



**SUBJECT: LaSalle Park Marina Wave Break**

**TO: Committee of the Whole**

**FROM: City Manager's Office**

Report Number: CM-01-19

Wards Affected: 1

File Numbers: 945-10

Date to Committee: March 4, 2019

Date to Council: March 25, 2019

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**Recommendation:**

Direct the Interim City Manager to implement Option A regarding the future operation of the Marina at LaSalle Park as outlined in report CM-01-19; and

Direct the Executive Director of Capital Works to proceed with the Request for Proposal for the acquisition of a new floating wave break and report back on the results of the Request for Proposal (Option A); and

Direct the Director of Parks and Recreation to continue negotiations with the LaSalle Park Marina Association for a long-term license agreement for the operation of the Marina at LaSalle Park and report back on the results (Option A); and

Direct the Interim City Manager should an agreement not be realized with the LaSalle Park Marina Association by June 1, 2019, to report back on alternative governance and operating models and the process for continuance of a community-based public Marina at LaSalle Park and report back to the Committee of the Whole meeting on July 8, 2019.

**Purpose:**

The purpose of this report is to provide relevant background information on the LaSalle Park Marina (Marina) wave break file and to provide a further update and recommendations to the Council Information Package memo issued January 25, 2019.

In addition, a confidential companion report addressing items related to this file will be presented for Council's information at this meeting.

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## **Background and Discussion:**

LaSalle Park Marina Association (LPMA) is a non-profit organization that was created in 1981 and operates as a membership based, self-help entity, without public funding or subsidy. LPMA operates the Marina on behalf of the City of Burlington (City) under the terms of a Joint Venture Agreement (JVA) and provides recreational boating activities to their members and the public. The agreement provides LPMA with the authority to utilize the marina and outlines their responsibilities related to maintenance, operation and capital renewal of all assets. The Marina has 219 slips and is protected by a single steel tube floating wave break acquired in 1998. Included among the marina users are a mix of Charter and Senior members and renters consisting of both Burlington and non-Burlington residents.

The Marina is a valued asset that offers recreational boating in Burlington that has been successfully operated by LPMA for almost 40 years. LPMA is responsible for all aspects of the operation of the Marina and has managed the Marina since its inception without financial support from the City.

The City has agreements with the Hamilton Port Authority for the use of water lots (in effect until 2020 with options for three more ten-year terms) and the City of Hamilton for LaSalle Park (expires in December 2022).

Over the last number of years there have been many staff reports regarding the wave break at the Marina. The conversation regarding a new wave break structure at the marina began with LPMA's Vision 2012 proposal, summarized as follows:

### **Vision 2012 Safe Harbour Project**

- The projected cost for a permanent wave break and expanded marina was estimated at \$14 million (2016 estimate and includes 30% contingency)
- Estimated 3-year project length (construction scheduled for off-season)
- Additional detailed design estimated cost of \$350,000
- No financing commitments for the proposed project cost however, assumed by LPMA to be funded as follows:
  - Senior levels of government grants: \$9.4 million
  - Joint Venture Loan from the City: \$4.6 million with preferred repayment terms of 25 years+

Since the introduction of LPMA's Vision 2012 proposal there have been a series of reports and steps undertaken to evaluate the proposal and the future of the Marina. The following table provides recommendations, key factors and timing for Council to understand how discussions have evolved over the years with the staff and LPMA.

2009	LPMA representatives presented Vision 2012, A Case for a Permanent Rock Wave Break and Expanded Marina at LaSalle to Committee.
2011	Council approved funding for the Environmental Assessment (EA) to determine and examine wave break alternatives at the Marina. (PR-30-11). The City and LPMA each contributed \$150,000 towards the EA.
2013	EA was completed, identifying four alternative solutions. Council approved funding of \$6,754 towards the Recreational Boating Feasibility and Capacity Study, to understand boating trends in Ontario. The City and LPMA co-funded this project.
2015	Ministry of the Environment and Climate Change approved the EA with conditions.
2016	<p>Recreational Boating Feasibility and Capacity Study presented to Council for information (PR-01-16).</p> <p>LPMA Business Case review (F-28-16) provided to Council for information only.</p> <p>City Manager report (CM-13-16) outlining directions to retain consultant services to assess LPMA's future operations. Staff directions included:</p> <ol style="list-style-type: none"> <li>1. Direct the City Manager, in consultation with the Director of Finance to take carriage of project planning and financial analysis including an assessment of the project's alignment with the Strategic Plan and the relative priority for capital funding.</li> <li>2. Direct the City Manager to retain outside consultant services to complete the following:             <ol style="list-style-type: none"> <li>a. A complete financial assessment of the viability of the marina operations with and without capital upgrades.</li> <li>b. Detailed costing and funding options and a recommended strategy if the assessment indicates that the marina is not viable without a permanent wave break and marina expansion.</li> </ol> </li> <li>3. Direct the City Manager to report back on the results of the analysis in recommendation 2 including next steps.</li> </ol>

	<ol style="list-style-type: none"> <li>4. Direct the City Manager to consult with the LPMA and make recommendations to Council of compensating LPMA for costs they have incurred to date in leading this project.</li> <li>5. Direct the City Solicitor and the Director of Parks and Recreation to undertake a review of the Joint Venture Policy (JVP) particularly with respect to undertaking and funding of capital projects and report back on any recommended changes.</li> </ol>
<p style="text-align: center;">2017</p>	<p>Grant Thornton Limited was retained as the external consultant and provided a report to Council (F-35-17) for information on their financial assessment of wave break alternatives.</p> <p>Grant Thornton assessed the financial viability of three scenarios, presented as follows with a summary of key points:</p> <ol style="list-style-type: none"> <li>(a) Replacing the current floating wave break with a fixed wave break:             <ul style="list-style-type: none"> <li>• Most expensive option, approximately \$14 million</li> <li>• Does not meet the City’s debt financing requirements</li> <li>• Grants from other levels of government did not materialize</li> <li>• Reduced annual maintenance on docks and wave break</li> <li>• Ownership issues with the Hamilton Port Authority</li> </ul> </li> <li>(b) The current status quo (continued use of the existing floating wave break):             <ul style="list-style-type: none"> <li>• Lowest capital cost option</li> <li>• Current wave break is near end of life</li> <li>• Without financial support LPMA would not be financially sustainable in the short term</li> <li>• High annual maintenance costs</li> </ul> </li> <li>(c) A new replacement floating wave break             <ul style="list-style-type: none"> <li>• Significantly less expensive than a fixed wave break</li> <li>• Reduced annual maintenance costs</li> </ul> </li> </ol>
<p style="text-align: center;">2018</p>	<p>LaSalle Park Marina Next Steps (CM-07-18) presented to Council providing two options for Council’s consideration. Council approved Option B; to provide marina services at the Marina through the City funded purchase of a new floating wave break.</p>

## **Strategy/process**

Since Council's approval of Option B, (report CM-07-18) on June 18, 2018 a staff team was formed to address a number of items related to this project.

Below is a summary of the actions taken on each of the staff directions from this report:

**Direct the City Solicitor and Director of Finance to explore early termination of the Joint Venture agreement with the LaSalle Park Marina Association and report back to Council on the legal and financial implications of an early exit and a funding source(s) to fulfill the city's obligations.**

The City's current JVA with LPMA expires in October 2019. Staff recommend keeping the current agreement in place until the expiry date provided that there is a moratorium on any membership sales at the marina until the expiration of the JVA.

**Direct the Director of Parks & Recreation to negotiate a revised relationship agreement with the LaSalle Park Marina Association for managing/administering all boating activity at the marina as well as the maintenance and replacement of all structures behind the wave break including the docks, and any other ancillary equipment, as soon as possible.**

Since July 2018, staff has met with representatives of LPMA five times in addition to several phone calls. Initial meetings and discussions focused on the ownership of the funds in the City-held LaSalle Marina reserve fund that currently has a balance of \$443,456. The funds held in trust by the City are from initial capital outlay payments made to the City by Charter members (fully refundable without interest upon relinquishment of slip and replacement boater is found to pay new capital outlay), and Senior members (capital outlay is partially non-refundable and balance subject to depreciating refund which nets to zero after 7 years) to secure the use of a slip. LPMA takes the position that it is entitled to these reserve funds to support infrastructure needs of the Marina.

Due to the prolonged discussions related to the City-held reserve fund, staff have only recently received (January 2019) a financial forecast of proposed marina operations. Staff have retained the services of Grant Thornton to review the financial proformas provided. Due to the timing of this report, staff will provide Grant Thornton's review under separate cover.

Following discussions on the City-held reserve fund LPMA subsequently asked to review the draft license and operating agreement in December 2018, which staff shared with LPMA on January 7, 2019. The new agreement is intended to replace the current JVA after October 2019. As part of the new arrangement staff proposed to include the following:

- City will be responsible for the wave break (initial capital and cost for ongoing maintenance) and LPMA will be responsible for managing/administering all boating activity at the marina as well as the maintenance and replacement of all structures behind the wave break (docks and other ancillary equipment)
- LPMA will be required to set aside their own funds for the future capital renewal and replacement of all capital items they are responsible for (docks and other ancillary equipment) as well as contribute funds for the future replacement of the wave break
- As the relationship will be that of licensor (City) and licensee (LPMA), the City will no longer have a role to play in the membership structure of LPMA. Prior to entering into this new relationship with LPMA, the City will disperse the marina reserve fund balance by returning the funds on a pro rata basis to the boaters to whom funds are owed.

Staff recently received LPMA's initial comments on the draft license and operating agreement and will work towards the June 1, 2019 deadline to finalize the document.

**Direct the Director of Parks & Recreation to initiate discussions with the Hamilton Port Authority, the LaSalle Park Marina Association and the City of Hamilton regarding opportunities to secure moorage space at Hamilton Harbour for the members of LaSalle Park Marina Association if moorage space is required during the purchase and construction of the new wave break.**

LPMA is considering if the current wave break will be installed for the upcoming season based on its condition and ability to protect the Marina from wave incidents.

Staff connected with the Hamilton Port Authority (HPA). The purpose of the discussion was to determine if there is capacity in the Harbour West Marina to accommodate the Charter and Senior members for the 2019 boating season if LPMA does not operate the marina in 2019.

HPA indicated that 60% of the 350 slips were rented in 2018 and as of February 4, 2019 approximately 65% of the slips are rented for the 2019 boating season. Available slips include 70 medium slips (maximum up to 42') and 39 large slips (maximum up to 52'). There are no slips available for smaller boats for 2019. HPA also indicated that there is a design for a phase 2 expansion for the Harbour West Marina that will accommodate up to 200 additional slips in the future. Timing for phase 2 will be based on determining the future demand for slips.

Staff would support discussions between Harbour West Marina and LPMA for the use of slips if required.

**Direct the Executive Director of Capital Works to initiate a Request for Proposal for the Design/Build of a Floating wave break, as soon as possible**

As mentioned in CM-07-18, there are considerable steps to be taken ahead of issuing an RFP for the design/build of a new floating wave break regarding the EA as summarized below:

The City released an Environmental Study Report Addendum (Addendum) for the Environmental Study Report (ESR) that was completed in 2013 and approved by the Ministry of the Environment and Climate Change (MOECC) in July 2015, which included conditions. The Addendum documented the recommended project as replacing the existing floating wave break with a new floating wave break in substantially the same configuration as the existing floating wave break. It also recommended that the new floating wave break be left in place year-round if technically viable and that no expansion to the Marina was contemplated.

A Notice of Addendum was advertised on November 8, 2018 on the City's web site, <https://www.burlington.ca/en/services-for-you/lasalle-park-marina-wave-break-project.asp>, and in the Burlington Post.

All stakeholders were made aware of the posting of the addendum as well as those who attended the September 18, 2018 Public Information Centre (PIC.). A total of 83 people signed-in at the PIC and 29 comment sheets were received. Most of the respondents were supportive of the marina operations with concern over the performance of the existing floating breakwater, the desire to be able to leave the floating breakwater in over the winter and that the best long-term solution for the marina is a fixed rock breakwater. Concern was also expressed by Burlington Green that near shore habitat would not be negatively impacted by the proposal, particularly during the winter months.

The purpose of the PIC was to show the background of the project, including the timing of the EA and ESR, identify the preferred concepts of the project as proposed in the ESR, the EA process, e.g. Part II orders and MOECC approval, the Council decision of June 2018, next steps and the proposed schedule. PIC participants were also given the opportunity to ask staff questions or provide comments regarding the project.

Interested persons were to provide written comments to the municipality on the proposal identified in the Addendum within 30 calendar days from the date of Notice of Addendum which concluded on December 7, 2018. Any person or party also may have requested that the Minister of the Environment, Conservation and Parks (formerly MOECC) order a change in the project status which would require a higher level of assessment under an individual Environmental Assessment process (referred to as a Part II Order), also within 30 days.

No Part II orders were received, and the project will continue as outlined in the Addendum.

At the same time staff secured the coastal engineering services of Shoreplan Engineering Limited. Shoreplan will assist in the preparation and analysis of procurement documents for an RFP.

The RFP documents are substantially ready to be issued.

**Approve funding for Design/Build of a new floating wave break at LaSalle Park Marina to an upset limit of \$4,000,000 to be funded from the Hydro Reserve Fund, contingent upon the signing of a long-term agreement with the LaSalle Park Marina Association**

The \$4 million is currently committed from the Hydro Reserve Fund. To date an agreement has not been reached with LPMA.

**Direct the Director of Parks & Recreation to review the city's current agreements with other marina stakeholders with a view to identifying any changes that may be required as a result of this proposed course of action, and report back to Council.**

With the assistance of legal staff, there has been a review of the Sailing and Boating Club's (BS&BC) JVA. With the proposed course of action, there is no impact to the existing agreements with BS&BC if LPMA operates the Marina in 2019. If the Marina does not operate, staff will contact stakeholders to discuss impacts to their operations. There may be a need to review the agreement with BS&BC post October 31, 2019.

The City currently leases the water lots from HPA which are used by the LPMA; the contract will remain in effect until 2020 with three further 10-year terms. In 2019 the annual payment including HST is \$69,669.02, of which 24% (\$16,720.56) is recovered from LPMA through the current relationship agreement and 56% (\$39,014.65) is recovered from BS&BC. There may be implications to the City's ability to recover these annual payments depending on whether or not the Marina operates in 2019.

**Establish a Stakeholder Advisory Committee and consider an ongoing monitoring and mitigating plan as outlined in the Minister's conditions.**

After Council's decision in June 2018, the City consulted with stakeholders, including representatives of the Hamilton Conservation Authority, Conservation Halton and the Trumpeter Swan Coalition. All three parties had expressed concern with the original stone or rock fixed breakwater design identified as the preferred option in the EA and submitted Part II Order requests to the Minister in 2013. The City met with the two Conservation Authorities on August 14, 2018 to describe the revised project. The Conservation Authority representatives indicated that they did not object to the revised proposal of replacing the existing floating breakwater with a new floating breakwater that would be designed to be left in year-round. A detailed design and permit application

will only be made to The Hamilton Conservation Authority; Conservation Halton will be copied only for information. A separate permit application to Conservation Halton is not required.

The City also met with the Trumpeter Swan Coalition (Coalition) representatives and a broader stakeholder group including the Coalition, LPMA, Hamilton Harbour Remedial Action Plan and Ministry of the Environment, Conservation and Parks (MECP) on September 18, 2018. The Coalition was supportive of the revised proposal subject to being permitted to undertake a monitoring program during winter conditions and being permitted to have licensed individuals feed the swans should exceptional winter ice conditions warrant this. In addition, the Coalition sought to enhance public education through improved signage at the Marina.

**That staff negotiate \$500,000 contribution for the LaSalle Park Marina to the wave break, electrification and/or fingers docks as part of the negotiation on a renewed agreement**

In discussions with LPMA their intention is to fund the electrification of docks, which is not included in the \$4M budget, with their contribution to the project. Staff will provide an update on LPMA’s contribution when reporting back to Council on negotiations.

**Options considered**

Staff have considered many different options to move forward on this important and complex file including the following:

Option	Pros	Cons
<p>A.</p> <p>Proceed with the RFP for the acquisition of a new floating wave break prior to securing a long-term agreement with LPMA post October 31, 2019.</p> <p>Continue to negotiate with LPMA for a long-term license agreement for the operation of the Marina.</p> <p>Should a license agreement not be realized with LPMA, report back on alternative governance and operating models.</p>	<p>Proceeding with the RFP assumes a Marina operation will continue at LaSalle Park.</p> <p>A number of unknown variables will be determined through the RFP process including:</p> <ul style="list-style-type: none"> <li>• Cost – capital and operating</li> <li>• Ability to stay in the water year round</li> </ul> <p>Possible to have a new wave break in place prior to the end of the 2019 boating season.</p>	<p>Uncertainty exists related to a new long-term agreement with a Marina operator post October 31, 2019.</p> <p>If the marina does not operate boaters may leave LPMA and may not come back in the future.</p>

<p>B.</p> <p>Do not proceed with the RFP for the wave break until a signed agreement with LPMA is in place. (Option B is the previously approved Council direction)</p>	<p>Confirms our go forward arrangement with LPMA prior to issuing the RFP.</p>	<p>The installation of the new wave break would be delayed.</p> <p>If the marina does not operate boaters may leave LPMA and may not come back in the future.</p>
<p>C.</p> <p>Discontinue negotiations with LPMA and review alternate governance/ operation models and report to Council prior to issuing an RFP</p>	<p>Determine the best option for operating the Marina.</p>	<p>The City's agreement with LPMA expires on October 31, 2019. LPMA may chose to not operate the Marina for the 2019 season.</p> <p>Need to address needs of Able Sail and public boat launch with new operator.</p> <p>City would need to address LPMA's repayment of the Canada 150 grant for finger docks.</p> <p>LPMA has a \$253,000 JV loan from the City for the purchase of docks.</p>
<p>D.</p> <p>Do not proceed with the RFP and re-design the marina to secure the public boat launch and the docks for Able Sail and the Sailing School.</p>	<p>A smaller wave break will protect the Able Sail docks, public launch and transient docks.</p> <p>May be able to offset costs by liquidating some of the docks that are no longer required in a smaller marina.</p>	<p>The City's agreement with LPMA expires in October 2019. LPMA may chose to not operate the Marina for the 2019 season. Sailing and Boating Club will lose members.</p> <p>Burlington will not have a marina.</p> <p>City would need to address LPMA's repayment of the Canada</p>

		<p>150 grant for finger docks.</p> <p>LPMA has a \$253,000 JV loan from the City for the purchase of docks on a prorated basis.</p> <p>City would need to dismantle existing marina infrastructure.</p>
<p>E. Make no further investment in the Marina.</p>	<p>City maintains the \$4M for future capital initiatives.</p> <p>May be able to offset costs by liquidating some of the docks that are no longer required.</p>	<p>LPMA would no longer operate a Marina at LaSalle Park.</p> <p>Able Sail, transient slips and public boat launch would not exist. Sailing and Boating Club will lose members.</p> <p>City would need to address LPMA's repayment of the Canada 150 grant for finger docks.</p> <p>LPMA has a \$253,000 JV loan from the City for the purchase of docks.</p> <p>City would need to dismantle existing marina infrastructure.</p> <p>Passive park users no longer have views of the boat and activities.</p>

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**Financial Matters:**

**Asset Management**

The 2016 Asset Management Plan (AMP) was brought forward to Committee in 2017 and as part of the report, staff noted pertinent variables that have a direct impact on the

financing strategy and long-term sustainability of the plan. One of those variables was new assets that increase our annual replacement requirements.

A new floating wave break will add to the city's inventory of assets. The average annual capital life cycle costs are estimated to be approximately \$133,000 per year based on the estimated capital cost of \$4 million. This is in addition to any operational and maintenance costs for the wave break. The average capital need is derived using straight line depreciation assuming a design life of approximately 30 years. As mentioned above, as part of the new relationship agreement the City will charge a fee in exchange for the use of the asset. The recovery from LPMA will assist with the future capital renewal of the new floating wave break, as discussed above due to the progress of the negotiations an annual fee has not yet been determined. However, we know LPMA is not in a financial position to fully support the annual replacement cost of \$133,000 in the short term therefore, the difference represents a financial gap to the City in renewing this asset. The additional annual funding requirement of \$133,000 was not included in the Asset Management Funding strategy and will be included in future updates.

Staff estimates that the annual operating and maintenance cost for a new floating wave break, which is separate from other Marina operating costs, will be \$40,000 to \$80,000 per year. This amount will be confirmed when staff reports back to the Committee of the Whole on July 8, 2019 on the results from the RFP.

### **Canada 150 and Joint Venture Loan**

In 2016, LPMA was the recipient of Canada 150 funds in the amount of \$109,000 for finger dock replacement. As part of the funding agreement, recipients must retain title to and ownership of any assets funded through the program for a minimum of six years after the expiry of the contribution agreement. In this case, since the recipient, LPMA is not the owner of the asset they must still maintain leasehold interest of the asset. If the asset is sold or leasehold interest transferred, repayment of the Canada 150 funds in whole or in part may be required. Staff will contact the Federal Government to discuss specific requirements related to the Canada 150 funding program.

Furthermore, the recent finger dock replacement was financed through a joint venture loan. Total principal and interest owed to the City by LPMA is approximately \$284,000 over ten years. At the end of 2018, there was \$253,000 still owing to the City, representing a debt liability the City is responsible for if LPMA no longer operates the Marina.

### **Review of Proformas**

Grant Thornton's review of proformas provided by LPMA will be distributed under separate cover.

**Public Engagement Matters:**

Discussed above.

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**Conclusion:**

Both staff and representatives from LPMA have done a considerable amount of work on this file. Staff recommend proceeding with Option A to proceed with the RFP for the acquisition of a new floating wave break prior to securing a long-term agreement with LPMA.

Staff will report back on the results of the RFP and the status of the license agreement with LPMA at the Committee of the Whole meeting on July 8, 2019 or sooner if required.

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Respectfully submitted,

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**Appendices:**

- A. Financial Review by Grant Thornton to be distributed under separate cover.

**Report Approval:**

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.