



## Staff Memo

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**Report To:** South Huron Council

**From:** **Dan Best, Chief Administrative Officer/Deputy Clerk**

**Date:** December 6 2021

**Report:** CAO 22.2021

**Subject:** Revised Agreement Between South Huron and Perth South for the Kirkton-Woodham Pool

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### Recommendations:

**That** the memo of D. Best, Chief Administrative Officer dated December 6, 2021 regarding the need for an updated agreement between South Huron and Perth South regarding the Kirkton-Woodham Pool be received; and

**That** Council approve the framework of a revised legal agreement to be solely between the two municipalities; and

**That** the role of Committee be defined through agreed upon Terms of Reference; and

**That** the Council representatives from both municipalities work with Staff in the development of the aforementioned Terms of Reference and revised Legal Agreement; and

**That** this topic be added to the agenda of the upcoming Joint Municipal Council meeting.

### Purpose:

Update and Approval

### Background and Analysis:

For the past several years there have been concerns identified respecting the current agreement with Perth South respecting the Joint Use Agreement concerning the Kirkton-Woodham Pool. These concerns have been exacerbated due to COVID-19. The following provides an overview of the current situation.

The 2013 Joint Use Agreement concerning the pool is concerning as the Pool Committee appears to be a “party” to the agreement. In order to be a party to an agreement, the entity must have some legal status (i.e. it must be a person or a corporation of some sort). Unless the Committee was established through some other means, it is unclear how or why the Committee would be a signatory or party to the agreement.

The agreement itself seems to “create” the Committee, however the language concerning the Committee’s establishment is not very definitive.

The current agreement offers no direction whatsoever concerning the actual operations of the facility. There is no formal mechanism created whereby the Committee is to be given instructions or for the Committee to report to each Council. It simply says minutes of Committee meetings will be circulated to the clerk of each municipality. It provides no specific direction concerning the operating season, specific schedules, the establishment of a budget etc. Furthermore, there are no provisions to address how disputes might be resolved, short of formal arbitration.

Numerous questions arise as a result of the brevity and lack of detail. For example, does South Huron have the final say on staff hired to operate the facility because they would be employees of South Huron?

Notwithstanding the foregoing, the agreement remains a valid agreement as between the two municipalities. That said it is very limited in scope. It provides for the creation of the advisory committee and establishes basic cost sharing obligations. It indicates that staff recruited to work at the facility will be employees of the Municipality of South Huron.

Based upon the Minutes of the July 14th, 2015 Pool Committee meeting, it appears that the Committee was recommending approval of “terms of reference” concerning its activities. Although the minutes of that meeting were “received” by both Municipalities, there was no express approval of the terms of reference by either municipality. Furthermore, in order to properly implement the terms of reference (even if one were to equate receipt of the minutes with approval), the terms of reference should have been added to the 2013 Agreement by way of an amending agreement (as required in section 9.4 of the 2013 Agreement).

The decision by South Huron Council not to open the pool for the 2020 season caused significant concern and upset. It should be noted that such a decision was/is not without legal authority. Pursuant to section 19(2) of the Municipal Act, 2001 (and to summarize it rather generally) a municipality that wishes to operate or provide a system in another municipality can only do so with the written consent (permission) of the host municipality. Thus, Perth South could not operate the pool on its own without consent from South Huron. The existing agreement does nothing to displace that requirement, admittedly, perhaps Perth South may have been provided with the option of operating it alone. It would have been very difficult to have addressed and accommodated such a proposal (i.e. Amending agreement, by-law approval etc.) considering what was occurring in March through June of last year.

At this point, it remains open for Perth South and South Huron to discuss both the short term and long term outlook for the continuing use and operation of the pool. Ideally if Perth South and South Huron are going to continue in a long term relationship, a new and more involved agreement should be prepared.

**Financial Impact:**

There are no financial implications as a result of the actions outlined in this memo.

**Legal Impact:**

There are no legal implications as a result of the actions outlined in this memo.

**Staffing Impact:**

There are no staffing implications as a result of the actions outlined in this memo.

**Related Documents:**

By-law 7-2013

Terms of Reference Received 2015

Legal Correspondence Dated July 17, 2020

Legal Correspondence Dated September 17, 2021

Respectfully submitted,

**Dan Best, Chief Administrative Officer/Deputy Clerk**