



**City of Kingston
Report to Council
Report Number 15-168**

To: Mayor and Members of Council
From: Cynthia Beach, Commissioner, Corporate & Strategic Initiatives
Resource Staff: George Wallace, Senior Special Projects Manager
Brodie Richmond, Manager, Environmental Projects
Date of Meeting: February 17, 2015
Subject: Cataraqui Source Protection Plan (SPP) – Approval and Implementation

Executive Summary:

On June 3, 2014 Council received Report 14-203 which provided a status update respecting the Cataraqui Source Protection Plan (SPP). This report, attached hereto as Exhibit A, provided Council with updates respecting proposed revisions to the SPP to address comments from the Ministry of the Environment and Climate Change (MOECC, formerly MOE) and the establishment of a regional risk management office and outlined the next steps in the approval and implementation of the Cataraqui SPP.

The Cataraqui SPP was approved by the MOECC on November 26, 2014. The Plan becomes effective as of April 1, 2015. The key components of the SPP implementation include the establishment of the required Risk Management Office, which will need to be in place prior to the effective date of the Cataraqui SPP, and amendments to the Official Plan (OP) and Zoning By-law (ZBL) to reflect the policies of the SPP with respect to significant drinking water threats in the Cana Well Head Protection Areas (WHPAs).

As outlined in previous reports to Council (12-279 and 13-077), the City has the option to establish the required risk management office “in-house” or through a transfer agreement with another agency. From a financial perspective, it is more cost-effective for the City to participate in a regional risk management office through the Cataraqui Region Conservation Authority (CRCA) that would represent several participating municipalities within the watershed boundaries on a cost sharing basis. Staff is recommending that Council transfer its duties and enforcement responsibilities under Part IV of the *Clean Water Act* to the CRCA and that Council

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authorize the Mayor and Clerk to sign the required Enforcement Transfer Agreement. A final draft of the Enforcement Transfer Agreement is attached as Exhibit B.

With respect to the amendments to the Official Plan (OP) and Zoning By-law (ZBL) to implement the "Comply With" policies of the Cataraqui SPP for the Cana WHPAs, staff in the Planning Division have advised that this will be undertaken as part of the 5 Year Official Plan Update and the Comprehensive Zoning By-law Project. At its meeting on January 6, 2015 Council approved the consultant selection and award of contract for this work. Until such time as the amendments are finalized, any planning or building permit applications in the Cana Well Head Protection Areas would be subject to the policies of the SPP respecting restricted or prohibited uses and the need for risk management plans and would be reviewed by the Risk Management Office. A meeting has been arranged for February 19, 2015 with staff in Planning, Building & Licensing Services at which CRCA staff will introduce procedures to ensure proposed developments are effectively flagged and submitted to the Risk Management Office as required.

In response to staff concerns respecting the inclusion of combined sewers in the SPP policies, the City received a letter from the Ministry of Environment and Climate Change advising that the Ministry will not be imposing additional design or operational requirements respecting combined sewers beyond the Ministry's current procedures. Staff will monitor the situation as applications for sewer works are submitted to the Ministry to ensure that this intent is being satisfied.

In terms of next steps, the Cataraqui SP Authority is required to prepare and submit a Work Plan to the Ministry that outlines detailed steps for the review of the approved Cataraqui SPP. The Work Plan is to be developed in consultation with the Cataraqui SP Committee, participating municipalities in the Cataraqui SP Area and the Ministry and is to be submitted to the Ministry by November 30, 2018.

Recommendation:

That the Corporation of the City of Kingston hereby appoints the Cataraqui Region Conservation Authority (on behalf of the Cataraqui Source Protection Authority) as the agent of the City to carry out the duties and enforcement responsibilities under Part IV of the *Clean Water Act* (the Act) for the purpose of implementing the Cataraqui Source Protection Plan as it applies to the lands that are subject to Part IV of the Act (Cana Well Head Protection Areas) as enabled by Section 48 of the *Clean Water Act* and in accordance with the provisions of the Enforcement Transfer Agreement; and

That Council authorize the Mayor and Clerk to sign the Enforcement Transfer Agreement with the Cataraqui Region Conservation Authority (on behalf of the Cataraqui Source Protection Authority); and

That in accordance with Section 3.02 of the Enforcement Transfer Agreement, Council hereby designates the Manager, Environmental Projects or his/her designate as the staff liaison to assist the CRCA in its duties to enforce Part IV of the *Clean Water Act*.

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Authorizing Signatures:

ORIGINAL SIGNED BY COMMISSIONER
**Cynthia Beach, Commissioner,
Corporate & Strategic Initiatives**

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER
Gerard Hunt, Chief Administrative Officer

Consultation with the following **Members of the Corporate Management Team:**

Lanie Hurdle, Community Services

Denis Leger, Transportation, Facilities & Emergency Services Not required

Jim Keech, President and CEO, Utilities Kingston

Desiree Kennedy, Chief Financial Officer & City Treasurer Not required

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Options/Discussion:**Purpose**

The purpose of this report is to provide Council with information respecting the approval and effective date of the Cataraqui Source Protection Plan (SPP) and to provide an update and recommendations respecting key implementation components related to the establishment of the required Risk Management Office and amendments to the City's Official Plan (OP) and Zoning By-law (ZBL). The report also provides a brief summary of next steps with respect to the required review of the approved Cataraqui SPP.

Background

On June 3, 2014 Council received Report 14-203 (see Exhibit A attached hereto) which provided a status update respecting the Cataraqui Source Protection Plan (SPP). This report provided Council with background information respecting the overall source water protection initiative. As noted in the report, the City has three sources of municipal drinking water: the residential groundwater supply at the Cana Well Head in Kingston Mills; and, two surface water supplies in Lake Ontario (Kingston Central Intake and Point Pleasant Intake). The main objectives of the source water protection initiative are: to protect existing and future drinking water sources; to ensure that existing significant drinking water threats cease to be a significant risk; and, to ensure that no other drinking water threats ever become significant risks. For the City of Kingston, significant drinking water threats only exist in the Cana Well Head Protection Areas (WHPAs).

Report 14-203 also provided Council with updates respecting proposed revisions to the August 2012 version of the Cataraqui SPP to address comments from the Ministry of Environment and Climate Change (known then as the Ministry of Environment - MOE). The report also provided updates respecting the establishment of a regional risk management office in the Cataraqui Source Protection Area and outlined the next steps in the process leading to the approval and implementation of the Cataraqui SPP.

Approval of Cataraqui SPP

Revised versions of the Cataraqui SPP and the accompanying Explanatory Document were resubmitted to the Ministry in August, 2014. The Cataraqui SPP was approved by the Ministry of Environment and Climate Change (the Ministry) on November 26, 2014. The Plan becomes effective as of April 1, 2015. The approved Cataraqui Source Protection Plan and Explanatory Document have been posted on the Cataraqui Source Protection website www.cleanwatercataraqui.ca.

Implementation of Cataraqui SPP

The key components of the SPP implementation include the establishment of the required Risk Management Office, which will need to be in place prior to the effective date of the Cataraqui SPP, and amendments to the Official Plan (OP) and Zoning By-law (ZBL) to reflect the policies of the SPP with respect to the significant drinking water threats in the Cana WHPAs. City staff

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has been participating in two Working Groups to prepare for Plan implementation: the Municipal Land Use Planning Working Group; and, the Municipal Part IV Working Group. The focus of the Municipal Land Use Planning Working Group was to establish standardized wording and/or approaches for amendments to the Official Plan and Zoning By-law in order to implement the “comply with” policies respecting significant drinking water threats. This Working Group is also establishing common approaches, model wording and support materials to implement the “have regard for” and “comply with” policies in the Cataraqui SPP. This Working Group is continuing to meet to finalize these matters.

The focus of the Municipal Part IV Working Group is on finalizing the arrangements for the Regional Risk Management Office and preparing a standardized Enforcement Transfer Agreement for use by all participating municipalities. The City is the last of the participating municipalities to execute the Agreement. Other participating municipalities include: the City of Brockville; Township of Elizabethtown-Kitley; Township of Front of Yonge; Town of Gananoque; and, the Township of South Frontenac. The Working Group also includes the Township of Leeds and the Thousand Islands who have established their own Risk Management Office. The Working Group continues to meet to develop procedures, educational materials, forms and checklists to be used by the risk management officials and inspectors.

Risk Management Office

As outlined in previous reports to Council (12-279 and 13-077), the City has the option to establish the required risk management office “in-house” or through a transfer agreement with another agency. Initially, Council passed a motion in 2012 assigning responsibility for administration and enforcement of Part IV of the *Clean Water Act* to staff and authorized staff to complete the mandatory Ministry training in order to be appointed as either a risk management official or risk management inspector. In response to a request by a number of the municipalities in the Cataraqui Source Protection Area, the Cataraqui Region Conservation Authority (CRCA) prepared a discussion paper on how the Part IV policies could be implemented on a regional basis. Since July, 2013, City staff has been participating as a member of the Municipal Part IV Working Group to investigate the establishment of a Regional Risk Management Office.

From a financial perspective, it is more cost-effective for the City to participate in a Regional Risk Management Office through the CRCA. The initial budget estimate for an “in house” risk management office was estimated to be \$30,000 for the first year. The City’s share through the Regional Risk Management Office is an upset limit of \$13,000 for the first eighteen (18) months. Costs are determined by a combination of shared “base cost” for all participating municipalities plus a “variable cost” based on the number of affected properties within the established vulnerable area. These costs are based on the anticipated level of effort associated with risk management planning for existing activities in each municipality.

Staff is recommending that Council transfer its duties and enforcement responsibilities under Part IV of the *Clean Water Act* to the CRCA and that Council authorize the Mayor and Clerk to sign the required Enforcement Transfer Agreement.

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Enforcement Transfer Agreement

An Enforcement Transfer Agreement has been prepared and discussed with the CRCA. The Agreement set out the responsibilities of both parties. Among other matters, the responsibilities of the CRCA would include: appointing qualified risk management officials/inspectors; providing mapping; preparing and distributing educational materials; reviewing applications under the *Building Code Act* and *Planning Act*; negotiating and reviewing risk management plans; reviewing and accepting risk assessments; conducting site inspections and obtaining inspection warrants; issuing orders and notices; maintaining records in accordance with the Act; preparing documentation and attending Environmental Review Tribunal Hearings; and, reporting annually on activities as required under the Act. The responsibilities of the City include: designating a staff liaison to assist the CRCA; adhering to agreed-upon protocols for circulating applications under the *Planning Act* and *Building Code Act*; covering the cost of the service; and, providing input regarding orders and warrants. Both parties would be required to share information and data necessary for the implementation of the Agreement. The initial Term of the Agreement is proposed to extend to December 31, 2017.

In accordance with the proposed Enforcement Transfer Agreement, it is recommended that the Manager, Environmental Projects or designate be designated by Council as the staff liaison to assist the CRCA in its duties to enforce Part IV of the *Clean Water Act*. The Manager, Environmental Projects has completed the required Ministry training for a Risk Management Official/Inspector, as has other staff in the Environment & Sustainable Initiatives Department.

The proposed Agreement also sets out provisions with respect to the estimated cost to the municipality for participating in the Regional Risk Management Office. Costs are to be invoiced on a cost-recovery basis and will be reviewed at regular intervals. No costs exceeding the upset limit will be incurred without written and authorized consent by the City. The proposed Agreement also addresses "Extraordinary Costs" related to such things as legal actions against the CRCA associated with executing its duties on behalf of the City, and costs associated with non-routine items such as enforcement orders, warrants and Environmental Review Tribunal Hearings. These costs would be over and above the upset limit of \$13,000 for the first eighteen (18) months.

The proposed Agreement sets out conditions respecting the term, renewal and termination of the Agreement. The City has the option to withdraw from the Regional Risk Management Office arrangement and resume duties "in house" if it is determined at a later date to be in the City's best interests to do so. Alternatively, the City may agree to extend participation beyond the initial term. Termination or extension requires six months' notice.

Amendments to Official Plan and Zoning By-law

The Cataraqui SPP contains a number of policies to deal with the significant drinking water threats in the Cana Well Head Protection Areas. These policies are binding on the City and must be complied with. In accordance with Part IV of the *Clean Water Act*, the significant drinking water threats are addressed by:

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- prohibiting certain future activities;
- negotiating and enforcing site specific risk management plans for existing or future activities; and
- flagging development applications associated with “restricted” land uses.

This necessitates that the City’s Official Plan and Zoning By-law No. 32-74 (former Pittsburgh Township) be amended to identify where the Part IV policies of the *Clean Water Act* apply. In addition, the new policies and regulations will need to identify the prohibited and restricted land uses, include text and map schedules to provide an understanding of the source protection requirements and outline the application screening process for planning and building permit applications in the Cana Well Head Protection Areas. Staff in the Planning Division have advised that the amendments to the Official Plan and Zoning By-law will be undertaken as part of the 5 Year Official Plan Update and the Comprehensive Zoning By-law Project. On January 6, 2015, Council approved the consultant selection and award of contract for this work.

Until such time as the amendments are finalized, any planning or building permit applications in the Cana Well Head Protection Areas would be subject to the policies of the SPP respecting restricted or prohibited uses and the need for risk management plans and would be reviewed by the Risk Management Office. A meeting has been arranged for February 19, 2015 with staff in Planning, Building & Licensing Services at which CRCA staff will introduce procedures to ensure proposed developments are effectively flagged and submitted to the Risk Management Office as required.

Outstanding Concern Related to Combined Sewers

Previous reports to Council addressed an ongoing concern of staff respecting the inclusion of combined sewers in Policy 7.2.12-HR of the SPP. Staff made a number of submissions to the SP Authority and the Ministry requesting that the reference to combined sewers be deleted. The policy indicates that the Ministry is to “have regard for” the policies of the SPP when reviewing and issuing environmental compliance approvals for applications for the construction of sewer infrastructure. Staff raised concerns regarding the potential for additional design works, costs and approval associated with the provision of appropriate risk management measures to address the policy’s requirements.

The City received a letter from the Ministry dated December 31, 2014 respecting the concern with the inclusion of combined sewers in the Policy. The letter indicated that as long as the City/Utilities Kingston continues to meet the standards of the Ministry’s existing Procedure F-5-5 (Determination of Treatment Requirements for Municipal and Private Combined and Partially Separated Sewer Systems), that there would be no additional design or operational requirements imposed by the Ministry to meet the intent of Policy 7.2.12-HR. Staff will continue to monitor the situation as applications for approval of sewer infrastructure involving combined sewers are filed with the Ministry to ensure that this intent is being satisfied.

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Review of Approved Cataraqui SPP

When a SPP is approved, the *Clean Water Act* requires that an Order be given that governs the review of the Plan. The letter from the Ministry dated November 26, 2014 advising of the Cataraqui SPP's approval indicates that as an initial step the Cataraqui SP Authority is required to prepare and submit a Work Plan to the Ministry. The Work Plan is to outline the detailed steps for the review of the Plan, including which portions of the Plan are to be reviewed, the timeframes for each step of the review and the consultation to be undertaken as part of the review. The Work Plan is to take into consideration any experience that has been gained from implementing the SPP and information from the annual progress reports on plan implementation. A rationale is to be included that explains the content of the Work Plan and how it was developed. The Work Plan is to be developed in consultation with the Cataraqui SP Committee, the participating municipalities of the Cataraqui SP Area and the Ministry. The Work Plan is to be submitted to the Ministry by November 30, 2018.

At its January 22, 2015 meeting, the Cataraqui SP Committee considered a staff report that outlined various options for future drinking water source protection work in the Cataraqui SP Area. The options presented included: refining the technical studies that were prepared to support preparation of the Cataraqui SPP (e.g. greater consideration for climate change); undertaking additional technical work within the scope of the existing SPP (e.g. identifying other locations or issues that may pose threats to drinking water); and, undertaking work with respect to areas not covered by the approved SPP (e.g. other public drinking water systems such as schools, campgrounds, retirement homes) and unserved settlement areas (e.g. hamlets). Discussions such as this will help to inform the draft Work Plan.

Existing Policy/By-Law:

Please refer to Council Report [14-203](#)

The approved Cataraqui Source Protection Plan and Explanatory Document have been posted on the Cataraqui Source Protection website www.cleanwatercataraqui.ca.

Notice Provisions:

None

Accessibility Considerations:

None. This report is available in an alternate format if so requested.

Financial Considerations:

As per the Enforcement Transfer Agreement, the City's costs to transfer the management and enforcement authorities under the *Clean Water Act* to the Source Protection Authority (CRCA) as part of a Regional Risk Management Office are estimated to be an upset limit of \$13,000 for the first eighteen (18) months. This includes all costs associated with enforcement of Part IV of the *Clean Water Act* as outlined in the Agreement except for "Extraordinary Costs" that may be

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incurred as a result of legal actions or non-routine work such as enforcement orders, warrants and Environmental Review Tribunals. The cost to the City beyond the initial eighteen months is not expected to exceed \$13,000 per year.

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Exhibits Attached:

None