



Council Report

Report Number: RS2021-035

Meeting Date: September 21, 2021

Title: **Proposed Amendments to Dock Encroachment Policy CP2018-001 - Update**

Description: Updated Proposed Amendments to Dock Encroachment Policy CP2018-001 following Public Consultation Period

Author and Title: Sharri Dyer, Manager – Realty Services

Recommendations:

That Report RS2021-035, **Proposed Amendments to Dock Encroachment Policy CP2018-001 - Update**, be received.

Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

Background:

At the Council Meeting of February 13, 2018, Council adopted the following resolution:

CR2018-074

Moved By Councillor Dunn

Seconded By Councillor James

That Report 2018-006, **Proposed By-law to Regulate Encroachments onto City Property**, be received;

That the City Lands Encroachment By-law attached as Appendix A be approved;

That the policy entitled, Dock Encroachments, attached as Appendix B to Report 2018-006, be adopted and numbered for inclusion in the City's Policy Manual;

That the Consolidated Fees and Charges By-law 2016-206 be amended accordingly; and

That the necessary by-laws be brought forward for adoption.

Carried

The framework of CP2018-001 – Dock Encroachments allows the City to deal with dock encroachments in a reactive manner, by offering License Agreements if an application is received directly from a dock owner, or if a complaint is received by Municipal Law Enforcement regarding an encroaching dock.

Currently the only areas that are regulated by License Agreements are Thurstonia, Kenstone Beach and Hickory Beach. In the case of Thurstonia and Kenstone Beach, the dock encroachments were historically permitted by the former Townships, and continued to be allowed upon amalgamation through a permit system run through Community Services. When the permits for those areas expired in 2018, both areas became regulated under CP2018-001 and dock owners were offered License Agreements for a 5-year term in accordance with that policy.

One of the major complaints received from Thurstonia and Kenstone Beach residents was that they felt that it was unfair that they were required to pay annual License fees and maintain insurance on their docks, when there are other areas within the City where docks exist on City property without any formal agreements in place.

Staff brought forward RS2021-004 at the February 9, 2021 Council meeting which introduced policy amendments and recommended that Council direct staff to obtain public input on the proposed amendments and report back to Council by the end of Q3.

At the Council Meeting of February 9, 2021, Council adopted the following resolution:

CW2021-036

Moved By Councillor Dunn

Seconded By Councillor Yeo

That Report RS2021-004, **Proposed Amendments to the Dock Encroachment Policy CP2018-001**, be received;

That the proposed amendments to the Dock Encroachment Policy CP2018-001 be referred to staff for revision and report back at the March 9, 2021 Committee of the Whole Meeting based on comments received from Council; and

That these recommendations be brought forward to Council for consideration at the next Regular Council Meeting.

Carried

In response, Staff made the following revisions to the Dock Encroachment Policy CP2018-001:

1. Added to definitions for “dock” and “boathouse”, and added definition of “front lot owner”
2. Changed the policy to exclude existing back lot owners from Cedar Glen and Hickory Beach in addition to Hazel Street.
3. Changed the Philosophy section to note that Schedule A sets out the proactive docking plan and specify that License Agreements would only be granted on shoreline road allowances and only to front lot owners
4. Changed the minimum spacing between structures from 10 metres to 6 feet
5. Specified that the 3 metre setback requirement would be dealt with as structures require major repair
6. Added permission to store docks on the road allowance during winter months, in areas where a 3 metre setback can be maintained, otherwise winter storage to occur on Licensee’s property
7. Changed the fee structure – docks to remain at \$150.00 per year, boathouses to increase to \$400.00 per year, dock and boathouse \$550.00 per year, and specified that these fees will increase by the Cost of Living index on a yearly basis, unless Licensee pays for the entire 5 – 10 year term upfront
8. Removed note that Realty Services would decide which area(s) would go through the Licensing process each year

9. Added note that requests for new docks/boathouses would be denied
10. Added note that areas not identified for proactive enforcement can make application to request a License Agreement, in which case the Land Management Team would make a determination concerning the entire area
11. Added note that Realty Services will reach out to residents as per the schedule set out in Schedule A of the CP2018-001 Dock Encroachment Policy
12. Set out "Harassment or Workplace Violence" as a specific section and added that if an applicant/Licensee receives a letter outlining an incident of violence or harassment, they may choose to use a representative to continue their process with City staff
13. Added Schedule A – Long Term Docking Plan
14. Added Schedule B – Aerial Photos of Proactive Docking Area
15. Added Schedule C – Example of Front Lot versus Back Lot owner

and brought the matter back to Council at the March 9, 2021 meeting.

At the Council Meeting of March 9, 2021, Council adopted the following resolution:

CW2021-058

Moved By Deputy Mayor O'Reilly

Seconded By Councillor Veale

That Report RS2021-016, **Proposed Amendments to Dock Encroachment Policy CP2018-001 – Update**, be received;

That staff be directed to obtain public input on the proposed draft policy amendments, including a further amendment to remove Hazel St., Thurstonia from the requirement that only front lot owners be permitted docking, and report back to Council by the end of Q3, 2021;

That Hickory Beach agreement be brought back for discussion before License renewal; and

That these recommendations be brought forward to Council for consideration at the next Regular Council Meeting.

Carried

The purpose of this Report is to provide Council with a summary of the feedback received on the first iteration of the amendments to the Dock Encroachment Policy CP2018-010, and to propose further amendments to the Dock Encroachment Policy to address those concerns.

Rationale:

Public Input Received and Response

In accordance with Council direction, staff posted a survey (the “Survey”) on the City website seeking public input on this issue. The Survey was originally scheduled to run until July 31, 2021 but was extended to August 31, 2021 to capture the entire summer. The input included herein consists of the results of that Survey as well as the input received by e-mail from the start of the process until the close of the Survey. The City received 362 responses to the Survey, 267 (73.8%) of those had a dock and 95 (26.2%) did not. The City also received 55 responses by e-mail or mail, information from which is included in this report.

Based on a review of the input received, Realty Services has made several revisions to the proposed policy to address the concerns expressed.

One of the main concerns arose with respect to the potential amendment to prevent “back lot owners” from renewing their licenses, or obtaining licenses, as the case may be.¹ A back lot owner was defined as any dock owner whose house was not adjacent to the City property on which the dock was located. This would remove a large majority of docks from Hazel Street (Thurstonia) and Cedar Glen Road. In response to this, **Staff amended the proposal to continue to allow the vast majority of back lot owners to have docks on the road allowance, but to prohibit those outside of walking distance² from docking on the City road allowances.**

Realty Services conducted measurements on Hazel Street in **Thurstonia** to determine the impact of the proposed. **Out of the 176 licensed docks in the area, 10 did not qualify for renewal.**

The same process was undertaken in **Cedar Glen Road**. Based on the calculations for this area, **out of 34 docks, 9 would not qualify using this definition.**

Licensing/renewing only persons within walking distance would address one of the often mentioned concerns of excessive traffic and parking along the road during the summer.

If only dock owners that reside close enough to their docks that they would be willing to walk according to the MTO definition are approved for licenses, it would reduce the desire/need to drive to the waterfront. Those residents that are not close enough to

¹ Unsurprisingly, this was a concern expressed by back lot owners. Front lot owners, on the other hand, expressed the competing interest in purchasing the waterfront across from their homes.

² 400 m, based on guidance from the Ministry of Transportation.

their docks that they would be willing to walk according to the MTO definition could access the water from other public access points. The policy has also been further amended to alleviate this situation to state that:

“Parking by licensees is prohibited on Hazel Street and Cedar Glen Road other than when the owner is putting their boat into the water at the beginning of the season or taking their boat out of the water at the end of the season.”

This change would also help with the issue of overcrowding which 34.0% of the Survey respondents felt was an issue and about which 10.2% were undecided. This is shown in a graph of the Survey results for question 9 which asked about overcrowding, attached as Appendix A.

Another change to the policy to help with the overcrowding issue was that a restriction against waterfront owners also having docks on City owned land was added. This would impact one dock in Cedar Glen. This is to prevent people who have alternative access to docking from crowding out those who do not have this alternative.

Another issue that was brought up numerous times was the restriction against **water and hydro** in boathouses. This was mentioned in several of the emails the City received as well as in the Survey. The original intent of this provision was to prevent boathouses from being used as additional living spaces. This provision has been clarified by permitting “hydro for the purposes of lighting docks, boathouses and staircases and to power water bubblers for water intake lines. Hydro is not permitted for the purposes of allowing living accommodation on City-owned lands along the waterfront.”

Many of the concerns were captured by Question 10 of the Survey: Do you have a concern with any of the following? This was followed by a list of examples based on the complaints/concerns received by Realty Services in the past:

- Docks limiting your access to water
- Safety concerns due to docks
- Parking/traffic concerns due to docks
- Docks limiting your view of the water
- Docks reducing the attractiveness of your property and view
- No concerns
- Other

Set out in Appendix A is the response to that question.

Spacing between Structures

The proposed amendments require a 2-metre (6 feet) spacing between adjacent docks/boathouses/boatlifts. In other words, a licensee must have, on either side of his dock/boatlift/boathouse, a 6-foot spacing to the dock/boatlift/boathouse of his neighbour. The required spacing will prevent overcrowding, which in turn creates a more pleasing aesthetic of the waterfront area and will allow public access to the waterfront.

The removal of persons within walking distance will not achieve appropriate spacing in Thurstonia, however, it is anticipated to achieve appropriate spacing in Cedar Glen. Approximately half of the remaining docks would need to be removed from Thurstonia to achieve this requirement. Accordingly, at the time of renewal of the Thurstonia licenses (2023; for the 2024-2029 period) this will be addressed by including in those licenses a term that provides that the license cannot be transferred to subsequent owners in the event of a sale/transfer. This will allow for a very gradual removal of docks over the next 20 to 40 years, as people transfer/sell their properties due to death or relocation.

Setback from the Road

Another concern expressed by dock owners, especially those along Grove Road, Fenelon Falls, was the requirement that structures must be set back a minimum of three metres from the edge of the travelled road. This will protect the motoring public that leaves the roadway. This, in turn, will result in reduced exposure to costs to the municipality.³ This setback also lessens the strike hazard during snowplow operations and allows sufficient space for snow storage.

This has been addressed to clarify that structures within 3 feet of the edge of the travelled roadway – that cannot be easily relocated/ relocated with minimal cost – must be brought into compliance (moved away from the roadway) at the time of substantial renovation/repair to the structure. This will allow for a very gradual improvement of safety and operational concerns over the next 20 to 40 years, as people repair their structures due to age. This will not result in the acceleration of cost expenditure to the licensees.

Fees

Another common complaint from Licensees in Thurstonia and Kenstone was that it was unfair to charge the same fee for a small dock as a large boathouse structure.

³ The City is currently paying \$224,000.00 per year in increased insurance costs relating to one incident where a driver left the travelled roadway and struck a stump within the road allowance.

The fee for a dock is proposed to remain at the existing fee of \$150.00 annually, and the fee for a boathouse is proposed to be set at \$400.00 (an increase from the current fee of \$150.00). This fee would apply to all boathouses no matter how many solid walls they have and would include a structure with a roof but no solid walls, given the increased risk of injury if the structure is moved or dislodged by wind. The increased fees are to reflect the fact that dock/boathouse space on municipal property is a privilege that not all residents are afforded, accordingly it should result in covering the costs of City staff administering the License Agreements.

Longer Licenses

A further proposed change is to allow for longer licenses in certain circumstances. Currently, CP2018-001 only allows for the City to enter into License Agreements for five year terms. The proposed amendments will allow for ten year terms when all the docks and boathouses in the area are on road allowance located directly across from the privately-owned property owned by the same owner.

No New Encroachments

Existing docks and boathouses may be approved for License Agreements; no new docks, dock expansions, or boathouses or boathouse expansions will be permitted.

Safe Workspace Requirements

The proposed amendments concern adherence to the City of Kawartha Lakes' Management Directive MD2016-013 "Workplace Violence and Harassment".

Members of the public requested further details, to ensure procedural fairness. Accordingly, Staff provided additional procedural fairness details in the policy.

A member of staff who is concerned that a member of the public is threatening the staff member's safety will contact his/her manager. The manager will review the matter and determine whether or not it can be determined, by reliable evidence such as emails or recorded voice mails, that the member of the public has threatened or engaged in violence or harassment. If so, the manager will communicate to the applicant/licensee, specifying the problematic communication and the manager's determination as to the nature of the communication (i.e. violence/harassment). The manager will direct the applicant to respond to the allegations to the satisfaction of the manager or to not engage in further communications of that nature with City Staff. That same applicant/licensee will be afforded the opportunity to work with the City through an agent, including his/her Councillor, directly with Management, or entirely by written communication should further communications (1 or more) result in a similar

determination of management. If the applicant/licensee elects to continue to send violent or harassing communications to Staff despite Management's attempts to intervene, Management will draft a Confidential Staff Report requesting direction to terminate the application or license agreement. The applicant/licensee will be afforded an opportunity to review the allegations and respond, which response will form part of the Staff Report seeking direction.

Removal of the dock/boathouse will be at the applicant/Licensee's sole expense.

Docking on Road Allowances Leading to Water & Docking on Open Space, Common Water Access Blocks

Based on recent direction received from Council with respect to specific instances of docking on road allowances leading to water, Staff have further amended the policy to allow existing docks and boathouses to remain in these areas, provided the dock is available for common/public use and the structures do not impact public water access and use.

Staff have extrapolated Council's direction on road allowances leading to water to apply the same direction to water on open space, common water access blocks, as the same considerations apply. Accordingly, Staff have further amended the policy to allow existing docks and boathouses to remain in these areas, provided the dock is available for common/public use and the structures do not impact public water access and use.

Fire Pits, Barbeques, and Other Sources of Fire or Flames

The policy has been updated to note that fire or flames are not permitted on docks or in boathouses, including, but not limited to, fire pits, fire bowls, fireplaces, and barbecues. This was not added in response to public concern but rather on the request of the Fire Department, which advises they often have to attend City property to deal with fire complaints.

Waterfront Closure to Public Access

Staff propose to stop up and close portions of the shoreline road allowance where exclusive use by licensees is occurring, in order to better protect their assets and better reflect the on-the-ground realities of exclusive use of the waterfront. This will require a by-law to be presented to and passed by Council.

Other Alternatives Considered:

Outside the scope of this policy and this report is Realty Services' general approach to land sales. Certain docks in certain areas, such as along **Grove Road**, Fenelon Falls, may qualify for sale rather than license. Where this is an option (such as where the sale will not impact road operations), this will be pursued as the better option and an alternative to licensing. In fact, several parcels along Grove Road have already been transferred in this way.

Alignment to Strategic Priorities:

The recommendations set out in this Report align with the following strategic priority:

- Good Government
 - Asset Management

Financial/Operation Impacts:

Proactive enforcement of the Encroachment By-law in relation to docks will assist capital works on the roads in the identified neighbourhoods. In other words, it will allow for upgrades to roads in the areas identified.

Proactive enforcement of the Encroachment By-law in relation to docks is anticipated to have a staffing pressure on Municipal Law Enforcement Office and Realty Services Division for the next five years. Land sales have an even greater one-time staffing pressure (as per the alternative offered in the case of portions of Grove Road, for example). However, following this 5-year period, staffing pressures from these encroachments will reduce from the baseline experienced prior to the enactment of the Encroachment By-law in 2018. Community Services noted that they spent 400 hours every two years on Encroachment issues. Public Works did not track their time related to Encroachment issues prior to 2018, but noted that a not-insignificant amount of their time was spent with encroachment issues, as the City was not effectively managing encroachments onto City roadways at that time.

Additional budget and staffing will be requested in the 2022 budget.

Consultations:

Public (via Jump In Survey and direct communications)
Senior Management Team
Trent Severn Waterway

Next Steps:

September 21, 2021 Regular Council Meeting

Results of consultation and proposed resultant policy amendments to be received by Council and for review and consideration.

October 5, 2021 Committee of the Whole Meeting

Proposed amended policy as recommended by Staff to be provided for Council direction. Any public comments can be provided at this meeting for consideration.

October 19, 2021 Regular Council Meeting

Recommendations from Committee of the Whole Meeting to be considered by Council. Final Council decision and/or direction to be provided.

Attachments:

Appendix A – Graphs (Responses to Survey Questions 9 and 10)



Appendix A -
Graphs (Responses 1

Appendix B – Proposed Amendments to Dock Encroachment Policy CP2018-001 (track changes)



Appendix B - DRAFT
Amendments to CP2

Appendix C – Proposed Amendments to Dock Encroachment Policy CP2018-001 (clean copy)



Appendix C - DRAFT
Amendments to CP2

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