

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 
Dave Reage, A/Chief Administrative Officer

DATE: May 27, 2019

SUBJECT: Sullivan's Pond Aquatic Weeds

ORIGIN

- January 11, 2018 Harbour East - Marine Drive Community Council motion:

MOVED by Councillor Austin, seconded by Councillor Hendsbee

THAT Harbour East – Marine Drive Community Council request a staff report regarding possible options for cutting or reducing the aquatic weeds in Sullivan's Pond in the Halifax and Area Model Yacht Club course. **MOTION PUT AND PASSED.**

- July 5, 2018 Harbour East – Marine Drive Community Council motion:

MOVED by Councillor Austin, seconded by Councillor Karsten THAT Harbour East Marine Drive Community Council recommend that Halifax Regional Council:

1. Request that staff consider the inclusion of aquatic plant control at the Sullivan's Pond model boat racing course in the 2019/2020 budget; and
2. That staff explore aquatic plant control as a potential partnership with the Halifax and Area Model Yacht Club. **MOTION PUT AND PASSED.**

- July 17, 2018 Regional Council motion:

MOVED by Councillor Austin, seconded by Councillor Nicoll THAT Halifax Regional Council:

1. Request that staff consider the inclusion of aquatic plant control at the Sullivan's Pond model boat racing course in the 2019/2020 budget; and
2. That staff explore aquatic plant control as a potential partnership with the Halifax and Area Model Yacht Club. **MOTION PUT AND PASSED UNANIMOUSLY.**

- April 2, 2019 Regional Council motion:

Moved by Councillor Austin, seconded by Deputy Mayor Mancini,

That Halifax Regional Council direct the Chief Administrative Officer to negotiate a partnership agreement with the Halifax and Area Model Yacht Club to share in the cost of conducting aquatic plant control at the

Sullivan's Pond Model Boat Racing Course, subject to any provincial approvals that may be required, that the requirement for approvals at Audit and Finance be waived, and that the agreement be referred to Regional Council for ratification and final approval. **MOTION PUT AND PASSED.**

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter

79A (1) Subject to subsections (2) to (4), the Municipality may only spend money for municipal purposes if

- (a) the expenditure is included in the Municipality's operating budget or capital budget or is otherwise authorized by the Municipality;
- (b) the expenditure is in respect of an emergency under the Emergency Management Act; or
- (c) the expenditure is legally required to be paid.

RECOMMENDATION

It is recommended that Halifax Regional Council authorize the Chief Administrative Officer to enter into a Contribution Agreement with the Halifax and Area Model Yacht Club substantially in accordance with the draft agreement attached to this report.

BACKGROUND

At the November 2, 2017 Harbour East – Marine Drive Community Council meeting, a presentation was given by the Halifax and Area Model Yacht Club regarding the Club's activities at Sullivan's Pond. The Club races two types of model boats on a course situated on the west side of the Pond at approximately ¼ of the Pond's total area (see Attachment 2). The Club races Tuesday and Thursday evenings, and Saturday and Sunday afternoons. The Club indicates that Sullivan's Pond is one of the best courses in North America due to the prevailing winds, its layout, urban setting, and the shore walls that allow participants to easily get their boats in and out of the Pond. The Club also attracts a steady stream of spectators, adding to the vitality of the park.

The Club does not book, schedule, or pay any user fees for the use of the Sullivan's Pond Park for their activities since it is not exclusive use of the space and occurs concurrently with all other public use of the space. The Pond itself is a watercourse subject to Provincial jurisdiction, therefore, the Province of Nova Scotia holds authority over maintenance and changes to the pond.

The issue facing the Club is the aquatic weeds as they can tangle up the model boats once they reach the surface. For several weeks each year the Club is prevented from using Sullivan's Pond due to plant growth.

The weed growth is a relatively new change in the environmental conditions at Sullivan's Pond, having only arisen as an issue over the last few years.

The Club has proven to be very successful and has produced national and international champions. The Club would like to be in the position to host regattas in Dartmouth, but they currently cannot because there are no guarantees as to when the weeds will shut down their activities.

As a result of these concerns, the following motions were put forth in an attempt to address the issue:

On January 11, 2018, the Harbour East – Marine Drive Community Council passed a motion requesting a staff report regarding possible options for cutting or reducing the aquatic weeds in Sullivan's Pond in the Halifax and Area Model Yacht Club course. Community Council was provided with an information report which responded to this request at its June 7, 2018 meeting.

On July 5, 2018, Harbour East – Marine Drive Community Council passed a motion recommending that Halifax Regional Council request that staff consider the inclusion of aquatic plant control at the Sullivan's Pond model boat racing course in the 2019/2020 budget; and that staff explore aquatic plant control as a potential partnership with the Halifax and Area Model Yacht Club.

On July 17, 2018, Regional Council passed a motion requesting that staff consider the inclusion of aquatic plant control at the Sullivan's Pond model boat racing course in the 2019/2020 budget; and that staff explore aquatic plant control as a potential partnership with the Halifax and Area Model Yacht Club.

On April 2, 2019, Regional Council passed a motion directing the Chief Administrative Officer to negotiate a partnership agreement with the Halifax and Area Model Yacht Club to share in the cost of conducting aquatic plant control at the Sullivan's Pond Model Boat Racing Course.

DISCUSSION

A similar problem occurred on Lake Banook and Lake Micmac where aquatic weeds were impacting safe boating operations for pleasure craft and canoe/kayaks on and around the Municipally-owned designated race course. In that case, consultants hired to study weed management options recommended weed harvesting, rather than pesticide application, dredging, or other treatments.

Early in 2018, Parks Operations staff held a site meeting with the Contractor that performed the weed harvesting in Lake Banook/Lake Charles and a representative from the model yacht club to review the area of the pond that is impacted by the weeds. The purpose of the meeting was to identify the area of concern and how the Contractor would perform the weed harvesting.

The use of this pond for this activity starts in April and goes to the end of October. Typically, the weeds at Sullivan's Pond have impacted the group anytime between July and September. If any early intervention to address this problem was to happen, it should be considered in the month of June. It is important that any harvesting be conducted while the pond is at optimal height levels to prevent gouging of shallow areas.

At the time of preparing this report, Parks has initiated process discussions with the Halifax and Area Model Yacht Club and a joint inquiry to the Department of the Environment regarding the harvesting permits. Pursuant to Regional Council's direction, staff has also negotiated a contribution agreement to provide \$1,500 funding to the group. The contribution agreement outlines standard terms for use of the funding by the group to harvest the weeds. It is understood that provincial approvals may be required, in which case all approvals will be registered in the name of the Halifax and Area Model Yacht Club, however, HRM Parks may provide assistance in this area. The agreement is for one year. It is not known whether the weeds will return, or how quickly, to Sullivan's Pond once harvested. Therefore, if the same issue arises again in the future, it should be reviewed at that time.

FINANCIAL IMPLICATIONS

Funding of \$1,500 for the aquatic weed harvesting can be absorbed in the 2019/20 Parks & Recreation Operating budget, account W181-6399.

RISK CONSIDERATION

There are no significant risks associated with the recommendations in this report. There is a probability that the mobilization of harvesting equipment to and from Sullivan's Pond could negatively impact the surrounding grounds. The Halifax and Area Model Yacht Club would be responsible for any remediation.

COMMUNITY ENGAGEMENT

The Halifax and Area Model Yacht Club was engaged for the purposes of the weed harvesting operation and the location in Sullivan's Pond model boat course route.

ENVIRONMENTAL IMPLICATIONS

Potential weed harvesting at Sullivan's Pond is similar to Lake Banook and Lake Micmac where consultants hired to study weed management options recommended weed harvesting, rather than pesticide application, dredging, or other treatments.

ALTERNATIVES

Halifax Regional Council may choose not to authorize the Chief Administrative Officer to enter into a Contribution Agreement with the Halifax and Area Model Yacht Club.

ATTACHMENTS

Attachment 1 - Contribution Agreement
Attachment 2 - Halifax and Area Model Yacht Club Course Route

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: Rob Mullane, Superintendent Parks East 902.490.5819

Attachment 1 - CONTRIBUTION AGREEMENT

Between

Halifax Regional Municipality

A municipal corporation in the Province of Nova Scotia (“**HRM**”)

-and-

Halifax Area Model Yacht Club

A society incorporated under the Societies Act of Nova Scotia (the “**Club**”)

WHEREAS

- A. The Club is a non-profit association whose members periodically race model boats on a portion of Sullivan’s Pond (the “**Race Course**”) located in Dartmouth, Nova Scotia;
- B. In late summer, early fall, aquatic weeds grow in the Race Course area hindering the ability of the boats to sail and the Club has sought a financial contribution from HRM to assist the Club with the removal of these aquatic weeds from the Race Course (the “**Project**”);
- C. Section 79(1)(av)(v) of the *Halifax Regional Municipality Charter* permits HRM to provide a grant or contribution to a number of different organizations within the Province of Nova Scotia, including “community organizations”;
- D. On April 2, 2019, Halifax Regional Council moved for HRM to respond to the Club’s request for financial assistance by entering into an agreement with the Club to share in the costs of the Project; and,
- E. Each of HRM and the Club may be referred to as a “**Party**” and collectively as the “**Parties**”.

NOW, THEREFORE the Parties hereto covenant and agree as follows:

1. Term of the Agreement

- (a) The term of this Contribution Agreement (the “**Agreement**”) shall be for one (1) year, commencing on the Effective Date and ending March 31, 2020 (the “**Term**”).
- (b) This Agreement will become effective when both HRM and Club have signed it. The effective date of this Agreement will be the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party’s signature) (the “**Effective Date**”).
- (c) There is no renewal term for this agreement.

2. Amount of Contribution

- a) Subject to the terms and conditions of this Agreement, HRM shall make a contribution directly to Club in the amount of one thousand five hundred dollars (\$1,500) (the “**Contribution Amount**”) during the term of this Agreement to be used by Club only for the Project.
- b) The Contribution Amount is a firm-fixed amount and HRM will not be liable for any losses incurred by Club in relation to the operation of Club or the Project.
- c) The Contribution Amount represents HRM’s complete financial commitment to Club under this Contribution Agreement, and HRM will not be obligated to provide any supplemental or incremental funding to Club.
- d) HRM’s role in is limited to making a financial contribution to Club and HRM will have no involvement in the operation of Club. HRM is neither a decision-maker nor an administrator to Club.

3. Payment and Reporting Schedule

- (a) Subject to the terms and conditions of this Agreement, HRM shall pay the Contribution Amount to Club in accordance with the following schedule and milestones:
 - (i) the Contribution Amount in HRM’s fiscal year 2019-20 to be used only toward the Project.
- (b) HRM will not pay interest for failing to make payments when due under this Agreement.
- (c) Payments issued under Section 3(a) shall be inclusive of HST.

4. Appropriation and Withholding

- (a) Any payment of a portion of the Contribution Amount to be made to Club is subject to there being an appropriation by HRM for the fiscal year in which the payment is to be made. If HRM’s appropriation is changed or if funds are not available for any other reason, the Contribution Amount may be reduced or withheld. If the Contribution Amount is to be withheld, this Agreement may be terminated by HRM in accordance with the provisions of this Agreement and HRM shall owe no further obligation to Club under this Agreement. HRM will not be liable for any direct, indirect, consequential, exemplary or punitive damages, regardless of the form of action, whether in contract, tort or otherwise, arising from any such reduction or termination of funding.
- (b) If Club receives any other financing for the Project during the Term, including, but not limited to, funding from other government departments or agencies, Club shall provide details of such financing to HRM and HRM, in its sole, but reasonable discretion, may choose to reduce the Contribution Amount.

5. Conditions Precedent to Payment of Contribution Amount

- (a) Prior to HRM's disbursement of the Contribution Amount as set forth in Section 3(a)(i), Club shall provide the following to HRM, for HRM's evaluation and acceptance:
 - (i) the most recent complete financial statements of the Club, including a balance sheet and income statement;
 - (ii) evidence, satisfactory to HRM, that Club has the required available funding to meet all outstanding amounts required to complete the Project;
 - (iii) written evidence from the Province of Nova Scotia that Club is permitted to undertake the Project and that the Club is in possession of any permits or licenses needed to undertake the Project; and,
 - (iv) an executed agreement between Club and a consultant who is prepared to undertake the Project on behalf of Club which details the work to be undertaken by the consultant and the cost of such work.
- (b) If Club fails to comply with any of the conditions precedent set forth in this Section 5, HRM may, in its sole discretion, reduce the Contribution Amount, suspend payments of the Contribution Amount, or terminate this Agreement in accordance with its terms and conditions.

6. Restrictions

- (a) Club shall direct the Contribution Amount only toward the Project and shall not expend any portion of the Contribution Amount for capital or operational needs of the Club.
- (b) No portion of the Contribution Amount is to be used for the payment of goods or services that are unrelated to the Project. Club shall make inquiries of HRM if Club is unsure if the Contribution Agreement may be apportioned to a certain expense.
- (c) No portion of the Contribution Amount shall be paid to employees, volunteers, officers or directors of Club (i.e. salary, wage, stipend, honorarium, gift or commission.)

7. Finances, Records and Information Services

- (a) The Club shall maintain, during the Term of this Agreement, active status as a Society pursuant to Nova Scotia's Societies Act.
- (b) Club shall maintain, during the Term of this Agreement, a complete and proper set of accounting records for Not for Profit and Charitable organizations as established from time to time by Chartered Professional Accountants Canada

- (c) HRM shall have the right, at its own expense, and with reasonable notice, to audit or examine the books of account and records maintained by Club pursuant to this agreement and the right to make copies thereof and take extracts therefrom.
- (d) HRM's Auditor General shall have the right, at its own expense and with reasonable notice, to examine, in the manner and to the extent the Auditor General considers necessary, the accounts, procedures and programs of Club, in respect of the Contribution Amount received by Club from HRM, in accordance with section 50 of the *HRM Charter*, S.N.S. 2008, c. 39.
- (e) Club will provide HRM and its designated representatives with reasonable and timely access to any documentation requested by HRM for the purposes of audit, inspection, monitoring, evaluation, and ensuring compliance with this agreement.

8. Representations and Warranties

Club represents and warrants to HRM that:

- (a) Club has the capacity and authority to enter into and execute this Agreement;
- (b) this Agreement constitutes a legally binding obligation of Club, enforceable against it in accordance with its terms and conditions;
- (c) all information submitted to HRM as set out in this Agreement and any proposals, documents or other material presented to HRM, is true, accurate, and was prepared in good faith to the best of Club's ability, skill, and judgment; and,
- (d) there are no actions, suits, investigations or other proceedings pending or, to the knowledge of Club, threatened and there is no order, judgment or decree of any court or governmental agency which could materially and adversely affect Club's ability to carry out the activities contemplated by this Agreement. Club will inform HRM immediately if any such action or proceedings are threatened or brought during the term of this Agreement.

9. Liability and Indemnity

- (a) Club agrees to supply at its sole cost and expense all staff, volunteers, equipment and resources necessary to undertake the Project.
- (b) HRM is not a guarantor of the Club or the Project and in no event will HRM be liable for any direct, indirect, consequential, exemplary or punitive damages in relation to the ongoing operations of the Club or the Project, regardless of the form of action, whether in contract, tort or otherwise.
- (c) Club will at all times indemnify and save harmless HRM, its Mayor, councilors, officers, servants, employees, volunteers or agents, from and against all actions, claims, demands, losses, costs, damages, suits or other proceedings in relation to this Agreement, the Project, or

the operation of Club, whether in contract, tort (including negligence) or otherwise, by whomsoever brought or prosecuted in any manner, based upon or occasioned by:

- (i) Club's performance or non-performance of its obligations under this Agreement;
- (ii) any injury to any person, including, but not limited to, death, economic loss or any infringement of rights;
- (iii) any damage to or loss or destruction of property of any person; or
- (iv) any obligation of any person, including, but not limited to, any obligation arising from a loan, capital lease or other long-term obligation.

10. Status of the Parties

HRM and Club are contractors independent of one another, and neither has the authority to bind the other to any third party or to act in any way as a representative of the other, except as expressly set forth in this Agreement. This Agreement does not create, and shall not be construed as creating, a partnership or joint venture relationship between HRM and Club. To the extent that the term "partner" or "partnership" may be utilized in this Agreement or in describing the relationship between HRM and Club, such terms shall be utilized merely to convey the anticipated spirit of cooperation between HRM and Club and is in no way intended to establish joint and several liability, fiduciary duties, or other implications of the legal term of "partner."

11. Termination

(a) Events of Default

- (i) Each of the following events constitute an event of default ("**Event of Default**") under this Agreement:
 - 1. Club has not complied with one or more of the terms and conditions of this Agreement;
 - 2. Club has submitted false or misleading information to HRM prior to the execution of this Agreement or made a false or misleading representation in this Agreement, except for an error in good faith, demonstration of which is incumbent on Club, to HRM's reasonable satisfaction; or,
 - 3. An appropriation of the Contribution Amount is not available as set forth in Section 4 of this Agreement.

(b) Declaration of Default

- (i) HRM may declare a default has occurred if:

1. one or more of the Events of Default occurs;
2. HRM gave written notice to Club of the event which in HRM's opinion constitutes an Event of Default; and,
3. other than an Event of Default occurring per Section 11(a)(i)3, Club has failed, within thirty (30) days of receipt of the above notice, either to remedy the Event of Default or to notify and demonstrate, to the satisfaction of HRM, that it has taken such steps as are necessary to remedy the Event of Default.

(c) HRM Remedies for Default

- (i) In the event HRM declares a default under Section 11(b)(i), HRM may exercise one or more of the following remedies, without limiting any remedy available to it at law:
 1. suspend any obligation by HRM to make the Contribution Amount;
 2. terminate any obligation of HRM to make the Contribution Amount;
 3. require Club to reimburse HRM all or part of the Contribution Amount paid by HRM to Club; or,
 4. terminate this Agreement.

12. GENERAL PROVISIONS

(a) Notice

- (i) All notices, demands, requests, approvals or other communication of any kind which the parties may be required or may desire to serve on each other in connection with this agreement shall be delivered by registered mail to:

Halifax Regional Municipality

Attention: Chief Administrative Officer
Halifax Regional Municipality
P.O. Box 1749
Halifax, NS B3J 3A5

Halifax Area Model Yacht Club

Attention: Bob White
Address: bikebob047@gmail.com

- (ii) Except in the event of a postal service strike or lockout (in which event the parties hereto agree to temporarily utilize other reasonable methods of communicating any notices), service of any notice or demand so made by registered mail shall be deemed complete on the date of actual delivery as shown by the registry receipt or at the expiration of the seventh business day after the date of mailing, whichever is earlier in time. Either party may from time to time, by notice in writing served upon the other party as aforesaid, designate a different mailing address or different or additional persons to which all such notices or demand are thereafter to be addressed.

(b) Confidentiality

- (i) Club acknowledges that this Agreement is a public document and that any information, document, or record, in any form, provided to HRM by Club pursuant to this agreement may be subject to disclosure in accordance with Part XX of the *Municipal Government Act* (“Freedom of Information and Protection of Privacy”).

(c) Governing Law

- (i) This Agreement shall be governed by and interpreted in accordance with the laws of Nova Scotia.
- (ii) HRM and Club hereby attorn to the exclusive jurisdiction of the courts of Nova Scotia to resolve any disputes arising out of this agreement.
- (iii) This Agreement comprises the entire agreement between HRM and Club in relation to the subject of the Agreement. No prior documentation, negotiation, provision, undertaking or agreement has legal effect, unless incorporated by reference into this agreement. No representation or warranty express, implied or otherwise, is made by HRM to Club except as expressly set out in this agreement.

(d) Survival

- (i) HRM’s and Club’s rights and obligations which, by their nature, extend beyond the expiry or termination of this Agreement, including Sections 2, 3, 4, 5, 6, 7, 8 and 9 will survive any expiry or termination of this Agreement.

(e) Severability

- (i) If for any reason a provision of this Agreement that is not a fundamental term of this Agreement between HRM and Club is found to be or becomes invalid or unenforceable, in whole or in part, and if both HRM and Club agree in writing, it will be deemed to be severable and will be deleted from this Agreement, but all the other terms and conditions of this Agreement will continue to be valid and enforceable.

(f) Members of HRM Regional Council

- (i) No member of HRM Regional Council will be admitted to any share or part of this Agreement, or to any benefit arising from it, that is not otherwise available to the general public. Club will promptly inform HRM should it become aware of the existence of any such situation.

(g) Conflict of Interest

- (i) No current or former employee or councillor of HRM to whom any post-employment, ethics and conflict of interest legislation, guidelines, codes or policies of HRM applies will derive direct benefit from this Agreement unless the provision or receipt of such benefits is in compliance with such legislation, guidelines, policies or codes. Club will promptly inform HRM should it become aware of the existence of any such situation.

(h) Assignment

- (i) Club will not transfer or assign its rights or obligations under this Agreement without the prior written consent of HRM. Any attempt by Club to assign any of its rights, duties or obligations of this Agreement without HRM's express written consent is void.

(i) Amendments

- (i) This Agreement can only be amended in writing by both Club and HRM.

(j) Waiver

- (i) Club or HRM may waive any of its respective rights under this Agreement only in writing. Any tolerance or indulgence demonstrated by either HRM or Club will not constitute a waiver.

[Remainder of this page intentionally left blank. Signature page to follow]

Club and HRM have executed this agreement through authorized representatives on the date stated opposite each party's signature.

HALIFAX AREA MODEL YACHT CLUB

Date

Name:

Title:

Date

Name:

Title:

HALIFAX REGIONAL MUNICIPALITY

Date

Name:

Title:

