

Subject: Supplementary Report: Approval Requirements for City of St. Catharines Fish Habitat Compensation Project in Twelve Mile Creek

Recommendation:

BE IT RESOLVED THAT Council receive Report # 2021-0106 – Supplementary Report: Approval Requirements for City of St. Catharines 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 proposes to undertake a fish habitat compensation project in Twelve Mile Creek within the Town of Pelham. St. Catharines has requested the consent of the Town to operate within its boundaries as required by section 19 of the *Municipal Act, 2001*. This matter was before Council on May 17, 2021 at which time Council requested more information before determining if the requested consent will be granted. In particular, Council requested information about

- (i) the involvement of the Nature Conservancy of Canada in the project; and
- (ii) the approvals required by the City of St. Catharines to proceed with the project.

Analysis:

Nature Conservancy of Canada Involvement

The fish habitat compensation project involves a pond located on private land. The pond has existed for many years and was reportedly constructed to provide cooling water for an adjacent cannery. Initially, the proposal was to remove a dam from the pond and restore the original channel of Twelve Mile Creek. However, the

private property owner wants to retain the pond so the proposal is now to build a by-pass channel around the pond. The proposed by-pass channel will be located largely on lands owned by the Nature Conservancy of Canada (NCC).

Although the project is not being managed directly by the NCC they are supportive of the restoration project in principle and are in agreement that if the City of St. Catharines (the proponent) will ensure that the proper permits and approvals are obtained to ensure that the project is completed successfully.

The City of St. Catharines is currently in negotiations with Trout Unlimited Canada and the NCC regarding the management of the project. As such details with respect to management responsibilities and processes, such as procurement, cannot be commented on at this point in time. However, St. Catharines has advised that the process typically followed by Trout Unlimited for this type of project includes building relationships with landowners, possibly contacting adjacent landowners to advise them of the project, monitoring instream temperatures upstream and downstream of the pond, tender out a consultant and engineer to complete necessary surveys, studies and design drawings, complete all required permit applications, tender the work and conduct post-construction monitoring.

Overview of Approval Requirements for Fish Habitat Compensation Project

As the proponent, the City of St. Catharines will ultimately be responsible for ensuring that the permits and approvals are in place from the environmental agencies and agreement has been received from affected stakeholders, including but not limited to the Niagara Peninsula Conservation Authority (NPCA), the Department of Fisheries and Oceans, Ministry of Environment Conservation and Parks (MECP), Ministry of Natural Resources (MNR), the Niagara Escarpment Commission (NEC), the Nature Conservancy of Canada (NCC), and private property owners directly impacted by the project.

Based on the current status of the project it is still too early to determine what approvals and permits will be necessary. Regardless, it will be the responsibility of the proponent to ensure that all the permits and approvals are in place prior to commencing construction.

The following is a list of agencies that will require at a minimum consultation during the design process and may or may not require permits and approvals.

Requirements of Fisheries and Oceans Canada

Pursuant to the *Fisheries Act*, work that results in the destruction of fish habitat is

prohibited unless it is authorized in accordance with the applicable regulations. The regulations require the proponent of works that will affect fish habitat to provide a detailed description of the measures and standards that will be implemented to mitigate the destruction of fish habitat. Where the proposal is to offset the destruction of fish habitat by providing fish habitat elsewhere, the proponent must provide the following information to obtain approval to proceed:

- (a) the geographic coordinates of the location where offsetting measures will be implemented;
- (b) a small-scale site plan identifying the general location and boundaries of the location where the measures will be implemented;
- (c) a detailed description of the measures and how these measures will meet their objectives;
- (d) a detailed description of the monitoring measures that will be implemented to assess effectiveness of the measures in paragraph (c);
- (e) a detailed description of the contingency measures and associated measures that will be implemented if the measures in paragraph (c) do not meet their objectives;
- (f) a detailed description of any adverse effects on fish and fish habitat that could result from the implementation of the plan;
- (g) a detailed description of the measures and standards that will be implemented to avoid or mitigate the adverse effects and how those measures will meet their objectives;
- (h) the timeline for the implementation of the plan;
- (i) an estimate of the cost of implementing each element of the plan; and
- (j) if the implementation of the plan requires access to lands, water sources or water bodies that are not owned by the applicant, a description of the steps that are proposed to be taken to obtain the authorization required for the applicant, the Department of Fisheries and Oceans and anyone authorized to act on the Department's behalf to access the lands, water sources or water bodies in question.

Requirements of Ministry of Natural Resources and Forestry

The *Public Lands Act* regulates the use of Crown land and shore lands that are managed by the Ministry of Natural Resources and Forestry and prohibits certain activities on those lands without a work permit. This applies to public lands managed by the Ministry of Natural Resources and Forestry, including the beds of most lakes and rivers and shore lands covered or seasonally inundated by the water of a lake, river, stream or pond. If any portion of the fish habitat compensation project is located on such lands, it may require a work permit. The issuance of work permits is governed by a regulation that requires the proposed work to be consistent with applicable laws, resource management plans, land use guidelines

and policies and procedures of the Ministry of Natural Resources.

Requirements of Niagara Peninsula Conservation Authority

The Niagara Peninsula Conservation Authority (NPCA) is empowered by Provincial Statute to regulate development and activities in or adjacent to river or stream valleys, Great Lakes and large inland lakes shorelines, watercourses, hazardous lands and wetlands. The authorizing regulation provides that no person shall straighten, change, divert or interfere with the existing channel of a river, creek, stream or watercourse without the permission of the NPCA. Based on the description of the fish habitat compensation project received from St. Catharines, it appears that NPCA permission will be required. Applications for permission must include the following information:

- (a) a plan of the area showing plan view and cross-section details of the proposed alteration;
- (b) a description of the methods to be used in carrying out the alteration;
- (c) the start and completion dates of the alteration;
- (d) a statement of the purpose of the alteration; and
- (e) such other technical studies or plans as NPCA may request.

Niagara Escarpment Commission

The Niagara Escarpment Commission (NEC) is empowered by Provincial Statute to regulate development in areas located within the Niagara Escarpment Planning Area, including proposals for matters such as irrigation or recreational ponds, altering the grade of land and changes in land use. If any portion of the fish habitat compensation project is subject to NEC regulation, a development permit will be required. Applicants for NEC development permits must provide information about the property where the development will occur, including any applicable easements or rights-of-way, the current use of the property and the proposed changes to the use of the property. Where an application involves pond construction or alteration, the NEC generally requires a hydrology/hydrogeology report and/or an environmental impact assessment. Applicants are also required to include details about inflow, outflow, emergency outflow, spillway details, type of construction, height and width of banks, erosion/sediment control measures, placement of excavated materials, finished grading and landscaping on the submitted site plan.

The Town of Pelham does not have authority to regulate the fish habitat compensation project; however, there will be ample oversight as outlined above.

Financial Considerations:

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

Alternatives Reviewed:

None.

Strategic Plan Relationship: Strong Organization

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 contribute to this report.

Other Pertinent Reports/Attachments:

Attached to this report is 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.

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