City of Burlington

SUBJECT: LaSalle Park Marina Wave Break Project Update

TO: Community and Corporate Services Committee

FROM: City Manager's Office

Report Number: CM-13-16

Wards Affected: 1

File Numbers: 945-10

Date to Committee: September 12, 2016

Date to Council: October 3, 2016

Recommendation:

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.
2. Direct the City Manager to retain outside consultant services to complete the following:
    a. A complete financial assessment of the viability of the marina operations with and without capital upgrades.
    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.
3. Direct the City Manager to report back on the results of the analysis in Recommendation 2 including next steps.
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.
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 the undertaking and funding of capital projects and report back on any recommended changes.

Purpose:

This report serves as a companion report to F-28-16, in the same agenda (LaSalle Park Marina Business Case Review) in order to provide context for decision making with respect to the financing request for infrastructure improvements to the LaSalle Park Marina, discuss risks beyond the financial risks noted in F-28-16, and identify questions that this project raises about the City's Joint Venture model and policy.

Background and Discussion:

Discussions regarding the potential construction of a permanent wave break at LaSalle Park Marina have been ongoing for some years. In 2010, Council approved funding in the capital budget of up to $150,000 as its share of funding an Environmental Assessment of the project. Council has received numerous reports providing updates on the matter. The project is now at a critical juncture with a need for Council to make a decision with respect to the funding of the permanent wave break and marina expansion. LaSalle Park Marina Association (LPMA) has provided technical and financial information in support of the project. Staff has reviewed the information and has raised concerns with respect to the magnitude of the project, the financial capacity of LPMA to undertake the project, and more importantly, the implications of moving forward for other capital projects and other Joint Venture partnerships in the City.

The marina is operated under the terms of a Joint Venture Agreement (JVA) with the City of Burlington, which is governed by the City's Corporate Joint Venture Policy (Appendix A). Any decisions made with respect to this proposal have potential ramifications for other City JVA's.

Report F-28-16, also on this agenda, provides detailed background with respect to the wave break project proposed by the LPMA and a detailed financial analysis of the funding proposal and business case put forward by the group. This report will go beyond the financial implications identified and assess the broad level risks facing the City in two parts: First, how this project fits within the city's infrastructure priorities and limited funding constraints. Secondly, the joint venture financing request of this project and LPMA as an organization relative to the city's joint venture policy. These are key areas Council will need to consider as it relates to this project.

City's Infrastructure Priorities

The permanent wave break and marina expansion is a large scale in-water capital project estimated to be approximately $14 million. A project of this size entails inherent risks to both the City and LPMA, particularly in the absence of detailed costing of the project including construction, project management and contingencies.

As with any capital project there are a wide range of possible risks due to cost overruns, unanticipated construction challenges (common with in-water projects), and the potential for default on loans that have not been fully assessed, but would unquestionably be the responsibility of the City. These risks are fully discussed in companion report F-28-16. Default on the loans would inevitably lead to the City becoming the de facto operator of the marina by circumstance, rather than by deliberate decision.

If Council wishes to pursue the construction of a significantly expanded marina with a permanent wave break then options for funding of the upgrades should be developed and assessed in the context of the City's overall capital needs.

Council has not yet set priorities for Federal and Provincial infrastructure grants. Regardless of who is seeking the funding, there is a finite amount of grant money that may be available for City of Burlington assets. The LPMA funding request for a permanent wave break and expanded marina should then be considered in the context of all City infrastructure needs, current and future.   Furthermore, Council approved the City's Phase 1 financial plan for the 2015 Strategic plan which contained a multitude of strategic priorities representing the city's vision over the next 25 years. The LPMA proposed expanded marina with a permanent wave break was not recognized as a key priority in phase 1.

Joint Venture Policy and Loan Qualifications

Council approved the city's joint venture policy in 2010. The following identifies provisions of the Joint Venture Policy which are particularly relevant for Council to consider as the LPMA joint venture (JV) financing request is not representative of the loan qualifications set out below.

- The Joint Venture Organization will self-fund (100%) of capital infrastructure and renewal.
- Joint Venture Financing: is 100% recovery requirement (principal plus interest)
- A joint venture business process involving key decision points will ensure effective decision making, including;
    - Service and needs determination, including a review of the strategic fit of the services within the context of current City and Department Strategic Plans
- A sum equal to at least 10% of the project cost be either paid by the Community Group or deposited with the Corporation at the time of signing of the agreement and prior to commencement of new construction.
- The length of repayment for the loan not exceed ten years

- That the financial resources of the Community Group be considered as a primary source of funding for the project, when the need for the loan is being assessed.

The above provisions from the city's joint venture policy represent policies that the LPMA capital project does not meet.

LPMA is proposing to seek funding through Infrastructure Ontario (IO) as noted in companion report F-28-16. LPMA's qualification for an Infrastructure Ontario loan has not yet been confirmed. Even with senior government funding, this project would require a 25+ year JV loan of $4.6 million (with no down payment). This would require setting aside two elements of our JV loan policy: Allowing a term in excess of 10 years, and waiving the requirement for a 10% up-front contribution by the LPMA. While not a formal position of Council, when polled at the debt workshop, Council unanimously opposed extending JV loans beyond 10 years as per policy.

There is also the matter of the magnitude of the project and the associated loan. The JV model did not anticipate a small non-profit JV partner undertaking the planning and funding of a complex project involving significant changes to City infrastructure. The largest JV loan the city has done to date is for $900,000 over 10 years (soccer dome). This would therefore be a significant departure from past practice and the approved corporate policy. Staff suggests that any such departure should be considered in the broader context of a policy review, taking into consideration implications for other Joint Ventures that the City has entered into.

Further the policy states the definition of a joint venture organization as a not-for- profit organization that when delivering programs meets the following criteria;

- If serving adults has participants primarily over 19 years of age and maintains a minimum of 80% Burlington residency for participants for all programs/leagues."

City policy requires that a joint venture partner have 80%+ Burlington residents as participants. Based on LPMA supplied data staff estimates that Burlington residents comprise of 44% of total slips being owned or rented presently at the Marina.

A joint venture policy review is scheduled to be undertaken by the city in 2017, which will encompass the policy issues that have arisen from this project, including synergies with the city's strategic plan.

Joint Venture Partner - LPMA Operating Model

2005 – Operating Model

In 2005, LPMA adopted a new operating model that was carefully crafted to transition all members, then present and future, to a single class of membership being senior membership. It was intended to deal with original boaters (Charter members) who contributed to the initial construction of the marina by purchasing access to a slip on condition that they would be fully refunded their contribution when they sold their slip. In order to encourage the transition, the number of slips available for rental was capped at 30% or 66 slips, though the LPMA remains entitled to the revenue generated from the rental program. The cap was intended as a means to encourage the expeditious transition to the new model. A charitable donation program was also put in place for a limited time to expedite the transition. Concurrently, clear rules were established around access to the City held Reserve Fund and how the Reserve Fund was to be funded.

In 2005 when the new model was adopted by Council there were 203 charter members in good standing. Assuming 8 sale transactions per year and 10 donations, it was estimated to take 24 years for the full transition to occur. The financial model that has been provided by LPMA is silent with respect to this aspect of the JV. The City's records indicate that in 2015 there were 117 Charter members entitled to a refund when their slips are sold totaling approximately $625,000. As per June 30, 2016 the balance in the reserve fund is approximately $400,000. Attached as appendix B is a memorandum from the City Solicitor providing legal advice in respect of this and related legal issues.

Proposed Operating Model

The LPMA proposed business model fundamentally alters the operating model that was approved by City Council in 2005, and transitions the relationship between the City and LPMA from a JV serving the interests of resident boater members, to a commercial transient rental marina responsible for managing slips to non-member boaters. This transition is clear in LPMA's project proposal.

The current operating model that was approved by Council and is reflected in the current joint venture agreement is a member/resident boater model. The purpose of the joint venture is as follows;

> *"to provide a sustainable boating experience and **resident marina** opportunity in Burlington. Through this Joint Venture, the Parties intend that by pooling certain resources, the Joint Venture will be mutually beneficial and represent for both Parties an opportunity to meet the **community's need for a resident marina**, known as the LaSalle Park Marina."*

Under the current proposal, less than half the slips (110/340) would be used by LPMA members. LPMA would make available for rental a total of 219 slips plus transient boater slips which combined represents approximately 70% of the total number of slips. This clearly indicates that the marina would no longer be a resident marina meeting community needs, but rather transient style marina serving the broader interests of boaters in the GTHA. This is a significant transition from a JV that exists to serve its members' interests, to a contracted service managing city assets used by the general public. The City's Procurement policy would normally require a competitive process for the contracting out of this service.

Recommendation

Based on the above, and reinforced in report F-28-16, the permanent wave break and marina expansion represents a significant financial risk to the city. Any default on future loans for this project by LPMA results in the city being financially responsible for commitments. Notwithstanding the financial risks, a project of this magnitude that has a potential to cost upwards to $14 million should be placed in priority with other city capital priorities, where a strong business case is required and a clear connection to the city's strategic plan as the funding available in the city and from senior government infrastructure programs is limited.

It would be prudent for the City to perform its own due diligence before committing to a project of this magnitude. In order to further explore the merits of this project additional financial resources and staff time will be required, including outside financial assistance. For a financial commitment of this magnitude, a comprehensive financial plan and business case would need to be developed, which should include an assessment of the size and viability of the marina operation in the City of Burlington with and without capital upgrades. The assessment should also explore in detail the alternative wave break options presented in the EA study to determine if there is a more cost effective solution.

Financial Matters:

Should Council approve the recommendation, approximately $150,000 would need to be put aside funded through the Tax Rate Stabilization reserve fund to hire a consulting resource to provide an arm's length review and assessment of the financial viability of the marina project.

Public Engagement Matters:

Community and stakeholder engagement has so far been limited to the EA process with a focus on alternative wave break methods. Should Council approve the report recommendation any forthcoming recommended strategy will include a community engagement component.

The LPMA was provided notice of the general direction in this report by letter in late August 2016.

Conclusion:

The proposed LaSalle Park Marina project for a permanent wave break and an expanded marina raises many concerns given the multiple layers of risk the city faces. The in-water capital project, which has not been costed in detail, goes beyond the scope of our current joint venture model. Staff has questions with respect to LPMA's operating and financial modeling and their capacity to sustain operations in the event of cost over-runs or if their projections prove to be overly optimistic. Council must consider LPMA's JV funding request in a broader context that goes beyond the business case and takes into consideration the issues raised in this report.

Respectfully submitted,

James Ridge

City Manager

905-335-7600, ext. 7608

Appendices:

A. Corporate Policy on Joint Ventures
B. Confidential memo prepared by the City Solicitor providing legal advice (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.