



City of Hamilton

GENERAL ISSUES COMMITTEE ADDENDUM

Meeting #: 19-008
Date: April 17, 2019
Time: 9:30 a.m.
Location: Council Chambers, Hamilton City Hall
71 Main Street West

Stephanie Paparella, Legislative Coordinator (905) 546-2424 ext. 3993

	Pages
10. DISCUSSION ITEMS	
*10.14 Judicial Investigation - Red Hill Valley Parkway (LS19017) (City Wide)	2
13. GENERAL INFORMATION / OTHER BUSINESS	
*13.2 Update respecting the Provinces Intention to Move from 52 Paramedic Services to 10 Across the Province (no copy)	
14. PRIVATE AND CONFIDENTIAL	
*14.4 Strathearne Avenue North Monitoring - Potential Regulatory Litigation (PW19036/LS19016) (Ward 4)	
<p>Pursuant to Section 8.1, Sub-sections (e) and (f) of the City's Procedural By-law 18-270, and Section 239(2), Sub-sections (e) and (f) of the <i>Ontario Municipal Act</i>, 2001, as amended, as the subject matter pertains to litigation or potential litigation, including matters before administrative tribunals, affecting the City; and, the receiving of advice that is subject to solicitor-client privilege, including communications necessary for that purpose.</p>	



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Legal and Risk Management Services Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	April 17, 2019
SUBJECT/REPORT NO:	Judicial Investigation Red Hill Valley Parkway (LS19017) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Nicole Auty (905) 546-2424 Ext. 4636
SUBMITTED BY:	Nicole Auty, City Solicitor Legal and Risk Management Services Corporate Services
SIGNATURE:	

RECOMMENDATION(S)

- (a) That the Terms of Reference for the Judicial Investigation attached as Appendix "A" be approved and that the Terms of Reference be forwarded to the Chief Justice of the Superior Court;
- (b) That the City Manager be authorized and directed to take such actions and to execute such documents in a form satisfactory to the City Solicitor as required to give effect to Council's decision to initiate a Judicial Investigation, including such actions required by the Justice presiding over the Investigation.
- (c) That the costs of the Judicial Investigation be paid from the Tax Stabilization Reserve (110046);
- (d) That staff provide regular status reports identifying the costs to date associated with the Judicial Investigation;
- (e) That the law firm of Lenczner Slight Royce Smith Griffin LLP be appointed as legal counsel for the City of Hamilton for the Judicial Investigation.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: Judicial Investigation Red Hill Valley Parkway (LS19017) (City Wide) -
Page 2 of 4**

EXECUTIVE SUMMARY

On March 20, 2019 Council passed a motion initiating a Judicial Investigation and referring a list of questions to external legal counsel for review and to report back.

The proposed Terms of Reference in Appendix "A" are the result of that review and are presented for Council's consideration.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The *Municipal Act 2001*, requires the City to pay the costs of the Investigation. In order to ensure the Tax Stabilization Reserve (110046) not over committed, staff will commit \$7M as an initial allocation. This is not an indication of budget or detailed estimate of the overall cost of the Investigation. The proposed reports will provide Council with an ongoing account of the costs of the Investigation.

Staffing: As indicated in earlier reports, there will be impacts on internal staffing and resourcing as a result of the Judicial Investigation. The extent of the impact will not be known until the Commissioner is appointed and the process and scope of the investigation are confirmed.

Legal: The legal implications of a Judicial Investigation have been provided to Council in earlier reports. Due to the specialized nature and resources required to support Council in relation to the Investigation, it is recommended that external counsel be retained on behalf of the City.

HISTORICAL BACKGROUND

On January 23, 2019, and in greater detail on February 6, 2019, Council was provided information regarding a friction report relating to the Red Hill Valley Parkway.

Following review of that information, on March 20, 2019 Council decided to initiate a Judicial Investigation into the circumstances surrounding the matter. Council also directed external legal counsel to bring back Terms of Reference to provide to the Commissioner who will conduct the Investigation.

**SUBJECT: Judicial Investigation Red Hill Valley Parkway (LS19017) (City Wide) -
Page 3 of 4**

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Section 274 of the *Municipal Act, 2001* sets out the legislative parameters for a Judicial Investigation.

RELEVANT CONSULTATION

Appendix “A” was reviewed and prepared by external counsel, Lenczner Slaght Royce Smith Griffin LLP.

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

The Terms of Reference are attached as Appendix “A” to Report LS19017 and are based on the questions submitted by Council at the March 20, 2019 Council meeting. Once approved by Council, the Terms of Reference will set the parameters of the Judicial Investigation, subject to approval from the Commissioner presiding over the Judicial Investigation.

Although the *Municipal Act, 2001* mandates that the Commissioner presiding over the Judicial Investigation shall investigate the matters requested by Council, in practice, commissioners of judicial inquiries often seek to vary the scope of the investigation and may refuse to investigate terms that it considers to be too broad or vague. In the event that the Commissioner appointed to the Judicial Investigation wishes to revise certain terms in the Terms of Reference, external counsel will work with the Commissioner and Council to refine the specified terms.

Pursuant to the legislation, the City may hire legal counsel to represent the City and the City is obligated to pay for the Commissioner to retain legal counsel and all other costs of the Investigation, including administrative and logistical costs.

It is unknown at this time what the costs of the Judicial Investigation will be and therefore staff recommend reporting back at regular intervals to identify the costs expended to date. It is also recommended that Council allocate an initial amount of \$7M from the Tax Stabilization Reserve to allow for proper management of this reserve.

ALTERNATIVES FOR CONSIDERATION

Not Applicable

**SUBJECT: Judicial Investigation Red Hill Valley Parkway (LS19017) (City Wide) -
Page 4 of 4**

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report LS19017 –
Terms of Reference re Judicial Inquiry

WHEREAS under s. 274 of the *Municipal Act, 2001* S.O. 2001, c. 25, the council of a municipality may, by resolution, request a judge of the Superior Court of Justice to inquire into or concerning any matter connected with the good government of the municipality, or the conduct of any part of its public business;

AND WHEREAS any judge so requested shall make inquiry and shall report the results of the investigation or inquiry to the council as soon as practicable;

AND WHEREAS on February 6, 2019, Council of the City of Hamilton ("**Council**") was advised that a draft report by Tradewind Scientific Ltd. with respect to friction on the Red Hill Valley Parkway (the "**RHVP**"), dated November 20, 2013 (the "**Report**"), was not disclosed to Council;

AND WHEREAS the Report was provided to the City of Hamilton's Department of Engineering Services in January, 2014 by Golder Associates Ltd;

AND WHEREAS the Ontario Ministry of Transportation (the "**MTO**") conducted friction testing on the RHVP in 2007, but did not disclose the results of the testing (the "**MTO Report**") to Council or to the public;

AND WHEREAS concerns have been raised about why the Report, or the information and recommendations in the Report, were not disclosed to Council;

NOW THEREFORE Council does hereby resolve that:

1. An inquiry is hereby requested to be conducted pursuant to s. 274 of the *Municipal Act*, S.O. 2001, c. 25, which authorizes the Commissioner to inquire into any matter related to a supposed malfeasance, breach of trust, or other misconduct on the part of a member of Council, or an officer or employee of the City of Hamilton or of any person having a contract with it, in regards to the duties or obligations of the member, officer, or other person to the corporation, or to any matter connected with the good government of the municipality, or the conduct of any part of its public business; and
2. The Honourable Chief Justice Smith, Chief Justice of the Superior Court of Ontario, be requested to designate a judge of the Superior Court of Ontario as Commissioner for the inquiry and the judge so designated as Commissioner is hereby authorized to conduct the inquiry in two stages:
 - (a) To obtain, bearing in mind cost and the principles of proportionality, all documents necessary to answer the following questions:

- (i) Identify all individuals who received a copy of the Report or were advised of the Report or the information and recommendations contained therein after it was provided to the City's Department of Engineering Services in January, 2014;
- (ii) Based on the City's by-laws, policies and procedures, as they were in 2014, should Council have been made aware of the Report, or the information and recommendations contained therein, once the Report was submitted to the Department of Engineering Services in 2014?
- (iii) Why was the information in the Report, or the information and recommendations contained therein, not provided to Council or the public once the Report was submitted to the Department of Engineering Services in 2014?
- (iv) Who, if anyone, was responsible for the failure to disclose a copy of the Report, or the information and recommendations contained therein, to Council in 2014?
- (v) Was there any negligence, malfeasance or misconduct in failing to provide the Report, or the information and recommendations contained therein, to Council or the public?
- (vi) How was the Report discovered in 2018?
- (vii) Identify all individuals who received a copy of the Report or were advised of the Report or the information and recommendations contained therein, in 2018;
- (viii) Were appropriate steps taken to disclose the Report, or the information and recommendations contained therein, once it was discovered in 2018?
- (ix) Was there any negligence, malfeasance or misconduct in failing to disclose the Report, or the information and recommendations contained therein, once the Report was discovered in 2018?
- (x) Were users of the RHVP put at risk as a result of the failure to disclose the Report's findings?
- (xi) Did the Report contain findings or information that would have triggered Council to make safety changes to the roads or order further studies?

- (xii) Did the failure to disclose the Report, or the information and recommendations contained therein, contribute to accidents, injuries or fatalities on the RHVP since January, 2014?
- (xiii) Did anyone in the Public Works Office or Roads Department request, direct or conduct any other friction test, asphalt assessment, or general road safety reviews or assessments on the RHVP?
- (xiv) Did subsequent consultant reports provide additional support or rebuttal to the conclusions contained in the Report?
- (xv) Identify any changes to the City's bylaws, policies and procedures to prevent any such future incidents of non-disclosure of significant information to Council;
- (xvi) Did the MTO Report provide additional support or rebuttal to the conclusions contained in the Report?
- (xvii) Why was the MTO Report not provided to Council or made publicly available?
- (xviii) Who was briefed within the MTO's office about the MTO Report?
- (xix) Did the MTO Report contain findings or information that would have triggered Council to make safety changes to the roads or order further studies?
- (xx) Did the failure to disclose the MTO Report, or the information and recommendations contained therein, contribute to accidents, injuries or fatalities on the RHVP since January, 2014?
- (xxi) Did the MTO request, direct or conduct any friction tests, asphalt assessments, or general road safety reviews or assessments on the RHVP other than the MTO Report?
- (xxii) What is the standard in Ontario, if any, with respect to the acceptable levels of friction on a roadway?
- (xxiii) Is information with respect to the friction levels of the roadways in Ontario publicly available?
- (xxiv) To what extent do other factors, including, but not limited to, driver behaviour, lighting and weather conditions, contribute to motor vehicle

accidents when compared to the impact of friction levels on motor vehicle accidents on the RHVP?

- (b) Having concluded the documentary review, to hold a public hearing to answer the questions listed in items 2 (a) (i) – (xxiv).
3. **AND IT IS FURTHER RESOLVED THAT** the Terms of Reference of the Inquiry shall be to inquire into all aspects of the above matters listed in items 2 (a) (i) – (xxiv), their history and their impact on the ratepayers of the City of Hamilton as they relate to the good government of the municipality, or the conduct of its public business, and to make any recommendations which the Commissioner may deem appropriate and in the public interest as a result of the inquiry.