

ELECTORAL AREA DIRECTORS REPORT

TO:

**Chair and Electoral Area
Directors**

File No:

BL No. 646

SUBJECT:

Soil Removal and Deposit Bylaw No. 646 update

DESCRIPTION:

Report from Gerald Christie, Manager Development Services, dated November 2, 2017.
Staff recommends that the Electoral Area Directors' Committee not pursue further consideration of a Soil Removal and Deposit Bylaw at this time.

RECOMMENDATION

#1:

THAT: the Electoral Area Directors' Committee receive this report and not pursue further readings of Bylaw No. 646 at this time;

AND FURTHER: that the Electoral Area Directors Committee recommend to the Board that the First Reading given to Bylaw No. 646 on August 18, 2012, be rescinded.

RECOMMENDATION

#2:

THAT: the Electoral Area Directors' Committee direct staff to prepare a draft policy to aid staff and Directors in providing comment to the Ministry of Energy and Mines (MEM) in regards to mines related referrals received from the Ministry.

SHORT SUMMARY:

Developing a Soil Removal and Deposit Bylaw and gaining Ministry of Energy and Mines and Petroleum Resources (MEMPR) approval for such a bylaw is a significant undertaking. The Board has previously given first and second reading to Bylaw No. 646 and referred the bylaw for comment to government agencies, Advisory Planning Commissions (APCs), and First Nations. After much consultation, legal review, and discussions with peer local governments, staff recommends that the Electoral Area Directors' (EAD) Committee no longer pursue the establishment of a Soil Removal and Deposit Bylaw due to the regulatory duplication with MEMPR, the increased administrative burden on staff, and the additional enforcement resources that would be required for the bylaw.

BACKGROUND:

Since 2011, staff have had discussions with the Board and EAD with regard to drafting a Soil Removal and Deposit Bylaw for the CSR. In August 2011 a proposed Soil Removal and Deposit Bylaw No. 646 was given first reading and then granted second reading in July 2012. Beginning in 2011 staff had several discussions with MEMPR with regard to the proposed bylaw, liaised with legal counsel on numerous occasions, and have met with Electoral Area Advisory Planning Commissions (APCs) and local construction industry professionals. Further, staff have also met personally with ministry staff and had the Senior Inspector of Mines and Permitting come and present to the Board in November 2016.

Throughout this process some Directors have expressed support for the bylaw, e.g. additional public consultation and Board approval of soil-related permits, while other Directors have expressed concerns related to the regulatory duplication with the ministry and increased costs to the CSR for the processing of applications and enforcement of the bylaw.

POLICY:

Due to the number of referrals from the MEMPR with regard to mining permits, and given the technical nature and at times the impact that can occur to surrounding property owners, it is recommended that the EAD direct staff to develop a referral policy for MEMPR soil removal and/or deposit referrals. The policy could deal with the interplay between the size of the proposed operation, whether it is located in a primarily rural area or in close proximity to residential or commercial uses, and the desire of the CSRD to have the applicant or MEMPR conduct informative and meaningful consultation with stakeholders and the public prior to granting the permit.

The CSRD has similar existing policies dealing with referral responses required from other agencies, e.g. Telecommunications Facilities Siting and Consultation Policy P-22, Subdivision Referral Procedure PR-29, Development Services Referral Nonpayment Policy P-21, and Liquor Licence Applications Policy A-42.

FINANCIAL:

If the staff recommendation to prepare a draft policy is approved there are no financial implications to the CSRD other than staff time to prepare a new MEMPR referral policy. If the EAD wishes to proceed with a Soil Removal and Deposit Bylaw, staff will prepare the bylaw for further review and include details as to the financial impacts of the bylaw which could include additional staff for the processing, monitoring and compliance of these CSRD permits, and possibly an increased legal budget to be able to force compliance through the courts (injunctive proceedings).

KEY ISSUES/CONCEPTS:

The MEMPR has a thorough application vetting process for mining permits which includes detailed pre and post site drawings, site operational plans, production levels, equipment used, reclamation plans, landscaping details, end land use, emergency plans, environmental impacts, access management, noise abatement, and protection of cultural and heritage resources, and estimation of required security necessary to meet the mining plan requirements and reclamation. The technical aspects of the application are then reviewed with regard to the Mines Act, Water Sustainability Act, Heritage Conservation Act, Land Act, Fisheries Act, ALC Act, Transportation Act and others. The Mines Inspector is responsible for conducting the technical assessment of this information and can then reject the application or accept the application for the next step in the process, i.e. additional information requirements, First Nations consultation, public notification, and referrals including to local government. The Mines Inspector then reviews all of the consultation information received and may require the applicant to then also hold a public meeting prior to the Inspector considering the application further.

There are few regional districts that have Soil Removal and Deposit Bylaws. Those that have such bylaws have had several issues in developing, modifying, and enforcing these bylaws as well as difficulty working with MEMPR in a sphere of concurrent authority, i.e. who exactly is responsible for what, who takes the lead in enforcement, who provides conditions for what activities, etc. In some cases the reason for adopting a Soil Removal and Deposit Bylaw is because of a particular situation or property that has attracted the public's attention or that of the local government. However, there is not the ability to retroactively enforce a new bylaw or revisit the applicable Mines permit that has been granted to the operator or landowner for the activity, unless they are not living up to the requirements of the permit in which such cases the ministry would then be responsible for compliance and enforcement. As the CSRD has seen in other similar circumstances, if the local government has a bylaw that regulates

within an overlapping area of provincial authority there is a penchant by the province to attempt to download such enforcement and any associated costs to the local government.

The review and processing of a permit by MEMPR is similar to those considerations of CSRD planning staff when reviewing and when processing a major rezoning application. Upon review of previous years referrals from MEMPR to the CSRD for new or renewed mining permits, the CSRD receives on average 8-10 referrals per year (some years much less while in other years there has been 20+ referrals that would result in applications to the CSRD); given previous discussions with the Board with regard to Development Services workload and staffing, an increase of this many additional major applications to the department may require additional staffing just to help process these applications or the processing of other types of applications may take longer.

The CSRD continues to hold the power to require a rezoning of lands where the desired use is for the extraction and secondary industrial processing or importation of materials for processing, e.g. screening, asphalt or concrete production. The MEMPR permit only allows for the extraction of mineral resources and processing necessary to transport the material off-site. The MEMPR permit may therefore be granted for the proposed mineral extraction and which may include conditions on the hours of operation, noise and dust mitigation, washing stations, etc., but a rezoning or temporary use permit (TUP) would be required to be granted by the CSRD for any proposed secondary uses.

The MEMPR are responsible for all monitoring and enforcement of the mines permit for which they grant. This includes taking security for the permit, conducting inspections, issuing orders, adding additional permit conditions and can even cancel permits or fine the landowner and operator for violating permit conditions. If the CSRD approves of Soil Removal and Deposit Bylaw and grants a permit for such a soil-related activity, the CSRD may become the lead agency responsible for some or all of these above mentioned enforcement issues; however, the powers vested to the CSRD are limited to utilizing the security issued for the permit, utilizing fines that could be issued through the MTI Bylaw, or undertaking a costly court injunction process to seek compliance. The MEMPR staff, through the substantial powers vested in the Chief Inspector of Mines, has significant powers to unilaterally modify permits or cancel them outright. If a court injunction is necessary in getting compliance with the approved mines permit, or if a permit was not obtained, the court proceedings are undertaken and paid for by the province.

SUMMARY:

The Ministry of Energy and Mines and Petroleum Resources has an extensive and detailed application vetting process for mining permits. However, staff and Directors have voiced concerns with the level of consultation with local governments and the public when the ministry is considering such new applications or their renewal. As noted by the Senior Inspector of Mines and Permitting at the November 2016 Board meeting, the ministry is making a renewed effort in consultations with local governments, stakeholders and the public generally during the mines permitting process. Staff agree with the Inspector that the industry is already heavily regulated through the MEMPR and the several applicable provincial acts that apply. As the ministry is already responsible for these permits, and given the geographic size of the CSRD and the number of additional applications that would need to be managed by the CSRD, the additional bureaucracy including staff time, and the additional cost and application processing time to the applicant, it is therefore the opinion of staff that in most cases the CSRD Soil Removal and Deposit Bylaw would be an unnecessary duplication of efforts. However, consistent referral messaging, i.e. MEMPR referral policy, and ongoing communication with ministry

staff will be necessary to proactively deal with new mines referrals and permits being considered by the MEMPR.

IMPLEMENTATION:

If the recommendation is approved, staff will develop a Ministry of Energy and Mines referral policy for consideration by Directors at a future EAD meeting.

COMMUNICATIONS:

N/A

DESIRED OUTCOMES:

That the EAD not pursue a Soil Removal and Deposit Bylaw at this time but direct staff to develop a MEMPR referral policy to be used by CSRD staff and Directors when responding to mines-related referrals.

BOARD'S OPTIONS:

Endorse the Recommendations.

Deny the Recommendations.

Defer.

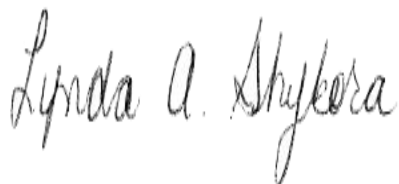
Any other action deemed appropriate by the Board.

LIST NAME OF REPORT(S) / DOCUMENT(S) AVAILABLE FROM STAFF: N/A

Report Approval Details

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This report and all of its attachments were approved and signed as outlined below:



Lynda Shykora - Oct 23, 2017 - 3:12 PM



Charles Hamilton - Oct 23, 2017 - 3:37 PM