

**Municipality Of Chatham-Kent**  
**Community Development**

**To:** Mayor and Members of Council  
**From:** John Norton  
Chief Legal Officer  
**Date:** February 28, 2020  
**Subject:** Road Closure – Erie Shore Drive

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**Recommendations**

It is recommended that:

1. A By-law be passed to provide for the permanent closing of part of Erie Shore Drive, Geographic Township of Harwich, effective March 9, 2020. A copy of the proposed By-law is attached as Appendix “A”.
2. Council delegate to the General Manager of Infrastructure and Engineering Services the authority to complete all work and to make all necessary purchases to respond to unstable conditions on the Erie Shore Road and dike. Council hereby waives all requirements of Chatham-Kent Purchasing By-law 3-2016 in relation to such purchases.

**Background**

Based on engineering information received by the Municipality, there is a substantial risk of conditions developing that could render the Erie Shore Road and dike unstable between (and inclusive of) 18416 Erie Shore Drive to the intersection of Erie Shore Drive and Erieau Road.

The engineering information indicates a 5 to 40 per cent chance for conditions to develop that would render the dike unstable with progressive failures potentially leading to a significant breach. The engineering opinion to close the section of road and risk assessment was based partly on forecasted lake levels, historical storm frequency, wind speeds and direction. A significant breach of the dike could result in significant harm to people and property, would prevent access to the Village of Erieau and prevent access to surrounding areas, including emergency access.

On February 28, 2020, in response to this situation, Mayor Darrin Canniff declared a state of emergency under the *Emergency Management and Civil Protection Act*.

## **Comments**

In response to the risk of failure on the Erie Shore Drive and dike, administration is recommending a by-law to permanently close the public highway on Erie Shore Drive between and inclusive of 18416 Erie Shore Drive to the intersection of Erie Shore Drive and Erieau Road, and to remove all rights of passage over that part of the right-of-way by abutting property owners. No emergency or municipal services, including emergency service vehicles would be provided to properties abutting this portion of Erie Shore Drive.

Under Section 34 of the *Municipal Act, 2001*, R.S.O. 2001, Council is authorized to pass a by-law to permanently close part of a public highway. Under Section 35, Council may pass a by-law to remove the common law right of passage by the public over a highway and access to the highway by abutting owners. Sections 9 and 10 of the Act provide broad powers to the Municipality to pass by-laws and take actions necessary and desirable for the public.

Under Section 44 of the *Municipal Act, 2001*, the Municipality is required to keep municipal highways in a state of repair that is reasonable in the circumstances and can be liable for damages to any person who sustains damages as result of a failure by the Municipality to meet this obligation.

Closure of the proposed part of Erie Shore Drive is strongly supported by engineering information received by the Municipality to date and is necessary to mitigate the risk of harm to people and property and to allow work to be undertaken to prevent a breach of the dike.

In addition, administration is recommending that Council delegate authority to the General Manager of Infrastructure and Engineering Services to make all necessary purchases to carry out work required to address the unstable condition of the Erie Shore Road dike and waive all corresponding requirements of Chatham-Kent Purchasing By-law 3-2016. While spending of public monies is normally done through a competitive process, the urgency of this situation justifies delegating the authority to make purchasing decisions outside of a competitive process to the General Manager.

## **Areas of Strategic Focus and Critical Success Factors**

The recommendation in this report supports the following areas of strategic focus:

Economic Prosperity:

Chatham-Kent is an innovative and thriving community with a diversified economy

A Healthy and Safe Community:

Chatham-Kent is a healthy and safe community with sustainable population growth

People and Culture:

Chatham-Kent is recognized as a culturally vibrant, dynamic, and creative community

Environmental Sustainability:

Chatham-Kent is a community that is environmentally sustainable and promotes stewardship of our natural resources

The recommendation in this report supports the following critical success factors:

Financial Sustainability:

The Corporation of the Municipality of Chatham-Kent is financially sustainable

Open, Transparent and Effective Governance:

The Corporation of the Municipality of Chatham-Kent is open, transparent and effectively governed with efficient and bold, visionary leadership

Has the potential to support all areas of strategic focus & critical success factors

Neutral issues (does not support negatively or positively)

### **Consultation**

The Chief Administrative Officer, Chief Financial Officer and General Manager, Infrastructure and Engineering Service were consulted regarding this report.

### **Financial Implications**

The financial implications of this report cannot be assessed at this time.

Prepared by:

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John Norton  
General Manager, Community Development

Attachment (1): By-law to provide for the closing of road

**BY-LAW NUMBER - 2020**

**OF THE CORPORATION OF THE  
MUNICIPALITY OF CHATHAM-KENT**

A By-law to provide for the closing of a part of the public highway known as Erie Shore Drive, Geographic Township of Harwich; Municipality of Chatham-Kent; being part of Property Identification Number (PIN) 00938-1125 and all of PIN 00938-1088 and part of PIN 00939-1089.

**FINALLY PASSED THE 2<sup>nd</sup> day of MARCH, 2020.**

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**WHEREAS** Council of the Municipality of Chatham-Kent has received an engineering opinion that a portion of the dike and public highway known as Erie Shore Drive is at risk of failure under potential conditions, which would cause serious risk to life and property;

**AND WHEREAS** the engineering opinion recommends action which will make continued use of the subject part of Erie Shore Drive unsafe for passage of vehicles and persons;

**AND WHEREAS** the engineering opinion recommends that urgent action be taken to prevent a breach of the Erie Shore Drive dike, as such a breach could result in significant harm to persons and property;

**AND WHEREAS** the head of Council of the Municipality of Chatham-Kent has declared an emergency in respect of that subject part of the road allowance and surrounding areas;

**AND WHEREAS** Council of the Municipality of Chatham-Kent wishes to permanently close that part of the public highway located on the lands legally described as:

**Part of 00938-1125, legally described as LAKESHORE RD., PLAN 398, 421 & 426, ROADWAY 30 FT WIDE, PLAN 421 BEAVER CREEK DREDGE CUT, PLAN 421, LYING BETWEEN N LIMIT OF LAKE SHORE DRAIN AND LAKE ERIE, TRAVELLED RD THROUGH PT LOT 3, PLAN 302 AS IN HA17005, LYING BETWEEN S LIMIT OF CLARKE SIDEROAD & W LIMIT OF THE BEAVER CREEK DREDGE CUT, PLAN 421, PT LOT 466, PLAN 421**

**DESIGNATED AS PT 1, 24R4927, PT LOT 407, PLAN 421 DESIGNATED AS PT 1, 24R5060 HARWICH; all of PIN 00938-1088, legally described as LAKE SHORE DRAIN, PLAN 421, LYING BETWEEN W LIMIT OF LT 439 & E LIMIT OF LT 407, PLAN 421 HARWICH; and part of PIN 00939-1089, legally described as LAKE SHORE DRAIN, PLAN 421, LYING BETWEEN W LIMIT OF LT 446 & E LIMIT OF ROADWAY 30 FT WIDE, PLAN 421 HARWICH**

**AND WHEREAS** pursuant to the provisions of Sections 9, 10, 34 and 35 of the *Municipal Act, 2001*, R.S.O. 2001, Chapter 25 and amendments thereto, the Council of a municipality may pass by-laws to permanently close a public highway, remove the common law right of passage by the public to a public highway, and to remove the common law right of access of abutting owners to a public highway;

**AND WHEREAS**, public notice of the closing was given by the Municipality, however, due to extenuating circumstances giving rise to the state of emergency, more lengthy public notice, though preferable, was not possible in the circumstances;

**AND WHEREAS** Council heard all parties that requested to speak about their concerns regarding this By-Law who appeared at this public meeting and indicated a desire to be heard;

**AND WHEREAS** after considering the matter of the proposed By-Law, Council authorized passage;

**BE IT THEREFORE ENACTED** by the Municipal Council of the Municipality of Chatham-Kent as follows:

1. That portion of the public highway known as Erie Shore Drive shown and described in the attached **Schedule "A"** be closed, effective March 9, 2020.
2. The common law right of passage by the public over that part of the highway shown and described in **Schedule "A"** and right of access over that part of the highway by abutting owners is removed, effective March 9, 2020.
3. To the extent that any previously established levels of Municipal service, including emergency services, conflict or derogate from this Bylaw, such levels of service are hereby expressly ended and not to be provided to properties abutting the road closure area.

4. That the Mayor and Clerk are hereby authorized and directed to execute on behalf of the Municipality of Chatham-Kent and to seal with the seal thereof any and all documents necessary to implement the foregoing.
5. For the purpose of legally describing the portion of the highway for the purpose of registering this bylaw on title to the lands, Council authorizes the Municipal Clerk to make administrative amendments to this bylaw to update the legal description in the bylaw once a reference plan has been deposited.

This bylaw shall be effective as of its date of passing.

READ A FIRST, SECOND AND THIRD TIME this 2<sup>nd</sup> day of March, 2020.

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Mayor – Darrin Canniff

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Clerk – Judy Smith

## **SCHEDULE A**

### **Road Closure Area:**

Commencing at the southwestern limit of the intersection of the public highways known as Erie Shore Drive and Erieau Road, then westerly along Erie Shore Drive approximately 2500 metres, and terminating at and including the portion of Erie Shore Drive abutting the lands known municipally as 18416 Erie Shore Drive, being:

Part of 00938-1125, legally described as LAKESHORE RD., PLAN 398, 421 & 426, ROADWAY 30 FT WIDE, PLAN 421 BEAVER CREEK DREDGE CUT, PLAN 421, LYING BETWEEN N LIMIT OF LAKE SHORE DRAIN AND LAKE ERIE, TRAVELLED RD THROUGH PT LOT 3, PLAN 302 AS IN HA17005, LYING BETWEEN S LIMIT OF CLARKE SIDEROAD & W LIMIT OF THE BEAVER CREEK DREDGE CUT, PLAN 421, PT LOT 466, PLAN 421 DESIGNATED AS PT 1, 24R4927, PT LOT 407, PLAN 421 DESIGNATED AS PT 1, 24R5060 HARWICH; all of PIN 00938-1088, legally described as LAKE SHORE DRAIN, PLAN 421, LYING BETWEEN W LIMIT OF LT 439 & E LIMIT OF LT 407, PLAN 421 HARWICH; and part of PIN 00939-1089, legally described as LAKE SHORE DRAIN, PLAN 421, LYING BETWEEN W LIMIT OF LT 446 & E LIMIT OF ROADWAY 30 FT WIDE, PLAN 421 HARWICH

And being approximately depicted in the map below:

