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Information Item No.2
Halifax and West Community Council
June 28, 2016

TO: Chair and Members of Halifax and West Community Council

Original Signed

SUBMITTED BY: _____
Brad Anguish, Director, Parks and Recreation

DATE: June 3, 2016

SUBJECT: Public Right of Way (Towpath) on the Northwest Arm - Maintenance and Access

INFORMATION REPORT

ORIGIN

October 3, 2011 Chebucto Community Council motion:

“Moved by Councillor Mosher, seconded by Councillor Wile that Chebucto Community Council request that staff investigate the condition of the HRM owned portions of the walkway along the Northwest Arm, from Sir Sandford Fleming Park towards Purcell’s Cove and report on future restoration as well as plans for continued acquisition of shoreline property.

MOTION PUT AND PASSED.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter:

Section 61:(1): The Municipality may acquire and own property granted or conveyed to the Municipality either absolutely or in trust for a public or charitable purpose. (3) The property vested in the Municipality, absolutely or in trust, is under the exclusive management and control of the Council, unless an Act of the Legislature provides otherwise. (5) The Municipality may (a) acquire property, including property outside the Municipality, that the Municipality requires for its purposes or for the use of the public; (b) sell property at market value when the property is no longer required for the purposes of the Municipality;

Section 79(1): Council may expend money required by the Municipality for: k) recreational programs; (x) lands and buildings required for a municipal purpose; (y) furnishing and equipping any municipal facility; and (ah) ... trails, including trails developed, operated or maintained pursuant to an agreement made under clause 73(c), bike paths ... and other recreational facilities.

BACKGROUND

The Northwest Arm of Halifax Harbour (the 'Arm') separates the western portion of the Halifax Peninsula from the communities of Armdale, Jollimore and Purcell's Cove. The water body and surrounding lands are a significant open space for the region with a history of providing recreation, cultural and community identity and significant views. The Arm provided a site for some military and industrial activities up until the end of the Second World War. A towpath existed along the western shore to aid in moving boats along the arm. This right of way was established across private properties many of which were large. Today the rough path continues to be used as a local foot path running between Sir Sandford Fleming Park and Saraguay House at the Nova Scotia Yacht Squadron.

In 1995, Halifax City Council adopted the Halifax Parkland Strategy to guide public parks and open space planning for the City. That plan identified the importance of public access to the North West Arm and identified public use of the towpath as one means to deliver this. The strategy called for the path to remain rustic and informal so as not to overly intrude on the private properties over which it crossed. The need to acquire lands and easement right over time was also identified, as was linking the path back to public streets.

In 2011, the former Chebucto Community Council (now Halifax and West Community Council) requested an update on the HRM owned portions of the walkway and future restoration, as well as plans for continued acquisition of shoreline property.

DISCUSSION

Staff has reviewed the current condition of the pathway and has had title searches conducted to determine the title rights and the viability of public use of the pathway (Attachment 1). The Municipality owns three narrow parcels of land containing segments of the towpath through existing private properties. This has primarily been through parkland dedication stemming from subdivision and development of larger properties along the Arm.

Access Rights on Title for the Towpath

Of the thirty properties adjoining the Arm (see plan attached):

- HRM owns a narrow segment of property accommodating the path way over a total of 11 properties, encompassing 377 metres in length;
- The property deed references the towpath or some level of access over a total of 10 properties, encompassing 420 metres in length; and
- There are no access rights over a total of 9 properties, encompassing 378 metres in length.

As a result, only 797 metres of the 1175 metre path has right of access or possible right of the access over it for the public according to a search of the Registry of Deeds.

The title search also uncovered that, of those deeds where an easement exists, there is significant variance in the easement. This variation results in a lack of clarity in two areas:

- 1) to whom the easement is in favour; and
- 2) what activity it allows.

In some cases, the right is a road reserve, in others reference is to a public path. In some, there is no mention of an easement but the path is shown on a property plan. In other deeds, it is explicitly granted for towpath use.

There may be a history of the public/neighbourhood using the towpath for access along the Northwest Arm. However, the right to use it as a foot path is not identified in the majority of titles and, such use may be an unpermitted use by landowners. The right to use the path appears to be a public perception. It is not unlikely that the use of the path is at the discretion of the landowners and could be withdrawn at any

time. Further, the path, other than connecting to Sir Sandford Fleming Park has no access to other public areas, instead relying on driveways and adjacent private lands for access.

The other possibility is that through repeated and long use, the general public has acquired an easement right through the Arm properties. This possibility is a matter of proof by community or neighbouring users under the common law. It does not result in any rights of the Municipality, but is a public right of itself if established by court order or acquiescence of the land owner. Otherwise the traditional use of the path, apart from the legal rights on title is a use by permission or trespass.

Present Pathway Condition

The path is largely an unimproved wear-path over much of its length. The majority of the path is more natural and difficult to traverse with roots and rocks. It runs very close to the shore, and in some places is subject to high tides and storm related flooding from the Arm. There is evidence of erosion in some areas due to tidal and storm action, including some of the path owned by the Municipality. In places, some land owners have improved the path and surrounding areas to the benefit of users encouraging them to walk through their gardens and yards. Along other portions, owners appear to have gone to lengths to make it difficult to traverse.

Over time, the Municipality has acquired some degree of access to or ownership of approximately 70% of the length of the pathway, with the expectation that at a future date it would become an informal public path. As a result, it is a combination of municipal path in part, and a traditional but likely not legal walking path across several private properties. As a result, it does not meet municipal standards and is not maintained or promoted by the Municipality.

Future Restoration

HRM does not own or have rights over approximately 30% of the towpath, and is not in a position to maintain the length of the path. HRM does not have authority or responsibility to maintain the length of the path. The municipality has posted signage on its properties indicating the unimproved state of the foot path.

Unless clear access rights are achieved along its full length, it cannot be considered a municipal path and HRM should not promote, invest, or maintain it. If the pathway were brought to a municipal standard, significant work would be required to stabilize the lands, potentially with the installation of armour stone or retaining walls. None of that work could be considered without the legal access rights being obtained.

Future Actions by the Municipality

The primary means for acquiring additional access to the towpath to date has been through parkland dedication as part of the subdivision of adjacent lands. In terms of future acquisition the Municipality has three general options it can pursue:

- 1) Continue its present route of acquiring lands or easements through the subdivision process.
- 2) Express interest in ongoing property acquisition as the opportunity presents itself.
- 3) Actively pursue creation of a municipal pathway by securing access rights across the entire length of the path. This would involve purchasing additional rights to existing easements and acquiring easements to all of the rest of the properties. It may also involve clarifying the current easement rights and undertaking possible amendments in addition to acquiring rights for public access. The Municipality would also need to bring the path to a municipal standard.

Alternatively, the Municipality could abandon its interest in a public path, sell its properties and easements to the adjacent landowners or a community interest association, and leave the path as a neighbourhood matter.

If Community Council has interest in HRM continuing to actively pursue additional access along the towpath, the idea should be revisited through consultation with two groups since it has been over twenty years since the initial concept was outlined in the Halifax Parkland Strategy. The first group would be the adjacent landowners to gauge their desire and willingness for a municipal path. The second group would

be the wider neighbourhood and local community who the municipal involvement in the foot path is meant to benefit. In that case, Halifax and West Community Council's intentions regarding the future of the towpath would need to be provided to Regional Council such that specific direction could then be provided to staff.

For information purposes, pursuit of additional access and development of a public pathway would involve:

1. Securing the right of access could involve legal fees and property purchase or purchase of easements over multiple properties;
2. Capital and operating monies for improvements to build and maintain the path to a public standard; and
3. Shoreline protection, similar to the work carried out at Sir Sandford Fleming Park, to protect the public investment from erosion in places.

The above actions would likely require significant financial investment by HRM, and therefore consideration of high level cost estimates would be required should Council choose to direct staff to assess the potential completion of a public path.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this Information Report. Any decision to move ahead with any future action on the towpath would be subject to approval by Regional Council through established budgeting processes.

COMMUNITY ENGAGEMENT

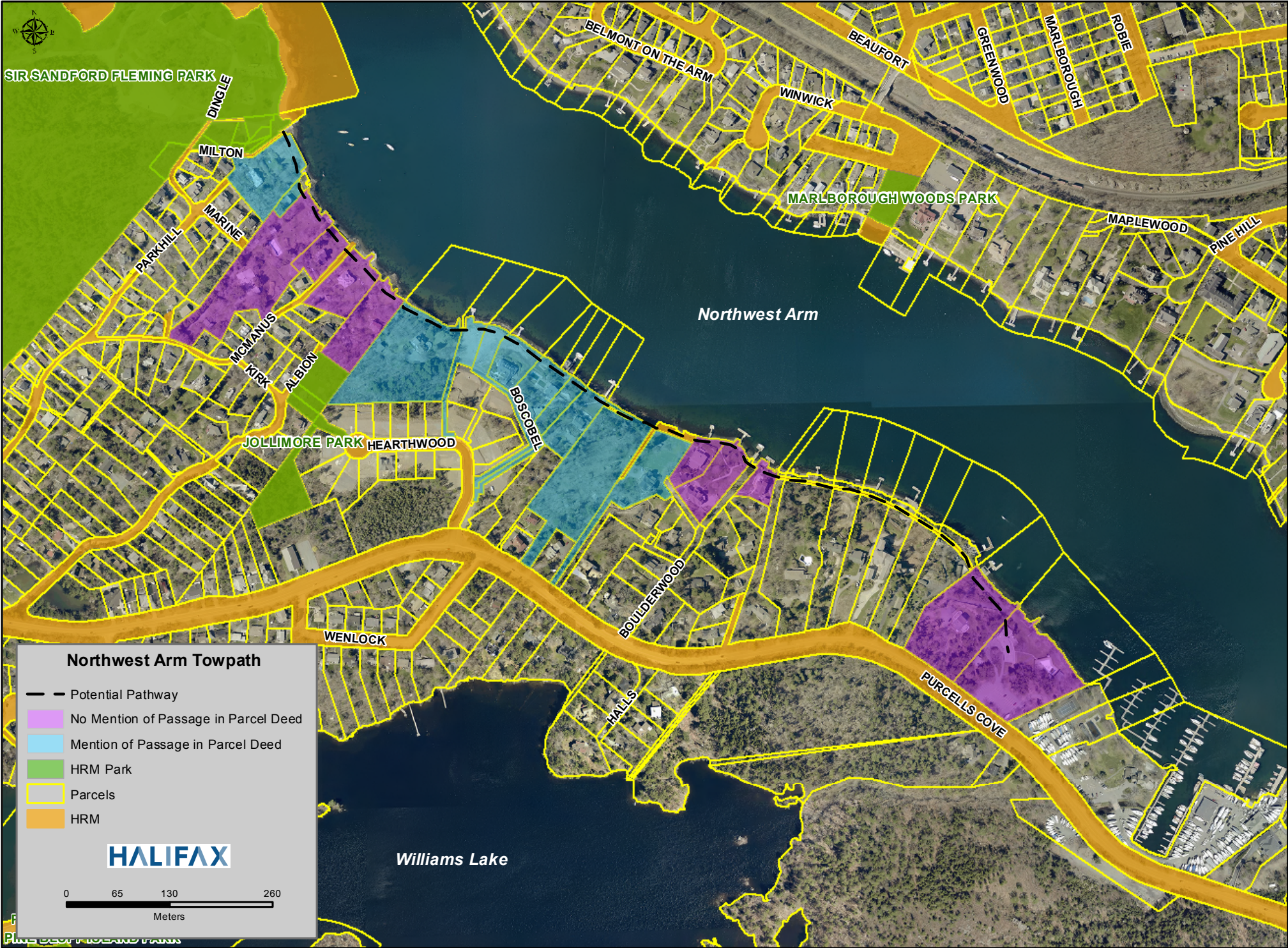
No community engagement was undertaken in preparation of this report. If additional acquisition was directed, consultation would need to be undertaken as outlined.

ATTACHMENTS

Attachment 1: Map of Towpath and Surrounding Area

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 902.490.4210, or Fax 902.490.4208.

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SIR SANDFORD FLEMING PARK

DINGLE

MILTON

PARKHILL

MARINE

MCMAHUS

KTRK

ALBION

JOLLIMORE PARK HEARTHWOOD

BOSCOBEL

WENLOCK

BOULDERWOOD

HALLS

BELMONT ON THE ARM

BEAUFORT

WINWICK

GREENWOOD

MARLBOROUGH

ROBIE

MARLBOROUGH WOODS PARK

MAPLEWOOD

PINE HILL

Northwest Arm

Williams Lake

PURCELLS COVE

PINE CREST FLEMING PARK