwithstanding the complicated planning history, the provincial policies and the Official Plan policies that apply to the Flewellyn Special Study Area and the Goulbourn Wetland Complex are clear and simple. The provincial Policy Statement states that municipalities shall identify significant wetlands based on provincial mapping and protect them from development and site alteration. The Official Plan states that the City will designate significant wetlands on Schedules A and B and zone them accordingly.

The premise for the Flewellyn Special Study Area policy was that the history of quarry operations and drainage changes in the area may have created unnatural conditions for the formation of wetlands, which could then be identified and corrected through appropriate drainage works. However, the Flewellyn Cumulative Effects Study demonstrated that wetlands are naturally-occurring features on the landscape, due to a combination of topography and soils, and that quarry pumping has not contributed to the expansion of wetlands in the area.

In light of these findings, the provincial Policy Statement and the Official Plan oblige the City to remove the Flewellyn SSA policies and to confirm the official boundaries of the Goulbourn Wetland Complex as significant wetland on Schedules A and B of the Official Plan and in the Zoning By-law.

Council Direction and Response

Official Plan Policy 3.2.5 – Flewellyn Special Study Area sets out Council's direction regarding the resolution of questions and issues concerning the boundaries of the Goulbourn Wetland Complex. It states:

The purpose of the overlay designation is to restrict development until such time as the City has completed three studies required to inform Council's decision on appropriate land use designations within the area: a cumulative effects study, the Rural Review – Mineral Resources Study, and a re-evaluation of the wetland.

Once the studies and re-evaluation have been completed, and following public consultation, the City will consider the new information and amend this Plan to remove the Flewellyn Special Study Area overlay designation and confirm the appropriate land use designations and policies for the area.

RURAL IMPLICATIONS

The OPA will increase the area of the Goulbourn Wetland Complex designated on Schedule A of the Official Plan by approximately 50 per cent. The Zoning By-law amendment will extend the EP zone to the new areas, prohibiting development and site alteration within the wetland boundaries. The wetlands and areas within 30 metres of the significant wetlands will be subject to the regulations of the Rideau Valley Conservation Authority or the Mississippi Valley Conservation Authority. Areas within 120 metres of the significant wetlands will be subject to the requirement for an Environmental Impact Statement in support of any development application, in accordance with the current Official Plan requirements.

The OPA and the ZBA will not limit existing agricultural uses nor activities outside of development and site alteration.

CONSULTATION

The City of Ottawa maintains a web page with information on the Flewellyn Special Study Area and the Goulbourn Wetland Complex (<https://ottawa.ca/en/city-hall/public-engagement/projects/flewellyn-special-study-area-and-goulbourn-wetland-complex-re-evaluation>). The web page includes the background and history of the issues, a summary of the results of the Flewellyn Cumulative Effects Study and the Goulbourn Wetland Re-evaluation. Links to the results of those studies, the process for contesting the results of the Wetland Re-evaluation, a summary of the opportunities for public engagement and appeal, and next steps are also found.

The City held a public open house on June 20, 2016, in the community, to update residents on the results of the Flewellyn Cumulative Effects Study and to advise them of the Goulbourn Wetland Re-evaluation. Following the public meeting, the City sent letters to property owners in the area requesting permission to enter their properties for the purpose of carrying out the wetland re-evaluation.

Upon notification by the MNRF in July 2017 of their confirmation of the Goulbourn Wetland Boundaries, the City sent a letter to residents in the area advising them of the completion of the wetland re-evaluation, providing a link to the results, and advising them of the next steps in the process, including the planned OPA and ZBA.

On March 1, 2018, the City sent out a formal notice and summary of the proposed OPA and Zoning By-law amendment to stakeholders and to area residents. The notice and summary included background and historical information on the proposal. The notice and summary noted that the OPA and ZBA would come forward no earlier than January 1, 2019, to allow affected property owners time to commission their own wetland boundary evaluations. The notice and summary set a due date of November 30, 2018 for comments.

The City received comments and inquiries from 28 property owners and interested parties regarding the proposed OPA and Zoning By-law amendment. The majority of the inquiries sought clarification on wetland boundaries for specific properties. Others sought information on how a significant wetland designation and zoning would affect land uses or development of their properties. Some property owners indicated that they would commission their own review of the wetland boundaries for consideration prior to the OPA and ZBA. Some property owners questioned the conclusions of the wetland

evaluation with respect to their properties. Some respondents questioned the legal right of the province, the City, and other agencies to identify, designate, and regulate wetlands on their properties. Some respondents questioned whether the City's studies had met the requirements of the Flewellyn Special Study Area policy. One respondent argued that the Minutes of Settlement from a previous planning appeal exempted their property from changes to the significant wetland boundaries. Many responses included more than one of these concerns.

Staff responded to each of the comments or inquiries. The responses ranged from a simple acknowledgement of the concerns to on-going dialogue. All comments were considered by staff in the drafting of the OPA, the ZBA, and this report.

There were no formal comments by external agencies. Throughout the Flewellyn Special Study Area process, staff have consulted closely with the Ministry of Natural Resources and Forestry, the Rideau Valley Conservation Authority, and the Mississippi Valley Conservation Authority. Their input has been considered by staff in the drafting of the OPA, the ZBA, and this report.

COMMENTS BY THE WARD COUNCILLORS

Ward Councillors El-Chantiry, Gower, and Moffatt are aware of this report.

Councillor Gower provided the following comment: "I attended a public meeting in June 2016 when staff presented the findings of the Flewellyn Cumulative Effects Study. I remember clearly the complexity and conflict of trying to establish wetland boundaries for zoning and planning purposes. Wetlands are in constant change and you can't just draw a line on a map and expect wetlands to comply.

The policies that govern this process are clear and simple: Under Provincial policy, the City must identify and protect provincially significant wetlands from development and site alteration. Over the past 15 years, staff have made every effort to ensure that this process has been fair and transparent."

LEGAL IMPLICATIONS

The *Planning Act*, Subsection 3(5) reads:

- 5) A decision of the council of a municipality, a local board, a planning board, a Minister of the Crown and a ministry, board, commission or agency of the

government, including the Tribunal, in respect of the exercise of any authority that affects a planning matter;

- a) Shall be consistent with the policy statements issued under Subsection (1) that are in effect on the date of the decision; and
- b) Shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.

As a result of the above provision, decision of Council (or delegated decisions by staff) in respect of a planning matter must be consistent with the Provincial Policy Statement.

Should the amendments be adopted and appealed in respect of one or more parcels of land to the Local Planning Appeal Tribunal, the length of the resulting hearing will depend on the number of parcels before the Tribunal. In addition to staff witnesses, it will likely be necessary to retain Dillon to provide professional opinion evidence as to the basis for the designation and zoning.

As these are City-initiated amendments, there is no right of appeal if the amendments are not adopted.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

ASSET MANAGEMENT IMPLICATIONS

There are no asset management implications.

FINANCIAL IMPLICATIONS

Potential financial implications are within the above Legal Implications. In the event that Dillon Consulting is retained to provide professional opinion evidence, the expense would be absorbed from within Planning, Infrastructure and Economic Development's operating budget.

ACCESSIBILITY IMPACTS

There are no accessibility impacts associated with the OPAs or Zoning By-law amendment.

ENVIRONMENTAL IMPLICATIONS

The OPA and Zoning By-law amendment will implement the City's significant wetland policies, providing increased environmental protection for the provincially significant Goulbourn Wetland Complex.

Wetlands provide multiple environmental, social, and economic benefits, including provision of wildlife habitat, provision of fish spawning and nursery areas, water quality protection, carbon storage and sequestration, and flood risk reduction. Their benefits are particularly significant for maintaining resilience to the impacts of climate change, such as drought and extreme rain events."

TERM OF COUNCIL PRIORITIES

This project supports the following Council priority:

- Environmental Stewardship

SUPPORTING DOCUMENTATION

Document 1 Official Plan Amendment

Document 2 Zoning By-law Amendment

DISPOSITION

Planning, Infrastructure, and Economic Development will be responsible for implementing the new policies through planning and development review processes.