



Supplemental Report - Zoning Bylaw Amendments - Aquifer Protection Overlay Zone

Date	November 10, 2021
To	City Council
From	City Planning & Community Development
Service Area	Planning & Development Services
Item No.	CM21-21

RECOMMENDATION

That City Council receive and file this report.

ISSUE

City Council considered CR21-125 on September 15, 2021, regarding amendments to the Aquifer Protection Overlay Zone and passed the motion:

“That this be referred back and that Administration report back on information respecting protection plans, financial remediation, construction operations and deconstruction as part of the Aquifer Protection Plan.”

This report responds to the information requested in this motion.

IMPACTS

None with respect to this report. Impacts of recommendations are described in the related report CR21-125.

OTHER OPTIONS

None with respect to this report.

COMMUNICATIONS

None with respect to this report. Notice of the public hearing required in relation to the bylaw amendment proposed will be advertised in accordance with *The Public Notice Policy Bylaw, 2020*.

DISCUSSION

What will be required in an Aquifer Protection Plan?

The requirements of an aquifer protection plan and the potential mitigative measures are generally described in the report CR21-125. The full extent of the specific requirements in the proposed *Regina Zoning Bylaw, 2019-19* (Zoning Bylaw) amendments and submissions needed for any development proposal would depend on the description and assessment of risks associated with the development and would include consideration of such requirements as are described below in more detail:

Aquifer Protection Plan Requirement	Details	Purpose
Baseline Geological Data	Submission of a hydrologic report.	Confirms the sensitivity of the aquifer, such as depth of aquifer and type of earth above the aquifer.
Site Preparation and Construction Details	Submission of plans for site development, changes to grading, foundation pile depth, other excavations	Confirms the construction can be accommodated on the site without detrimental impacts to the aquifer.
Industrial Process Description	Submission of flowcharts, diagrams, photos, and/or written description, confirming types and quantity of raw materials and products, wastes, transportation methods, storage, and handling of materials.	Provides an understanding of the level of risk that may occur to the aquifer.

Community Impact Assessment (if Hazardous Materials are involved in process)	Submission of additional details regarding potential accident and hazards.	This is an existing process required at the discretion of the Development Officer for applications involving hazardous materials.
Risk Mitigation Strategy	Depending on the risks identified in factors above, the physical mitigation measures would be detailed (e.g., storage tank constructions, containment dykes, leak detection and monitoring systems, spill prevention systems, pile depth and excavation limits).	Key mitigation strategy that would be customized to the satisfaction of City Council through the discretionary use process.

As noted in CR21-125, many of these details are already required as part of any development permit application at the discretion of the Development Officer. Depending on the land use and sensitivity of the aquifer, any permit issued may prescribe specific conditions for development. For example, the Zoning Bylaw requires that any new above ground industrial storage tank in the Medium Sensitivity Aquifer Protection Zone requires secondary containment with dykes, impervious liners, leak detection, and a monthly statistical inventory analysis. These requirements will continue to be applied. The key change within the proposed amendment is to add a discretionary use opportunity for industrial development in the High Sensitivity Aquifer Overlay Zone, where it is currently prohibited.

The primary concern raised by City Council during the previous discussion involved contamination of the aquifer from potential hazardous materials. The proposed amendment allows for the consideration of an industrial development as a discretionary use, but not all developments would involve hazardous material.

The change proposed would require full disclosure of the details of the industrial operation, which allows Administration to assess and make informed recommendations to City Council regarding the risk of the development on aquifer-sensitive lands. City Council would be able to require financial securities or other performance assurances (to ensure the development and the conditions of land use approval are carried out, but not for remediation); time limits on the duration of the proposed use; and a binding development agreement to ensure the requirements are apparent and aware to property owners in perpetuity. Furthermore, City Council may also determine that the proposed land use does not comply with the discretionary use requirements or is unsuitable for the proposed

location and deny the application. Essentially, rather than prescribing or pre-determining the requirements, the discretionary use process would allow for a customized evaluation and approval process to suite the development type and associated risks to the aquifer.

Jurisdiction of Aquifer Protection

The *Statements of Provincial Interest Regulations* require local municipalities to regulate aquifer protection. Aquifers are natural subsurface features that do not coincide with municipal boundaries and are a therefore a shared responsibility with regional partners. Map 1 shows the extent of aquifers that overlap the City Limits of Regina. The map shows that that most of the total geological area of aquifers that overlap the City Limits is the jurisdiction of the surrounding Rural Municipalities. Therefore, the same industrial development on the same aquifer may be subject to differing municipal review procedures, depending on their regulations. Currently, it may be possible for an industrial development in a high-sensitivity aquifer area to be approved in a surrounding Rural Municipality if it meets their regulatory requirements, while this same development would be prohibited inside the city limits. While the City will continue to require more detail, the zoning regulations, as proposed, will allow for development reviews to be more consistent between the municipalities within the Regina region.

Remediation for Contaminated Sites

The Government of Saskatchewan and the Government of Canada have jurisdiction over environmental legislation and regulation in Regina. The key piece of provincial legislation is *The Environment Management and Protection Act, 2010* (EMPA). Both levels of government have a robust regulatory framework and reporting structure that use a risk-based framework to set limits for compounds in the environment to protect animal, plant and human life. While the City has a role to play as regulator of land use, the purpose of which is partly related to protection of natural resources, ultimately the Government of Saskatchewan is responsible for environmental remediation, should land become contaminated. If contaminated sites are not dangerous to public health, EMPA may not compel immediate remediation. Some types of contamination may naturally dissipate with time, and owners may determine that long-term holding of land is the most viable solution to the problem. Unless an owner is required to remediate a property, remediation is a financial decision, balancing the costs of holding vacant or underutilized land over time, and the costs of full or partial remediation to suit a shorter term and viable re-development of the property.

There is Provincial legislation intended to address remediation issues on industrial sites and the onus of remediation is assigned to the polluter (i.e., “person responsible”). In the event of a spill or detection of contamination, the legislation requires person(s) responsible to report any unauthorized discharge, and to take immediate action to remedy, reduce or mitigate the risk. The Minister may issue an order to require a report on the incidence if more information is required. The Minister may require a Corrective Action Plan and financial assurances to ensure the Corrective Action Plan is carried out. Properties subject to the EMPA, 2010 are also listed in a registry to ensure future

development options are compatible with the state of the reclaimed site. The City is not responsible to remediate or require remediation of a contaminated site. Responsibility generally follows the “polluter pays principle.”

As the land use authority, the City has a responsibility to ensure safeguards are in place as required, such as spill containment measures and monitoring systems, which it implements at the time of development through regulations in the Zoning Bylaw. The City may also have a role to play by encouraging reclamation and redevelopment of vacant, or underutilized brownfield sites through incentives or other benefits, ensuring the site is developed to its full taxable benefit. While it may be possible for the City to accept responsibility to regulate site contamination, it would be an entirely new business for administration to regulate and enforce, which requires expertise and enforcement resources, for which it is currently not prepared and would duplicate the process currently in place under Provincial legislation.

Furthermore, the scope of the proposed amendments applies only to the City’s High Sensitivity Aquifer Protection Overlay Zone where sites are zoned to accommodate industrial development. These lands are limited to the north fringe of the City and shown in Map 2. The concern of site contamination and brownfield reclamation may extend beyond the scope of this proposed amendment.

Financial Assurances and Development Approvals

City Council’s motion requires Administration to consider financial remediation for construction and deconstruction of the development. *The Planning and Development Act, 2007* (the Act), allows for a zoning bylaw to require a letter of credit, performance bond, or other form of assurance that the council considers necessary to ensure that the development is constructed and completed in accordance with the time frames and development standards required in the approval and to prescribe the procedures by which these assurances are released once the development is completed. Financial assurances may be a useful tool to ensure development is carried out where it otherwise may be a public nuisance, danger, or negatively impact public infrastructure.

The City has not required financial security deposit for a private development previously. During the discussion of the new 2019 Zoning Bylaw, provisions for financial assurances were proposed, but Council resolved to remove those provisions during the initial consideration of the bylaw. However, Administration is committed to consider amendments to the Zoning Bylaw to allow this tool to be applied to other development situations, such as this one. Administration intends to bring this item back to Council in 2022. Requiring financial securities is a regular part of servicing agreements, which cover obligations for private construction of future public infrastructure (eg. new roads or parks) during the subdivision process, and a similar obligation could be imposed at the time of development permit.

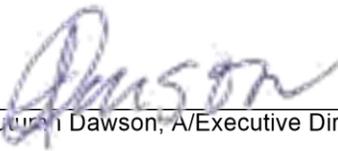
The proposed amendments would allow for financial assurances to be required as a condition of approval only for industrial development within the High Sensitivity Aquifer Protection Overlay Zone. However, the assurance would intend to be held during the construction process to ensure the development is carried out as required, and then the assurances would be released. This would act as an enforcement tool to ensure the development is carried out, and if not, the City may use the securities to perform necessary work that is required to mitigate the risk of aquifer contamination. It would not be possible to require financial assurances at the time of development approval with the intent of applying to a hypothetical remediation or deconstruction of the site in the future. Those costs would be impossible to determine at the time of development review and the securities cannot be held indefinitely as conditions of the development approval process.

DECISION HISTORY

On September 15, 2021, City Council considered a report regarding amendments to the Aquifer Protection Overlay Zone and asked Administration to report back with further information (CR21-125).

Respectfully Submitted,

Respectfully Submitted,



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10/29/2021



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11/4/2021

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ATTACHMENTS

Map 1 - Aquifers in Region

Map 2 - Aquifer Sensitivity and Employment Areas