

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee
From: George Kotsifas, P. Eng
Managing Director, Development & Compliance Services &
Chief Building Official
Subject: Environmental Impact Study (EIS) Compliance
(Deferred Matters Item)
Meeting on: July 16, 2018

Recommendation

That, on the recommendation of the Director, Development Services, the following actions be taken:

- (a) the report regarding Environmental Impact Study (EIS) compliance for subdivisions BE RECEIVED for information; and,
- (b) this item BE REMOVED from the Planning and Environment Committee Deferred Matters list (Item #7 of the May 28, 2018 PEC report).

Background and Analysis

1.0 Background

1.1 Council Resolution

On January 26, 2016, Council resolved the following:

Civic Administration BE DIRECTED to review and report back to a future meeting on how Development Agreements could be modified to include a mechanism for the Civic Administration to undertake compliance investigations to ensure that conditions set out in Environmental Impact Statements are and will be met; it being noted that the Planning and Environment Committee reviewed and received a communication dated January 18, 2016, from Councillor T. Park.

The purpose of this report is to provide additional information regarding Council's request, to outline actions being taken on this matter, and to highlight further work that Civic Administration is pursuing.

1.2 Additional Background

Environmental Impact Studies (EIS) are required for proposed development occurring adjacent to natural heritage areas. Through scientific analysis, studies determine the features, systems and species that have important ecological functions and the enhancements and protections that are required. From an EIS, the limits of development are established as well as appropriate buffers/mitigative measures from the significant natural heritage areas.

In most circumstances, EIS reports include recommendations for post-development monitoring to assess the implementation and efficacy of the findings of the EIS and impacts on the applicable features, systems and species. The monitoring results are used by the City to determine if corrective actions are required to better protect the subject environmental lands.

Monitoring conditions are included in subdivision agreements based on the recommendations contained in the EIS.

2.0 Key Issues and Considerations

In response to Council's direction, Staff have reviewed current processes, initiated a review of active subdivisions and determined an approach for further improvement. EIS compliance involves multiple areas of the City: Environmental Planning, Development Planning, and Agreement Compliance. The sections below provide a summary of issues, work-to-date and next steps.

2.1 Improved EIS Compliance Process

Operationalizing EIS monitoring clauses involves Senior Planners, Development Inspection Technologists and Ecologist Planners. Each individual has an important role to play in the "chain" to ensure that monitoring reports are received, reviewed and actioned accordingly.

The following process is being implemented for EIS compliance matters:

- Senior Planners will review the EIS to determine if a monitoring clause(s) is required (draft plan approval or subdivision agreement) and ensure inclusion of clause;
- Senior Planners will prepare milestone dates for annual monitoring requirements and provide the list to the Compliance team;
- Development Inspection Technologists will send out reminders for annual monitoring to landowners and receive the monitoring reports for distribution;
- Ecologist Planners will review the monitoring reports, conduct site inspections (if deemed to be required) and provide comments/deficiencies/sign-off to the Compliance team; and,
- Development Inspection Technologists will communicate the outcomes of City review to landowners and any required actions/remediation.

Additional communication and training regarding this improved process will be completed in the coming months.

2.2 Review of Active Subdivisions

Both Development Services and Environmental and Parks Planning have recognized that there has been inconsistent receipt and corresponding review of monitoring reports. Further, tracking databases are not in place to confirm the status of monitoring requirements for active subdivisions.

Staff has initiated an inventory and assessment for EIS monitoring conditions for one hundred and fifty (150) active subdivisions at varying stages to identify the monitoring requirements, confirm reports received to date and engage landowners with outstanding requirements. Although some of this information is readily available, much of the analysis is labour intensive; as a result, the review will not be completed until the early fall. Any identified gaps will be actioned and older subdivisions will be prioritized first due to the length of elapsed time from pre- to post-development conditions and recognizing that the subdivisions will be nearing assumption.

2.3 Compliance and Enforcement

Compliance and enforcement matters relate to conditions for development, security and by-laws.

Conditions: As mentioned above, subdivision agreements presently provide EIS monitoring clauses where needed. As part of the subdivision continuous improvement initiatives, Staff is examining draft plan conditions and subdivision agreement clauses. It has been recognized that draft plan conditions and agreement clauses would benefit from improved language on expectations, requirements and timing associated with EIS monitoring. Once the language has been finalized it will be implemented for all new conditions and clauses.

Security: Historically, the City has not required security from developers associated with EIS monitoring. Security is generally received in the form of cash or letters of credit that can be drawn upon by the City in the event that a developer is in default of the requirements of their subdivision. In a default circumstance, the City can undertake actions required to remedy the matter with the available funds. As EIS compliance matters are not secured, in a default circumstance (e.g., monitoring has demonstrated ecological failure), the City would be required to compel the developer to action through the courts or to take action on behalf of the developer and gain reimbursement as a result of litigation. Staff is investigating options available for EIS security and implementation.

By-laws: Another means of addressing EIS compliance is through the creation of dedicated by-laws and associated enforcement. The City presently has limited by-law options associated with natural heritage matters. By-laws can provide a means to protect features and functions of recognized environmental areas, and to levy fines associated with non-compliance. By-law options (and need) are still in preliminary stages of review and consideration will be given to enhancement of existing by-laws (e.g., Site Alteration By-law and Tree Protection By-law) as well as the drafting of a new by-law.

It should also be noted that enforcement of natural heritage matters extends beyond the City – the Upper Thames River Conservation Authority and other Provincial and Federal agencies have the ability (if they choose) for enforcement related to impacts to natural heritage features. City staff regularly liaise with these agencies and departments to address comments and concerns.

2.4 City-wide Monitoring Contract

As described above, EIS monitoring requirements are the responsibility of developers. Consultants are retained by these individuals to assess outcomes for individual subdivisions. Some municipalities have opted to have a single city-wide monitoring contract with a consultant that reviews all applicable subdivisions on behalf of the City and developers. A city-wide contract approach provides benefits by conducting monitoring consistently (the same consultant and the same methodology), at regularized intervals, and opportunities for benchmarking with other similar subdivisions. The City of Kitchener has adopted a city-wide monitoring contract approach and funds the reviews through their Development Charges Study. Single, city-wide EIS monitoring would also be consistent with the City's program for stormwater management facility monitoring prior to assumption (for former developer-constructed facilities). Staff is reviewing this matter as part of the 2019 Development Charges Background Study.

2.5 Post-Development “Audits”

There are two types of post-development “auditing” of EIS compliance: site inspection and systematic long-term review.

Site inspections: Presently, Environmental and Parks Planning staff perform limited site inspections for post-development effects on natural heritage lands and species proactively (e.g., a particularly sensitive feature is known and was the subject of significant consideration during the development process, or random inspection when adjacent/on-site for other matters) and reactively (e.g., a call-in about significant development-related erosion impacting natural heritage lands). Given that the City only has two Ecologist Planners on staff, it is challenging to undertake site inspections on a regular basis as these same individuals are reviewing current development applications and advancing numerous environmental planning projects. Staff is exploring the need for additional Environmental Planning resources and associated business cases.

Long-term review: Staff has recognized the benefit of completing systematic long-term reviews of post-development impacts on natural heritage areas. The City's environmental policies were substantially changed in 2009 with Official Plan Amendment 438. These revised policies have subsequently informed the content and recommendations of Environmental Impact Studies completed for new development. In

the coming years, a sizeable number of subdivisions that were planned based on the revised policies will have been occupied and built-out for a period of time such that a study could be undertaken to assess the efficacy of EIS recommendations and the City's environmental policies. This information would be a beneficial "feedback loop" to considering future development requirements. The completion of a long-term study will continue to be explored by Staff.

3.0 Conclusion

Staff has established a multi-pronged approach to improving EIS compliance. Over the coming months, further actions will be taken related to the review of active subdivisions, development conditions, security and other enforcement alternatives. Staff will also continue to investigate enhanced post-development auditing, recognizing the longer-term nature of this matter due to resource constraints.

Discussions with stakeholders regarding the matters contained in this report will also occur.

Acknowledgements: This report was prepared with the assistance and input of staff from Environmental and Parks Planning and Development Services.

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Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from Development Services.	

July 18, 2018
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Cc: Andrew Macpherson, Manager, Environmental and Parks Planning
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