

Town of Whitby

Staff Report

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Report Title: Department of Fisheries and Oceans Canada (“DFO”) request to utilize Town lands to facilitate Harbour Remediation

Report to: Committee of the Whole

Date of meeting: April 8, 2024

Report Number: CMS 05-24

Department(s) Responsible:

Community Services Department
Legal and Enforcement Services

Submitted by:

John Romano, Commissioner of
Community Services

**Acknowledged by M. Gaskell,
Chief Administrative Officer**

For additional information, contact:

Keenan Watters, Manager of Marina &
Harbour Facilities, 905.706.5445

1. Recommendation:

1. That Report CMS 05-24 be received as information;
2. That Council grant approval to The Department of Fisheries and Oceans Canada (“DFO”) for use of a portion of Gordon Fields adjacent to the Gordon Street Boat Ramp between July 15, 2024 and October 31, 2026 in exchange for in kind remediation (clean up) of Town owned water lots as identified in attachments #1 and #2;
3. That Council grant approval to DFO for use of a portion of the Gordon Street Boat Ramp parking lot between July 15, 2024 and October 31, 2026 in order to facilitate dredging contractor vehicle parking;
4. That Council grant approval for DFO to access Town lands adjacent to Promenade Lake Park to allow loading/unloading of barges from the Federally owned portions of the promenade and pier as identified in attachment #3; and,
5. That Staff be delegated authority to execute any agreement(s) which may be required to carry out the above recommendations in a form satisfactory to the Commissioner of Community Services and the

Commissioner of Legal and Enforcement Service/Town Solicitor, or their designate.

2. Highlights:

- DFO are finalizing plans to remove contaminated sediment from Whitby Harbour through an extensive multi-year dredging program. Due to Whitby Harbour's importance as a central component of Whitby's waterfront, this project will provide long term benefits to the community. The removal of harbour sediment will require a period of containment and drying followed by trucking to an approved landfill site. The project is anticipated to begin in mid-July 2024 with a project duration of approximately 27 months. To facilitate the containment and removal of sediment, DFO has requested the use of Town owned harbour lands adjacent to the Gordon Street Public Boat Ramp for the duration of the project. The remediation project as well as restoration of Town lands will be entirely funded by DFO.
- In exchange for the use of Town land to facilitate remediation, DFO will increase the scope of their dredging to include two Town owned water lot areas. Recent studies indicate that the Town would otherwise be liable for \$1,064,000 in estimated remedial dredging costs.
- A public communication plan was initiated by DFO in 2019, and a Whitby Harbour Remediation website has been maintained and updated since that time. The website identifies the problem and related risks to the public and wildlife, outlines studies completed to date, presents solutions and remediation plans, and identifies next steps and timelines. The website can be found at the following link <https://www.dfo-mpo.gc.ca/sch-ppb/whitby/index-eng.html>. A public information session was also held by DFO at Port Whitby Marina on March 9, 2023, in order to provide an additional opportunity to inform and engage with the community on this project.
- On February 13, 2024, DFO approached the Town to formally request to utilize a portion of Victoria Fields and the Gordon Street Boat Ramp parking lot to facilitate harbour remediation. Use of federally owned lands adjacent to Promenade Lake Park will be required to load/unload barges. Although DFO have committed to minimize impacts to harbour, park, trail and field users, significant impacts are expected within the harbour area as a result of the use of Town lands to support this project. A detailed summary of user impacts is outlined in section 4.

3. Background:

The federally owned Whitby Harbour and provincially owned Pringle Creek are contaminated with dioxins and furans at levels above provincial and federal standards. The source of the contaminants is not fully understood; however, they are believed to have entered the harbour via Pringle Creek in approximately the 1970's. DFO in

partnership with The Provincial Ministry of Environment, Conservation, and Parks (“MECP”) are advancing plans to remediate these areas. In the case of MECP, final provincial approvals have not been received which may delay cleanup of the creek beyond 2024. Remediation of the harbour by DFO is advancing with dredging to take place beginning in 2024. During discussions with the DFO in 2022, CMS staff were informed that two Town owned water lot areas within Whitby Harbour contain contaminants at levels found within DFO areas. Subsequently, DFO has made a request to utilize Town owned property adjacent to Whitby Harbour to facilitate sediment remediation in exchange for assistance with the cleanup of the Town owned water lots.

4. Discussion:

DFO recently developed a Remedial Action Plan (“RAP”) to guide the remediation of Whitby Harbour. The RAP is intended to reduce potential risks to the health of people, fish, and wildlife, that are associated with long term exposure to the chemicals currently found in Whitby Harbour. Remediation of the highest levels of contaminated sediment will result in reduced risks and will help ensure the long-term enjoyment of this important water body. Given the scale of this project, there will be impacts within the community in 2024, 2025 and 2026. Use of the field area adjacent to the Gordon Street Boat Ramp would include the creation of a fenced and berm sediment containment area as illustrated in attachment #3. This area will feature a perimeter fence to ensure public safety. Additional silt fencing within the perimeter will be installed as needed for environmental protection. The central portion of the sediment containment area will be excavated to approximately 2 metres below existing grade and capped with a protective layer of material. The excavated soils will be utilized to construct a berm measuring approximately 2 metres above existing grade. The existing waterfront trail which passes through this area will be temporarily closed and an alternate trail link around the fenced containment area will be provided by DFO. In order to transfer material from barges to the sediment containment area, a temporary stone/gravel pier will be installed, and the affected shoreline will be restored to current conditions following the project. The temporary sediment containment area as requested by DFO represents the maximum area that may be required for this project. As such it is possible based on final detailed project planning that areas may shift, and a smaller area may be used.

Understanding that the impacts of the remediation project are significant and that many of the regular users of the impacted areas are well into their planning for this year, staff worked with DFO, to delay their proposed start of May 1, until after Ribfest weekend (July 12-14). The timing of the DFO’s dredging tender is based on the successful bidder mobilizing no earlier than July 15, 2024. DFO declined staff’s request to delay the project until 2025 to allow as much advanced notice as possible to the users of the area. DFO is concerned that if the project does not begin in 2024 the funding for the project could be cancelled. The key impacts related to the project are identified below including name of affected group, duration of impact and alternative options, if applicable.

Sports Field Users

Gordon Field which is the area adjacent to the Gordon Street Boat Ramp is currently permitted to Lady Blue Knights Field Lacrosse weekday evenings from early May through August each year. This use will be impacted by the dredging project forcing relocation to another field. Staff can provide Lady Blue Knights with several alternative field options to choose from for the duration of the DFO project.

Special Events Field Users

Use of the field area adjacent to the Gordon Street Boat Ramp will have a significant impact on Town, Town Supported and Third-Party events which currently utilize this space on an annual basis.

These events include Canada Day (Town event), Ribfest (Town Supported event) and India Day (Third Party event). Some of these events use this space for programming while others use this space for the launching of fireworks. The DFO dredging project will commence on July 15, 2024, and will impact these fields continuously for approximately 27 months. As such, Canada Day (July 1, 2024) and Ribfest (July 12-14, 2024) will not be impacted in 2024, but India Day which will be hosted on August 24, 2024 will be. India Day will be informed they need to redesign their site layout for the fireworks display. All these events will be impacted in 2025 and 2026. Each event will need to be reviewed to see if it can revise its site plan to proceed on a smaller footprint or determine if the event needs to be cancelled or relocated. Other options for Canada Day may include moving from a fireworks show to a lights display or floating barge, however this would have significant cost impacts.

Staff will review options for Canada Day and report back to Council on options for 2025 and 2026. Staff will work with organizers of Ribfest and India Day to review options for their events.

Waterfront Trail Users

Use of the field area adjacent to the Gordon Street Boat Ramp to support DFO's harbour remediation project will result in the temporary closure of a section of waterfront trail adjacent to the boat ramp. Prior to closure, DFO will install a temporary 3.0-metre-wide trail around the sediment containment area as identified in attachment #2. This temporary asphalt trail section will meet off road recreational trail specifications as provided by the Town.

Gordon Street Boat Ramp Users

DFO have requested use of a portion of the parking lot at the Gordon Street Boat Ramp to provide parking of vehicles and equipment during the dredging project. Given the size of this lot, staff do not believe there will be significant impacts on users as a result of the DFO dredging project. The dredging contractor will be required to minimize the impact on users of the Gordon Street Boat Ramp, restricted from impacting peak weekend use of the parking lot and will be required to maintain access to the main vehicle/trailer parking spaces for users.

Port Whitby Marina

Given the widespread contamination of sediment within Whitby Harbour, dredging can be phased to reduce impacts on marina users during the peak boating season (May 1 to October 31). Dredging of marina navigation channels, fuel dock and floating piers can be completed during winter months while other portions of the harbour can be dredged during the boating season. DFO staff recognize the importance of maintaining access to the marina fuel dock as this facility is the only major fueling station for vessels between Toronto and Cobourg. The Port Whitby Marina fuel dock is regularly used by the Coast Guard, DRPS, and other first responder organizations. To facilitate dredging within the Port Whitby Marina water lot area, all nine marina piers will need to be moved elsewhere in the harbour during the winter months of 2024/2025 and 2025/2026. In addition, DFO will arrange removal and re-installation of concrete pier anchors if required. As marina piers typically remain in place year-round, DFO will be required to cover costs related to the removal and re-installation of these piers and anchors.

Whitby Yacht Club

Dredging within the Whitby Yacht Club water lot can be phased to reduce impacts on club users during the peak boating season (May 1 to October 31). Dredging of club navigation channels and floating piers can be completed during winter months. DFO will work with the Whitby Yacht Club regarding removal of floating docks and concrete anchors. As club docks are typically moved from the club water lot each year to more protected areas of the harbour, dock removal in this case will have minimal impact.

Promenade Lake Park

DFO have identified the need to utilize some federally owned lands within Promenade Lake Park as a loading area for barges during the project. As a result, a portion of the promenade area and pier may be fenced and closed off to the public, while the waterfront trail access through this area would remain open. DFO have committed to minimize use of this area and to provide sufficient notice of closures to the Town.

5. Financial Considerations:

The Remediation of Whitby Harbour is a federal project, and this work will be fully funded by DFO. It should be noted however that although the majority of Whitby Harbour's 260 ha area is owned by DFO, the Town owns an additional 2.5 ha (shown in green on attachment # 1) and a further 2.5 ha is owned by Brookfield Residential adjacent to the Brookfield property (shown in purple on attachment #1). These separate ownership areas appear to result from changes to the harbour shoreline over time related to dredging and shoreline stabilization projects. These Town and Brookfield water lots are contaminated with dioxins and furans at similar levels to the main harbour water lot. DFO have offered to include Town areas within the scope of the larger harbour dredging project. A recent study completed by Golder Associates on behalf of DFO provided detailed analysis of the two Town owned lots including cost estimates to dredge and truck the materials to an approved landfill. Town of Whitby Water lot #1 is located at the north end of Whitby Harbour within dredge area B and requires the removal of 2,295 cubic metres of contaminated sediment. Estimated costs to remove contaminated sediment from this area total \$514,080 or \$224/cubic metre. Town of

Whitby Water lot #2 is located to the south of Shirley Scott Park within dredge area A and requires the removal of 2,455 cubic metres of contaminated sediment. Estimated costs to remove contaminated sediment from water lot area #2 total \$549,920 or \$224 per cubic metre. The combined cost to dredge the areas totals \$1,064,000.

6. Communication and Public Engagement:

The Remediation of Whitby Harbour is a DFO project, however it can only be completed with the support of the Town of Whitby. A public communication plan was initiated by DFO in 2019 providing the community with information on the Whitby Harbour Remediation Project as well as opportunities to engage with DFO's project team. DFO communications were shared by Town Communications staff on Town resources and social media. A public information session was also held by DFO at Port Whitby Marina on March 9, 2023. As DFO remedial dredging plans are finalized subject to Council approval, additional communication via websites, print media and social media will be initiated by DFO with the cooperation of the Town. In addition, user groups that may be impacted due to the use of Town lands to support this project will be contacted directly by Town staff. Affected user groups will be provided detailed information related to impacts along with alternatives where possible.

7. Input from Departments/Sources:

In addition to collaboration within the Community Services Department, input has been received from Legal Services, Financial Services, Strategic Initiatives, and the Engineering Division.

Subject to Council approval, Legal Services has agreed to draft and assist with the execution of the agreements which will be required allow DFO to utilize Town lands in exchange for in kind remediation of two Town owned water lots. It is intended that the agreements will include insurance and indemnification protection for the Town, remediation provisions, requirements for before and after environmental assessments of the sports fields and any other provisions which are required to ensure the Town's interests are adequately protected. DFO will be required to ensure that measures are in place throughout the project duration to protect users and the public. DFO will also be required to ensure that all Town areas are restored to pre-project condition.

8. Strategic Priorities:

Supporting DFO remediation of Whitby Harbour supports the following objectives as identified in the Town of Whitby Strategic Plan 2023 to 2026:

- Whitby's Natural & Built Environment – Connected & Resilient
 - 2.3.3 Enhance existing facilities and services and invest in structural upgrades at the waterfront.

2.3.6 Invest in upgrades at the Marina.

· **Whitby's Economy – Innovative & Competitive**

3.1.3 Implement actions to enhance Whitby's tourism sector, including a focus on the waterfront.

· **Whitby's Government – Accountable & Responsive**

4.1.1 Advocate for funding from upper levels of government and other partners to support and advance current and anticipated community priorities.

9. Attachments:

Attachment 1 – Whitby Harbour Overall Site Plan

Attachment 2 – Proposed use of field area adjacent to the Gordon Street Boat Ramp

Attachment 3 – Whitby Harbour plan including staging area at Promenade Lake Park