

COUNCIL REPORT

TO: CITY MANAGER **DATE:** 2015 January 14

FROM: DIRECTOR PLANNING AND BUILDING
DIRECTOR ENGINEERING
CITY SOLICITOR

SUBJECT: PROPOSED TRANS MOUNTAIN EXPANSION PROJECT - UPDATE

PURPOSE: To provide Council with an update on the NEB Public Hearing process and a summary of the City's Technical Review with respect to the proposed Trans Mountain Pipeline Expansion Project.

RECOMMENDATION:

1. **THAT** this report be received for information.

REPORT**1.0 BACKGROUND**

On December 16, 2013, Trans Mountain applied to the National Energy Board (NEB) for a certificate of public convenience and necessity, and related approvals, pursuant to s. 52 of the *National Energy Board Act*, for the Project (the "Application"). The Project is a proposal to expand the existing Trans Mountain pipeline system between Edmonton, AB and Burnaby, BC. For Burnaby, the proposed expansion primarily for exportation of crude oil would result in:

- a) A new pipeline along a new route to the Burnaby Terminal;
- b) Addition of 13 new tanks, and one replacement tank, at the Burnaby Terminal resulting in an increase of storage volume from 1.6 existing million barrels to 5.6 million barrels;
- c) Two new 30 inch delivery lines connecting the Burnaby Terminal to the Westridge Marine Terminal; and,
- d) A new dock complex with two new berths at the Westridge Marine Terminal which would increase the number of tankers from 8 to 34 per month.

The Application provided that the proposed pipeline corridor for the two new delivery lines connecting the Burnaby Terminal to the Westridge Marine Terminal would follow alongside Burnaby Mountain Parkway, Hastings Street, and Cliff Avenue before turning east into the Marine Terminal (the "Original Route"). The original Application did not list the pipeline route through the Burnaby Mountain Conservation Area as the proposed preferred route. There is also an existing right of way for the original pipeline in existence, which Trans Mountain is not currently proposing to utilize for the proposed two new lines to connect the Burnaby Terminal to the Westridge Marine Terminal.

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On April 02, 2014, the NEB issued a completeness determination for the Application - based on the Original Route for this portion of the pipeline - and began the hearing process for the Application. Burnaby, which is opposed to this proposed project, was granted intervenor status in the hearing for the Project.

On May 14, 2014, Trans Mountain in response to Information Request No. 1 from the NEB, stated that the alternative pipeline corridor options have been further examined since the Application was filed in December 2013 and that the route through Burnaby Mountain, either by a horizontal directional drill (HDD) route or a trenchless direct route, is preferred. Additionally a preferred route through the Brunette River Conservation Area was also selected and the route following Lougheed Highway through the Lougheed Town Centre was removed from the application.

On June 10, 2014, in response to information requests from the NEB of June 03, 2014, Trans Mountain confirmed that their preferred route was through Burnaby Mountain. The Original Route remains an "alternative route". Trans Mountain listed the studies that it would need to complete to meet the information requirements for the new preferred route in the response.

On July 15, 2014, the NEB, by letter and Procedural Direction No. 4, revised the timetable for the hearing so that a new notice to apply for intervenor status could be given and Trans Mountain could deliver supporting information for the new preferred route through Burnaby Mountain by December 01, 2014. The NEB excluded the period from July 11, 2014 to February 03, 2015 from the timeline, for the review of the Project, in order for Trans Mountain to provide the information. As a result of this exclusion period, the NEB issued a revised schedule on December 12, 2014 and has now scheduled release of its report to the Governor in Council and to the Minister of Natural Resources on January 25, 2016 (*see attached Appendix 1*).

2.0 TECHNICAL REVIEW OF THE APPLICATION

As an intervenor in the project, the City has been undertaking detailed technical reviews of all aspects of the Application submitted by Kinder Morgan as part of the ongoing NEB process. This review includes staff, and consultant studies of specific aspects of the proposed Trans Mountain Expansion Project with a particular focus on reviewing the credibility of Kinder Morgan's submission related to environmental, socio-economic and community health and safety concerns related to the proposed pipelines, the Burnaby Mountain Terminal and the Westridge Terminal.

As outlined in previous reports to Council, the existing NEB process has been the subject of changes which have limited the public's opportunity to provide direct cross-examination of the project and Kinder Morgan. The City's participation as an Intervenor provides an opportunity to present the community's concerns and questions related to the Application through the NEB hearing process as Information Requests. Information Requests, in addition to being presented to the NEB, are also served on Trans Mountain (Kinder Morgan), its counsel, and all other Intervenor participants.

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2.1 Information Request – Round 1

On May 08, 2014, the City filed over 1,700 Information Requests on the proposed project to the NEB. Kinder Morgan responded to the City on June 18, 2014. As was noted by staff in an update to Council at their meeting of November 03, 2014, Kinder Morgan failed to respond to 62% of the City's questions and requests for more information. The NEB was requested by counsel to compel Trans Mountain to respond to all of the City's the submitted questions and concerns. This request was denied by the NEB.

2.2 Information Request – Round 2

The City has reviewed and prepared new series of Information Requests which were submitted to the NEB on its established deadline of January 16, 2015. The completed submission, which includes approximately 200 pages and over 140 Information Requests comprising more than 620 questions, has been provided to Council as a separate document and will be available to the public on the City's website.

The focus of this round of technical reviews has concentrated on new information prepared by Kinder Morgan and submitted as part of the Application, including responses to Information Requests from the NEB and other Intervenors. Staff and legal counsel also reviewed, in detail, all of Kinder Morgan's new data collected and submitted related to the proposed preferred route and tunnel through Burnaby Mountain. Additionally, staff have undertaken a careful review of the responses that Kinder Morgan provided to the City's Round 1 Information Request to further define the impacts of the project on the City.

The Round 2 Information Request submission provides the City with further opportunity for technical review of the Application with specific focus on the environmental, socio-economic and public safety issues related to the pipeline, Burnaby Mountain Terminal, and the Westridge Terminal. Additional Information Requests have been submitted which focus on the impacts to the City's infrastructure, public park and conservation lands and lack of public consultation with Burnaby's citizens and property owners. Information Requests have also been prepared related to the economic and financial aspects of the proposed project, focusing on issues related to the corporate operations of Kinder Morgan and its subsidiaries, including Trans Mountain.

2.3 Information Request - Termpol

Staff have also begun the preparation of additional Information Requests related to the Technical Review Process of Marine Terminal Systems and Transshipment sites (TERMPOL) report, the results of which Transport Canada filed with the NEB on 11 December 2014. This report is directly related to the review of the Application and its proposal to substantially increase the shipping of oil products through the Westridge Terminal, Burrard Inlet and the coastal waters of British Columbia. This Information Request is due for submission on February 18, 2015. Upon completion and submission of this technical review, staff will prepare and provide a further update for the information of Council.


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3.0 CONCLUSION

The City has made extensive efforts through its position as an Intervenor to review the proposed project from a technical perspective. This work has been completed as part of the ongoing review of Kinder Morgan's application. Throughout this process, Council has expressed its opposition to the proposed expansion of the Trans Mountain pipeline facilities on behalf of Burnaby Citizens.

The City will continue to advocate through the ongoing review of the project and participation as an Intervenor through the established NEB process and its legal opposition. This background report is for the information of Council.


Lou Pelletier, Director
PLANNING AND BUILDING


Leon A. Goss, P. Eng. MBA
DIRECTOR ENGINEERING


Bruce Rose
CITY SOLICITOR

DD/JW:cp
Attachment

cc: Deputy City Managers
Director Parks Recreation and Cultural Services
Director Finance
OIC - RCMP
Fire Chief

National Energy Board of Canada
Trans Mountain Pipeline ULC - Trans Mountain Expansion - Hearing Schedule
(Revised: 12 December 2014)

Revised Hearing Events and Steps: (responsible person[s] in bold)	Date or deadline
Board Round 3 information requests to Trans Mountain.	9 January 2015
Intervenor Round 2 information requests to Trans Mountain. <i>Each information request must be relevant to one or more of the issues identified in Appendix I of the Hearing Order [Filing A59503]. Information requests must be served on Trans Mountain, its counsel, and all other intervenors, except on those who have been removed from the email service list at their request.</i>	16 January 2015 (formerly 9 January 2015)
Trans Mountain responds to Board Round 3 information requests. <i>Responses must be served on all intervenors, except on those who have been removed from the email service list at their request.</i>	3 February 2015
Trans Mountain responds to Board Round 2 intervenor information requests. <i>Responses must be served on all intervenors, except on those who have been removed from the email service list at their request.</i>	18 February 2015 (formerly 10 February 2015)
Intervenor information requests to Trans Mountain about the TERMPOL report [Filing A64923]. <i>This round of information requests is limited to questions to Trans Mountain about the TERMPOL report, the results of which Transport Canada filed on 11 December 2014. Information requests must be served on Trans Mountain, its counsel, and all other intervenors, except on those who have been removed from the email service list at their request.</i>	18 February 2015 (formerly not scheduled)
Motion Day 2 - As considered necessary, Intervenors file notices of motion on the adequacy of Trans Mountain's responses to information requests. <i>Notices of motion must be served on Trans Mountain, its counsel, and all other intervenors, except on those who have been removed from the email service list at their request. The Board will issue guidance on such motions in the near future.</i>	26 February 2015 (formerly 19 February 2015)
Trans Mountain responds to intervenors' motions on adequacy of responses to Round 2 intervenor information requests from Motion Day #2 <i>This is an optional step. Any responses must address specific motions pertaining to specific information requests. The Board will issue guidance on such motions in the near future.</i>	12 March 2015 (formerly 5 March 2015)
Intervenors reply to Trans Mountain's responses to their motions from Motion Day #2. <i>This step only applies IF Trans Mountain provides responses to specific motions which were made regarding specific information requests. The Board will issue guidance on such motions in the near future.</i>	17 March 2015 (formerly 10 March 2015)
Trans Mountain responds to intervenors' information requests on TERMPOL report. <i>Trans Mountain is directed to respond only to questions about the TERMPOL report at this time.</i>	17 March 2015 (formerly not scheduled)

Revised Hearing Events and Steps: (responsible person[s] in bold)	Date or deadline
<p>Motion Day (TERMPOL only) - As considered necessary, intervenors file notices of motion on the adequacy of Trans Mountain's responses to information requests about the TERMPOL report.</p> <p><i>Notices of motion must be served on Trans Mountain, its counsel, and all other intervenors, except on those who have been removed from the email service list at their request. The Board will issue guidance on such motions in the near future.</i></p>	<p>24 March 2015 (formerly not scheduled)</p>
<p>Trans Mountain responds to intervenors' motions on adequacy of responses to information requests from Motion Day (TERMPOL only).</p> <p><i>This is an optional step. Any responses must address specific motions pertaining to specific information requests. The Board will issue guidance on such motions in the near future.</i></p>	<p>7 April 2015 (formerly not scheduled)</p>
<p>Intervenors reply to Trans Mountain's responses to their motions from Motion Day (TERMPOL only).</p> <p><i>This step only applies IF Trans Mountain provides responses to specific motions which were made regarding specific information requests. The Board will issue guidance on such motions in the near future.</i></p>	<p>13 April 2015 (formerly not scheduled)</p>
<p>Intervenors file written evidence.</p> <p><i>Evidence must be relevant to one or more of the issues identified in Appendix I of the Hearing Order [Filing A59503]. Evidence must be served on Trans Mountain, its counsel, and all other intervenors, except on those who have been removed from the email service list at their request. See Procedural Direction No. 7 [Filing A64513] for further guidance on evidence and an optional template.</i></p>	<p>27 May 2015 formerly 1 May 2015)</p>
<p>Intervenor information requests to other intervenors.</p> <p><i>Each information request must be relevant to one or more of the issues identified in Appendix I of the Hearing Order [Filing A59503]. Information requests must be served on the relevant intervenors, with a copy also served on Trans Mountain, its counsel, and all other intervenors, except on those who have been removed from the email service list at their request.</i></p>	<p>22 June 2015 (formerly 25 May 2015)</p>
<p>Trans Mountain information requests to intervenors.</p> <p><i>Each information request must be relevant to one or more of the issues identified in Appendix I of the Hearing Order [Filing A59503]. Information requests must be served on the relevant intervenors, with a copy also served all other intervenors, except on those who have been removed from the email service list at their request.d on Trans Mountain, its counsel, and all other intervenors, except on those who have been removed from the email service list at their request.</i></p>	<p>22 June 2015 (formerly 25 May 2015)</p>
<p>Intervenors respond to other intervenor information requests.</p> <p><i>Responses must be served on Trans Mountain, its counsel, and all other intervenors, except on those who have been removed from the email service list at their request.</i></p>	<p>14 July 2015 (formerly 15 June 2015)</p>

Revised Hearing Events and Steps: (responsible person[s] in bold)	Date or deadline
Intervenors respond to Trans Mountain information requests. <i>Responses must be served on Trans Mountain, its counsel, and all other intervenors, except on those who have been removed from the email service list at their request.</i>	14 July 2015 (formerly 15 June 2015)
Board Round 4 information requests to Trans Mountain.	15 July 2015 (formerly 19 June 2015)
Board information requests to intervenors.	15 July 2015 (formerly 19 June 2015)
Letter of comment workshop (multiple online sessions)	July 2015 (formerly February 2015)
Commenters file letters of comment. Letters must be served on Trans Mountain and its counsel. <i>See the Board's 15 July 2014 letter to commenters [Filing A61779] for more information.</i>	23 July 2015 (formerly 16 March 2015)
Intervenors respond to Board information requests. <i>Responses must be served on Trans Mountain, its counsel, and all other intervenors, except on those who have been removed from the email service list at their request.</i>	29 July 2015 (formerly 6 July 2015)
Trans Mountain responds to Board Round 4 information requests. <i>Responses must be served on Trans Mountain, its counsel, and all other intervenors, except on those who have been removed from the email service list at their request.</i>	29 July 2015 (formerly 6 July 2015)
Board releases draft conditions for comment.	29 July 2015 (formerly 7 July 2015)
Trans Mountain files reply evidence. <i>Evidence must be served on all intervenors, except on those who have been removed from the email service list at their request.</i>	6 August 2015 (formerly 10 July 2015)
Intervenors and Trans Mountain file affidavits swearing evidence.	6 August 2015 (formerly 10 July 2015)
Intervenors and Trans Mountain file notices of intent to present oral summary argument and/or reply argument.	6 August 2015 (formerly 10 July 2015)

Revised Hearing Events and Steps: (responsible person[s] in bold)	Date or deadline
Intervenor workshop, part 2: oral submissions (multiple online sessions)	August 2015 (formerly June 2015)
Trans Mountain files written argument-in-chief, including comments on draft conditions. <i>Comments on conditions must be included in written argument-in-chief; they cannot be raised for the first time during oral argument. No new evidence can be provided in written argument-in-chief.</i> <i>Written argument-in-chief must be served on all intervenors, except on those who have been removed from the email service list at their request.</i>	20 August 2015 (formerly 24 July 2015)
Oral hearings: to hear Trans Mountain's oral summary argument. <i>No new evidence can be provided in oral argument. Time limits will be imposed.</i>	August 2015 (formerly July 2015)
Intervenors file written argument-in-chief and reply to Trans Mountain including comments on draft conditions. <i>Comments on conditions must be included in written argument-in-chief; they cannot be raised for the first time during oral argument. No new evidence can be provided in written argument-in-chief.</i> <i>Written argument-in-chief must be served on Trans Mountain, its counsel, and all other intervenor, except on those who have been removed from the email service list at their request.</i>	1 September 2015 (formerly 6 August 2015)
Oral hearings: to hear intervenors' oral summary argument and/or reply argument. <i>No new evidence can be provided in oral argument. Time limits will be imposed.</i>	September 2015
Trans Mountain files written reply argument.	October 2015
Hearing record closes.	Immediately after finishing argument
Board releases its Report to the Governor in Council and provides it to the Minister of Natural Resources (time limit end)	25 January 2016