



SUBJECT: Proposed public access/ongoing maintenance agreement for Burlington Canal Pier with Hamilton Oshawa Port Authority (HOPA)

TO: Environment, Infrastructure & Community Services Cttee.

FROM: Engineering Services Department

Report Number: ES-43-22

Wards Affected: N/A

File Numbers: 155-03-01

Date to Committee: September 15, 2022

Date to Council: September 20, 2022

Recommendation:

Authorize the City Manager to proceed with negotiating an agreement with the Hamilton-Oshawa Port Authority for public use and ongoing maintenance of the Burlington Bay Canal shipping pier under terms as generally outlined in engineering services department report ES-43-22; and

Direct the City Manager to report back to the Environment, Infrastructure & Community Services Committee following negotiations to provide a status update and recommendations related to the proposed public access and maintenance agreement.

PURPOSE:

Vision to Focus Alignment:

- Support sustainable infrastructure and a resilient environment
- Building more citizen engagement, community health and culture

Background and Discussion:

The Burlington Canal Piers (both Burlington and Hamilton sides) are held in federal ownership. In addition to their function for shipping, the piers have a long history of recreational use by the public for walking, cycling, and watching the ships come through

the canal. In the fall of 2020, Transport Canada formally advised both the City of Burlington (CoB) and the City of Hamilton of their intention to close the piers to the public, due to safety concerns.

In December 2021, Transport Canada installed a lockable gate on both piers, preventing the public from accessing the piers at the portion where they project into Lake Ontario. Recognizing the strong desire to maintain public access, both cities have worked closely and engaged in joint discussions with Transport Canada to determine a strategy for the re-opening. Transport Canada has agreed in principle that the piers could be re-opened if each city assumes liability and ongoing responsibilities for recreational use of the pier. The federal government, under Transport Canada would retain ownership and continue operation of the shipping functions of the pier.

In July 2021, a preliminary risk assessment of both piers was prepared by the City of Hamilton Risk Management group, providing an overview of identified risks and recommendations for improvements to mitigate risk to public safety. The risks identified include trip hazards related to uneven surfacing, water hazards due to the unencumbered pier edge, requirements for rescue equipment and other risk issues.

During this period, numerous meetings have taken place between CoB, City of Hamilton, Halton Region, Transport Canada, and the Hamilton Oshawa Port Authority (HOPA). As Council is aware, HOPA is a regulated federal agency with responsibility for operation of the harbour. A concerted effort has been made to find a suitable arrangement to address the concerns of all parties, while maintaining both the commercial and recreational functions of the piers.

As a result, in July 2022 Transport Canada officially transferred responsibilities for management of the piers to HOPA. Going forward, both cities will now be required to work directly with HOPA to negotiate and develop a formal public access and ongoing maintenance agreement. A similar agreement has been developed between the City of Oshawa and HOPA and will be used as a basis for developing the agreement, although specific terms of an agreement between HOPA and CoB will be guided by discussions to date with HOPA and the respective needs of the parties at this location.

Based on preliminary discussions with HOPA, the general parameters for the agreement will include the following:

- The piers will continue to be maintained for shipping operations and responsibility for this function will reside directly with HOPA.
- HOPA will be responsible for structural and underwater infrastructure components of the piers to maintain their primary purpose for shipping.
- HOPA will be responsible for any pier structural and surface improvements to address deficiencies and safety issues identified. Safety improvements will address identified risks in the above noted report and including stable and level

pier surfacing, new railings, lighting, water safety equipment and other improvements to ensure the pier is safe for public recreational use.

- City to provide ongoing minor or regular maintenance of the pier surface and any public amenity features such as waste receptacles, benches etc. in keeping with maintenance standards in City park facilities including sweeping, cleaning, waste collection and minor repairs.
- City to assume responsibility for operation of the gate, which may include annual winter closure.
- City to assume liability for public access and recreational use of the pier.

CoB has agreements for public use and maintenance of lands owned by other agencies including Hydro One, Conservation Halton and other agencies, providing precedents for this contemplated agreement between CoB and HOPA.

HOPA will begin planning for the required pier infrastructure and safety improvements this year, with construction of the works planned to occur in 2023. The timing and length of time for construction completion will be contingent on the extent of pier repairs required, which is being assessed by a qualified engineering firm engaged by HOPA. Once the improvements have been made to address risks identified and an agreement is in place, the pier could be re-opened for public use. The date for re-opening will be confirmed at a later date by the City Manager.

Strategy/process

Waterfront Master Plan

The Burlington Beach Regional Waterfront Park Master Plan (Master Plan) was approved by Regional Council in 2015 and includes plans for the federal lands at the south end of Beachway Park including the pier. The agreement for public access use of the pier as outlined in this report is consistent with the vision of the approved Master Plan. The recommendations are to work in partnership with the federal government to provide enhancements to the pier including benches, shade structures, interpretive signage, public art, and other amenities to create a distinct recreational destination that celebrates the marine heritage of the area. The Region will continue to work in partnership with CoB to develop the implementation plan, as a future phase of the Master Plan.

Options Considered

Historically the public have enjoyed access to the two canal piers extending into Lake Ontario, that are on federal lands and managed by Transport Canada. In the past there has been no formal agreement between Transport Canada and the CoB or the City of Hamilton regarding access. When Transport Canada advised the City in 2020 of their intention to install gates and restrict public access to the piers, one option would have

been to accept this restriction. As outlined previously, this access has long been enjoyed and appreciated by the public. Preserving and enhancing this experience is identified as a priority direction in the approved Master Plan and is consistent with the principles of both the Waterfront Trust and Hamilton Harbour Remedial Action plan in maintaining a clean, green and accessible waterfront. As such, a dialogue was established both through the Mayor's office with federal political representatives and City staff discussion in partnership with Halton Regional and City of Hamilton staff with Transport Canada and HOPA to establish an arrangement that would seek to permit the continued public access to the piers, while at the same time addressing any safety issues and concerns. With the transfer of the piers now to HOPA from Transport Canada and the negotiation of a formal public access and maintenance agreement between HOPA as recommended in this report, these objectives will be met.

Financial Matters:

Transfer of the right of use of the piers in the form of an agreement with HOPA would be at nominal ongoing cost to the city. HOPA would continue to be responsible for the cost of capital maintenance of the pier for commercial shipping as well as safety improvements to the pier surfaces, installation of appropriate railings etc. Capital costs associated with additional amenities such as waste receptacles, benches, shade structures etc. would be primarily funded by the Region of Halton as per the development of the Master Plan.

The city would be responsible for ongoing basic maintenance of the pier including inspection, surface cleaning as required and waste removal. Subject to negotiation and approval of the agreement, the incremental costs would be identified for inclusion in the multi-year operating budget. The preliminary annual operating impact associated with maintaining the additional +/-450m of pier infrastructure by the city will be approximately \$75,000 (includes labour and equipment) and involves the following maintenance activities:

- Daily inspection and litter cleanup \$42,500
- Daily sweeping \$20,000
- Twice a season trimming of vegetation adjacent to walkway/pier \$5,000
- Minor repairs to site furnishings including occasional graffiti removal \$6,500
- Seasonal and intermittent closing/opening of pedestrian gate. \$1,000

The pier will be maintained at the same service level as the Brant Street Pier/Spencer Smith Promenade from mid-March to mid-November (dates are weather dependent), with access fully closed off for the winter season.

Total Financial Impact

The total annual operating budget impact for maintaining the piers is estimated at \$75,000 anticipated to be required starting in 2024.

Source of Funding

The maintenance of the pier would be a new service enhancement and would require a net increase to the RPF tax supported operating budget.

Other Resource Impacts

Legal and administrative resources will be required to negotiate and prepare the necessary agreement between CoB and HOPA. Subject to a form satisfactory to the City Solicitor and future Council consideration and approval, the City Manager will execute the agreement for public use and ongoing maintenance of the Burlington Canal Pier with HOPA including any related documents.

Climate Implications

In recent years, a significant increase in storm activity, including winter ice storms, and fluctuating water levels have impacted the canal piers. Safe operation of the piers will need to account for these seasonal and extreme events, including limiting public access during potentially dangerous winter conditions and high-water levels.

Engagement Matters:

To date there has been extensive engagement by CoB with the federal government, HOPA, Halton Region as well as the City of Hamilton. Broader public engagement has been undertaken through the development of the Master Plan encompassing the piers. The direction to maintain and enhance public access to the piers is clearly outlined in the Master Plan.

Conclusion:

Over the past year, considerable progress on establishing an arrangement for continued public access to the Burlington Canal Piers has been made jointly by Burlington and Hamilton including most recently with the transfer of operating authority of these piers to HOPA by Transport Canada. The report recommends that the City Manager be authorized to negotiate a public access and ongoing maintenance agreement as

generally outlined in this report and to report back with a status update and recommendations for Council's consideration.

Respectfully submitted,

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Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer, and the Executive Director of Legal Services & Corporation Counsel.