

| Type of Decision | | | | | | | | | |
|--|---------------------------|------------------|--|----|-----------------|----------------------------|------|--|--------|
| Meeting Date | Tuesday, January 23, 2018 | | | | Report Date | Wednesday, January 3, 2018 | | | |
| Decision Required | X | Yes | | No | Priority | X | High | | Low |
| Direction | x | Information Only | | | Type of Meeting | X | Open | | Closed |
| REPORT TITLE - Algonquin Trail Implications and Head, Clara & Maria | | | | | | | | | |
| Report #23/01/18 - 1101 | | | | | | | | | |

Subject:

Council's consideration of the long term use of the rail corridor through Head, Clara & Maria as the Algonquin Trail and subsequent concerns.

Questions for County staff and Council consideration.

RECOMMENDATION:

That Council adopt the following recommendation and direct staff to forward to the appropriate persons/organizations for information and action.

WHEREAS the potential for serious liability has been identified with the use of the rail corridor as a motorized trail throughout the municipality;

AND WHEREAS this Council has some concerns with:

- The process with which the trail has been pushed through at County Committee level without proper consultation with lower tier municipalities or their residents;
- Unanswered public safety and operational concerns with the use of the corridor as a multi-use trail and the risks involved;
- Unanswered lower tier liability and indemnification with respect to crossings on municipal roads and unopened road allowances;
- Incompatibility with local Zoning By-laws;
- The restrictions and costs associated with by-passes imposed by the County;

THEREFORE BE IT RESOLVED that the Council of the United Townships of Head, Clara & Maria does hereby request that the County of Renfrew staff, meet with representatives of Head, Clara & Maria staff and Council to discuss the future of the Algonquin Trail within our municipal boundaries paying particular attention to resolving concerns including as a minimum:

1. The need for the lower tier to come up with and fund any by-pass required to protect its residents from environmental contaminants and to provide for their safety;
2. Coming to an agreement with respect to the municipal Zoning By-Law through by-law amendment, rezoning some sections to allow motorized use;
3. Written assurance from the County that the municipality is protected and indemnified by the County and its lessees with respect to the general use of the rail corridor through Head, Clara & Maria, and specifically with respect to travel over municipal roads and unopened road allowances;
4. That the municipality is named as an additional insured in all trail insurance policies;
5. A written commitment from the County of Renfrew to provide resources to enforce trail rules, and/or to provide and finance an increased police presence;

6. A written commitment from the County of Renfrew to provide assistance with fire management and suppression costs due to increased trail use and to assume the municipal cost of fires that can be linked to trail use;
7. Written assurance that when the corridor is brushed, waste materials will be properly disposed of and not left along the trail increasing forest fire risk;
8. Immediately, rescinding the lease agreement with the Missing Link Snowmobile Club for motorized use through the Community contrary to the Municipal Zoning By-law until all of these issues have been resolved;

AND FURTHER THAT a copy of this resolution and report be circulated to the Counties of Renfrew and Lanark, the Municipality of Papineau/Cameron, and to the lower tier Councils in the County of Renfrew and Lanark for information and support.

BACKGROUND/EXECUTIVE SUMMARY:

Based on feedback received by Mr. Jim Hutton on behalf of the Algonquin Trails Advisory Committee in response to Council's resolution at its December meeting; in addition to my review of the draft Trail Management Plan, significant concerns have been noted which require consideration by this Council.

It is important that Council expresses its concerns with the roll out of the Algonquin Trail before the management plan has been completed and adopted by the County of Renfrew; without proper consultation and resolution to the problems identified above and within the letter to the County attached to this report as information.

It must be understood that over the past year, staff fully expected, at various stages, an invitation from the County of Renfrew staff to consult with Council and the residents of HCM on the use of the trail. This has not occurred.

Based on the discussion of the report of the December 19, 2017th HCM Council meeting; documentation was forwarded to municipal stakeholders as per Council's direction. The response from CAO Jim Hutton, on behalf of the Trails Committee of the County of Renfrew is attached as information. I have responded to his email clarifying misstatements and error, through a letter to Mr. Davis and Mr. Kelley also attached for your information and presented at the County workshop held on January 18, 2018.

It is staff opinion that this situation is now so much more than the use of a rail bed as a trail but one of disrespect and complete disregard for fellow municipalities. Although the terms used are upper tier and lower tier, at law with respect to certain spheres of jurisdiction, the municipalities are equals with different roles to play. Yes, the County by-law is allowed; but consideration of the lower tier's policies and wishes must also be considered. Of most seriousness is the lack of respect for the lower tier and its constituents, council, by-laws and staff.

Earlier in this process, Mayor Sweet was quoted as saying ““We are not going to impact the tax rate,” Sweet said.” and “If at the end of the day a local council has made a decision – it will be honoured,” Sweet said. “We are not going to tell municipalities what can happen in their jurisdiction.”

Contrarily, then Warden Emon was quoted as saying “...That said I have said from the very first time I spoke on the possible uses for the CP Rail properties that I consider it to be the perfect venue to host a four season multi use trail. I haven't changed my mind on that and will not be.” When discussing democracy, policy and by-laws, this type of statement might be construed as bias.

By not addressing each of the questions and concerns within this report to Council and the letter to the County, and with passing the by-pass resolution; the County is in fact passing costs on to the lower tiers and in fact **“impacting the tax rate”**. The answer that “we did consultation, maybe just not in the way that you want” is unacceptable.

Further, by failing to follow up, Council is in effect allowing itself to be undermined by decisions of the upper tier.

Under Ontario law, staff have the authority to enforce its by-laws including the Zoning By-Law. Staff will do so.

Normally, when there is a new land use, the land owner will contact the municipality to enquire about its laws and policies with respect to that land use. Based on the type of use requested, sometimes concessions are made, and attempts are made to facilitate use. Sometimes, the use is of a non-desirable nature and will not be allowed; either by the municipality or by legislation created to protect landowners from unwanted uses in proximity to their homes.

An example in Head, Clara & Maria is when the Council of the day was contacted by a representative of Air Swisha, to relocate to Stonecliffe. Residents in proximity to the area where the float planes would land opposed that move. Council discouraged Air Swisha’s move as it did not conform to current zoning. Often there is separation such as between farming operations and residential areas.

Similarly, some uses, such as a senior’s home, would simply not be allowed (or would require significant building modifications) due to our lack of fire suppression services. This is exactly the process which should have occurred with respect to the proposed use of a motorized trail through our populated areas. It hasn’t. Not following up on this situation would be setting a dangerous precedent for Council.

Moving forward, through consultation, a compromise could be arranged whereby the County could use the by-passes that currently exist to avoid residential areas, and Council could pass a zoning by-law amendment allowing use as a motorized trail in all other areas. Opportunities for collaboration and cooperation are endless. There needs to be a will by both parties.

Outstanding operational Challenges

In addition to the Zoning By-law, all Ontario municipalities have the authority under the Municipal Act and the Environmental Protection Act to protect its residents from public nuisance as well as noise, vibration, odour and dust. Council has the authority under the Motorized Snow Vehicles Act to prohibit motorized use in designated areas within a community. Council has the authority to pass resolutions and/or by-laws under any of these pieces of legislation should it come to that.

Under Joint and Several Liability Insurance in Ontario, in the event of an incident within the municipality which may occur along the new trail, we are concerned that the municipality of the United Townships of Head, Clara & Maria would be named and found responsible in any potential law suit.

Our municipal insurer has confirmed that being added as a named insured under the applicable County and lessee’s policies is recommended to mitigate liability over road crossings and unopened road allowances. I have seen no evidence at this point of the County’s consideration of this indemnification for lower tiers.

It is recommended that the Council of the United Townships of Head, Clara & Maria requests written assurance from the County that it is protected and indemnified by the County and its lessees with respect to the use of the rail corridor through Head, Clara & Maria.

A Quebec court case has tested this specific issue and the municipality was found at fault. The case is referenced as the COALITION FOR THE PROTECTION OF THE ENVIRONMENT - LINEAR PARK "NORTHERN NORTH TRAIN", complainant -and- GERARD EMOND, ALINE THIBAUT-ÉMOND, Designated persons and c. LAURENTIDES REGIONAL COUNTY MUNICIPALITY, DIABLE AND RED SNOWMOBILE CLUB INC., MOTELLE-NEIGE CLUB OF LABELLE INC., TIG INSURANCE COMPANY, GROUPE COMMERCE INSURANCE COMPANY, LOMBARD INSURANCE COMPANY, defendants -and- THE ATTORNEY GENERAL OF QUEBEC, Representing the Government of Quebec, Defendant- in the Quebec Superior Court ref. 700-06-000001-000.

As proved in the class action law suit of November 2004 the County (LRCM) was successfully sued by landowners who proved that the use of a motorized trail in proximity to their homes caused (at paragraph [376])“*disadvantages of noise and the presence of the odor on their property. The collective harm resulting in almost constant discomfort, disturbance (to) frequent sleep and the inability to normally enjoy their property outside (in) the winter.*”

Even though the trail was created through the Municipal County of the Laurentians with consideration and legislation enacted by the province of Quebec, it was found at law that these entities did not have the right to create a linear snowmobile park which constituted a public nuisance. At paragraph [84] of the decision when discussing the ability of the parties to provide recreation trails the judge states “*It is not possible to infer from those provisions permission to cause neighborhood disturbances.*”

At paragraph [415] the court “*ORDERS the Regional County Municipality of the Laurentians, its directors, officers, representatives, employees and agents, prohibit access to snowmobile on the Linear Park Petit Train du Nord between kilometer markers 68.5 and 106.5 until appropriate measures are taken to stop the nuisance resulting from the circulation of snowmobiles on this section the Linear Park.*”

And at paragraphs 417-419 the municipality is ordered to financially compensate the claimants for their suffering.

As there is legal precedent and already threats of class action law suits against the Ottawa Valley Rail Trail partnership originating in the Lanark section; in order to protect itself from liability the Council of the United Townships of Head, Clara & Maria should make it known, publicly, that it has voted against motorized use on the Algonquin Trail in proximity to residences and have provided to the County of Renfrew, the County of Lanark and Papineu-Cameron Township, evidence that motorized use is contrary to the local Zoning By-law. Our insurer does not believe that HCM would be at increased liability under such a law suit. Head, Clara & Maria Council should still consider and protect the safety and health of its residents.

At a cursory calculation, there are at least 35 permanent residences within 100 m of the track in Head, Clara & Maria. Even though some of these current owners suggest that they are in support of the trail; who knows what time might change, especially with new ownership. Citizens residing within that distance in the class action law suit were compensated due to the adverse environmental conditions affecting their land use. Future landowners may not be so amenable.

This Quebec court case was based on the use of snowmobiles during the winter months; considering the additional claims against other off road vehicles during the summer months on the Algonquin Trail, there is serious potential for legal liability and costs if this trail proceeds without proper consideration for and collaboration with residents along the trail and the installation of mitigating factors.

In the case referred to above, the claimants were each awarded substantial sums of money and the trail was changed to non-motorized use in this residential area; those amounts will only increase considering the year round use of motorized vehicles in proximity to residences.

Knowing this, should the County of Renfrew not be pro-active and consult with residents and lower tier municipalities to come up with viable solutions to these problems, before a law suit?

To date, use by atv's has not been approved however; without proper enforcement, the simply "no trespassing" signs are useless in protecting residents who live in proximity to this "trail".

For your reference a translation of the court decision may be located here:

https://translate.google.com/translate?sl=fr&tl=en&js=y&prev=t&hl=en&ie=UTF-8&u=http%3A%2F%2Fflacmercier.ca%2Fwp-content%2Fuploads%2F2017%2F04%2Fjugement_20langlois_opt.pdf&edit-text

And the Petit Train du Nord Linear Park Brochure – amended based on this case located here:

<https://www.quebecoriginal.com/en/listing/pdf/master/e09912ec-df64-43ba-a9cc-be7b64b90fa7/le-petit-train-du-nord-linear-park-brochure.pdf>.

Additional Questions for County/Council Consideration

1. The local snowmobile clubs claim that they require new routes as private property owners are rescinding permission for traditional properties. Have the question as to why that is occurring been given proper consideration before moving the trails to people's backyards? From what we have learned, the reasons are mainly due to disrespect by users including public urination, residual waste/trash and trespass. Now that the trail will be in people's backyards, who will be responsible for these issues on private lands? The County is creating the problem, how is it prepared to remedy it?
2. What makes anyone think that the county can better control these things on a public trail through signage? Over this past summer, the trail was used extensively by ATVs. Nothing was done to curb that use. Signage and berms certainly didn't work; these vehicles are called off road for a reason.
3. Who will pay for increased signage along municipal roads leading up to crossings? And the increased inspections required to ensure proper maintenance of the crossings for liability purposes?
4. Will an increased police presence be required? If yes, at whose cost? Normally lower tiers pay policing costs? Were local taxpayers consulted prior to making this decision to increase the taxes required to pay for extra policing? Will the OPP even agree to increased policing in Head, Clara & Maria? Do they have the resources for that?
5. It is difficult enough getting police in our area in a timely manner to attend accidents, especially during winter months; how will the county ensure an increased police presence to police the trails to enforce speed laws? Who will enforce the user Code of Conduct? And what of increased demand due to accidents/mishaps along the trail?
6. Under the draft management plan there is discussion of the lease to OFSC snowmobile clubs and their 3rd party liability insurance. Is that insurance effective where there is multi-users on the trail? Children? Pets? Horses? Snowshoe users? Or will those uses nullify that insurance?
7. How does insurance protect the safety, health and welfare of non-motorized users?
8. From the Draft Trail Management Plan, section "7.1 Commercial Development - Any application or request for commercial development along the trail will be reviewed by each Managing Authority on a case by case basis. The Managing Authority may develop an application process in the future." We assume that this Commercial development referred to is to occur on the trail corridor property? Otherwise, how is this within the County's authority

or purview? Are municipalities not responsible for land use and development within their boundaries?

9. Section 5.3.2. speaks to identifying, logging and remediating trail concerns. Since some sections of the trail have already been leased, have these inspections been completed? To the satisfaction of the county insurer? What would happen should there be an accident with these activities not having been completed? Again our concern is with lower tier municipal liability simply as the trail runs through our communities, and specifically contrary to our Zoning By-Law.
10. Section 5.3.3.2. (b) speaks to leaving brush along-side of trail or chipping as to be determined. What of the specifics of our community with no fire suppression? Staff recommendation to HCM Council would be to ensure that all such brush would be removed or chipped as per practice in our municipality. Is the County going to pay this municipality's costs to the MNRF under our agreement for fire suppression?
11. Under *the Line Fences Act* new owners of abandoned railway rights-of-way must be willing to come up with the cost of fencing if a private property owner wishes fencing. Assuming that this been fully considered in long range financial plans; what is the estimate of the cost of fencing? And considering noise pollution, should those fences not also be sound barriers?
 - a. "In 2006, amendments to *the Line Fences Act* changed Section 20. Under the amendment, farmers retained their statutory rights requiring **that whoever has acquired the former railway right-of-way continues to be solely responsible for building and maintaining the fences along it.** However, farmers must now notify the owners of the right-of-way in writing of their need for the fences to be constructed, kept up or repaired in order to receive a fence."
 - b. "The **significant change affects non-farm property owners. They must now cost-share the fences along the former railway right-of-way between themselves and the owners of the right-of-way.** If they are not prepared to cost-share the fence, then no fence will be built."
 - c. What would potential installation costs be? What of annual costs of repair and maintenance?
12. It has been noted that the K & P MANAGEMENT ADVISORY COMMITTEE TERMS OF REFERENCE includes representation on the committee of members of the lower tier councils as well as abutting property owner's groups. Why has this process not been repeated with the Algonquin Trail Advisory Committee?

Copy of Email to Craig Kelley dated December 20, 2017.

"Further to Council's resolution provided earlier; I have been directed by Council to contact County staff to request consultation on the issue of the use of the rail corridor as a trail throughout Head, Clara & Maria. It is not the intent of this municipality to prevent the use of the rail corridor as a trail. What we are requesting is consideration and respect due a fellow municipality. We have concerns with the use of the trail through built up areas, safety of multi-use, speed, enforcement, reduced police presence in our community, by-law enforcement on municipal roads, insurance and liability, indemnification, cost of development and maintenance, the need for the lower tier to finance by-passes, and general upkeep. From a property owner perspective we have concerns with quiet enjoyment of property, safety, encroachment, theft, trespassing and loss of the wildlife some moved here to observe chased by motorized vehicles.

Prior to the Council meeting in January; we respectfully request that you provide a copy of the information you are presenting to Council so that it could be included in their meeting package? That is our normal practise.

Also, I have the following questions that we would appreciate a response to at your earliest convenience.

1. We have learned that there is some talk about a representative from CP rail who along with Jason Davis contacted a landowner in Renfrew asking him to sign a quick claim deed for the rail corridor going through his farm. Does this mean the CP does in fact not own the entire length of the trail? How will this affect the planned purchase if it is not contiguous?
2. Can you speak to how municipal road allowances will be dealt with? I am certain that Head, Clara & Maria (and any other municipality) did not cede ownership to CP rail for their road allowances. Federal ownership supersedes municipal however; once ownership of land reverts to a private entity, would the road allowances not revert to the municipalities? Other property owners do not have rights over municipal road allowances? Why would this be different? Section 5.7 of the Draft Management Plan speaks to rights-of-way where a user wishes to cross the trail. Has equal consideration been given to where the trail crosses municipal roads and road allowances?
3. The County does not have authority over municipal by-laws; how will it deal with conformity to lower tier zoning by-laws?
4. Similarly, what of the municipal roads over which the trail/rail crosses? Again, federal and/or provincial (crown) ownership supersedes municipal however; any other ownership does not. Assuming that zoning is worked out; is the County willing to lease these crossings from lower tier municipalities?
5. The draft management plan recognizes and notes many challenges but does not specifically detail how these concerns will be addressed. Who? When? With what funds? Section 5.3.5. recognizes this issue but does not specify plans for the County of Renfrew? Will this document be released in January?
6. In Section 2.2 of the proposed management plan the term “extensive consultation” is used. How can there have been “extensive consultation” if the Council, residents or staff of one of the municipalities through which the trail runs have not been consulted aside from an invitation to attend a meeting which was advertised to the public in Chalk River in October of 2016? Are the residents, Council and staff of Head, Clara & Maria not significant stakeholders? Would the County be satisfied if this was the level of consultation they were afforded in a decision which affects them so profoundly?
7. Recent correspondence between HCM staff and County staff speak to County representatives coming to HCM to provide a review of the draft Management Plan in January because it will be ready to be circulated to lower tiers for review then. How can the County and those responsible for this process think that a municipality which will be host to this trail not be afforded additional consultation and input than every other lower tier municipality even when the trail does not directly affect them?
8. How will the proposed Code of Conduct be enforced along the extent of the trail?
9. How will you ensure the safety of walkers, hikers, cyclists, snow shoe users and skiers in proximity to motorized users? Signage? How will that be enforced? Is this a liability that the County is ready to take on?
10. Who is paying for trail maintenance and improvements? Who will pay for rebuilding the culverts and bridges along our stretch of the trail?

11. Who will enforce speed limits, crossings, noise, trespass, encroachment and general safety rules? Who will pay for the increased police presence required?

12. Section 5.3.6. speaks to a Memorandum of Understanding between OFSC clubs and the Managing Authority. What about the lower tier that the trail runs through? With Joint and Several liability in Ontario, how are the municipalities through which the trail run being indemnified?

13. Who will ensure that the club is complying with their agreements as it relates to maintenance and removal of garbage? What of when crossing municipal roads? Who will ensure that roads/crossings are being left bare? What of joint and several liability in these instances?

14. Section 5.3.9. speaks to the local municipality paying for by-passes. Where was the consultation when this resolution was being adopted? Were all lower tier municipalities consulted? Were they aware of the costs that were being downloaded to municipalities that the trails were running through when this resolution was passed? Or was this fact hidden in a larger report similar to omnibus bills passed at the provincial level?

15. How is it fair that a trail, developed with public funds, may only be used when leased to a club by people who have purchased permits for the club?

16. Have the Algonquin's, whose land this rail corridor travels through been consulted in a more respectful and thorough manner than the lower tiers have?

17. Section 7.3 speaks to Tourism Integration, what of the people who purchased land in these rural areas for the sole purpose of removing themselves from built up and commercial environments? How does the county justify this push for tourism to them?

18. The goal was to purchase a contiguous piece of land. How will the planned closing of access to the Bissett Creek bridge by MTO affect that decision? It is not possible for passage through that area on the rail corridor.

Can you please be prepared to provide answers to these questions prior to the meeting or in the package to forward to Council prior to Jan. 23rd? "

Financial Considerations/Budget Impact:

Assuming that the County is successful in raising the funds necessary for trail improvements, that volunteers perform a large portion of the required work; what of the extra costs of insurance, policing, law suits which precedent shows insurers were not liable for?

There will need to be a revenue source. Perhaps the trail will only be open to those who can afford to purchase passes. Would this not marginalize a large number of Renfrew County residents?

The funds are coming from reserves? With the infrastructure deficit within the county; would these reserves not better be spent elsewhere?

Any costs which cannot be covered through the above questionable sources will come either from the lower tier or the County. Considering that the County obtains considerable revenues from the local property tax owner; should they not have had a say in how their taxes are being spent? Are they aware?

Others Consulted:

- Municipal Solicitor
- Municipal Insurer

- County Official Plan, Trails Management Strategy, Draft Algonquin Trail Management Plan, K&P Advisory Plan
- Provincial Policy Statement under the Planning Act
- Municipal Zoning By-Law 2004-12
- The Municipal Act, The Planning Act, The Environment Protection Act, The Motorized Snow Vehicles Act
- Successful Law Suit – Quebec - COALITION FOR THE PROTECTION OF THE ENVIRONMENT LINEAR PARK "NORTHERN NORTH TRAIN", complainant -and- GERARD EMOND, ALINE THIBAUT-ÉMOND, Designated persons c. LAURENTIDES REGIONAL COUNTY MUNICIPALITY, DIABLE AND RED SNOWMOBILE CLUB INC., MOTELLE-NEIGE CLUB OF LABELLE INC., TIG INSURANCE COMPANY, GROUPE COMMERCE INSURANCE COMPANY, LOMBARD INSURANCE COMPANY
- Email from Matthew and Ashley Andrews

Approved and Recommended by the Clerk

Melinda Reith,

Municipal Clerk

Melinda Reith

Attachment: Response to Mr. Hutton's Email (On behalf of the Trails Advisory Committee) dated December 21, 2017 – Provided to Mr. Kelley and Mr. Davis for response.