



wood.

RECEIVED

FEB 03 2020

The Island Regulatory
and Appeals Commission

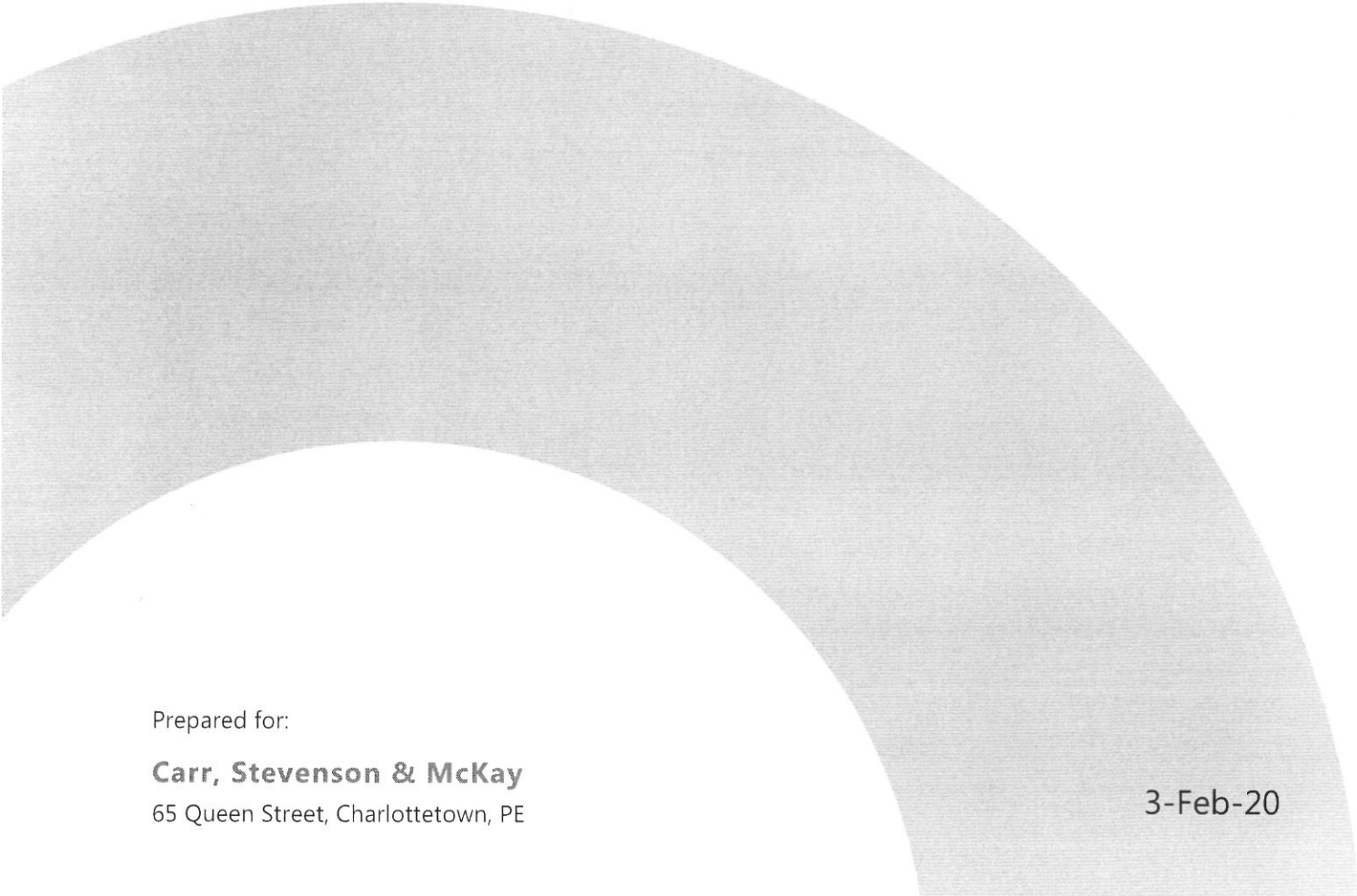
Rural Municipality of Eastern Kings Development Permit

Expert Report
Fredericton, NB
Project # TE181036

Prepared for:

Carr, Stevenson & McKay
65 Queen Street, Charlottetown, PE

3-Feb-20





Wood Environment & Infrastructure Solutions, a Division
of Wood Canada Limited
495 Prospect Street, Suite 1
Fredericton, NB E3B 9M4
Canada
T: 506-458-1000
www.woodplc.com

3-Feb-20

Gordon McKay
Carr, Stevenson & McKay
65 Queen Street
Charlottetown, PE
C1A 7L1

Dear Mr. McKay,

Re: Expert Report: Rural Municipality of Eastern Kings Development Permit

Wood Environment & Infrastructure Solutions, a Division of Wood Canada Limited (Wood), is pleased to submit this expert report to Carr, Stevenson & McKay.

I hereby acknowledge my duty as expert is to advise the Island Regulatory & Appeals Commission impartially on matters within my area of expertise, and that duty overrides any duty to the party that has called me.

Please contact us at your convenience with any comments or questions.

Sincerely,

**Wood Environment & Infrastructure Solutions,
a Division of Wood Canada Limited**

A handwritten signature in black ink, appearing to read "Jacques Paynter".

Jacques Paynter, FEC, P.Eng.

Principal

Direct Tel.: (506) 450-0843

Mobile (506) 451-5780

E-mail: jacques.paynter@woodplc.com

JP/cjy





Rural Municipality of Eastern Kings Development Permit

Expert Report

Fredericton, NB

Project # TE181036

Prepared for:

Carr, Stevenson & McKay
65 Queen Street, Charlottetown, PE

Prepared by:

Wood Environment & Infrastructure Solutions, a Division of Wood Canada Limited
495 Prospect Street, Suite 1
Fredericton, NB E3B 9M4
Canada
T: 506-458-1000

3-Feb-20

Copyright and non-disclosure notice

The contents and layout of this report are subject to copyright owned by Wood (© Wood Environment & Infrastructure Solutions, a Division of Wood Canada Limited). save to the extent that copyright has been legally assigned by us to another party or is used by Wood under license. To the extent that we own the copyright in this report, it may not be copied or used without our prior written agreement for any purpose other than the purpose indicated in this report. The methodology (if any) contained in this report is provided to you in confidence and must not be disclosed or copied to third parties without the prior written agreement of Wood. Disclosure of that information may constitute an actionable breach of confidence or may otherwise prejudice our commercial interests. Any third party who obtains access to this report by any means will, in any event, be subject to the Third-Party Disclaimer set out below.

Third-party disclaimer

Any disclosure of this report to a third party is subject to this disclaimer. The report was prepared by Wood at the instruction of, and for use by, our client named on the front of the report. It does not in any way constitute advice to any third party who is able to access it by any means. Wood excludes to the fullest extent lawfully permitted all liability whatsoever for any loss or damage howsoever arising from reliance on the contents of this report. We do not however exclude our liability (if any) for personal injury or death resulting from our negligence, for fraud or any other matter in relation to which we cannot legally exclude liability.



Table of Contents

1.0	Introduction	1
1.1	Purpose	1
1.2	Documents Reviewed	1
1.3	Findings	2
2.0	Regulatory Compliance	3
2.1	Permitted Use	3
2.1.1	Overview	3
2.1.2	Summary	4
2.2	Subdivision and Development Control Bylaw	4
2.3	Planning Act Chapter P-8 Subdivision and Development Regulations	4
2.4	Application Information	5
2.4.1	Application for Development Permit	5
2.4.2	Community of Eastern Kings Subdivision and Development Control Bylaw	5
2.4.3	Conclusion	6
3.0	Conclusion	6
4.0	Closing	7

1.0 Introduction

1.1 Purpose

Wood Environment & Infrastructure Solutions, a Division of Wood Canada Limited (Wood), has been retained by Carr, Stevenson & McKay to offer an opinion, based on sound planning principles, regarding the Application for Development Permit (Jeffrey Klein, dated August 27, 2019) and the issuance of the Development Permit No. 17 (EKDP17-2019; dated August 27, 2019) by the Rural Municipality of Eastern Kings (RMEK).

The proposed Klein development must have merit based on sound planning principles. As stated in Island Regulatory and Appeals Commission IRAC LA17-06, sound planning principles:

- are a guard against arbitrary decision making especially where a regulatory checklist does not address a concern,
- require regulatory compliance but go beyond merely ensuring such compliance and require discretion to be exercised in a principled and informed manner,
- require the decision maker to take into consideration the broader implications of their decisions, and
- in anomalous applications require that a professional land use planner must be consulted.

Sound planning principles are further informed by the objects of the *Planning Act* as follows:

- (a) to provide for efficient planning at the provincial and municipal level;
- (b) to encourage the orderly and efficient development of public services;
- (c) to protect the unique environment of the province;
- (d) to provide effective means for resolving conflicts respecting land use; and
- (e) to provide the opportunity for public participation in the planning process.

1.2 Documents Reviewed

The following documents were reviewed in order to arrive at the findings presented in this report.

- Planning Act Chapter P-8.
- Planning Act Chapter P-8 Subdivision and Development Regulations.
- Community of Eastern Kings 2013 Subdivision and Development Control Bylaw.
- Schedule A: Community of eastern Kings Zoning Map.
- RMEK Application for Development Permit (dated August 27, 2019), including:
 - Topographical Map of Parcel 819854 (undated);
 - Driveway to Dwelling distance map (undated);
 - Accompanying sketch to Application (undated); and
 - PEI Geomatics Map of Jeffrey Klein Property (dated September 13, 2019).
- RMEK Development Permit No. 17 (EKDP17-2019) (dated August 27, 2019).

- RMEK Council Meeting Agenda:
 - May 14, 2019;
 - June 25, 2019;
 - July 16, 2019;
 - August 14, 2019; and
 - September 10, 2019.
- RMEK Council Meeting Minutes:
 - February 26, 2019;
 - June 25, 2019; and
 - November 12, 2019.
- RMEK Special Council Meeting Minutes:
 - May 21, 2019; and
 - July 31, 2019.
- RMEK Special Public Meeting Agenda:
 - July 31, 2019.
- Notice of Public Meeting July 31, 2019.
- PEI Energy Corporation – 30MW Wind Farm Development, Special Development Permit (Preliminary Application) To Rural Municipality of Eastern Kings (dated June 2019, submitted to RMEK CAO June 10, 2019).

1.3 Findings

In the author's opinion the Rural Municipality of Eastern Kings did not follow sound planning principles nor did they consider the broader implications of their decisions in the processing of the Application for Development Permit (Jeffrey Klein, dated August 27, 2019) and the issuance of the Development Permit no. 17 (EKDP17-2019; dated August 27, 2019). This conclusion is based on:

- the lack of measured deliberation of the submission (Klein application) and failure to follow the proper procedure;
- permitted uses and definition of a dwelling;
- lack of required information in the relevant documentation; and
- non-compliance with several requirements of the Community of Eastern Kings 2013 Subdivision and Development Control Bylaw, and the Planning Act Chapter P-8 Subdivision and Development Regulations.

With respect to timing and process:

- It is highly unusual for a development application for a single-family dwelling to be processed within one business day. Sound planning principles would suggest, in general, that the application be reviewed by a planning advisory committee, and a professional land use planner who would make recommendations to the development officer or Municipal Council for a decision.
- There is no documentation to indicate that the Klein application was reviewed by the "appropriate Committee" as required by RMEK Council Meeting Minutes, dated February 26, 2019. Presumably this would entail Councilor Anne McPhee and the Planning & Development Committee, which met for the first time on November 12, 2019, according to RMEK Council Meeting Minutes, dated November 12, 2019.

- PEIEC submitted a Special Development Permit (Preliminary Application) to the RMEK CAO on June 10, 2019, indicating their intent to expand an existing wind farm and disclosing the location of seven new proposed turbines. It is a generally accepted sound planning principle that development applications are processed in the chronology of their receipt. The PEIEC Special Development Permit should have been addressed prior to any consideration of the Klein application. There is no documentation to indicate that this occurred.
- Given the public and RMEK's awareness of the turbine locations it would have been in accordance with sound planning principles and due fairness for the RMEK Property Development Officer, upon receipt of the Klein application, to apprise the Mayor and the Chair of the Planning & Development Committee, as well as consult a professional land use planner. It would also have been a common courtesy to contact PEIEC to discuss the matter. There is no documentation indicating that this occurred.

2.0 Regulatory Compliance

Regulatory compliance is important to ensure that local governments ensure that their administration and their citizens abide by a set of rules identifying permissible and impermissible activity. It involves actions that encourage and compel conformity with regulatory requirements including, but not limited to, legislative provisions, regulations, rules, standards, and orders. It is a local government responsibility to make citizens aware of local bylaws, policies and procedures as well as enforce their compliance.

2.1 Permitted Use

2.1.1 Overview

Zoning is used to regulate land use by dividing the area into different zones (e.g., residential, commercial, industrial, etc.) Within each category of zoning, particular property uses are identified as permitted by the zoning bylaw which provides the property owner the ability to use the property this intended use. If a specific land use is not permitted in a zone it is explicitly prohibited.

According to Development Bylaw 5.33.6 : Turbines shall be located a minimum of 3280 ft (1000 m) from a "dwelling"..... The definition of dwelling is an important factor for consideration. If the proposed Klein development does not involve a dwelling, then the setback requirement for the turbines has not been affected and the proposed turbine locations remain valid.

The Development Permit (EKDP17-2019), is for a 1000 sf "building". Building is not a recognized use and is not defined in any RMEK legislation or regulation. A handwritten amendment indicates "cabin / sleeping". This use is also not recognized or defined in RMEK legislation or regulation. According to Schedule A, Community of Eastern Kings Zoning Map, "building" or "cabin / sleeping" are not identified and are not permitted uses in any zone.

Based on the description and sketches of the "building" in the development application and the development permit application (cabin / sleeping) this "building" does not meet the definition for a "dwelling", which is defined in RMEK Schedule A Community of Eastern Kings Zoning Map as follows: a unit designed to be occupied by a family, with its own kitchen and bathroom facilities .

Further, the *Planning Act* define "dwelling" as: arranged or intended for residential occupancydomestic use....one or more individuals living as a single housekeeping unit.....cooking and toilet facilities, etc. (P308 Planning Act 1g1).

2.1.2 Summary

It is the author's opinion that the "building" proposed in the Klein application (August 27, 2019) is not a permitted use and does not comply with the zoning regulations applied to his property. The RMEK permit should not have been approved and issued, based on RMEK's bylaws and regulations, which will be discussed in further detail below.

2.2 Subdivision and Development Control Bylaw

The Development Application (August 27) and the Development Permit (August 27) are non-compliant with many of the requirements of the Community of Eastern Kings Subdivision and Development Control Bylaw, as follows:

Section 2.3 Development Permit

No person shall:

- b) commence any Development;
- c) construct or replace any structure;
- h) construct a driveway;

without first applying for and receiving a permit from Council.

Section 5.9 Driveway Access:

Where an entranceway permit is required under the Roads Act Highway Access Regulations, its issuance shall be a precondition of the approval of a subdivision or development permit.

Section 5.12 Grade of Site:

No permanent building shall be erected or placed without first providing existing and proposed grade elevations relative to the adjoining property, and to the public right of way, as well as showing the pattern and allowing for surface water run off on the lot so as not to cause damage or water run off onto adjacent lots.

Section 5.15.2 Landscaping:

The provision and maintenance of adequate landscaping shall be required on the site plan for new development to the satisfaction of the Development Officer.

Section 5.20 One Main Building on a Lot

No person shall erect more than one main building on any residential lot.

Section 5.24 Servicing

Council may require on-site sewage treatment systems in any zone to be designed and construction certified by a qualified professional engineer.....

2.3 Planning Act Chapter P-8 Subdivision and Development Regulations

The *Planning Act*, prepared by the Legislative Counsel Office of the Prince Edward Island Government, provides the framework for the making of bylaws and other regulations related to land use planning and development by municipalities and local governments in Prince Edward Island.

The *Planning Act* provides some clarity regarding the definition of a building and dwelling.

Section 1 (c) "building" means any structure having a roof supported by columns or walls intended for the shelter, housing or enclosure of any person, animal, or chattel, and includes a mini home or mobile home;

Section 1g1 "dwelling" means a building or portion thereof designed, arranged or intended for residential occupancy, and

(i) "dwelling unit" means one or more rooms used or intended for domestic use of one or more individuals living as a single housekeeping unit with cooking and toilet facilities,

(ii) "single-unit dwelling" means a building containing one dwelling unit and does not include mobile homes, but does include mini homes, modular homes, single-family dwellings and summer cottages,

2.4 Application Information

The RMEK process for the submission of an Application for Development Permit requires that specific information be provided. This is indicated in the Application document, and in the Community of Eastern Kings Subdivision and Development Control Bylaw. Sound planning principles would necessitate that this information be provided by the proponent and carefully reviewed by the Property Development Officer prior to approval and issuance of a Development Permit. However, it is the author's opinion that the Klein application is inconsistent and deficient in several instances as shown below.

2.4.1 Application for Development Permit

With respect to the Application for Development Permit document:

Part 4: indicates dwelling, residential with a handwritten amendment indicating "cabin / sleeping" as other proposed use.

This use is not defined in any RMEK legislation or regulation and is not a permitted use in any zone. Consider Section 4.4 Permitted Uses, of Eastern Kings Bylaw: In this Bylaw any use not listed as a permitted use in a zone is prohibited in that zone unless otherwise indicated.

Part 5: indicates one story, two bedrooms, but describes a first floor comprising 1000 SF and a second floor comprising 1000 SF. This is an inconsistency that should have been resolved. The foundation is "pillars" and the exterior "wood". A building supported on "pillars" would not be suitable for year-round residential occupancy by a family.

Part 7, Servicing: There is no plan to install a sewage disposal system; instead a composting toilet is proposed. There is no plan for a well; instead a water tank is proposed. There is no plan for underground fuel storage and there is no basement; there is no indication of a fuel tank location. Based on the lack of reasonable essential services to ensure the safety and convenience for permanent occupancy by a family, this building cannot be considered a year-round dwelling.

Part 9, Sketch: The application sketch comprises two photos of a similar structure and a map indicating driveway distance and setbacks from property lines.

2.4.2 Community of Eastern Kings Subdivision and Development Control Bylaw

With respect to the Community of Eastern Kings Subdivision and Development Control Bylaw, Section 2.7 Site Plan, there are several information requirements that have not been provided as described below.

Subsection 2.7.1:

The Klein application contains inadequate information regarding:

.....existing and proposed grade elevations.....

....pattern.....for surface water runoff

....plan shall be prepared by a licensed engineer.....

Subsection 2.7.2:

The Klein application contains inadequate information regarding:

.....a sketch or site plan, drawn to scale and showing:

- existing and proposed grade elevations relative to the adjoining property or properties.
- height of the building or structure proposed to be erected.
- general location of the buildings on abutting lots.
- proposed location and dimension of any well, sewerage systems, parking.

Based on sound planning principles, a building destined for year-round family occupancy would not be located almost a mile from the main road, in consideration of access convenience, emergency response and snow removal. There is no existing road and a new one would have to be constructed at considerable expense.

2.4.3 Conclusion

It is the author's opinion that the RMEK permit should not have been approved and issued without requesting more detailed information in the Klein application.

3.0 Conclusion

In the author's opinion the Rural Municipality of Eastern Kings did not follow sound planning principles nor did they consider the broader implications of their decisions in the processing of the Application for Development Permit (Jeffrey Klein, dated August 27, 2019) and the issuance of the Development Permit no. 17 (EKDP17-2019; dated August 27, 2019). This conclusion is based on:

- the lack of measured deliberation of the submission (Klein application) and failure to follow the proper procedure;
- permitted uses and definition of a dwelling;
- lack of required information in the relevant documentation; and
- non-compliance with several requirements of the Community of Eastern Kings 2013 Subdivision and Development Control Bylaw, and the Planning Act Chapter P-8 Subdivision and Development Regulations.

4.0 Closing

This report represents an opinion, based on sound planning principles, regarding the Application for Development Permit (Jeffrey Klein, dated August 27, 2019) and the issuance of the Development Permit No. 17 (EKDP17-2019; dated August 27, 2019) by the Rural Municipality of Eastern Kings. This document is intended to be a stand-alone report.

Wood Environment & Infrastructure Solutions, a Division of Wood Canada Limited

Prepared by:



Jacques Paynter, FEC, P.Eng.,
Principal

Reviewed by:



Jonas Roberts, PhD, P.Eng.
Associate

RECEIVED

FEB 03 2020

wood.

Jacques Paynter, MUP, FEC, P.Eng. The Island Regulatory and Appeals Commission **49 Years of Experience**

Professional Summary

Extensive experience in the planning, management and execution of a wide variety of large-scale multi-disciplinary projects. Specialist in land-use and community planning, public and stakeholder engagement, economic analysis, legislative and regulatory frameworks, climate change adaptation, environmental management and impact assessment, socio-economic analysis, transportation and, corporate strategic planning and human resource development. Extensive experience working with municipal, provincial/state and national governments, private sector and industry agencies. Expert witness to the Court of Queen's Bench (NB), public utility boards, and Environmental Impact Assessment regulatory hearings on land use planning and development issues. International experience in 30 countries: Africa, the Caribbean, Central and South America, Asia and Russia.

Office of Employment

Fredericton, New Brunswick

Languages

- English
- French
- Dutch

Qualifications

Education

- McGill University, Master of Urban Planning, 1975
- Royal Military College, Bachelor of Engineering Physics, 1970
- Post-graduate Studies in Environmental Engineering and Business Administration

Registrations / Certifications / Licenses

- Certificate of Qualification in Military Engineering, 1970
- Certificate of Fellowship, Certificate of Appreciation, Engineers Canada
- Life Membership, Association of Professional Engineers and Geoscientists of New Brunswick

Relevant Experience

Land Use Planning

Preparation of comprehensive urban development plans, detailed neighbourhood and secondary zone plans, planned unit developments involving mixed-use components, large scale area plans and regional plans, as well as the full range of supporting legislation such as zoning, building, subdivision, and other development control bylaws. He is intimately familiar with the full spectrum of contemporary land-use planning, environmental, fiscal, service delivery and governance issues facing municipalities and non-incorporated areas. He has worked with many private developers and is very familiar with development control and approvals issues. He has worked with communities on a wide variety of issues, including climate change, emergency measures planning, strategic planning, land use planning, community and downtown development, municipal regulatory framework, economic and business development, tourism development and environmental sustainability.

Economic Development and Strategic Planning

Numerous socio-economic impact assessments, economic impact (input-output) analyses, economic benefits/offsets agreements and cost/benefit analyses for major industrial projects, research establishments, tourism destination sites, and private corporations. Strategic planning for federal and provincial departments and agencies responsible for environmental management, land-use and coastal planning, local governance, economic development, information technology, advanced manufacturing



technology, biotechnology, agriculture, fisheries and aquaculture, tourism, government on-line, and innovation.

Example Projects (Project Director for almost all Assignments)

Land Use and Community Planning

- Concept design, land use and infrastructure layout, engineering design for planned unit developments involving mixed density residential, commercial and institutional components.
- Retail market assessments, business mix analyses, strategic land use plans and development schemes for several major central commercial cores.
- Development potential analysis (adding value to a property by engineering enhancements, resource use and/or built form) for expropriated / severed properties related to highway and pipeline development and easements.
- Development of a self-sufficient new municipality on a green field site in northern Alberta to accommodate the workforce (and support employment base) for a major oil sands project - components included all residential, commercial, institutional, industrial and civic development and infrastructure.
- Needs analysis and preliminary cost estimating for all infrastructure, institutional development and community services and facilities for a proposed NATO jet fighter training base.
- Program design and assessment of resource requirements and development of optional organizational and operational structures to facilitate the implementation of comprehensive regional land use plans in the Yukon and Northwest Territories.
- Preparation of numerous municipal development plans, business improvement area (BIA) plans, neighbourhood and secondary zone development strategies and regional area plans, drafting of planning related supporting legislation, for a wide population range of urban and rural communities, and co-ordination of public consultation processes related to bylaw adoption / modification.
- Numerous waterfront development plans.
- Numerous provincial, regional and municipal economic development strategies incorporating land use and community planning components.
- Assessment of the development approval process related to the planning, approval, permitting and implementation of the Seawinds Subdivision in Bathurst NB.
- Evaluation of the vision and strategic direction for land information infrastructure activities in New Brunswick.
- Land use planner and site selection analyst for several major capital projects including energy installations (nuclear, thermal, hydro, co-gen), civic facilities (performing arts theatres, museums, convention centres, recreation complexes, libraries) industrial plants and parks, retail outlets, housing, linear corridor infrastructure (transmission lines, pipelines, highways), and defense installations.
- Identification of reasonable and probable land uses study related to a legacy pipeline development for Madawaska Maliseet First Nation and Indian & Northern Affairs Canada.
- Pointe-du-Chêne Wharf Business and Long-Range Development Plan for the Pointe-du-Chêne Harbour Authority Inc.
- Inland flooding study, infrastructure vulnerability assessment, flood management governance and climate change adaptation measures for the Greater Moncton Area, NB; Portugal Cove-St. Philip's, NL; and Hillsborough River Basin, PE.
- Flooding study, municipal infrastructure assessment, hydraulic modelling, flood protection design options and implementation plan for the City of Dieppe, NB.

- Flooding study, built-form vulnerability assessment, flood protection design options and benefit / cost analysis for the Village of Sussex Corner, NB.
- Development of guidelines for real time assessment and monitoring of inland and coastal flooding events in Atlantic Canada.
- Numerous municipal water well-field protection plans and watershed management plans.
- Canadian Project Manager for the Victoria Falls Environmental Capacity Enhancement and Master Plan Project in Zimbabwe, comprising the strengthening of the National Department of Physical Planning and the preparation of master plan and local development plans for Victoria Falls Municipality, Hwange Rural District, Hwange National Park and Zambezi National Park.
- Eastern Caribbean: Resident Program Manager (Barbados) of the Small Project Implementation Facility responsible for identification, financing, planning and construction of priority small-scale infrastructure projects in agriculture, forestry, fisheries, tourism, business and small industries, in collaboration with teams of sectoral specialists, engineers, and architects. Liaison and project development negotiation with cabinet ministers and senior government officials in eight Caribbean island states: Grenada, St. Lucia, St. Vincent, Dominica, Anguilla, St. Kitts and Nevis, Montserrat, and Antigua.
- Technical Advisor to the University of West Indies Marine Resource Management Programme regarding the development of a natural resources management plan for the Turneffe Islands atoll.

Economic Development and Strategic Planning

- Inter-Regional Input-Output economic impact analyses for an \$8.5 billion LNG plant, \$4.5 billion potash mine / railway / port project, and \$1.5 billion nuclear generating station.
- Inter-Regional Input-Output economic impact analyses for multi- \$ million major capital projects (knowledge park, wind farm, PanaMax dry dock, quarries, industrial plants).
- Economic Growth Strategies for the Province of New Brunswick, and Integrated Growth Strategies and Sustainability Plans for 15 economic development agencies.
- Preparation of numerous municipal development plans incorporating an economic development component, and several community economic renewal strategies.
- Retail market assessments, business mix analyses, strategic land use plans and development schemes for several major commercial cores.
- Municipal/regional business and economic development strategies related to identifying opportunities for commercial growth in retail and service sectors as well as increasing industrial capacity.
- Strategic plans and business plans for government, industry and business associations, not-for-profit organizations, and the volunteer sector.