



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Economic Development Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	February 20, 2019
SUBJECT/REPORT NO:	Proposed Amalgamation of Hamilton Port Authority and Oshawa Port Authority (PED19065) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Glen Norton (905) 546-2424 Ext. 5780 Michael Kyne (905) 546-2424 Ext. 4716 Ed VanderWindt (905) 546-2424 Ext. 2574 Tom Hewitson (905) 546-2424 Ext. 4159 Anita Fabac (905) 546-2424 Ext. 1258 Chris Phillips (905) 546-2424 Ext. 5304 Ray Kessler (905) 546-2424 Ext. 7019
SUBMITTED BY:	Glen Norton Director, Economic Development Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That the Mayor be directed, on behalf of the City of Hamilton, to request a meeting with the federal Minister of Transport to discuss this proposed amalgamation and outline the City of Hamilton's objectives and concerns;
- (b) That Transport Canada be requested to provide to the City of Hamilton, the draft Letters Patent proposed for the newly amalgamated port authority for the City's review and input prior to finalization;
- (c) That the Mayor be directed, on behalf of the City of Hamilton, to make written representations to the Minister regarding the amalgamation respectfully requesting that the:
 - (i) Corporate name of the amalgamated port authority be known as the 'Hamilton-Oshawa Port Authority' and have its registered offices located in Hamilton, Ontario;

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- (ii) Board of Directors of the amalgamated port authority have no more than seven members and that the Cities of Burlington, Hamilton and Oshawa each be granted the authority to appoint one member; and,
- (iii) Newly amalgamated port authority be directed to continue the close working relationship established between the Hamilton Port Authority and the City of Hamilton, its citizens and stakeholders particularly with respect to the transparency of port operations, project reviews, development planning, site plan approvals and the issuance of building permits.

EXECUTIVE SUMMARY

This Report responds to Planning Committee's February 5, 2019 direction to staff to report on the implications of the proposed merger of the Hamilton Port Authority (HPA) and the Oshawa Port Authority (OPA).

This staff review indicates that:

1. With little prior notice or explanation, on February 9, 2019, the federal Minister of Transport formally proposed the amalgamation of the HPA and OPA to continue as a single port authority named the "Oshawa-Hamilton Port Authority". Interested persons have 30 days to make representations to the Minister subsequent to which the Minister may propose that the federal Governor in Council issue a Certificate of Amalgamation formally amalgamating the two authorities;
2. The federal government has the specific authority under the *Canada Marine Act* to amalgamate two or more port authorities the effect of which would be that the newly amalgamated authority would assume the geographical jurisdictions, assets, liabilities and obligations of the HPA and OPA;
3. Recent financial reports indicate that the HPA is in a stronger financial position than the OPA;
4. The City and the HPA have long enjoyed a cooperative, consultative and mutually beneficial relationship—particularly with respect to land use planning and development—that the City of Oshawa does not apparently enjoy with the OPA;
5. The City has a number of ongoing agreements with the HPA (which will be assumed by the newly amalgamated port authority) and is currently resolving a few issues of common interest (including the lease of part of Pier 22 and the acquisition of water lots to facilitate the rehabilitation of the Pier 8 shore-wall); and,

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6. In order to provide useful input to the federal government regarding this proposed amalgamation, the City requires a better understanding of the federal government's motivations and objectives. To that end, staff recommend that the City meet with the federal Minister of Transport to obtain that information—including a copy of the draft Letters Patent for the newly amalgamated port authority—and directly communicate the City's concerns to the Minister. The City will then be better informed to provide its formal written submissions.

Alternatives for Consideration – N/A

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: While the financial implications are more fully outlined in this Report, a review of recent financial statements indicates that the HPA currently enjoys a stronger financial position than the OPA particularly in terms of asset value under management, annual revenues/deficits, debt and borrowing limits.

Staffing: There are no known staffing implications for the City of Hamilton.

Legal: The complete legal implications are more fully outlined in this Report. Significantly, the newly amalgamated port authority will assume the geographical jurisdictions, assets, liabilities and obligations of the HPA and the OPA.

HISTORICAL BACKGROUND

Planning Committee's Direction

Subsequent to the February 5, 2019 announcement by the federal Minister of Transport (Minister) that the federal government intended to amalgamate the Hamilton Port Authority (HPA) and the Oshawa Port Authority (OPA), Planning Committee directed staff "to report back to the General Issues Committee on the legal, financial, economic and development implications of the recently announced merger of the Hamilton Port Authority and Oshawa Port Authority".

Formal Announcement of Intent—Canada Gazette (February 9, 2019)

On February 9, 2012, the federal government formally announced its intent to merge the HPA and OPA by publishing a Certificate of Intent to Amalgamate in the Canada Gazette (<http://gazette.gc.ca/rp-pr/p1/2019/2019-02-09/html/order-decret-eng.html>) which noted that:

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- Pursuant to section 59.1 of the Port Authorities Management Regulations the Minister recommended that the OPA and the HPA be amalgamated and continue as one port authority to be named the “Oshawa-Hamilton Port Authority”;
- This “proposal seeks to strengthen the Canadian supply chain in Ontario by providing a coordinated approach to port development, land use and marketing” and “would allow the amalgamated port authority to leverage the operations of the” HPA and “the established operations of the” OPA “to successfully broaden multimodal transportation options in the Greater Toronto Area”;
- The benefits of amalgamating Canadian Port Authorities (CPAs) have been raised in the 2016 review of the *Canada Transportation Act* (which recommended “that work be conducted to further the amalgamation of CPAs guided by ‘common user principles embodied in the *Canada Marine Act*’ and also noted the success of the previous Port Metro Vancouver amalgamation”) as well as the Minister of Transport’s Transportation 2030 vision which “proposed a broad agenda for the future of Canada’s transportation system that includes examining the governance and the optimization of CPAs”;
- Canada’s national port system is made up of 18 CPAs—non-share capital corporations incorporated under the *Canada Marine Act (CMA)*. CPAs handle about 60% of Canada’s marine commercial cargo tonnage and contribute over 213,000 direct and indirect jobs and over \$25 B to Canada’s GDP;
- This amalgamation is administrative in nature and would represent no further financial costs for the Government of Canada or to the Canadian public. Operations at both ports would continue without disruption and the amalgamated port would be in a strong financial position and forecast positive growth;
- There are no expected environmental implications, as no changes to the current land holdings, infrastructure, or real property of the OPA and HPA are being proposed. Available industrial land at both ports would complement one another in terms of business coordination and development planning to strengthen the Ontario regional supply chain. Continuity of operations at both ports would result in continued direct and indirect economic benefits for surrounding communities; and,
- Consultations will be conducted after the posting of this Certificate of Intent. Interested persons may make written representations to the Minister within 30 days after publication of the Certificate. “The results of these consultations would be considered within the context of a second submission to the Governor in Council

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on whether to seek the issuance of a Certificate of Amalgamation that officially amalgamates the two ports. Consultation with entities directly affected by a proposed amalgamation will be conducted by Transport Canada within the consultation period.”

The Creation of the Hamilton and Oshawa Port Authorities

The federal government created the HPA in 2001 to replace the Hamilton Harbour Commission (which had been in operation since 1912) and created the OPA in 2012 to replace the Oshawa Harbour Commission (which had been in place since 1960).

The Port Authorities Management Regulations (PAMR) are issued under the *Canada Marine Act* (CMA) which was enacted in 1998 with the stated purpose of establishing a system of “competitive, efficient and commercially oriented” Canadian ports and commercializing the St. Lawrence Seaway.

CPAs are intended operate at arm’s length from the federal government and are governed by a board of directors chosen by port users and the municipal, provincial and federal governments. Each board:

- Sets the business direction and makes commercial decisions for the port;
- Sets fees (e.g. berthage and wharfage fees);
- Is responsible for maintaining and dredging commercial shipping channels; and,
- Acts as a landlord, leasing port operations to private operators.

Transport Canada states that CPAs must also be financially self-sufficient. They don’t receive federal funding to meet operating costs or deficits but finance capital projects using their own revenues. However, CPAs can also partner with the private sector, borrow from commercial lenders or apply for certain federal grants related to infrastructure, the environment or security.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

RELEVANT CONSULTATION

- Ian Hamilton, CEO, Hamilton Port Authority;
- Financial Policy and Planning Division and Legal Services Division, Corporate Services;

- Building Division, Planning Division, Real Estate Section of the Economic Development Division, Planning and Economic Development Department;
- City Manager's Office.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The Amalgamation Process

The PAMR were specifically amended in 2007 to permit the amalgamations of two or more port authorities using the following process:

1. The government must publish a Certificate of Intent to Amalgamate in the Canada Gazette and at least one major newspaper that is distributed in the municipalities where the affected ports are situated. The Certificate shall also state that interested persons may make written representations to the Minister within 30 days of publication;
2. The government may, at any time after the 30-day period, amalgamate the port authorities by issuing a Certificate of Amalgamation which shall specify the day on which the amalgamation takes effect and contain the Letters Patent of the amalgamated port authority; and,
3. The government may also revoke a proposed amalgamation by issuing a Certificate of Revocation of Intent to Amalgamate at any time before the Certificate of Amalgamation is issued.

The Legal Effect of Amalgamation

On the day on which an amalgamation takes effect:

- (a) Every director of an amalgamating port authority who remains in office continues as a director of the amalgamated port authority for the balance of their term or until s/he ceases to hold office. However, the federal government may remove any director of an amalgamating port authority during the period that begins on the day on which the federal government requires the amalgamation and ends on the day before the day on which the amalgamation takes effect;
- (b) The navigable waters within the jurisdiction of each amalgamating port authority continue to be within the jurisdiction of the amalgamated port authority;

- (c) The property, rights and interests of each amalgamating port authority continue to be the property, rights and interests of the amalgamated port authority. However, this does not constitute a disposition of the property, rights and interests of an amalgamating port authority to the amalgamated port authority;
- (d) The amalgamated port authority continues to manage any real property or immovable (i.e. a fixture) that the Minister has given to an amalgamating port authority;
- (e) The real property or immovables occupied by each amalgamating port authority continue to be occupied by the amalgamated port authority;
- (f) The amalgamated port authority continues to be liable for the obligations of each amalgamating port authority;
- (g) An existing cause of action, claim or liability to prosecution is unaffected;
- (h) A civil, criminal or administrative action or proceeding pending by or against an amalgamating port authority may be continued to be prosecuted by or against the amalgamated port authority;
- (i) A conviction against, or ruling, order or judgment in favour of or against, an amalgamating port authority may be enforced by or against the amalgamated port authority;
- (j) Every fee fixed by an amalgamating port authority continues in force until the expiry date specified in the provision that fixes the fee or until the amalgamated port authority repeals that provision or replaces the fee; and,
- (k) The letters patent contained in the Certificate of Amalgamation are the letters patent of the amalgamated port authority.

The Importance of the Letters Patent

Under the CMA, the power of a port authority to operate a port is limited to the power to engage in:

- (a) Port activities related to shipping, navigation, transportation of passengers and goods, handling of goods and storage of goods, to the extent that those activities are specified in the Letters Patent; and,
- (b) Other activities that are deemed in the Letters Patent to be necessary to support port operations.

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Letters Patent are the official documents issued by the federal government confirming the creation/incorporation of the new amalgamated port authority as well as its official name, headquarters and the composition/authority of its Board of Directors.

The CMA specifies that the Letters Patent shall set out:

- (a) The corporate name of the port authority;
- (b) The place where the registered office of the port authority is located;
- (c) The navigable waters that are within the port authority's jurisdiction;
- (d) The federal real property and federal immovables under the management of the port authority;
- (e) The real property and immovables, other than the federal real property and federal immovables, held or occupied by the port authority; and,
- (f) The number of directors, between seven and eleven, to be appointed, to be chosen as follows:
 - (i) One individual nominated by the Minister;
 - (ii) One individual appointed by the municipalities mentioned in the Letters Patent;
 - (iii) One individual appointed by the province in which the port is situated; and,
 - (iv) The remaining individuals nominated by the Minister in consultation with the users selected by the Minister or the classes of users mentioned in the Letters Patent;
- (g) A code of conduct governing the conduct of the directors and officers of the port authority;
- (h) The charge on the gross revenues of the port authority, or the formula for calculating it, that the port authority shall pay each year to the Minister on the day fixed by the Minister to maintain its Letters Patent in good standing;

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- (i) The extent to which the port authority and a wholly-owned subsidiary of the port authority may undertake port activities referred to in paragraph 28(2)(a) and other activities referred to in paragraph 28(2)(b);
- (j) The maximum term of a lease or licence of federal real property or federal immovables under the management of the port authority;
- (k) The limits on the authority of the port authority to contract as agent for Her Majesty;
- (l) The limits on the power of the port authority to borrow money on the credit of the port authority for port purposes or a code governing that power, as the case may be; and,
- (m) Any other provision that the Minister considers appropriate to include in the Letters Patent and that is not inconsistent with this Act.

Comparing the Current Letters Patent for the HPA and the OPA

Except for expected differences outlining their respective geographical jurisdictions, the current Letters Patent for both the HPA and the OPA are largely similar and meet the legislated requirements listed above. That said, the HPA's present Letters Patent:

1. Provides more precise instruction regarding the appointment of directors. For example, although both Boards are composed of seven members appointed as follows:
 - the Governor in Council appoints one individual nominated by the Minister;
 - the Province of Ontario appoints one individual;
 - The local municipality appoints one individual. However, the City of Oshawa appoints its member independently while the City of Hamilton is required to consult with the City of Burlington; and,
 - The Governor in Council appoints the four remaining individuals. For the OPA, all four are appointed from one 'User' group (described as "Major Business Users") whereas, for the HPA, these appointments come from three "User" groups—"Private Docks" (one position), "Port Authority Docks and Related Businesses" (two positions) and "All other port users, including but not limited to labour, environmental and recreational users" (one position);

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2. Grants the HPA the explicit authority to operate or maintain a railway within the port;
3. Provides the HPA with more explicit authority to delegate activities to any subsidiary corporations it creates. For example, a HPA subsidiary company can operate a freight forwarding facility or a dry dock;
4. In certain circumstances, limits the length of a licence/lease of federal real property granted by the HPA to 40 years (OPA's limit is 60 years) but both the HPA and OPA can extend this limit to 99 years with Minister's approval; and,
5. Permits the HPA to borrow up to \$5 M while the OPA is limited to \$500 K and a 365-day term and must borrow from a member of the Canadian Payments Association.

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Financial Comparison of the HPA and the OPA

A review of the financial statements of both the HPA and OPA reveals a very dissimilar picture. The HPA is in a relatively strong financial position marked by operating surpluses, significant assets and little debt. The OPA, in turn, would appear to be in a relatively weak financial position marked by operating losses, declining asset base and increasing short term debt.

The chart below provides highlights of the financial information:

Port Authority Financial Information (2017)

Financial Indicator	Hamilton		Oshawa	
	\$	Trend	\$	Trend
Assets	145,425,725	↑	9,909,613	↓
Current Assets (CA)	14,555,887	↑	234,658	↓
Equity	134,202,739	↑	3,812,220	↓
Net Income	3,645,543	✓	(230,306)	✗
Cash/Investment	11,807,642	✓	0	✗
Liabilities				
Current Liabilities (CL)	5,211,705	↓	5,525,220	↓
Non-Current Liabilities	6,011,281	↑	21,141	↑
Debt (Borrowings)	0	✓	551,032	↑
Ratios:				
<i>Liquidity Measurement Ratio</i>				
Current Ratio (CA/CL)	2.79	✓	0.04	✗
<i>Debt Ratio</i>				
Debt to Equity Ratio	0.08	✓	1.60	✗

In general, the HPA's financial measures are healthy and trending positively while the OPA's measures are less healthy and trending negatively. With respect to assets, the HPA has significantly more resources including current assets which include cash and investments. The OPA's assets are declining and include no cash or investments. With respect to liabilities, the HPA's Liquidity Current Ratio (Current Assets vs. Current Liabilities) is fairly strong at 2.79 (2.79 times the assets versus liabilities) while the OPA's ratio is quite weak with current liabilities far exceeding current assets. A ratio over 1.0 is considered positive.

Debt to Equity Ratio is also a common measure of financial health. In general, a measure less than 1.0 is considered positive (indicating equity surpasses debt), while a measure

over 1.0 is considered poor (more debt than equity). HPA's ratio of 0.08 is quite strong, while OPA's ratio of 1.60 is quite weak.

The HPA's net income of \$3.6 M in 2017 (\$8.6 M in 2016) is modest given the assets, but none-the-less positive. The OPA had a deficit of about -\$230 K in 2017 (-\$4.4 M in 2016).

With respect to this industry in general, the majority of port authorities have annual surpluses with revenue exceeding expenditures. In a 2015-2016 report entitled "Federal Port Review" by Canadian Sailings, there were only two ports that had operating losses (deficits) that year: Oshawa and Nanaimo. The report noted the challenging financial circumstances of the OPA identifying that their current liabilities exceed its current assets by more than \$6.0 M. The article quotes the OPA's auditor as indicating that this situation would "cast significant doubt on the Port Authority's ability to continue as a going concern".

The primary driver for the OPA's liabilities is a recent arbitration ruling that directed the OPA to pay \$4.4 M related to a development issue. The terms and conditions of this payment have not been finalized and certainly would transfer to the merged corporation.

Based on the OPA's financial challenges, it is possible that the primary reason for the Federal Government to propose this merger is financially motivated (the announcement indicates increased supply chain efficiencies). The significantly different financial positions give cause for concern that the merger may lead to HPA's financial strength being diminished in the short-term as its assets become merged and possibly used to support the OPA's operations. HPA's assets could also be used to make investments in the OPA lands which may possibly divert potential business from Hamilton to Oshawa.

Land Use Planning and Development Implications

In August 2000, Report PDC00137 was approved by Council which established a "project review" or Site Plan Control process for the area known as Eastport. The report established the mutual goals and objectives of the City and the HPA (then the Hamilton Harbour Commission) and laid out the process for development proposals which required the HPA to attend pre-consultation meetings with staff and submit Site Plan applications.

When the City established its current Site Plan Control Process, the previous direction remained in place. City staff and the HPA continue to have pre-consultation meetings to discuss the HPA's land use plan, vision and upcoming projects, and the HPA utilizes the City's Site Plan Control process for its projects, including attending Development Review

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Team meetings and consulting Building Division decision-makers. While the City is not the formal approval authority for HPA developments, this cooperative process results in jointly developed recommendations related to matters such as engineering requirements, urban design, landscaping treatments and other site planning matters which the HPA typically implements.

City of Oshawa Planning staff recently confirmed that Oshawa does not enjoy a similar established process with the OPA. City of Oshawa staff do not have pre-consultation meetings and the OPA does not utilize the site plan process for its projects nor does it receive recommendations from City staff on development proposals.

City Building Division and Planning staff are particularly concerned that the long established, cooperative and mutually beneficial relationship and consultations between the City and the HPA may be lost if the newly amalgamated port authority does not accord the relationship the same priority as the HPA. The continuation of this relationship is particularly critical given the extensive developments presently underway on the Hamilton waterfront.

Economic Development Implications

The Economic Development Division acknowledges the potential value of an amalgamated port network. However, the Division think it appropriate to seek a commitment from the new port authority that any prospective investments introduced to new port authority by City staff would not be solicited to locate in Oshawa, unless the City first concluded that there is no other viable location anywhere within Hamilton.

Other Issues of Common Interest Between the City and the HPA

The City has several commercial agreements with the HPA including, importantly, the 2000 Dispute Resolution Agreements and the 2014 Marina Management Agreement. In addition, City is presently negotiating with the HPA regarding a lease of a portion of the Pier 22 lands, the City's acquisition of water lot property for the construction of the new Pier 8 shore-wall and pedestrian way and the potential realignment of Ship and Niagara Streets to accommodate a new rail spur.

While the legislation dictates that the newly amalgamated port authority would assume the HPA's rights and responsibilities under these agreements, staff reiterates the benefit of the established relationships with current HPA representatives and is concerned that any change in management philosophy may alter the tone of the relationship and adversely impact the traditionally successful cooperation between the parties.

Summary

While the federal government has the legal authority to amalgamate port authorities, it is noted that the City has little prior notice of, and still lacks a complete insight into the motivation for, this proposed amalgamation. As such, staff recommends that the City promptly request a meeting with the federal Minister of Transport in order to better understand the federal government's plans and objectives regarding this proposed amalgamation and to directly outline the City's concerns. The City can then incorporate that new information and its known concerns into its formal written submissions on a more informed basis. City staff also recommend that the federal government be specifically requested to provide the draft Letters Patent proposed for the newly amalgamated port authority for the City's review and input prior to finalization.

ALTERNATIVES FOR CONSIDERATION

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

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

N/A

GN:dt