

NO: **R003**

COUNCIL DATE: **January 14, 2013**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **January 7, 2013**

FROM: **General Manager, Engineering**

FILE: **5225-40 (SDD)
5225-40(CDD)**

SUBJECT: **Responsibility for Dyking Districts in the City of Surrey**

RECOMMENDATION

The Engineering Department recommends that Council:

1. Receive this report as information;
2. Authorize staff to continue to work with the Surrey Dyking District and the Province with a view to the City of Surrey assuming responsibility for the Surrey Dyking District in 2013; and
3. Authorize staff to inform appropriate Provincial officials and representatives of the Colebrook Dyking District that the City is not able to assume responsibility for the Colebrook Dyking District at this time.

INTENT

The purpose of this report is to provide information about the pending dissolution of the Colebrook Dyking District and the Surrey Dyking District and to outline actions that are being taken by staff in relation to these matters.

BACKGROUND

At its Regular meeting on January 23, 2012 Council considered Corporate Report No. R010;2012 (copy attached as Appendix A) and adopted its recommendations. That report documented that the Province had enacted legislation that would repeal the Drainage, Ditch and Dike Act [RSBC 1996] Chapter 102 (the "Act") on December 31, 2010. The report also documented that the repealing of this legislation would result in the dissolution of six dyking districts across the Province, two of which (Colebrook Dyking District and Surrey Dyking District) are within the City of Surrey. None of the City of Surrey or the Colebrook Dyking District or the Surrey Dyking District was consulted in advance of the legislation being enacted. Subsequently, at the request of local governments, the Province decided to defer the repeal of the Act by two years to December 31, 2012.

The dissolution of the Colebrook Dyking District and the Surrey Dyking District will result in the assets of each of these Dyking Districts and the continued operation and maintenance responsibilities of the Districts being transferred to the City of Surrey.

The Mud Bay Dyking District, which is also located in the City of Surrey, is not affected by the repealing legislation as this District was incorporated as an Improvement District under different legislation.

As was documented in Corporate Report No. Ro10; 2012 staff committed to:

1. establishing a new City staff position of “Dyke Superintendent” which will be responsible for overseeing the operation and maintenance of the dykes;
2. establishing a stakeholder committee made up of representatives of the owners of the properties located within the respective Dyking Districts that will provide advice and input to the Dyke Superintendent regarding opportunities and concerns with respect to the dykes; and
3. reviewing opportunities in relation to the drainage parcel tax to ensure that there is a sufficient stream of funding to support the ongoing operation and maintenance of the dykes.

During 2012 staff has:

1. Worked with representatives of each of the Colebrook Dyking District and the Surrey Dyking District in preparation for the transfer of their responsibilities to the City beginning on January 1, 2013;
2. Requested assistance and clarification from the Province on a number of transitional issues;
3. Established and filled the position of Dyke Superintendent;
4. Advertised and are in the process of forming a Lowlands Dyking Stakeholder Committee. The Committee will be made up of land owner representatives from each of five areas within the lowlands. A copy of the terms of reference for the Lowlands Dyking Stakeholder Committee is attached as Appendix B; and
5. Completed a detailed assessment of all dykes within each of the Colebrook Dyking District and the Surrey Dyking District.

The Province in a letter dated December 5, 2012 advised that the above-referenced repeal of the Act has been deferred for another three years. The Act is now scheduled to be repealed on December 31, 2015. This decision by the Province was based on their need for more time to resolve a number of outstanding issues and negotiate transfer agreements related to other dyking districts in the Province.

DISCUSSION

Surrey Dyking District

At a meeting between Surrey staff and the Commissioners of the Surrey Dyking District it was agreed that it would be in the best interests of the Dyking District’s ratepayers that the City assume the responsibilities of the Surrey Dyking District as soon as possible. Staff and the Commissioners have determined that the operation of the Dyking District will be difficult to maintain if the current employees of the District leave during the three year period. It will be

difficult to hire term employees to properly effectively fill the vacated roles. The rights-of-way within which the dykes of the Serpentine and Nicomekl Rivers are located are in favour of the City of Surrey and the Dyking District and, as such, the City has the right to maintain these dykes. These rights-of-way were obtained as part of the implementation of the Serpentine/Nicomekl River Strategic Plan for Lowland Flood Control.

Based on the above rationale, staff holds the view that it would be reasonable for the City to continue to work with the Surrey Dyking District and the Province toward the City assuming the responsibilities of the Surrey Dyking District during 2013.

Colebrook Dyking District

The Commissioner of the Colebrook Dyking District also holds the view that it would be in the best interests of the District's ratepayers for the City to assume the responsibilities for the Colebrook Dyking District as soon as possible. The Colebrook Dyking District has no staff. The Commissioner coordinates all of the operation and maintenance responsibilities of the District through contracted services. The Commissioner of the Colebrook Dyking District has resigned his position with the District effective December 31, 2012. However, unlike the Surrey Dyking District, the City does not control the rights-of-way along the majority of the dykes under the administration of the Colebrook Dyking District.

As the City does not have control over the Colebrook Dyking District dyke rights-of-way, it is not in a position to ensure maintenance of the dyking system. On this basis, staff holds the view that the City should not assume the responsibilities of the Colebrook Dyking District at this time. In the absence of the City taking over the District, the Province will assume the role of overseeing the Colebrook Dyking District in a similar manner to the role the Province plays in overseeing the Barnston Island Dyking District.

Funding

There is sufficient funding from the current parcel drainage tax and the financial reserves of Surrey Dyking District to fund the operation and maintenance of the Surrey Dyking District dykes in 2013. During 2013 staff will develop a sustainable funding model for the on-going operation and maintenance of these dykes and will incorporate appropriate recommendations for Council's consideration in the 2014 Five Year financial plan.

CONCLUSION

Based on the above discussion, it is recommended that Council:

- Authorize staff to continue to work with the Surrey Dyking District and the Province with a view to the City of Surrey assuming responsibility for the Surrey Dyking District in 2013; and
- Authorize staff to inform appropriate Provincial officials and representatives of the Colebrook Dyking District that the City is not able to assume responsibility for the Colebrook Dyking District at this time.

Vincent Lalonde, P.Eng.
General Manager, Engineering

VL/JA/brb

Appendix A - Corporate Report No. Ro10;2012

Appendix B - Lowlands Dyking Stakeholder Committee Terms of Reference

NO: **R010**

COUNCIL DATE: **January 23, 2012**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **January 19, 2012**

FROM: **General Manager, Engineering**

FILE: **5225-40 (SDD)
5225-40(CDD)**

SUBJECT: **Management of Dyking Districts in the City of Surrey with the
Repeal of the Drainage, Ditch and Dike Act**

RECOMMENDATION

The Engineering Department recommends that Council:

1. Receive this report as information; and
2. Authorize staff to establish a Lowlands Dyking Stakeholder Committee to provide advice to the Dyke Superintendent in relation to the operation and maintenance of the dykes that are located within the Colebrook Dyking District and the Surrey Dyking District.

INTENT

The purpose of this report is to advise Council of the pending dissolution of the Colebrook Dyking District and Surrey Dyking District and the actions that are being taken by staff in relation to this matter.

BACKGROUND

At its Regular meeting on January 19, 2009 Council considered Corporate Report No. R003;2009, a copy of which is attached as Appendix I, which noted that the Province had enacted legislation that would act to repeal the Drainage, Ditch and Dike Act [RSBC 1996] Chapter 102 (the "Act") on December 31, 2010. The report noted that the repealing of this legislation would result in the dissolution of six dyking districts across the Province, two of which (Colebrook Dyking District and Surrey Dyking District) are within the City of Surrey. Neither the City of Surrey or the Colebrook Dyking District or the Surrey Dyking District was consulted before the repealing legislation was enacted. Subsequently, at the request of local government, the Province extended the repeal of the Act by two-years to December 31, 2012.

The dissolution of the Colebrook Dyking District and the Surrey Dyking District will result in the assets of these Dyking Districts including their operation and maintenance responsibilities being transferred to the City of Surrey.

The Mud Bay Dyking District, which is also located in the City of Surrey, is not affected by the repealing legislation as this District was incorporated as an Improvement District under different legislation.

Under Corporate Report No. R003; 2009 staff committed to:

1. work with Provincial officials toward a further extension to the Act beyond December 31, 2012;
2. study potential operating partnerships or cooperatives with each Dyking District with a view to determining the most appropriate approach to provide dyking services after the Dyking Districts are dissolved; and
3. establish how operation and maintenance responsibilities related to each District can continue in the shorter term if any District finds that it is not able to fulfill its obligations.

DISCUSSION

Staff has worked with the City of Coquitlam and Metro Vancouver, both of which are also impacted by the repealing of the Act, to obtain a further extension to the Act beyond December 31, 2012.

In addition, at 2011 Convention of the Union of British Columbia Municipalities (UBCM) the delegates endorsed Resolution No. B12 – “Dyking Districts”, which stated:

WHEREAS the Province desires to transfer responsibility of operating and maintaining diking district assets to local government;

AND WHEREAS the cost of operating and maintaining diking district asset, and the associated liabilities of operating and maintaining the assets are undefined:

THEREFORE BE IT RESOLVED that UBCM request that the Province of BC undertake a full cost, operating and condition assessment of diking district assets to determine the most appropriate and cost effective delivery of flood protection to property owners;

AND BE IT FURTHER RESOLVED that if local government-provided flood protection is deemed to be in the best interests of property owners, the Province of BC be asked to provide adequate funding for the operation, maintenance and rehabilitation of the diking district assets.

The Province has yet to respond to the UBCM Resolution and has not agreed to extend the date on which the repealing legislation takes effect, being December 31, 2012.

As an alternative, staff has discussed with Provincial staff the option of converting each of the Colebrook and Surrey Dyking Districts, respectively, to an Improvement District similar to the Mud Bay Dyking District. The Province has advised that they would not approve the formation of any new Improvement Districts as they are not practical in established communities such as Surrey. Upon further analysis, staff agrees with the Province’s conclusion on the practicality of this approach.

Staff has had discussions with the members of the Surrey Dyking District with a view to developing a potential operating partnership or cooperative as a means to provide dyking services after the Dyking District is dissolved. Neither the Colebrook Dyking District nor the Surrey Dyking District has taken any steps to establish either District as an independent entity or to establish a partnership with the City for the purpose of maintaining their respective dykes. Engineering staff are making the necessary arrangements to assume the operation of the dykes in both of these Districts. The following sections summarize the actions that are being taken.

Operation and Maintenance of the Dykes

As a means to ensure the proper operation and maintenance of the dykes, including dyke inspections during/after significant runoff events, a new position of “Dyke Superintendent” is being established in the 2012 budget process. This position will be responsible for determining and overseeing the operation and maintenance of the dykes by the City and by the ex-Dyking District staff or others.

Public Consultation

The Colebrook Dyking District and the Surrey Dyking District operated with the benefiting property owners acting as commissioners. Each Dyking District elected three property owners as commissioners, who meet regularly to establish operation and maintenance priorities within available funding. Each Dyking District also hosts an annual general meeting where they present their yearly work program to the owners of the properties located within the Dyking District.

To provide for regular consultation with representatives of the owners of the properties located within the respective Dyking Districts after the Districts are dissolved, staff is recommending that a Lowlands Dyking Stakeholder Committee be established. This Committee will provide advice and input to the new Dyke Superintendent regarding opportunities and concerns with respect to the dykes. It is proposed that this Committee be comprised of three to five owners of properties across a variety of agricultural interests and locations from within the areas covered by the Dyking Districts. Engineering staff will also host an annual Public Information Meeting at which information regarding the dyke and drainage work undertaken over the prior year within the benefiting areas would be communicated along with information regarding the work plan for the coming year.

Funding Operation and Maintenance of the Dykes

The Dyking Districts currently receive funding for their operations from two sources; these being:

- a dyking tax against the benefiting properties in each District (which tax delivers approximately half of the respective District’s operating budget); and
- the City, by way of an operating agreement with each District, covering the remaining half of each Dyking District’s operating budget.

With the repeal of the Act, the Dyking Districts will lose their ability to charge a tax. Therefore, to fund the operation and maintenance of the dykes, staff is reviewing opportunities to adjust the drainage parcel tax to address this funding requirement. A further report complete with recommendations regarding this matter will be forwarded to Council later in 2012.

CONCLUSION

Based on the above discussion, it is recommended that Council authorize staff to establish a Lowlands Dyking Stakeholder Committee to provide advice to the Dyke Superintendent in relation to the operation and maintenance of the dykes that are located within the Colebrook Dyking District and the Surrey Dyking District. A further report complete with recommendations regarding funding for dyke maintenance and operations will be forwarded to Council later in 2012.

Vincent Lalonde, P.Eng.
General Manager, Engineering

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Appendix I - Corporate Report No. R003; 2009

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Corporate Report

APPENDIX I

NO: R003

COUNCIL DATE: January 19, 2009

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **January 19, 2009**

FROM: **General Manager, Engineering** FILE: **5225-40 (SDD)**
XC: **5225-40 (CDD)**
5225-40 (MBDD)

SUBJECT: **Dyking Districts in the City of Surrey – Repeal of the Drainage, Ditch and Dike Act**

RECOMMENDATION

The Engineering Department recommends that Council receive this report as information.

INTENT

The intent of this report is to advise Council of the pending dissolution of the Colebrook Dyking District and Surrey Dyking District and the actions that are being taken by staff in relation to this matter.

BACKGROUND

In 2002, the Province enacted legislation that would act to repeal the Drainage, Ditch and Dike Act [RSBC 1996] Chapter 102 (the “Act”) on December 31, 2010. The repealing of this legislation will result in the dissolution of six dyking districts, two of which (Colebrook Dyking District and Surrey Dyking District) are located within the City of Surrey. The City of Surrey, Colebrook Dyking District and Surrey Dyking District were not consulted before the Province enacted the repealing legislation.

The dissolution of the Colebrook Dyking District and the Surrey Dyking District will result in their assets, and their operation and maintenance responsibilities, being transferred to the City of Surrey.

The Mud Bay Dyking District is not affected by the repealing legislation as they are incorporated as an Improvement District, which falls under different legislation.

DISCUSSION

The Surrey Dyking District and Colebrook Dyking District have provided a valuable service to the owners of lands located in the floodplains. The continued operation of the Dyking Districts is in the best interests of those that they serve.

As noted above, the Act was to be repealed on December 31, 2010; however, in response to a request from the City of Surrey for an extension, the Province extended the date of the repeal to December 31, 2012 (as shown in Appendix I). The City requested this extension, as the City wants to work with the Dyking Districts to explore potential operating partnerships or cooperatives.

Staff will be meeting with each District to establish how the City can assume the assets and the operation and maintenance responsibilities of each District once the Act is repealed or if the Dyking Districts are unable to fulfill their obligations. This latter statement relates to an observation by the Surrey Dyking District, which has three full-time and two part-time employees, that they may not be able to retain their staff and fulfill their operation and maintenance responsibilities due to the uncertainty created by the pending dissolution of the District.

The Surrey Dyking District and Colebrook Dyking District have also inquired about converting to Improvement Districts, similar to the Mud Bay Dyking District. The Province has indicated that they do not support the creation of new Improvement Districts and that they are seeking to transfer existing Improvement Districts to local government responsibility. As such, staff will also be meeting with the Mud Bay Dyking District to discuss their future operations.

Next Steps:

Over the next few weeks, staff will:

1. work with Provincial officials toward a further extension to the Act beyond December 31, 2012;
2. study potential operating partnerships or cooperatives with each Dyking District with a view to determining the most appropriate approach to provide dyking services after the Dyking Districts are dissolved; and
3. establish how operation and maintenance responsibilities related to each District can continue in the shorter term if any District finds that it is not able to fulfill its obligations.

CONCLUSION

Staff will provide a further report to Council complete with recommendations as additional information becomes available.

Vincent Lalonde, P.Eng.
General Manager
Engineering

VL/JA/brb

Appendix I - Excerpt from Drainage, Ditch and Dike Act and Correspondence – Extension of Sunset Clause

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If the works of a development district are located in more than one regional district, the regional districts may assume the assets, rights, claims, obligations and liabilities in accordance with the apportionment set out in the order dissolving the development district, and that portion of the development district in each regional district is a service area of that regional district.

- (3) A board may provide that some or all of the assets of the development district be credited to the service area and that some or all of the liabilities be charged to the service area.
- (4) Without limiting section 176 (*Corporate powers*) of the *Local Government Act*, a board may enter into an agreement with the Provincial government for the joint undertaking of additional works of a similar nature and for their maintenance.
- (5) A board may, by bylaw adopted without the assent or approval of the electors but otherwise in accordance with the *Local Government Act*, borrow sums required under any agreement with the Provincial government.
- (6) The entire cost or the parts of the cost of an existing work or a work to be constructed under the terms of an agreement under this section, and of its maintenance and operation, as may be determined by the board, must be borne by the owners of real property in the service area.

2003-72-15

Sunset provision

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173.

This Act is repealed on December 31, 2012 or on a later date prescribed by regulation of the Lieutenant Governor in Council.

2003-72-15; R.C. Reg. 375/2008

Lowlands Dyking Stakeholder Committee Terms of Reference

PURPOSE

The purpose of the Lowlands Dyking Stakeholder Committee (the “Committee”) is to allow for regular communication between the owners of dyke-protected land in the lowlands and the City regarding the operation and maintenance of the lowland dykes.

GENERAL RESPONSIBILITIES

The Committee will:

- (a) receive from and disseminate information to landowners about the dyking system and provide advice to the City about the operation and maintenance of the lowland dykes; and
- (b) promote awareness with the general public and landowners about the dyking infrastructure and general considerations about living in a floodplain.

MEMBERSHIP

The Committee will consist of 5 members appointed by the General Manager, Engineering. The Committee’s membership will be representative of five separate geographic lowland areas within Surrey and will to the extent possible represent different agricultural interests in the lowlands.

A staff representative of the Engineering Department will act as the chair and preside over meetings of the Committee.

MEETINGS

The Committee shall meet a minimum of twice a year.

Committee meetings will be at the call of the chair.

The meetings will be open and will be held at City Hall.

The Committee is advisory in nature and, as such, there is no need to establish “quorum”.

A record (notes of the outcome) of each meeting of the Committee will be compiled by City staff and will be posted on the City’s website as soon as practical after each meeting.