

**Subject:** Request from City of St. Catharines for Town of Pelham Consent to Proceed with Fish Habitat Compensation Project in Twelve Mile Creek

**Recommendation:**

**BE IT RESOLVED THAT Council receive Report # 2021-0099 – Request from City of St. Catharines for Town of Pelham Consent to Proceed with Fish Habitat Compensation Project in Twelve Mile Creek, for information;**

**AND THAT Council consent to the request from the City of St. Catharines to proceed with a fish habitat compensation project in Twelve Mile Creek in the Town of Pelham.**

**Background:**

The City of St. Catharines has undertaken emergency shoreline protection works and has recently approved a further shoreline protection improvement project. Both projects are subject to approval by Fisheries and Oceans Canada (DFO). Where a large area of fish habitat is impacted by a shoreline construction project, DFO requires the proponent of the works to provide compensation for the lost fish habitat. The City of St. Catharines is unable to provide sufficient fish habitat compensation within its municipal boundaries; however, it has identified a project within the Town of Pelham that would provide the required compensation. The City of St. Catharines has requested the consent of the Town of Pelham to proceed with a fish habitat compensation project in Twelve Mile Creek.

**Analysis:**

The Fish Habitat Compensation Project

The fish habitat compensation project involves the installation of a by-pass channel onto publicly accessible lands to divert around an existing pond located on private property in the Town of Pelham. The project location is situated a short distance northwest of the intersection of Pelham Street and Linden Avenue.

The pond was reportedly constructed many years ago to provide cooling water for an adjacent cannery. It is an on-line pond; it has no control structure; and it has been accumulating sediments since it was first constructed. The dam is imposing a barrier to fish movement and the pond is warming the water flowing downstream from the dam, thereby impairing the quality of downstream habitat and making the downstream watercourse uninhabitable for cold-water fish such as brook trout.

Initially, the proposed remedial works were to remove the dam and restore the original channel. The owner, however, wants to retain the pond, so an alternative enhancement concept was developed - the construction of a bypass channel around the pond. This channel will be designed to convey water now flowing to the pond, to provide fish passage around the pond, and to provide water to the pond during high-flow events. The proposed bypass channel will be located to the west of Cannery Pond, largely on lands owned by the Nature Conservancy of Canada (NCC).

Completing this project would provide benefit throughout the Twelve Mile Creek watershed. This project would directly and indirectly benefit the Town of Pelham, the City of St. Catharines, as well as other municipalities in Niagara since the identified improvements benefit the health of the Twelve Mile Creek.

The total cost for the compensation plan is estimated to be \$250,000 and will be fully managed and completed through Trout Unlimited Canada.

#### Request for Town of Pelham Consent to Fish Habitat Compensation Project

Municipalities are generally able to act only within their boundaries. However, section 19 of the *Municipal Act, 2001* ("the Act") permits a municipality to exercise its powers in another municipality where certain conditions are met. In particular, a municipality may provide a system to provide a service or thing in another municipality where (i) the providing municipality acts at least partially for its own purposes; (ii) the other municipality has jurisdiction to provide the service or thing in the area where it is to be provided by the providing municipality; and (iii) the other municipality provides its consent for the service or thing to be provided by the providing municipality.

The City of St. Catharines proposes to undertake a fish habitat compensation project in Twelve Mile Creek within the boundaries of the Town of Pelham. In so doing, the City of St. Catharines is acting at least partially for its own purposes as it must provide fish habitat compensation to obtain DFO approval for its shoreline protection construction projects. In addition, the fish habitat compensation project

will provide benefit throughout the Twelve Mile Creek watershed, part of which is located in St. Catharines.

The Twelve Mile Creek watershed extends into the Town of Pelham and the fish habitat compensation project is located within its municipal boundaries. The Town of Pelham has jurisdiction to provide services or things pertaining to the social and environmental well-being of the municipality. This would include improvements to the Twelve Mile Creek watershed within the municipal boundaries of the Town.

The City of St. Catharines is therefore able to proceed with the fish habitat compensation project only with the consent of the Town of Pelham. Staff recommend that this consent be provided.

**Financial Considerations:**

None. The City of St. Catharines will fund the fish habitat compensation project.

**Alternatives Reviewed:**

None.

**Strategic Plan Relationship: Grow Revenue - Promote Cultural Assets and Protect Environment**

The fish habitat compensation project will provide environmental and social benefits to the Town of Pelham including improved water quality and enhanced biodiversity in Twelve Mile Creek and associated recreational and tourism opportunities.

**Consultation:**

The Director of Public Works and the Town Solicitor contributed to this report.

**Other Pertinent Reports/Attachments:**

Attached to this report are (i) City of St. Catharines Report Number EFES-071-2021 and (ii) Letter from City of St. Catharines dated May 11, 2021 requesting the consent of the Town of Pelham to proceed with the fish habitat compensation project.

**Prepared and Recommended by:**

Jason Marr, P. Eng.  
Director of Public Works

Jennifer Stirton, BSc(Hons), LL.B.

Town Solicitor

**Approved and Submitted by:**

David Cribbs, BA, MA, JD, MPA  
Chief Administrative Officer