

**THE THIRD MEETING OF THE ST. THOMAS AREA
SECONDARY WATER SUPPLY SYSTEM BOARD OF MANAGEMENT**

COMMITTEE ROOM #304

OCTOBER 9, 2018

4:00 p.m. The meeting convened with Councillor J. Kohler, Chair, presiding.

ATTENDANCE

Members

Councillor J. Kohler, City of St. Thomas
Councillor L. Stevenson, City of St. Thomas
Mayor Grant Jones, Southwold Township
Councillor D. Crevits, Municipality of Central Elgin

Staff

J. Lawrence, Director, Environmental Services and City Engineer
N. Bokma, Manager of Development and Compliance, Environmental Services
M. Knapp, Corporate Administrative & Accessibility Clerk, Clerk's Department
C. Andrew, Manager of Water and Sewer, Environmental Services
D. Aristone, Director of Finance and City Treasurer, Treasury Department
L. Perrin, Director of Physical Services, Municipality of Central Elgin

DISCLOSURES OF INTEREST

Nil.

MINUTES

Motion by Mayor Jones - Councillor Stevenson:

THAT: The minutes of the meetings held on February 22, 2018 and May 24, 2018 be confirmed.

Carried.

REPORTS OF COMMITTEE

Report SWB 03-18: STWDS Drinking Water Quality Management System - Management Review Meeting 2018 - Appendix "A"

The Director, Environmental Services stated that a new Compliance Coordinator had started in the department coming from the Town of Innisfil.

The members asked about details regarding the non-conformance from the 2017 Internal Audit.

The Manager of Development and Compliance stated that the missing information regarding the watermain repair procedure was logged immediately and corrected.

The members asked the efficacy of the risk assessment process.

The Manager of Development and Compliance stated that MOECC's mandated hazard analysis list was reviewed and the City Hazard Analysis Procedure was updated and reviewed to reflect the list.

Motion by Councillor Stevenson - Mayor Jones:

THAT: Report SWB 03-18 relating to St. Thomas Water Distribution System (STWDS) Drinking Water Quality Management System (DWQMS) - Management Review Meeting 2018 be received for information.

Carried.

Report SWB 04-18: St. Thomas Water Distribution System (STWDS) and St. Thomas Area Secondary Water Supply System (STASWSS) DWQMS Reaccreditation - Appendix "B"

CONFIRMED _____ CHAIRMAN

3rd Meeting - St. Thomas Area Secondary Water Supply System Board of Management - 2

Motion by Councillor Crevits - Mayor Jones:

THAT: Report SWB 04-18 relating to the St. Thomas Water Distribution System (STWDS) and St. Thomas Area Secondary Water Supply System (STASWSS) DWQMS Reaccreditation be received for information.

Carried.

Report SWB 05-18: STASWSS 2019 Water Rates - Appendix "C"

The members discussed budgeting for the supply system including revisiting and simplifying the rates.

Motion by Councillor Stevenson - Mayor Jones:

THAT: Report SWB 05-18 relating to the St. Thomas Area Secondary Water Supply System - 2019 Water Rate be received for information; and further,

THAT: The Secondary water rate for the St. Thomas Area Secondary Water Supply System of \$0.4773/m³, effective January 1, 2019, be approved.

Carried.

UNFINISHED BUSINESS

NEW BUSINESS

Municipal Act - Board Structure - Appendix "D"

The members discussed two information sessions regarding establishment of the Board and regional water system held in June in London.

The members discussed the fact that a combination of the Boards would be a very complicated process and would take months to review.

The Director, Environmental Services stated that more information sessions would be held in 2019.

Next Meeting

To be determined.

ADJOURNMENT

Motion by Mayor Jones - Councillor Crevits:

THAT: The Board adjourn at 4:15 p.m.

Carried.

CONFIRMED _____

CHAIRMAN



Appendix "A"

Report No.

SWB 03-18

File No.

Directed to: Councillor Jeff Kohler and Members of the Board of Management of the St. Thomas Area Secondary Water Supply System

Date Authored: September 10, 2018
Meeting Date: October 9, 2018

Department: Environmental Services

Attachment

Prepared By: Nathan Bokma, P. Eng.
Manager of Development and Compliance

Minutes of Management Review for St. Thomas Area Water Supply System

Subject: STWDS Drinking Water Quality Management System – Management Review Meeting 2018

Recommendation:

THAT: Report No. SWB 03-18, relating to St. Thomas Water Distribution System (STWDS) Drinking Water Quality Management System (DWQMS) – Management Review Meeting 2018, be received for information.

Background:

As the Operating Authority for the St. Thomas Water Distribution System (STWDS) and the St. Thomas Area Secondary Water Supply System (STASWSS), the Environmental Services Department is continually striving to improve its Drinking Water Quality Management System (DWQMS). This improvement is accomplished through internal audits and the implementation of the decisions and actions recommended in the management review.

The management review occurs once within a 12 month period by Senior Management of the DWQMS. The purpose of the management review is to stay informed on the DWQMS and ensure it is:

- Suitable to Operations staff
- Adequately managing quality issues
- Performing quality management effectively
- Adequate resources are provided.

As part of the management review, specific topics were discussed pertaining to the DWQMS of the secondary system, which can be seen in the attached meeting minutes. Discussion and decisions made as part of the management review was recorded and compiled in the meeting minutes, which were recorded by the Manager of Development and Compliance.

Analysis:

The management review meeting was held on May 9, 2018, which was attended by Justin Lawrence, Chris Andrew, and Nathan Bokma.

One of the topics of the management review was the internal audit, which is completed every 12 months by the Compliance Coordinator. Results of the internal audit were discussed as well as the process to address any minor non-conformances or opportunities for improvement (OFI's). The Manager of Development & Compliance will follow up on the results of the internal audit as per the timelines established in the DWQMS.

The Compliance Coordinator position has recently been filled by Karel Kamerman, who comes to the City from the Town of Innisfil. Karel has a vast amount of experience in DWQMS and with the STASWSS from his time with American Water's contracted operations of the EMPS.

In summary, the management review was completed with no major issues to discuss, and the DWQMS policy and procedures in place contribute to the excellent operation of the STASWSS.

Respectfully,

Nathan Bokma, P. Eng.
Manager of Development and Compliance

Reviewed By: _____

ES Treasury HR City Clerk City Manager



DWQMS Management Review Meeting

City of St. Thomas

May 9, 2018

10:00 AM

City of St. Thomas – City Hall

Meeting Minutes

Present: Justin Lawrence – Director of Environmental Services & City Engineer, City of St. Thomas (CITY)
Chris Andrew – Manager of Water and Sewer
Nathan Bokma – Manager of Development & Compliance, City of St. Thomas

Previous Minutes

- **Review 2017 minutes and approve 2018 Agenda**
The 2018 agenda and the Minutes from the May 2017 Management Review Meeting were reviewed and approved by those present. No additional items were presented by the participants.

Agenda Items

- **Incidents of regulatory non-compliance**
There were no incidents or reports of non-compliance in 2017.
- **Incidents of adverse drinking-water tests**
There were no adverse drinking water tests in the St. Thomas system or the greater St. Thomas Distribution System or STASWSS.
- **Deviations from critical control point limits and response actions**
There were no deviations from the critical control points (CCP) in 2017. Therefore, no response actions were required.
- **The efficacy of the risk assessment process**
Participants discussed the risk assessment process, which the City refers to as the Hazard Analysis Procedure. The review of the hazard analysis spreadsheet was recently completed by City staff, with additions made to reflect to the MOECC's mandated hazard analysis list.
- **Internal and third-party audit results**
A desktop audit by SAE was carried out on March 26-27, 2018, and there were 7 OFI's and 2 minor non-conformances from the audit that were dealt with through Preventative Action Forms and Corrective Action Forms. The 2 non-conformances were:
 - NCR #1 – EMPS Ownership in Secondary OP
 - NCR #2 – Emergency Testing Reference

Internal Audit for 2017 occurred on April 30-May 1, 2018. There was 1 non-conformance and 3 OFI's from the audit that will be dealt with through Preventative and Corrective Action forms. The 1 non-conformance was:

- **NCR #1 – Watermain repair procedure does not contain the minimum information outlined as per MOECC Watermain Disinfection Procedure (released November 2015).**
- **Results of emergency response testing**
This emergency training is scheduled to be done in mid May 2018. Last one was completed on May 2017 (topic - soap entering distribution system).
- **Operational performance**
St. Thomas was satisfied with the overall operational performance.
- **Raw water supply and drinking water quality trends**
Raw water is supplied through the Elgin Area Primary Water Supply System. No issues with the water supply.
- **Follow-up action items from previous management reviews:**
No follow up action items from the last meeting.
- **The status of management action items identified between reviews**
No action items have arisen between management review meetings, so no follow up required.
- **Changes that could affect the DWQMS, QMS Elements, or legislative changes**
New updates from MOECC on the DWQMS, which will be implemented over the next year. Changing over to the new DWQMS standard over the next year. City has implemented the new MOECC hazard analysis items as mandated.
- **Consumer feedback (including any concerns, complaints, or expectations from customers)**
None were mentioned.
- **The resources needed to maintain the Quality Management System**
There are adequate resources available to City staff to maintain the DWQMS.
- **The results of the infrastructure review**
Planned projects are listed below in the review. The results of the review allowed for coordination and awareness of planned works within the vicinity.
- **Effectiveness of infrastructure maintenance, rehabilitation and renewal program**
The infrastructure program remains effective since it allows for the City and St. Thomas to maintain an efficient water distribution system.
- **Operational plan currency, content and updates**
The St. Thomas Operation Plan is up to date and does not require any immediate updates.
- **Staff suggestions**
No staff suggestions were made at this meeting about the DWQMS or the water distribution system. However, the City staff discuss issues over the course of the year during various STASWSS board meetings and other meetings. None to note during this meeting.

- **Significant non-conformances, corrective and preventative actions (e.g. winning an award, incident free year)**

MOECC inspection was completed in September 26, 2017 for St. Thomas Distribution, which received a 93.62%. MOECC inspection was completed in September 26, 2017 for St. Thomas Secondary, which received a 100%.

No non-conformances came about outside of audit processes for the year.

Infrastructure Review

- **St. Thomas Capital projects**

- Southdale Line Watermain and PRV Installation
- Pump replacement at EMPS (completion in May 2018)
- Pump replacement at ARBS (completion early 2019)
- Watermain lining on Edward Street and Woodworth Ave.
- Talbot St. Reconstruction (Mary to Steele) – WM Replacement
- St. George Street Reconstruction – WM Replacement
- Center Street Reconstruction – WM Replacement
- Flora Street Reconstruction – WM Replacement
- West pearl Reconstruction – WM Replacement
- City-wide water meter replacement
- Projects planned for the STASWSS happening in 2019 or later (ie. Ford Tower removal, WM replacement)

Action Items

- No action items to note from this meeting.

These minutes were completed by Nathan Bokma. Any changes or discrepancies should be forwarded to nbokma@stthomas.ca.

Next Meeting Date: May 2019 (TBD)



Appendix "B"

Report No.

SWB 04-18

File No.

Directed to: Councillor Jeff Kohler and Members of the Board of Management of the St. Thomas Area Secondary Water Supply System

Date Authored:
September 6, 2018
Meeting Date:
October 9, 2018

Department: Environmental Services

Attachment

Prepared By: Nathan Bokma, P. Eng.
Manager of Development and Compliance

Subject: St. Thomas Water Distribution System (STWDS) and St. Thomas Area Secondary Water Supply System (STASWSS) DWQMS Reaccreditation

Recommendation:

THAT: Report No. SWB 04-18, relating to St. Thomas Water Distribution System (STWDS) and St. Thomas Area Secondary Water Supply System (STASWSS) DWQMS Reaccreditation, be received for information.

Background:

As the Operating Authority for the St. Thomas Water Distribution System (STWDS) and the St. Thomas Area Secondary Water Supply System (STASWSS), the Environmental Services Department undergoes periodic external reaccreditations for the City's Drinking Water Quality Management Systems (DWQMS) that the City operates through a third party auditing firm approved by the Ministry of Environment, Conservation and Parks (MOECP). The last reaccreditation audit was completed in 2015, and these audits usually happen in 3 year cycles.

The third party auditing firm completed a comprehensive review of the City's (DWQMS) Operational Plans, procedures, Emergency Management Plans (EMP), and other processes for the water systems that the City owns, operates, and maintains.

Analysis:

The reaccreditation audit was held on May 29-30, 2018, with the Manager of Development and Compliance being the primary contact/liason for the external auditing firm.

The City was successful able to gain reaccreditation for the STWDS and STASWSS until 2020.

Through the auditing process, many DWQMS topics were discussed and recommendations for improvements were made for the City's systems. The external auditing firm also highlighted many positive areas in which the City is very progressive in our robust DWQMS.

Respectfully,

Nathan Bokma, P. Eng.
Manager of Development and Compliance

Reviewed By:

ES

Treasury

HR

City Clerk

City Manager

Other

Directed to: Councillor Jeff Kohler and Members of the Board of Management of the St. Thomas Area Secondary Water Supply System

Date Authored:
September 14, 2018
Meeting Date:
October 9, 2018

Department: Environmental Services

Attachment

Prepared By: Karel Kamerman, B.Sc.
Compliance Coordinator

Subject: St. Thomas Area Secondary Water Supply System – 2019 Water Rate

Recommendation:

THAT: Report SWB05-18, St. Thomas Area Secondary Water Supply System – 2019 Water Rate, be received for information; and further,

THAT: The Secondary Rate for the St. Thomas Area Secondary Water Supply System of \$0.4773/m³, effective January 1, 2019, be approved.

Origin:

The St. Thomas Area Secondary Water Supply System (STASWSS), which obtains water from the Elgin Area Primary Water Supply System (EAPWSS), provides drinking water to the City of St. Thomas, the Municipality of Central Elgin and the Township of Southwold.

In order to recover costs related to the maintenance and operations of the infrastructure, as well as meet the requirements of provincial water legislation and build an adequate reserve balance to help fund future rehabilitation and renewal projects for the St. Thomas Area Secondary Water Supply System infrastructure, each benefitting municipality must establish water rates that include cost recovery for the use of the EAPWSS and STASWSS infrastructure.

The EAPWSS is governed by a Joint Board of Management, who set the *Primary Rate*.

In 2015, Watson & Associates, in association with GM BluePlan Engineers were retained to complete a Water Rate Study to forecast the full costs (including infrastructure renewal and rehabilitation) of supplying water through the STASWSS to the year 2024. The Study recommends the *Secondary Rates* that are required in order for the system to be financially self-sustaining, based on anticipated flows to the various benefitting municipalities. The full version of the 2015 Secondary Rate Study is available on the City of St. Thomas website.

The cost of supplying water services through the EAPWSS and STASWSS is recovered through the *Blended Supply Rate*. The *Blended Supply Rate* is a calculated value and reflects 70% of the overall supply for the area coming directly from the Primary System and the remaining 30% being supplied through the Secondary System (i.e. the *Blended Rate* comprises 100% of the *Primary rate* and 30% of the established *Secondary rate*). The *Blended Rate* and a *Common Water Rate* (established and set by the City of St. Thomas) are combined to establish the *St. Thomas and Suburban Rate*, which is then used by each benefitting municipality as the foundation of each of their overall water consumption rates, which are the rates ultimately charged to the end user.

Analysis:

The EAPWSS Joint Board of Management approved the 2019 Primary Rate at their October 4, 2018 meeting. Effective January 1, 2019, the *Primary Rate* will be increased by 4%, and is scheduled to be changed from \$0.8047/m³ to \$0.8369/m³.

In order to meet the requirements of provincial water legislation and build an adequate reserve balance to help fund future rehabilitation and renewal projects, the *Secondary Rate* is recommended to increase from \$0.4336/m³ to \$0.4773/m³, a 10.1% increase. The *Secondary Rate* increase being recommended is aligned with the STASWSS Water Rate Study completed in 2015.

The approved *Primary* and *Secondary Rates* are utilized to calculate the *Blended Supply Rate*. As a result of the increase in the *Primary rate* and the *Secondary rate* increase recommended within this report, the *Blended Supply Rate* is forecasted to increase from \$0.9348/m³ to \$0.9801/m³, an increase of 4.8%.

The table below outlines the current and 2019 forecasted rates and demonstrates the respective % increase for each of the supply rates.

Year	2018	2019	% Increase
Secondary Rate (\$/m ³)	0.4336	0.4773	10.1
Primary Rate (\$/m ³)	0.8047	0.8369	4.0
Blended Supply Rate (70% Primary and 30% Secondary)	0.9348	0.9801	4.8

The water rates for the STASWSS will continue to fund several capital projects. A status update for ongoing, completed, or upcoming projects from the recent 10 year plan is summarized in the table below:

Item	Capital Project	Project Value	Status
1.	EMPS Pump Replacement	\$650,000	COMPLETE – July 2018
2.	Process Electrical & HVAC SCADA PLC Server	\$35,000	PENDING - approval from partner municipalities
3.	Replacement of 1050mm Suction Header Valve and Actuator (33% of \$125k share with London and Aylmer)	\$42,000	PENDING - approval from partner municipalities
4.	Replacement of suction header coupling between St. Thomas header and London Header	\$12,500	PENDING - approval from partner municipalities
5.	Pump Discharge Control Valve Rebuilding	\$20,000	IN PROCESS: ~60% Complete
6.	Chlorinator System (Annual Contribution)	\$5,000	COMPLETE
7.	DWQMS Audit	\$2,000	2018 Audit COMPLETE
8.	Drawing Revisions	\$10,000	PENDING - completion of items 2,3&4
9.	Replace all light fixture upper and lower level	\$15,000	IN PROCESS – Obtaining Quotes
10.	Ford Tower Decommissioning	\$400,000	IN PROCESS - Consultant RFP to be issued Fall/Winter 2018

City staff are also looking forward to initiate future STASWSS capital projects in 2020 and beyond. Two key projects to note that are targeted to start in 2020 are the chlorination equipment replacement at the EMPS in partnership with the Aylmer Area SWSS, and the design/environmental assessment phase of the first portion of the watermain replacement for the STASWSS.

Financial Considerations:

Based on an assumed typical annual consumption of 179 m³/annum, the 2019 Residential Customer Water Rate impact for the total annual water increase (Primary and Secondary blended rate) will be an increase of \$8.11 per year, which is lower than the \$9.62 increase indicated in the STASWSS Water Rate Study. This discrepancy is a result of the *Primary Rate* increasing at a slower rate than was anticipated in the report.

Respectfully,



Karel Kamerman, B.Sc.
Compliance Coordinator



Nathan Bokma, P. Eng.
Manager of Development and Compliance

Reviewed By: _____

ES

Treasury

HR

City Clerk

City Manager



To: Chair and Members
Elgin Area Primary Water Supply System Board of Management

From: Kelly Scherr, P.Eng., MBA, FEC
Chief Administrative Officer

Subject: Municipal Act – Board Structure

RECOMMENDATION

That the Board of Management for the Elgin Area Water Supply System **RECEIVE** this report for information.

PREVIOUS AND RELATED REPORTS

- December 1, 2018 Board Structure – Municipal Act
- December 10, 2016 (Concurrent Meeting) Corporate Options for the Primary Water Supply Systems

EXECUTIVE SUMMARY

Representatives from all of the benefiting municipalities were invited to attend one of two identical information sessions (workshop #1) held on June 22 and June 29, 2019. The workshop provided an overview of the establishment of the Board and regional water system, and options under the Municipal Act to clarify the legal status of the Board; as either a Municipal Services Board (local board) or Municipal Services Corporation.

Additional documentation and information is being prepared for the consideration of the benefiting municipalities, including the preparation of an outline of an agreement that could be used to establish either the Municipal Services Board or Municipal Services Corporation.

It is currently anticipated that an agreement likely wouldn't be finalized and approved by each municipal council any earlier than the fourth quarter of 2019.

BACKGROUND

The ownership of the Elgin Area Primary Water Supply System was transferred from the Province of Ontario and the Board of Management established in 2000 in accordance with the Transfer Order issued by the Minister of the Environment under the *Municipal Water and Sewage Systems Transfer Act*, 1997. Because of the ambiguity of the *Municipal Water and Sewage Systems Transfer Act* and the subsequent Order, the legal status of the Board requires further clarification with specific regard to the *Municipal Act* and in relation to the collective powers of the benefitting municipalities of the water system.

DISCUSSION

Information Workshop #1

Representatives from all of the benefitting municipalities were invited to attend one of two (duplicate) information workshops (Workshop #1) held on June 22 and June 29, 2018 at the Best Western Lamplighter Inn and Conference Centre. The workshop was intended to provide preliminary information on the legal status of the Board and regional water system, including:

- Background information related to the Municipal Water & Sewage Systems Transfer Act, the Transfer Orders creating the Board of Management, an overview of the current organization, administration and operation of the regional water systems, and the current ambiguity of the legal status of the Board.
- An overview of the options under the Municipal Act (local board/Municipal Services Board versus Municipal Services Corporation), the legal relationship between the Board and its benefitting municipalities, reporting relationships, and applicable law (including the Municipal Freedom of Information and Protection of Privacy Act, and the Safe Drinking Water Act)
- An overview of the current financial status and fiscal relationship with the benefitting municipalities, and potential financial implications with the Municipal Act options.

As part of the municipal workshops, there was an open forum discussion whereby attendees could ask questions, express concerns, and provide comments on the information presented. In addition, the overall process of consideration and approval by the respective Councils of each of the benefitting municipality was discussed.

An overview of the workshop and summary of the questions asked is attached to this report as Appendix A for the information of the Board.

Action Items and Next Steps

Following Workshop #1, documents are being prepared for the benefitting municipalities which will outline:

- A summary of the workshop discussions, frequently asked questions, and additional requested information;



Elgin Area

Primary Water Supply System

Report No.: EA-2018-03-07
Report Page: 3 of 13
Meeting Date: October 4, 2018
File No.:

- An overview of the options under the Municipal Act (do nothing, local board/Municipal Services Board, or Municipal Corporation) and anticipated benefits and risks associated with each;
- An outline of possible options for administering the system; and,
- An outline of a possible agreement that could be used to establish either a Municipal Services Board or a Shareholders Agreement (Municipal Services Corporation).

In addition, and at the request of the municipal representatives, the option of establishing one legal entity over both the Lake Huron and Elgin Area water systems is being explored including variations whereby the systems operate independently or jointly as one combined regional water system.

It is anticipated that these document will be circulated to each of the benefiting municipalities in late 2018, and then discussed at a second workshop during the winter of 2018/2019.

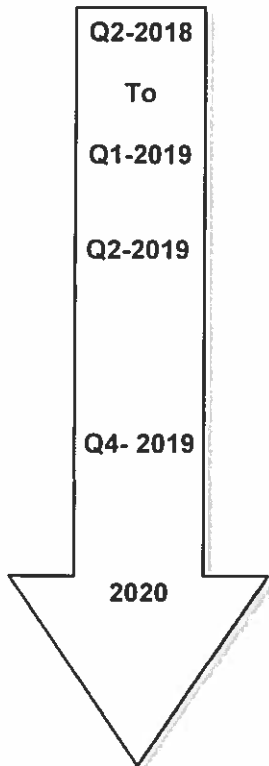
It is important to note that the decision whether to pursue and establish the Board under the Municipal Act, either as a Municipal Services Board or a Municipal Services Corporation, is entirely at the discretion of each Municipal Council. Should one Municipal Council chose to not approve the agreement that would establish the Board as a Municipal Services Board or Municipal Services Corporation, the issue cannot proceed further and the Board would continue to operate in legal ambiguity.

TIMELINE

There is no set schedule in the discussions or specific deadline to establish (or not) the Board as a Municipal Services Board or Municipal Services Corporation. It is the recommendation of staff that process be allowed progress at a steady pace and measured pace, but allow all parties of the discussion the opportunity to receive and deliberate on issues of concern.

Based solely on the level of engagement at the first workshop, the questions asked and information requested, it is currently anticipated that an agreement wouldn't be achieved any earlier than the third quarter of 2019.

An agreement would have to be approved and authorized by the Council of each of the benefiting municipalities through by-law.



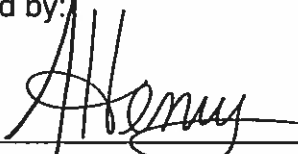
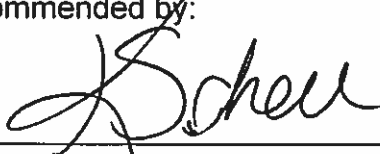
INFORMATION MEETINGS - Benefiting municipalities meet to understand and discuss the options available, obligatory and suggested process(es) for undertaking each option, potential benefits and detriments of each option to both the Boards and the benefiting municipalities, and the potential legal and financial implications. In order to proceed beyond this "information stage", each municipality must agree to enter into detailed discussions and negotiations with the objective of drafting an agreement for the preferred option.

MUNICIPAL DECISION – Each of the benefiting municipalities must decide to pursue (or not) further discussions and negotiations. *It is highly recommended that each benefiting municipality seek their own legal and financial advice, as necessary, prior to their commitment to enter into further discussions and negotiations.*

MUNICIPAL DISCUSSION AND NEGOTIATION – The benefiting municipalities collectively enter into detailed discussions and negotiations with respect to the preferred option with the objective of drafting an agreement which defines the "new entity" as preferred.

ESTABLISH NEW ENTITY – Once the agreement between the benefiting municipalities is finalized, each municipality must pass an enacting bylaw to complete the creation of the new municipal entity.

New entity begins operation (January 1, 2020 at the earliest)

Submitted by: 	Recommended by: 
Andrew Henry, P. Eng. Director, Regional Water Supply	Kelly Scherr, P. Eng., MBA, FEC Chief Administrative Officer

Attachments: Appendix A – Stakeholder Information Session (June 22 and June 29, 2018)

APPENDIX A: STAKEHOLDER INFORMATION SESSION (JUNE 22 AND JUNE 29, 2018)

Municipal Services Boards, Municipal Services Corporations, and the Lake Huron/Elgin Area Water Supply Systems

PRESENTATIONS:

The Origins of the Regional Water Systems, and the Transition to the Boards of Management

Andrew Henry, Director of Regional Water, Lake Huron & Elgin Area Water Systems

Mr. Henry provided details on the origin of regional water systems and the transition to the current boards of management. He explained that originally the province constructed, owned and operated regional water and wastewater systems through the Ontario Water Resource Commission, and then subsequently through the Ministry of the Environment and the Ontario Clean Water Agency. The province transferred ownership of water and wastewater assets throughout the province to the municipalities under the *Water & Sewage Systems Transfer Act, 1997* (the "MWSTA"). The MWSTA established a system whereby water and wastewater systems that benefitted multiple municipalities were transferred and governed by boards of management (the "Water Boards").

MWSTA Transfer Orders

In 1998 a MWSTA Transfer Order (the "1998 Transfer Order") created separate provisional Water Boards for both the Huron water system and the Elgin water system. The debt associated with the water system was transferred from the province and refinanced, and the City of London was appointed as Trustee.

In 2000 the province issues a final transfer order for each of the Huron and Elgin Systems (the "2000 Transfer Orders"). The 2000 Transfer Orders completed the transfer of real property associated with the systems to the City of London as trustee. As a trustee, London holds registration of property in its name for the benefit of the municipalities that the regional water systems' services. London is also mandated to provide administrative services to the Huron and Elgin Water Boards.

The 2000 Transfer Orders established the management structure for the Water Boards including the roles, responsibilities and obligations of Board members with the overarching obligation to act in the best interests of regional water system. The Water Boards have the authority to act by by-law, issue policies, approve budgets, and enter into contracts, and maintain bank accounts.

Problem Statement

The authorities given to Water Boards through transfer orders under the MWSTA imply that they are "bodies-corporate", but their legal status is slightly ambiguous. A body-corporate is defined

as "an organization such as a company or government entity that is considered to have its own legal rights and responsibilities similar to a natural person". Examples of "Body-Corporates" include: private corporations, public corporations, (M.A.) Local Board, Limited Liability Partnerships, etc.

Municipalities of the Huron-Elgin water systems need to deal with this issue of unclear legal identity because the implications are widespread. For example, legal status determines the Water Boards' ability to hold debt, have bank accounts, have employees etc. The *Municipal Act, 2001* provides several legal structures for possible future governance structures of the water system.

Overview of Legal Options under the Municipal Act, 2001

Paula Lombardi, Partner and Solicitor, Siskinds LLP

Ms. Lombardi explained that the *Municipal Act, 2001* (the "Act") provides municipalities with three options concerning the future governance structure of water systems: 1) Local Board / Municipal Services Board, 2) a Municipal Services Corporation, or 3) "do nothing".

1) Local Boards

The definition of a Local Board in section 1 of the Act includes a municipal service board, transportation commission, public library board, board of health, police services board, and planning board. Generally a Local Board can refer to any board, commission, committee, body or local authority established or exercising any power under any provincial legislation with respect to the affairs of one or more municipality (excluding a school board and conservation authority).

Municipal Authority with respect to Local Boards are governed by s.216 of the Act, which grants Municipalities power to deal with various boards defined broadly. Municipal councils can make changes to Local Boards (s.216(5)), may pay remuneration of members, officers, and employees of Local Board (s. 283).

Local Boards are now subject to mandatory codes of conduct, and as of January 1, 2018 they can conduct electronic meetings and closed door meetings. Closed door meetings are limited to statutory exemptions to protect information received from a province or crown agency, competitive positions, contractual or other negotiations, trade secrets or information of monetary value, and information relied in in negotiations.

Local Boards still look after best interest of municipality, but their first priority is to the mandate of the Local Board.

There are additional regulatory requirements of Local Boards, including the fact that they are governed by the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"),

and the *Planning Act* requires that comments decisions of Local Boards that affect a planning matter shall be consistent with and conform to provincial plans and policies (ss. 3(5) and (6)).

2) Municipal Service Corporations

Since 2007, with the passage of Bill 68, the Act has allowed the creation of Municipal Services Corporations (“MSCs”). An MSC is wholly owned by a municipality. It may be brought into existence only after the municipality has done a case study, but once established it cannot easily be dissolved by council.

In general an MSC is more nimble and more flexible than a Local Board, and while it is tied to the municipality its sits outside of the immediate authority of council. An MSC is tantamount to a delegation of authority by the municipality, but as soon as it is formed there is limited oversight by the council.

Power of MSCs

MSCs have powers to do things Local Boards cannot do, such as leverage real assets. This is in part because an MSC, unlike a Local Board, is a real corporation and the articles of incorporation dictate what it can do. MSC’s may be structured under the *Ontario Business Corporations Act* (“OBCA”), however, all shares of MSC must be owned by municipalities. While private entities cannot own any shares in a MSC, the MSC can enter into public / private partnerships.

There are some differences between MSCs and regular corporations. For example, MSCs are subject to MFIPPA (like Local Boards) and are deemed under the Act to be the same as a Local Boards for the purposes of certain regulatory oversight regimes (i.e. conflict of interest and privacy).

Directors of MSCs

A Shareholder Declaration determines governance structure of an MSC, and Directors are appointed by municipal council. An MSC always has a representative of municipal council on the board, but the remainder of the board depends on the Shareholder Declaration. Often the Shareholder Declaration will require that Directors have expertise in the area of the intended purpose of the MSC. This is distinct from Local Boards where the decision about whether directors should have a particular expertise depends on the political cycle and the decision of council.

Directors’ decisions must be in the best interests of the MSC (similar to the duty of a member of a Local Board to act in best interest of the Board). This includes any municipal representative. His or her first duty is to the MSC.

Liability

Because an MSC is a separate legal entity from the municipality, any liability associated with the operation of its service remains with the MSC and not the municipality. For example, the duty of



Elgin Area

Primary Water Supply System

Report No.: EA-2018-03-07
Report Page: 8 of 13
Meeting Date: October 4, 2018
File No.:

care to provide safe drinking water under the *Safe Drinking Water Act* would create liability for an MSC that owned and operated the municipal drinking water system, not the municipality. Whereas, if the drinking water system is operated by a Local Board, the liability stays with the municipality.

Water System Finances

Anna Lisa Barbon, Managing Director, Corporate Services and City Treasurer, Chief Financial Officer, City of London.

Accounting

Lake Huron and Elgin prepare their own financial statements on an annual basis. Generally, the works, properties and all assets, liabilities and rights of the water system are transferred jointly to the member municipalities.

Debt Issuance

As the administering municipality, London issues the debt on behalf of the Huron and Elgin Water Boards. London has had a AAA credit rating for 42 years. As a result London receives a very good interest rate that the Water Boards have been able to take advantage of.

“Pros” to Water Systems Holding Their Own Debt:

- financial flexibility (control over timing, structure, terms and conditions of debenture issuances)
- potential additional debt capacity for benefiting municipalities

“Cons” to Water Systems Holding Their Own Debt:

- potential for lower credit rating (additional borrowing costs)
- administrative effort and cost (obtaining a credit rating, fiscal agents, clearing and depository requirements)
- limited debt capacity for Huron and Elgin

OPEN DISCUSSION: COMMENTS, QUESTIONS AND CONCERNS OF STAKEHOLDERS

Comments

There was a general request for a summary of the pros and cons of three options discussed, and a recognition that municipalities will not be able to make a decision right away. The earliest possible time to make a decision is likely January 2019 with the remainder of 2018 being used to ensure that the municipalities have the information necessary to advise councils of their options.

Attendees were also reminded that the Water Boards as they exist today have no authority over this discussion, but it is a decision for municipal councils. Ultimately, all 15 municipalities will

have to come to an agreement based on what's best for entire region. That said, no provincial approval is required for the municipalities' decision.

Questions

Q: If Council appoints someone to the board, is there a mechanism for removing them?

- Yes, in an MSC a shareholder declaration can provide such a mechanism. The shareholder declaration could tie representation to an election cycle, establish criteria for alternative appointment, etc.
- Under the current Water Board system, they serve at the pleasure of the municipality

Q: If a person sits on board and a decision comes and they don't want to decide until they go back to council and get feedback, can we do that?

- No, you don't have an obligation to take it back to council, you're duty is to the water system, we're voting anyways and continuing to operate as a board.

Q: Can you have an alternate member or a substitute?

- Yes, under either system.

Q: If the agenda is public information, can I discuss the agenda with council prior to going to the board, or can I not discuss with council at all?

- Today, the Water Boards are run as local boards and the agendas are public with exception of confidential items. So board member can sit down with staff or fellow council members and discuss.
- Remember an MSC is a separate corporation with its own board and makes its own decision and regularly reports back to council, so shouldn't be seeking advice from council (outside of periodic update to council) – council has no say once MSC formed.

Q: If you go to MSC structure, who represents rate payers, tax payers, customers?

- It depends on the Stakeholder Declaration. It can be specific about what the Board has to take into consideration, and this could be tied to guidance documents that are reviewed annually, for example.

Q: With so many municipalities as members, how is the public interest determined in guidance document because the needs are different across municipalities?

- If you think about the overall interest in the day-to-day operations of a water system, decision of the MSC Board can be expected to be based on the benefit to public at large regardless of specific municipalities. However, if there are different needs by municipality, the Stakeholder Declaration can say that annually as part of annual business plan, you can create key identifiers for the goals and plans for each municipality and figure that out.

Q: With MSC and skills-based members, is that a paid position? Compensation from municipality?

- Currently, remuneration (if any) is provided by the municipality
- In the future, you can write it into Stakeholder Declaration. It could be nothing or could be *per diem* and expenses, whatever is written in.

Q: The voting system does not work the same in Huron vs Elgin, so how would it work going forward with an MSC?

- Votes are proportion to the approximate benefit to each municipality, with the exception that London held to only 60% of votes on the Huron system. This structure could remain the same in an MSC, or it could change. In an MSC, the Stakeholder Declaration is the governing/controlling document and it would spell out the voting mechanism.

Q: Under the current system, we consolidate the debt, I assume we can't count the proportion of the revenue?

- Yes, it's recognized, but it's a part of your broader financial situation and with debt it could free up the debt limit for individual municipalities. If we're a government business enterprise, you take debt component away. Either way it's relative.

Q: Under MSC, do we still have administration from municipality?

- It depends, but likely not. You could structure it as two separate corporations (Elgin and Huron), and hypothetically you could have one contracted to the other, or you could create joint administration. At this stage the thinking remains very preliminary and high level.

Q: Is one of the options a complete merger of the Elgin Water Board and Huron Water Board into a single corporation?

- At this point, we are not proposing that. This is entirely up the municipalities, but we are proceeding under assumption that they would stay separate. If you want us to look at merging into one single corporation we can. It is possible but we are not proposing it at this point.

Q: In order for structure of the Board to comply with requirements of the Municipal Act, is the re-structuring a necessity or is it just a recommendation?

- Under the changes, we are not actually sure if we are a body corporate at law. It's implied, but we are not sure. For example, the City of London as bare trustee is currently signing extra agreements so they are reassured that contracts will be followed and bills paid back.
- For example, the Boards buy electricity every year and we don't know if we can legally do that.
- We are choosing to act and behave as a local board, but we don't know for sure that we are.



Elgin Area

Primary Water Supply System

Report No.: EA-2018-03-07
Report Page: 11 of 13
Meeting Date: October 4, 2018
File No.:

- The Boards are at a stage in your operations that you have to do something to make the legal structure clear and to do all the things you're doing – now that the Boards are more sophisticated in our operation and management, it's time for us to evolve and we need to make the determination of whether we're a MSB or MSC.

Q: Have we spoken to the Ministry about this issue and asked them to clarify what we are?

- Yes, and their response was it's your problem now, figure it out.
- The changes in 2010 to the *Municipal Act* allow us to fix it ourselves and it's in the best interest of the municipalities to work together to fix it because then we can make sure we get what we want.

Q: For similar boards in Ontario, what are they doing?

- There are two others, besides ours:
 - o The Lambton Area Board is years behind us
 - o The Union (Chatham) Board is looking at same thing we are
- Since 2002, there have been several instances in Ontario where municipalities are creating MSBs, but more often it's a MSC (Innisfil, Chatham etc.) because these opportunities now exist.

Q: Do you have comparative costs of the 2 options?

- We could give potential costs. What municipalities see now is the unit rate at which we sell municipalities water, pays for admin costs, electricity, engineering, to reserve funds etc.
- If we go MSC route, the actual changes are that board's decision.
- If stays as MSB, they make the decisions of how it changes in the future.
- Boards would have to be accredited for their credit-worthiness, could be AAA, but likely go down to AA and that could increase costs over time.
- Operating costs would likely not change unless the administration changed dramatically under the new structure.
- If we went to a one corporation system, may still choose to run it as 2 separate water systems with different rates charged for Huron versus Elgin.
- We could also have a holding corporation with 2 subsidiaries under it, one for each system, and each system could have its own boards and shareholder declaration.

Q: Are we having this discussion so we can remove the debt from our individual municipalities and have more room before we hit the ceiling? Is that the main driver?

- We see the main issues as: Are these entities body corporates at law and what does that mean?
- The biggest issue with respect to debt is the whole financial sustainability of the water systems themselves. They could trigger even greater impact on the municipalities over



Elgin Area

Primary Water Supply System

Report No.: EA-2018-03-07
Report Page: 12 of 13
Meeting Date: October 4, 2018
File No.:

the long term if debts of the water systems go up and it begins to affect the ability to do future capital projects.

- But the risk depends on how much debt each municipality is carrying currently and is different for each. So that's why you need to go back and look at your own – could have a higher impact if you're already close to your debt capacity, or may not want to arbitrarily increase debt anyways because can impact on your interest rates in the long run.
- The financial plan of the water systems is good place to start. It shows you debt-equity ratios etc.

Q: Do we know if the debt we have currently is transferable over to a new MSC?

- We think that it is, but we would look at how that's done once we move forward, different ways to transfer it all over.
- An MSC could purchase all the debts and assets of the entities and re-finance etc. accordingly
- Once transferred to a MSC, depending on how the MSC is structured, it will be evaluated on its own.
- if you make it the same (MSB), you'd need to look at how it will impact your credit rating with future financial plans, taking on debt, capital projects etc.
- But consolidation could occur under either option.

Q: Are there any major substantive differences on the personnel side if going with one option over the other?

- This entirely depends on the structure that's adopted, operationally likely wouldn't change much, but how you administer it would depend on what the entity is.
- Currently we contract out a lot of administration services that may change depending on how we structure it.

Q: As new board members come onto the Water Boards, they will have to be brought up to speed, how will that work over the next year?

- Water Boards themselves have no authority over this process, entirely up the municipalities, only responsibility is to inform the board about progress.
- For the next 6 months, mostly administration working on this issue, informing councils and Andrew informing the Boards

Q: The goal in terms of how to better manage risk and liability under standards of care, members etc. wasn't included in your presentation, so can you include how the risks and liabilities etc. will be better managed under each option?

- Yes, you will get that before the next session.
- We talked about it a little bit, but we can provide an FAQ on how it's being managed now and how it could be changed under a different structure. For example, the application of



Elgin Area

Primary Water Supply System

Report No.: EA-2018-03-07
Report Page: 13 of 13
Meeting Date: October 4, 2018
File No.:

safe drinking water act, how it applies to boards and back to municipalities is something we looked at.

CLOSING REMARKS AND NEXT STEPS:

- Preliminary recommendation in session in late fall after balloting exercise happening in October.
- Then gather feedback.
- By spring, have a recommendation for municipalities to consider based on everyone's opinions, concerns etc. and maybe even a draft stakeholders' declaration.
- This is not a short process. It will likely take up to a year.