


HALIFAX

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Item No. 11.1.2
Halifax Regional Council
September 9, 2014

TO: Mayor Savage and Members of Halifax Regional Council

Original signed by 

SUBMITTED BY:

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: August 25, 2014

SUBJECT: Halifax Regional Water Commission Governance

ORIGIN

January 15, 2013 and February 26, 2013 motions of Regional Council (see Background).

LEGISLATIVE AUTHORITY

Halifax Regional Water Commission Act (Attachment 1)

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Request that the Province amend the *Halifax Water Commission Act* to:
 - a. Make HRM Council the sole shareholder of HRWC with sole authority to
 - i. Approve Issuance, purchase, sale, hold, transfer, vote, manage and all dealings with capital stock,
 - ii. Approve wind-up or dissolution,
 - iii. Appoint the Board of Directors, and,
 - iv. Receive the Annual report.
 - b. Further, define the scope of authority of the shareholder by authorizing HRM Council to approve and direct:
 - i. new lines of business,
 - ii. services to new areas,
 - iii. formal partnerships,
 - iv. the long-term strategic plan,
 - v. the annual business plan,
 - vi. the debt policy and any guarantees, and,
 - vii. Maximums for individual employee compensation.

RECOMMENDATION CONTINUED ON PAGE 2

2. Direct Staff to develop an Administrative Order outlining
 - a. Competency requirements for appointment to the Board of Directors,
 - b. The review annual financial statements,
 - c. Required annual performance metrics,
 - d. The review of the HRWC Employees Pension Plan Financial Statements, and,
 - e. Other matters as required or allowed by the Halifax Water Commission Act.
3. Direct the CAO to establish a joint team to explore and implement shared services where practical. Request the HRWC Board direct their General Manager to participate in this initiative.

BACKGROUND

On January 15, 2013: MOVED by Councillor Craig, seconded by Councillor Outhit that Halifax Regional Council direct staff to provide a report which will:

1. Clarify the current governance framework respecting Halifax Water and the authorities of Regional Council; and
2. Provide options, including consideration for realignment of the organizational reporting structure, and / or responsibility transfer, to improve governance, accountability, communication, policy, public service and public infrastructure, and the authority of Regional Council to direct such.

On February 26, 2013: MOVED by Councillor Craig, seconded by Councillor Karsten that Halifax Regional Council:

1. Approve the interim two-year storm water infrastructure solution, including the Community Affordability Feature, as per the attachment to the report of December 6, 2012;
2. Limit this annual financial commitment from the Halifax Regional Municipality (HRM) to a maximum of \$3 million (Net HST included), sourced from the annual Halifax Water dividend payment to Halifax Regional Municipality; and
3. Direct staff to:
 - (a) Jointly prepare, within two years, an Integrated Storm water Policy, which includes an accountability matrix with respect to storm water management; and a five-year storm water infrastructure capital program with permanent funding options, for the consideration of HRM, Halifax Water, and the Nova Scotia Utility and Review Board (NSURB), for a permanent program; and
 - (b) Provide bi-annual updates to the Environment and Sustainability Standing Committee and the Board of Directors of Halifax Water on completion and progress on identified outstanding responsibilities in the accountability matrix.

The Public Service Commission (later renamed as Halifax Water Commission) was created in 1945 by an Act of the Provincial Legislature. In 1996 water utility amalgamation saw the formation of Halifax Regional Water Commission (HRWC). August 1, 2007 wastewater/storm water services were transferred to the HRWC. This created the first regulated water, wastewater and storm water utility in Canada. It operates in accordance with an Act of Provincial Legislature with rates, rules and regulations approved by Halifax Water Board and the Nova Scotia Utility and Review Board [NSUARB]. It is funded directly from user fees and fire protection revenue.

This report addresses the motion of Jan. 15, 2013. Although there is a discussion of storm water, this report is not intended to address the motion of Feb. 26, 2013. That work is ongoing. To identify the issues, staff conducted interviews with numerous staff and officials of both HRM and HRWC. They were:

Councilors:

Councilor Outhit
Councilor Craig
Councilor Nicoll
Councilor Walker, HRWC Board Member

HRM Staff:

Marian Tyson, Director Legal Services
Brad Anguish, Director CRS
Ken Reashor, Director TPW
Taso Koutroulakis, Manager Traffic and Right Of Way
Dave Hubley, Manager Design and Construction
Bruce Colborne, Construction Supervisor
Jim Donovan, Manager, Municipal Compliance
Kelly Denty, Manager Development Approvals
Mark McGonnell, Development Engineer
Wendy Lines, Manager Bus Maintenance
Chris Mitchell, Manager, Municipal Operations
Jane Fraser, Director Planning and Infrastructure

HRWC Staff:

Carl Yates, General Manager
Cathie O'Toole, Director of Finance and Customer Care
Susheel Arora, Operations Manager
Reid Campbell, Director of Water Services

Others:

Paul Kent, GHP
Nancy Conrad, Halifax Chamber of Commerce

Each discussion focused on three major areas:

- 1: The transfer of waste water and storm water from HRM to HRWC
- 2: Operations
- 3: Governance

DISCUSSION

Authority

As outlined in the Halifax Regional Water Commission Act, Council has no direct authority over the HRWC. Council:

- Appoints the Board. Once appointed, Board members owe fiduciary responsibility to the HRWC, not to Council.
- May guarantee debt above the maximum the MFC will lend to HRWC without a guarantee. The cap set by the MFC is currently set at \$70 million dollars.
- May make agreements with the HRWC regarding the payment of HRWC surpluses.
- Make other agreements with the HRWC.

In the event of the dissolution of the HRWC, HRM is entitled to the assets.

While Council has no direct authority over HRWC, the three Councilors plus the Mayor do constitute a majority of the Board, greatly reducing the risk of a serious disconnect between HRM and HRWC. That being said, this also creates the potential for conflict of interest as when they sit as Councilors they owe fiduciary responsibility to HRM, and when they sit as HRWC Board members, they owe fiduciary

responsibility to HRWC.

HRM also controls:

- Establishing of servicing boundaries
- Establishing of by-laws which impact HRWC activities
- Permitting and right-of-way access
- Establishing local improvement charges or area rates to fund water, wastewater or storm water processes

HRWC does fall within the authority of the HRM Auditor General.

HRWC files Board agendas and minutes, business plans and financial statements with HRM.

Storm water / Wastewater Transfer

From discussions with staff, the principal objective of the transfer of responsibility for wastewater and storm water from HRM to HRWC was to address the lack of a sustainable funding model for the service and address the infrastructure deficit that resulted from insufficient funding.

As a result of the transfer, utility business practices are now being applied to these services. Under the utility model, HRWC tracks costs by each of its major services – water, wastewater management and storm water management – and a cost of service model is produced. Rates are set by the UARB for each of these services based on these costs and allocated to customers based on consumption. (Water volume is used for water and waste water, lot size and the non-permeable portion of the lot for storm water.) The UARB also approves the debt plan to monitor intergenerational shifts, and development charges to ensure new users to the system pay their appropriate share of costs. With a sustainable funding model, HRWC has a plan in place to address both the poor state of the wastewater infrastructure and compliance with regulations.

The major issue outstanding from the transfer relates to storm water management. Storm water is managed using natural topography and water courses and storm sewer systems as well as best management practices, which include green infrastructure and low impact development. From inception with a rain fall or snowmelt event, storm water is conveyed through or across a variety of mediums prior to its final destination in a river or the ocean. These components include:

- Surface Collection
- Private property discharge
- Overland flow
- Public street flow
- Piped and ditch flow
- Major Storm route flow

As a result the management of storm water does not fall under a cradle to grave management approach within any one organization. Storm water is a multi-agency responsibility shared between:

- NS Transportation and Infrastructure Renewal
- NS Environment
- HRM
- HRWC
- Private property owners

There is a lack of clearly defined funding responsibilities between the resident (property owner), the taxpayer (municipality) and the rate payer (utility). Neither the Province, HRM nor HRWC has responsibility for the full scope of storm water management. This leads to additional effort for triage and diagnosis of issues, and sometimes leaves citizens being passed from one organization to the other. This is particularly acute for infrastructure that serves more than one purpose i.e. part of the road and part of the drainage system. Although clear roles and responsibilities for which parts of the storm water system

each is responsible are not always easy to pin down, significant work has been done since the transfer of storm water services in 2007. In particular, as defined in the 2007 Transfer Agreement, a Special Technical Committee [STC] was formed to deal with interface issues between HRM and HRWC and continues to meet on a regular basis. The STC has produced a matrix to document activities and associated roles and responsibilities for the vast majority of interface issues. Notwithstanding this progress, at the direction of Council, staff continue to refine policy to ensure resources are allocated for effective and efficient service delivery. A report on refined storm water policy will be brought back to Council at a later date. An interim policy is being followed in the meantime to facilitate improvements and related projects such as the Cow Bay Deep Storm Sewer, First Lake Drive Major Storm Route Improvements and Metropolitan Storm Sewer Upgrades.

This will be fully addressed by staff in response to the Feb. 26, 2013 Council request for an Integrated Storm Water Policy.

Operations – Client Service and Shared Administrative Services

The general consensus among those interviewed is that operations are going well, with most issues, in the words of one interviewee, more about relationships than structure. That said, there is room for improvement in the following areas:

- Storm water management, as identified earlier in this report
- Documentation of processes and inter-organizational charges
- Shared services

Storm water management

As already described, there is no party with responsibility for storm water as a program. Even with the current roles more clearly defined, there are still pieces that that will require cooperation. Finally, a single contact for citizens needs to be defined.

Documentation of processes and inter-organizational charges

The transfer agreement for wastewater and storm water contemplated a Service Level Agreement be created to document the interactions between the two organizations. Work on this was proceeding up until 2010 when changes in personnel caused it to be put on hold. The CFO for HRWC and the CFO for HRM have restarted the process and it is almost complete. It should be presented to the HRWC Board and HRM Council for approval shortly.

The Service Level Agreement will have two main sections. The Terms and Conditions section will describe the purpose and principles for the agreement, oversight provisions, conflict resolution mechanisms and change mechanisms. In the Services and Fees section, it will document each area of interaction, the agreed service standards, and fees as appropriate. It will contain schedules for:

- Legal
- Insurance
- Fleet and stores
- Solid waste leachate treatment
- Wastewater treatment contract
- Valve box and manhole covers
- Damaged sewer laterals – tree roots
- Miscellaneous TPW issues
- Finance, Investments and cash management
- Public fire protection
- Collection of outstanding waste water and storm water accounts
- Storm water billing
- ICT

- Capital Cost Contributions
- Local Improvement charges and any associated low income relief or deferrals
- HRM cooperation

Shared Services

Many of the interviewees identified opportunities for shared services. These ranged from the traditional administrative functions - finance, human resources, and information and communications technology – to non-traditional areas such as customer service (i.e. 311), fleet and procurement. In May 2013, the Auditor General released a report titled “Review of the Administrative Functions within HRM’s Entities which are governed by an Agency, Board or Commission”. This report identified several opportunities for shared services for administrative functions. In 2005, a Council Report on HRWC governance recommended several areas for cooperation and shared services. Although many were implemented, those related to administrative functions were not.

A shared service model cannot be successfully implemented simply by a project or a series of initiatives. Shifting priorities within the separate organizations change the focus of staff. The “best” solution for one organization may not be the same as the “best” solution for another, and neither the same as the optimum solution for both. For example, HRWC has a policy of using “best of breed” software, while HRM now has a policy of using software suites to cover many applications and minimize support costs.

Maximizing the use of shared services will require senior management support and direction in both organizations. It will also require a cultural change in both organizations. The foundation for this change would be a shared set of principles:

- A Shared services model is the preferred, unless there is a compelling reason for another approach.

Partnerships of any kind introduce complications, and reduce control and freedom of action. The path of least resistance is to proceed with a stand-alone function, rather than pursue a shared model. By having a policy of shared being the preferred approach, the onus switches from making a case for shared services to making a case not to.

- Shared strategic focus.

Our current practice is for each organization to proceed on its own, and then ask the other organization if they want to participate. (i.e. Enterprise Asset Management). It is far more effective for both parties if the initiative is joint from the beginning, developing a shared outcome for the initiative.

- Leverage existing assets and capabilities.

If either organization has existing assets and capabilities, the other should leverage this as opposed to building their own duplicate system.

- Balance between costs and effectiveness

When evaluating options, the enhanced quality and effectiveness of one solution or approach (best of breed software, in-house versus purchased) must be weighed against the increased cost and efficiency of other options.

- Customer Service

Any evaluation of approaches and solutions must consider which is best for the customer, and the relevant service standards and expectations.

There are numerous areas where shared services should be evaluated:

- Connectivity – there are numerous initiatives underway that have a common requirement for remote connectivity – water meters, street lights, traffic lights, parking meters, mobile workers. HRM and HRWC should be seeking a shared solution.
- Information Technology – Customer Relationship Management and permitting (Hanson); GIS; Enterprise Asset Management; Information and on-line services (web site)
- Finance
- HR
- Legal
- Customer Service channels – service counters, 311, web
- Fleet
- Procurement

Governance

The consensus from those interviewed is that the current arrangement works well. That is particularly true for water, and increasingly so for wastewater, but there are issues related to storm water. The principal benefit identified with the current arrangement is the utility model, with oversight by the UARB. Water infrastructure is in good shape, and HRWC have a plan to address the infrastructure deficit and regulatory compliance issues with wastewater. The independence of HRWC combined with the utility model with oversight by the UARB has proven effective in creating a sustainable funding model for these critical services. Having a separate organization like HRWC aligns well with this model.

There were recommendations for improvement:

- The Board should be competency based - that is, define the knowledge and skill set required, and appoint individuals with those specific skill sets. If this is not acceptable, there should be increased training for Councillors regarding their role and the potential for conflict of interest with their role as HRM Councillors.
- The activities of HRWC need more exposure to Council. Citizens often don't know or don't care about governance structures and call their Councillors when they have an issue. This interaction would be improved if Councillors are informed of issues at HRWC.
- Council should have a formal method of directing HRWC, or at least informing HRWC of Council concerns.
- Under the current model the HRWC is accountable to the UARB, but not directly accountable to citizens, although citizens can and do express their concerns at UARB hearings.
- There is a need for better operational coordination. Bringing HRWC in-house under the CAO would achieve this, as well as other benefits, but at the risk of losing the benefits of the current arrangement.

The recent legislation for the Halifax Convention Centre (HCC) provides a model for an independent board with provisions for external approval and direction in specific areas. It provides for a competency based board, and the corporation has shareholders. The HCC must file a five year strategic plan, as well as annual business plans and financial results. It also must seek approval from the shareholders for such things as new lines of business, debt, partnerships, and compensation of officers over a stated amount. Moving to this model for HRWC would give Council, as the shareholder, some authority over HRWC. HRWC would be accountable to taxpayers through Council. Filing strategic plans and annual business plans provides a mechanism for improved operational alignment while maintaining a separate utility.

Specific areas of control for Council are:

- Approve debt policy and guarantees

One of the major risks to be managed by utilities is the amount of debt they carry. Although HRWC has a good plan, approved by the UARB, this is something HRM would want to be appraised of.

- Approve any compensation in excess of \$250K

Compensation in the public sector is always under scrutiny, particularly when any individual position becomes an outlier. While it wouldn't be appropriate for Council to be involved with human resource matters, setting a salary cap for individual compensation levels that would need approval to exceed is prudent.

- Approve new lines of business and service areas

Any decisions by HRWC to expand their lines of business (i.e. energy), or to offer their services to other municipalities need to be ratified by Council. This would apply only to major changes, and not periodic contract work.

- Approve wind-up or dissolution

As HRM assumes control of the assets and responsibility for the delivery of the services should this occur, Council should be involved in the decision.

- Approve issuance of stock

As the only shareholder, HRM would need to ratify the issuance of any additional stock.

- Approve partnerships

Any decisions by HRWC to enter into a formal partnership arrangement with another party needs to be ratified by Council.

- Approve 5 year strategic plan, revised annually

HRM land use planning and planning policy objectives are significantly impacted by HW. Our ability to meet density targets are predicated on the ability of HW's infrastructure to carry the capacity. Requiring approval by Council of the 5 Year Strategic Plan provides an opportunity for this to be aligned with HRM's Strategic Plan.

- Approve annual business plan

Requiring approval by Council of the annual business plan provides an opportunity for this to be aligned with HRM's annual business plan priorities as appropriate. Fee structures and amounts will still remain under the authority of the UARB.

- Review annual financial statements, and annual performance metrics.

This information will provide context for the business plan and budget approvals.

- Review annual HRWC Employees Pension Plan Financial Statements.

Recognizing the strain that public sector pensions are under, this is an important risk for HRM to review on a regular basis.

FINANCIAL IMPLICATIONS

There are no financial implications to the recommendations in this report.

COMMUNITY ENGAGEMENT

None

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

None

ATTACHMENTS

Extract from Halifax Regional Water Commission Act

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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Attachment 1
Extract from Halifax Regional Water Commission Act

Board:

4 (1) The Commission Board consists of

- (a) the Mayor of the Regional Municipality;
- (b) three members of the Council appointed by the Council;
- (c) three residents of the Regional Municipality, who are not members of the Council, appointed by the Council; and
- (d) one member of the Regional Municipality staff, appointed by the Chief Administrative Officer of the Regional Municipality, who shall be a non-voting member of the Commission Board

6 The Regional Municipality is the owner of the business of the Commission for purposes of surplus payments as provided for herein and entitlement to the assets of the Commission in the event of dissolution or winding down of the Commission.

Powers of Commission:

7 In addition to all powers of the Commission under any other Act, and subject to the supervision and regulation of the Board pursuant to the Public Utilities Act, the Commission may

- (a) acquire, own or operate
 - (i) water systems, facilities and utilities,
 - (ii) wastewater systems, facilities and utilities, and
 - (iii) stormwater systems, facilities and utilities,

for the purpose of providing water, wastewater and storm water service to customers located within the Regional Municipality, including the power to acquire, own or operate systems, facilities and utilities not located within the Regional Municipality for the purpose of protecting or enhancing the service or reducing the cost of service to customers located within the Regional Municipality;

(aa) subject to any applicable municipal by-law, lease land owned by the Commission for the erection, maintenance and operation of wind turbines;

(b) exercise all necessary powers in relation to the activities, operations and purposes of the Commission as set out in this Act or any other Act including, but not limited to, the power to

- (i) make and carry out contracts,
- (ii) buy, sell or lease interests in real or personal property,
- (iii) borrow and invest monies,
- (iv) receive and issue negotiable instruments, and
- (v) hire employees and participate in pension plans or provide pension benefits; and

(c) engage in other incidental business activities, including the generation of heat or electricity in whole or in part from by-products of any of the operations of the Commission set out in clause (a) and the provision of contract services to persons located outside the Regional Municipality, so long as such activities are carried out without subsidy from any of the operations of the Commission set out in clause (a) and relate to the provision of water, wastewater or storm water services, and for the purpose of this clause exercise any of the powers set out in clause (b).

Debt:

16 (5) The Regional Municipality is empowered to and may from time to time guarantee unconditionally the payment of the principal and interest or the principal or the interest only of the bonds or debentures issued by the Commission or of such of the bonds or debentures issued by the Commission as the Regional Municipality may, by resolution of the Council, determine, and the Regional Municipality may also guarantee the due performance by the Commission of all terms, provisions, covenants and

conditions of every deed of trust or mortgage made by the Commission securing the same, and upon such guarantee being given by the Regional Municipality, the Regional Municipality is liable according to the terms of the same for such payment or such due performance, or both, to the same extent and in all respects whatsoever as if the Regional Municipality were the principal debtor.

17 Where funds are borrowed under Section 16 for purposes of providing an extension of water, wastewater or storm water service throughout the Regional Municipality, the Commission and the Regional Municipality may enter into an agreement for the Regional Municipality to pay to the Commission the amount, in whole or in part, of the funds borrowed.

18 The Regional Municipality may impose a charge to cover the cost of payments made to the Commission under an agreement referred to in Section 17 as though it were a charge for the municipal portion of the capital cost of installing a water system under clause 81(1)(c) of the Municipal Government Act.

Public utility:

19 The Public Utilities Act applies to the Commission and any water, wastewater or storm water facility or system owned, operated, managed or controlled by the Commission for service to the public is deemed to be a public utility within the meaning of that Act.

Annual report and payment from surplus:

20 (1) The Commission shall annually, following the end of its fiscal year, have prepared and submit to the Council statements of revenue and expenses, surplus or deficit account and assets and liabilities all drawn or prepared in accordance with the NOVA SCOTIA UTILITY AND REVIEW BOARD Water Utility 2007, c. 55 Halifax Regional Water Commission Accounting and Reporting Handbook, as amended from time to time, for each public utility operated by the Commission.

(2) Accompanying the financial statements referred to in subsection (1), the Commission shall, in writing, submit to the Council its recommendation of the amount or amounts of money to be paid from the surplus of the Commission's undertaking or undertakings to the Regional Municipality for the general purposes of the Regional Municipality.

(3) The amount or amounts to be paid by the Commission from the surplus of the Commission's undertaking or undertakings to the Regional Municipality for the general purposes of the Regional Municipality shall be such amount or amounts as are agreed upon by the Commission and the Council, and may be based on an amount denominated as a percentage of the Commission's rate base allocated to one or more of water, wastewater and storm water systems or by reference to any other formula agreed to by the Commission and the Council.

(4) The amount or amounts in an agreement made pursuant to subsection (3) must be paid as
(a) a grant in lieu of taxes on taxable assets pursuant to Section 92 of the Charter regardless of whether the amount is calculated by reference to a formula that includes non-taxable assets; or
(b) a dividend.

(5) Any amount payable pursuant to subsection (3) is subject to review and approval by the Board.

Municipal taxes:

21 Subject to any agreements made pursuant to Section 92 of the Charter, property that is owned or utilized by the Commission for the purpose of providing water service is liable to real property taxation.

Charter Section 92 (1) For greater certainty, the Council may levy commercial and business occupancy taxes against the property and assets of the Halifax Regional Water Commission situated within the geographical boundaries of the Municipality.

(2) Notwithstanding subsection (1) and the Assessment Act, the Municipality may enter into agreements with the Halifax Regional Water Commission providing for the payment of grants in lieu of commercial and business occupancy rates and taxes against the property and assets of the Halifax Regional Water Commission within the geographical boundaries of the Municipality in such amounts annually as shall be agreed upon between the Council and the Halifax Regional Water Commission.

22 Notwithstanding the Assessment Act or the Charter, property that is owned or utilized by the Commission for the purpose of providing wastewater or storm water service is not liable to real property taxation or any other municipal rate or tax.

Agreements:

24 The Regional Municipality has the authority and capacity to enter into or carry out the terms and conditions of any agreement entered into with the Commission for the purposes set out in this Act and may enter into further agreements with the Commission for modifying or amending any previous agreement.