

HALIFAX REGIONAL MUNICIPALITY

HALIFAX REGIONAL COUNCIL COMMITTEE OF THE WHOLE MINUTES November 14, 2001

PRESENT:

Mayor Peter J. Kelly
Councillors: Steve Streach (1:20 p.m.)
Gary Hines
Ron Cooper
Harry McInroy
Brian Warshick (1:30 p.m.)
Condo Sarto (1:30 p.m.)
Bruce Hetherington
Jim Smith (1:20 p.m.)
John Cunningham
Jerry Blumenthal
Dawn Sloane (1:20 p.m.)
Sue Uteck
Sheila Fougere (1:30 p.m.)
Russell Walker
Diana Whalen (1:20 p.m.)
Linda Mosher
Stephen Adams
Len Goucher
Reg Rankin
Gary Meade

ABSENT:

Deputy Mayor Robert P. Harvey
Councillors: Keith Colwell (regrets)
Brad Johns

STAFF:

Mr. George McLellan, Acting Chief Administrative Officer
Mr. Wayne Anstey, Municipal Solicitor
Ms. Vi Carmichael, Municipal Clerk
Ms. Julia Horncastle, Assistant Municipal Clerk

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1. CALL TO ORDER

The meeting was called to order at 1:00 p.m.

At a later point in the meeting, Mayor Kelly acknowledged former Mayor Walter Fitzgerald, who was present in the gallery.

2. APPROVAL OF THE ORDER OF BUSINESS AND APPROVAL OF ADDITIONS AND DELETIONS

MOVED by Councillor Hetherington, seconded by Councillor Blumenthal, that the Order of Business be approved. MOTION PUT AND PASSED.

3. HARBOUR SOLUTIONS

Cost Operating and Capital continued

Mr. Kulvinder Dhillon noted that at the last meeting Council was discussing the breakdown of the costs for the operating and capital budget.

In response to Councillor Hetherington, Council was advised all submitted correspondence will be responded to by staff.

Future Financing

Mr. Kulvinder Dhillon advised when the project was started from the RFP the estimated capital cost of the project was approximately \$315 million. It was expected that one third financing would come from the other levels of government for cost sharing on this project. Based on that, HRM was financing a \$210 million capital budget project. Approximately two years ago Council approved different increases in the pollution control charge to make up the shortfall which will be created if HRM proceeded with the project. He noted the overhead outlines the numbers which includes a \$0.10 increase for four years starting in July, 1999. He noted funds have to be set aside for upgrading plants, approximately \$1 million for the existing infrastructure to be upgraded or expanded. He stated it had also been assumed that there would be interest revenue in the amount of 4%. If cost sharing is received from other levels of government of \$105 million, the project should be able to proceed. Staff and Council has approached the other levels of government for cost sharing for that amount.

Mayor Kelly advised he had written to both the Premier and the Prime Minister on this situation asking them to respond so that the Municipality would know in which direction to go. He has met with Minister Thibault who is aware of the situation and the Minister has advised they will

work with the Municipality on this issue. They will keep HRM informed but, to date, there has been no formal response. The Mayor advised that through the HRM funding formula the Municipality has secured two thirds, with one third still being a question mark.

Councillor McInroy stated there are not enough funds for what is before Council and this fact should be clearly conveyed to Council and the public. Referencing the pollution control charge increases, he asked if they were to cover capital and operating. In response, Mr. Dhillon advised there were increases there based on the estimated cost of capital and operating, including the monies which are already in the reserve.

In response to Councillor McInroy, Mr. Dhillon confirmed the \$210 million that is indicated as the HRM share is a portion of what HRM currently has, \$54 million plus what will be generated from those increases in the pollution control charge. He advised the way the model is set up is that HRM has assumed that it has already built up money as a reserve and, in addition to that, HRM will have to borrow money to finance the HRM share of the remaining \$210 million dollars which will be paid over time. There will be a payment every year for capital and operating. The increases will cover those payments for the capital mortgage and the operating costs.

Councillor Rankin noted the Municipality committed two thirds and the commitment was not contingent on Federal and Provincial funds. He noted a motion of April, 1999 reflects this. The Councillor stated the intention was that HRM would be prepared to scale back the operations. The Councillor stated this was an important element of the tender and that information was communicated to the Proponents and goes to the doability of the tender. He stated there is a question of how HRM scales back.

In response to Councillor Blumenthal as to whether the Mayor has contacted the provincial and federal governments with regards to the HST offsets and tax, Mayor Kelly advised both have been approached in correspondence. He noted they have been asked to look at giving back to the Municipality what the project will generate, in that way there are no new dollars other than what the project would bring.

Councillor Adams asked what the cost per plant would be for a two plant solution. Mr. Dhillon advised the two plant solution with tunnel at net present value is \$445 million. He stated the cost for capital and operating for Halifax is approximately \$241 million, for Dartmouth it is \$158 million and for Herring Cove it is approximately \$66 million.

Councillor Adams referenced the programs for infrastructure and noted, in principle, there is \$5 million set aside for Herring Cove. He suggested giving \$2 million back to the Municipality and putting \$3 million towards the infrastructure program which would be the HRM contribution towards the federal and provincial infrastructure program. He stated that \$3 million would become \$9 million with equal contribution from the other two levels of government.

Mr. McLellan advised the integration funds are for the purpose of facilitating the project. He stated to facilitate the extension of water in the area of Herring Cove outside of this project is an entirely separate issue.

Councillor Walker asked if approval has been received from the Province for the HRM share. Mr. McLellan advised a commitment in writing had been received from the Province and based upon a certain amount of borrowing HRM had in its original projections, it would be okay for the Municipality to issue debentures over that period of time as long as they maxed out roughly in the amount of \$150 million. If HRM exceeded that amount then the Municipality would have to go back to the Province. He stated there is ongoing discussion with regards to the Municipality having the ability to issue the bonds directly to the public.

In response to Councillor Mosher, Mr. Eric Schibler, KPMG, advised both Proponents provided options with financing. The standard HRM used to evaluate the proposed financing was that of the Municipal Finance Corporation and, based on an indication of what the current cost would be borrowing through the Finance Corporation, it appeared that the HRM benchmark was better using the Municipal Finance Corporation than what the two Proponents offered. There is an opportunity to issue a revenue bond. It is his understanding, in talking with the Municipal Finance Corporation, that this type of financing has not been issued for a municipality in the Province noting, the ability to do so is there. He stated there is a requirement under the Financial Administration Act that the Province agree to this.

Mr. Schibler stated that in the RFP the proponent was asked to give HRM a price and that price would be paid at the date the sewage treatment plant was in full operation meeting all conditions. He stated HRM would not be at risk for any problems that might occur at the commissioning stage. He advised currently there is a possibility of using a revenue bond.

Councillor Cooper suggested the minutes of the UNSM session with the Ministers be reviewed noting, it was clearly indicated, in response to questions he had posed, that there did not seem to be any type of cap on the Municipalities in this Province and there did not seem to be any difficulty about the Harbour Cleanup and the ability of the Municipality to handle any financial implications that it had for this particular project. The Councillor stated he would like to see Council make a decision on the recommendation, get it flowing and the financing and operational aspects will flow from the future discussions with the Proponent. He stated Council should not sit too much longer without giving clear indication where the Municipality is going.

Councillor Warshick recommended HRM request an extension to March 31, 2002. Mr. Dhillon advised there is currently a letter being drafted by HRM asking each Proponent for a three month extension.

Mr. McLellan stated this is not an attempt to slow down the initiative but, if HRM were to make

an award today to one of the Proponents, there is some negotiation required because there are details that have to be sorted out before coming back to Council with a contract. The intention is not to slow down the award but to encompass a period of negotiation that will go beyond December 15th.

Councillor Uteck stated that unless HRM moves forward and goes "in principle" with a selected partner, which was supposed to be the first step as was the recommendation of the CAO, HRM may not be aware of financing as HRM has not talked to an approved partner. The Councillor noted both Proponents have offered financing. The Councillor stated that whichever proponent is selected will be patient enough to understand the financing aspect. She stated the RFP protects HRM and if the financing is not there, the selected Proponent knows that.

Mr. McLellan clarified that discussing the extension today is not intended to in any way forestall the agreement as to a proponent to move forward with. It is only out of recognition that if we did one today, HRM knows full well it is not just financing. He stated staff is not contemplating not having an award or decision prior to December 15th.

Councillor Rankin suggested staff be given the authority to start negotiations noting, this would not preclude consideration of postponement. The Councillor stated there is a burden on the Municipality to demonstrate duty and good faith to deliver on the tender. The Councillor asked that Council take the motion off the table and debate the financing and then move to a recommendation for staff to negotiate with the proponent.

MOVED by Councillor Rankin, seconded by Councillor Adams, that the rules be suspended. MOTION DEFEATED.

The Councillor advised he would give Notice of Motion at the end of the meeting to bring the tabled motion back on the floor.

Councillor McInroy asked what would be the change to the pollution control charges to make up the \$210 million capital. Mr. Dhillon advised there is a \$0.40 increase starting in 1999, \$0.10 in 2000, 2001 and 2002. He advised out of the \$0.10, \$0.09 goes to the pollution control and \$0.01 goes to the wastewater management. He stated there is \$50 million in the reserve which leaves \$155 million to borrow which will be borrowed over a period of time, approximately thirty years. It will have an annual payment to be made which is the amount which will be financed out of the rate increases.

Councillor McInroy asked if HRM had to borrow more to approve "in principle" the project, what would be the impact on the pollution control charges. Mr. Dhillon advised if Council decides to finance the whole project, there would be approximately another \$0.50 increase on top of what has already been approved by Council.

Councillor McInroy asked whether approving "in principle" permits HRM to negotiate a total overall solution that is within the current fiscal ability or does it put HRM in a position where additional funds have to be found to do what is on the table now. In response, Mr. Dhillon advised that from staff point of view if the Municipality comes up with the money, it would put HRM in a very weak position to negotiate. He stated if Council approves the recommendation, staff would go back with the selected proponent to negotiate the terms of the agreement including the payment, sites and other details. Subsequently, this would come back to Council for final approval and this would be part of the discussion with the Proponents. By agreeing to the staff recommendation at this time, HRM is not approving the project for half a billion dollars rather, Council is giving staff the authority to go back and deal with the proponent and come back with an agreement, including financing.

In response to Councillor Whalen, Mr. Dhillon advised the Proponents cost is approximately \$262 million capital. The overhead provided background on how staff arrived at rate increases as well as the assumptions that were used.

Councillor Whalen noted HRM's two thirds share is \$175 million. Mr. Dhillon confirmed that the prices quoted in the proposals were fixed.

In response to Councillor Warshick regarding termination fees, Mr. Dickson advised that the operating agreement allows all operating agreements to be terminated on the 15th and 20th anniversary of the start up of the first plant for a fee or under the formula that was offered by the respective Proponents. He noted those terminations would come about without cause so it would be at the choice of HRM.

In response to Councillor Whalen as to who bears the risk if the financing proposals don't work, Mr. Eric Schibler advised the risk is shared in the RFP in that the Proponents were provided with a reference bond which was a Government of Canada bond due June, 2023. HRM took the risk with what the interest on that bond would be from the date the proponent submits to the date that HRM actually negotiates and signs a deal. What the Proponents agreed to do was to take the risk beyond that point. In other words, they quoted a spread over that interest rate. That interest rate was approximately 5.69%. He stated HRM has taken the risk of what happens to the Government of Canada reference bond. The proponent takes the risk in their ability to finance, in the spread, above that bond and each proponent has quoted a different spread above that. They have committed and fixed that spread. The only portion HRM is at risk is with respect to how the Government of Canada long term bond would float.

On further question, Mr. Schibler advised it is his understanding that the Proponents are holding their price until December 15th.

Legal Opinion

Mr. Fred Dickson outlined a summary of the Executive Opinion to Council on the opinion on NAFTA and the WTO issues that were raised in the Shrybman Opinion and its applicability to the HRM project as per his correspondence dated November 2, 2001 which was circulated at the November 6, 2001 Committee of the Whole session.

Mayor Kelly clarified that if there are any challenges, the Federal Government will defend any action and pay any outcomes.

In response to Councillor Warshick with regards to page 2 of the letter from Mr. Dickson dated November 2, 2001, Mr. Dickson advised there is one project but it is structured through two separate agreements. He noted the tender is for design, build and operate. On further question, Mr. Dickson stated it would be in contravention if only one agreement was signed.

Councillor Uteck noted the HRM project was for advanced primary but questioned if the government decides that HRM needs to do tertiary or a more advanced level of treatment, how would that affect the outcomes of the project. Mr. Dickson advised the agreements provide that costs resulting as a result of changes in law would be the responsibility of HRM and the costs would be negotiated with the company.

Future Meetings

Councillor Goucher referred to technical merit allocation of 12 merit points. The Councillor noted both Proponents received "0" points on this and in all other aspects each proponent received a low percentage out of one hundred points. He stated both "A" and "B" were scored with failing grades and questioned how HRM could proceed on a technical aspect when both Proponents have failed. In response, Mr. Kulvinder Dhillon stated these are not pass and fail but are marks above the baseline mark. These are the points above the working level. In addition to what Council had asked for, the Proponents were provided an opportunity to give a better design noting, both systems would work without these points. Mr. Dhillon stated this is with respect to items over and above the baseline and what weight they will have relative to each of the items. There were items identified, there was weight attached to each item.

In response to Councillor Goucher, Mr. Dhillon advised the figures provided includes the flows for four times dry weather flow. He stated the flows will be separated into the outfalls and from there into the harbour and HRM will be paying for the volume that will be going to the treatment plant, not necessarily what has been allowed for in the RFP. He stated that if the flows are reduced over a period of time, HRM will only be paying for the actual flow which will go to the treatment plants.

In response to Councillor Warshick, Mr. O'Halloran advised that prior to any proposal being opened one or other or both Proponents may offer a level of treatment which is over and beyond which was specified. The potential was there to earn some points but the reality was that neither submission offered to provide a level of treatment over and above. Both Proponents committed to reach the level of treatment specified so there was no merit put on.

Councillor Cooper expressed concern with the motion being taken off the table and tested noting, once the motion is back on the table it may be voted on.

In response to Councillor Whalen regarding the cost of enhancements, Mr. Dhillon advised the cost of enhancements are not included in the proposal. The merit points do not include the enhancements. He advised the treatment plant is on different levels and any expansion would not change the height of the building.

Referencing the net present value, Councillor Whalen asked why it has been normalized. In response, Mr. Dhillon advised normalization is to have the financial value in the timeline so that everybody is on the same dollars at different times of the construction season over eight years. Then it has to be brought back to the present day values of the dollars on the same time over eight years and that is the net present value.

Mr. Schibler advised when the RFP was sent out, HRM asked the Proponents to identify which inflation index they would relate to a particular item in their fixed cost component in order to take care of inflation as it occurs down the road. HRM did not tell them what inflation index rates the Municipality was going to use. In terms of normalization, HRM has made sure that both Proponents, when HRM evaluated them, used the same inflation rates. He noted there were six indexes and each of them had slightly different rates of inflation associated with them. HRM tried to make sure it used the same rate for each of the Proponents.

On further question, Mr. Schibler advised the increases in the sewage protection charges provides the cash to make the payments for the financing. What is committed now is sufficient funding from the residents of HRM to pay for two thirds of a project that was estimated at \$315 million.

NOTICE OF MOTION - Councillor Rankin

Take Notice that at the next meeting of the Committee of the Whole to be held on Wednesday, November 21, 2001, I will move that the motion of Councillor Cunningham made on November 6, 2001 respecting the approval in principle of the recommendation of the Proposal Selection Committee, tabled at that meeting, be taken up from the table.

4. ADJOURNMENT

The meeting was adjourned at 3:30 p.m. with the next meeting being scheduled for Wednesday, November 21, 2001.

Vi Carmichael
Municipal Clerk