

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: June 25, 2022

SUBJECT: Street Closure and Less than Market Value Licence and Temporary Encroachment Agreement; Banook Canoe Club, Portions of PID's 00094573 and 40941718, lands adjacent to 17 Banook Avenue, Dartmouth

ORIGIN

This report originates from:

1. The announcement of \$3M in funding for infrastructure improvements to the Banook Canoe Club for a possible fall 2022 construction start. Prerequisites to the project advancing include:
 - an agreement with HRM for use of the parkland Banook Canoe Club has been using primarily for summer programs for many decades.
 - having a portion of the unused right of way road formally closed to enable use by the Club and to enable the construction of accessible entrance structures at the Banook Hall entrance/beach area and on the west end of the building for proper accessible egress from the waterside of the building.
2. Requirement of the Halifax Regional Municipality to have a current formal agreement with any group or organization owning or operating any portion of HRM Real Property.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, SNS 2008, c 39
Section 61

Powers of the Municipality regarding property:

- (1) The Municipality may acquire and own property granted or conveyed to the Municipality either absolutely or in trust for a public or charitable purpose.
- (3) The property vested in the Municipality, absolutely or in trust, is under the exclusive management and control of the Council, unless an Act of the Legislature provides otherwise

Section 325(1)

- (1) The Council may, by policy, permanently close any street or part of a street and the Council shall hold a public hearing before passing the policy.
- (2) Notwithstanding subsection (1), where a street or part of a street is being altered, improved or redesigned, part of that street may be closed without holding a public hearing under subsection (1) if
 - (a) the part of the street that remains open
 - (i) is open to vehicular and pedestrian traffic, and
 - (ii) meets all the municipal standards; and
 - (b) the part of the street that is closed
 - (i) is determined by the engineer to be surplus, and
 - (ii) is worth less than fifty thousand dollars.
- (3) The Council shall give notice of its intent to close the street by advertisement in a newspaper circulating in the Municipality.
- (4) The notice must set out the time and place of the public hearing at which those in favour or opposed to the street closing will be heard and describe the street to be closed sufficiently to identify it.
- (5) A copy of the notice must be mailed to the Minister of Public Works before the public hearing.
- (6) A copy of the policy passed by the Council, certified by the Clerk under the seal of the Municipality, incorporating a survey or a metes and bounds description of the street that is closed, must be filed in the registry and with the Minister of Public Works.
- (7) Upon filing the policy in the registry, all rights of public user in the land described in the policy are forever extinguished and the Municipality may sell and convey the land or may subsequently reopen the land as a street in the manner required by this Act.

Section 328 (1)(a)

Except as otherwise provided in this Act, no person shall (a) obstruct a street in the Municipality;

Section 332(b)

"The Engineer may (b) temporarily close a street, or part thereof, for the protection of the public, to allow work to be done on the street or on lands and buildings adjacent to the street or for any other purpose beneficial to the public interest."

RECOMMENDATION:

It is recommended that Halifax Regional Council:

1. Approve Administrative Order SC-100 in Attachment "4" of this report, to close that portion of Banook Avenue shown as Lot BA-1 on Attachment "2".
2. Approve a less than market value land licence and temporary encroachment agreement with Banook Canoe Club Limited as per the general terms and conditions set out in Table 1 of this report and authorize the CAO to finalize the necessary agreements and amendments and request the Mayor and Municipal Clerk to execute the final licence and temporary encroachment agreement.

BACKGROUND

Banook Canoe Club is a non-profit paddling organization located on historic Banook Lake in Dartmouth. The first boathouse was built in 1903. Later that year, they incorporated the Banook Canoe Club, Limited (the "Club") and the Club of today was formed.

The Club has had a deep history with Natal Day celebrations. The first celebration which the Club hosted was in 1904 – just one year after its incorporation.

The Club offers high-performance training with recreational programs aimed at developing life-long athletes in the sport. With a long history of Olympians and National team members coming from the Club, they are committed to continuing this legacy into the future.

Community programs are offered in sprint canoe and kayaks, war canoe, dragon boat, kiddie canoe, water polo and basketball programs. The Club is open year-around, with a grand hall and a gymnasium providing recreation and social activities for all ages. The Club operates out of the facility at 17 Banook Avenue, on property owned by the Club. The proposed agreement covers adjacent HRM owned property which the Club has been using without the benefit of an agreement.

A licence and temporary encroachment agreement is the appropriate agreement as the Club will have access to the area proposed under the agreement and HRM will maintain full control over the lands being encroached upon.

In March 2022, the Club was successful in securing \$3.0M in Provincial funding for infrastructure improvements to the Club. The Club is the oldest sprint canoe club in the Atlantic Division. Funding will be used to assist in completing needed major structural improvements to the facility and to improve safety and accessibility at the Club.

As part of the improvement project, the walkways, ramps, circular garden, and steps will be located on municipal lands and the recommend licence and temporary encroachment agreement and closing of the unused right of way will enable this (Attachment 3).

DISCUSSION

The Club's programs and services align with Halifax Regional Municipality's council priority area of communities and specifically priority outcomes related to involved and inclusive communities. Without volunteers and clubs of this nature providing this alternative service delivery, these types of offerings may not otherwise be provided or would be expected by the community to be provided by HRM. As such, a less than market value licence and temporary encroachment agreement is recommended as it supports the provision of a service which benefits the community.

The authority to enter into a less than market value licence and temporary encroachment agreement lies within the *Halifax Regional Municipality Charter* (Charter). Property vested in the Municipality, absolutely or in trust, is under the exclusive management and control of the Council, which allows Council to approve this licence and temporary encroachment agreement with the Club.

The Club has signed an offer, subject to Municipal approvals. A map of the proposed agreement area and existing property is attached (Attachment 1). This request from the Club encompasses a very small portion of land bordering on Banook Avenue and a small portion of the shore lands adjacent to Boat House Lane. The rent for the term of this agreement is a nominal amount of \$1.00 per annum which is less than market value. The market value of these lands is \$11,400 per annum and as such represents an opportunity cost to the Municipality of that amount.

Lot BA-1, as shown on Attachment 2 is a portion of the lands to be under the licence and temporary encroachment agreement, appears to be situated on an unused and undeveloped street right-of-way. The

portion of Banook Avenue at its intersection with Boathouse Lane and extending to the lake's shoreline is classified as street right of way however does not contain any improvements or paved surface or typical street features. The parcel contains grassy surface leading to a small sandy beach. It has been used by the Club for more than 10 years and does not form a part of the formal street network.

As the use by Club under the agreement would likely lead to the street being obstructed in contravention of section 328(1)(a) of the Charter, and in order to facilitate the agreement with the Club, a temporary street closure has been approved by the Engineer in accordance with section 332(b) of the Charter. Lot BA-1 is a street right-of-way, and as per Section 325 of the Halifax Regional Municipality Charter, Regional Council may, by policy, permanently close any street or part of a street. The portion of the street that is being considered for closure is valued at less than fifty thousand dollars (\$50,000) and the Engineer has deemed this portion of the street as surplus for street purposes, therefore, a public hearing is not required.

The proposed licence and temporary encroachment agreement terms and conditions recommended by staff are outlined in Table 1.

Table 1

Recommended Key Agreement Terms & Conditions	
Property Address	Lands Adjacent Banook Avenue, Dartmouth (Portions of PIDs 00094573 and 40941718)
Property Owner	Halifax Regional Municipality
Encroacher	Banook Canoe Club, Limited (for the purposes of this table, the "Encroacher")
Premises Area	Approximately 10,500 square feet, actual area may be verified by survey
Base Rent	\$1.00 per annum plus additional charges as applicable
Term	Twenty (20) years (June 1, 2022 to the last day of May 2042) with renewals to be negotiated.
Temporary Encroachment	The Encroacher is granted a temporary encroachment on the street right of way until such time as the street can be formally closed.*
Commencement Date	As soon as possible following Council Approval
Permitted Use	Banook Canoe Club activities, facility rentals, community events and other related activities
Property Tax	The Encroacher shall be responsible for any applicable property taxes based on assessed value resulting from their license, plus applicable HST. HRM shall issue an invoice to the Club.
Specific Conditions	<p>The Encroacher shall be responsible for:</p> <ul style="list-style-type: none"> • All operating costs and other associated costs related to the licensed area • Lifeguarding duties specifically for club programming • all landscaping maintenance including but not limited to mowing, trimming, raking, and litter removal for the licensed area • regular garbage, recycling, compost, etc. removal from the site • snow clearing & ice control for relevant portions of the parking lot, and walkways • maintain registered non-profit status with the Nova Scotia Registry of Joint Stocks • obtain HRM's consent for any proposed change of use • maintain Commercial General Liability insurance in the amount no less than \$5,000,000. If alcohol is served, stored or consumed on site then liquor liability must be included in the insurance which coverage must be satisfactory to HRM. HRM is to be named on the policies as additional insured • obtaining prior permission from HRM for any structure, signage, dock/float installation

	The Licensor shall: <ul style="list-style-type: none"> • provide Banook Canoe Club with access to the HRM-owned lands
Condition	The Encroacher accepts the Premises on as “as is” basis
Access	HRM grants permission for the Encroacher and their invitees to have access to the non-exclusive use of a portion of beach area of PID# 00094573 and PID 40941718, lands adjacent to 17 Banook Avenue, Dartmouth as shown in Attachment 1. As shown in Attachment 1, the Encroacher shall have exclusive access to the encroachment area Monday to Friday 5:30 am until 7:00 pm and 7am until 2 pm Saturdays from the end of June to end of August and also for occasional special events subject to HRM’s prior approval. The general public shall have access outside of these times.
Notice	Either party shall have the option to terminate this agreement upon providing six (6) months written notice to the other party at any time and for any reason
Amendments	The CAO shall have the authority to make amendments to the general terms and conditions herein.

*- this term would only be required if we do not complete the formal closing of the street prior to entering into the agreement.

FINANCIAL IMPLICATIONS

The rent for the term of this agreement is a nominal amount of \$1.00 per annum which is less than market value. The potential market value rent for the land represents an opportunity cost to the Municipality in the amount of \$11,400 per annum.

The club shall be responsible to pay property taxes as they fall due and are invoiced by HRM. Should Regional Council approve the inclusion of Banook Canoe Club to Administrative Order 2014-001-ADM Tax Relief to Non-Profit Organizations, the amount offset will represent additional ‘operating grant’ from HRM.

RISK CONSIDERATION

Defining the agreement areas in the immediate control of the Club provides clear lines of responsibility. Having a valid licence and temporary encroachment agreement in place also reduces the risk considerations to HRM associated with unregulated use of lands. The Club will be required to mitigate any risks to public use.

COMMUNITY ENGAGEMENT

The Board of Directors for the Club is made up of members of the community.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

1. Regional Council could elect not to close this Lot BA-1 portion of the Banook Avenue right-of-way, but still issue a license and temporary encroachment agreement as Lot BA-1 has been temporarily closed by the Engineer under section 332(b) of the Charter.

2. Regional Council could elect to close this Lot BA-1 portion of the Banook Avenue right-of-way, but not enter into a license and temporary encroachment agreement with the Banook Canoe Club.
3. Regional Council could license and grant a temporary encroachment over the property at market value to the Banook Canoe Club.
4. Regional Council could direct the CAO to negotiate different terms for the agreement to the Banook Canoe Club. This may require additional negotiation with the Club and supplementary report.

ATTACHMENT

- Attachment 1: Site Map & Area of Use
 - Attachment 2: Area of ROW to be closed
 - Attachment 3: Proposed Design Rendering
 - Attachment 4: Administrative Order SC-100
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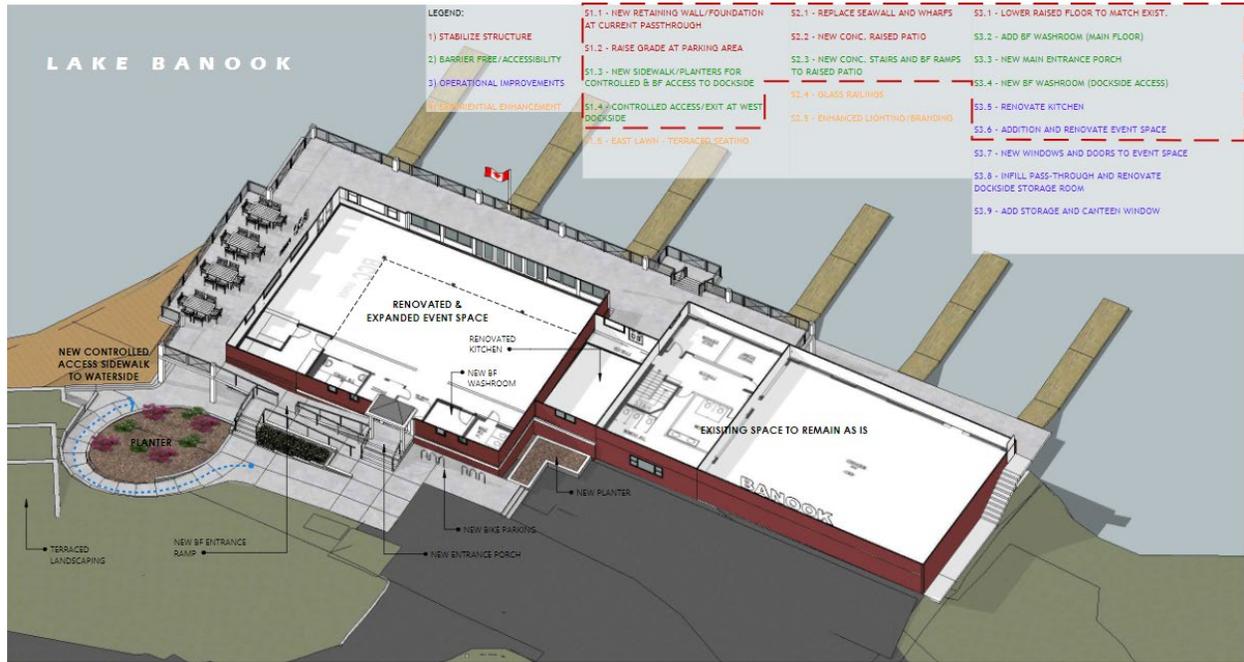
A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210

Report Prepared by: Trish Higby, Partnership Coordinator, Community Partnerships, 902 490-1808
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Site Map & Area of Use



Proposed Design Rendering



HALIFAX REGIONAL MUNICIPALITY

**ADMINISTRATIVE ORDER #SC-100
RESPECTING CLOSURE OF A PORTION OF BANOOK AVENUE, DARTMOUTH**

BE IT RESOLVED AS AN ADMINISTRATIVE ORDER of Council of the Halifax Regional Municipality pursuant to Section 325 of the Halifax Regional Municipality Charter Act as follows:

1. That portion of Banook Avenue, Dartmouth, Nova Scotia more particularly shown as Parcel BA-1 on the Attachment is hereby closed.

I HEREBY CERTIFY THAT the foregoing Administrative Order was duly adopted by Halifax Regional Council the 12th day of July 2022.

Mayor Mike Savage

Iain MacLean, Municipal Clerk

I, Iain MacLean, Municipal Clerk of the Halifax Regional Municipality, hereby certify that the above-noted Administrative Order was passed at a meeting of Halifax Regional Council held on June 28, 2022.

Iain MacLean, Municipal Clerk

