
CITY OF KELOWNA

MEMORANDUM

Date: October 27, 2004
File No.: 1280-01

To: City Manager

From: Director of Works & Utilities

Subject: **Ditch Maintenance and Inspection Policy**

Report Prepared by: D. Beaudry, Roadways Superintendent

RECOMMENDATION:

THAT Council approve the attached policy for ditch maintenance and inspection.

AND THAT Council direct staff to bring forward a 2005 Provincial Budget submission to allow the hiring of a summer student in 2005 to put together an up to date ditch inventory.

DISCUSSION:

Presently the City does not have a formal ditch inspection and maintenance policy. Our practice has been to respond to flooding complaints. Where ditches are considered to have contributed to the flooding problem, a practical solution is sought.

Open ditches are commonly used for drainage in areas that have a rural cross section. Over the years residents take it upon themselves to fill in these ditches to make room for parking or to make the area easier to maintain. In the absence of a formal inspection program these filled in ditches may go unnoticed for years until there is a flooding complaint. The person who filled in the ditch may or may not still own the property and usually the flooding occurs to property downstream of the filled in ditch.

We consulted with the City Solicitor to determine what the City's statutory obligations are to maintain its drainage infrastructure as originally designed (i.e.: open ditches). The following is a summary of their opinion:

1. If the landowner of the flooded property is the same owner responsible for filling in the ditch, the owner should have sole responsibility for any flooding damage sustained which would have been prevented had the ditch not been filled in.
2. If the landowner of the flooded property is not the same owner responsible for filling in the ditch, the subsequent landowner may be found responsible if they continued or adopted the nuisance.
3. The City could have liability to other property owners suffering damage as a result of their neighbours filling in the ditch.
4. There is potential for the City to be fixed with liability if the City was aware of a filled in ditch, that poses a flooding risk and the City chose to not take corrective action by way of a plan to address the solution.
5. The Community Charter S. 75 and S.76 (1) gives Council the power to order a ditch obstruction to be removed. This power can not be transferred to staff; S. 154 (2) (f).

If Council approves the attached Policy, staff will put in a late Budget Supplemental in the amount of \$15,640 which is to be used for the development of a ditch inventory. Once established the annual inspections and updating of the inventory will be completed under the existing base operating Budget. The cost for remedial action, as identified by the annual inspections, will be paid for out of the miscellaneous drainage account. A separate Budget item will be submitted to Council if something extraordinary comes out of the development of the inventory or subsequent annual inspections.

On the basis of this information the attached policy was developed for Council consideration.

John Vos, P. Eng.
Director of Works & Utilities

DB/ms



CITY OF KELOWNA

COUNCIL POLICY MANUAL

POLICY: 321
PAGE: 1 of 1
APPROVAL DATE: @
RESOLUTION #: @
REPLACING #: NA
DATE OF LAST REVIEW: October 2004

SUBJECT: Ditch Maintenance and Inspection

It is recognized the City has a duty of care in maintaining ditches which make up part of its drainage network.

1. Annual Inspections

- The City's Roadway Division will be responsible for conducting annual ditch inspections. Annual inspections will be documented.

2. Ditch Cleaning

- Areas found in need of repair or cleaning will be scheduled on a priority basis and work will be performed within the resources available.

3. Re-establishing Ditches

- Where a ditch has been filled in by the existing landowner, since the previous inspection, the City will instruct the landowner to remove the obstruction. If the landowner fails to remove the obstruction within the time allotted by the Roadways Superintendent, a resolution imposing a remedial action will be drafted for Council approval and will be carried out at the property owners expense.
- Where the ditch has been filled in by the previous landowner, since the previous inspection, the City will remove the obstruction at the City's expense, within resource limitations.
- Where the ditch has been filled in by the existing or previous landowner before the implementation of this Policy and there is a demonstrated history of flooding as a result of the obstruction, the City will remove the obstruction, at the City's expense, within resource limitations.
- Where the ditch has been filled in by the existing or previous landowner before the implementation of this Policy, the City will only remove the obstruction if the City believes the obstruction will cause flooding damage to property other than the property who filled in the ditch. The obstruction will be removed at the City's expense, on a priority basis and within resource limitations.
- In cases where the filled in ditch has been landscaped, the City will give notice to the landowner of its intent to remove the obstruction and provide an opportunity for the owner to remove any landscaping that would have to be removed in any event as part of the construction process. Where a landowner neglects or refuses to remove any landscaping or other items within the road right of way, the City will proceed to remove the items.

REASON FOR POLICY: To provide maintenance staff direction on dealing with filled in ditches.

LEGISLATIVE AUTHORITY: Sanitary Sewer/Storm Drain Bylaw

PROCEDURE FOR IMPLEMENTATION: Annual inspection program and service requests.

