



## **Governance and Priorities Committee Report**

### **For the Meeting of April 23, 2015**

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**To:** Governance and Priorities Committee **Date:** April 14, 2015  
**From:** Robert Woodland, Director, Legislative and Regulatory Services  
**Subject:** Trans Mountain Expansion Project

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#### **Executive Summary**

The purpose of this report is to:

- provide Council with a summary of the responses to the City's questions to Trans Mountain regarding the Trans Mountain Expansion Project, and
- to obtain Council direction regarding the City's position and next steps on the Trans Mountain Expansion Project.

As an intervenor in the National Energy Board's (NEB) public hearing on the Trans Mountain Expansion Project, the City of Victoria has a unique ability to put forward the views and opinions of local and regional residents and businesses with regard to the proposed pipeline expansion. In the fall of 2014, the City hosted an engagement process to collect public feedback regarding the proposed expansion. Close to 90% of engagement participants were opposed to the proposed expansion, with many expressing concerns that the risks associated with the proposed expansion significantly outweighed any benefits. The feedback received through that process was used to develop a number of questions for Trans Mountain, which were answered in early 2015. The answers to those questions show that few benefits from the proposed expansion are anticipated in Victoria or the CRD at this time, although an additional Coastal Community Benefit program is under consideration.

Staff are in the process of compiling the City's evidence submission to the NEB, which must be filed by May 27, 2015. The City's evidence submission will be a collection of facts and information that supports Council's views or beliefs on the proposed expansion. To date, Council has not formally expressed a position with regard to the proposed expansion. Formal direction from Council regarding its position is needed at this time in order for staff to effectively prepare the City's evidence submission and ensure that the submission supports any final argument that Council may wish to make. An expression of opposition to the proposed expansion would be consistent with the views of engagement participants and supported by the information provided by Trans Mountain, which shows an increased risk of an oil spill in the waters off of Victoria, but few direct benefits to Victoria or the CRD.

The next major step after the filing of evidence is the final argument phase of the hearing process. The City's evidence submission will focus largely on the views and concerns of residents. While these are valid local issues, it is expected that the City's argument may carry less weight in the public hearing, since the NEB will rely predominantly on evidence provided by experts in relevant disciplines. The City is not required to submit any final argument with regard to the proposed

expansion; however, participation in either written and/or oral final argument will ensure that residents' views are given full consideration by the NEB.

### Recommendation

That Council:

1. Express Council's position with regard to the Trans Mountain Expansion Project to enable the submission of the City's evidence, and
2. Provide instructions to staff regarding the form of participation in the final argument portion of the hearing process.

Respectfully submitted,



Shannon Craig  
Policy Analyst  
Legislative and Regulatory Services Department



Robert Woodland  
Director, Legislative and  
Regulatory Services Department

Report accepted and recommended by the City Manager: \_\_\_\_\_

Date: April 17, 2015

### List of Attachments:

Appendix A – Tanker Route

Appendix B – Trans Mountain Response to City's Information Request (Hyperlink provided with electronic agenda)

Appendix C – Response from President of Kinder Morgan to City's Questions (Hyperlink provided with electronic agenda)

Appendix D – Previous Council Motions



## Purpose

The purpose of this report is to:

- provide Council with a summary of the responses to the City's questions to Trans Mountain regarding the Trans Mountain Expansion Project, and
- to obtain Council direction regarding its position and next steps on the Trans Mountain Expansion Project.

## Background

### *The Trans Mountain Expansion Project*

Trans Mountain has made an application to the National Energy Board of Canada (the NEB) to expand the Trans Mountain Pipeline System. The proposed Trans Mountain Expansion Project (the proposed expansion) consists of three components:

- twinning (or looping) of existing pipeline segments in Alberta and British Columbia
- new and modified facilities (including pump stations and tanks), and
- three new berths at the Westridge Marine Terminal in Burnaby, B.C.

The Terminal expansion will allow for an increase in handling capacity from the current five vessels per month to 34 vessels per month. The type of vessels loaded at the Terminal will remain the same. The tanker route from the Terminal commences in Burrard Inlet, and then traverses Boundary Pass, Haro Strait, and the Juan de Fuca Strait, passing to the south of Victoria, before reaching the Pacific Ocean. A map of the tanker route is attached as Appendix A.

### *The Public Hearing*

The NEB is holding a public hearing to review Trans Mountain's application. The NEB has identified 12 issues that will be considered during the hearing. The particular issue of significance to Victoria is Issue #5:

"the potential environmental and socio-economic effects of marine shipping activities that would result from the proposed project, including the potential effects of accidents or malfunctions that may occur."

The NEB hearing is a formal legal process. The NEB has granted the City of Victoria intervenor status for this hearing. Intervenors are allowed to:

- file written evidence
- ask written questions about Trans Mountain's and other intervenors' evidence
- file, and potentially respond to, notices of motion
- comment on draft conditions, and
- present written and oral argument.

The following table outlines key dates associated with the NEB hearing process:

January 16, 2015	Intervenor information requests submitted to Trans Mountain – Completed
February 18, 2015	Trans Mountain responded to intervenor information requests – Completed
May 27, 2015	Intervenors file written evidence
September 2015	Oral hearings to hear intervenors' oral summary argument and/or reply argument
January 25, 2016	NEB provides its report to the Federal Government

## *Activities to Date*

In the fall of 2014, the City hosted an engagement process to collect public feedback regarding the proposed expansion. The engagement program focussed on the potential environmental and socio-economic impacts to the City, its residents and businesses from the increase in tanker traffic.

A report summarizing the results of the engagement process was shared with Council and the public at the December 18, 2014 Governance and Priorities Committee meeting and can be viewed by following the hyperlink to the City's *Have Your Say* website provided with this report on the electronic meeting agenda. The documents referenced in the paragraphs below can also be accessed via that link.

Informed by engagement results, on December 18, 2014, Council directed staff to submit the City's information request to Trans Mountain, which reflected the themes and concerns identified by members of the public. Information requests are the formal opportunity for intervenors in the public hearing to raise questions about the application filed by Trans Mountain or request additional information. A response to that information request was received from Trans Mountain on February 18, 2015 is attached as Appendix B.

On December 18, 2014, Council also directed staff to send a letter to Trans Mountain asking for answers to additional questions raised during public engagement activities that were outside of the scope or purpose of the information request. A response was received from the President of Kinder Morgan Canada on January 19, 2015 and is attached as Appendix C.

## **Issues & Analysis**

### *Trans Mountain's Response to Identified Themes*

The table below summarizes Trans Mountain's responses to the concerns and questions posed through both the City's formal information request and the additional letter to the President of Kinder Morgan Canada.

	<b>Theme</b>	<b>Description</b>	<b>Trans Mountain Response</b>
1.	Climate change	Engagement participants were concerned that the proposed expansion will contribute to climate change.	<ul style="list-style-type: none"><li>• Not addressed</li></ul>
2.	The need for the proposed expansion	Engagement participants questioned why alternative sources of energy were not being considered or why petroleum products could not be refined or used within North America.	<ul style="list-style-type: none"><li>• Trans Mountain is supportive of alternative and clean energy technologies and continues to explore new technologies that can be incorporated into their own operations.</li><li>• Canada produces more oil than it domestically needs. Not exporting this surplus of oil would mean fewer jobs for Canadians and a reduction in government revenues.</li></ul>



	Theme	Description	Trans Mountain Response
3.	How the proposed expansion will benefit Victoria, Vancouver Island or British Columbia	Engagement participants wanted more information regarding the local or regional benefits of the proposed expansion and questioned whether those benefits would justify the identified risks.	<ul style="list-style-type: none"> <li>• There will be a total of 36,000 person-years of employment generated in BC during development.</li> <li>• There will be an additional \$309 million of BC provincial taxes generated during the project development phase.</li> <li>• There will be an overall boost to employment of 50,000 to 65,000 person-years during the first 20 years of operations, with 60 per cent of the jobs being created in BC.</li> <li>• The Project will generate about \$727 million in additional tax revenues for the BC government during the operations phase.</li> <li>• The economic and fiscal benefits study by the Conference Board of Canada commissioned by Trans Mountain on the Project did not specifically consider the City of Victoria or the Capital Regional District (CRD). It can be expected that within the CRD, there will be vendors and jobs seekers who will be looking for procurement or employment opportunities during the construction of the Project.</li> <li>• Increased spill response capacity will create new employment and infrastructure in the CRD. The total investment towards enhanced spill response capacity in the Salish Sea is up to \$100 million in initial capital spending and 100 on-going full-time equivalent positions.</li> <li>• Trans Mountain is considering a Coastal Community Benefit program that will require further consultation with local governments.</li> </ul>
4.	The impacts of increased tanker traffic on whale populations	Engagement participants questioned how Trans Mountain will minimize the impacts to the Southern Resident Killer Whale population associated with an increase in tanker traffic.	<ul style="list-style-type: none"> <li>• While Trans Mountain's vessel acceptance process provides a means to screen vessels for suitability there are currently no accepted standards for underwater noise quieting techniques or adaptations that could be implemented as the basis of a screening criteria. Similarly, due to the absence of standardized criteria there are no published performance rankings for vessels against which to screen for their acceptance. As such it is not practical for Trans Mountain to implement acoustic criteria for tankers or tugs in its vessel acceptance process at this time.</li> <li>• Port Metro Vancouver (PMV) is engaged in working collaboratively with regulators and industry to develop future guidelines or standards for reducing underwater noise from commercial vessels in local waters. Once such guidelines are available, Trans Mountain shall require Project tankers to adopt those as best practice as part of its Tanker Acceptance Standards.</li> </ul>

	Theme	Description	Trans Mountain Response
5.	Marine accident and oil spill risk mitigation	Engagement participants questioned what strategies Trans Mountain has in place to mitigate the risk of marine accidents and oil spills, including shipping routes and tanker construction and safety requirements.	<ul style="list-style-type: none"> <li>• Tankers are held to strict internationally accepted build, manning, maintenance and operating quality standards mandated by the International Maritime Organization and Canadian Shipping Act.</li> <li>• Only double-hull tankers of modern design and construction are accepted for scheduling at the Westridge Dock.</li> <li>• In accordance with Port Metro Vancouver and the Pacific Pilotage Authority (PPA) requirements, tugs capable of controlling the tanker are tethered to the vessel as it transits to open waters. The PPA requires that a tethered tug escort is also provided through Boundary Pass (starting near East Point) and Haro Strait (through Turn Point) through to Victoria.</li> <li>• In its application to the NEB, Trans Mountain has proposed a number of additional precautionary and preventative measures, including extended use of tug escorts and pilots.</li> </ul>
6.	Marine oil spill response capacity	Engagement participants wanted to know who was responsible for marine oil spill response and what response plans and equipment are in place in the event of a marine oil spill.	<ul style="list-style-type: none"> <li>• Western Canada Marine Response Corporation (WCMRC) is the Response Organization for the West Coast of Canada.</li> <li>• The regulation of marine oil spill response is contained in the Canada Shipping Act, 2001 and administered by Transport Canada. The Act defines the requirement for oil spill Response Organizations to be certified by the Minister, the requirement for all large vessels and oil handling facilities to have an arrangement with a certified Response Organization as a condition of operating in Canadian waters, and establishes planning standards that define minimum levels of capacity to be maintained by the Response Organization.</li> <li>• Current planning standards require a minimum capacity to respond to oil spills of up to 10,000 tonnes, or about 70,000 barrels, in specified time frames which in some cases allow up to 72 hours plus travel time to deliver response equipment. WCMRC currently maintains capacity significantly in excess of the minimum planning standard requirements.</li> </ul>



	Theme	Description	Trans Mountain Response
7.	Marine oil spill cleanup	Engagement participants questioned the ability of Trans Mountain and its partners to effectively or sufficiently clean up a marine oil spill.	<ul style="list-style-type: none"> <li>WCMRC examined its current equipment locations and capacity, and the mandated response times and have concluded that certain improvements could be undertaken to improve the effectiveness of its current emergency preparedness and response capacity. Proposed improvements include doubling of the current mandated spill response capacity to up to 20,000 metric tonnes, new response bases and reduced maximum response times to six hours at all locations along the tanker shipping route within the Salish Sea.</li> <li>WCMRC does not determine cleanup endpoints. As applied to a marine oil spill incident, Net Environmental Benefit Analysis (NEBA) is the guideline that weighs many factors against the cleanup endpoints established by the Unified Command (UC) under the enforcement oversight of the Canadian Coast Guard. The UC, through the NEBA process determines when a marine oil spill has been sufficiently cleaned up and the response activities can cease.</li> </ul>
8.	Marine oil spill liability and compensation	Engagement participants questioned the sufficiency of insurance coverage in the event of a marine oil spill.	<ul style="list-style-type: none"> <li>Liability for a marine oil spill is defined under Canadian law within the Marine Liability Act. It is based upon the principle of "polluter pays."</li> <li>If oil were released from a vessel, the vessel owner would be the Responsible Party. In addition to the ship owner's insurance, there are a variety of funding sources available to cover the costs of cleaning up such a spill. Today, liability for compensation in the event of an at sea spill is capped at \$1.36 billion.</li> <li>It is possible that costs of emergency response, clean-up and compensation associated with a marine oil spill from a Project tanker will exceed \$1.3 billion but risk analyses would not support credible assumptions that generate such high costs.</li> <li>The Government of Canada has recently announced changes to the liability and compensation regime such that in the event of a spill, there would be unlimited compensation based on a polluter pay principle. In the event that all available sources of funds have been exhausted by spill-related claims, the Government of Canada will compensate eligible claimants and then recover those costs from the marine oil transport industry through a levy.</li> </ul>

### *The City's Evidence Submission*

On September 11, 2014, Council "directed staff to work with interested individuals and stakeholder groups to compile and submit evidence for the National Energy Board public hearing on the Trans Mountain Pipeline Expansion Project regarding the potential environmental and socio-economic impacts to the City, its residents and businesses from a marine oil spill."



Evidence is the information that the NEB will consider in its review of the proposed expansion. Staff are in the process of compiling the City's written evidence, which will be submitted by May 27, 2015. The City's evidence submission will focus on describing:

- the opinions and concerns expressed by engagement participants
- the specific economic, social and environmental values or assets that may be impacted in the event of a marine oil spill off the coast of Victoria (e.g. description of location and population of Victoria, value of the tourism economy to Victoria and the region, description of shoreline parks and habitats that may be affected by an oil spill, etc), and
- the City's current ability to respond to, or mitigate the effects of, an oil spill (e.g., current status of City and regional emergency plans, training, equipment, etc.).

While much of this information is available internally from City staff, stakeholders and survey respondents who indicated they had relevant information or expertise to share with the City have also been invited to provide relevant information. Greater weight is given during the hearing process to evidence that is within the direct personal knowledge of the intervenor filing the evidence. This is because intervenors are expected to be able to answer any questions regarding the evidence that they have filed. This means that information obtained directly from City staff, or people viewed as experts in relative disciplines, is preferable to information obtained from third party reports or websites.

Although Council has publicly expressed concerns regarding the public hearing process, the City has not formally expressed a position with regard to the proposed expansion. On July 26, 2012 Council passed a motion opposing the Northern Gateway Pipeline, which included a general opposition "to any expansion of bulk crude oil tanker traffic as well as bitumen export through British Columbia's coastal waters, including in Dixon Entrance, Hecate Strait, and Queen Charlotte Sound." The full text of that motion and all other past Council motions regarding the proposed expansion are provided in Appendix D.

The City's evidence submission will be a collection of facts and information that supports the City's views or beliefs on the proposed expansion. Formal direction from Council regarding its position is necessary at this time in order for staff to effectively prepare the City's evidence submission and ensure that the submission supports the City's final argument. Three options for Council consideration are presented below. An expression of Council opposition to the proposed expansion would be most consistent with the views of the majority of engagement participants and supported by the information provided by Trans Mountain, which shows an increased risk of an oil spill in the waters off of Victoria, but few direct benefits to Victoria or the CRD.

## **Options & Impacts**

### **Option 1 – Council wishes to express its opposition to the proposed expansion**

Close to 90% of engagement participants were opposed to the proposed expansion, with many expressing concerns that the risks associated with the proposed expansion significantly outweighed any benefits. Trans Mountain outlined few specific benefits to Victoria or the CRD from the proposed expansion, although a Coastal Community Benefit program is under consideration. If Council wants to reflect the views of the majority of engagement participants, Council may wish to express its opposition to the proposed expansion at this time.

If Council chooses this option, a suggested motion is "that Council express its opposition to the proposed Trans Mountain Pipeline Expansion Project."



## Option 2 – Council wishes to express no position on the proposed expansion at this time

Council may opt not to express a formal position with regard to the proposed expansion or may wish to engage in further discussions with Trans Mountain regarding the proposed Coastal Community Benefit program before deciding on a position. Should Council not wish to formally express any position on the proposed expansion at this time, staff can proceed with compiling and submitting the City's evidence submission, focusing on the concerns expressed by engagement participants. The lack of an expressed position does not impact the City's ability to file evidence or comment on draft conditions.

If Council chooses not to express any position on the proposed expansion, a suggested motion is "that Council instruct staff not to make a final argument, but to compile and submit evidence of local residents' concerns."

## Option 3 – Council wishes to express its support for the proposed expansion at this time

Some intervenors have expressed support for the proposed expansion, including the Scia'new First Nation (Beecher Bay First Nation), which has entered into a Mutual Benefits Agreement with Trans Mountain and Kinder Morgan that sets out a number of ways that Nation may benefit from the project. However, Council's expression of support would not be consistent with the majority of public feedback obtained through the engagement process.

If Council chooses this option, a suggested motion is "that Council express its support for the proposed Trans Mountain Pipeline Expansion Project."

## **Next Steps**

Staff will file the City's evidence submission by May 27, 2015. Trans Mountain, the NEB and other intervenors are then provided with an opportunity to question the City's evidence submission. Although details with regard to time and location have not yet been provided, intervenors who wish to do so will have an opportunity to present a final argument during oral hearings currently scheduled to occur in September 2015. It is likely that intervenors will also be able to make final argument via written submission.

The City has a number of options with respect to its participation in the final argument phase of the NEB hearing. The City's evidence submission will focus largely on the views and concerns of residents. While these are valid local issues, it is expected that any argument the City can make based on this evidence may carry less weight in the public hearing, since the NEB will rely predominantly on evidence provided by experts in relevant disciplines.

The City is not required to submit any final argument with regard to the proposed expansion; however, participation in final argument will ensure that residents' views are given full consideration by the NEB. If Council wants the City to participate in final argument, internal resources are available within Legislative and Regulatory Services and the City's Solicitor's office to prepare a written argument that focuses exclusively on the concerns expressed by members of the public. Participation in oral final argument would require additional resources, which could be provided internally, but would result in displacement of other work.

Using external resources to present oral final argument would cost approximately \$20,000. Council may also wish to consider designating a member of Council to present the City's final oral argument. As no new evidence can be raised for the first time during the final oral argument, the designated member of Council would orally present the final argument created by staff and filed as the final

argument.

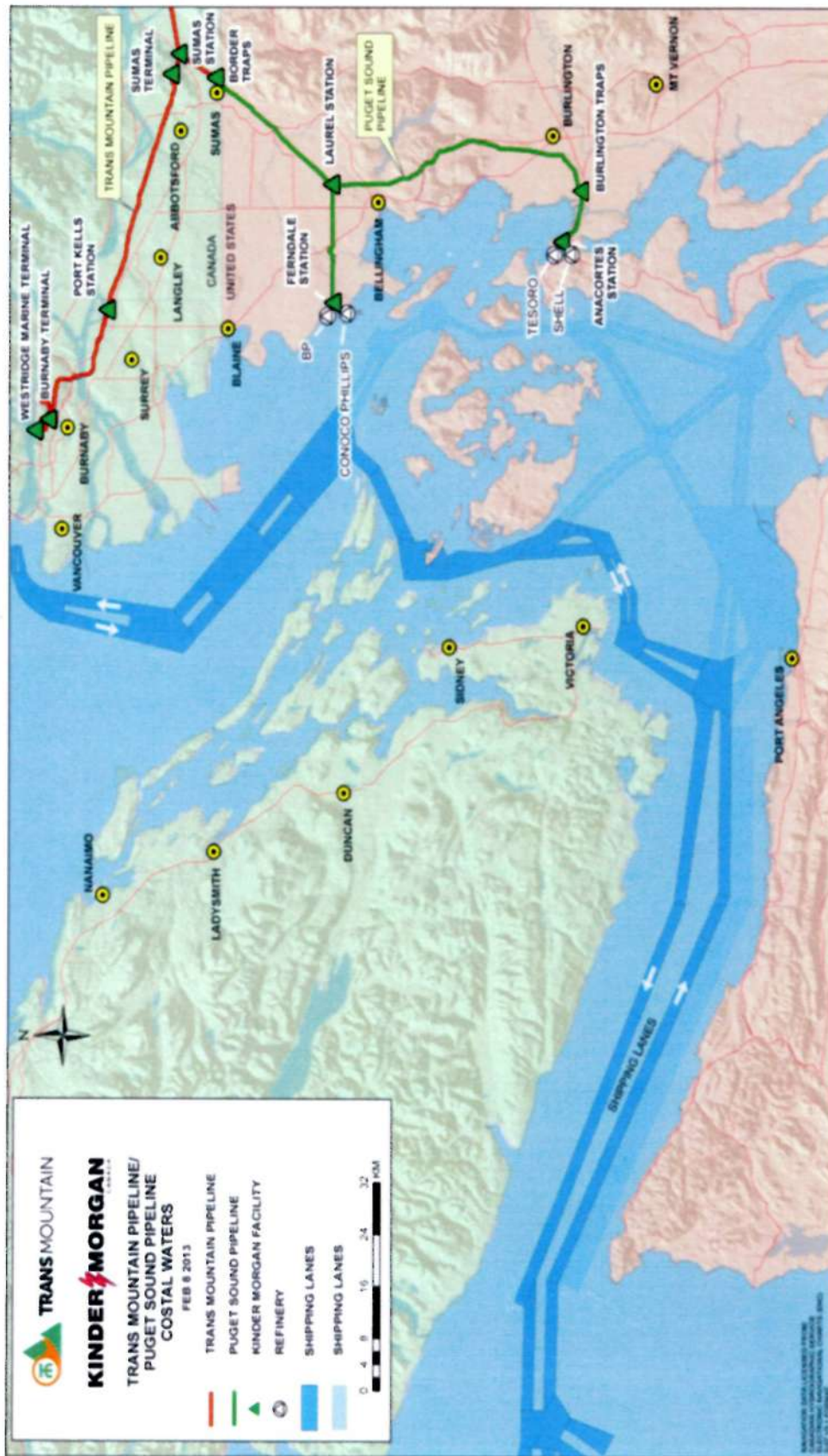
## **Recommendation**

That Council:

1. Express Council's position with regard to the Trans Mountain Expansion Project to enable the submission of the City's evidence, and
2. Provide instructions to staff regarding the form of participation in the final argument portion of the hearing process.



## Appendix A – Tanker Route



**Appendix B – Trans Mountain Response to City's Information Request**  
**and**  
**Appendix C – Response from President of Kinder Morgan to City's Questions**

Hyperlink to documents provided with electronic agenda.



## Appendix D – Previous Council Motions

On **July 26, 2012**, Council endorsed the following motion:

WHEREAS, the Northern Gateway Project is designed to bring 525,000 barrels of toxic crude oil and 193,000 barrels of condensate a day to the Great Bear region, requiring upwards of 220 oil tankers each year;

AND WHEREAS, a crude oil spill will have devastating and long lasting effects on the unique ecosystems, which provide critical marine habitat and resources that sustain the social, cultural, environmental and economic health of coastal communities, including First Nations communities;

AND WHEREAS, the City of Victoria supports a thoughtful energy strategy that protects our natural heritage, respects deep Canadian values of fairness and inclusiveness, protects Canadian jobs, and safeguards the interests of all Canadians:

THEREFORE BE IT RESOLVED, that the City of Victoria express its opposition to the Northern Gateway Pipeline project;

BE IT FURTHER RESOLVED, that the City of Victoria be opposed to any expansion of bulk crude oil tanker traffic as well as bitumen export through British Columbia's coastal waters, including in Dixon Entrance, Hecate Strait, and Queen Charlotte Sound;

AND BE IT FURTHER RESOLVED, that the City of Victoria petition the federal government to establish a legislated ban on bulk crude oil tanker traffic and bitumen export through British Columbia's coastal waters, including Dixon Entrance, Hecate Strait, and Queen Charlotte Sound.

On **January 30, 2014**, Council authorized staff and the Mayor to apply to intervene in public hearings relating to the Trans Mountain Pipeline Expansion Project, determining the most appropriate form of participation in consultation with the City of Vancouver and other municipalities, to ensure that municipal interests as well as the specific interests of City of Victoria residents and property owners are represented in the hearing process.

On **August 28, 2014**, Council approved submitting the following emergency resolution to the UBCM:

### **ENVIRONMENTAL ASSESSMENT OF TRANS MOUNTAIN EXPANSION PROJECT**

WHEREAS the Environmental Assessment Office of the Province of British Columbia ("the EAO") entered into an Agreement in 2010 with the National Energy Board ("NEB") under which the EAO accepts that the NEB assessment of a pipeline constitutes the equivalent of an assessment under the British Columbia *Environmental Assessment Act*;

AND WHEREAS Trans Mountain's responses to motions filed in early July 2014 by intervenors in the NEB hearing process for the Trans Mountain Expansion Project demonstrate that Trans Mountain is failing to adequately respond to written information requests, which are the only opportunity for intervenors to test and clarify Trans Mountain's evidence;

AND WHEREAS this failure to respond to written information requests means that intervenors are not able to properly prepare their own evidence and participate meaningfully in the assessment process for the Trans Mountain Expansion Project, in contravention of the preamble to the Agreement, which states that any assessment of a project pursuant to the *National Energy Board Act* would take into account any comments submitted during the assessment process by the public and Aboriginal peoples;

THEREFORE BE IT RESOLVED that the Union of British Columbia Municipalities request that the Province direct the EAO to withdraw formally from the Agreement pursuant to Clause 6 thereof and undertake its own Environmental Assessment process for the Trans Mountain Expansion Project, which should include sufficient opportunity for meaningful participation by all interested British Columbians.

On **September 11, 2014**, Council made the following motions:

1. That Council direct staff to work with interested individuals and stakeholder groups to compile and submit evidence for the National Energy Board public hearing on the Trans Mountain Pipeline Expansion Project regarding the potential environmental and socio-economic impacts to the City, its residents and businesses from a marine oil spill.
2. That the City of Victoria host a public meeting on October 2 to identify the particular impacts or issues that members of the public feel are important, and to provide an opportunity for people to submit their questions to the City of Victoria through the City's social media and the City's website, about the Trans Mountain Expansion Project.
3. That the City of Victoria collect written questions from members of the public about the Trans Mountain Expansion Project to identify the particular impacts or issues and use that to help shape the City's presentation as an intervenor.

On **December 18, 2014**, Council made the following motion:

That Council:

1. Receive for consideration the Trans Mountain Expansion Project Engagement Summary Report provided with the report dated December 8, 2014.
2. Direct staff to submit the information request to Trans Mountain attached as Appendix B to the report dated December 8, 2014
3. Direct staff to send a letter to Trans Mountain asking for answers to additional questions raised during public engagement activities and attached as Appendix C to the report dated December 8, 2014.