

# Report to Council



**Date:** August 12, 2024  
**To:** Council  
**From:** City Manager  
**Subject:** Diking Authority Designation – Mill Creek Flood Protection Project  
**Department:** Utility Services

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**Recommendation:**

THAT Council receives, for information, the report from Utility Services dated August 12, 2024, with respect to the Diking Authority designation for sub-projects as part of the Mill Creek Flood Protection Project;

AND THAT Council agrees, pursuant to the *Dike Maintenance Act*, to the City of Kelowna assuming the role of Diking Authority with respect to the necessary dikes or berms to be constructed along Mill Creek in accordance with the Mill Creek Flood Protection Project.

**Purpose:**

To provide approval to name the City of Kelowna as a Diking Authority for flood control structures as part of the Mill Creek Flood Protection project.

**Council Priority Alignment:**

Climate & Environment

**Background:**

In December 2023, the City of Kelowna completed an application for a Provincial Change Approval permit under Section 11 of the Water Sustainability Act to complete in-stream construction works for the Burne Avenue Park, Lindahl Park and Mission Creek – Reach 4 Riffles sub-projects of the larger Mill Creek Flood Protection Project.

Section 11 of the Water Sustainability Act prohibits making changes in and about a stream, unless authorized to do so (such as by a licence, change approval, or regulations). A Change Approval is required if an applicant wishes to request permission to eliminate (e.g., closure/infill), modify, or significantly re-locate an existing waterbody. The City of Kelowna applies for Section 11 permits every time the City initiates work around a creek.

The City's latest application included the submission of design drawings, construction timelines, work plans and long term operational and maintenance plan. In doing so, it highlighted a number of new berms and small dikes to be constructed to assure flow releases downstream of the Mill Creek diversion structure are contained as effectively as possible. These changes are limited to the specific project areas.

The City was recently advised that the Provincial Inspector for the Dike Maintenance Act cannot issue approval for a new dike until the local government has both:

1. Passed a Council resolution agreeing to become the Diking Authority.
2. Acquired the necessary land for dike or berm ownership and maintenance through fee simple ownership, or through the registration of statutory rights of way.

The Provincial Dike Maintenance Act outlines the responsibilities of a municipality as a Diking Authority. These responsibilities generally include inspection, operation and maintenance. These actions are consistent with the City's current practice. Assuming the role of a Diking Authority is aligned with standard provincial practice and does not represent additional responsibilities that the City of Kelowna has not anticipated.

**Discussion:**

The construction of works for Burne Park has begun. The Section 11 permit for this work has already been approved, except for the work on the final berms in the Project. Upon acceptance and approval of the submission of this Council Resolution to become the Diking Authority, the Section 11 application will be amended to include the dike and berm work.

Future new berms and small dikes will be included in a number of Mill Creek Flood Protection sub-projects during the next three years, including the Parkinson Park and Lindahl Road creek works. A similar requirement for the City to be Diking Authority will be expected for those projects. Staff are therefore requesting that Council agree to assume the role of Diking Authority for the other subprojects of the Mill Creek Flood Protection Project that come up on Mill Creek. The planned dike/berm works for this and future Section 11 applications for the Mill Creek Project are identified in the attached Figure 1.

This Diking Authority request relates only to new City works on Mill Creek and will not impact other water bodies such as Mission Creek.

**Conclusion:**

The City wishes to complete our parks and flood protection works along Mill Creek. The Province requires that the City be named as the Diking Authority, responsible for general repair and maintenance for that new section of dike constructed as part of the Mill Creek Flood Protection Project. This authority must be granted by Council as required by the Dike Maintenance Act.

**Internal Circulation:**

Communications

**Considerations not applicable to this report:**

***Communications Comments:***

***Legal/Statutory Authority:***

***Legal/Statutory Procedural Requirements:***

***Existing Policy:***

***Financial/Budgetary Considerations:***

***Consultation and Engagement:***

Submitted by: Rod MacLean, Utility Planning Manager

Reviewed by: Kevin Van Vliet, Utility Services Department Manager

**Approved for inclusion:** M. Logan, General Manager, Infrastructure

cc: Communications Director

**Attachments:**

Figure 1: Lower Mill Creek Planned Diking