



January 24, 2020

City of Kawartha Lakes  
P.O Box 9000  
26 Francis Street  
Lindsay, Ontario  
K9V 5R8

Dear Mayor Letham and Council,

**Re: Off-road vehicles on boundary roads**

The Council of the Township of Cavan Monaghan has been approached and requested to establish an off-road vehicle route through the Township, primarily to access the Ganaraska Forest at this time. Staff was asked to research options and report back to Council.

On September 17, 2019 the Township held a public meeting and provided a proposed option to Council and those in attendance; a map is included for your review. There were a number of comments and questions which staff compiled and provided an update report to Council on January 13, 2020, which I have also included.

One of the issues with the proposed route is with the use of Dranoel Road and Glamorgan Road as they are boundary roads and support would be required from the City of Kawartha Lakes to proceed.

As the new legislation is pending to open up all roads, the Township of Cavan Monaghan is seeking a position from the City of Kawartha Lakes on the use of boundary roads for off-road vehicle use.

The Township plans to continue to investigate off-road vehicle use and would welcome collaboration with the City of Kawartha Lakes to discuss the use of boundary roads.

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I look forward to your response and should you have any questions, please feel free to contact me.

Yours truly,

A handwritten signature in cursive script, appearing to read 'E. Arthurs'.

Elana Arthurs  
Clerk  
Township of Cavan Monaghan

cc: Cathie Richie, Clerk - City of Kawartha Lakes



## Regular Council Meeting

<b>To:</b>	Mayor and Council
<b>Date:</b>	January 13, 2020
<b>From:</b>	Elana Arthurs, Corporate Services Department
<b>Report Number:</b>	Corporate Services 2020-02
<b>Subject:</b>	Update - Off Road Vehicle Route from the Victoria Rail Trail to the Ganaraska Forest

### Recommendations:

1. That Council direct staff to send a letter to the Council of the City of Kawartha Lakes requesting a formal position on using boundary roads for the off-road vehicle route from the Victoria Rail Trail to the Ganaraska Forest.
2. That Council direct staff to send a letter to the Ministry of Transportation requesting a formal position on off-road vehicles crossing over Highway 115 as identified in the route from the Victoria Rail Trail to the Ganaraska Forest.

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### Overview:

At the Regular Council Meeting held on July 2, 2019 Council passed the following resolution:

**That Council direct staff to schedule an evening Public Meeting no later than the end of September to gather public input and consultation on the proposed north/south off-road vehicle route connecting the Victoria Rail Trail to the Ganaraska Forest along the west side of the Township of Cavan Monaghan.**

A Special Council meeting was held on September 17, 2019 where Council and the public received a presentation from Staff on a proposed off road vehicle route connecting the Victoria Rail Trail out of Bethany to the Ganaraska Forest along the west side of the Township. The meeting was open for the public to speak on the proposed route and approximately 300 people were in attendance.

Council received comments from approximately 50 speakers with about half being in favour and half opposed. Those that spoke addressed issues of concern including traffic, speed, safety and noise and those in favour spoke to the enjoyment of the trails, increased property values and economic benefits to the Township.

Since the meeting comments and questions have been received via email with the majority of the submissions being opposed to allowing off road vehicles on the proposed route. A variety of questions were submitted, many of which had similar themes, so they

have been grouped together, where appropriate, and staff have answered and summarized them in the chart below.

	<b>Questions</b>	<b>Answers</b>
1.	Has the Township taken into consideration the effect of home values of those with homes on a designated ATV route within the Township?	There has been information received from both sides those that believe a trail will increase the value and those that do not. Staff have not identified any research or numbers to confirm whether either is accurate as staff are not qualified real estate experts.
2.	Has the Township considered just completely opening up ATV use within the Township, so not just some residents take on all the ATV use?	Future information will be provided to Council as the legislative and regulatory amendments are established in Bill 107, as identified in this report. Additional information on the legislation may be provided as it becomes available.
3.	Who is taking on the liability of a collision?	All legal off road vehicles are licensed and individually insured and liability will fall to the at fault driver. Similar to auto collisions, if it is determined that the conditions contributed to the accident the municipality could held partially liable.
4.	Does the Township have any concerns for pedestrian traffic to and from the trail systems off of Carveth/4 <sup>th</sup> Line	Multi-use trails are becoming common in other areas, including pedestrian and motorized vehicle traffic. The proposed off road vehicle route does not intersect with this pedestrian trail, although staff has requested comments from our insurance broker and our municipal solicitor to ensure that all risks are brought to the attention of Council for consideration.
5.	Where are the studies to support that off road vehicles would bring in tourism?	Staff have contacted other municipalities and were told there was some economic benefit as would be when you bring people into an area that would not normally be there. Staff were not able to find any quantifiable numbers on the economic benefits of this type of traffic.
6.	Has Council considered the losses in jobs and revenues that would result from the demise of the 4 <sup>th</sup> Line Theatre.	The proposed off road vehicle route does not impact the 4 <sup>th</sup> Line Theatre.
7.	Is this a money making venture for you?	There is no expected financial benefit to the Township in allowing the proposed route for off road vehicles by Council.
8.	Is there no other course these riders could use?	Staff was directed to establish a route from the Victoria Rail Trail in Bethany to the Ganaraska Forest along the westerly limits of Cavan Monaghan. Based on the research and recommendation of staff, the proposed route was provided to Council. Council could direct staff to do some additional research on an

		alternative route at which time a report would be provided to Council on those options.
9.	Who is responsible for damages (personal or property) or injury to the rider occurring on one's private property?	The proposed off road vehicle route is solely restricted to municipal road allowances, roads and County roads. There is no recommendation to access private property.
10.	Who will enforce speed limits for off road vehicles?	The Peterborough Police are contracted to provide Police Services in the Township and would be required to enforce speed limits for all vehicles.
11.	Who will maintain road maintenance?	Township staff would be required to maintain the proposed off road vehicle route.
12.	Glamorgan Road is a boundary road between Cavan Monaghan and City of Kawartha Lakes, therefore does any extra maintenance fall on a particular Township?	Currently Glamorgan Road is maintained by the City of Kawartha Lakes in a Township Boundary Road Agreement.
13.	Who will enforce the use of ATV's and dirt bikes on our roadways?	The Peterborough Police are contracted to provide Police Services in the Township and would be required to enforce use of off road vehicles.
14.	Who will ensure that operators of these vehicles have the necessary insurance.	The Peterborough Police are contracted to provide Police Services in the Township and would be required to enforce insurance requirements of off road vehicles.
15.	How many more vehicles does Council anticipate?	Staff is not able to effectively respond to this question.
16.	Will you investigate whether this is part of a bigger plan supported by the Province or the Province and off-road vehicle associations?	This would require Council direction.
17.	How much is the Province committing to this type of recreation?	Potential funding and/or grants have not been announced at this time.
18.	How much will Council budget for adequate policing and other acts of due diligence related to Cavan Monaghan roads with increased use by off road vehicle on this route?	The Peterborough Police are contracted to provide Police Services in the Township and would be required to include off road vehicle to comply with the laws within their existing contract.

The recently passed Bill 107 – Getting Ontario Moving Act makes changes to permitting off road vehicles on municipal roads unless a by-law is adopted to restrict off road vehicles by Council. Bill 107 received Royal Assent in 2019 although additional legislative and regulatory amendments are required to implement changes to off road vehicle use in the province. Representatives from the Ministry of Transportation indicated amendments to Highway Traffic Act (HTA) Regulation 316/03 and Off-Road Vehicle Act Regulation 863 still need to be prepared and filed to allow off-road vehicle access to roads within certain municipalities (where the 80 km/h default speed limit

applies). An 18 to 24-month transition period is necessary to allow time for the regulations to be developed and, more importantly, allow municipalities that wish to restrict or prohibit off-road vehicle access on roads within their jurisdictions the time needed to study the issue and prepare by-laws accordingly. It was also noted that such by-laws cannot take effect until the regulatory amendments are proclaimed into force. This is anticipated to be on January 1, 2021.

Staff contacted the Ministry of Transportation requesting a position on the portion of the route that crosses Highway 115, although no response had been received at the time of this report.

Staff contacted the City of Kawartha Lakes requesting a position on the use of boundary roads, although no response had been received at the time of this report.

On October 25, 2019 Staff met with Robin McCleave, Senior Vice President-Risk Manager of JLT Canada Inc., the Township's Insurance Broker, and drove the proposed route for her review and comments which are provided below.

"There were two roads in particular that did raise some concern from a risk management perspective and they are:

1. The public road the off-road vehicle group would like to use to get to the entrance of the Unopened Road Allowance / Fire Route that stops at the railway tracks and into the Ganaraska Forest. For reference purposes please see my comments below – "Dranoel Road".
2. Travelling from a Township road onto a County road, including a bridge over 115 and a long curve before turning right onto a Township road. For reference purposes please see my comments below "ROAD B".

### **Dranoel Road**

Based on there being no shoulders and limited sight lines, it would be difficult from a risk management perspective to recommend the use of this section of Dranoel Road as a route for off-road vehicle users. My suggestion would be to consider looking at potential alternate routes for off-road vehicle users to get to this section of the forest. However, if it was decided to move forward and allow the use of off road vehicles on Dranoel Road, at a minimum my recommendation would be to erect –

- warning signs advising drivers they are sharing the road with off-road vehicles;
- curve signs;
- signs advising what the speed limit should be; and
- ensure that the trail identified as needing to be cleared of brush be completed on an ongoing basis.

### **Road B**

This section of road forms part of a snowmobile trail signed by a snowmobile club, and therefore an assumption was made that an off-road vehicle user would consider using the same section of road because it is already being used by snowmobilers.

At this section there are no shoulders and if there were two vehicles coming from different directions, and an off-road vehicle on the bridge at the same time, there would be limited room for each vehicle to safely manoeuvre while travelling on the bridge. Any

oncoming vehicles would have to slow down, it would not be safe to pass due to reduced sight lines.

To conclude, this may not be an issue for the Township because the section of the road that causes the most concern is a County Road. However, the off-road vehicle driver will be leaving your road to go onto the County Road, and if there was a loss at that intersection it is likely that the Township would be named in a suit. Therefore the Township may wish to not allow off-road vehicles on the Township road that would take the driver to the County Road. Potentially it may be possible work with the snowmobile and off-road vehicle clubs to try and find an alternate route that is safer all users.

### **Considerations when deciding which roads to allow the use of off-road vehicles**

Anytime a municipality is considering which roads are best suited for off-road vehicle use, it is our recommendation that the following be taken into consideration:

- Does your municipality have the staff to manage their increased maintenance responsibilities? If there is a loss the courts would look to maintenance/inspection records to see what standards were being met at the time of the accident.
- How safe is the roadway that is being contemplated for this use:
  - a. Is it flat with no curves, does it have clear sight lines.
  - b. The distance that the off-road vehicles are allowed to travel.
  - c. Type of road e.g. paved or gravel.
  - d. How busy is the roadway?
  - e. Based on the type of road which minimum maintenance standards (MMS) apply.
  - f. off-road vehicles are to travel on the shoulder unless it is deemed by the driver of the off-road vehicle that the shoulder is unsafe. Depending on the speed the off-road vehicle is travelling at, and how quickly a judgement call needs to be made by the driver of the off-road vehicle, the off-road vehicle could suddenly be on a roadway with little warning to other vehicles travelling on the road. Therefore it is important that the shoulders on the road are wide enough and properly maintained to reduce any need for the driver of the off-road vehicle to move from the shoulder to the road.

For information purposes below is the link to the MMS and the section that pertains to shoulders:

<http://www.canlii.org/en/on/laws/regu/o-reg-239-02/latest/o-reg-239-02.html>

### **Unopened Road Allowances also designated as Fire Routes**

Below is a synopsis of my observations while travelling through the various sections of the Ganaraska Forest located on Township property:

- There were Township signs advising the public "Fire Route 101, Unopened Road Allowance, Use at Own Risk".
- I did not see any signage advising/warning the public that along with the URA being a Fire Route, it was also a multi-use recreational trail used by:
  - snowmobilers,
  - off-road vehicles,
  - motorbikes,

- horseback riders
  - pedestrians
  - cyclists
- There was a section of the unopened road allowance / fire route being used by two private property owners to get to their sites. One of these sites is used for horses, their horse trailer and camping.
  - A logging company is using the unopened road allowance/fire route for their vehicles and equipment to get to sites where they are cutting down trees and parking their equipment.
  - Private passenger vehicles (PPV) have also been known to travel on the unopened road allowance/fire route – there was no signage stating PPV's were prohibited.
  - Sections of the forest are being used for hunting and any signage –
    - was not consistent;
    - at times difficult to read;
    - did it articulate where you could and could not hunt; and
    - did not articulate what times during the year the forest could be used for hunting.

From a risk management perspective my recommendation would be to set up a meeting with yourself, other pertinent municipal staff members, if feasible legal counsel and myself early in the new year to discuss:

1. Does additional signage needs to be erected? If yes, what should it say and where should the additional signage be erected.
2. Should consideration be given to erecting signage for information purposes. For example:
  - advising users to stay on the trail – to protect the environment, sensitive plants and wildlife;
  - directional signs;
  - create a trail map, naming the trails and number of kilometers;
  - warn users that cellular service is limited.
3. If the message on the current unopened road allowance/fire route signs needs verbiage added advising only designated vehicles are allowed to travel on the unopened road allowance/fire route.
4. How best to address the issue of PPV's vehicles using the unopened road allowance/fire route. In particular should consideration be given to widen the section of the unopened road allowance/fire route that is being used by the two property owners?
5. How best to address the sections of the unopened road allowance/fire route that are being used by commercial vehicles, including parking of vehicles and equipment (the logging company). For example widen those sections of the unopened road allowance/fire route and build a designated parking lot. Would it make sense/would it be possible to limit the sections of the unopened road allowance/fire route that can be used by their commercial vehicles.

6. Should action be taken to try and prevent the use of motorbikes on the unopened road allowance/fire route e.g. using signage and better enforcement by the Peterborough Police?
7. To try and prevent the use of unauthorized vehicles on the unopened road allowance/fire route should gates be installed with fire staff having access to the keys or cutters in the event of an emergency? This may not be feasible if other users of the unopened road allowance/fire route cannot get around the gates. The use of the unopened road allowance/fire route by the logging company would also need to be addressed.
8. Build parking lots at specific entrances to the forest where individuals who want to use the forest for recreational purposes can park their cars. This would also create an opportunity to erect an informational sign."

In addition to the comments from the insurance company above, comments were requested from the Ed Veldboom, Municipal Solicitor which have been provided below:

"The same general principle has been carried through from the last major changes to the legislation concerning ATV/UTV (Off Road Vehicles) use on public highways. Province has opened the door to allow more types of vehicles to be used, but has given the municipalities the final say in their jurisdiction by allowing municipalities to restrict and/or prohibit use by by-law

The key aspect is that the authority and rules/regulations under the *Highway Traffic Act* are tied to the existence of a "highway". In this case it appears that the connection being considered could involve both maintained (but lightly used) roads and unopened road allowances; both are "highways" and as such the *Highway Traffic Act* does apply; however if unopened road allowances were actually closed by by-law, then the *Highway Traffic Act* would not apply (that could also apply to any opened section of highway along the boundary).

The other key aspect that must be considered is the fact that it is a boundary road/road that is being considered. Thus any by-law passed to address the issue of Off Road Vehicle Use (that affects a boundary road allowance) must be passed by both municipalities to have any effect. In that regard, boundary road allowances are subject to joint jurisdiction (i.e. boundary municipalities are "joint owners" and do not simply own its half of the boundary road allowance).

With respect to Robin McCleave's comments I agree with her cautionary remarks and recommendations. I think that further and specific consideration of the roads/road allowances at issue is required. For example some consideration of how winter maintenance is conducted must be factored into the equation. This gives rise to the question should any by-law that is passed include prohibitions on use during the winter maintenance period?"

Staff are requesting that with the information provided in this report that further direction be provided as to next steps with the proposed route as attached.

**Financial Impact:**

There is no financial impact at this time.

**Attachment:**

Map of off-road vehicle route connecting the Victoria Rail Trail to the Ganaraska Forest along the west side of the Township of Cavan Monaghan.

Respectfully submitted by,

Reviewed by,

Elana Arthurs  
Clerk

Yvette Hurley  
Chief Administrative Officer

