



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Growth Management Division
and
CORPORATE SERVICES DEPARTMENT
Legal and Risk Management Services Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	June 19, 2019
SUBJECT/REPORT NO:	Imperial Oil Leave to Construct Application to the Ontario Energy Board for the Waterdown to Finch Pipeline Project (PED19119 / LS19021) (Ward 15)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Guy Paparella (905) 546-2424 Ext. 5807 Justyna Boroch Hidalgo (905) 546-2424 Ext. 2023
SUBMITTED BY: SIGNATURE:	Tony Sergi Senior Director, Growth Management Planning and Economic Development Department
SUBMITTED BY: SIGNATURE:	Nicole Auty City Solicitor Legal And Risk Management Services

RECOMMENDATIONS

- (a) That the General Manager of Planning and Economic Development be authorized and directed to raise potential municipal issues of concern for the City of Hamilton relating to the Imperial Oil Limited Leave to Construct Application for the Waterdown to Finch Pipeline Project directly with Imperial Oil Limited, and to submit a Letter of Comment outlining these concerns to the Ontario Energy Board;

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.

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- (b) That the Mayor and Clerk be authorized and directed to negotiate and enter into, on behalf of the City of Hamilton, a License Agreement with Imperial Oil Limited and any necessary ancillary documents which set out the roles, responsibilities and obligations of the parties with respect to the Imperial Oil Limited Waterdown to Finch Pipeline Project where it crosses City-owned right-of-ways and property, in a form satisfactory to the City Solicitor and with content satisfactory to the General Manager of Public Works;

- (c) That where required to give effect to a License Agreement with Imperial Oil Limited, which set out the roles, responsibilities and obligations of the parties with respect to the Imperial Oil Limited Waterdown to Finch Pipeline Project where it crosses City-owned right-of-ways and property, Legal staff be directed to prepare By-law(s) to repeal the following By-law(s), in the form satisfactory to the City Solicitor:
 - (i) The Corporation of the Township of Beverly By-Law 71-14;
 - (ii) Wentworth County By-Law 1553;
 - (iii) Township of West Flamboro By-Law 2054; and,
 - (iv) Township of East Flamboro By-Law 1141.

EXECUTIVE SUMMARY

Imperial Oil Limited (“Imperial Oil”) has applied to the Ontario Energy Board (“OEB”) to construct 63 kilometres of pipeline and associated infrastructure to transport refined oil products from its facility in the City of Hamilton to its facility in the City of Toronto (the “Leave to Construct Application”) in connection to its Waterdown to Finch Pipeline Project. If approved, the proposed pipeline would replace existing transportation capabilities of refined oil products (gasoline, diesel fuel and jet fuel) between Imperial Oil’s Waterdown Pump Station in the City of Hamilton to its Finch Terminal in North York in the City of Toronto.

Approximately 3.6 kilometres of the proposed project extends through the City of Hamilton, more specifically, Ward 15 through the Waterdown area (see attached Appendix “A” to Report PED19119 / LS19021).

Staff from Legal and Risk Management Services, Healthy and Safe Communities, Planning and Economic Development and Public Works have identified preliminary issues with respect to the proposed project. Approval of this Report will authorize City staff to raise municipal concerns relating to emergency response, natural heritage, sourcewater protection and corridor management to Imperial Oil, and to submit a Letter of Comment to the OEB. This will help to ensure that issues of concern for the City are

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identified to Imperial Oil and the OEB in a timely manner and considered by the parties in the course of the review of the Leave to Construct Application.

Approval of this Report will also authorize the General Manager of Public Works to negotiate and execute an Agreement with Imperial Oil which governs the relationship of the parties as it relates to the crossing of Imperial Oil pipeline facilities with City-owned roadways and property. An Agreement will set out the roles and responsibilities of the parties, and help to ensure that issues such as liability, insurance and notice requirements are adequately addressed.

Alternatives for Consideration – See Page 9

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: The OEB will hold a public written hearing to consider Imperial Oil's Leave to Construct Application. As part of its review of this application, the OEB will assess Imperial Oil's compliance with the OEB's Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario. The City's Letter of Comment, if submitted, will be considered in the hearing.

If the project proposed in the Leave to Construct Application is approved by the OEB, staff from Legal and Risk Management Services will assist in the negotiations of a crossing agreement relating to Imperial Oil's crossings over City land.

HISTORICAL BACKGROUND

On February 25, 2019, Imperial Oil submitted the Leave to Construct Application related to the Waterdown to Finch Project to the OEB, the Province's energy regulator responsible for ensuring compliance with the Province's environmental guidelines for the location, construction and operation of hydrocarbon pipelines and facilities in Ontario.

The proposed project will replace a 63 kilometre segment of the Sarnia Products Pipeline between Waterdown and North York. This pipeline provides refined products used by businesses and households across the Greater Toronto and Hamilton Area, including a significant portion of jet fuel at Toronto Pearson International Airport.

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Subject to Provincial regulatory review and receipt of all permits, Imperial Oil expects to start construction on the replacement project by the end of 2019. Approximately 3.6 kilometres of the proposed project extends through the City of Hamilton, more specifically, Ward 15 through the Waterdown area (see attached Appendix “A” to Report PED19119 / LS19021).

Imperial Oil has provided information about the proposed project and its regulatory review, including a number of Open Houses in the Waterdown area. In accordance with OEB requirements, the Waterdown to Finch Project application and submissions related to the Leave to Construct Application and the Environmental Report will be available for download from Imperial Oil’s project website at www.imperialoil.ca/waterdowntofinch as well as on the OEB’s regulatory applications page at www.oeb.ca/industry/applications-oeb.

The purpose of this Report is to outline potential issues of concern for the City of Hamilton in connection to the proposed project and recommend appropriate action be taken to defend the City’s interests within the context of the OEB decision-making process.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

N/A

RELEVANT CONSULTATION

Planning and Economic Development – Growth Management Division;
City Manager’s Office – Legal and Risk Management Services Division;
Healthy and Safe Communities – Hamilton Fire Department;
Planning and Economic Development – Planning Division – Community Planning and Design Section;
Public Works – Engineering Services Division – Geomatics and Corridor Management Section; and,
Public Works – Hamilton Water – Sustainable Initiatives Section.

Staff from the above listed Departments have assembled comments regarding the proposed Imperial Oil Waterdown to Finch Pipeline Project. If the Recommendations in this Report are approved, the comments will be submitted to Imperial Oil and a Letter of Comment will be submitted to the OEB for consideration as part of the Leave to Construct Application.

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

OEB Decision-making Process:

The OEB is an independent, quasi-judicial tribunal that is regulated by the *Ontario Energy Board Act* (the “Act”). The primary objective of the OEB is to ensure the public interest is served and protected. Any individual or organization planning to construct certain hydrocarbon transmission facilities within Ontario must apply to the OEB for a Leave to Construct prior to construction, pursuant to section 90(1) of the Act. The project proposed by Imperial Oil will require a Leave to Construct because the pipeline length is greater than 20 kilometers, has a nominal pipe diameter of 12 inches or greater, and additional land is required. The OEB’s approval for construction of pipelines is conditioned upon compliance with applicable regulatory requirements including design, operation, maintenance, safety, and integrity.

The OEB will hold a public written hearing to consider Imperial Oil’s Leave to Construct Application. As part of its review of this application, the OEB will assess Imperial Oil’s compliance with the OEB’s Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario. The City’s Letter of Comment, if submitted, will be considered at the hearing.

Potential Municipal Issues of Concern:

Staff from Healthy and Safe Communities (the Hamilton Fire Department), Planning and Economic Development (Planning – Community Planning and Design), and Public Works (Hamilton Water – Sustainable Initiatives and Engineering Services – Geomatics and Corridor Management) have identified potential municipal issues regarding the proposed project.

Emergency Response Issues:

The Hamilton Fire Department is requesting the following in relation to potential emergency response concerns regarding the project:

- That Imperial Oil provide a copy of the emergency response plan specific to the construction and cutover activities;
- That Imperial Oil provide contact information for their site commander relative to the cutover of the replacement line so that consultation and co-ordinated planning can take place;

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- Given that the diameter of the pipe is being increased for this project, the Hamilton Fire Department is looking for Imperial Oil to provide information relative to the installation of control valves on the pipeline and to confirm the quantity of product that will be transported through the pipeline;
- That Imperial Oil provide adequate access points / routes to any new or replacement sections of the pipeline;
- Development of a Traffic Plan – there are some critical intersections from an emergency response perspective that could be affected as part of the project. The Hamilton Fire Department should be consulted on developing traffic plans given these concerns;
- Emergency Response Equipment – given the potential for increase in levels of product being transported, Imperial Oil must ensure that the levels of emergency response equipment that they would be providing in the event of an emergency are maintained and or increased at adequate levels; and,
- Financial assurance – allocation of financial responsibility for costs that may be incurred for emergency response, clean-ups and other required action, such as evacuation in the event of a spill, particularly costs which may be in excess of Imperial Oil's commercial liability insurance coverage limits.

Natural Heritage Issues:

The proposed pipeline replacement may impact natural heritage features within the Greenbelt Plan Protected Countryside and Natural Heritage System.

The proposed pipeline crosses significant natural heritage features, including:

- Grindstone Creek;
- Provincially Significant Wetlands – (Logies Creek-Parkside Drive Wetland Complex and Lake Medad Valley Swamp);
- Provincial Life Science Area of Natural and Scientific Interest (ANSI) – (Medad Valley);
- Regional Earth Science ANSI – (Medad Valley); and,

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- Environmentally Significant Areas (Waterdown North Wetlands and Medad Valley).

Mapping and species occurrence data for these areas which can be used to assess and mitigate impacts is available from the City and Hamilton Conservation Authority on request.

A detailed project plan will be required to determine the potential impacts on natural heritage.

Source Water Protection Issues:

Staff emphasize that activities related to commissioning or decommissioning of a pipeline should always consider possible impacts to surface and groundwater resources, and that the establishment of a water quality testing and monitoring program by Imperial Oil is essential to assess any changes to local conditions.

It is not clear if Imperial Oil plans to actually remove the old pipeline once the new one is in place considering that there may be residue left in the decommissioned pipeline, staff supports the position that Imperial Oil should remove the decommissioned pipeline assuring that site remediation is performed as required.

There are different types of groundwater vulnerable areas mapped as per the directions under the Clean Water Act (2006). The Imperial Oil pipeline crosses groundwater vulnerable areas such as highly vulnerable aquifers (HVAs) and significant recharge areas (SGRA). Furthermore where the pipeline crosses open water bodies, staff requests that Imperial Oil:

- Considers drinking water source protection and therefore includes appropriate design standards, monitoring and maintenance practices that when implemented will prevent a pipeline from negatively impacting the water resources;
- Conduct inline pipeline integrity testing and visual inspections every three years;
- Include the mapping of the vulnerable areas in the spill prevention plans and spill contingency plans;
- Provide the Source Water Protection group of Hamilton Water, City of Hamilton and the Halton-Hamilton Source Protection Department, Conservation Halton with the report on the findings of the integrity testing and visual inspections, and actions taken; and,

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- Include the mapping of the vulnerable areas in the spill prevention plans and spill contingency plans.

A more comprehensive analysis of City-related source water protection concerns can be provided once the completed application is filed by Imperial Oil with the OEB and studies are available for review.

Corridor Management Issues:

The following comments relate to the road crossing portions of the proposed project.

Engineering Services has been involved in some preliminary meetings with Imperial Oil and its consultants. To date, Engineering Services considers this project to be at a high level study phase but will work with Imperial Oil to fully define the alignment of the project. Engineering Services has supplied Imperial Oil and their consultant group access to the on-line drawing archive tool, SPIDER, and supplied access to any other data to support the optimal location of the pipeline.

Should Imperial Oil's Leave to Construct Application be approved by the OEB, it is recommended that the City and Imperial Oil negotiate a Crossing Agreement which sets out the responsibilities of the parties as they relate to the crossing of the proposed pipeline project with City-owned land and right-of-ways. This would be consistent with the direction given in Report PW14073, where Council authorized the City to negotiate satisfactory Agreements with utility companies where they cross City owned right-of-ways. The Crossing Agreement would address issues such as liability, insurance, work-around costs, and notice. A number of Imperial Oil's crossings with City of Hamilton right-of-ways are covered in pre-amalgamation By-laws (e.g. The Corporation of the Township of Beverly By-Law 71-14, Wentworth County By-Law 1553, Township of West Flamboro By-Law 2054, and Township of East Flamboro By-Law 1141). Where any of the crossings proposed to be replaced are currently covered by existing agreements or valid By-laws, where appropriate, such agreements would be superseded, and repealing by-laws brought before Council for its consideration, when the parties enter into the new crossing agreement for these crossings. The City entered into a similar agreement with Enbridge Pipelines in May of 2017, which similarly to what is proposed in this Report, sets out the roles, responsibilities and obligations of the parties with respect to the Enbridge Pipeline project and where it crosses City-owned rights-of-way and property.

Engineering Services remains concerned about decommissioning pipelines, and is of the view that more consideration needs to be given to the impacts both in the short-term and long-term. It should be noted that leaving a decommissioned pipeline installed in

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place could have significant implications such as increased costs for future City capital works projects (work-around costs).

The City will be seeking a detailed project plan that satisfactorily identifies material storage, haul routes, coordination with City projects, coordination with Forestry, Operations, and Traffic programs, and any other project-specific details that may arise. These details will arise once the final project plan is formalized.

ALTERNATIVES FOR CONSIDERATION

Not Applicable

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

Appendix “A” – Maps of Waterdown Portion of Pipeline