



City of
Peterborough

To: Members of the Committee of the Whole

From: Ken Doherty, Director of Community Services

Meeting Date: September 25, 2017

Subject: Report CSRS17-006
Trail Grooming in Jackson Park for Nordic Skiing

Purpose

A report to recommend approval of the proposal by the Peterborough Nordic Club to groom a section of the Trans Canada Trail within Jackson Park for Nordic Skiing.

Recommendations

That Council approves the recommendations outlined in Report CSRS17-006 dated September 25, 2017, of the Director of Community Services, as follows:

- a) That Staff be directed to enter into an agreement with the Peterborough Nordic Club to allow the Club to groom the trail within Jackson Park for Nordic Skiing, on a trial basis for the 2017-2018 winter season; and
- b) That the Peterborough Nordic Club not be permitted to begin grooming activities until all requirements identified within the agreement are confirmed to be in place, to the satisfaction of City Staff.

Budget and Financial Implications

There is no budget or financial implication resulting from the approval of the recommendation of Report CSRS17-006. All costs associated with the trail grooming, signage and any other risk mitigation measures will be the responsibility of the Peterborough Nordic Club.

Background

Original Proposal Declined

On October 18, 2016, the Arenas Parks and Recreation Advisory Committee (APRAC) approved the recommendation of report APRAC16-032 to respectfully decline the proposal by the Peterborough Nordic Club (PNC) to groom approximately 1.2 km of the Trans Canada Trail within Jackson Park, for the purposes of Nordic Skiing.

At the time the proposal was made, the PNC was not yet a legal entity. As such, the City could not enter into any agreement with the PNC. While PNC provided a letter from Cross Country Ontario indicating that insurance is available through Cross Country Ontario and Cross Country Ski de Fond Canada for clubs in good standing, no policy was in place at the time.

PNC made a similar proposal to Otonabee Region Conservation Authority (ORCA) to groom the section of the trail owned by ORCA, between Jackson Park and Ackison Road. After receiving the Letters Patent for PNC, confirming they are an incorporated body, ORCA entered into an agreement with PNC to groom ORCA's section of the Trail from February 15, 2017 to April 30, 2017. While there was no expressed or implied right to renew the agreement, ORCA has confirmed with the City that it intends to continue the arrangement with PNC.

2017 Reconsideration by APRAC

At its meeting of September 19, 2017, the Arenas Parks and Recreation Advisory Committee endorsed the recommendations of this report since original concerns were addressed by the project proponent.

Legal Entity Status of PNC:

Staff has confirmed that the PNC is a legal entity, which can enter an agreement with the City. Staff obtained a copy of the PNC's Letters Patent, confirming its' incorporation.

Insurance Coverage:

There are two general areas of risk that need to be considered, as follows: Risk that is posed by the operation of a snowmobile to perform the PNC's grooming activities, and the risk of personal injury to a skier or to another person using the groomed trail for another purpose.

Snowmobile Insurance Coverage:

In order for coverage from the Canadian Snowsports Association's insurance policy to be afforded to a loss involving the operation of a snowmobile used for the purpose of PNC's operations, provincial regulations must be adhered to. In the event of a loss, the automobile insurance policy, which is held by the owner of the snowmobile, will be the first to respond. Verification of such insurance must be evidenced to the City, prior to any trail grooming taking place. The City confirmed that, although the PNC provided an insurance pink slip for operation of the snowmobile, the insurance was not in an amount required under the PNC's agreement with ORCA and the use of trail grooming was not disclosed to the insurer. Such non-disclosure can lead to a denial in coverage by an insurer. Any agreement with PNC will require PNC to provide evidence of appropriate insurance for the snowmobile it intends to use before the City would permit PNC to commence grooming activities.

Personal Injury Insurance Coverage:

The City's Insurance and Risk Management Coordinator has reviewed the insurance program available to the PNC, and contacted the Managing Director and CEO of the Canadian Snowsports Association (CSA), the governing body. The PNC must be a member of CSA to be afforded insurance coverage. Coverage is contingent upon the PNC's compliance with the guidelines contained in the Cross Country Canada Liability Insurance Manual (the "Guidelines"). If the PNC fails to comply with the Guidelines insurance coverage may not be afforded if there is a loss and the City, as the landowner, would be at risk. If an agreement was entered into with PNC to allow it to groom the trail, wording would need to be included that requires PNC to provide written verification that it is in compliance with the Guidelines.

CSA has confirmed that, in the event of a claim arising out of the activities of the PNC, and where the City is also party to the action, the policy held by the PNC will be primary to respond, defending the City. Any insurance held by the City will not be called upon as the first line of coverage. The CSA confirmed that a limit of \$15 million is available.

Since no person who is not a member of the PNC will sign a waiver, Staff, having reviewed recent case law about occupier's liability, will also require the PNC to develop signage to warn the general public that the area they are about to enter has been or may be groomed and that grooming may increase the risk of a slip and fall, especially during freeze-thaw cycles. Such signage should read: Exercise caution. Use at own risk.

Waivers:

The CSA is to provide the PNC with a Word template of the waiver that is to be signed by members of PNC. It is to be given to the City for review, so amendments can be made to the satisfaction of the City.

City By-Laws:

Legal Services has reviewed and provided interpretation of City By-Laws 09-164, and 14-096. Both By-Laws prohibit motorized snow vehicles on the City's multi-use trail system. By-Law 09-164 states it is not an offence for a servant, agent, or employee of the Corporation or the police to operate, propel or drive a vehicle on Public Land, provided such vehicle is engaged in work undertaken by or on behalf of the Corporation or the Police. Grooming of the trail by PNC, provided it is not in breach of any its obligations to the City under an agreement, would be permitted under Article 6 of By-Law 09-164.

Agreement with the PNC:

If the recommendations of this report are approved, an agreement will need to be entered into with the PNC. The agreement will include all mandatory risk management elements that need to be in place and adhered to by PNC, to the City's satisfaction. Staff recommends that, if Council is prepared to accept the risks associated with permitting PNC's activities on its land, that a trial agreement be entered into for 2017-2018 winter season.

The PNC will not be permitted to use the trail for races, special events or commercial operations. The trail will be used for recreational purposes only, and will be available for use by the general public. No motorized or grooming equipment will be used when travelling over the Pagoda Bridge. The agreement with PNC will require PNC to show, to staff's satisfaction, how it will access the trail without using the Pagoda Bridge. The agreement will also address regular inspection of the trails, especially after grooming and inclement weather. The agreement will also authorize Recreation Division staff to terminate the agreement at any time for any reason.

Summary

The PNC requested that APRAC reconsider its original decision made in 2016 to not permit the PNC to groom a section of the Trans Canada Trail within Jackson Park, for Nordic Skiing. The PNC has confirmed it is now incorporated, giving it the ability to enter an agreement with the City, and obtain appropriate insurance coverage. City Staff is recommending that, pending PNC being able to provide evidence of satisfactory insurance for its activities and pending PNC's development of acceptable waiver language and signage, PNC be permitted to groom the Trail in Jackson Park, as requested, on a trial basis for the 2017/18 winter season.

Submitted by,

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